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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Appellate Case No. 2021-000569

The Honorable Diane S. Goodstein, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Muanah A. Fortune, Jr. .....Appellant.

RECORD ON APPEAL

VOLUME I OF III

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INDEX

PRE-TRIAL TRANSCRIPT, MAY 7, 2021.....0001

JONATHAN DAVIS
Direct Examination.....0108
Cross Examination.....0118
Redirect Examination.....0140

TRIAL TRANSCRIPT, MAY 11-19, 2021.....0180

VOIR DIRE.....0205

JURY SELECTION.....0328

STATE'S OPENING.....0375

DEFENSE OPENING.....0380

LETA BOEHLER
Direct Examination.....0392
Cross Examination.....0401
Redirect Examination.....0416
Recross Examination.....0418

CHRISTINA DENSON
Direct Examination.....0421
Cross Examination.....0424

MARCUS PORTER
Direct Examination.....0425
Cross Examination.....0498
Redirect Examination.....0575

JAMES GREEN
Direct Examination.....0587
Cross Examination.....0603

JOSHUA SCARBOROUGH
Direct Examination.....0605
Cross Examination.....0617

JACOB ANTHONY CRAMER
Direct Examination 0619
Cross Examination 0646

RYAN DEWANE
Direct Examination 0650
Cross Examination 0675
Redirect Examination.....0694
Recross Examination 0697

VERA MARTINEZ
Direct Examination 0725
Cross Examination 0730

BETHANY DAVIDSON
Direct Examination 0731
Cross Examination 0736

JACKIE DAVIS
Direct Examination 0738
Cross Examination 0750
Redirect Examination 0759
Recross Examination 0760

DAVID SWIBAKER
Direct Examination 0762
Cross Examination 0779
Redirect Examination 0789

JAMIE HALL
Direct Examination 0791
Cross Examination 0796
Redirect Examination.....0800
Recross Examination 0801

PHILLIP M. MOY
Direct Examination 0803
Cross Examination 0809
Redirect Examination 0825
Recross Examination 0834

MATTHEW ADAM BROOKS
Direct Examination 0872
Cross Examination 0927

Redirect Examination 0946
Recross Examination 0950

SALINA SHEPPARD
Direct Examination 0953
Cross Examination 0959

RACHEL L. NGUYEN
Direct Examination 0960
Cross Examination 0980

RYAN DEWANE (OUTSIDE OF JURY)
Direct Examination 0994
Cross Examination 0996
Redirect Examination.....1000

RYAN DEWANE
Direct Examination 1008
Cross Examination 1026
Redirect Examination.....1028
Recross Examination.....1030

NICOLE HARDIN
Direct Examination 1032
Cross Examination 1042
Redirect Examination 1048
Recross Examination 1054

JONATHAN DAVIS
Direct Examination 1056
Cross Examination.....1096

NICHOLAS I. BATALIS
Direct Examination 1159
Cross Examination 1172

STATE RESTS 1173

DEFENSE RESTS 1183

STATE'S CLOSING ARGUMENT 1188

DEFENSE'S CLOSING ARGUMENT 1219

JURY CHARGES 1246

VERDICT 1286

SENTENCING 1322

SENTENCING SHEETS AND INDICTMENTS 1327

STATE OF SOUTH CAROLINA)	GENERAL SESSIONS COURT
)	
COUNTY OF CHARLESTON)	CASE NO. 2019-GS-18-0416-0422 2019-GS-18-0437-0443
STATE OF SOUTH CAROLINA,)	
)	Transcript of Record
Plaintiff,)	
)	
vs.)	
)	Date: May 7, 2021
MUAHAH FORTUNE & POLO SALAZAR,)	
Defendant.	

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B E F O R E:

The Honorable Diane Goodstein

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Denise J. Lauder, RPR

Ninth Judicial Circuit

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I N D E X

WITNESS/EXAMINATION	Page
JONATHAN DAVIS	107
DIRECT EXAMINATION BY MR. OSBORNE	108
CROSS-EXAMINATION BY MS. HUBRICH	118
REDIRECT EXAMINATION BY MR. OSBORNE	140
CERTIFICATE OF REPORTER	179

E X H I B I T S

	Page/Line	
DFT. EXH. 1, Motion to Severe	8	6
DFT. EXH. 2, Motion	146	11

(The following proceedings were had 5/7/21, Dorchester County General Sessions Court, 11:50 a.m.)

MR. OSBORNE: So before you today, Your Honor, is the State v Muanah Fortune as well as Polo Salazar. And I understand you've heard the facts of this case many times. These are two of four codefendants accused of murder, as well as a number of other charges.

There are a number of indictments for both of the two defendants. I can read them into the record if you would like.

THE COURT: Yes.

MR. OSBORNE: Okay. Mr. Fortune, who is represented by Mrs. Hubrich, has been charged with murder, that's 2019-GS-180146; attempted murder, 2019-GS-180417; burglary, first degree, 0418; possession of a firearm during the commission of a violent crime, 0420; ill treatment of animals, 0421, and armed robbery, 0422.

Most of these are duplicative with the exception of one charge with Mr. Salazar who is represented by Ms. Cornwall. The first charge is murder 2019-GS-180437; burglary, first degree, 0438; possession of a stolen vehicle, that's a different charge, 0439; attempted murder, 0440;

possession of a firearm during the commission of a violent crime, 0441; armed robbery, 0442; and ill treatment of animals, 0443.

And, Your Honor, I have spoken to the defense. I think I have it narrowed down. We have about ten pretrial matters; most of them are going to be pretty quick.

THE COURT: Okay.

MR. OSBORNE: Only a couple of them have any meat to them. I have the State's pretrial. We can enter that into the record if you would like.

THE COURT: Sure. Counsel, do you have copies of the trial brief?

MS. HUBRICH: Yes, Your Honor.

MS. CORNWELL: Yes, ma'am.

THE COURT: Thank you. Is there any consent with regard to any of the motions; yes, no, maybe?

MR. OSBORNE: I would say Ms. Cornwell and I have already talked. I think it's fair to say we have made some concessions; she has made some concessions on some issues. On other matters we need your help.

THE COURT: Okay.

MS. CORNWELL: That's correct, Your Honor.

THE COURT: How about -- Ms. Hubrich.

MS. HUBRICH: Judge, I believe -- so my main motion and I believe my first motion would be a motion to sever in which I'm going to ask you to listen to the arguments, and then -- and hold judgment until you hear the other motions. A lot of what my motion to sever relies on is how you are going to find in the other motions --

THE COURT: Okay.

MS. HUBRICH: -- regarding statements and DNA. How you find there I think is going to affect whether or not you sever the case. So I would like to argue my severance and give you the heads up as where we are and then go into my motion.

As I told Mr. Osborne pretrial, I think a lot of ours are going to be -- and I think I told Your Honor this back in chambers, a lot of these will be resolved as we go through the motions. I don't think I'm going to need to make certain motions. I just needed them to be preserved because I couldn't get a clear answer and I needed the Court to make some findings.

THE COURT: Okay. Got it. Good.
MR. OSBORNE: With that said, maybe the motion to severe might be the best place to start?
THE COURT: Sounds like it.
MR. OSBORNE: And Ms. Chelsea Glover, I don't know if you've met her, she's going to handle --
THE COURT: I do. I have known Chelsea Glover -- let me think. I have known Chelsea Glover since she was contributing to the brain trust that is the office of a certain judge in Columbia.
MS. GLOVER: Yes, Your Honor.
THE COURT: Yes, ma'am. Ms. Hubrich.
MS. HUBRICH: Thank you, Judge. At this point I would like to proceed on my motion to sever the trial of Muanah Fortune and Polo Salazar.
THE COURT: Okay.
MS. HUBRICH: I have submitted to the Court --
THE COURT: I think I've got it.
MS. HUBRICH: Can I make it a Court's --
THE COURT: Motion to severe the trial, yes. Let me make sure. Yep.

MS. HUBRICH: The facts are exhaustive. I know we have been through these facts on numerous hearings. I have put them into my motion -- may I please make this a Court's exhibit?

THE COURT: Yes.

(DFT. EXH. 1, Motion to Severe, was marked for identification.)

MS. HUBRICH: If the record could reflect, this is Court's Exhibit 1 for the purpose of pretrial motion only.

THE COURT: Okay.

MS. HUBRICH: Judge, the facts of this case -- there are two witnesses Marcus Porter and David Swibaker. They are going to testify that four armed black males had masks on, kicked in the door to the place where they were living, and robbed them of various things -- drugs, items -- shot another occupant, he subsequently died, shot a canine, also died at the scene, and shot Mr. Porter. And those are the facts.

The four defendants that were ultimately arrested, two of them are being tried this week, the State has opted to try them together, and two are being tried next week. The State wanted to try all four of them together, but

because of COVID-19 regulations they had to, I think, separate it into two. So that's why we're here today.

In preparing this case for trial, it became apparent quickly that my client could not have a full and fair trial if his case was tried with Polo Salazar. And it became apparent the more we prepared for court.

In this case, my client is accused to have been a passenger in a car. The driver of that car is alleged to be Polo Salazar. The driver of that car led the police on a multi-county chase that lasted, I think, in excess of 30 minutes.

And that's why Mr. Salazar is charged with another charge. He's charged with possession of a stolen motor vehicle in addition to what Mr. Fortune has.

The police will testify that there were items thrown as they were chasing it. My client gave two statements. The first statement that he gave he denied involvement. The second statement that he gave inculpates both himself and his codefendants. And so we have those issues to deal with.

Law enforcement in this case went to

retrieve buccal swabs to get DNA. And they went to my client -- they went to all four defendants. They went to my client and my client went along with it and had his buccal swab taken, and that was sent to SLED for DNA results.

SLED came back and, to be completely frank with the Court, these DNA results really don't hurt us. We're going to talk about that. Mr. Wehman is going to argue the motion regarding those DNA results.

But they don't hurt us in any way, shape, or form from our perspective. They certainly hurt Mr. Salazar much more significantly than Mr. Fortune. But that being said, when the new solicitor David Osborne took this case, he reviewed those search warrants and decided that there was not enough probable cause, and so he advised all of us in a pretrial status conference in April that he was going to review the search warrant -- or he was going to correct the issue.

And that was pretty much the last I heard of it until Friday afternoon. And it was Friday, April 2nd. I was actually getting my second COVID vaccination; it was 2021; I was in downtown Charleston getting my second COVID

vaccine. I had taken the day off.

At 2:59, I received a phone call saying that my client was not complying with the buccal swab, the new buccal swab, and that I should call and advise him it was probably in his best interest.

I had no problem advising him it was in his best interest, but I was not in the office. Advised the solicitor that I was protected the following week, that I was going to the Grand Canyon with Boy Scouts. I was leaving at 5:00 a.m. on Saturday and I didn't know how I was going to get to my client in the Berkeley County Detention Center.

He's been held in the Berkeley County Detention Center this whole time, and I was in downtown Charleston. I assumed I had a bit more time.

On Monday afternoon as I believe I was in Arizona, I contacted my office, my paralegal, and advised her to get word that he should comply with this buccal swab, but by then it was too late. They had tried to get his buccal swab on Friday afternoon, Monday morning, and then they discontinued their efforts.

The police officer in his report advised that he had opted not to do a forced swab. My client is in custody. They had a search warrant. So he opted, I guess, not to hold him down and take a buccal swab.

Called the State and the solicitor advised, we're not going to try again. My office got word to my client on Monday afternoon to go ahead and comply. And that was pretty much the last I heard of that whole DNA process until I got a search warrant return e-mailed to me, that was on April 27, 2021, that I found out that my client had not complied.

And at that point, I didn't -- I didn't know that they hadn't gone back to get it, to do the new DNA results. We did get the DNA results I believe just earlier his week, the new DNA results came back. They are essentially the same as they were before.

And I tell you all that to talk a little bit about severance. When criminal defendants are tried -- who are jointly tried, they are not typically entitled to have separate trials. I've been doing this 21 years. I've never seen codefendants that want to be -- if the State wants

to try them together, I've never seen them be severed.

So I thought really long and hard about what I could say to Your Honor that would make it as apparent to you as it is to me that it just isn't a fair trial as we go forward.

I put some of that into the motion that's Court's Exhibit 1. I will say, Your Honor, that the evidence against Polo Salazar is much more significant than the evidence again Muanah. He's the one driving the car. He's the get-away driver. He's the one who admits that he knows the car is stolen. His DNA is all over quite a few of the items in the car.

He -- his -- the charges against him --

THE COURT: Now, this he is?

MS. HUBRICH: Is Salazar. Yes. The evidence against him is much more substantial than the evidence against Muanah Fortune. And Muanah ends up being prejudiced by the fact that the evidence is much more weighty against the codefendant that he's being tried with. And I think that presents confusion for the jury.

This ultimately ends up being an attempt to convict my client just by implication.

Just by the fact that we can prove this case against Polo Salazar, so why don't you just find Muanah Fortune guilty too.

And based on that, it's a due process right for... and I'm asking you to sever it based on that.

In addition to that, we have the problem with the DNA analysis. And I know I was exhaustive about the buccal swab and how that all happened. When we started talking about how to try this case, I advised the State -- the State advised me, we want to present to the jury that your client refused to comply with the DNA buccal swab.

And I said, well, I don't think I can keep that out. I think it's -- borders on talking about his right to remain silent, but I don't think I can keep that out, as long as I can talk about the fact that he didn't really not comply because he did comply the first time.

And then I get to talk about the search warrant return and how his DNA is excluded from all this other stuff you got. And the State advised me, no, you can't do that because the first search warrant is invalid.

And I said, but I'm not challenging the

first search warrant. And he said, well, that doesn't matter because you're a codefendant.

So by virtue of the fact that this case is being tried together, I'm not allowed to get into the DNA evidence that arguably helps my client. So that's where we find ourselves and that's why this case is different than every other case out there where the State tries them jointly; because I think the State and the co-defendant's counsel will consent that that first search warrant is invalid.

I think they both think it's invalid. I'm not challenging it. If I was being tried separately, if Muanah Fortune was being tried separately, I don't challenge that the search warrant, the DNA comes in, the jury gets to hear that relevant evidence.

Because we're being tried together, Ms. Cornwell is going to challenge that search warrant. The State is going to say, I can't talk about it now because it's -- it's been found to be invalid.

THE COURT: Let me be clear, but it would have been -- it would have been a search warrant for your client and then a search warrant

for Mr. Salazar.

MS. HUBRICH: Correct.

THE COURT: Okay.

MS. HUBRICH: But the DNA analysis that comes back as a result. Do you understand? It's very convoluted.

THE COURT: Well, my -- but this is where -- this is where I'm losing you, and help me. Help me. So two search warrants. You don't care about the first one. Whether it's good, bad, or indifferent with regards to your client, you don't care.

MS. HUBRICH: Correct.

THE COURT: Right. No objection. So then how does Mr. Salazar object to the search warrant with regards to your client?

MS. HUBRICH: Because the search warrant leads to a -- that's what I want to get into, the DNA analysis that happened as a result of the defective search warrant to get buccal swabs. So they went and got the first search warrant, law enforcement did, for all four codefendants.

I think the State and Mrs. Cornwell would both argue that that's a defective search warrant. So they get all four and they send it up

for a DNA analysis. I want to talk about what that DNA analysis is. For once, it actually helps me, Judge. That never happens, but for once the DNA analysis says, Muanah Fortune excluded from this. Muanah Fortune excluded from that. Muanah Fortune excluded from this.

And so I have all of these things where I can say, hey, jury, he wasn't there. Or whatever defense I'm going to make because the DNA shows it. But now I can't get into it because my -- the codefendant's counsel is going to say, that's a defective search warrant. And the State is going to say, you can't talk about the results of that DNA analysis because it's a defective search warrant. And so they're going to preclude me.

So what the State wants to do and -- what I think the State wants to do, and I understand why they're saying it, because they don't want me to say there's no DNA evidence from Muanah Fortune.

They don't want me to be able to argue that there is no DNA evidence. So they want to say, well, we don't have DNA evidence because he refused to comply. But then I want to say, well, he didn't really refuse to comply.

He just wanted to talk to his lawyer and you literally gave me like at the close of business, you gave me two hours on Friday and maybe four hours on Monday to get to my client to tell him to comply. And he just wanted to talk to his lawyer.

THE COURT: Okay.

MS. HUBRICH: And they never went back. So they want to say, you can't talk about the DNA analysis, but we get to say that he refused the buccal swab. Does that make sense?

THE COURT: Uh-huh, yeah.

MS. HUBRICH: If I wasn't being tried with Polo Salazar, it wouldn't be an issue. We could talk about the -- we could talk about the first search warrant. I am not going to challenge it. I can't imagine that the State wouldn't bring it in if I'm not challenging it.

THE COURT: Okay.

MS. HUBRICH: So it's a unique circumstance. It's one that I have never seen above and I don't know that it's one that can be corrected unless we severe these trials.

We are then going to get into my client's statement which is a whole other issue.

We will have a Jackson v Denno hearing today and we're asking this Court to get rid of the statement entirely because it's not voluntary. I'm going to be completely frank; I suspect that you are going to admit the statement into evidence. At that point the Jackson v Denno then moves to another part.

The State, because it wants to avoid Bruton, wants to just put little clips in of my client's video confession. And they have given me those clips. I think they sent them to Your Honor. They've given them to everybody what these little clips are.

The way this relates to severance now, if I was being tried separately, that whole video comes in front of the jury. We don't have to worry about Bruton. The whole video comes in, and I get to argue to the jury -- because the State has to prove to the jury beyond a reasonable doubt that that statement is voluntary.

THE COURT: Right.

DEFENSE: And I get to argue, hey, jury, look here. He sat there for three hours without any breaks. Hey, jury, look at how many times they say to the defendant, we'll help you

out. Why don't you just erase the mistake you made?

Look at how many times -- and I get to argue to the jury that this wasn't voluntary of the length, because of the different statements the police make. I can't do that if we're only going to do little clips. And it precludes my ability to present a full and complete defense.

And so that's why some of these issues we have to talk about in the pretrial motions go back to my motion for severance.

THE COURT: Uh-huh.

MS. HUBRICH: And so what we're really talking about what rights are being affected by this, this joinder we're really talking about the right to due process; the right to a full trial; the right to present a defense.

And because of that, I'm asking you to sever these cases, and I would just ask you to hold your judgment on that --

THE COURT: I will. You got it.

MS. HUBRICH: -- finish pretrial.

THE COURT: And do you want to wait until -- how do you want to do this?

MR. OSBORNE: I feel like I can deal

with the DNA issue easiest, and then the Denno issue and the Bruton issue --

THE COURT: Okay.

MR. OSBORNE: -- are probably going be a little bit more in the weeds.

THE COURT: All right.

MR. OSBORNE: The DNA issue, Ms. Hubrich is correct. The initial search warrant upon my review in the case, I didn't think I could make a straight-face argument to you there was PC there. So I asked Detective Davis here, Sergeant Davis here to cure those search warrants. He did.

We did have a status conference with Judge Murphy on March -- this is just for the record. This is not really covering what Ms. Hubrich was talking about -- on March 24th of this year. At that status conference, I alerted Ms. Hensley, Ms. Hubrich, Ms. Cornwall, as well as Ms. Gay and Judge Murphy my concern about the search warrants and I would be curing them.

Judge Murphy did ask me, well, do you think you can get those done and the results back by May 10th trial. I had already spoken to SLED analyst, Ryan DeWane, and she insured me that they would be done; and they have been done.

So the search warrant wasn't executed until I guess it would be about nine or ten days later. I did not -- honestly, I don't remember whether Summerville Police Department notified me of the exact date and time that they would be executing the search warrant on each defendant; I don't know. But I do know that had I been alerted that, you know, Ms. Hubrich, or any of the other defense attorneys wanted to be present or wanted to have some sort of notification, I would have done that.

But in reference to the way it all went down. So it is correct they went to go execute the search warrants for all four codefendants. Muanah Fortune was the only one who refused. I then called Ms. Hubrich and we had that conversation.

She did tell me that she didn't think she could get to him by then. So I said, well, do you think you can at least notify family members to let him know. Because we both agreed; the DNA result doesn't really hurt him that bad. I mean, he does show up in a proposition, but there is a good argument, the weight. You know, what is the weight to that?

She said she would try. Apparently, it

didn't happen, or if it did, he still refused the second time. The happy accident that happened here is when Ryan DeWane from SLED analyzed the three new buccal swabs without me asking and I guess this is just SLED protocol, she went ahead and reanalyzed the original buccal swab taken from Fortune. So this result that we have, this DNA report contemplates proposition involving him.

So that's why when I sent the e-mail to Mrs. Hubrich earlier, I -- how should I say it? In my mind she has -- they have two options as to this defense. They can either challenge the search warrant and we don't like the DNA. Okay.

If that's the case, Ryan DeWane is prepared to testify excluding his DNA. And if that's the case, I think we do have to explain to the jury why we didn't test it. If she doesn't mind the DNA, which would make perfect sense to me, then have Ryan DeWane testify to the proposition with all four defendants.

And then Ms. Cornwell -- like you said, Your Honor, I don't believe Ms. Cornwell would have standing to object to the defective first search warrant, and then the jury gets to hear the results of all four codefendants.

THE COURT: Okay. How do you feel about that?

MS. HUBRICH: Two things. The time period -- if I could just address quickly, the time period between my client refusing to comply, using that language, makes my skin crawl, because I don't think you can refuse to comply with a search warrant when you are in jail. I think that's almost impossible to do. There is a way to make it happen.

But it was on -- they tried to do the first buccal swab on a Friday afternoon and did the second buccal swab the following Monday, literally the next business day in the morning. We got word to the family to tell him to go ahead and comply. So there is semantics to that.

In regards to using his DNA for the second search warrant, I have no objection to that. We are moving to challenge the DNA entirely. Not based on a defective search warrant. Based on it's more prejudicial than probative 404(b). So Pierce is arguing that. We are moving to get rid of the DNA entirely because it's more prejudicial than probative.

THE COURT: Okay.

MS. HUBRICH: But not because of the search warrant. And I believe Ms. Cornwell is joining that argument also. I saw her motion that said she is joining that argument based on 404B.

THE COURT: Okay.

MS. HUBRICH: I assume that she is going to object to the DNA entirely. Ms. Cornwell is going to object to the DNA entirely because they used Muanah Fortune's DNA that was taken by a defective search warrant and put them in these propositions that are now going to be presented to the jury.

I'm thinking she is going to object to that. I don't know. I have no problem with it, but I'm assuming cocounsel will object.

THE COURT: Got it.

DEFENSE: Because they are using evidence that was taken by a defective search warrant, even though I'm not challenging that search warrant.

THE COURT: Okay. Got it.

MS. HUBRICH: Judge, did you need the two DNA reports?

THE COURT: Huh-uh. Okay.

Ms. Cornwell, your motion to sever. I

think that's where we are.

MS. CORNWELL: May I?

THE COURT: Have you had your vaccines?

MS. CORNWELL: Unfortunately, I have not. I contracted COVID two days before I was supposed to get my vaccine. So I now cannot get it for 90 days, but because I just recently got over it, I think I'm pretty --

THE COURT: Oh, you have antibodies. Congratulations, you got them the rough way.

MS. CORNWELL: It was frustrating to say the least. My household member tested positive, but we're not going to talk about that because we have finally gotten over that.

THE COURT: I'm with you. I understand. Yes.

MS. CORNWELL: Your Honor, with the motion to sever for Mr. Salazar, and I talked to Mr. Osborne and Mrs. Hubrich about this, I'm more than happy to argue it now, but it may be better for me to bookend because, like Ms. Hubrich, I'm probably going to pull in parts of other motions as well to build on that motion to suppress.

THE COURT: Okay. Okay.

MS. CORNWELL: So it may be easy for

the Court to hear the first motion to suppress to get a preview, and then have a closing argument on my motion to suppress.

THE COURT: I understand. That's fine with me. Absolutely fine with me. Got it. All right. Now --

MS. CORNWELL: I will say with the DNA stuff, I can at least touch on that a little bit because I do have those motions --

THE COURT: Yeah. I'm a little bit -- everybody seems to think you're going to object to Mr. Fortune's DNA that was taken with -- taken the first time, I gather reconfirmed with the second search warrant. Talk to me.

MS. CORNWELL: And they are correct in that.

THE COURT: Okay.

MS. CORNWELL: My basis of objection on that is as Mrs. Hubrich indicated. There is a statement Mr. Fortune gives that implicates himself and my client in all of this.

He's the only one that gives that statement. It is in a second interview after hours of talking, after a lot of cajoling and convincing. I would disagree with Ms. Hubrich that there is

more evidence against my client.

The only thing that really my client has to do with anything is that he's in a car that three other people who were known to be in the house are in throwing evidence out. He admits to being in the car. That's all there's evidence of.

And even with the DNA, the evidence doesn't conclusively put my client on any of the DNA. He can't be excluded from I think two items that were in the car, but he can't be identified through DNA by any of that. And we will get into that in the separate motion to suppress the DNA and reliability under 702.

When it comes to arguing the DNA from the defective warrant with Mr. Fortune being included in the analysis where we had to get a valid search warrant, the problem comes in that I'm going to continue to argue that this is sort of law enforcement's kind of MO and how they have gotten him to cooperate, for him to do all this.

He's not even submitting a second DNA sample so that -- you know, the first sample came back, it was defective; but law enforcement has admitted it was defective. That comes back and doesn't harm him at all. He doesn't submit to a

second sample. So they can't retest a solid sample, a validly collected sample against him to try to link him even further to this.

But they get my client's second sample, and because of that I think it gives at least an argument of prejudice in showing bias, and showing why he would also be so cooperative in helping law enforcement in trying to implicate my client in things.

You know, the fact that my client gives DNA that's inconclusive against him, so they want to then retest the DNA to see if anything comes back, but they don't retest his DNA.

THE COURT: I thought they did. I thought they ultimately did get it at the same time, correct?

MS. CORNWELL: No, they never got --

MS. HUBRICH: Not Mr. Fortune.

THE COURT: Oh, okay. I thought you said they came back. Okay.

DEFENDANT: No. They came back a second time the following Monday.

THE COURT: Right.

MS. HUBRICH: And he said, I still haven't spoken to my lawyer. And then they

discontinued efforts after that.

THE COURT: Okay. So what they did they had the search warrant and they just used the first sample.

MS. HUBRICH: Correct.

THE COURT: Okay. Go ahead.

MS. CORNWELL: And so that is -- and what -- I don't think myself or the State expected is in the new analysis and report that came back that Muanah Fortune, his samples wouldn't have been tested. It wouldn't be in the new report.

So the report would be for the three codefendants with the -- what we will say is a buccal swab that was taken through a search warrant that was validly issued by the Court and compared those. We didn't think Muanah Fortune's information from the illegally received sample would have been included.

Unfortunately, because it is included in that, I believe that we are going to have to address that issue. And, of course, my position is going to be, and I think I can argue to a jury, is kind of one of those things that make you question policy and procedure and how things are done, what's going on, and why, you know, he gives a

first statement that says he's not doing anything.

And I believe one of the officers is going to testify that right before they are supposed to take everybody to the jail, that kid looks up at him and looks at the ground, and he just knew that that kid wanted to talk to him.

And he brings him back, and two, almost three hours later, we finally elicit this, you know, confession. They get the DNA from an illegal manner and send it off. It doesn't harm him. They are still wanting to help me out, and yet my client, all of a sudden, is getting a second sample done and getting tested again and again.

I think it goes to not the weight of the evidence on me arguing they don't really have evidence against my evidence. They have him in a car. And that's all they have, and this is the only way we're convincing this kid of promising him things, by, you know, helping him out as much as they can to get him to identify my client. And I think it goes to credibility. I think it goes to weight, I think. And so I think that --

THE COURT: Okay.

MS. CORNWELL: That's why I'm objecting to that sample.

THE COURT: Are you objecting to the sample or not objecting? Are you objecting to the sample or commenting on the fact that the -- they didn't obtain the second one?

It seems to me that --

MS. CORNWELL: I think --

THE COURT: -- you're not -- that you're not coming from a place where I've got to make a determination in regards to standing. It is just -- what you are saying is, see, there he goes again.

MS. CORNWELL: I think I can argue he refuses to comply. And I think Mrs. Hubrich wants to say -- and I understand the argument, you know, that -- of what it is. But I'm going to stand up and say, he refused to comply. And the reason he refused to comply was because, you know, they made all these promises to him and he didn't think he needed to do anything. And, you know, he was already getting helped out.

So he's refusing to comply, and then even though they admitted it's a defective warrant, they still include him on the DNA report to show, you know, that he's not included on some of these DNA samples.

I will let the Court know nobody is -- none of the defendants are conclusively identified by DNA. They're all propositions, but the DNA doesn't say that any of these defendants' DNA is found on these items. They are all speculation propositions.

So I'm going to argue that he didn't help out, he refuses to comply and still included on there because they're really just wanting you to see that credibility and they're hoping to bolster that --

THE COURT: Okay. Got it.

Yeah. Mr. Osborne, let me tell you what I'm hearing. What I'm hearing is that -- and of course it's going to be things that have to occur and they will have to be -- there has to be some sort of testimony for Ms. Cornwell to be able to argue what she's saying she is going to argue, but she is not taking the position that she has standing to object to the admissibility of the DNA of Mr. Fortune.

She's not handling it that way. I'm not worrying about that. Now, where it goes into the sever, it's still there. So -- but it's not a standing issue. It's an issue of -- and, quite

frankly, I guess -- you know, I guess that worst case scenario is whoever went to collect the second sample is going to say he wanted to talk to his attorney first. He wanted to talk to his attorney first and -- and that would be whatever that is.

And, you know, Ms. Hubrich may find herself as a witness which will be uncomfortable, but that's the worst case scenario on that issue as I see it. I'm not -- this is -- this is going to be a do, Ms. Cornwell.

Now having said it, it's probably going to come roaring in, but it's going to be a do to have the testimony in this trial that this gentleman didn't comply because -- you gotta get it in here. You can't just go out and make it up. You're not going to do that, so I'm not worried about that.

SOLICITOR: Okay.

THE COURT: Not worried about it.

SOLICITOR: Yeah.

THE COURT: And you're not going to say he didn't comply, right?

SOLICITOR: No, I don't want to.

THE COURT: Okay.

MS. HUBRICH: Well --

THE COURT: I'm not concerned about it.
MS. HUBRICH: -- I guess, you know, the commenting on the right to remain silent, if it's a codefendant's counsel, that's not the State commenting on it. So that argument is now precluded. I was not anticipating Ms. Cornwell.
THE COURT: That's what keeps you coming back for me.
MS. HUBRICH: But, Judge, that still puts me in the position that the State was going to object to -- and this is what started this whole conversation is when I said, well, okay, if you say he, you know, refused to comply, then I get to get into the fact that, no, he didn't actually. You actually didn't do it the first time.
And then he said, well, you can't comment on that. I said, well, after you kick the door open, I'm going to walk right through it.
I just want to make sure that I'm allowed to walk through that door.
THE COURT: Yeah.
MS. HUBRICH: Okay.
THE COURT: If the doors get opened, the doors get opened, and then they get shut and --
MS. HUBRICH: Absolutely.

MR. OSBORNE: That was when I didn't think the SLED's analyst could parse them apart, but now she can parse them apart. So we want to get into the police wanted to do a super good job the right way, I have no problem with that.

MS. HUBRICH: But I will say, just in piggy-backing on Ms. Cornwell's argument, can you imagine, Judge, and we're going to have to imagine this next week, explaining this to a jury coherently so that they can make a full and fair decision.

It took us an hour and a half with how many law degrees in the room to figure it out? It's taken me a week to do as Mr. Osborne called it the mental gymnastics to get to where we are now.

THE COURT: But, see, here's the thing: Between the three of you, you're so absolutely brilliant and fabulous, and it was very clear to me, simple, bada bing, bada boom.

So this jury is going to have the brilliance of all of these brilliant minds. I think they're going to be in brilliant shape.

MS. HUBRICH: I said all that to say, jury confusion is another part of the motion to sever.

THE COURT: This one doesn't concern me. It doesn't mean that some others will not. Do you understand what I'm saying? I have not made a determination with regards to the motion to severe. This one -- this one I think is manageable.

Okay. I'm not worried.

All right. Next.

MR. OSBORNE: This is Ms. Hubrich's motion to suppress evidence of the gunshot residue.

MS. HUBRICH: I would ask that we get to do Mr. Wehman's next, which is the motion to suppress DNA because we're already talking about it.

THE COURT: Yes.

MS. HUBRICH: And I believe Ms. Cornwell has a similar motion too.

MS. CORNWELL: I do, Your Honor.

MR. WEHMAN: And, Judge, I have had my first vaccine; I haven't had my second dose yet. So I can keep this on or --

THE COURT: No. This is really an interesting question and you're going to think, gosh, there she goes, Judge Momma. When are you supposed to get the second one?

MR. WEHMAN: Three weeks.

THE COURT: Okay. Good. And I don't mind sharing with you the reason for my question is that if it was going to occur during this trial that could be a problem because that second one can put you -- put you in your -- put you on your sofa.

MR. WEHMAN: Yes, Judge. And I have arranged to get it on a Friday so hopefully I have the weekend to --

THE COURT: Yeah, really. Good for you. I did mine on Wednesday and went to court.

MR. WEHMAN: Judge, my motion will be a motion to suppress the introduction of the actual DNA report as it pertains to Mr. Fortune. My argument is going to be based off of Rule 403, so the probative value versus prejudicial effect standard.

I believe Ms. Cornwell has a different tactic. I think she might be taking a 702 argument. My argument is based on 403. I know you've heard a lot of the facts. There are a couple that will be different. I have provided a memorandum as well.

THE COURT: Yes. Yes, I have it.

MR. WEHMAN: The facts that are pertinent to this hearing that I don't know were in

the previous motion, that the vehicle when fleeing from law enforcement during this chase, there are a number of items that are thrown out of the vehicle along the way and there are a number of items that are recovered from within the vehicle once it is finally stopped by law enforcement and searched.

THE COURT: Okay.

MR. WEHMAN: The -- a number of these items were collected, swabbed by law enforcement, obviously sent to SLED for analysis. We've heard a lot of about that just a few moments ago, and I actually have a DNA report, a SLED report. I left my other copies that were for you at my office, but I can pass this up.

THE COURT: I don't want to take yours. Tannie can copy it.

Thank you, Tanda.

THE CLERK: Yes.

MR. WEHMAN: Judge, I know some of the numbers I'm talking about without the report, and we can review them when we get there.

THE COURT: Okay.

MR. WEHMAN: And, Judge, the main item of contention that we have would be the only item I believe that Mr. Fortune is included in one of

these propositions. So SLED is able to identify, I think, on most if not all of these items that are tested multiple contributors.

So we have four DNA profiles, I think is the most common and that they're able to kind of pick apart, and then they determine the likelihood of whether these defendants that they are testing contributed to that mixture.

The only one I'm aware of that Mr. Fortune is identified in is a black and orange glove. This glove, I believe, was recovered from within the car. It's not an item that was thrown from the car as the chase is going on, and they were able to scrape the interior of this glove and compare it to the four individuals.

And I'm going to present the Court with the second DNA report, the last one that I believe the State would intend to introduce at trial. I guess that's where we are if I kept up earlier.

And in that report, two individuals that would be in this case test as contributors -- potential contributors to that DNA mix, Mr. Salazar and Mr. Fortune. The -- and this goes into numbers I can't even comprehend, but in the report SLED determined that it was 260 sextillion times more

likely that Mr. Salazar and three unidentified individuals contributed to this mixture than just four random people.

So they are very confident that Mr. Salazar is made up a part of this, some part of it.

The independent analysis on Mr. Fortune, when they compare him to -- and three unidentified people to four, just random people, is much less. It's actually 1 in 130,000 times more likely. So we have the independent on Mr. Salazar where it's sextillion, and Mr. Fortune we're talking about 130,000 times more likely.

So they are much less confident in him as an individual than they are in the other individual that's been tested and they come up with a number for.

Judge, they do test them together, so they put another proposition set. What they do is they combine Mr. Fortune and Mr. Salazar and two unidentified people with just the random four people. And that number that they come up with goes up to 330 octillion.

So that's just a combination of their two individuals sets and whatever magic they do to

make up a combined number to get that figure.

My motion, Judge, is based in South Carolina and State v. Council has said that while there is a 702 standard that's set for the introduction of scientific evidence, the trial court has the ability to and should review whether there is probative value to that evidence and whether or not that value is substantially outweighed by the prejudicial effect.

And in order to determine the probative value, what our courts come to indicate is we need to figure out what issue of facts in this trial the evidence tends to prove. And so what we need to look at is this glove, this scraping from the interior of the black and orange glove. What is that being presented to the jury for? What are they trying to say?

THE COURT: Okay.

MR. WEHMAN: And, Judge, I will note in my understanding of the reports it is never identified a black and orange glove was used by one of the perpetrators of the crime. It's a glove that's found; they think it's worth testing; they swab the interior.

And, Judge, the -- so not only do we

not have the glove as identified as part of the crime, but we also have the probative value of including Mr. Fortune as being a contributor to this. What is the probative value of that? Because we determined based on the SLED report and my understanding of the SLED report that his individual likelihood of being a contributor to this DNA profile is much less. We're talking sextillion number of times for the other individual -130, 120,000 for Mr. Fortune.

Only one of these individuals could have worn the glove. One person did. And it's obvious to me and my understanding of it, that the major contributor of that DNA profile, the one that was more likely based on the science that they developed, should be the individual that is the most likely to have worn the glove. That would be Mr. Salazar in this case.

Judge, after we look at the probative value, what are they trying to say, how can this help their case against Mr. Fortune, we need to look at the prejudicial effects. And, Judge, I think that the main issue that our courts allow us to look at and I think applies here is confusion to the jury.

Will this information as it pertains to Mr. Fortune confuse the jury of an issue of fact. This is the only piece of DNA evidence that they would try to suggest to the jury ties Mr. Fortune to the home. One, we don't know if the glove was used because it's not identified. Two, we can't say for sure that he was even wearing it, and he is probably out of the two people that were tested the least likely to wear it.

And based on that, I believe that it would confuse the jury. It would try to convince them that scientific evidence, which rightly so, has a lot of weight. I mean, that's why we have the scientific standard, because DNA evidence is rarely challenged.

And I think a jury when they hear this will say, oh, it's DNA. It's a pretty heavy piece of evidence to overcome for a defense. And rightly so, it's also tough for us to keep out DNA if they can prove the scientific standard for it.

But in this case, as it pertains to Mr. Fortune, that if it is allowed to be presented to the jury that he's a minor contributor on an item that might not have been used in the crime, that it would confuse the jury and we are asking

that it be suppressed, at least that part of the report be suppressed for presentation to the jury.

THE COURT: Got it. Got it.

Yes, sir, Mr. Osborne.

MR. OSBORNE: Thank you, Your Honor.

So I have and I know that you have too, Your Honor, a case in which prosecutors have recently oversold DNA, especially to the jury, and they have been reprimanded by the courts and opinions. That's not going to be me. I have the SLED DNA witness, I'm going to be doing closing arguments.

The issue here really, for me, it comes down to an issue of weight, not admissibility. The weight of this evidence, I would agree with Mr. Wehman, is not particularly strong for the State, but we have to present it to show a thorough investigation.

If we don't present it, then the question is quite clear, why did we not -- why did the police not look into Muanah Fortune? Why did we compare it to everybody else and not Muanah Fortune.

I do agree with what he's saying, that the propositions -- you're not going to get SLED

nowadays -- I found this interesting when I talked to Mrs. Did. I said, if I were to give you a sample of my buccal swab and I were to send it to you, and then a week later I sent you a sample of my buccal swab and ask you to compare the two, and present the second one as an unknown, would you generate a report that said match? And she said, no. We don't do matches anymore. We do propositions.

If I were to do that to her, what she would end up reporting back is that it's a single-source DNA contributor. And the proposition -- there would be two propositions. The first proposition would be that the DNA results when compared, the known standard to the unknown standard, would be one in octillion, like Mr. Wehman said, to be to Mr. Osborne.

The second proposition would then be Mr. Osborne compared to an unknown individual.

So either way you look at it we're stuck with propositions. I don't think that makes it inadmissible. I think we can present it to the jury. And, again, there is case law out there if I over-sell that to the jury, I'm sure the objections are going to be coming and we'll be doing this

again. I do not plan on doing this again.

THE COURT: I understand.

Now, so you would tell me that your concern is that -- you would tell me that the concern is that the results -- the relevancy of the result under 403 is to show that this -- Mr. Fortune, this defendant, Mr. Fortune, was included in the DNA analysis.

SOLICITOR: That's correct, Your Honor. And to that point Mr. Wehman brings up -- and at the end of the SLED report, they talk about proposition numbers and what they mean. And I believe for this analysis it is one of the very low proposition.

THE COURT: Yeah.

MR. OSBORNE: And just -- I might have heard you wrong. This glove for relevance, this glove is a black and orange glove. It was recovered from a jumpsuit, a navy-colored jumpsuit that was found on the side of the road. In that jumpsuit was also a knife. That glove, that black and orange glove is significant. The matching -- corresponding matching to that glove is found in the Honda.

THE COURT: In where?

MR. OSBORNE: It's found in the Honda. The Honda. The vehicle they were fleeing in.

THE COURT: Gotcha. In the Honda. I didn't realize it was a Honda. In the vehicle.

MR. OSBORNE: It's not going to be Johnny Cochran, if the glove fits and all that stuff, but these are two different gloves, I mean, gloves and they are a set.

THE COURT: Isn't it funny how everybody's head goes right there. Got it. Got it. Okay.

Now your DNA has a different -- you have a different take.

MS. CORNWELL: We do, Your Honor. The only DNA that is linked to my client, one, I'm going to argue it's not linked to my client because, again, these are propositions. They are not saying yes or no. They are saying maybe, maybe not. Could be this. Could be that. Which I think goes under 702 for the reliability of it.

As the solicitor indicated, the courts have been fraught ever since SLED switched over to this STR mix analysis thing. I'm not sure how much longer they're going to keep this given the fact that people like me continue to bring up the 702,

Daubert, the reliability standard, the prejudicial nature of it.

This came in when I was leaving the State's office and I was happy that I was not having to deal with those headaches because it is -- it's unreliable. Previous reports would say, it's a match offer, or inconclusive. One or the other.

And that's a lot more understanding to a jury than to give, well, it's this much times that it could be this one, but it's this much times that it could be this one. If you put these two together, it's this much time.

It's confusing. It's confusing for anyone. The solicitor himself had to ask, well, what does it mean if you do have a match? Well, We don't have matches. And it's SLED trying to protect themselves in the liability of wrongfully identifying somebody through DNA. If we can't rely on SLED identifying somebody through DNA, how do we expect the jury to understand --

THE COURT: Hold on one second. I'm so sorry. We have a problem?

(Off-the-record conference.)

THE COURT: Let me tell you where my

brain left you. When you were talking about when you left the State's office you were delighted you weren't going to have to deal with this new methodology of SLED with using the propositions as opposed to this is a match.

MS. CORNWELL: Because under 702 -- and 702, the State of South Carolina has specifically stated in admitting scientific evidence under 702, that it has to assist the trier of fact in understanding the purpose of what it is, and that it has to be -- it has to be qualified and that the source is reliable.

When we look outside of, say, the US v. Daubert, Daubert goes further and says, it doesn't have to be reliable. It has to be accepted, you know, by the group of people that, you know -- the wording just left me. It has to be widely accepted --

THE COURT: Peer review.

MS. CORNWELL: -- peer review. Thank you.

THE COURT: That is Daubert. That is not counsel.

MS. CORNWELL: But I think 702 feeds into that as well because of the reliability

standard. When you have seven propositions for one piece of evidence, that's not reliable. And it's confusing to the jury, it doesn't assist the trier of facts.

When you look at the evidence that they claim have propositions for my client, there are some that are a weak standard that are under that, you know, it's not going to be likely, yet they're still saying, well, here's a proposition that it could be. And that's -- if it's unlikely, then why are we putting that it could be a possibility it's his DNA?

It confuses the jury. It throws up a number of issues for appeal, for all that. And that's what the Court is facing right now with the STR mix.

In regards to the 403, is it overly prejudicial or is it more probative than prejudicial? As Mr. Wehman stated, it is incredibly prejudicial to try to link these clients to evidence that was either in a car or on the side of the road back to the crime scene.

There is going to be testimony regarding that car and as far as my client goes, all four of these people were in the car. So any

items in the car could possibly have DNA. I don't think that that goes any way to whether these people were actually in the house. The stuff is in the car. It's not in the house.

None of my client's DNA, I don't believe any of the codefendant's DNA is ever found in the house. There's nothing that puts either one of these individuals in the house based on DNA.

There is a proposition, one had a seven-set proposition and one has a three-set proposition, one has a four-set proposition. And all of the propositions that link my client's DNA and one piece that links the codefendant's DNA are found in the pockets of a jumpsuit that is never identified through being at the crime scene.

I don't believe the gloves were ever identified as being at the crime scene. There is a pocket knife that there is some inconclusive things on that I don't think is ever identified. So it's incredibly prejudicial and it's 100 percent unreliable based on all the propositions and the what ifs and maybes, all they're doing is educated guesses.

And the fact that they can't say what a definitive match is is brought to confuse the jury

and confuse the issues and to show the Court that there is not a reliability standard. And if you can't rely on it, then why is it given to the jury and confusing them on asking them to figure out, do you want to rely on it?

I understand that Your Honor is going to give a credibility charge and a weight of the evidence charge, but when you hear the word expert, it's indicating that you are going to trust that they know what they are talking about. And they are going to give all these numbers and all these propositions and they are going to show all these things against my client or against the codefendants, and none of them are reliable.

They can't get on the stand and say, yes, they contributed to this mixture, or, no, they haven't. And that's what we need them to do. If they're not willing to do that, we need to exclude it completely.

THE COURT: I got you.

So, Mr. Osborne, this is where I see it. The science of DNA that has stood the test of the Daubert has also stood the test of Council. I'm not concerned about the science of DNA.

What I'm hearing from counsel is that

the methodologies that is used by SLED to communicate their results is confusing to the jury; and because it is so confusing to the jury, it ought be excluded because it is of no benefit, and when you look at the prejudicial effect to the defendants, the probative value is -- does not outweigh the prejudicial effect.

Now, talk to me a little bit about this business of all terms proposition. Talk to me about that and tell me how that is presented, because I gather you do not have the SLED folks here.

MR. OSBORNE: Right.

So to address the issue of there being a reliability standard. There is a reliability standard. It's listed --

THE COURT: I'm not worried about -- let me tell you what I'm not worried about.

MR. OSBORNE: Okay.

THE COURT: DNA is reliable. The science -- Council, Daubert, the science is good science. We are over that. Been over that for decades now. DNA science is reliable.

What I'm hearing and it's couched in terms of 403 and it's couched in terms of 702, it's

confusing this business of proposition instead of just saying within a reasonable of scientific certainty that being more likely than not, da, da, da, da, da.

And what I'm hearing is it may be below that standard where they cannot say most probably and they're saying something about propositions. Let me be clear -- let me be candid with everyone. I've not tried a case where SLED has talked about proposition.

I'm -- when last we tried, you know, I tried a murder case, hasn't been that long ago, we weren't doing -- I didn't hear about propositions. I heard about in the words of Gene Dukes, rest his soul, all those squiggly lines. But they would tell you that either it was connected or not connected.

So tell me about little bit about the -- this use of propositions.

MR. OSBORNE: So this is the way that I understand it. This is the way it was explained in the report. The first thing they do is take an unknown sample and then they run this sample and test it to see how many mixtures of DNA are included in that standard. That's the starting

point.

So if you look at that first sample and you find and based on the alleles and the chromosomes that they look at that first sample, that we find -- that SLED finds there to be four different contributors to that DNA mixture, it's going to increase your propositions. Because you have four different people contributing to that.

So then the next thing they do is they look at how many standards do we have. Then they take these known standards -- in this case we have quite a few. And that's just by nature of the crime.

We have Marcus Porter. He's the victim that was shot and lived thankfully. And then we have J. B. Weaver who succumbed to his wounds. He was shot many times. Then we have each of the four defendants. That's six. And I feel like Mr. Swibaker is included in there; although, I could be wrong. I know there were a least six or seven.

THE COURT: All right.

MR. OSBORNE: So now you have four different contributors to this mixture that need to be compared to each one of those. Then you start

looking at, okay, now they look at the known standards and they start eliminating. Who can we look at right off the rip and say their DNA is not anywhere near there that. Then they eliminate them.

But then a jury, and you, and anyone else who is evaluating the evidence is going to say, well, what is -- what statistical probability that, for example, Mr. Fortune contributed to mixture? And that's where you come up with the proposition. Because they can come in and say, well, it is very strongly likely.

Well, they have that on their chart. That would be greater than one million. If you see a number greater than one million, very strongly likely. That's simply the way that they break it down. I've heard Gayle Heath testify many times, an expert in handwriting analysis. She has five different criteria herself. It happens in fingerprint analysis as well.

So, to me, as a prosecutor, sure, you would like to hear the magic words, match. I think it would be easier to present it. That doesn't make it inadmissible because they're putting a statistical number to it, and they are putting

words to that number. They're putting analysis to that number.

THE COURT: Let me ask you this, as I understand it, based on what you're telling me, the SLED analysis person could say, in my opinion, it is more likely than not that this DNA was present and it shows up in this proposition as being one in whatever number, but there is a more likely than not presence.

Let me tell you why I say that. Because that's what is required under 702. They must be -- an expert must be able to testify that it is more likely than not, blah, blah, blah. So that the DNA of an individual is present.

MR. OSBORNE: I agree with Ms. Cornwell that I think that the STR mix, this new way of analyzing DNA is a little bit more complex, but I don't think it's beyond being able to explain it to a jury, and I certainly understand your position.

THE COURT: That's just rules of evidence.

MR. OSBORNE: Right. But I don't want to say what an expert might say. I would ask that we hold off and proffer that testimony.

THE COURT: I think it ought to be proffered because in order to testify -- in order to test it they have to say it's more likely than not or it's inadmissible. Remember, there are no magic words as long as the magic words convey within a reasonable degree of scientific certainty, that being more likely than not, X, Y and Z. They don't have to use the magical words, but that has to be in there. It has to be more likely than not or they can't testify to it.

Now, I gather there is a strength and weakness to that. So I think that we will have to have some proffering of that evidence. So I think that --

MR. OSBORNE: And if I may, I have one other point under Daubert in those cases with the reasonable degree of medical certainty. They are giving, it's my understanding -- I need to bone up on this. It's my understanding that that comes into play when they are giving their opinion on a matter.

THE COURT: We are not Daubert and we are not Council. Remember Daubert, it was -- was developed in the federal court system. We did not adopt Daubert. We are not a Daubert state. We are

a Council state and there really is a difference. What Daubert said was, that's junk science. Okay.

For everyone in the criminal justice world, the moth-eaten brain theory as a defense may or may not pass the Daubert standard. If someone came in and said, let me tell you about the moth-eaten brain that that's really what is going on here. And you come across junk science and Daubert is meant to catch that.

So that even if you have an expert that says, I'm an expert in wonkiness, and this is wonky. Then the judge comes in and says, tell me about your peer review. Tell me about your -- what is your percentage of error? Where are your false positives? What are your false negatives?

And you really do get into the scientific analysis to determine whether or not this science is one that ought be preserved. And the Court is the gate keeper under Daubert.

South Carolina is a little different. We go looking at the experts themselves and does the expert say this is an expertise. We are a little bit different than Daubert, but that's what Daubert says. DNA -- the science of DNA is -- is set. Has been set for decades. Set for decades.

It's not Daubert. It's not Council. It's good science. It's good science.

This is not Council. This is not Daubert. The only -- here's what is going through my head. It's going through my head, quite frankly, because I'm just -- I have not dealt with the testimony given by SLED not in this format of propositions. So I'm not -- I don't know.

What I do know is that in order -- under our rules of evidence, I just left -- I just left Daubert and I'm in the rules of evidence. Under our rules of evidence, in order for the testimony of an expert to be admissible, the expert must be able to testify that within a reasonable degree of scientific certainty -- blah, blah.

In other words, what the expert must be able to testify is, for example, we are concerned about Mr. Fortune. This expert from SLED has to say more likely than not within a reasonable degree of scientific certainty the DNA is present. Has to be able to say that.

MR. OSBORNE: I don't want to put words in her mouth, but I can almost assure you they will never say that. What they will say is -- they will say, the odds of his DNA being present are that odd

number. Whatever the odds are, that's what they are going to say.

And they are going to say, that's the whole point to this is to give you the trier of facts, the jury, you get to look at this. This is the proposition. These are the chances of -- and, really, to be perfectly frank from a defense point of view, I think you would rather have that than match.

We would rather have match. They would rather have this because there is a chance.

MS. CORNWELL: Which is what serves to confuse things under that prejudicial standard of --

THE COURT: They are -- they are dancing on the edge of the sword because it is not for the jury to make a determination. It's going to be for me to make a determination whether or not they are testifying with regard to the standard, which is required. And an expert must testify that within a degree of scientific certainty, that being more likely than not, such as -- otherwise, it is of no moment.

MR. OSBORNE: And, to me, I would kind of correlate it with the handwriting expert where I

would ask Ms. Heath, I would say, to a reasonable degree of certainty, are you comparing the known standard and saying that it is a match to the unknown standard? And she would say yes. If she couldn't, then the answer would say, I cannot match those. And she doesn't put a number to it, but these witnesses do put a number to it. So that's --

THE COURT: Well, they have to have some really good number that means more likely than not so that you could say, for the purposes of the testimony before this jury, what would be more likely than not? What number is more likely than not? In other words, they can't get away with it because they can't say it's a 10 percent possibility.

That's of no help to the jury because they have to be able to quantify it. Now if they want to say it's more likely than not, and it's real likely, super duper likely, oh, my goodness, so likely, maybe not so much.

In other words, you cannot place upon this jury the ability to listen to an expert and make that determination I don't think. We shall see.

I'm confident that they are not going to leave that. I would be surprised if that's what they've gotten. It may be a little wonky that they are trying to quantify rather than saying the chances of this not being the person is one in 85 quadrillion.

And I don't think there's a number quadrillion. I mean, maybe that's what they're trying to get away from, but we'll see.

MS. CORNWELL: And for the purpose of the record, this has nothing to do with handwriting. The jury gets both sets of handwritings and they can look at it and compare. I can't give the analysis and have a jury be able to look at that and understand it enough.

They can look at handwriting samples, and even if they say, well, I can't say it's this, a jury can still make that determination by their own knowledge of handwriting.

DNA is not a known thing. When it comes to odds and saying, the odds -- the house wins a lot, even if the odds are incredibly skewed towards the other side. So if they are going to say, well, the odds are more favorable than not, I don't think that meets --

THE COURT: It might. The odds are more likely than not? Yeah, maybe. It depends. I get the point.

MR. WEHMAN: Just to tail back to where we started, even if we do get the standard, the more likely than not, the scientific reliability that the Court is comfortable with, we would then circle back to the --

THE COURT: Back to 403. I get it. I'm with you. Yeah. Because even it's more likely than not, it's so -- is the quantifying more likely than not would be your point, Mr. Wehman. If they're quantifying more likely than not, and this is right on that precipice, then maybe it ought not me admitted. Because maybe more than one person wore the glove. Right?

The other point would be I would think, if they cannot -- if they refuse to say more likely than not that Mr. Fortune's DNA was present, or words to that effect, or an explanation to that effect, it ought not come in both under 702 as well as 403.

MR. WEHMAN: Correct. Yes, Judge.

THE COURT: I got it. Next.

MS. HUBRICH: The gunshot residue

motion, Judge, is the same. I'm assuming the State does not have the examiner here for gunshot residue.

SOLICITOR: No. Are you challenging the chain?

MS. HUBRICH: No, I'm not challenging the chain.

Judge, for the purpose of gunshot residue, I think we're going to have to reserve this motion for an in camera hearing. The State does intend, correct me if I'm wrong, to present gunshot residue testimony and the gunshot residue. I have report if you would like me to hand it up, Judge.

THE COURT: Do I need it or can you just tell me what I need?

MS. HUBRICH: I can read it to you and put it in the record.

As it pertains to Muanah Fortune, I think the examiner is going to get up and say, it's more likely than not that he had it on him. I think they are going to say that, which meets the standard that you are concerned about.

If that happens, the next question is, is it more prejudicial than probative? I think we

have to have that person on the witness stand to do an in camera evaluation. And I make this motion because as I'm reading through the evidence, I'm looking at the gunshot residue and I have never seen this.

They actually put as a result, particles characteristic of gunshot primer residue were found in general particles characteristic --

THE COURT: You've got to slow down.

THE COURT REPORTER: Thank you, Judge.

(Off-the-record conference.)

MS. HUBRICH: Microscopic molten particles that contain elements lead, barium and antimony. Gunshot primer residue can come from being in the vicinity to the discharge of firearm or coming into contact with the surface that has gunshot primer residue on it; however, no information can be provided as to this -- as to the time frame in which these particles were deposited.

So I've never actually seen those results on a gunshot residue finding. Usually it's they had gunshot residue on the sweatshirt. These results lend itself to a question of, is that really more probative than prejudicial?

The State is going to argue to the jury they were there when these -- when these guns were firing all over the place and we know that because they have gunshot residue particle on their shirts. At that point, it's so prejudicial. We are now putting these people in the vicinity of this. When you read a little further, it says no, actually, we can't say that at all.

So I think the argument is going to be more prejudicial than probative assuming they testify it's more likely than not.

THE COURT: I would think that's a -- and I understand that language is definitely what you normally hear because you hear they are so fragile that if you don't collect them in two hours, you don't get them. So we'll see.

DEFENSE: Right. Right.

THE COURT: We will have to see.

I mean, you can see the point.

MR. OSBORNE: Yeah.

MS. CORNWELL: (Inaudible)

THE COURT REPORTER: I didn't hear what you said, Ms. Cornwell.

THE COURT: She said ditto.

MS. CORNWELL: Ditto.

THE COURT REPORTER: Thank you.

THE COURT: The next motion would be the motion to determine the admissibility of the defendant's prior bad acts.

MR. OSBORNE: I'm not aware of any prior bad acts with the exception of Lyle. And I guess I was thinking about -- there is an incident, and this is all over this trial, less than a week prior to this incident, Mr. Swibaker was at the same residence and he was home alone.

Mr. Porter, our second victim in the second incident, it's his -- they live together. He wasn't home at the time. At that time, five individuals came in through the back door, kicked in the back door, and committed a home invasion robbery that was very similar in nature to the murder incident.

Mr. Swibaker has indicated through my speaking to him as well as what he relayed to the police that he thought there were five individuals in the first incident and four individuals in the second incident. The same four individuals that were in the second incident that committed the murder, the same five -- four of the five guys from the first incident.

So there are some things going on in the background here. In the first incident there were five guys. Swibaker believes that one of those five guys, including the same four from before, one of the five is named Jaquavious Washington. He may not have known his name, but he said he was a co-worker.

He had met Jaquavious a week or two before, sometime before, and he had introduced Jaquavious to Marcus. Marcus will admit he was a marijuana seller at the time. He sold marijuana to Jaquavious on a couple of occasions.

Mr. Swibaker lent some boots to Jaquavious. During that first incident when they came in, he saw those boots. They were masked and armed, same as the second ones, and he saw one of them that he'll say he recognized. Well, that's Jaquavious. I recognized the boots as well.

He then in between the first incident and the second incident told, Marcus, hey, Jaquavious is one of those guys. I don't know the other ones, but Jaquavious is one of them.

THE COURT: One of the five.

SOLICITOR: Yes, ma'am.

THE COURT: Okay.

MR. OSBORNE: So Marcus then decided that, well, I want to get to the bottom of this. So he takes David and they met up with Jaquavious to confront him. Let's see who's telling the truth. It gets contentious. Jaquavious denies it and David said, no, I think it was him.

They end up -- like I said, there was some yelling and it gets contentious. I think Jaquavious may even have had a gun during that incident. But Jaquavious convinces Marcus that he had nothing to do with that first incident.

So Marcus continues to do marijuana transactions with Jaquavious. And we actually have a ledger to prove that, Marcus's ledger. He gave marijuana on two different occasions to Jaquavious, $50 a pop. I think Jaquavious owed him a hundred bucks.

So on the night of the incident, Mr. Fortune tells the police that -- one of his stories is that I came down from Beaufort and I was going to meet with my cousin Jaquavious, or friend Jaquavious. And I think he said he might have met Luken, I'm not sure, but that was his intention of coming here. That's how he explains it.

He kind of comes off of that later on

and says, yeah, I was in fact involved in the robbery. An hour and a half before the home invasion, you have Elijah Green, one of the four codefendants, on his phone. He makes like a 14-minute phone call to a phone that we can tie to Jaquavious Washington.

The whole point to all of that is to establish a connection between the guys in the car to the victim's house. And in the middle is Jaquavious Washington. Without Jaquavious, they don't even know about that. That's how they get there.

So prior bad acts. I have instructed both of these victims -- well, one other issue. When they searched the Honda that the four defendants fled, there were three watches in the Honda, a brown one and two black ones. Swibaker, I showed him a photograph of it. It hadn't been done until we met. I showed him the photograph of the brown watch. He said, yeah, I think that's my watch.

I showed Marcus Porter a photograph of the two black watches and he said, yeah, I think those are my watches. Both of them believe that those watches were stolen during the first

incident.

Now I think we're real close to me getting this in on Lyle, but I don't want to. The only thing that I want to do is I want to just draw the connection to say, these guys didn't just randomly pick this house, they got there through Jaquavious. So that shows from my perspective a complete investigation on their part and ties in the loops.

Having said that, if they want to address this footprint that's at the back of the door that doesn't match any of the four individuals, I don't think I need to talk about that previous incident. Just to simply say, was your house burglarized before? Yes.

I can stay away from it from there.

The watches. I have instructed them, unless I get a ruling from the Court otherwise, to simply say when I show you pictures of the watch, tell the jury if you recognize it as yours or not, but do not say you think it was from a previous burglary. And leave it at that.

MS. HUBRICH: I am not going to be popular, I imagine, between the two attorneys on the other side of me right now.

THE COURT: You are not.

MS. HUBRICH: As long as I'm popular with Your Honor that's really all that matters.

So I have no objection to talking about that incident. I have no objection to saying -- and I will tell you why. The State didn't tell you a really important fact. The two witnesses, Mr. Porter and Mr. Swibaker, lie about it for like two days before they finally disclose it to the police.

And they only disclose it to the police after the police confront them with it and say, hey, did you have a prior break-in because they found some evidence on phones.

And only then do they say, oh, yeah, by the way, a week ago five black males kicked in the door, they stole our half pound of weed and two guns and we didn't report it. Oh, and by the way, Mr. Porter says, I think Swibaker is involved and I think he set this whole thing up.

So those the State didn't tell you.

THE COURT: You mean Washington?

MS. HUBRICH: No. Mr. Porter says Mr. Swibaker is involved and set the whole thing up.

THE COURT: Okay.

MS. HUBRICH: So I have no objection to getting into all of that because it shows that they are not telling the truth. What I don't want is for them to then say, oh, one of those black males in the first incident we believe was Muanah Fortune.

I think that's Lyle. That is where we're getting into the Lyle and --

THE COURT: That I did not hear.

MS. HUBRICH: Right. Well --

THE COURT: Did I miss that?

MR. OSBORNE: He does. He says -- Mr. Swibaker says in the second incidents those four guys he thinks are the same four out of five that did the first one.

THE COURT: That's right. He says that in a conversation with --

MR. OSBORNE: He doesn't say like, hey, you know, I recognize that guy, but he's like, the way they came in and acting, the same dudes minus Jaquavious.

THE COURT: Got it.

MS. HUBRICH: So I don't mind talking about all of it. In fact, I would love to talk about all of it and I plan to bring it out. I

don't want them saying that Mr. Fortune was involved in the first incident.

I think that's impermissible Lyle. Number 1, it doesn't meet the elements of Lyle or 404(b) or the rules of evidence. In addition, even if it does, they certainly can't prove it by clear and convincing evidence.

This wasn't even reported to the police and the two witnesses lied about it for the first three times they were interviewed. So I don't mind talking about that it happened, but I do mind them trying to connect it to my client. I think it's impermissible.

THE COURT: I know what's coming.

MS. CORNWELL: It wouldn't be fair if it was easy.

THE COURT: Yes, ma'am.

MS. CORNWELL: I understand where Ms. Hubrich is coming from. My position is that it doesn't come in, that it shouldn't be talked about. It is confusing the issues. If you're trying to use it on identification where I agree with the State in this is that they can talk about Jaquavious Washington. And what he just put on the record is going to run right into my motion for

third-party guilt.

THE COURT: I know.

MS. CORNWELL: And it is -- and that is fraught right there even -- at this point I don't know that that is proper testimony because he just put the nexus of why I have a right to a third-party guilt claim. So I need all of that information to come in. Not the burglary part of it, not the previous burglary, but Jaquavious Washington is the nexus of all this.

Green is on the phone with Jaquavious Washington and Green even gives a statement that says, I went to three white guys' house with Jaquavious that day and we shot guns and we smoked weed.

Jaquavious Washington admits that he had been in the house. The victims admit that he had been in the house the night that this incident occurs. The defendants all say it can be linked to Jaquavious Washington.

So there is a footprint on the back door that doesn't match any of the four people that were arrested. The door is kicked in. I think that that goes to third-party guilt, especially given all of the Jaquavious Washington stuff.

So I don't want to bring in the burglary. I don't mind if they say the watches are mine and keeping out the burglary. You know, if he wants to -- as far as the door being kicked in and saying that you had your -- I mean, that's -- in the grand scheme of things, that's not what I'm worried about.

But I do think to say, first it was five and now it's four, and I think that these are the same; I think the same four today are the same from the first time, that I have a problem with.

THE COURT: Let me ask you this question. Gregory says the evidence offered by the accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt and to such facts has raised a reasonable inference or presumption as to his own innocence.

Evidence which can have no other effect than to cast a bare suspicion upon another or to raise a conjectural inference as to the commission of a crime by another is not admissible.

Let me tell you what is going through my head. Talking about two people? Oh, yeah. Totally, totally with you. My concern is we're

talking about four people. And so the third -- as I understand the third-party guilt -- and help me because I'm sure you have studied it, but as I understand third-party guilt, somebody is in and somebody is out.

My client is out. Somebody else is in. So the inclusion of Mr. Washington excludes my client. Does that make sense what I'm saying?

MS. CORNWELL: Yes, Your Honor. That's what we're saying, that the inclusion of Jaquavious Washington --

THE COURT: I get the inclusion. Tell me about the exclusion.

MS. CORNWELL: It excludes Mr. Salazar because everybody says four black males. They can put Devonte Major there based on his shoes; the victims identified Elijah Green based on the height, build, and eyes; they actually give some description of Mr. Fortune's shoes, and of course he puts himself there; and that's all.

They can tell you about three of them. We don't know about the fourth. My client in his statement said, I wasn't there, I borrowed the car from Jaquavious. As I'm leaving, these guys go to take them back.

So my position, and I think our --

THE COURT: Where did he meet up with these other folk?

MS. CORNWELL: At Jaquavious's house. I think that I get to argue Jaquavious is the fourth person with them, and the reason that he's in the car with the three with Jaquavious, because he was at Jaquavious's house, he got in the car, then they take off and cops come behind them, and now he's associated with all of them.

THE COURT: Okay. Got it.

MR. OSBORNE: All right. So I agree he can do that on the stand. I can't prevent him from getting on the stand and saying -- that's not third-party guilt because that's direct evidence. That's saying I didn't do it. He did. That's fine, but what you can't do is ask this guy, detective, well, did you have any other people that you were looking at? No.

That's third-party guilt because it could easily be involved with the other guy, with Jaquavious. So if he gets on the stand, I think he does get to do that, and I don't think I can stop him from saying that. I think that's the only way that type of evidence comes in. Other type of

evidence that ends up coming in will be third-party guilt.

THE COURT: Let me challenge that a little bit. All right. We have four. And you yourself are putting evidence in about Jaquavious Washington, right?

MR. OSBORNE: Well --

THE COURT: Because you are connecting those dots to Jaquavious Washington.

MR. OSBORNE: I guess --

THE COURT: And you have four people. Do you see what I'm saying?

MR. OSBORNE: Yeah. Well, I guess I'll see how this goes. I reserve the right to pivot.

THE COURT: You are too good for me.

MR. OSBORNE: I do think that -- but I'm introducing that evidence for an entirely different purpose. That State introducing evidence to explain the connection between the victim's house and the defendant's car and who may have brought them there. Jaquavious may have pointed them out to there.

I think detectives did a lot of looking into that. If you point them out to the house, that's much different than the defense saying, he

went into the house, not my guy. And they're both going to say that? Devonte's going to -- we Lyle that in, they're all saying, it's not me. It's Jaquavious.

Well, that's -- I'm with you on Gregory, and that is third-party guilt when they're introducing it. Like I said, I looked into it. I don't think I can stop them from testifying. If they get on the stand and say that, I will be stuck with that.

MS. CORNWELL: I think -- I've lost my train of thought. I think that -- I know where I was going with that. My client has a constitutional right to a complete and meaningful defense. So, at this point, I think the State has admitted this would be a very valid defense. Maybe now I won't bring in any evidence that I wanted to bring in because I don't want them to have that offense. And that's taking away my client's right to present a valid defense based on the evidence.

So even if he doesn't bring that nexus in, on cross-examination of the detectives of the victims, I get to bring that in under the third-party defense because it does implicate another person and show that not the guilt of my

client and the presumption of innocence to my client by putting that in there.

And the jury has the ability to consider that, to look at the credibility of the witnesses, to look at the evidence against the State and make a jury verdict based on all of the evidence and the complete defense including the reasonable doubt that comes into play if they think Jaquavious is involved.

THE COURT: Here's what we're going to do. We are going to take lunch because it's time. Unlike me, who thought it was important to pad on for COVID-19 in the event I got it, my court reporter did not. She decided she would lose a lot of weight. She's skinny anyway, but I'm desperately worried about her nutrition. So we're going to take -- but it's going to be short if you don't mind.

I would like to start back at 2:00. It gives you time to tell Smitty, where are the nabs? We will take a little bit of time --

(A luncheon recess transpired.)

THE COURT: Okay. Next.

MS. HUBRICH: Judge, I think we left off, I had made a motion under Lyle to determine

the admissibility of prior bad acts. The State went into the incident from ten days prior.

THE COURT: Yes.

MS. HUBRICH: We didn't determine whether we were going to let that in. I think Ms. Cornwell and I have different positions on how that should be admitted, whether it should be admitted. But we segued right into third-party guilt from there without a determination on Lyle.

And then I wanted to say, I'm joining in the motion for third-party guilt to admit third-party guilt on behalf of my client also for the same reasons that Ms. Cornwell has brought out to the Court.

In addition, you know, I did want to say, and I don't know that this was said -- I tried to listen carefully -- that in this particular case regarding third-party guilt the police officers themselves went to Jaquavious Washington. They go get a statement from him. Then they start getting cellphone records in.

They see that his cellphone records put him at the scene of the crime, the tower puts him at the scene of the crime, even though he had told them he was somewhere completely different during

the incident. So they go back to him and say, the problem is that the statement you gave us isn't right because your cellphone records put you -- our records put you at the scene of the crime, so tell us how you were involved. We think you were involved; tell us how you were involved. And this is all on video.

So the police themselves go back well after -- I think this is months after they've even arrested our clients -- they go back and interview Jaquavious Washington to say, we think you're involved; we think you're part of this crime; your cellphone records put you there.

And he tap dances around it, and he says, well, my girlfriend drove me to a gas station down the street and I was trying to get cigarettes, and we were driving all over the place.

So when we're talking about whether or not third-party guilt is -- the weight of that evidence, you really have to look at the fact that the police themselves started second guessing, who were those four people that kicked in that door? And Jaquavious Washington was there. We don't know how. We don't know what he did.

You add that to the fact that the two

witnesses in this case can identify two of the four defendants. They can identify Devonte Major and Elijah Green. They cannot -- as far as the other two people that were involved, the only thing they say is they kind of stood by the door.

They wore masks. There's no height, there's no weight, there's no hair, there's no skin tone. There is a mention once of red, blue and -- Nike shoes. There's a mention by Mr. Swibaker of somebody wearing red-blue Nike shoes, which my client was wearing that night so -- but that's the only indication -- only indication -- that would even bring up that my client was there.

THE COURT: Other than --

MS. HUBRICH: Well, so I'm going to argue that his statement, number one, needs to be precluded; and even if you let it in, I'm going to tell the jury it's not voluntary, there should be no weight given to it, and it isn't -- you know, it was coerced.

THE COURT: Okay.

MS. HUBRICH: And when we get to Jackson v. Denno, you can see -- I mean, Ms. Cornwell alluded to it -- you can see how much pressure they put on my little 21-year-old client

that has no prior record after he initially said evidence I had nothing to do with this and then how they lead him and coerce him and suggest to him, isn't this really what happened.

THE COURT65okay. Got it. With you. So you want to know about third-party guilt.

MS. HUBRICH: Correct -- no, I want to know about -- there was another incident -- there is an allegation that my client stole the gun that was used in this crime. I want to make sure that the State's not bringing that up, unless I somehow kick the door open.

MR. OSBORNE: Well, if he takes the stand, I'm 100 percent going to ask him about the gun.

MS. HUBRICH: Fair.

MR. OSBORNE: If he doesn't take the stand, then no, I will not.

THE COURT: All right. So the prior bad act, the only prior bad act that has arisen would be this business about what occurred a week before.

MS. HUBRICH: Correct, that's what I'm understanding, unless I kick the door open.

THE COURT: Okay. Got it. All right.

Now, so we were at third-party guilt, right? Talked about third-party guilt. And, you know, I think -- this is what I think, I think that -- and I'm going to do some additional work with regards to it, but I don't know that if I can rule in a vacuum.

I'm not going to rule in a vacuum. In other words, I will say this: I certainly think that you have, based on your argument an what you have told me, you very well may be a beneficiary of that, I think; but I don't know that I can actually rule in a vacuum.

Oh, sure, yes, I think that the trial is going to have to develop; but let me say that your motion is incredibly helpful for -- certainly elucidating because, obviously, in my mind, as you heard, my picture is two people; but the way that you have explained it, you certainly have a viable argument that it is -- it could be excluded. Okay. So there it is.

MS. HUBRICH: Thank you, ma'am.

THE COURT: Next?

MR. OSBORNE: And then with Lyle -- I know there are so many --

THE COURT: You know, I don't know how

to rule Lyle in a vacuum. I just don't know how to do that. I don't mind doing this, I do not mind sharing the example of Lyle that is in my mind, and it comes from a treatise on evidence that is always helpful to me, and that is there have been a number of robberies all around town at convenience stores at 11:00 the night. That is not Lyle.

What then can become Lyle is that they are in a limousine with little American flags, and the person -- the robber who is robing all of the convenience stores gets out at 11:00 at night, and every single time he's wearing a Richard Nixon mask with the same vehicle with the little flags American flags and the Richard Nixon.

And in the last robbery, oh, lo and behold, the mask slips off of this person's face or head, you can see the face very clearly, that is admissible Lyle. In other words, it goes to identification because everything else is so odd and different and unusual that they do tie on one to the other, and it would go to identification.

So that's what happens in my mind with Lyle. So there's got to be that uniqueness. And there maybe, you know; but, again, little bit in a vacuum, I think.

Yes. You wanted to say something.

MS. HUBRICH: The second part of that is, if you find it meets one of the elements of Lyle, i.e., identity, then the next thing is can they prove it by clear and convincing evidence, and that was part of my argument.

THE COURT: Absolutely. Well, at that point in time you're going to let me know, we're fixing to Lyle it up.

MR. OSBORNE: And that was my whole point going into this whole thing, we don't want to Lyle anything up. But if they want to Lyle it up, what I don't want them to be able to do is say, people are breaking into people's houses all the time but I don't want him to say it might have been my guy, and that's what he's going to say.

THE COURT: Okay.

MS. HUBRICH: I definitely don't want him to say it's my guy.

THE COURT: Got it. Got it. All right. Now, I know we've got Jackson v. Denno, and we're going to get to that. Does the State have anything other than Jackson v. Denno?

MR. OSBORNE: The only other thing, real quick, that I have, I have a -- I was using

that statute that allows me to introduce business records without the necessity of extrinsic testimony. I've worked out with Ms. Cornwell, I think, in reference to the CAD -- I don't plan on moving the CAD in. I understand why she doesn't want me to. I won't. I'm just going to ID it and then publish some times, that's really all that's important to me from that, about three or four times.

And the other thing is the 911 call. I don't think that she is arguing that it is a 911 call. She wanted to get some testimony out just to indicate that just because the 911 call was placed at that time doesn't mean that's the time of the actual incident, and I think she can get that out through the detective and all of that.

And I'm not sure where Ms. Hubrich stands on the business exception that we're trying to bring in under the statute.

THE COURT: Okay. Great. First of all, let me finish: Yes? Is that correct? Not correct?

MS. CORNWELL: Yes, Your Honor, I wasn't objecting under the business records. It was just the foundational issues, wanting to lay

the foundation, but I agree I can get it in through another officer. I think the only other business records that we discussed were the DMV records.

THE COURT: Which ones?

MS. CORNWELL: DMV records.

THE COURT: Oh, DMV, okay.

MS. CORNWELL: I think the state is intending on introducing each of the defendants' DMV records to show -- I guess to, I'm assuming, conspiracy, you know, they all know each other, they all are from the same area, they're all together. I think that he gets that through law enforcement.

They obviously collect information from each of the defendants to show that. So I would say that by putting in the DMV records and all that, it's unnecessary. I don't know that it's -- I mean, I get the business records. I will let Your Honor make the call on that.

THE COURT: In other words, there are two prongs, remember, there's authenticity, and then there's relevance. And I think all you're asked at this time moment is will you require them to bring in or will you concede the authenticity of the document; that relevancy is not conceded. Are

you okay with authenticity?

MS. CORNWELL: They're certified DMV records. I don't have any issue with that.

THE COURT: Authenticity as opposed to relevance; two different issues.

MS. HUBRICH: Actually, and, Judge, I may be wrong, but I'm seeing three issues. So there's three different documents -- my understanding from the e-mail I got, there's three different -- they're not documents, actually.

Three different pieces of evidence the State is attempting to admit. One is the CAD report. I think they've conceded they're not actually admitting that now, so I'm good with that; I have no more objection because they're not admitting that. They're just going to -- testimony will bring that in, the relevant parts.

So I have no objection to it in regards to it being authenticated.

THE COURT: What's the it?

MS. HUBRICH: The CAD report. Because they're not actually putting the physical piece of evidence; we'll have testimonial report about what it said.

The second piece of evidence they

wanted to admit was the DMV records, and I think that there's three different ways that the State needs to -- three different things -- elements they need to meet. One, they need to authenticate it. And the way it was presented to me was, will you stipulate to it's authenticity because I now have this piece of paper from the records keeper saying that is an authentic report. Am I right?

MR. OSBORNE: Yeah.

THE COURT: A certified record from the DMV?

MS. HUBRICH: Correct. And so it was presented to me, will you go ahead and stipulate to its authenticity because -- under the statute, he kept saying statute, under the statute it's authentic. I think that that's fine. I think that they can do that under the statute for DMV records because it's a business record.

THE COURT: It's actually a self-authenticating document.

MS. HUBRICH: And then they also said that they were going to redact the portions of it that dealt with, I guess, traffic offenses because they were --

THE COURT: Okay.

MS. HUBRICH: And I'm fine with that too. I didn't think they needed to go that far, but I'm good with that. So I don't think I have -- as far as authenticity of the DMV records, I have no objection to that with that piece of paper that they have that says it's authentic.

Whether or not it's hearsay, I think they then bring it in under the hearsay business exception rule, which is a different rule. So we're talking about authenticity under the statute, which is why they have that piece of paper, and then we're talking about a business records exception under hearsay.

THE COURT: I think it means both. Because it is a State record, once you have a certified copy, it is a self-authenticating document. You don't need the business records as an exception act because it is a self-authenticating document.

Whether or not it's relevant is a whole different program. My question to you is, do you object to the authenticity; does he need to call somebody from across the street and make that line go out the door?

MS. HUBRICH: Not for the DMV records.

THE COURT: Yes.
MS. HUBRICH: The third piece of evidence is the 911 call.
THE COURT: Are you good with the -- you got it?
MR. OSBORNE: Yes. Yes, ma'am. I've got it.
MS. HUBRICH: The third piece of evidence is the 911 call itself. I don't think it's a business record. I don't think the statute is applicable. I think they need the dispatcher in here to say, this is what I recorded, and identify it; and then that way it can be played to the jury.
I think hearsay then becomes -- it's just not a business record. I've never seen it qualified as a business record. It has subjective opinions in it, which is the whole reason why police reports aren't considered business records.
THE COURT: So no stipulation with record to authenticity.
MS. HUBRICH: Correct.
THE COURT: With regards to the 911.
MS. HUBRICH: Correct.
MR. OSBORNE: Okay. The DMV custodian --

THE COURT: Don't worry about DMV. Worry about 911.

MR. OSBORNE: I'm sorry, yes, Christina Denson, the 911 custodian here, submitted an affidavit where she said that the declarant, herself, is a records custody or other qualified person who may provide or -- provide a written declaration regarding the records of regularly conducted law enforcement activity which are the subject of certification.

The records of regularly conducted law enforcement activity, hereinafter records, which are the subject of this certification are identified above, that being the 911 call and the CAD report. The records are originals and duplicate copies of 911 auto recordings, audio recordings, and computer assisted dispatch, CAD reports.

The records were made at or near the time of the occurrence of the matters set forth by or from information transmitted by a person with knowledge of those matters.

The records were kept in the regular -- the records were kept in the course of regularly conducted law enforcement activity, and the records

were made by regularly conducted law activity and regular practices.

And I think that language pretty much tracks with the business record, and she is attesting that that 911 call does meet that requirement.

(Brief pause.)

THE COURT: All right. I'm going to ask you to bring in the individual for this reason65because by necessity we are not going to have the original recording. We're just not because we're not going down there, and we're not going to have the original. We can't. We're going to have a copy of the recording.

And I do not believe that it is -- it is unreasonable for the defense to be able to hear, is this the 911 phone call in its entirety, has not been redacted, manipulated, in any form or fashion; and it's for that reason I'm going to ask you to authenticate the recording with a human being.

MR. OSBORNE: Okay. Yes, ma'am.

THE COURT: Thank you. Next.

And let me be clear, just somebody that's familiar with the process, somebody that's familiar with the recording, how it was downloaded

and brought to us so that they can testify by their knowledge it is the entire thing.

MR. OSBORNE: She's super nice. She's ready, I think.

THE COURT: Okay. Yes.

MS. HUBRICH: Motion to determine the admissibility of my client's prior convictions.

MR. OSBORNE: I'm not aware of any.

MS. HUBRICH: Motion to sequester the State's witnesses.

MR. OSBORNE: Sequester the State witnesses, so obviously I'm not objecting to that. I just don't understand how we're -- I don't know how we're going to do that. So I guess I just need to get together with Tom and figure out --

THE COURT: This is how we will do it -- I'm looking at Lynn. Ms. Goettee has always been beyond spectacular help, and she grabs whoever she grabs to help do that. What we've been talking about is perhaps -- and, you know, we used to keep witnesses that way (indicating).

I think this time we're going to keep witnesses maybe in the jury room because it's a larger room, and I think we can keep up to four people -- and I'm looking at Tonda -- safely in

that room. We're going to be using the courtroom next to us, that's going to be the jury room.

So I think -- and Lynn will be -- you know, she'll just be very careful not to let them cross paths. That's not particularly difficult. They will go out an go in as opposed to going this way (indicating).

And, Lynn, you'll probably bring them in, what, from the elevator downstairs and through.

MS. GOETTEE: Yes, ma'am. We were kind of waiting to hear what you wanted us to do. We're going to keep them back in the jury assembly room. I would probably be in the courtroom. We would have another staff member, I think that's going to be Rebecca; and she is the one that's going to be actually bringing them in.

THE COURT: Okay. That sounds great. And, you know, if you need to kind of hang out in this area, that's fine (indicating).

MR. OSBORNE: And while we are on that, just a little housekeeping quick matter, do we have any inclination as to how many victims will be allowed in the courtroom.

THE COURT: Thank you. Thank you for asking me. We will need, I'm contemplating, a

number of more alternates than we would normally have. And we will talk about that. I want to maximize the number of alternates that we can have. However, having said that, I want to -- you know, we've got to talk about where our victims are going to be, victim's family, where they are going to be.

We will not have room for very many victims; unfortunately, we simply will not have a lot of space; however they can rotate in and out. We will be live-streaming downstairs because defendants' family also want to be present.

We will have an area for victim's family and an area for the defense, and we will have security because there need not be any kind of communication.

It's not ideal, and I am so, so sorry; but that's probably how we are going too to proceed, but we will talk.

Probably, I think what we have done in prior trials is the victims have been on the back row sitting with Mrs. Goettee, who is obviously -- she does not allow any interaction whatsoever between the victim's family and -- the alleged victim's family, let me say, and the jurors. That would be completely and totally unacceptable.

But I try to keep that to a minimum; but, again, they can rotate in. You now, now, this is beside the point, but I will tell you, in so far as I am concerned victims families -- I don't want people moving once we are in and we're set. Other than my lawyers. You all have to move. You all have stuff going on. I don't do that to the lawyers because you have stuff going on. And people who are assisting you.

And Ms. Goettee knows after a number of years, there are moments that are tough for a victim's family, alleged victim's family, and they need to leave sometimes, and then they can come back. They have the ability to do that. The only time I shut that down is in openings and closings.

Okay. All right. Yes, ma'am.

MS. HUBRICH: Motion to determine the admissibility of any identification the State intends to use of my client. Motion to have a pretrial hearing to determine the admissibility of any in court identification.

THE COURT: Okay.

MS. HUBRICH: I'm asking you to have to have in camera hearing to determine whether or not that would be admissible.

THE COURT: Okay.

MS. HUBRICH: If the State intends to do it. I don't know that they do.

THE COURT: Okay. All right. What else you got?

MS. HUBRICH: Jackson v. Denno.

THE COURT: Okay. Good. Anything else?

MS. HUBRICH: Motion to keep them from talking about victims, which is more prejudicial in regards to Mr. Swibaker.

THE COURT: I think you mean alleged victims. And I apologize because I'm -- I guess I'm just every so slightly -- because I'm usually pretty careful about saying alleged victims, but I did correct myself.

Yes, ma'am.

MS. CORNWELL: Your Honor, we would join all of her motions, the court identification and all that. I believe it is confirmed that my client doesn't have a prior record.

THE COURT: No prior record, did you look at that?

MR. OSBORNE: No.

THE COURT: Okay.

MS. CORNWELL: There was indication that the State was going to ask to preclude any evidence of the victim's -- alleged victim's prior bad acts, prior record. I have informed the solicitor I will use those for impeachment purposes under the rules of evidence. I don't know if we need to go through that.

MR. OSBORNE: There are just a couple of quick things. Mr. Porter does have some pending criminal charges with our office that's being handled by a different prosecutor. I think that's perfect fodder for cross-examination. He has had those pending charges.

But what I -- and I don't think they would, but just so he feels better and Mr. Vannoy who represents him feels better, I would ask that we not get into substance of those charges so he has to plead the fifth and all that.

But the fact that he has pending charges is certainly perfectly good for cross. He does have some pending charges. And if you all did want to impeach him on his prior conviction, I'm sorry, then I would like to address that because I don't think it's relevant.

THE COURT: Okay.

MS. CORNWELL: As far as impeaching him on prior convictions, I think that would go to -- toward the inconsistent statement, this impeaching evidence on prior inconsistent statement --

THE COURT REPORTER: I can't hear you. I'm sorry.

MS. CORNWELL: I believe at one point he tells law enforcement, I'm not a heavyweight, I'm not a big-time dealer. And I know the pending charges -- I want to say that he had a prior as well that would obviously negate or impeach that statement.

And I would just -- I think if he's going to say that on the stand, give that testimony on the stand, I can impeach him and say, but weren't you previously convicted of a distribution charge that was within the last ten years an it goes to --

THE COURT: I'm with you.

MS. CORNWELL: The truthfulness, the veracity, the credibility, and I believe it does come in under the rules of evidence for that purpose.

THE COURT: Can't do it in a vacuum. Can't do it in a vacuum. Okay.

MS. CORNWELL: Thank you, Your Honor.
THE COURT: Got it. And I know you still have your severance.
MS. CORNWELL: Yes.
THE COURT: Yes. Hold on. Now back to you. I hate to keep doing this. There is some logic. Jackson v. Denno we're going do in just a moment and we'll do the -- I'm going to do that last is what I'm doing.
And then yours about identification.
MS. HUBRICH: Correct.
THE COURT: You're talking about identification beyond Jackson v. Denno; yes?
MS. HUBRICH: Beyond his statement?
THE COURT: Yes.
MS. HUBRICH: No. I think the State's going to have the witnesses get up and say, that's the person who kicked in our door that night, or that's the person who was in the house that night. I don't think they should be able to do that, and I would ask for a hearing to determine whether or not they can.
Although I haven't been able to get an answer as to whether or not they intend to do that. I can object during the course of the trial and we

can argue it then.

THE COURT: I like it.

MS. HUBRICH: I'm good with that. I actually said that I thought that that was what was going to happen.

THE COURT: Okay. Great.

MS. HUBRICH: We were at Jackson v. Denno.

THE COURT: Yes. Okay. But I think I want to do the severance too, because I know you're going to stay for the Jackson v. Denno.

Your motion to sever, I would think you would want to do that now. Yes?

MS. CORNWELL: I can. I was going do it after Jackson v. Denno because I think that they're going to show what clips they're going to do for redaction, and I don't think that's going to go to -- you know, my reason for severance or suppressing statements.

THE COURT: Thank you. Thank you for that.

MS. CORNWELL: Thank you, ma'am.

MR. OSBORNE: The State calls Detective Sergeant Jonathan Davis.

JONATHAN DAVIS,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OSBORNE:

Q. All right. Detective Sergeant?

A. Yes, sir.

Q. Where are you employed?

A. Summerville Police Department.

Q. And how long have you been there?

A. January 2017.

Q. Okay. We are going to kind of move this along a little bit, okay?

A. Yes, sir.

Q. Did you have the occasion on the night of the incident of the arrest of the two -- well, four co-defendants, the four defendants in this case. Were you working that night?

A. I was called in to work for this incident.

Q. And do you have the occasion to speak to this defendant, Muanah Fortune?

A. Yes I did.

Q. Okay. And where did you meet with him?

A. Interview room number one at the Summerville Police Department.

Q. Okay. And at that point when you spoke

to him, was he already in custody?

A. He was detained from the traffic stop and pursuit, so technically, yes, he was.

Q. In all fairness, if he said, I've had enough, I'm ready to go home, that wasn't an option for him?

A. No.

Q. And was anyone else present during the interview?

A. Captain Driscoll.

Q. Okay. All right. So when you and Captain Driscoll interviewed Defendant Fortune, was it broken down into two segments, or was it all one interview?

A. There were two separate interviews with Mr. Fortune.

Q. Okay. So let's talk about the first interview. About how long did that -- did the first segment of the interview last?

A. Approximately one hour.

Q. And what time did the interview begin?

A. I want to say 1:00, 2:00 in the morning, early morning hours.

Q. Okay. And was that interview audio and video recorded?

A. Yes it was.

Q. All right. During Defendant Fortune's interview and your being around him did he appear to be intoxicated or under the influence of drugs?

A. No, he did not.

Q. Did Defendant Fortune appear to have any physical or mental disability that would have impaired his ability to understand what was being said to him?

A. No, he did not.

Q. Prior to or during your interview with Mr. Fortune did you offer any breaks, bathroom or otherwise?

A. I did.

Q. And was the Defendant, Muanah Fortune, denied access to a telephone, food, or drink?

A. No.

Q. Okay. Were there any threats made to him or promises made to him in exchange for his statement?

A. No, there was not.

Q. All right. Did you advise him of his Miranda rights?

A. I did.

MR. OSBORNE: Your Honor, may I

approach.

THE COURT: You may.

BY MR. OSBORNE:

Q. I'm showing you what's been previously marked State's Exhibit 192. Can you look at that and tell me if you recognize that?

A. I do.

Q. What is that?

A. It's a Summerville Police Department advisement of rights form, and I recognize my handwriting and signature.

Q. Okay. All right. Now, I have shown you before State's 191, and that was, what, clips from the entire interview?

A. Yes, sir.

Q. Okay. So that wasn't the entire interview, that was clips from the interview; is that fair to say?

A. Correct.

MR. OSBORNE: At this time I would seek to publish what's going to be our State's 191, which is clips from the interview. It should total about 20, maybe 30 minutes in total.

THE COURT65all right. And that's what you all were talking about earlier, you all have

seen these clips, probably seen the whole tape, clips, the Miranda form, etc. Yes? Yes?

MS. HUBRICH: Yes, ma'am.

MS. CORNWELL: Yes, Your Honor.

THE COURT: Go ahead.

(Video played.)

THE COURT: Can't hear.

MR. OSBORNE: I'm maxed out over here.

THE COURT: Tonda, can you do it?

THE CLERK: Yes, ma'am.

(Video played.)

BY MR. OSBORNE:

Q. He said getting a ride to go back to Beaufort?

A. Correct.

Q. He came here to see Jaquavious?

A. Correct.

MR. OSBORNE: Clip two.

(Video played.)

MR. OSBORNE: All right. Clip three.

(Video played.)

BY MR. OSBORNE:

Q. All right. So Clip 2 ended at about 3:05, I think, or 3:04, and clip three picks up at 3:55. Does that sound right.

A. Yes, sir.
Q. During that 50 minutes or so does the defendant's story change at all from being dropped off to go see a friend, Jaquavious Washington, and looking for a ride at a gas station?
A. No, sir.
Q. Does his demeanor change at all?
A. No, sir.
Q. Is it fair to say that you all -- you and Captain Driscoll did employ various techniques to try to get him to open up?
A. Sure, it's fair --
Q. Different strategies, interrogation techniques and whatnot?
A. Sure.
Q. Did any of that have any effect?
A. No.
Q. All right. So is that the end of the first interview?
A. I believe so.
Q. And, all right, what happened after that?
A. So after that interview's concluded he's escorted to the booking room. We subsequently interviewed Mr. Green for probably an another hour,

hour and-a-half. After that walked back into the brooking room, bring Mr. Green back in, I lock, eyes with Mr. Fortune, and he puts his head down.

And when he does that, I approached him and said, is there something else you want to talk about. He tells me, he's like, if I say something, they're going to kill me. They will kill me. And I said, let's come on back, let's work through this. So we brought him back in and began a second interview.

Q. So his concern was -- was the other people --

A. Correct.

Q. -- saying something. Or saying something, and that the other people were his concern.

A. Correct.

Q. Not you and Captain Driscoll? Or was he concerned about you and Captain Driscoll?

A. I don't believe he was.

MR. OSBORNE: All right. The second interview folder.

Beg the Court's indulgence.

And, Your Honor, and for your knowledge, I don't trust what I'm looking at here

on this hard drive. I'm going to play it directly from the CD.

THE COURT: Okay.

(Video played.)

BY MR. OSBORNE:

Q. All right. Detective, and just for the record, you went ahead and re-advised him of his Miranda warnings?

A. Correct, due to the time frame.

Q. And so we are at 7:18 now, so we're looking at, what, maybe three hours later, something like that?

A. Correct. Sir.

(Video played.)

Q. So at this point had the story changed?

A. No.

MR. OSBORNE: Clip two.

(Video played.)

BY MR. OSBORNE:

Q. Where did he say he found the 9 millimeter?

A. He advised it was in the vehicle when he got into it.

(Video played.)

Q. Did you all recover a Taurus 9?

A. We did.

MR. OSBORNE: All right. Clip three.

(Video played.)

MR. OSBORNE: All right. Clip four.

(Video played.)

Q. Did you all recover the 9 right before the car chase?

A. Correct, it was recovered at the completion when they went back and traced steps.

Q. Well, I mean like, geographically speaking, would it have been recovered before the car chase was initiated?

A. Correct.

MR. OSBORNE: Clip five.

(Played in open court.)

Q. So you told him there were three guys in the house?

A. Correct.

Q. And how many guys did he say he saw?

A. He said they said he only observed two.

Q. Did he change it to three once you said three?

A. No, sir.

Q. He kept it at two?

A. Yes, sir.

Q. That's all he saw?
A. Yes, sir.
MR. OSBORNE: All right. Last clip, clip six.
(Played in open court.)
Q. The first interview was an hour and the second interview was an hour; is that correct.
A. Approximately.
Q. Did -- we listened for about close to 30 minutes. Did the defendant's demeanor change at all during that two hours of you being with him?
A. I believe he became more -- his body language changed.
Q. Say it begin?
A. His body language changed some.
Q. In what way?
A. More of defeated and -- and open. So on the second interview he seemed to be more truthful, not scared.
Q. Okay. And does what we have seen, the clips we've seen fairly and accurately depict his demeanor through the second portion of the interview and how it changed?
A. It does.
MR. OSBORNE: Okay. No further

questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. HUBRICH:

Q. His demeanor changed, he became more defeated? Did you just testify he became defeated?

A. As far as his body language, like his head's down, and then more open.

Q. As if he had been beaten down by interrogation?

A. No. As in like a sense of relief, like I'm going to talk about this now.

Q. Okay. So you originally -- I want to talk a little bit about what you testified to. You originally said that the interrogation started at 1:00 am. I'm assuming that was a misstatement?

A. Correct.

Q. Okay. When did the interrogation start?

A. According to the video, about 3:00 a.m.

Q. Okay. Because otherwise that would put us at like four-hour interrogation.

A. Correct.

Q. And your testimony today is that it was two interrogations.

A. Correct.
Q. Each one lasting about an hour, a little over an hour.
A. Correct, with several hours in between.
Q. Muanah Fortune's 21 years old.
A. Correct.
Q. He has no prior record.
A. Correct.
Q. You testified that you never denied him access to telephone.
A. Correct.
Q. You testified to that on direct?
A. Correct.
Q. So have you watched the entire interrogation, both of them --
A. I have.
Q. -- before coming here today?
A. I have.
Q. Okay. Do you remember, so that we don't have to play them for the -- do you remember him asking to talk to his mama twice?
A. I do.
Q. Did you allow him to leave and go talk to his mama?
A. Not at that point.

Q. Okay. But you're not calling that a denial of access to telephone.

A. Correct.

Q. Okay. So you also said, we didn't deny him food or drink.

A. Correct.

Q. Where, during the course of those two interrogations, because I didn't see it, where during the course of those two interrogations did you say, hey, can I get you a glass of water?

A. So it's not played in that clip, but when we bring him back, you know, on the second time after that three-hour gap he did have access to water and toilet at that point. But on that second hour -- at the beginning of the second interview he's in there by himself. I walk in. I asked him if he wants water. He says no. I closed the door. Go back out.

Q. Did you offer him food that time?

A. I did not.

Q. Okay. Was there ever a time where you offered him food?

A. No.

Q. And so the arrest comes in at about 1:00 a.m., he's arrested.

A. In Colleton County, he's detained.
Q. Taken into custody.
A. Correct.
Q. Transported to Dorchester County, Summerville.
A. To Summerville Police Department, correct.
Q. The interrogation starts at 3:00 a.m.
A. Correct.
Q. So it's two hours there. It lasts -- gosh, the second interrogation starts at what, 7:00 a.m. I think you said?
A. Approximately.
Q. Did he get a chance to eat at all during all this time?
A. We didn't offer any food, no.
Q. Do you know if me he made any phone calls?
A. That I'm not for sure if he made any phone calls from the booking area.
Q. But gain, your testimony is that you didn't deny him access to the phone and you didn't deny him food.
A. Correct.
Q. Okay. The third thing you said is that

you made no threats or promises to him.

A. Correct.

Q. I want to talk first about the Miranda that you had him sign.

A. Okay.

Q. We marked it as State's 1?

MR. OSBORNE: 192.

MS. HUBRICH: 192. Is that entered into evidence for the purpose of this hearing?

MR. OSBORNE: Say again.

MS. HUBRICH: Did you enter it into evidence for the purposes of this hearing?

MR. OSBORNE: Yes.

BY MS. HUBRICH:

Q. Okay. So State's 192 which is entered into evidence for the purposes of this hearing was the Miranda form that he signed.

A. Correct.

Q. And we saw you read it to him. And part of that is where you say, no threats or promises of leniency have been made to you to get this statement.

A. Correct.

Q. Okay. And that's before you ever start questioning him.

A. Correct.

Q. The second time the solicitor mentioned that you read Miranda to him after the, what was it, like three hours, four hours that he was --

A. Roughly four hours.

Q. In the second one do you remember whether or not you ever said to him, no threats of leniency or promises have been made to you, did you say to him the second time around?

A. So at the bottom of that statement is the waiver of rights, so that was read to him the first time. The second time I summarized that and asked him if he was willing to speak with me at that time.

Q. Do you ever say to him, no threats or promises of leniency have been made to you?

A. No, I did not.

Q. Okay. So the only time that was -- that portion was ever said to him was at the very beginning.

A. Correct.

Q. Okay. So let's talk about the promises of leniency.

Oh, I wanted -- before I want to get back to -- real quick before we go with promises of

leniency, you said that his demeanor didn't change except he became defeated.

A. Defeated and more open.

Q. Okay. Isn't it true that he actually, as it went on, cried?

A. At some points in the interview, yes.

Q. And that would be a change in his demeanor.

A. In the second interview yes.

Q. Okay. Getting back to promises of leniency, your testimony is that you made no promises of leniency.

A. Correct.

Q. These interrogations each lasted an hour, and you had testified that you had used various tactics.

A. Correct.

Q. And maneuvers.

A. Correct.

Q. To secure a confession.

A. Correct.

MS. HUBRICH: Are we on? Can we connect?

Q. Okay. What I'm showing you on the screen is just exactly what we were just looking

at, correct? It's his statement to you.

A. Correct.

(Video played.)

Q. Okay. So right there you say, I don't think you're being 100 percent truthful with me.

A. Correct.

(Video played.)

Q. Okay. And you tell him, I can't help you and he can't help you. At that point you're referring to the other detective in the room.

A. Correct.

Q. And you've gotten yourself into some stuff.

A. Correct.

(Video played.)

Q. We've got to be honest with each other and get to the bottom of this.

A. Correct.

(Video played.)

Q. To make sure that you walk out of hear all right?

A. Correct.

Q. That's what you told him.

A. Correct.

Q. You said, I can't help you and he can't

help you, right?

A. Correct.

Q. We've got to be honest.

A. Correct.

Q. To make sure that you walk out of here.

A. Correct.

Q. Okay. Four seconds later --

(Video played.)

Q. You tell him, we already know what happened, or someone tells him that.

A. Captain Driscoll.

Q. Maybe Driscoll tells him that, right?

A. Correct.

(Video played.)

Q. And we're giving you the opportunity to come forward, is that what you said to him?

A. That was Captain Driscoll as well.

Q. So Captain Driscoll says to him, we're giving you the opportunity to come forward.

A. Correct.

Q. What's opportunity for? What's he going to get if he takes the opportunity?

A. He gets to tell his version of the events.

Q. Not that he gets to walk out of there.

A. Correct.
Q. But you had just told him he got to walk out of there and that you'd give him an opportunity.
A. I think that's misconstrued.
Q. Okay.
(Video played.)
Q. So at that point you say to him, we have cameras in the house -- you said, we're giving you the opportunity to come forward. We have cameras in the house. It's completely up to you if you want to be honest with us. And then you leave an open ended statement, or Captain Driscoll does, you're 21 and you've got no record.
A. That was my statement, correct.
Q. And that was right on the heels of you saying, we want to make sure you walk out of here.
A. I didn't say I want to make sure you walk out of her.
Q. What do you think you said?
A. I believe the statement is, we need to make sure that you walk out of her.
Q. Okay. We need to make sure you walk out of here. So right on the heels of saying: We need to mistake you walk out of here you tell him;

we're going to give you an opportunity; it's completely up to you; we want you to be honest with us; you're 21 and you've got no record. And your testimony is that that is not a promise of leniency.

A. No, it was not.

Q. Okay. Fast-forwarding to 1:20:50 of the same interview.

(Video played.)

Q. Do you want to spend the rest of your life in prison. That was the next thing that was said to him, correct?

A. Not the next thing, but yes.

Q. That's the next thing I presented to you.

A. Correct.

(Video played.)

Q. Okay. And again we tell him, this is your opportunity.

A. Correct.

Q. Did you happen to count how many times either yourself or Captain Driscoll told him, this is your opportunity or used that word?

A. I did not.

Q. Would it surprise you if you used it in

excess of 37 times?

A. Could be accurate probably.

(Video played.)

Q. At this point you now tell him, do you hear -- or someone tells him, I don't know if it's you or Captain Driscoll, do you hear that mumbling next door?

A. Correct.

Q. That's your buddy next door talking.

A. Correct.

(Video played.)

Q. What I heard was: You're 21; you're the youngest; you're scared; we came to you because we figured your involvement was minute.

A. Correct.

Q. Are these the tactics that you're trained to use to coerce a confession, elicit a confession?

A. Nothing was coerced, but we -- various tactics of interrogation.

Q. At some point, and this just might be my opinion, but it becomes frustrating that he is not giving you what you think he should be giving you.

A. At that point he's -- there's a lot of

silence.

Q. In fact -- and I want to follow up on that -- in fact, he says I don't know quite a bit, correct?

A. Correct.

Q. Yeah. You would ask him a question, where were you in the car? He says, I don't know, everything was confusing. Or you say, where did you go, what gas station? He says, I don't know; I'm not from here. So he says I don't know quite a bit.

A. Correct.

Q. And that can be frustrating because you all need facts, that's what you're looking for, right?

A. (No response.)

(Video played.)

Q. So when it becomes frustrating, at that point you start giving him things, like maybe you're just there; isn't that what we just said here?

A. No. I believe the statement was, what if the other people -- I posed a scenario for him. You're telling me that there's nothing there, but what if one of your friends is telling us something

different, that what if they implicate you and say everybody's involved, but you're saying you're not involved, we're going to have conflicting statements.

Q. And you suggested to him, well, maybe you were just there?

A. I'd have to hear that again.

Q. And I might be wrong it's hard to hear.

(Video played.)

Q. So you're saying that maybe one of the other guys is suggesting that maybe you're just here.

A. Correct.

Q. Okay.

(Video played.)

Q. And I don't want you to throw your life away at 21 when you don't even have a criminal record.

A. Correct.

Q. We're going to fast-forward about ten minutes further, or I'm sorry, six minutes further.

(Video played.)

Q. Do you believe in second chances.

A. Correct.

(Video played.)

Q. But this is your opportunity to possibly get a second chance.

A. Correct.

(Video played.)

Q. Maybe you're not the trigger man, but you were there.

A. Correct.

Q. Okay. So this is where we're starting to maybe give him some answers. He hasn't said anything about being a trigger man or being present at this point, correct?

A. Correct.

Q. Okay. But in the eyes of the Lord and everybody else that makes you just as guilty.

A. Correct.

(Video played.)

Q. At this point you say: You go from being a witness to being a suspect because you don't want to talk.

A. Can you play that one more time? I only heard the first part.

Q. Yes.

(Video played.)

BY MS. HUBRICH:

Q. So the implication there is if he

talks, he goes from being a suspect to being a witness.

A. At this point in the interview, we don't know what he is.

Q. He's not been charged?

A. No.

Q. He doesn't have papers that say murder on them?

A. Not yet. This is the first interview.

Q. We talked a little bit about his demeanor. You said he cried in the second interview.

(Video played.)

Q. At this point does he start crying?

A. I'm not sure. At one point -- at whatever point he does start crying I do remember making note of that verbally to him.

Q. Okay. And so it's possible it's right here, just not at this particular spot.

Okay. At one point you pick up the pencil in front of him, and we talk about the eraser on the end of the pencil.

A. Correct.

Q. And we talk about erasing things, correct?

A. Correct.

(Video played.)

Q. And you say, help me help you erase your mistake.

A. Correct.

(Video played.)

Q. Do you want to erase that mistake?

A. Correct.

(Video played.)

Q. So at that point you say, erase that mistake; if he walks out the door I can't help you.

A. Correct.

Q. Shortly thereafter you all end his first interview, correct?

A. Correct.

Q. An this is the last -- the closing statements.

(Video played.)

Q. I thought I had a chance to save you.

A. Correct.

Q. He then goes out and is who knows where for three hours, approximately?

A. He's in a holding cell.

Q. Holding cell. And I think the solicitor stated, or maybe you stated, that you see

him hanging his head and you approach him again.

A. Correct. So he's been -- at that point the interview's ended. He's escorted to the holding cells. We re-interview -- or interview another suspect and as we come back in there he's provided with his paperwork for -- or had already previously been provided with his paperwork with his charges.

Q. Okay.

A. At that point we lock eyes, like I said before.

Q. So at that point he's got -- he's charged with murder?

A. Correct.

Q. And he comes to you, and he is questioning you, why is murder on this piece of paper.

A. In the interview.

Q. Right.

A. Yes.

Q. And that's where this one comes in, he's just said to you, why does it say murder on my piece of paper, right? That's a question he gives to you.

A. Right.

Q. You reread him his Miranda rights, but you leave out the threats or promises of leniency.

A. I just summarized them.

Q. So you left that little summary out when you read it to him.

A. Yes.

Q. But that's one of the parts.

A. Correct.

(Video played.)

Q. So again he had just asked you why does my paper say murder on it.

(Video played.)

Q. And you respond, we'll go through all that stuff. If things need to be changed, they can be changed?

A. Correct.

Q. Indicating, if we need to change the murder charge we can change it.

A. If he provides information that would prove to us that he wasn't -- that that charge shouldn't be on him, then yes, we would change it.

(Video played.)

Q. And at that point you're referring to his co-defendants: They're going to jail; they can't hurt you from there?

A. Correct. That was in reference to his statements that they're going to kill me, they're going to kill me; arrangements is in regards to being housed separately and things of that nature if we need to do that.

Q. You didn't tell him, you're going to be housed separately. You were just saying, they're going to jail; they can't hurt you from there.

A. Correct.

Q. The implication being, you're not going to jail.

A. Not my intent.

Q. I want to talk a little bit about what was played in the clips. One of the clips you -- he had not mentioned a gun yet, and I believe it was Captain Driscoll who said, was it a revolver? Was it an automatic? And he was suggesting what types of guns.

A. Correct.

Q. And that was before Mr. Fortune ever mentioned having a gun.

A. I don't know where at in the interview, but, yes, I remember the statement.

Q. He was suggesting different types of guns that it could have possibly been.

A. Correct.
Q. At a different part it said, did you have something covering your face? And he said no. Right?
A. Correct.
Q. Both of the witnesses in this case, Mr. Swibaker and Mr. Porter, say all four people had masks on.
A. He later corrects that, Mr. Fortune does, and says he had his hooding up, pulled tight.
Q. Well, both of the witnesses said they had -- all four had masks on, and I think they --
Was that a yes?
A. I believe so.
Q. Okay. And all four say they were -- and I'm going to mispronounce this. All I can think of is baklava. That's probably not right.
A. I believe that's the correct name.
Q. It's some sort of full-face covering.
A. Yes. I know what you're talking about.
Q. Mr. Fortune, when he's asked, did you have something covering your face, he originally says no.
A. Correct.
Q. And you guys circle back to that and

you say, did you have a mask on? And he says again, no.

A. Correct.

Q. And then you say, did you have a hoodie on. And he says, well, I had a hoodie on. And did you have the hooding pulled tight covering your face? And so at this point, even though he's said, no, I had nothing covering my face, he's going along with what you're saying to him, right?

A. Correct.

Q. Okay. At one point in the clip Captain Driscoll says, were you standing in the kitchen?

A. Correct.

Q. And then he says, did you go into the bedroom?

A. Correct.

Q. And did you throw the mattress on the guy that wasn't hurt?

A. That's correct.

Q. And that's before Mr. Fortune says anything about a kitchen, a mattress, or a bedroom.

A. Correct.

Q. It's only after he's given those facts that he says, well, I went into a bedroom, right?

A. Four hours later.

Q. Yes. Four hours later, after he's given those facts, he then comes back and says, well, I went into a bedroom.

A. (No response.)

Q. And as those things are being suggested to him, Captain Driscoll says, things are now coming back to you, aren't they?

A. Correct.

MS. HUBRICH: I have no further questions.

THE COURT65all right. Ms. Cornwell.

MS. CORNWELL: I don't have any questions, Your Honor.

THE COURT: All right. Thank you. All right. Yes, sir, redirect.

MR. OSBORNE: Thank you Your Honor.

REDIRECT EXAMINATION

BY MR. OSBORNE:

Q. So to refresh your memory -- I'm just going to go in order here -- I asked you if you had ever denied food to Mr. Fortune, and you said you had not.

A. Correct.

Q. Okay. Ms. Hubrich asked if you had ever offered food. It's a little different

question, I suppose.

A. Correct.

Q. If he had asked for food, would you have said, sorry, no food for you?

A. No. We would have made arrangements for him.

Q. And then Ms. Hubrich asked, did you deny him a phone call, and you said that, no -- well, you told her -- I think you said, yeah, you did.

A. I didn't deny the phone call. I just told him he couldn't use it at that point.

Q. Well, would it help refresh your recollection if I were to show you video, I can get it, at 6:22 where Mr. Fortune, with you standing next to him, called his brother and said I'm -- well, tried to make phone calls, I should say, and wasn't able to?

A. That would -- if there is video of that, then it happened.

Q. Okay. There was some talk about masks. You were saying that -- Ms. Hubrich asked you that the witness indicated that they thought they all had masks. Did you all find a camouflaged mask in the passenger's -- in the front passenger seat of

the Honda that was pulled over?

A. I believe so.

Q. And who was seated in the front passenger seat of the Honda?

A. Mr. Fortune.

Q. And there was some mention about guns. Do you remember Captain Driscoll first saying, what did you have, the 380? Did you have the 380?

A. Correct.

Q. And did he admit to having a 380?

A. No.

Q. What gun did he admit to having?

A. He went into more detail and provided a model. He said, I had a -- I had the Taurus 9.

Q. Okay. And did anyone suggest to him, prior to him bringing up Taurus 9, there was a Taurus 9 involved in this investigation at all?

A. No.

Q. In fact, it was a 380 that was mentioned to him, correct?

A. Correct, I believe a 38.

Q. All right. So let's talk about some of these techniques that you utilized here. Let's talk about the difference between a hope of leniency and a promises of leniency. Are you, as a

detective, are you allowed to promise someone leniency, a defendant?

A. No.

Q. Are you able to tell them, tell me what happened, and I'll make sure that all those charges go away?

A. No.

Q. That you have the authority to make it go away, did you make that quid pro quo promise?

A. No.

Q. But I think it is fair to say that you did provide him some hope.

A. Correct.

Q. When you're doing --

Well, let me ask you, how many violent criminals have you interrogated in your career?

A. Hundreds.

Q. And when you walk in there to an interview, is one of the techniques that you're trained to do, to walk in there to an interview and say, look, pal, I know you just committed a violent murder; now, tell me you did it.

A. No.

Q. Has that ever worked?

A. No.

Q. Okay. So what do you do to -- let's just talk about some of those techniques that you utilize. What do you do?

A. Try build a rapport. Try to elicit hope. I guess it goes back to that old saying, you catch more flies with honey than you do vinegar; things of that nature.

Q. Good cop, bad cop, is that a technique?

A. Sometimes.

Q. Do you minimize their involvement?

A. Yes.

Q. Do you sometimes say things like, hey, the other guy is rolling on you.

A. Yes.

Q. Pitting them against each other?

A. Yes.

Q. Okay. And just in case it wasn't clear, the comment here of, we need to get to the bottom to make sure that you walk out of here all right, but I can't do that when you're lying to me, that was around 2. I guess that probably would have been pretty early in the interview?

A. It's pretty early. At this point we're not -- we don't have everything together. We don't know that he's -- what his involvement is.

Q. Okay. Very early. You all are still trying to figure out what happened.

A. Yes.

Q. And about 20 minutes later, come on, man, do you want to spend the rest of your life in prison.

A. Correct.

Q. And the first incriminating statement comes three to four hours later.

A. Correct. Second interview.

MR. OSBORNE: No further questions, Your Honor.

THE COURT: All right. Recross?

MS. HUBRICH: No, ma'am.

THE COURT65all right. Very well, you may step down.

Any additional witnesses, or call your next witness.

MR. OSBORNE: No, Your Honor.

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

MS. HUBRICH: Judge, may it please the Court.

THE COURT: Yes.

MS. HUBRICH: I have submitted to the Court just this morning a motion to suppress the

defendant's statement. Has it been provided to Your Honor?

THE COURT: Yes.

MS. HUBRICH: May I please have a copy of it marked as a Court's Exhibit?

THE COURT: Yes. Of course, both sides -- State has it.

MS. HUBRICH: It's been provided to both counsel for the Codefendant and for the State.

(DFT. EXH. 2, Motion, was marked for identification.)

MS. HUBRICH: Let the record reflect this has been admitted as Court's Exhibit No. 2 for the purposes of pretrial hearing.

THE COURT: Yes.

MS. HUBRICH: The test for determining the admissibility of a defendant's statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances.

THE COURT: That's right.

MS. HUBRICH: The first step for the State is to prove that to you by a preponderance of the evidence.

THE COURT: Yes.

MS. HUBRICH: If you find that it is knowing and voluntary, it's then admitted before the jury. They then have to prove that it it's knowing and voluntary to the jury beyond a reasonable doubt.

THE COURT: Correct.

MS. HUBRICH: That's my understanding of the law.

THE COURT: Yes.

MS. HUBRICH: The totality of the circumstances in this case, Judge, we have a 21-year-old who has no prior involvement with law enforcement, no prior record. They say themselves that he's scared. They admit that he cries during the interview.

While they testify that they made no promises of leniency, Judge, certainly when you say to someone, I want to see you walk out and make sure you walk out of here all right, there is no doubt certainly in my mind that I get to walk out of here. That means without handcuffs. That means I get to leave by the front door. Not by handcuffs out the back door into the police cruiser.

The fact that you -- the fact that you

say, I want to make sure you get out of here all right, you then say, let's take your opportunity 37 times during the course of that first interview. I want to make sure you get out of here all right, here's your opportunity, let's take this opportunity, we're giving you this opportunity, we came to you first so you could have this opportunity.

If you listen to the -- it's through the entirety. It's almost -- I just kept tallies, oh, my goodness, how many times are they going to say this, and that was just during the course of the first interview, which lasted an hour. I didn't even keep tallies for the second part of the interview.

So when you have a 21-year-old with no prior record, fairly unsophisticated in terms of the criminal justice system, you tell him, I want to make sure you walk out the door, and let me give you this opportunity.

And then you say, let's erase this. What does that mean? It's not a hope. That's a promise. If you do what I'm telling you to do, then we're going to make sure you walk out this door, and I'm going to erase this for you. Let me

help you help yourself. Let me save you.

The State wants you to take each one of those and say, oh, he's just giving him a hope. This is just another hope. This is just another hope.

What I hope I've showed the Court is that you take them all together, the totality of the circumstances, you take it in the context of who Muanah Fortune is and you say, there is no way that's not a promise of leniency. Look at all times you said this to him. Look at how many times you gave him an opportunity, you told him you would erase it, you told him you would save him. Those are just promises of leniency.

You then add to, and we touched on it a bit, the suggestiveness of, I'm going to give you the answer, give you a little bit to marinate on it, and then I'm going to come back and ask you about it, at which point I'm going to let you regurgitate the answer back to me.

We saw it through some of the State's clips. We saw it again through some of the clips and through the testimony that the officer gave.

I will say that it was two hours. It was extensive. It lasts forever. It is

consistent. It is nonstop. Constantly, this is a question, Mr. Fortune; we're asking the questions, Mr. Fortune. They don't ever let up on this gentleman. You see that as you watch it, and it becomes exhausting just watching it. The fact that he was beaten down at the end of it is no surprise at all.

Because of that I'm asking you to suppress the entirety of the statement. It is not knowing. It is not voluntary. It relies on promises of leniency. It is suggestive just by the fact they're giving facts to him and having him regurgitate them back. And I'm asking you to suppress all of it based on that.

I do have a second argument.

THE COURT: Okay.

MS. HUBRICH: That if you decide to let the statement come in, that you let it come in in it's entirety. It's only fair. If we're going to let the jury -- the State's going to have to prove to the jury beyond a reasonable doubt that this was knowing and voluntary.

I get to talk about every -- we get to watch the whole thing, watch this kid get beaten down, watch this 21-year-old without a prior record

get beaten down into giving a confession, and then go back to the jury room and decide whether it was knowing and voluntary.

They get to watch that. That's only fair. If we're going to give it to them, we've got to give it to them, and I have to be able to present a complete a defense. Thank you, Judge.

THE COURT: Thank you. All right. Anything you want to add?

MS. CORNWELL: I don't have anything to argue. It would be part of my severance.

THE COURT: I know. I'm with you.

Yes, sir.

MR. OSBORNE: All right. Well, I guess just briefly, Judge, so the test, as I understand it, once we get into it being possibly coercive conduct by the police is whether the defendant's will was overborne in making a statement.

And it's actually the defendant who reinitiates the interview, and he's the once that was calling the shots. And I know she's saying that there was regurgitation, but when they tried to push him a certain way, he wasn't going.

THE COURT: Let me ask you this question. I get -- I'm with all that. You know,

it's a little bit disconcerting that they do say, we want to make sure you walk out of here. That's probably the most difficult part of this, but it's one statement out of many. Why not -- and I think I know the answer.

Why not the entire statement? You know, there is that theory and there is that that evidentiary concern with regards to completeness. And again, I think I know what the answer is, but your, on behalf of the State, response would be, why not two, why not the whole statement.

MR. OSBORNE: So twofold -- hope I'm tracking with you. The first one would be the rule of completeness, it was a terrible case where the prosecution literally introduced a small portion of an interview that said, I killed the guy, and then they stopped it.

Well, in the next part he said, because he had a gun and I had to. Well, the Courts are like, come on, you've got to play the whole thing.

We don't have that here. What we have here is we have the story. In the clips I made sure to get his story out. And his story really was pretty simple, and it did take a little bit of while.

So now the next part of it, the reason why I didn't want to press play is because I think it will implicate Bruton. You know, but I think we can get there. I think she can cross, I think -- he is going to be subjected to cross-examination, so she can depict that atmosphere and that attitude.

I don't like the whole clip situation. I mean, I would object to hearsay to that. I mean, it seems like she's trying to impeach him. I think she can ask the question: You said this? You said that? And she can paint the picture. If he denies any of it, then it comes in. That's kind of the way I would handle that.

THE COURT: Okay. In other words, in short, it's not necessary to the State's case, to play the whole thing.

MR. OSBORNE: Right, right, yes, Judge.

THE COURT: Okay. All right. The standard for me is the preponderance of the evidence. More likely than not it's voluntary. I do not believe, using the preponderance standards, that his free will was overcome. It's two hours.

It is late, but it is -- it's two hours of interrogation, which is not particularly long,

lengthy, particularly given that there is space in between.

While the statement, we need to be sure that -- he didn't say, except on cross -- fine cross-examination -- that we need to be sure that you walk out of here, which is what he said on cross-examination. What he says in the tape is, to make sure that you walk out of here.

And so while the statement is disconcerting, yes, if I look at the tape in it's entirety, I do not believe that his free will was overcome. But the ultimate -- by a preponderance of the evidence, the ultimate call, though, is beyond a reasonable doubt with regards to the jury.

Now, with regard regards to playing the entirety of the tape as supposed opposed to those portions which the State has requested, it could be played in cross-examination and -- if need be. And so I will leave that -- I'll leave that to you on cross. Okay.

But however, however, my concern is that while you certainly can ask about the duration, duration, duration, both of the tapes and the duration in between, where was he and what is that space like, all of those things, on

cross-examination the tape needs to be played, or portions of it, on cross-examination.

MS. HUBRICH: Do I understand, Judge --

THE COURT: It could be part of cross-examination.

MS. HUBRICH: So I can admit the statement on cross-examination? I can do what I did on cross-exaggeration?

THE COURT: I don't know why not. If there's an objection, I guess there will be an objection, and I will deal with it, right? But if it's on cross-examination and it's relevant to you and it's relevant to your cross-examination, what?

I'm going to keep -- yes, I'll handle it when it comes up, but I don't think you're thwarted from doing that.

MR. OSBORNE: Judge, it seems to me like, if I understand Bruton correctly, it's when the State introduces evidence of a co-defendant's out-of-court statement and implicates another co-defendant, that Bruton is triggered.

So -- and I don't think Ms. Hubrich would ever try to try to trigger Bruton to kind of try to get a mistrial. And what I just heard from that, I don't even think Bruton was implicated.

This was all about what he said.

THE COURT: Without a doubt.

MS. HUBRICH: To be clear, I would play the whole thing to the jury. I think the jury needs to hear the whole thing. I would enter it into evidence and I would play the whole thing for the jury.

THE COURT: But the State has the Bruton burden, so they can. They've got it. As I understand what you're telling me, in that I have not heard all of it, you are telling me that there are Bruton issues in it and that you have culled those.

And I'm satisfied you've culled them because I saw no indication whatsoever of any other implication. However, there you go.

MS. HUBRICH: I'm not following you. I would want the jury to hear all two hours.

THE COURT: Okay. I got it.

MS. HUBRICH: Okay.

MR. OSBORNE: Okay.

THE COURT: Okay. Meaning you get to cross-examine, so you'll cross-examine.

MS. HUBRICH: Right.

THE COURT: If there is an objection

to playing a portion, I will deal with it at the time. In other words, your client's 6th Amendment right to cross-examination is very, very strong. And so I am not about to sit here and say, you can't cross-examine, you can't use this tape, you can't play a portion of this tape on cross-examination.

Now, it may get limited based on an objection. But, Ms. Hubrich, I'm not about to tell you an in limine motion, in a pretrial motion, that you can't -- you can't cross-examine fully when there's no objection to that cross-examination that is challenging your ability to do that. Do you understand what I'm saying?

MS. HUBRICH: I think so.

THE COURT: Okay.

MS. HUBRICH: I believe there will be objections.

THE COURT: Well, okay. I'm okay with that. But don't -- in other words, I'm certainly not going to say at this juncture, Ms. Hubrich, you can't cross-examine because, whatever reason, when there is no objection before me with regards to your ability to cross-examine.

I'm just not about to do that to you or

to your client. I'm not going to do that. You have the 6th Amendment right to cross-examine witnesses on behalf of your client, and when there's not an objection interposed, and at this moment there isn't, so there you go.

MS. HUBRICH: Thank you, Judge.

THE COURT: See what I'm saying?

MS. HUBRICH: I absolutely see what you're saying, and it actually dances us right back to the motion to sever because I believe it implicates Bruton, and it goes towards why I think this case needs to be severed because this wouldn't be an issue. None of this would be an issue if we could sever it.

THE COURT: Okay.

MS. HUBRICH: Thank you, Judge.

THE COURT: Yes. All right. Closing argument.

MS. CORNWELL: Your honor, again, with regards to the Denno part of Mr. Fortune's statement, I don't have any argument.

THE COURT: I know.

MS. CORNWELL: However, I do believe that the Bruton issues are throughout that statement. On even the clips that the State

played -- apologize in advance -- the clips that you gave me must have been what you saw on the hard drive before you put them on there because the second interview I only had three clips and so I've got to go through a couple that haven't been released to us.

MR. OSBORNE: Okay.

MS. CORNWELL: But I would have an issue in clip one, I'm sorry, in interview one, clip three, were you there when your buddy shot the guy. I mean, that's clearly going to implicate Bruton when you've got two people sitting at the table and someone says were you there when your buddy shot the guy. So, I mean, that's going to create an issue just with that.

THE COURT: Hold up. What about that?

MR. OSBORNE: I mean, Bruton was when the comment makes it clear that you're talking about those individuals. We know -- at that point we're already going to have testimony that there were four people involved in this.

So it doesn't implicate either one of them by saying, I know you were there when your buddies -- I mean, that could have literally been anyone. But I'm going to go back and listen to

that again. I may just cut that out.

THE COURT: Okay. All right.

MS. CORNWELL: And, Your Honor, of course I would argue that from Bruton stems a number of cases where our Supreme Court has indicated even pronouns that may implicate somebody violates Bruton and can give an overly prejudicial inference to the person sitting beside him.

So if a pronoun does that, your buddy, the person that was sitting next to you in the car, shot the person, I think that gives an overly prejudicial inference that they are talking about Mr. Salazar.

THE COURT: Okay.

MS. CORNWELL: You know, throughout the clips and in the second clips they make references to again pronouns of, they're going to jail; who's house did you all go to; where did you all walk; where were you all going.

So I think those do make some Bruton issues that will be hard to overcome. Even in the clips that the State is playing, if they redact all of that, they can't guarantee that the testimony would be limited in not implicating my client unfairly.

The DNA issues we've already discussed and how that's going to play out and what the arguments would be on that for the severance motion.

Ms. Hubrich has just indicated and Your Honor has told her that once we get to the juncture she's going to move for the entire statement in, or attempt to. In that entire statement he says that my guy is in that house and that my guy is there.

Well, now I have a confrontation issue because I don't have the opportunity to cross-examine Mr. Fortune on why he would say my client was there, what biases, what motives, is he being truthful. I don't have the opportunity to impeach him or his truthfulness because he has the right not to not take the stand and not testify at trial.

So that's why Bruton is such a huge issue in this is because Ms. Hubrich has the right to present a complete defense and play that entire tape. My client has a right to confront the witnesses against him and can't do that unless he takes the stand, so that's going to cause the biggest issue.

THE COURT: In addition to?

MS. CORNWELL: The DNA evidence. We've got to overcome those things, and I guess we're going to get to the GSR and the other DNA stuff later. But I think what happens in this case is you're compounding so many things on top of each other things, things that could negatively impact and be overly prejudicial to my client if he has to be tried alongside Fortune. And I think Fortune would make the same argument.

I am with Michelle. In all of the years that I have been in this courtroom and conducting criminal trials, I haven't seen a motion for severance because typically what happens is the State either elects to not use the statement and try co-defendants together to avoid the Bruton issues; or they elect to try them separately and either flip one or do something to get that person on the stand if they want that statement in.

For whatever reason, the State does not want to do that in this case. They want to have their cake and eat it too. And I think that makes it fraught with the appellate issues with Bruton, through our right to present a complete defense, through Mr. Fortune's right to present a complete defense.

And our Supreme Court has become very cognizant of these severance issues. Recently in 2014 in the Hinson case where they specifically said, you know, that they understand that separating trials and severances, it goes to judicial economy, you know, saving State's resources.

However, those reasons should in no way put or give precedence over a defendant's right to a fair and impartial trial and the right to present a full and complete defense to a jury; and if it comes down to one of the two, then obviously the Court needs to take every measure into ensuring that the case and the defense gets to present is fair and impartial.

And if you can't do that, separating the trials, then the only other option is to suppress the statement. And in my case I would argue also to suppress the DNA because those are going to be the two things, those are going to be the arguments where, while antagonistic defenses is not a reason for severance, in this case when you're trying to move into evidence different -- under different rules of evidence and argue those things under the rules of evidence, then I believe

you're taking away the opportunity for each defendant to present a full and proper defense, a complete defense.

And that's just going to be fraught with all the issues that the Supreme Court has cautioned so much about. So given the abundance of issues that are likely to be presented if these two defendants are tried together, I believe that the most reasonable option is to sever these trials.

I'm not saying that because we are trying to avoid trial. My client and I will be happy to proceed on Tuesday. I would prefer to go first by myself. Because I think that my client's rights to a full and complete defense, to a fair and impartial trial, the right to confront the witnesses against him, the right to challenge any evidence, is going to be severely impacted if he has to be tried alongside Mr. Fortune.

If Your Honor is inclined to deny the severance, I believe the only other cure in this is to suppress the statement and suppress the DNA.

THE COURT: Okay. Yes.

MR. OSBORNE: Just briefly, Judge, so the only right that I have heard that could be infringed here is Ms. Hubrich's right to

cross-examine Mr. Davis or Detective Davis. She can do that, but there's no rule that allows her to press play on her client's own statement. That would be introducing the statement. She can't do that. I am the party opponent. I can introduce the statement.

Now, if she's trying to cross-examine him to create an atmosphere of coercion going on, I think that's fair. I don't even think that's hearsay. So I think you can get some of that in, but I don't think you then get to use that as a vehicle to then trigger Bruton, which it sounds like that's what she's doing.

She can get the atmosphere without pressing play. I think she successfully did that just right here. And I think that doesn't infringe her ability to cross-examine Detective Davis, and that's the only thing that I've heard.

The DNA to me, I mean, I know we're going to proffer that statement or that testimony later, Forensic Scientist Dwayne explained to me very well, and I'm only slightly above average intelligence, and I got it.

THE COURT: All right. Yes, ma'am, anything further?

MS. CORNWELL: Your Honor, again, I believe that the confrontation clause is going to become an issue I think that --

THE COURT: And with regards to --

MS. CORNWELL: Ms. Hubrich intends on putting those clips in.

THE COURT: I got you. Well, here's my problem: My problem is I don't know that, obviously, at this point. She certainly was able to do that today. And as I understand her intention, her intention isn't to implicate your client.

Her intention is that she wants to be able to express to the jury that her client was worn down, and that's her intention to do that. You know, I would presume that that's certainly available to do so with some cross-examination. If you have an objection to what she proposes, I expect you to bring that it to my attention.

MS. CORNWELL: Your Honor, that might not be her intention. My client's name still gets put out there.

THE COURT: I understand.

MS. CORNWELL: And that is unfairly prejudicial --

THE COURT: Well, let me ask you this question: Do you perceive that you are without the ability, if she wants to put in a particular portion of it, do you maintain that you lack the ability to object to that?

MS. CORNWELL: No, Your Honor. Once the jury's heard those things, you can't unring that bell. That's where Bruton comes in. Even a curative instruction that says, you are not allowed to consider anything said about the co-defendant in that statement, and that's what Bruton did.

THE COURT: I got you. Here's what we'll do: Once the -- there will be a break between direct and cross-examination, and I will simply require you to tell me what it is that you want to put in additionally.

And with regards to that then if there's a Bruton concern, you need to let me know. I don't know any other way to -- I think that's a manageable way to allow for you to get in what you need and for you to help me be sure that your clients' rights or protected.

MR. OSBORNE: Judge, and to that point I'll just say that -- and I kept saying, remember to say this, remember to say this, and I keep

forgetting -- since your ruling was that it was freely and voluntarily given, the statement, then at that point -- I want to be in all candor to you -- at that point in the trial, if I like the way things are going for us, in all fairness, I may not introduce the statement, and I may just seek to use it for impeachment if he takes the stand.

And so I did want to throw that out there to let you know that is in the back of my mind too.

MS. HUBRICH: Well, that fixes everything if that's your decision.

MR. OSBORNE: Well, I'm not going to be handcuffed to that decision.

MS. HUBRICH: Judge, I need to be clear on the record.

THE COURT: Yes ma'am.

MS. HUBRICH: I should have played the entire thing for you during this motion, and I toyed with playing the entire thing. And it was two hours, and it's late, and I didn't because of that.

Instead what I did is I stayed up until about 3:00 in the morning last night finding those clips so that we could move forward quickly because

I knew we were going to take all day. I shouldn't have done it.

I should have played the whole thing because I think it would have enabled you to see maybe that it wasn't voluntary, and I'm questioning now my decision to not play it and to play those clips.

The State can say as much as they want that all I'm trying to do by admitting the entire statement is to implicate Bruton. I'm not. If I could take out every reference to it, I would. The problem with this statement is it goes on forever. It goes around in circles.

THE COURT: Doesn't go on forever.

MS. HUBRICH: Well, two hours.

THE COURT: It does not go on forever. Two hours is not forever. It's just not.

MS. HUBRICH: Well, good. I'm glad you feel that way because I think we're going to get there next week.

THE COURT: It's just not. It's not forever. A two-hour interrogation by law enforcement is not -- breaking it up an hour and an hour is simply not long.

MS. HUBRICH: It goes around. There

are definite -- where they're taking about the other guys involved and who kicked in the door and who was wearing what and talking about the purple sneakers. Everybody is implicated in the statement.

THE COURT: Yes.

MS. HUBRICH: So my intent for this hearing was to put the whole thing in, and I decided not and just to go with the clips. My intent for trial is to put the whole thing in.

I think the State, by saying, we're going to admit it into evidence, but we're going to redact everything except for these portions; and then say, but you can't do it because you don't have a right to put it in. Because that's what he just said, the defense doesn't have a right to put this in.

But what he's saying is, I get to put it in, redact it all down to here, but then you don't have the right to bring in the rest of it. And that's just incorrect. That's not true. That's not an accurate statement of the law.

I do have a right to cross-examine. I think what we're having now is it's going to be the right to cross-examine verus the right to confront.

We also have a right to present a full and complete defense, which is due process.

THE COURT: Here's what's fascinating, now, and here's where I'm really having a very difficult time, defense counsel for the duration of my practice of law has always, always, wanted statements, confessions, to be videotaped and recorded. They are now videotaped and record.

Obviously, that's happening every day all day everywhere. And this is it is not a unique trial. It's the most important trial to these people. God knows I know that and I believe that, and they deserve that kind of attention, absolutely does.

But it is not unique in that there are codefendants in a murder. It's not unique that there are codefendants in a murder that are tried together with a recorded statement. It's just not.

And so to say that our system cannot accommodate a joint -- joint defendants where there is a recorded statement because of Bruton is simply not correct; that the Court cannot fashion the ability for Bruton and a defendant's right not to let that statement harm, overly, and that the ability to cross-examine occur, when your point is

to place before this jury the position that the two hours of interrogation was too much and overcame his free will.

You're going to ask him, was it two hours? Two hours. You asked him several times. Two hours. I just think it can be fashioned.

Having said that, I'll certainly do some research. I may be incorrect that where there are recorded statements there can be no -- there can be no co-defendants tried, but we will take a look.

MS. HUBRICH: Thank you Judge.

THE COURT: Yes.

MS. CORNWELL: -- judicial economy and State resources is, obviously I think the thing to do is to sever it and suppress it and get it done right now, because what you're suggesting is when it comes up, when she starts to cross-examine Captain --

THE WITNESS: Sergeant.

MS. CORNWELL: Sergeant. Sorry. I was trying to promote you over Driscoll.

When it gets to that point, clearly I'm making an objection and I'm moving for a mistrial at that point.

THE COURT: No, no, no, no, no, no, no, I'm going to require -- we're going to take a break, and I'm going to require whatever is coming in on cross-examination that I have an opportunity to take a look at that.

MS. CORNWELL: I thought you were saying I could object to her --

THE COURT: Well --

MS. CORNWELL: -- moving things in but at that point --

THE COURT: I changed -- you're right, and I changed that little bit. We will take a break, give you an opportunity -- give me an opportunity to fashion it to -- so that the error is on me. If it's a problem, it's my problem.

But I have a sneaking suspicion that irrespective of what I do, if you think I could do it better, you're not going to hold it. You will help me.

MS. CORNWELL: I've never been one to hold back, Your Honor, on objections on how other thing could be done.

THE COURT: I would love to tell you it has always been of assistance.

MS. CORNWELL: Well, thank you, Your

Honor. And I think that's the only thing is I'm going to preserve my right to move for a mistrial if it ends up coming through and we'll go from there and maybe we'll all be back here in a couple more weeks.

THE COURT: That's right. That's exactly right.

MS. CORNWELL: Thank you, Your Honor.

THE COURT: All right. Anything else?

All right. Now, I did want to just talk about a little bit of housekeeping. Did we do what we need to do in talking about the back row and how many people, where we're going to be.

MS. HUBRICH: I have not spoken to my client's family yet. I don't know where to tell them to go.

THE COURT: Your client's family, downstairs.

MS. HUBRICH: Downstairs.

THE COURT: Yes. And please let them know that it is our intention to be able to stream it. We are not as sophisticated as I wish we were, and I apologize. I really do apologize for that. You know, you can see the witness testify.

I would like it so much better if we

looked much more like CNN, but we don't. We kind of look like, you know, do it yourself, and I apologize. But the family hopefully will be certainly able to see the witnesses and hear the witnesses.

MS. CORNWELL: And Your Honor, the only -- not trying to be difficult -- I think I will have an objection that the victim's entire family gets to be here and have support and so the jury gets to see the victim's family supported. However, we'll have two individuals whose life is on the line and it will look like nobody is in here to support them.

And I think that could also have a prejudicial effect. Where if there's a three, three, three where we have three from the victim's family, three members from the defendants' families, that at least gives equal weight and appearance on at least the support and these aren't two kids that are just being here with no family while the victims have all this love and support in the world.

THE COURT: Well, that would be, if the jury was to utilize that, obviously that would be an extraneous matter, which they are not to use in

making their determination with regards to whether or not -- one or both or neither -- whether or not the State's met it's burden of proof, that would be an extraneous matter, and so that's my first indication.

The second indication is, just tell everyone how sorry I am. It's COVID driven. We've never been here before. We've always been in a place where both sides -- you know, alleged victim's family has been present, defendants' families have been present.

If there was a need, I do not marginalize that need, and I get it. It's heartbreaking. It's one of the many, many heartbreaks of COVID, and I am so sorry that it is the way that it is, and it breaks my heart. But we must move forward with trials, and so in the -- I wish it was better. I wish it was different. We have to move forward with trials.

These young men, this family of the alleged victim, people must have a resolution. So while we do is it less than perfect, we have to do so, and I am so sorry.

MS. CORNWELL: Thank you, Your Honor.

THE COURT: Yes. Now, I need to

mention this, and I've got no fix. The tape, the quality of this tape -- let me say this: I have kept out tapes before where the quality has been so terribly, terribly compromised such that the jurors cannot hear. I think the jury will be able to hear, but it needs to be better if at all possible. I know I ask for a lot.

MR. OSBORNE: Was it just me? It seemed like it was so much louder over there. Maybe it was just where I was sitting. Were you able to pick it up.

THE COURT REPORTER: Mm-hmm, it was louder.

MR. OSBORNE: It could be my mic on my computer stinks.

THE COURT: Well, I will give you -- we used to have a computer that the State had that was kept only for trial. There's a story. So I don't know. I don't know what we can do but it would be lovely.

MR. OSBORNE: The other thing that I can offer to you, I've done this before, is I could provide both the defense a -- it's not like an official transcript, but if you all wanted to look at it and then put the words in there as we see

them and we all agree on that and then provided that to the jury, we've done in a before.

THE COURT: Think you probably just want to try to get it as clear as you possibly can.

MR. OSBORNE: Yes, ma'am.

THE COURT: All right. Great. Thank you. Anything further at this point?

(Off-the-record conference.)

(These proceedings were concluded 4:30 p.m.)

CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 31st day of July, 2021, at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder, RPR
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

THE STATE OF SOUTH CAROLINA	)IN THE COURT OF GENERAL SESSIONS
	)2019-GS-180416; 2019-GS-180417;
COUNTY OF DORCHESTER	)2019-GS-180418; 2019-GS-180420;
	)2019-GS-180421; 2019-GS-180422
STATE OF SOUTH CAROLINA	)
	)
VS.	)
	)
MUANAH ARUNA FORTUNE, JR.	)

- AND -

STATE OF SOUTH CAROLINA	)IN THE COURT OF GENERAL SESSIONS
	)2019-GS-180437; 2019-GS-180438;
COUNTY OF DORCHESTER	)2019-GS-180439; 2019-GS-180440;
	)2019-GS-180441; 2019-GS-180442;
	)2019-GS-180443
STATE OF SOUTH CAROLINA	)
	)
VS.	)
	)
POLO KEOKI SALAZAR	)

B E F O R E:

The Honorable Diane S. Goodstein, Judge, and a jury

Saint George, South Carolina

DATES: Tuesday, May 11, 2021, through Wednesday, May 19, 2021

Reported by: Cathy J. Provost, RPR/RMR

Official Circuit Court Reporter

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I N D E X PAGE:

JURY STRIKE SHEET 18

JURY VOIR DIRE 25

JURY SELECTION 149

MOTION FOR SEQUESTRATION 22

OATH ADMINISTERED TO JURY..... 177

PRELIMINARY INSTRUCTIONS BY THE COURT 186

OPENING STATEMENTS:

BY ATTORNEY GLOVER (THE STATE) 196

BY ATTORNEY HUBRICH (DEFENDANT FORTUNE) 201

BY ATTORNEY CORNWELL (DEFENDANT SALAZAR) 206

STIPULATIONS ... none

MATTERS OF LAW ... 20,69,96,147,171,280,308,313,334,470, 524,661,692,806,813,904,908,995,1006

DEFENDANT'S 5TH AMENDMENT RIGHTS 999

CLOSING STATEMENTS:

BY ATTORNEY OSBORNE (THE STATE) 1009

OBJECTION DURING STATE'S CLOSING 1033

BY ATTORNEY HUBRICH (DEFENDANT FORTUNE) 1040

BY ATTORNEY CORNWELL (DEFENDANT SALAZAR) 1051

OBJECTION DURING DEFENDANT SALAZAR'S CLOSING .. 1056

CHARGE OF THE COURT 1067

VERDICT OF THE JURY 1107

SENTENCE OF THE COURT 1143,1144

CERTIFICATE OF REPORTER 1147

INDEX TO WITNESSES

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
LETA BOEHLER				
By Attorney Glover	213	---	237	---
By Attorney Hubrich	---	222	---	239
By Attorney Cornwell	---	234	---	241
CHRISTINA DENSON				
By Attorney Glover	243	---	---	---
By Attorney Cornwell	---	245	---	---
MARCUS PORTER				
By Attorney Osborne	408	---	---	---
By Attorney Hubrich	---	319	---	---
By Attorney Cornwell	---	384	---	---
JAMES GREEN				
By Attorney Osborne	408	---	---	---
By Attorney Wehman	---	424	---	---
JOSHUA SCARBOROUGH				
By Attorney Osborne	426	---	---	---
By Attorney Hubrich	---	438	---	---
JACOB ANTHONY CRAMER				
By Attorney Osborne	440	---	---	---
By Attorney Hubrich	---	467	---	---
By Attorney Cornwell	---	467	---	---

INDEX TO WITNESSES (cont.)

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
RYAN DeWANE				
(outside of the jury's presence)				
By Attorney Osborne	471	---	515	---
By Attorney Wehman	---	496	---	518
By Attorney Cornwell	---	508	---	---
Examination by The Court ... 520				
VERA MARTINEZ				
By Attorney Glover	546	---	---	---
By Attorney Cornwell	---	551	---	---
BETHANY DAVIDSON				
By Attorney Glover	552	---	---	---
By Attorney Cornwell	---	557	---	---
JACKIE DAVIS				
By Attorney Glover	559	---	580	---
By Attorney Wehman	---	571	---	581
By Attorney Cornwell	---	577	---	---
DAVID SWIBAKER				
By Attorney Osborne	583	---	610	---
By Attorney Hubrich	---	600	---	---
By Attorney Cornwell	---	605	---	---

INDEX TO WITNESSES (cont.)

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
JAMIE HALL				
By Attorney Glover	612	---	621	---
By Attorney Wehman	---	617	---	622
By Attorney Cornwell	---	619	---	---
PHILLIP M. MOY				
By Attorney Osborne	624	---	646	---
By Attorney Hubrich	---	630	---	655
By Attorney Cornwell	---	639	---	657
MATTHEW ADAM BROOKS				
By Attorney Osborne	693,748	---	767	---
By Attorney Hubrich	---	748	---	771
By Attorney Cornwell	---	759	---	---
SALINA SHEPPARD				
By Attorney Glover	774	---	---	---
By Attorney Cornwell	---	780	---	---
RACHEL L. NGUYEN				
By Attorney Osborne	781	---	---	---
By Attorney Wehman	---	801	---	---
By Attorney Cornwell	---	804	---	---
RYAN DeWANE				
(outside of the jury's presence)				
By Attorney Osborne	815	---	821	---
By Attorney Wehman	---	817	---	---

INDEX TO WITNESSES (cont.)

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
RYAN DeWANE				
By Attorney Osborne	829	---	849	---
By Attorney Cornwell	---	847	---	851
NICOLE HARDIN				
By Attorney Osborne	853	---	869	---
By Attorney Wehman	---	863	---	875
By Attorney Cornwell	---	867	---	877
JONATHAN DAVIS				
By Attorney Osborne	877,912	---	---	---
By Attorney Hubrich	---	917	---	---
By Attorney Cornwell	---	957	---	---
NICHOLAS I. BATALIS				
By Attorney Osborne	980	---	---	---
By Attorney Cornwell	---	993	---	---

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
1 – Overhead street map	215	218
2 – Disk (911 call)	244	283
3 – CAD report	435	---
4 – Disk (in-car, clipped – Scarborough)	433	---
5 – Disk (in-car – Scarborough)	433	434
6 – Disk (in-car – Cramer)	447	---
7 – Disk (in-car, clipped – Cramer)	447	448
10 – Orange ski mask	458	719
11 – Jumpsuit	458	722
12 – Wallet with contents	459	460
13 – Taurus pistol	413	725
14 – S&W pistol	413	725
15 – Jimenez Arms pistol	413	725
16 – Springfield pistol	413	423
17 – Shell casings (fired)	415	423
18 – Fired projectiles	415	423
19 – Swabs (blood spot; projectile)	561	714
20 – Swabs (canine)	561	714
21 – Mason jar	709	714
22 – Bag of bags	294	714
23 – Notepad	709	714
24 – Latex gloves	563	714

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
25 - Taurus pistol	297	423
26 - Photograph (incident location)	286	287
27 - Photograph (incident location)	697	698
28 - Photograph (incident location)	697	698
29 - Photograph (incident location)	697	698
30 - Photograph (incident location)	697	698
31 - Photograph (incident location)	401	402
32 - Photograph (moped)	258	259
33 - Photograph (incident location)	286	291
34 - Photograph (incident location)	286	288
35 - Photograph (incident location)	697	698
36 - Photograph (incident location)	697	698
37 - Photograph (incident location)	697	698
38 - Photograph (incident location)	697	698
39 - Photograph (incident location)	697	698
40 - Photograph (incident location)	697	698
41 - Photograph (incident location)	697	698
42 - Photograph (incident location)	697	698
43 - Photograph (incident location)	697	698
44 - Photograph (incident location)	697	698
45 - Photograph (incident location)	697	698
46 - Photograph (incident location)	697	698

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
47 – Photograph (incident location)	401	402
48 – Photograph (incident location)	697	698
49 – Photograph (incident location)	697	698
50 – Photograph (incident location)	697	698
51 – Photograph (incident location)	697	698
52 – Photograph (incident location)	697	698
53 – Photograph (incident location)	697	698
54 – Photograph (incident location)	697	698
55 – Photograph (incident location)	697	698
56 – Photograph (incident location)	697	698
57 – Photograph (incident location)	697	698
58 – Photograph (incident location)	697	698
59 – Photograph (incident location)	697	698
60 – Photograph (incident location)	697	698
61 – Photograph (incident location)	697	698
62 – Photograph (incident location)	697	698
63 – Photograph (incident location)	697	698
64 – Photograph (incident location)	697	698
65 – Photograph (incident location)	697	698
66 – Photograph (incident location)	287	288
67 – Photograph (incident location)	599	599
68 – Photograph (incident location)	697	698

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
69 - Photograph (incident location)	286	289
70 - Photograph (incident location)	697	698
71 - Photograph (incident location)	697	698
72 - Photograph (incident location)	697	698
73 - Photograph (incident location)	697	698
74 - Photograph (incident location)	697	698
75 - Photograph (incident location)	697	698
76 - Photograph (incident location)	286	290
77 - Photograph (incident location)	697	698
78 - Photograph (incident location)	697	698
79 - Photograph (incident location)	286	289
80 - Photograph (incident location)	286	291
81 - Photograph (incident location)	697	---
82 - Photograph (swabs - Weaver)	560	---
83 - Photograph (wallet)	460	460
84 - Photograph (wallet)	460	460
85 - Photograph (wallet)	460	460
86 - Photograph (wallet)	460	460
87 - Photograph (Honda CR-V)	732	732
88 - Photograph (Honda CR-V)	732	732
89 - Photograph (Honda CR-V)	732	732
89 - Photograph (Honda CR-V)	732	732

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
90 - Photograph (Honda CR-V)	732	732
91 - Photograph (Honda CR-V)	732	732
92 - Photograph (Honda CR-V)	732	732
93 - Photograph (Honda CR-V)	732	732
94 - Photograph (Honda CR-V)	732	732
95 - Photograph (Honda CR-V)	732	732
96 - Photograph (Honda CR-V)	732	732
97 - Photograph (Honda CR-V)	732	732
98 - Photograph (Honda CR-V)	732	732
99 - Photograph (Honda CR-V)	732	732
100 - Photograph (Honda CR-V)	732	732
101 - Photograph (Honda CR-V)	732	732
102 - Photograph (Honda CR-V)	732	732
103 - Photograph (Honda CR-V)	732	732
104 - Photograph (Honda CR-V)	732	732
105 - Photograph (Honda CR-V)	732	732
106 - Photograph (Honda CR-V)	732	732
107 - Photograph (Honda CR-V)	732	732
108 - Photograph (Honda CR-V)	732	732
109 - Knit cap and orange glove	568	746
110 - Camo glove	568	746
111 - Watch (unidentified)	301	---

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
111A&B – Watches (Porter)	303	304
112 – Photograph (evidence from car)	737	738
113 – Photograph (evidence from car)	299	738
114 – Photograph (evidence from car)	299	738
115 – Photograph (evidence from car)	299	738
116 – Photograph (evidence from car)	299	738
117 – Photograph (evidence from car)	599	599
118 – Photograph (evidence from car)	737	738
119 – Photograph (evidence from car)	737	738
120 – Photograph (notepad)	711	712
121 – Photograph (notepad)	398	400
122 – Overhead firearm recovery	730	731
123 – Photograph (Green's clothing)	737	741
124 – Photograph (Green's clothing)	737	741
125 – Photograph (Green's clothing)	739	741
126 – Photograph (Green's clothing)	739	741
127 – Photograph (Green's clothing)	739	741
128 – Photograph (Green's clothing)	739	741
129 – Photograph (Green's clothing)	739	741
130 – Photograph (Green's clothing)	453	455
131 – Photograph (Green's clothing)	453	455
132 – Photograph (Major's clothing)	739	741

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
133 - Photograph (Major's clothing)	739	741
134 - Photograph (Major's clothing)	739	741
135 - Photograph (Major's clothing)	739	741
136 - Photograph (Major's clothing)	739	741
137 - Photograph (Major's clothing)	739	741
138 - Photograph (Major's clothing)	739	741
139 - Photograph (Major's clothing)	739	741
140 - Photograph (Major's clothing)	739	741
141 - Photograph (Major's clothing)	437	438
142 - Photograph (Major's clothing)	437	438
143 - Photograph (Fortune's clothing)	739	741
144 - Photograph (Fortune's clothing)	739	741
145 - Photograph (Fortune's clothing)	739	741
146 - Photograph (Fortune's clothing)	739	741
147 - Photograph (Fortune's clothing)	739	741
148 - Photograph (Fortune's clothing)	453	455
149 - Photograph (Fortune's clothing)	453	455
150 - Photograph (Fortune's clothing)	453	455
151 - Photograph (Salazar's clothing)	739	741
152 - Photograph (Salazar's clothing)	739	741
153 - Photograph (Salazar's clothing)	739	741
154 - Photograph (Salazar's clothing)	739	741

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
155 – Photograph (Salazar's clothing)	739	741
156 – Photograph (Salazar's clothing)	739	741
157 – Photograph (Salazar's clothing)	453	455
158 – Photograph (Salazar's clothing)	453	455
159 – Photograph (Salazar's clothing)	453	455
160 – Green's shoes	459	746
161 – Major's shoes	437	438
162 – Fortune's shoes	459	746
163 – Salazar's shoes	459	746
164 – Photograph (jumpsuit)	792	793
165 – Photograph (jumpsuit)	792	793
166 – Photograph (jumpsuit)	792	793
167 – Photograph (jumpsuit)	792	793
168 – Photograph (jumpsuit)	456	457
169 – Photograph (jumpsuit)	456	457
170 – Photograph (ski mask)	456	457
171 – Photograph (ski mask)	456	456
172 – Serology samples	495	836
173 – Mr. Porter's agreement	250	251
174 – DMV paperwork (Salazar)	646	647
175 – DMV paperwork (Fortune)	646	647
176 – DMV paperwork (Major)	646	647

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
177 – DMV paperwork (Green)	647	---
178 – DMV paperwork (Washington)	398	400
185 – Ammunition (live)	729	---
186 – Blood stain (Weaver)	495	834
187 – Projectiles from autopsy	415	423
188 – Bullet fragments	415	423
189 – Autopsy sketch	984	984
190 – Disk (Fortune interview)	887	---
191 – Disk (Fortune interview, clipped)	613	888
192 – Miranda (Fortune)	459	888
193 – Jacket (Major)	459	884
194 – Jacket (Salazar)	459	654
195 – Jacket (Fortune)	459	890
196 – Jacket (Green)	459	884
197 – Jacket (Green)	459	884
201 – Photograph (Major's jacket)	453	455
202 – Photograph (Salazar's jacket)	453	455
203 – Photograph (Fortune's jacket)	453	455
204 – Photograph (Green's jacket)	453	455
205 – Photograph (Green's jacket)	453	455
206 – Buccal swabs (Porter)	495	834
207 – GSR samples	614	---

INDEX TO EXHIBITS

	IDENTIFIED:	ADMITTED:
STATE'S EXHIBITS:		
208 – GUCCI bag	736	737
209 – Buccal swabs (Salazar)	495	834
210 – Buccal swabs (Major)	495	834
211 – Buccal swabs (Green)	495	834
212 – Photograph (map – chase)	461	461
213 – Photograph (map – chase)	461	461
214 – Buccal swabs (Fortune)	629	834
300 – Statement (Swibaker)	597	---
301 – Projectiles (fired)	715	---
302 – Packaging for jumpsuit and ski mask	721	722
303 – Photograph (couch)	768	768
304 – Photograph (couch)	768	768
DEFENDANT'S EXHIBITS:		
1 & 2 – Disks	229	---
COURT'S EXHIBITS:		
1 & 2 – Jury notes	312	---
3 – Jury note	406	---
4 – Jury note	544	---
5 – Jury note	545	---
6 – Jury note	1096	---
7 – Jury note	1100	---
8 – Jury note	1107	---

JURY STRIKE SHEET

NAME:	RACE:	SEX:	STE:	DFT:	CRT:	SEATED:
1. Shirley E. Obry	W	F		X(F)		
2. Thomas E. Saatela	W	M				X
3. Christopher Greenhill	W	M				X
4. Evelyn Cassidy	A	F		X(S)		
5. Carol A. Huggins	W	F		X(F)		
6. Davon C. Hunter	B	M				X
7. Brandon L. Boykin	W	M				X
8. Karen A. Kuykendall	W	F				X
9. Alexandria C. Pendino	W	F				X
10. Sebastian K. Ford	W	M		X(F)		
11. Salvador J. Chaves	W	M				X
12. Linda D. Harrington	W	F		X(F)		
13. Diania F. Ancrum	B	F				X
14. Timothy E. Stewart	W	M		X(F)		
15. Christopher S. Tucker	B	M				X
16. Paul M. Zoeller	W	M	X			
17. Tedd J. Steele	W	M		X(S)		
18. Rory M. McColly	A	F		X(F)		
19. Jason W. O'Neil-Thomas		M	X			
20. Anthony W. Nichols	W	M		X(S)		
21. Sheila Summers	B	F				X
22. Shari A. Smith	W	F		X(F)		
23. Michael J. Rabasco IV	W	M		X(F)		

JURY STRIKE SHEET

(cont.)

NAME:	RACE:	SEX:	STE:	DFT:	CRT:	SEATED:
24. Lyndy E. Carpenter	W	F		X(S)		
25. James P. Foss, Jr.	W	M		X(S)		
26. Alan B. Murray	W	M		X(S)		
27. George A. Webster	W	M		X(S)		
28. Jennifer L. Parvin	W	F	X			
29. Carrie C. Rafferty	W	F				X
30. Donald L. Paro	W	M		X(F)		
31. Joanne L. Smith	W	F				X
32. Christina V. Mills	B	F				X
33. Kristine L. Shifty	W	F		X(F)		
34. Rylie E. Middaugh	W	F				X
35. Nakilya Y. Phillips	B	F				X

(State v. M. Fortune and P. Salazar - 2019GS180416, et al)

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

(WHEREUPON, proceedings commenced at 10:08 a.m.)

MATTERS OF LAW

THE COURT: I'll begin by saying amazing presentations all the way around. Lots to think about. Wonderful work. Thank you all. However -- and maybe this is too hopeful on my part -- but I do believe that we can fashion what we need to as the trial proceeds. I know that you will be here and be making the appropriate objections. That will be of great assistance to me.

But I'm not prepared to sever the trial. But I do thank you all for excellent arguments. Again, much to think about, but I do think that the case can be tried and not severed. But there are four codefendants, and I speak of the two defendants here, of course, Mr. Fortune and Mr. Salazar. And so I am prepared to try this case with both of these defendants, noting the exception on behalf of the defense.

ATTORNEY CORNWELL: Thank you, Your Honor.

THE COURT: Now, with regards to the *Jackson v. Denno,* I think I addressed that on Friday. I think that, with regards to the DNA, I'm going to address that in camera whenever we have an opportunity when SLED appears. And there was one other matter. Y'all help me remember.

ATTORNEY OSBORNE: Your Honor, the only other matter that was pertinent to us, I think, was the third-party guilt. So I would just ask that you instruct the defense to not mention

anything about third-party guilt in their openings. And then we can then proffer that testimony when they plan on eliciting that as the trial goes on. If I had to guess, it was probably going to be through the first-case agent, Officer Moy, and the second-case agent, Detective/Sergeant Jonathan Davis. They'll be toward the end of the trial.

THE COURT: Okay. All right.

ATTORNEY CORNWELL: I'd like to get it in through my openings, but ...

THE COURT: I understand. I don't think that -- I will ask you to do that. As you know, third-party guilt is a brand new theory.

ATTORNEY CORNWELL: Yes, ma'am.

THE COURT: I know that I'm asking you to restrict your opening. But if it is in I know that certainly, you know, you will have an opportunity to address it fully in closing.

ATTORNEY CORNWELL: Yes, ma'am.

THE COURT: Not that openings aren't important to jurors, but certainly they are also in closing.

ATTORNEY CORNWELL: And then just to clarify for the record, I understand the motion regarding the *Jackson v. Denno* statement. My motion to sever was that, in the alternative, a motion to suppress the statement for the *Bruton* issues. I understand you're denying the motion to sever. Or do you want to make a ruling on the motion to suppress the statement based on the

Bruton issues and the denial of the severance?

THE COURT: Yes. I'm not going to suppress the statement.

ATTORNEY CORNWELL: Thank you, Your Honor.

ATTORNEY HUBRICH: Judge, can I go through my laundry list real quick?

THE COURT: Sure.

ATTORNEY HUBRICH: So that motion to sever is denied. The motion to suppress DNA is going to be addressed during trial. Motion to suppress gunshot residue, also addressed during trial. Motion to preclude the state from eliciting testimony that the defendant refused to comply, that goes with the DNA, so I think that's addressed during trial.

THE COURT: We'll address it during trial. But for everybody's edification, I am not going to penalize counsel for needing to communicate with a client. We'll address that in trial, but I'll just share that with everybody.

ATTORNEY HUBRICH: We had discussed that *Lyle*, i.e., my motion to determine the admissibility of prior bad acts. The state brought up the prior armed robbery. And I think you also said you were not going to decide that ---

THE COURT: Oh, absolutely not yet.

ATTORNEY HUBRICH: The motion to determine the admissibility of prior convictions, we decided there were none. Sequestration, granted. Motion to determine admissibility of eyewitness ID, if I object if they try to ID my client in court during trial. And

Jackson v. Denno. Prejudicial language. You recall the eyewitness's victims.

THE COURT: Say it again.

ATTORNEY HUBRICH: Motion to preclude the state from using prejudicial language in reference to their witnesses.

THE COURT: Oh. In other words, you want to call them alleged victims instead of victims?

ATTORNEY HUBRICH: Or just eyewitnesses or just their names.

THE COURT: I gotcha. I gotcha.

ATTORNEY OSBORNE: I mean, I'm going to try. Unless the evidence is that Marcus shot himself, they're victims of somebody, maybe just not their victims. But I will try.

THE COURT: Okay.

ATTORNEY HUBRICH: Perfect. The business records, I think we're all in agreement on that. And I think you said Mr. Porter's pending charges and criminal offenses. Did we address that at pretrial?

ATTORNEY OSBORNE: I'm sorry, say it again.

ATTORNEY HUBRICH: Mr. Porter's prior record.

ATTORNEY OSBORNE: Actually, you brought up I point I hadn't considered. So I will concede that if he did say that he's never sold drugs -- I mean, he's been convicted of it, so ...

THE COURT: Right. Unless the door gets opened.

ATTORNEY HUBRICH: Okay. Thank you, Judge.

THE COURT: All right, got it. Good? Good?

ATTORNEY OSBORNE: When I was looking at my scheduling, I don't talk about DNA until about the fifth or sixth witness, my detective. So the only thing I would ask for playing purposes is that before he testifies we get the SLED analyst up here so that I know the playing field on relevant issues of DNA and not ---

THE COURT: I'm going to be right here. Let me know. Yes, yes and yes.

ATTORNEY OSBORNE: Thank you, Judge.

THE COURT: All right. I'm going to try to be as quick as I possibly can be. You know, everybody's a little bit rusty. I had done jury qualification, and I did some last week, thank goodness, but I was a little rusty. I almost forgot to do the roll call.

ATTORNEY CORNWELL: Your Honor, one last thing, just for the record. For trial purposes, there are no offers being extended by the state to the defense; correct?

ATTORNEY OSBORNE: And none from the defense to the state.

ATTORNEY CORNWELL: Thank you. Actually, I did make an offer.

ATTORNEY OSBORNE: Oh, she did. I'm sorry.

THE COURT: All right.

ATTORNEY OSBORNE: And if we want to put it on record, I have rejected the plea to possession of a stolen motor vehicle.

THE COURT: All right. Very well, got it. Thanks. And as I understand it, as each panel comes in, you guys are going to

get a list of the folks on the first panel.

CLERK OF COURT: Ys, ma'am. We'll let them know when we're ready.

ATTORNEY HUBRICH: Judge, if my client's family is here, I'm sending them downstairs for a live feed. Is that -- no?

CLERK OF COURT: Next panel will be coming in.

ATTORNEY HUBRICH: I don't believe they're here. One person did say they wanted to be here.

THE THE BAILIFF: I can check and see, Your Honor.

THE COURT: If we have one. Okay. But, yes, we're ready.

CLERK OF COURT: There's no live feed today, though, Judge.

THE COURT: Right. We don't have a live feed going today.

(WHEREUPON, the Clerk of Court conducted roll call, and the Court conducted exemptions and transfers necessary to qualify the jury panel.)

VOIR DIRE OF THE JURY PANEL

THE COURT: All right. Now, ladies and gentlemen, I find that the panel is now qualified. And at this time I am going to call on our solicitor. You know, in every other state we call them district attorneys or state's attorneys. Our prosecuting lawyers, we call them solicitors in South Carolina. So.

I am going to call on our solicitor, Solicitor Osborne, and ask you to please call our first case for trial.

ATTORNEY OSBORNE: Thank you, Your Honor. The matter before you is The State versus Muanah Fortune and Polo Salazar.

Mr. Fortune has been charged with murder, that's Indictment No. 2019-GS-18-0416; the next charge is attempted murder, that's 2019-GS-18-0417; the next charge is burglary in the first degree, that's 0418; the next one, possession of a firearm during the commission of a violent crime, 0420; next indictment, ill-treatment of animals, 0421; and the last charge, armed robbery, 0422.

The next case is State versus Polo Salazar. His charges are very similar with the exception of one. The first charge is murder at 2019-GS-18-0437; burglary in the first degree, 0438; attempted murder, 0440; possession of a firearm during the commission of a violent crime, 0441; armed robbery, 0442; ill-treatment of animals, 0443; and the different charge is possession of a stolen vehicle, and that's 0439.

And, Your Honor, I have the indictments, if I may approach.

THE COURT: Sure. Now, ladies and gentlemen, I want to tell you what has just occurred. What has just occurred is the solicitor/the prosecutor on behalf of the state, the solicitor/attorney on behalf of the state, has just called to my attention certain indictments.

Now, ladies and gentlemen, I want to tell you what an indictment is and what it is not. The first thing I will tell you is that an indictment is a piece of paper, that's the first thing that it is. And each of the charges that the solicitor just mentioned are, each one, they're on separate pieces of

papers, or separate indictments. Now, ladies and gentlemen, an indictment contains the allegations against a fellow citizen. And those folks are called defendants.

Now, ladies and gentlemen, now I want to tell you what an indictment is not. An indictment is not evidence of any of the allegations it contains.

I also want to hasten to tell you that each of these defendants has pled not guilty to each of these indictments. And that places upon the state the burden of proving guilt beyond a reasonable doubt. In other words, they must prove each element of each offense, on each defendant, beyond a reasonable doubt.

You will consider these, those of you that serve on the jury, will consider these indictments separate and apart, one from the other, and each defendant separately and independently.

Now, ladies and gentlemen, the reason that I have brought up the indictments is because I need to find out whether or not any of you know or think you may know or have you heard or think you may have heard anything about these allegations.

So, ladies and gentlemen, I am going to read to you the allegations of these indictments. Now, remember, the question that's going to follow is, Do any of you know or think you may know or have you heard or think you may have heard anything about these allegations, to include today?

All right. Now, ladies and gentlemen, my question -- and this is for the sake of time, although I want you to understand

that these indictments are separate, these defendants are separate. But I think what I'll do is, I'll go through them for each individual.

Indictment 2019-GS-18-0416 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant Mr. Muanah Aruna Fortune, Jr., did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of the common law and Section 16-3-10 of the South Carolina Code of Laws, as amended.

Now, Indictment 2019-GS-18-417 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., did, with the intent to kill, attempt to kill one Marcus Porter with malice aforethought by shooting the victim, this offense being in violation of Section 16-3-29, South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0422 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., did, by use of force, threats or intimidation, and while armed with a deadly weapon, or while alleging either by words or action that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, taking, carrying away goods and/or monies from the person or presence of the victim, Joe

Weaver, with the intent to permanently deprive the victim of possession of goods or money, such weapon or alleged weapon described as a handgun, this offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0418 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., did willfully and unlawfully enter the dwelling of Marcus Porter without consent and with the intent to commit the crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime is armed with a deadly weapon or explosive, causes physical injury to a person who is not a participant in the crime, uses or threatens to use the use of a dangerous instrument, displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machinegun or other firearm and/or the entering or remaining occurs in the nighttime, this offense being in violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-420 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., did visibly display or have in his possession a handgun during the commission of a violent crime, as defined by Section 16-1-60 of the Codes of Laws of South Carolina, 1976, as amended; to wit, burglary in the first degree and murder, thereby violating Section 16-23-49 of the

South Carolina Code of Laws, 1976, as amended.

And Indictment 2019-GS-18-0421 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Arna Fortune, Jr., did torture, torment, needlessly mutilate, cruelly kill or inflict excessive or repeated, unnecessary pain or suffering upon an animal, or by omission or commission, did cause the acts to be done in that the defendant did cruelly kill a dog by shooting it, this offense being in violation of Section 47-1-40(b) of the South Carolina Code of Laws as, amended.

Now, ladies and gentlemen, the allegations that I've just gone over are for the offenses of ill-treatment of animals, in general, torture; possession of a firearm or knife during the commission of a violent crime; burglary in the first degree; armed robbery; attempted murder; and murder.

Now, ladies and gentlemen, I'm now going to address the allegations contained in the indictments involving Mr. Salazar. Indictment 2019-GS-18-0437 alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant Polo Keoki Salazar did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of the common law and Section 16-3-10 of the South Carolina Code of Laws, as amended. Those allegations are the murder charge.

Indictment 2019-G-S-18-0438. Ladies and gentlemen, these

allegations are contained in the burglary, first degree, indictment. The allegations are that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did willfully and unlawfully enter the dwelling of Marcus Porter without consent and, with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime is armed with a deadly weapon or explosive, causes physical injury to a person who is not a participant in the crime, uses or threatens to use a dangerous instrument, displays what is or appears to be a knife, pistol, revolver, shotgun, machinegun or other firearm and/or the entry or remaining occurs in nighttime, this offense being in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

The next indictment is 2019-GS-18-0430. It is the indictment for attempted murder, and it alleges as follows. That, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did, with the intent to kill, attempt to kill one Marcus Porter, with malice aforethought, by shooting the victim, this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Now, Indictment 2019-GS-18-0435, which is the indictment for armed robbery, alleges that, in Dorchester County, South

Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did, by use of force, threats or intimidation and, while armed with a deadly weapon, or while alleging either by words or actions that he was armed while using a representation of a deadly weapon or any object in which a person present during the commission of the robbery reasonably believed to be a deadly weapon, taking, carrying away goods and/or money from the person or in presence of the victim, Joe Weaver, with the intent to permanently deprive the victim of possession of the goods money, such weapon or alleged weapon described as a handgun, this offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Now, ladies and gentlemen, bear with me for just one second. Ladies and gentlemen, I need to give a different indictment number. It's Indictment No. 2019-GS-18 -- and, counsel, could you fill in the last three numbers for me.

ATTORNEY OSBORNE: Sorry, Judge. What was the charge that you're on now?

THE COURT: This is the armed robbery allegations involving Mr. Salazar.

ATTORNEY OSBORNE: 0442.

THE COURT: 0422. Thank you kindly. Now with regards to Indictment 2019-GS-18-0441, which is the indictment for possession of a firearm or a knife during the commission of a violent crime, the allegations are that, in Dorchester County,

South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did visibly display or have in his possession a handgun during the commission of a violent crime, as defined by Section 16-1-60 of the Code of Laws of South Carolina, 1976, as amended; to wit, burglary, first degree, and murder, thereby violating Section 16-22-490 of the Code of Laws of South Carolina, 1976, as amended.

Indictment 2019-GS-18-0439, which is the indictment for possess, conceal, sell or dispose of a stolen vehicle where the value is more than two yet less than $10,000, alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle described as a 2007 Honda CR-V with an approximate value of $6,000 and the defendant was not entitled to possession of the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully, this offense in violation of Section 16-21-80 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0443, the ill-treatment of animals, in general, torture, alleges that, in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did torture, torment, needlessly mutilate, cruelly kill or inflict excessive or repeated, unnecessary pain or suffering upon an animal, or by omission or commission did cause the acts to be done, in that the defendant cruelly killed a dog

by shooting it, this offense being in violation of Section 47-140(b) of the South Carolina Code of Laws, as amended.

Ladies and gentlemen, as to each of these indictments, the defendant(s) who is mentioned in the indictments, those involving Mr. Fortune, those involving Mr. Salazar, they have pled not guilty.

Now, ladies and gentlemen, my question to you is this. Do any of you know or think you may know or have you heard or think you may have heard anything about these allegations? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, please allow me to introduce you to Mr. Osborne/Solicitor Osborne. And he is going to introduce to you his cocounsel and the members of his office.

When he is finished my question to you is going to be this. Do any of you know or think you may know -- excuse me. Are you related by blood or marriage or acquainted with Mr. Osborne or any of the folks that he is going to mention to you? Thank you, sir.

ATTORNEY OSBORNE: Thank you, Your Honor. Again, my name is Dave Osborne, I'm the prosecutor/assistant solicitor in the First Circuit. And the First Circuit's Dorchester, Calhoun and Orangeburg Counties. My boss, our boss, is David Pascoe. He's the solicitor here in the First Circuit. Locally our supervisor

here is Kelly LaPlante, she's the first assistant. Working in our office is Mike Speers, John Rivers, Baker Allen, Nick Young, Meagan Chinnis, Jillian Frederick, Vergil Deas.

Coming in and out you'll be seeing Rebecca Durr, she is my legal assistant. We also have Stacy Cook. She'll be helping rallying in the witnesses, so she might be coming in and out. We have our court coordinator here, Carrie Huff. And also, you may see Investigator Chor (phonetic sp) King. Assisting me is Assistant Solicitor Chelsea Glover. Her hometown is Orangeburg. She's coming down to help.

THE COURT: Assistant Glover, if you'd just stand for me, please. Thank you. You may be seated. Thank you.

Ladies and gentlemen, are you related by blood or marriage or acquainted with -- and let me define for you my definition of acquainted with, because I'm trying to find out if you have any connection whatsoever with the folks that I'll be asking you about.

Let me give you a couple examples. Maybe you went to school with somebody that I mentioned 20 years ago and you haven't thought about that person in 20 years. That relationship, as old and limited as it is, would be encompassed within the very general, expansive definition of an acquaintance. Again, I'm trying to find out if you have any connection with these folks whatsoever. So that's the reason that I'll be -- that's the definition that I use with acquainted with. So be mindful of

that.

So with that in mind, are you related by blood or marriage or acquainted with Solicitor Osborne or any of the folks from the solicitor's office in the First Circuit? Please stand at this time.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, please allow me to introduce you to Mr. Muanah Fortune. Thank you, Mr. Fortune. And this is Mr. Muanah Fortune. Thank you. If you'll just look at our jurors. Thank you so much, sir. And you may be seated.

Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Muanah Fortune? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing. Now, ladies and gentlemen, I am going to call on Ms. Michelle Hubrich, and she is going to introduce you to her co-counsel and the lawyers in her office. The question will be the same just as it was with regard to the other lawyer's office.

Yes, ma'am, Ms. Hubrich.

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court. My name's Michelle Hubrich. I've gone by other names in the past 10 years, so I'll just introduce you by all of my names. It's currently Michelle Hubrich. It used to be Michelle

Williams. Before that, it was Michelle Stubbs (phonetic sp). I'm an attorney with the Dorchester County Public Defender's Office.

Sitting with me at counsel table is another attorney in our office by the name of Pierce Wehman. Another attorney accompanying us in court today, her name is Ms. Julie Beeks. Other attorneys in our office include Mark Leiendecker, Mary Lematty, John Loy, Ash Chisholm, Tom Squires, Gina Mcelhany is our juvenile public defender. I think that's all of the attorneys in our office. And we represent Muanah Fortune.

THE COURT: I don't know if you mentioned Vergil Deas. Did you mention Vergil Deas?

ATTORNEY HUBRICH: Did you mention Vergil Deas?

ATTORNEY OSBORNE: I think I did, Your Honor.

THE COURT: Okay, good. I think you did. That's what made me think of it.

ATTORNEY HUBRICH: I have Gina McAlhany as our ---

THE COURT: Yes, thank you very much.

ATTORNEY HUBRICH: Thank you.

THE COURT: Now, ladies and gentlemen, are you related by blood or marriage or acquainted with, or have you or any member of your immediate family, to your knowledge, ever been represented by, Ms. Hubrich, Mr. Wehman, or any of the folks at the public defender's office? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, please allow me to introduce you to Mr. Polo Salazar. And thank you so much, Mr. Salazar. You may be seated.

Ladies and gentlemen, are you related by blood, marriage or acquainted with Mr. Polo Salazar? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Ladies and gentlemen, please allow me to introduce you to Ms. Ashley B. Cornwell. She's going to stand. She represents Mr. Salazar. She is a sole practitioner for the moment.

Ladies and gentlemen, are you related by blood or marriage or acquainted with, or have you or any member of your immediate family ever been represented, by Ms. Cornwell? If so, I'm going to ask you to please stand at this time.

(No response.)

THE COURT: I find no one standing. Thank you so much, Ms. Cornwell.

Now, ladies and gentlemen, in just a moment I am going to be reading to you a list of potential witnesses. Lawyers help me in this regard, and they give to me a list of potential witnesses, because this is my chance to ask you all if you know any of these folks. So they have given to me a list of potential witnesses.

And my question as to each and every one of these folks is,

Are you related by blood or marriage or acquainted with any of these individuals? So please keep that in mind as I go through this list.

Now, Leta Boehler, Joshua Scarborough, Jacob Cramer, Dylan Reynolds, Matthew Brooks, Kenneth Driscoll, Phillip Moy, Jonathan Davis, Rachel Nguyen, Ryan DeWane, Nicole Hardin, James Green, David Swibaker, Marcus Porter, Salina Sheppard, Jamie Hall, Bethany Davidson, Vera Martinez, Charlotte Pitts, Daniel Greene, Christina Denson, Marie Wearing, Christopher Flynn, Christopher Hirsch, Taylor Jackson, Megan Wade, Jonathan James, Jaquavious Washington, Wade Rallings, Bernard Seabrook, Shaneka Wright.

Are you related by blood or marriage, or acquainted with any of those individuals? Yes?

ATTORNEY OSBORNE: Yes, Your Honor. I'm so sorry, I must have left off Dr. Nicholas Batalis off that list.

THE COURT: Dr. Nicholas?

ATTORNEY OSBORNE: Batalis.

THE COURT: Batalis. Dr. Nicholas Batalis, related by blood or marriage or acquainted with Dr. Nicholas Batalis. If so, please stand at this time. Or if you're just like, Ah, I need you to go, you went through too many names too quick, y'all need me to repeat, I don't mind doing that.

(No response.)

THE COURT: Very well, I find no one standing.

Now, ladies and gentlemen, I have a few additional

questions. I'm going to ask two questions together. And if you need to respond, I'll have you approach.

Have you or any member of your immediate family ever had any criminal charges handled by the First Circuit Solicitor's Office? Don't respond until I ask the second one.

And does any member of our jury panel have any personal, political or religious beliefs that would prevent you from sitting in judgment of another person?

Now, ladies and gentlemen, if you need to respond to either of those questions, I'm going to ask you to please stand.

(Juror No. 68 stands.)

THE COURT: Your Juror number?

JUROR NO. 68: Sixty-eight.

THE COURT: Come forward for me. Yes, ma'am. I'm coming down. Hold on.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: Yes, ma'am?

JUROR NO. 68: For criminal charges. My dad went to prison for armed robbery and drugs.

THE COURT: And was that prosecuted by the First Circuit?

JUROR NO. 68: I'm not sure.

THE COURT: All right. Where was that?

JUROR NO. 68: This was in Georgia.

THE COURT: It was in Georgia. Gotcha. It wasn't in

Dorchester County?

JUROR NO. 68: No.

THE COURT: Okay. Thank you so much.

JUROR NO. 68: Yes.

THE COURT: All right. Can y'all hear me if I stand here? Anybody have trouble? If you do, just raise your hand. Thank you.

Is any member of our jury panel related by blood or marriage are or a close, personal friend -- now, let me tell you what that is, close, personal friend. This close, personal friend is somebody that you are so close to that you probably like this close, personal friend better than you like one of your siblings, if not all your siblings. This is somebody you're really, really close to, they really are a member of your family.

So my question is this. Is any member of our jury panel related by blood or marriage or a close, personal friend to any person employed by any law enforcement agency? If so, please stand.

(Jurors stand.)

THE COURT: And I need your number, your juror number.

JUROR NO. 262: 262.

THE COURT: And?

JUROR NO. 336: 336.

THE COURT: Now, my question is, what law enforcement agency?

JUROR NO. 262: North Charleston Police Department.

THE COURT: Okay.

JUROR NO. 336: My father was in law enforcement in (inaudible). My nephew is in law enforcement in New Hampshire. And I served as a SLED agent for Seacoast Church (phonetic sp), so I was good friends with everybody on that team. I'm still a part of the emergency response team, but I'm not currently a SLED agent.

THE COURT: Okay, gotcha. Hold on.

And your number?

JUROR NO. 53: My number is 53. My husband is a former law enforcement with U.S. Air Force.

THE COURT: Okay, thank you. Now, the question's going to be yes or no. As a result of your personal involvement or your family member's involvement, do you believe that that would have an affect on your ability to be completely fair and impartial to the state, as well as to these two gentlemen?

I need you to answer with your voice.

JUROR NO. 262: No, ma'am.

JUROR NO. 53: No, ma'am.

JUROR NO. 336: No, ma'am. I forgot to mention, my sister works in --

THE COURT: No explanation. Just yes or no.

JUROR NO. 336: I can be impartial.

THE COURT: Now, can you set your affiliation/their

affiliation completely aside and make up your mind based upon what you hear while court is in session?

JUROR NO. 262: Yes, ma'am.

JUROR NO. 53: Yes, ma'am.

JUROR NO. 332: Yes, ma'am.

JUROR: Yes, sir, you stood. Your number?

JUROR NO. 158: Yes, ma'am, 158. Center County Sheriff's Emergency Department as a special deputy (inaudible) in Tennessee. ---

THE COURT: We're having trouble hearing, sir.

JUROR NO. 158: I'm sorry.

THE COURT: Somebody's in Tennessee?

JUROR NO. 158: Yes, ma'am. I was in law enforcement in Tennessee in medical and security.

THE COURT: Okay. And that was you?

JUROR NO. 158: Yes, ma'am.

THE COURT: How long ago?

JUROR NO. 158: I left in 2016.

THE COURT: Might that/could that involvement interfere with your ability to be completely fair and impartial to the state, as well as to Mr. Fortune and Mr. Salazar? Yes or no.

JUROR NO. 158: No.

THE COURT: Can you set that history aside, that former affiliation/employment aside and make up your mind based upon what you hear in court while court is in session?

JUROR NO. 158: Yes, Your Honor.
THE COURT: Thank you. Please be seated. And thank you. All right.
Is any member of our jury panel employed by, related by blood or marriage to or a close, personal friend of anyone employed by the attorney general, the solicitor or any prosecuting attorney's office? If so, please stand.
(No response.)
THE COURT: I find no one standing.
Has any member of our jury panel ever been employed by any civilian or military law enforcement agency? If so, please stand.
(Juror stands.)
THE COURT: Anything other than what you just told us?
JUROR NO. 336: No. My sister works for Homeland Security. I forgot to mention that earlier.
THE COURT: Okay. And would that have an affect on your ability to be fair and impartial?
JUROR NO. 336: No.
THE COURT: Your number again?
JUROR NO. 336: 336.
THE COURT: Perfect. Thank you.
I'm going to ask these two questions together.
(Juror stands.)
THE COURT: Oh, I'm so sorry. Your number?

JUROR NO. 255: 255.

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

JUROR NO. 255: I served in the Air Force in Security Forces.

THE COURT: All right. How long ago?

JUROR NO. 255: I retired in 2013.

THE COURT: As a result of that former employment, might that/could that interfere with your ability to be completely fair and impartial to the state, as well as to Mr. Fortune and Mr. Salazar?

JUROR NO. 255: No, ma'am.

THE COURT: Can you set that aside and make up your mind based on what you hear in court while court is in session?

JUROR NO. 255: Yes.

THE COURT: Thank you.

My last two questions are together. Please don't respond to either until I have asked both. And if you need to approach, I will ask you to approach.

Have you or any member of your immediate family, to your knowledge, or that close, personal friend, ever been the victim of a violent crime such as burglary or robbery? That's the first question. Don't respond.

Second question, Is any member of our jury panel or member of your immediate family, to your knowledge, or close, personal friend, a member of MADD, SADD, CAVE law enforcement. Can

describe it that way, would be one way to describe.

If this applies to anyone, either one of these questions, you need to respond, please stand and approach.

(No response.)

THE COURT: And I find no one standing.

All right. Now I'm going ask three questions together. This case may involve some testimony regarding the use of alcohol and/or drugs. Does any member of our jury panel have a belief, either moral, religious, whatever belief, and it is so strong, it is so strong, that it would prevent you from being able to listen to the evidence and make up your mind based upon what you hear in court while court is in session? In other words, it would disturb your ability to be impartial. That's question number one.

Have you ever sat on a jury before?

And, have you ever received assistance from a victim's advocacy program?

And I have two more questions. Let me ask these, too, and then you can respond. Have you or any member of your family ever been prosecuted here or anywhere else?

And finally, has any member of our jury panel ever been the member of an organization dedicated to the protection of animals such as PETA, ASPCA, SPCA, et cetera?

If you need to respond to any of those, I'm going to ask you to please stand. And you may come forward. Your number, please?

JUROR NO. 255: 255.
THE COURT: 255, okay.
THE BAILIFF: Juror no. 255.
THE COURT: Thank you.
(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)
THE COURT: Which one? That was a lot of questions. Which one?
JUROR NO. 255: The victim assistance. I've been raped.
THE COURT: Okay. Now, that is not a topic in this matter.
JUROR NO. 255: Well, you said victim's advocate.
THE COURT: You're perfect, you're doing exactly what I asked. My follow-up question, because I'm looking at this. Is this a matter that you think you can participate in?
JUROR NO. 255: Yeah.
THE COURT: Okay. I'm sorry I brought up some sad things and I'm so sorry, and so forgive me for that. But do you believe you can set that aside and make up your mind?
JUROR NO. 255: Yes. This is nothing like that.
THE COURT: I understand. Thank you so much. You stay with us.
JUROR NO. 255: Okay.
THE COURT: All right. I find that our panel is now qualified.
Ladies and gentlemen, further information. I am going to

ask you to please return in the morning at 9:30, in the morning at 9:30. When you return, we will go through our jury selection. Our jury selection is not going to take a particularly long time, so I'll share that with you. It's not going to take a particular -- I don't think. Now I probably just jinxed everything in that I said that, but it should not take us a very long time.

Now, ladies and gentlemen, two things. First thing, I'm going to ask you not to discuss this matter. I've given you a little bit of information; I've read you some allegations, so you've got a little bit of information. If you serve on a jury you will be told repeatedly you may not discuss this matter, nor allow anyone to discuss that with you, and that really does begin now. So I'm going to ask you not to discuss this matter or allow anyone to discuss this with you.

Now, what does that mean as a practical matter? So when you go home this evening I don't expect you, as you have a conversation with your spouse and they say, Well, how was your day? Fine. What did you do? I can't tell you. Because then I have just put a ripple in the water. So that's not what I'm talking about. I went to Saint George. I have been qualified for the jury. It's a criminal term as opposed to a civil term. And I have to go back tomorrow for jury selection.

And the next question's going to be, Well, what kind of case is it? And at that point I'm going to ask you to say that the

mean, old judge has asked me not to discuss this specifically, or not allow you to discuss it with me. That's where the prohibition will begin. Now, put it on me. Put it on me. I don't want anybody mad with any of my jurors. You just put out on me.

Now there may be those of you who are dashing off to work this afternoon and you need something for your employer. We're happy to get that for you downstairs in the clerk's Office. Clerk's office is all the way on the end, this end of this building. Walk right in there. Don't be -- keeping, of course, social distancing, and they'll be happy to get you something for your employer if you need it.

Now, I do need you back at 9:30 in the morning. You'll go to the jury assembly room, and then you'll come on up here. Is that clear? Anybody got any questions about that? Wonderful.

It's really, really important, though, that you not discuss this matter with your family, friends, coworkers, and certainly not with anyone involved with this matter.

Should somebody try to talk to you about this case, I'm going to ask you to please get their name, if not a description, and let me know, because I'll deal with them, because no one should be discussing this matter with you.

And I want to thank you guys for every single, solitary tick of the clock. And can't wait to see you in the morning at 9:30. Thank you so much.

ATTORNEY HUBRICH: Judge, can I --

THE COURT: Hold on. Hold on. Yes?

(WHEREUPON, an off-the-record discussion was had.)

THE COURT: Ms. Gadiss (phonetic sp), you know, lawyers are wonderful people. And they said, Oh, Ms. Gadiss is going to think she's got to come back, and you excused her. You do not because you transferred; right?

JUROR: Yes.

THE COURT: Well, you and your wonderful sparkly mask, we are going to miss you. But you're going to be transferred, just like we talked about, okay. Very well.

Thank you, everybody. Six feet apart, please.

(WHEREUPON, the first jury panel is excused for the day at 11:38 a.m.)

(WHEREUPON, the second jury panel is seated in the courtroom at 11:46 a.m.)

(WHEREUPON, the Clerk of Court conducted roll call, and the Court conducted exemptions and transfers necessary to qualify the jury panel.)

VOIR DIRE OF THE JURY PANEL

THE COURT: Yes. Very well. Now, the panel is now qualified.

Ladies and gentlemen, let me tell you what happens next. What happens next is I'm going to go call on, in just a moment, our solicitor to call our first case -- one of our solicitors, to

call on your first case -- for trial.

You know, in most states in the United States the prosecutor is called the state's attorney or the district attorney. South Carolina, we're different. We call our prosecuting attorneys solicitors. I think we are the only state in America that we call our prosecutors solicitors, but we call our prosecutors solicitors.

So I am going call on our solicitor's office and ask our solicitor to please call our first case for trial this week. Thank you, solicitor.

ATTORNEY OSBORNE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, Mr. Osborne.

ATTORNEY OSBORNE: The first matter before you is State versus Muanah Fortune. Mr. Fortune has been charged with several charges. The first is murder, the indictment number is 2019-GS-18-0416; the second charge is attempted murder, that's Indictment No. 0417; the next is burglary in the first degree, 0418; next, possession of a firearm during the commission of a violent crime, 0420; ill-treatment of animals, 0421; armed robbery, 0422.

The next case is State versus Polo Salazar. First charge is murder, 2019-GS-18-0437; next is burglary in the first degree, 0438; next, possession of a stolen vehicle, 0439; attempted murder, 0440; possession of a firearm during commission of a

violent crime, 0441; armed robbery, 0442; and ill-treatment of animals, 0443.

And, Your Honor, I have a copy of the indictments, if I may approach and hand this to you.

THE COURT: Thank you, sir.

All right. Ladies and gentlemen, let me tell you what's just happened. Solicitor Osborne has just called the first case for trial, and he's just read some numbers and some charges off of what is called an indictment. An indictment. And each charge, each alleged crime, those allegations are contained in an indictment.

Now, what is an indictment? Well, let me tell you what it is, and then I'm going to tell you what it is not. First of all, it's a piece of paper, it is a notice document, it is a document that gives a citizen notice that the state alleges that that citizen has violated one of the criminal laws of the state of South Carolina.

Let me tell you what it is not. It is not evidence of any of the allegations that it contains. It's a notice document.

Now, I want to hasten and tell you that, to each allegation of each of those indictments of Mr. Fortune, Mr. Salazar, who also may be referred to as the defendant or defendants, each of these gentlemen have pled not guilty to each of these indictments. Now, that places upon the state the burden to prove each and every allegation of each indictment beyond a reasonable

doubt.

Now, ladies and gentlemen, in just a moment I am going to be reading to you some of the allegations of the indictments. Why do I do that? Well, I am trying to find out whether or not any of you know or think you may know or if you have heard or think you have heard anything about these allegations. That's the reason that I'm going to be reading to you some of the allegations of the indictments.

Now, ladies and gentlemen, a couple things I want you to keep in mind. First of all, I want you to keep in mind that each of these defendants has pled not guilty and have denied the allegations in these indictments. They pled not guilty.

The other thing I want to you keep in mind is, that those of you who are selected on this jury will treat each of these indictments independently and separate, one from the other, and each of these defendants separate and part, one from the other, individually. They are certainly entitled to that under our Constitution.

Now, for judicial economy, though, I am going to be reading to you these indictments, and all but one are the same for each of these gentlemen, so I'm going to read them, instead of reading them twice, I'm going to read them once, and I'll read both their names. But please understand that these indictments are to, and these individuals are to, be treated independently, separately. I simply do that for economy.

Now, ladies and gentlemen, with regards to Indictments 2019-GS-18-0437 and 2019-GS-18-416, the allegations, some of the allegations, are as follows: That, in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Kioki Salazar did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of the common law and Section 16-3-10 of the South Carolina Code of Laws, as amended.

Ladies and gentlemen, Indictments 2019-GS-18-0442 and 0417 allege -- excuse me, let me give you those numbers again. 2019-GS-18-0442 and -- I will get the number correct in just a moment. What I'm looking for is the indictment number for the armed robbery, the two numbers for armed robbery.

ATTORNEY OSBORNE: Yes, ma'am. 0422 for Muanah Fortune.

THE COURT: And?

ATTORNEY OSBORNE: And 0442 for Polo Salazar.

THE COURT: Okay, thank you. Ladies and gentlemen, these indictments allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and Defendant Polo Keoki Salazar did, by use of force, threats or intimidation, and while armed with a deadly weapon or while alleging either by words or actions that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the

robbery reasonably believed to be a deadly weapon, taking, carrying away goods and/or money from the person or presence of the victim, Joe Weaver with the intent to permanently deprive the victim of possession of goods or money, such weapon or alleged weapon described as a handgun, this offense in violation of Section 16-11-330 of the South Carolina Code of laws, as amended.

Ladies and gentlemen, Indictments 2019-GS-18-0438 and 0418 allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and Defendant Polo Keoki Salazar did willfully and unlawfully enter the dwelling of Marcus Porter without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, the defendant, each of them, and remember, one indictment allegations as to one defendant and then an indictment of allegations as to the other, the defendant or another participant in the crime is armed with a deadly weapon or explosive, causes physical injury to a person who is not a participant in the crime, uses or threatened to use the use of a dangerous instrument, displays what it is or appears to be, a knife, pistol, revolver, rifle, shotgun, machinegun or other firearm, and/or the entering or remaining occurs in the nighttime, this offense being in violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Now, ladies and gentlemen, Indictment 2019-GS-18-0440 and Indictment 2019-GS-18-417 allege, that in Dorchester County,

South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and Defendant Polo Keoki Salazar did, with the intent to kill, attempt to kill, one Marcus Porter, with malice aforethought, by shooting the victim, this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Ladies and gentlemen, Indictments 2019-GS-18-0441 and 0420 allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., also, indictment alleges the Defendant Polo Keoki Salazar, did visibly display or have in his possession a handgun during the commission of a violent crime as defined in Section 16-1-60 of the South Carolina Code of Laws, 1976, as amended; to wit, burglary in the first degree and murder, thereby violating Section 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Indictments 2019-GS-18-0443 and 0421, which is indictment for ill-treatment animals, in general, torture, allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and Defendant Polo Keoki Salazar did torture, torment, needlessly mutilate, cruelly kill or inflict excessive or repeated, unnecessary pain or suffering upon an animal, or by omission or commission did cause the acts to be done, in that the defendant did cruelly kill a dog by shooting it, this offense being in violation of Section

47-1-40(b) of the South Carolina Code of Laws, as amended.

And with regards to Indictment 2019-GS-18-0439, possess, conceal, sell or dispose of stolen vehicle where the value's more than two but less than $10,000, this indictment alleges against Mr. Salazar only, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Kioki Salazar did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle described as a 2007 Honda CR-V, with an approximate value of $6,000, and that the defendant was not entitled to possession of the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully, this offense in violation of Section 16-21-80 of the South Carolina Code of Laws, as amended.

Ladies and gentlemen, as to each allegation in each indictment against him, each of these defendants has pled not guilty.

Ladies and gentlemen, my question to you is this. Do any of you know or think you know or may have heard or think you may have heard anything about these any of these allegation? Please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, in just a moment I am going to be introducing you to some folks. And I use the term acquainted with, are you acquainted with. I want to define that phrase for

you, because what I'm trying to find out is if you have any connection with these folks that I am going to be talking about, do you have any connection with them.

Now, it may be that you went to school with somebody, who I mentioned, 20 years ago and you have not thought about or seen that person in 20 years, but you know you went to school with him 20 years ago. Well, that is a connection, and that would be encompassed with my definition of acquainted with.

Perhaps you simply work at the same location with someone and wave at each other occasionally across the parking lot. Well, believe it or not, that limited relationship would be encompassed within my definition of acquainted with. And you can stand and tell me that. So please keep that definition in mind as we go through these next questions.

And, ladies and gentlemen, please allow me to introduce you to Solicitor Osborne. He's going to introduce the folks in his office and the folks who will be participating in trial. Yes, sir, solicitor.

ATTORNEY OSBORNE: Thank you, Your Honor. Like the Judge said, I work in the First Circuit, I'm assistant solicitor there. My boss, our boss, is David Pascoe, he's the First Circuit solicitor. Kelly LaPlante is the first assistant here in Dorchester. Also in our office is Mike Spears, John Rivers, Baker Allen, Nick Young, Meagan Chinnis, Jillian Frederick, Vergil Deas. And coming from Orangeburg, also a prosecutor or

assistant solicitor, is Chelsea Glover.

On our team you will see Rebecca Durr, she is my parallel. Stacy Cook will be helping, as well, they'll be helping rallying in witnesses in and out of the courtroom. And then we have Carrie Huff here, who is our court coordinator. You may also see my investigative court team come in and out of the courtroom.

THE COURT: Thank you very much. Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Osborne, Ms. Glover, or any of the attorneys and the staff that Mr. Osborne just mentioned, or there may be other staff in the First Circuit Solicitor's Office that you know you know. So I'll ask, are you related by blood or marriage or acquainted with any of the attorneys or staff or employees of the First Circuit Solicitor's office, and as well as the First Circuit solicitor? So, please stand at this time.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, please allow me to introduce you to Mr. Muanah Fortune. Thank you, Mr. Fortune. And you may be seated. Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Muanah Fortune? If so, please stand.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, Mr. Fortune is represented by

Ms. Michelle Hubrich and Mr. Pierce Wehman. And Ms. Hubrich will give you the names of the folks in her office.

ATTORNEY HUBRICH: Thank you, Judge. My name's Michelle Hubrich. I've been known by a couple of different names over the past couple of years, so if you know me you might also know me as Michelle 3 or Michelle Stubbs. I am assisted in trial today by Pierce Wehman. We are both of the Dorchester County Public Defender's Office. Another attorney present from our office, Ms. Julie Beeks. You might know one of the three of us. Or you might know other attorneys in our office. Other attorneys in our office are Mark Leiendecker, Mary Banate, Ash Chisholm, Tom Squires. We have a juvenile department. The juvenile public defenders are Gina McElhany and John Loy. Thank you.

THE COURT: Thank you. Are you related by blood or marriage or acquainted with, or have you or any member of your immediate family, to your knowledge, ever been represented by Ms. Hubrich, Mr. Wehman or any of the folks in her office she just mentioned. If so, please stand.

(A juror stands.)

THE COURT: All right. Now, tell me your number.

JUROR NO. 405: 405.

THE COURT: 405. I'm going to ask you some questions. I need you to tailor your response to my question, okay. In other words, I'm not looking for explanations; I'm just looking ---

JUROR NO. 405: I forgot to put the shield on.

THE COURT: Great, wonderful. Thank you. Now, tell me who you know.

JUROR NO. 405: Mark Leiendecker.

THE COURT: All right. And would you describe your relationship with Mr. Leiendecker as one that is professional or personal?

JUROR NO. 405: Personal.

THE COURT: All right. And do you visit in each other's homes?

JUROR NO. 405: No.

THE COURT: And would you describe that relationship as a friendship or acquaintanceship?

JUROR NO. 405: Friendship.

THE COURT: A friendship, very well. And it is my understanding that Mr. Leiendecker, while folks in his office will be involved in this trial, it is my understanding that he will not be involved in this trial.

However, I will ask you this question. As a result of Mr. Leiendecker being in the office with Mr. Wehman, with Ms. Hubrich, would that/could that/might that interfere with your ability to be completely fair and impartial to the state, as well as Mr. Fortune and Mr. Salazar? Yes or no.

JUROR NO. 405: No.

THE COURT: Can you set that relationship completely aside and make up your mind based upon what you hear in court while

court is in session?

JUROR NO. 405: Yeah.

THE COURT: Thank you. Please be seated.

JUROR: All right.

THE COURT: Now, ladies and gentlemen, please allow me to introduce you to Mr. Polo Salazar. Thank you, Mr. Salazar. Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Polo Salazar? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Mr. Salazar is represented by the Cornwell Law Firm, LLC, and this is Ashley Cornwell. Ladies and gentlemen, are you related by blood or marriage or acquainted or have you or any member of your immediate family, to your knowledge, ever been represented by the Cornwell Law Firm or Ms. Ashley B. Cornwell? If so, please stand at this time.

(No response.)

THE COURT: Thank you. Thank you, Ms. Cornwell.

ATTORNEY CORNWELL: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, the lawyers help me by giving me a list of potential witnesses, because this is my opportunity to ask whether or not anybody knows anybody. So in just a moment I'm going to be reading to you a list of potential witnesses. My question as to each and every one of these folks

is, Are you related by blood or marriage or acquainted with the following individuals? Now, if you need me to go over them again I'm really happy to do that, just let me know. But here are the names.

Leta Boehler, Joshua Scarborough, Jacob Cramer, Dylan Reynolds, Matthew Brooks, Kenneth Driscoll, Phillip Moy, Jonathan Davis, Rachel Nguyen, Ryan DeWane, Nicole Hardin, James Green, Dr. Nicholas Batalis, David Swibaker, Marcus Porter, Salina Sheppard, Jamie Hall, Bethany Davidson, Vera Martinez, Charlotte Pitts, Daniel Greene, Christina Denson, Marie Wearing, Christopher Flynn, Christopher Hirsch, Taylor Jackson, Megan Wade, Jonathan James, Jaquavious Washington. Let me spell that. J-a-q-u-a-v-i-o-u-s, Jaquavious Washington. Wade Rallings, Bernard Seabrook, Shaneka Wright.

Are you related by blood or marriage or acquainted with any of those individuals? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

All right. Ladies and gentlemen, I have just a few questions additionally to ask of you. And you're going to hear me ask, are you or any member of your immediate family or close, personal friend, and I'll ask a question.

I need to describe this close personal friend. This close, personal friend is someone with whom you are so close you probably like this person better than you like one or all your

siblings. So please keep that in mind. This close, personal friend is somebody that you are so close to that, if you you're going to talk about relationships, you really ought to include them because you are that close with this particular person.

Now, is any member of our jury panel related by blood or marriage, or close, personal friend of a member of any law enforcement agency? If so, please stand.

(No response.)

THE COURT: I find no one standing.

Is any member of our jury panel employed by, related by blood or marriage to, or a close, personal friend to anyone employed by the attorney general, the solicitor or any prosecuting attorney's office or does work or has worked with any attorney general solicitor or any prosecuting attorney's office in the past? If so, please stand.

(No response.)

THE COURT: I find no one standing.

Has any member of our jury panel ever been employed by any civilian or military law enforcement agency? If so, please stand.

(A juror stands.)

THE COURT: Your number?

JUROR NO. 32: I mean, I was former employed with South Carolina State Transport Police.

THE COURT: And your number?

JUROR NO. 32: 4087.

THE COURT: Thank you very much.

JUROR NO. 32: That was a long time ago.

THE COURT: Your juror number, you gave that to me, I thought. What's your juror number?

JUROR NO. 32: Oh, 32. I'm sorry, I thought you were asking me for my law enforcement badge. No, Juror No. 32.

THE COURT: That's a first. Wonderful. Thank you so much. I'm going to ask three questions together. Please don't respond to any until I ask all three.

Have you or any member of your immediate family, to your knowledge, or close, personal friend ever been the victim of a violent crime such as burglary or robbery? That's question number one.

Question number two, Is any member of our jury panel, a member of your immediate family, to your knowledge, a close, personal friend, a member of MADD, SADD, CAVE or any other similar-type organization which has, as its goal, the promotion of law enforcement?

And, three, this case may involve some testimony regarding the use of alcohol and/or drugs. Does any member of our jury panel have a moral, religious or otherwise opinion that is so strong that your opinion would interfere with your ability to be fair and impartial to the state, as well as to Mr. Fortune and Mr. Salazar?

If you need to respond to any of those three questions, I'm going to ask you, please stand and approach.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, I'm going to now ask you four questions together and ask you not to respond until I've asked all four.

Ladies and gentlemen, have you ever had occasion to be a member of a trial jury before? That's question one. Question number two, Have you ever received assistance from a victim's advocacy program?

Next, Have you or any member of your immediate family, to your knowledge, ever been prosecuted by the First Circuit Solicitor's Office or been prosecuted anywhere?

And lastly, Are you a member currently, or have you been in the past, a member of an organization dedicated to the protection of animals such as PETA or the ASPCA or the SPCA?

If you need to respond to any of those questions, I'm going to ask you to please stand and approach.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, does any member of our jury panel have any personal, political or religious beliefs that would prevent from you sitting in judgment of another person? If so, please stand.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, my concluding question is this. Do you know any reason why you ought not/should not be a juror in this matter, being ready, willing and able to listen to the evidence and make up your mind based solely on what you hear in court while court is in session, all the while being fair and impartial, both to the state, as well as to Mr. Fortune and Mr. Salazar? Do you have any concern about your ability to do that? I'm going to ask you to please stand and approach at this time.

(No response.)

THE COURT: I find no one standing.

All right. I find that our panel is now qualified.

Now, ladies and gentlemen, let me tell you what happens next. In just a moment I'm going to be dismissing you for the day, for the balance of the day. But I'm going ask you to please be back in the morning at 9:30, at 9:30, for jury selection. You have now been qualified, but weren't selecting a jury in the morning until 9:30.

Now, ladies and gentlemen, I do need to ask you and instruct you not to discuss this matter or allow anyone to discuss it with you. Ladies and gentlemen, you know a very little bit about this matter. I introduced you to the folks and I've read some allegations to you. But you do have a little bit of information.

And those that are selected for tomorrow's jury will be told that they cannot discuss the matter or allow anyone to discuss it with them. And that now applies to you with regards to this matter.

Having said that, you're going to go home, you're going to work this afternoon, and someone's probably going to be curious about what you have been doing today. When you go home for dinner I don't expect family members to ask you, Well, what did you do today?, and you say, I can't tell you. That can cause some discomfort with your family members. You can certainly say that you reported for your jury duty; that you've been qualified; that it's a term of General Sessions, or criminal court; and that you're going to report back in the morning for the selection of the jury.

The next question is going to be, What kind of case is it? Ladies and gentlemen, that's where you have to tell them that you've been instructed by me -- put the blame all on me, I'm completely at ease and comfortable with that, but you must tell -- that you've been instructed not to discuss the matter or allow anyone to discuss it with you. Let them get mad with me but not with you. So please, please keep that in mind.

Now, those of you who are dashing off to work and need something for your employer, we're happy to get that for you in the clerk's Office which is located directly below the courtroom. When you go to the front, when you get to the first floor, just go all the way to the parking lot end of the building, and

they'll be happy to get that for you.

Now, is anybody going to go to work all night tonight? Good. I was going to tell you not to. Very well.

Ladies and gentlemen, please remember to keep your cellphones or other communication devices somewhere other than the courthouse in the morning in 9:30. I know it's hard not to have your cellphone with you every moment of the day, but I am going to ask you to please leave your cellphone in your vehicle or at home tomorrow morning. If you're selected to sit on the jury, you cannot have your cellphone with you while you're serving on the jury. So please keep that in mind, as well.

Again, tomorrow morning again, please be here at 9:30. Report to the general assembly room where you did, just same manner that you did, same drill that you did this morning. And I look so forward to seeing you in the morning. And I thank you for every single, solitary click of the clock. And I will see you in the morning at 9:30.

Any questions from anybody? Wonderful. Thank you so much. Remember to keep your social distancing as you leave.

(WHEREUPON, the second jury panel is dismissed for the day at 12:54 p.m.)

(WHEREUPON, court recessed at 12:55 p.m. and reconvened at 1:20 p.m.)

MATTERS OF LAW

ATTORNEY CORNWELL: One of the indictments, the armed

robbery indictment against my client, when I received the indictments prior to trial I assumed that it was just a scanned error on the scanner.

However, in looking at the clerk's file of the original indictment, the front of Docket No. 2019-GS-18-0442, which is The State versus Polo Salazar, indictment for armed robbery, that is what the front and the face of the indictment says.

However, when you turn it over, on the back it states that it's Indictment No. 2019-GS-18-0435, and it identifies Devonte Major in the body of the indictment.

It does say that it was presented to a grand jury and presented as a true bill. However, at this point if this is what was presented to the grand jury and true billed I believe there's going to be an issue with whether or not they believe that Polo Salazar, they presented evidence against Polo Salavar, and the armed robbery and they true billed it, or whether they presented evidence that Devonte Major with the armed robbery and they true billed it.

So at this point I would move to dismiss the armed robbery indictment against my client based on the fact that we don't know what a grand jury heard and who they presented a true bill against.

THE COURT: Yes, sir.

ATTORNEY OSBORNE: Your Honor, I'd say a classic scrivener's error, and we would move, per Section 17-19-100, to amend the

indictment. And the grounds that has been provided in case law for us to allow us, the state, to do that, as long as the indictment has a sufficient information to place the defendant on notice.

And in this case the facts that are alleged here are all the same facts. There isn't anything new to one indictment to the next, they're all intertwined, and there were 25 indictments that were submitted to the grand jury. All were indicted. This is nothing more than a scrivener's error. I'm more than certain Mr. Salazar is very aware of the indictment and charges that were presented against him.

THE COURT: Let me ask you this question. If you looked at all the original indictments, are there two where the body is for Major?

ATTORNEY OSBORNE: Yes. So what you're looking at here, and I think Ms. Cornwell is correct, there is, of the 25 indictments, you have a body for Major that has been duplicated onto, or the indictment number and the name, or scrivener's error. I mean, that's certainly possible.

But either way you look at it, there is one indictment, one armed robbery, for Polo Salazar which says 042 on the front. It has been presented; it has been indicted. And then on the back, there appears to be a scrivener error that is duplicative for the indictment for Devonte Major.

ATTORNEY CORNWELL: Your Honor, my issue with that is it

would be different if it were the back that was the incorrect thing. But what the solicitor is now saying is that the grand jury heard two armed robberies with Devonte Major and the facts of that case and not the facts as it relates to Polo Salazar on the armed robbery, because the body of, now two, indictments have Devonte Major.

So it's more than just a scrivener's error. It's got the indictment number for Devonte Major on the back of this. This is the factual basis that they would have true billed on. So I don't know if the state is going to be able to show that a grand jury heard any evidence of an armed robbery against Polo Salazar to true bill it. And, therefore, it has not been presented to a grand jury in a manner that would allow it to go forward to trial today, or this week, which is why I believe the only remedy at this point is going to be to dismiss the armed robbery or, in the alternative, continue our case and have the grand jury hear the armed robbery and try them altogether.

ATTORNEY OSBORNE: Well, to follow that logic you would have to assume then the grand jury indicted Devonte Major for two counts of armed robbery for the same victim, Joe Weaver. Joe Weaver is who is listed as the victim. It's not multiple victims; it's Joe Weaver.

And I would argue exactly the opposite, obviously. The fact that it was signed on the cover is more probative than the actual narrative itself. We have a signature here by the grand jury,

individual, indicting Polo Salazar for armed robbery. Or the foreman, as it were.

And then, Your Honor, I would also bring to your attention *State v. Means*, that's 367 SC 374. The state may move to amend an indictment once the case is called for trial as long as the amendment does not change the nature of the offense charged.

This would not change the nature of the offense charged. Armed robbery is listed as Joe Weaver being the victim in every indictment for armed robbery for all four defendants.

THE COURT: All right. Let me see the best case. You just pulled it up on your computer, is that what you did? *Means*, you think, is your best?

ATTORNEY OSBORNE: Well, I'm going fast. I mean, quick reference, seems like *State v. Means* seems like a good one, 367 SC 374.

ATTORNEY CORNWELL: Your Honor, I will also say the language in *Means* states that, When a defendant timely objects to the sufficiency of the indictment, before the jury is sworn, a ruling that an indictment is not sufficient will result in the quashing of the indictment unless the defendant waives presentment to the grand jury and pleads guilty. And, of course, we are not intending on doing that, Your Honor.

And, Your Honor, *State v. State* and *State v. Tabory* says, Likewise, a defective caption would not invalidate an otherwise perfect indictment, but the state may not rely upon a caption to

the exclusion of the language contained into the body of the indictment. And that is *State v. Tabory.*

THE COURT: You got it up? Let me see.

ATTORNEY OSBORNE: What's the cite for that, Ashley?

ATTORNEY CORNWELL: 262 SC 136.

ATTORNEY OSBORNE: I have another decent one, Judge, *State v. Gentry*, since we're rocket-firing you.

THE COURT: Yes, great.

ATTORNEY OSBORNE: Your Honor, in *State v. Gentry,* this is from 2005, a Supreme Court case, there are two levels that a defendant goes through, or requirements, for an indictment to be found sufficient. A defendant's right to question the manner in which the accusation has been presented, and the Court's determination of whether the offenses stated with sufficient certainty and particularity to enable the defendant to know the charges being brought against him.

It would be hard for Mr. Salazar to argue that he had no idea what was coming this week.

THE COURT: 262 SC 136, I'm troubled by it. I'm troubled by it. Let me tell you what troubles me about it, and here's my problem. My problem is, is that does it change the nature of the offense? You think? It goes from no charge to a charge in the body. And the body is what you've got to look at. I mean, you can't look at the caption of an indictment to be able to prepare to defend it; you've got to look at the body of it. And the

body's got the wrong name.

Here's what worries me. Do I think -- here's the real dilemma, is that I believe that Mr. Salazar's lawyer is probably prepared. But what happens on the next lawyer if, for whatever reason, looks at the body of the indictment and doesn't look at the other side, just looks at the body of the indictment and says, Armed robbery, maybe I should but it isn't in the indictment, but I'm not going to worry about it, I'm going to worry about whatever else.

And the case law does not talk about -- I can't find one where they changed the name of the defendant in the body of the indictment. Anybody got one of them?

ATTORNEY OSBORNE: No.

THE COURT: It's too easy to fix. It's too easy not to have this problem. That's my problem, you know, that's what's got me really concerned. Because when this, when the Supreme Court looks at it, they'll go, They didn't name the guy in the indictment. How is he supposed to know? He isn't named. So how in the world could I make a determination that the character of the charge isn't different? He's going from not being charged with armed robbery to being charged with armed robbery.

And I don't think -- I think the body of the indictment is what you've got to look at.

ATTORNEY OSBORNE: Well, I'll tell you what, Judge. We're not going to lose this case on that indictment, so we just won't

go forward on either armed robbery.

THE COURT: Okay. Okay.

ATTORNEY OSBORNE: And if we do, then I stand corrected.

ATTORNEY CORNWELL: I want to just get on the record that he's willing to dismiss the charges with prejudice, that he can't bring them back at a later date and try them just on the armed robbery at a later date.

ATTORNEY OSBORNE: I think you've got a double jeopardy attached once we swear this jury.

ATTORNEY CORNWELL: Just want to make sure we're clear on that.

ATTORNEY OSBORNE: That's basic law. Yeah.

ATTORNEY HUBRICH: No, I don't think it is.

THE COURT: I think it is. When we swear that jury in, it's open.

ATTORNEY CORNWELL: That's right. As long as --

THE COURT: Unless it's a mistrial. Unless it's a mistrial. But he's going to live with it.

ATTORNEY CORNWELL: Thank you, Your Honor.

THE COURT: Okay. Okay. And then we have Ms. Hubrich. Do you have any problem with that?

ATTORNEY HUBRICH: No, Your Honor. My understanding is that the state is dismissing, with prejudice, assuming we don't have a mistrial, the armed robbery against Muanah Fortune.

THE COURT: Correct. Correct.

ATTORNEY HUBRICH: Thank you.
THE COURT: Now, can we have our jury?
ATTORNEY HUBRICH: Judge, we probably need to do some sorted of curative instruction to the first two panels.
THE COURT: You know, interesting, I was just thinking about it. It happens all the time, what ends up going to the jury and what starts with the jury. And I'm inclined not to call attention to it ---
ATTORNEY HUBRICH: That's right.
THE COURT: --- because you even tell them, you charge, I'll explain that to you later. Lesser-included offenses are not talked to the jury.
ATTORNEY HUBRICH: Yeah. Directed verdicts. If it happens with a directed verdict, you wouldn't cure it that way, either. That's correct.
THE COURT: I absolutely just went through that thought process. I'm actually not that concerned about it. We do that to them all the time.
ATTORNEY HUBRICH: Then I have no objection to it. I'm sorry I brought it up. Thank you, Judge.
THE COURT: No. And don't say sorry because, guess what? I just want to went through that mental exercise myself.
ATTORNEY HUBRICH: Well, I didn't. Actually, Ms. Cornwell mentioned it to me, and then I'm a big mouth.
ATTORNEY OSBORNE: We may not be going forward with another

charge. We'll have to see.

ATTORNEY HUBRICH: Why? Which one is that?

(WHEREUPON, the third jury panel is seated in the courtroom at 1:58 p.m.)

(WHEREUPON, the Clerk of Court conducted roll call, and the Court conducted exemptions and transfers necessary to qualify the jury panel.)

VOIR DIRE OF THE JURY PANEL

THE COURT: Thank you for being here today. All right. I find that our panel is now qualified.

Ladies and gentlemen, we'll call the first trial for this week. Ladies and gentlemen, I want to explain to you that most states around the country the prosecuting attorney for the state is called the district attorney, or perhaps the state's attorney. We, in South Carolina, are unique. We call our prosecuting attorneys for the state solicitors.

So I'm going to call on our solicitor's office. I'm going to ask the solicitor's office, and I see Solicitor Osborne is ready to stand up and call the first case for trial. Yes, sir.

ATTORNEY OSBORNE: Thank you, Your Honor. May it please the Court.

The matter before you, Your Honor, the first case is State versus Muanah Fortune. He has been charged with murder, the indictment number is 2019-GS-18-0416; he's been charged with attempted murder, 0417; burglary in the first degree, 0418;

possession of a firearm during the commission of a violent crime, 0420; ill-treatment of animals, 0421.

And the second case, Your Honor, is State versus Polo Salazar. He's been charged with murder, Indictment Nos. 2019-GS-18-437; burglary in the first degree, 0438; possession of a stolen vehicle, 0439; attempted murder, 0440; possession of a firearm during the commission of a violent crime, 0441; and ill-treatment of animals, 0443.

And, Your Honor, may I approach with a copy of the indictments?

THE COURT: Thank you, yes. Now, ladies and gentlemen, let me tell you what just happened. What just happened is the solicitor has called the first case for trial. And what he's been referring to, he's been referring to indictments. Those numbers that you heard him reading, those are called indictments.

I want to tell you what an indictment is and what it is not. First of all, it's a piece of paper, it's a notice document. It is the document that is used by the state of South Carolina to give notice to a citizen that the state of South Carolina maintains, alleges, that that individual, that person, has violated one of the criminal laws of the state of South Carolina. Now, ladies and gentlemen, we have an indictment for each of the alleged crimes.

Now, ladies and gentlemen, I want to hasten and tell you that to each of these indictments, to each of the indictments

naming him, each of these defendants, Mr. Fortune for the indictments directed at him and Mr. Salazar for the indictments directed at him, that each of these defendants has pled not guilty. And that places the burden of proof on the state to prove each and every allegation of each of these indictments.

And those of you who serve on the jury will receive an instruction on the law by me, and I'm going to say that you treat each of these indictments independently and separate, one from the other, and you treat each of these defendants independently, separately.

And I mention that to you because, ladies and gentlemen, in a moment I am going to read to you some of the allegations of the indictments. I'm not going to read all of the language, but I'm going to go read to you some of the allegations in the indictment that I believe would be responsive, or be helpful, for you to tell me, Do you know anything or think you know anything about this matter?; do you think you've heard anything, including today?. You haven't heard anything about this matter. Well, the only way for me to do that is to read you some of the allegations for that purpose. And that's going to be the purpose that I'm going to be reading to you some of the allegations of these indictments. That's the reason why.

But I do need to you keep in your mind that to these allegations, these defendants, each of them, have pled not guilty. I simply need to find out whether or not any of you know

or think you know or have heard or think you've heard anything about these allegations.

Now, ladies and gentlemen, as to each of the crimes charged, there's a separate indictment. And in the interest of judicial economy, to be efficient, I am going to read the indictments a little bit together. And I do that really for efficiency reasons. But do know that there is a separate indictment for each of these gentlemen, for each of these offenses. There's one additional one for Mr. Salazar, I'll go over that.

But I do need you to know that these gentlemen will be treated independently, they will be treated separately. I simply will combine a little bit for efficiency purposes at this time.

Now, ladies and gentlemen, with regards to Indictments 2019-GS-18-0416 and 2019-GS-18-0437, which is, these are the indictments for murder, they allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant polo Keoki Salazar and Defendant Muanah Aruna Fortune, Jr., did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of the common law in Section 16-3-10 of South Carolina Code of Laws, as amended.

Ladies and gentlemen, Indictments 2019-GS-18-0418 and 0438, the indictments for burglary in the first degree allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and the Defendant

Polo Kioki Salazar did willfully and unlawfully enter the dwelling of Marcus Porter without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime is armed with a deadly weapon or explosive, causes physical injury to a person who is not a participant in the crime, uses or threaten to use the use of a dangerous instrument, displays what is or appears to be a knife, a pistol, revolver, rifle, shotgun, machinegun or other firearm, and/or the entering or remaining occurs in the nighttime, this offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Ladies and gentlemen, Indictment 2019-GS-18-0417 and 440, which are the indictments for attempted murder allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Kioki Salazar and the Defendant Muanah Aruna Fortune, Jr., did, with the intent to kill, attempt to kill, one Marcus Porter, with malice aforethought, by shooting the victim, this being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

And bear with me just a moment. With regards to Indictment 2019-GS-18-0420 and 0441, possession of a firearm or a knife during the commission of a violent crime, the indictments allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and the

Defendant Polo Kioki Salazar did visibly display or have in his reach/his possession a handgun during the commission of a violent crime, as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended; to wit, burglary in the first degree and murder, thereby violating Section 16-23-490 of the Code of Laws of South Carolina 1976, as amended.

And Indictments 2019-GS-18-0443 and 2019-GS-18-0421, ill-treatment of animals, in general, torture, allege, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Kioki Salazar and the Defendant Muanah Aruna Fortune, Jr., did torture, torment, needlessly mutilate, cruelly kill or inflict excessive or repeated, unnecessary pain or suffering upon an animal or by omission or commission did cause the acts to be done, in that the defendant did cruelly kill a dog by shooting it, this offense being in violation of Section 47,140(b) of the South Carolina Code of Laws, as amended.

And then, ladies and gentlemen, Indictment 2019-GS-18-0439, this indictment alleges possession -- it is, the indictment states possession, conceal, sell or dispose of a stolen vehicle with a value more than two yet less than $10,000, and it alleges, that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle described as a 2007 Honda CR-V with an approximate value of $6,000, and the defendant was not entitled to possession of

the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully, this offense in violation of Section 16-21-80 of the South Carolina Code of Laws, as amended. And, ladies and gentlemen, this indictment is against Mr. Salazar.

Ladies and gentlemen, to each indictment that is directed towards each of these defendants, they have each pled not guilty. Now, ladies and gentlemen, my question to you is this. Do you know or think you may know, have you heard or think you may have heard, to include today, anything about these allegations? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, allow me to introduce you to Solicitor Osborne who's going to introduce folks who are with him at counsel table. And he's going to talk a little bit about folks in the office. And then I'll follow up with a question. Yes, sir.

ATTORNEY OSBORNE: Thank you, Your Honor. My name's David Osborne. I'm an assistant solicitor in the First Circuit, that is Dorchester, Calhoun and Orangeburg Counties. My boss, our boss, is David Pascoe, he is the solicitor in the First Circuit. In my office is First Assistant Kelly LaPlante, Mike Spears, John Rivers, Baker Allen, Nick Young, Meagan Chinnis, Jillian Frederick and Vergil Deas. Throughout the trial you'll see my assistant, Rebecca Durr, my legal assistant, she'll be helping

with witnesses. Stacy Cook, they'll kind of tag-team, Stacy will be bringing in witnesses, as well. My investigator, Chor King, might be in and out helping with evidence. And then we have Chelsea Glover here, she is a prosecutor from Orangeburg County who has come down to help out.

THE COURT: Thank you. Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Osborne, Ms. Glover or any of the attorneys in the solicitor's office, or the solicitor or any of the employees that Mr. Osborne has just introduced you to or any other employee that you would know or associated with the First Circuit Solicitor's Office? If so, please stand at this time.

(No response.)

THE COURT: Let me define for you acquainted. I'm trying to find out if you have any connection with the folks that I'll be asking you about. For example, perhaps you went to school with someone 20 years ago, you haven't thought about that person in 20 years, hadn't seen him in 20 years, but you know you went to school with him. It may be that you work out at the same location with someone that I'll mention, maybe you occasionally wave at each other across the parking lot and that is the extent of your relationship. Well, believe it or not, those relationships, as limited as they are, would be encompassed within my definition of acquainted with. I'm trying to find out if you have any connection with these folks at all.

So with that in mind, let me ask again, are you related by blood or marriage or acquainted with Ms. Glover, Mr. Osborne or any of the attorneys or folks in the First Circuit Solicitor's Office? If so, please stand.

(Juror stands.)

THE COURT: All right. Yes, ma'am, your number?

JUROR NO. 34: 349.

THE COURT: 349. Now, I need you to answer just the questions that I ask, okay.

JUROR NO. 349: Okay.

THE COURT: And I have a reason for wanting your responses to be limited, because I just need information that I need. First of all, who do you know?

JUROR NO. 349: Kelly LaPlante.

THE COURT: And would you describe your relationship with Ms. LaPlante as one that is more of an acquaintanceship, a professional relationship or friendship?

JUROR NO. 349: Acquaintanceship.

THE COURT: Acquaintanceship?

JUROR NO. 349: Uh-huh.

THE COURT: Do you visit at each other's homes?

JUROR NO. 349: No.

THE COURT: And as a result of the fact that Ms. LaPlante is in the office as a solicitor, might that/could that, in any way, interfere with your ability to be completely fair and impartial,

both to the solicitor, as well as to Mr. Fortune and Mr. Salazar?

JUROR NO. 349: No.

THE COURT: Can you set that relationship completely aside and make up your mind based on what you hear in court while court is in session?

JUROR NO. 349: Yes.

THE COURT: Thank you. Please stay with us. Now, ladies and gentlemen, please allow me to introduce you to Mr. Fortune. If Mr. Fortune can please stand and face our jury. Thank you, Mr. Fortune.

Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Fortune? If so, please stand.

(No response.)

THE COURT: And if I find no one standing. Now, ladies and gentlemen, please allow me to introduce to you Ms. Michelle Hubrich and to Mr. Pierce Wehman. They represent Mr. Fortune, and they will introduce the folks in their Office. Ms. Hubrich, thank you so much.

ATTORNEY HUBRICH: Thank you, Judge. Hi, my name's Michelle Hubrich. I've been married a couple times, so I have some other names if you know me. I've been known as Michelle Williams and Michelle Stubbs. I represent Muanah Fortune today. At counsel table with me is Attorney Pierce Wehman. We are both attorneys with the First Circuit Public Defender's Office for Dorchester County.

Other lawyers in our office, and also a companying us today, is Ms. Julie Beeks, she's the newest employer in our Office. We have Mark Leiendecker, who is the chief public defender, John Loy, Mary Lematty. Gina McAlhany is one of our juvenile public defender. Ash Chisholm, who is an adult public defender. Tom Squires is an adult public defender. We have an investigator, John Chisdale is our investigator, for the Dorchester County Public Defender's Office.

THE COURT: Thank you so much. Ladies and gentlemen, are you related by blood or marriage or acquainted with or have you any member or your immediate family, to your knowledge, ever been represented by Ms. Hubrich, Mr. Wehman or any of the folks in their office? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing. Now, ladies and gentlemen, allow me to please introduce you to Mr. Salazar. Thank you, Mr. Salazar. And you may be seated.

Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Salazar? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing. Now, ladies and gentlemen, Mr. Salazar is represented by Ashley Cornwell. She is the Cornwell Law Firm, LLC. Ladies and gentlemen, are you related by blood or marriage or acquainted with or have you or

any member of your immediate family, to your knowledge, ever been represented by Ms. Cornwell or anyone at the Ashley Cornwell Law Firm? If so, please stand.

(No response.)

THE COURT: Thank you. Thank you very much. All right. And I find no one standing.

Now, ladies and gentlemen, the attorneys help me, and they give me the names of potential witnesses so that I can ask you if you know any of these folks. And so in just a moment I am going to be going over those names with you.

My question to each and every one of those individuals is, Are you related by blood or marriage or acquainted with any of these individuals? Leta Boehler, Joshua Scarborough, Jacob Cramer, Dylan Reynolds, Matthew Brooks, Kenneth Driscoll, Phillip Moy, Jonathan Davis, Rachel Nguyen, Ryan DeWane, Nicole Hardin, James Green, Dr. Nicholas Batalis, David Swibaker, Marcus Porter, Salina Sheppard, Jamie Hall, Bethany Davidson, Vera Martinez, Charlotte Pitts, Daniel Greene, Christina Denson, Marie Wearing, Christopher Flynn, Christopher Hirsch, Taylor Jackson, Megan Wade, Jonathan James, Jaquavious Washington, wade Rallings, Bernard Seabrook, Shaneka Wright.

Are you related by blood or marriage or acquainted with any of those individuals? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, I have a few additional questions that I will ask of you. I'll ask two together. Please don't respond to the first until you've heard both.

Have you or any member of your immediate family, to your knowledge, ever had any criminal charges handled by the First Circuit Solicitor's Office? That's the first question.

Second question, Does any member of the jury panel have any personal, political or religious beliefs that would prevent you from sitting in judgment of another person?

If you need to respond to either of those questions, I'm going to ask you to please stand and approach.

(No response.)

THE COURT: I find no one standing.

Ladies and gentlemen, you're now going to hear me talk about a close, personal friend, I've got to describe who that is. A close, personal friend is someone that is so close to you that you really can't differentiate between this person and a family member. In fact, this close, personal friend is so close to you that you might like them better than you do your own siblings. That's the level of relationship that I'm referring to.

Is any member of our jury panel related by blood or marriage or a close, personal friend to any member of a law enforcement agency? If so, please stand.

(Juror stands.)

THE COURT: And your number?

JUROR NO. 349: 349.

THE COURT: Thank you so much. You may be seated.

Is any member of our jury panel employed by or related by blood or marriage to or a close, personal friend of anyone employed by the attorney general, the solicitor or any prosecuting attorney's office, or does work for any of those agencies? If so, please stand.

(No response.)

THE COURT: And I find no one standing. Has any member of our jury panel ever been employed by any civilian or military law enforcement agency? If so, please stand.

(Juror stands.)

THE COURT: Your number?

JUROR NO. 50: Fifty.

THE COURT: All right.

JUROR NO. 50: I work for the U.S. Navy. And I previously worked for the U.S. Army.

THE COURT: Thank you. All right. I'm going ask two questions together. Please don't respond to either until I've asked both.

Have you or any member of your immediate family or close, personal friend ever been the victim of a violent crime such as burglary or robbery? That's the first question.

Second question, Has any member of our jury panel or member of your immediate family, to your knowledge, or close, personal

friend, a member of MADD or SADD or CAVE or any other similar type of organization which has, as its goal, the promotion of law enforcement?

If you need to respond to either of those questions, please stand and come forward.

(No response.)

THE COURT: I find no one standing.

Two questions again. Please don't respond to either until you've heard both.

Ladies and gentlemen, this case may involve some testimony regarding the use of alcohol and/or drugs, illegal drugs. Do you maintain a moral, a religious or other belief that is so strong that it would interfere with your ability to be fair and impartial, both to the state, as well as to Ms. Fortune or Mr. Salazar? That's question number one. Question number two, Has any member of our jury panel ever sat on a jury before?

If you need to respond to either of those questions, I'm going ask you to please stand and approach.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen I'm going ask three questions together. Please do not respond until I've asked all three.

Has any member of our jury panel ever received assistance from the victim's advocacy program? That's question number one.

Question number two, Have you or any member of your

immediate family ever been prosecuted in the First Circuit Solicitor's Office or anywhere else?

And, third question, Has any member of the jury panel, have you ever been a member of an organization dedicated to the protection of animals such as PETA or the SPCA or the American SPCA?

If you need to respond to any of those questions, if you'd please stand and approach.

(No response.)

THE COURT: I find no one standing.

Ladies and gentlemen, this will be my concluding question, is this. Do you know any reason why you ought not/should not/could not be a juror in this case, being ready, willing and able to listen to the evidence and make up your mind based solely on what you hear in court while court is in session, while being completely impartial and fair to the state and to Mr. Fortune and to Mr. Salazar?

If you have any concern about your ability to do that, listen to the evidence, make up your mind based solely on what you hear in court while court is in session, being fair and impartial to these parties, if you have any concern, for whatever reason, I'm going to ask you to please stand and come forward at this time.

(No response.)

THE COURT: I find no one standing.

All right. I find that our panel is qualified.

Now, ladies and gentlemen, I'm going to ask you to please return tomorrow morning at 9:30. Just like you did this morning, you'll come into -- well, you may come into the jury assembly room but you may not. We're going to have three different areas set up to receive our qualified jurors. And at 9:30 in the morning we are going to begin the process of selecting the jury for our trial.

Ladies and gentlemen, once folks are selected to serve, then we're going to get right into the trial of the case.

Now I need to give some instruction. Primarily I'm going instruct you, do not discuss this matter or allow anyone to discuss it with you. You're thinking, Well, I haven't heard anything, I'm not even a juror in this case. Well, the reason for that is that you've got a little bit of information, and jurors in a case cannot discuss a matter, they can't allow anyone to discuss it with them while they're sitting on the jury. Because you have a little bit of information, because I have read to you some allegations, it's very important that you not discuss this case with anyone. That's your family, your friends, certainly anyone that has anything do with this case.

Should anyone try to talk to you about this case, it's really important that you get their name; if you can't get their name get a description, and report it to me upon your return to the courthouse, and I will tend to the matter.

Ladies and gentlemen, I'm going to ask you to leave your cellphone or other communication device somewhere other than the courthouse tomorrow morning, because you cannot have a cellphone with you while you're serving on the jury. And so please be mindful of that in the morning.

Finally, those of you that are dashing off for what might be another hour or so of work, if you need something for your employer, I'd be happy to get that for you in the clerk's office, which is directly below where we are. And when you get to the first floor, if you'll go all the way down to the building on the parking lot side of the building, they'll be happy to get that for you.

Now, does anyone plan on going to work tonight? Good. I was going to say, no, not tonight, because I need you all rested and fresh. For those of you who will be selected to sit on the jury tomorrow, you need to be rested.

Now, ladies and gentlemen, other than to thank you for your time, your precious and dear time, we've taken a lot of it this afternoon, I'm certainly grateful for every single, solitary tick of the clock, and I thank you for it.

If you'll be mindful of the social distancing as you leave. Just know that I'll look forward to seeing all of you in the morning at 9:30. Do you have any questions about that? 9:30. 9:30. 9:30. Yes?

JUROR NO. 229: What if you have to work in the morning?

Because I have to work tomorrow. Or do I have to be here?

THE COURT: Yes, ma'am.

JUROR NO. 229: Okay. I'll have to have my boss find somebody to take my place.

THE COURT: Yes, ma'am. That happens with every single juror every day all over this country. And that's why we talk about sacrifice, it is a sacrifice. And I so appreciate that, yes. So tell your boss, Appreciate me greatly, even greater than you did before. Yes. Thank you. All right, anything else?

Thank you so much. I'll see you in the morning at 9:30. And thank you so, so much. And I need to have your juror number, please, ma'am, justs so our record can reflect.

JUROR NO. 229: 229.

THE COURT: 229, perfect. Thank you so much. Have a wonderful evening, all of you.

(WHEREUPON, the fourth jury panel is excused for the day at 3:02 p.m.)

MATTERS OF LAW

ATTORNEY CORNWELL: Your Honor, Juror 349, her husband is a Summerville Police Department detective. This case was investigated by the Summerville Police Department. So I think there are obviously concerns about her husband being a member of the investigating agency.

THE COURT: Okay.

ATTORNEY CORNWELL: Juror 349, her husband was a ---

THE COURT: Okay. So you're raising to strike for cause?
ATTORNEY CORNWELL: Yes, Your Honor.
THE COURT: Position of the solicitor?
ATTORNEY OSBORNE: We don't take one, Your Honor.
THE COURT: All right. I have no problem with that. 349, out. Got it?
ATTORNEY CORNWELL: Juror 145, she was a fire and rescue ambulance clerk. She indicated that she worked for the old courthouse here in Saint George. That is also where the solicitor's office also is now, so I don't know. I know when we say you work in the courthouse, so there's not a lot of overlap between the prosecuting agency, the clerk's office, all that. And with her working in the same ---
THE COURT: Solicitor?
ATTORNEY OSBORNE: I'm still learning my way around that office, but what I can tell you is, we don't have access to their office; they don't have access to ours. I didn't even know they had an office, to be honest with you.
THE COURT: And now you do. All right. I'm sorry. Ms. Hubrich?
ATTORNEY HUBRICH: I'll join in the motion.
THE COURT: You okay with that?
ATTORNEY HUBRICH: I'm okay with striking her.
THE COURT: We'll scratch her.
ATTORNEY HUBRICH: What number was that?

ATTORNEY CORNWELL: That was 145.

THE COURT: Okay.

ATTORNEY CORNWELL: The last one, I think it's -- I mean, I don't know how much of an issue this is. Juror 184 has, I've got notes that she's got three prior DUIs out of California for which she got three years' probation. So I believe that is actually a disqualifying conviction.

THE COURT: DUI first?

ATTORNEY OSBORNE: It's one DUI. I mean, it doesn't bother me.

ATTORNEY CORNWELL: It doesn't actually bother me. I don't want it to come back, like, where she's on the jury panel and like, oh, yeah.

THE COURT: And she should have been disqualified.

ATTORNEY CORNWELL: And she didn't bring up the fact that she's been prosecuted. That is certainly a question, Have you ever ---

THE COURT: Yeah.

ATTORNEY CORNWELL: I think that ---

THE COURT: Yeah, I'm going take her out. Out.

ATTORNEY OSBORNE: Okay.

ATTORNEY HUBRICH: Which one is that? My position is that she has she passes the mustard. I don't think she's required to disclose it, and I don't think it matters.

THE COURT: Didn't I ask her if she was prosecuted by this

solicitor's office or anyone else?

ATTORNEY HUBRICH: It was in California. Right?

THE COURT: Or any other prosecutor office.

ATTORNEY HUBRICH: I didn't know that was your question. I'm sorry, Judge. That might have actually been my question.

THE COURT: It was your question.

ATTORNEY HUBRICH: Okay. I'll withdraw that.

(WHEREUPON, the fourth jury panel is seated in the courtroom at 3:16 p.m.)

(WHEREUPON, the Clerk of Court conducted roll call, and the Court conducted exemptions and transfers necessary to qualify the jury panel.)

THE COURT: Ladies and gentlemen, I find that you are qualified to serve. And at this time I am going call on the solicitor, the prosecutor on behalf of the state. Solicitor Osborne, if you'll please call the first case for trial.

ATTORNEY OSBORNE: Thank you, Your Honor. The matter before you is State versus Muanah Fortune. Mr. Fortune has been charged with murder. the indictment number's 2019-GS-18-0416; been charged with attempted murder, that's 417; of burglary in the first degree, 0418; possession of a firearm during the commission of a violent crime at 0420; and ill-treatment of animals, 0421.

The next case is State versus Polo Salazar. He also has been charged with murder, the indictment number's 2019-GS-18-0437; burglary in the first degree, 0349; possession

of a stolen vehicle, 0439; attempted murder, 0440; possession of a firearm during the commission of a violent crime, 0441; and ill-treatment of animals, 0443.

THE COURT: Thank you. Now, ladies and gentlemen, I want to describe for you what has just occurred. Ladies and gentlemen, Mr. Osborne is representing the state, he's a prosecutor with the first circuit solicitor's office. He has just called the first case for trial. And what he has done, he has called my attention to indictments.

Now, what is an indictment? Well, I'm going to describe for you what an indictment is and what it is not.

Ladies and gentlemen, an indictment, first of all, is a piece of paper, it is a notice document. It notifies a citizen that the state alleges that the citizen has violated one of the criminal laws of the state of South Carolina. And because the state is alleging that each of these folks has violated more than one crime, there's more than one indictment. But it holds true that an indictment is simply a notice document.

Let me tell you what an indictment is not. It is not evidence of any of the allegations that it contains.

I want to hasten to tell you that, to each of the allegations of each one of these indictments, that these defendants, each of them, have pled not guilty. And that places upon the state of South Carolina the burden to prove each allegation of each indictment beyond a reasonable doubt.

Now, ladies and gentlemen, those of you that serve on the jury will be told and will learn that each of these indictments is to be considered separately and independently of each other. Each of these defendants is to be considered separately and independently. These matters are not intertwined. And so it is important that I tell you that and that you understand that.

Now, ladies and gentlemen, in just a moment I am going to read you some of the allegations of these indictments. The reason I'm going to be doing that is to find out whether or not any of you know or think you may know or if you've heard or think you've heard anything about these allegations. The way that I'm going to be doing that is to read to you some of the allegations in the indictments.

Now, ladies and gentlemen, for judicial, economy purposes I am going to be combining these two gentlemen, their names, and I'm doing that only for efficiency reasons. And it is important, that because you are potential jurors in this matter, that you understand that although I'm doing that for judicial, economic reasons, these charges are considered separately, these individuals are considered individually and independently. All right.

Now, ladies and gentlemen, give me just a moment, and then I am going to be reading to you some of these allegations in the indictment.

Now, ladies and gentlemen, Indictment 2019-GS-18-0437 and

0416, which are the indictments for murder, allege as follows: That in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Keoki Salazar did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of the common law and Section 16-3-10 of the South Carolina Code of Laws, as amended.

Indictments 2019-GS-18-0440 and Indictment 2019-GS-18-417, which are indictments for attempted murder, allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Kioki Salazar and the Defendant Muanah Aruna Fortune, Jr., did, with the intent to kill, attempt to kill, one Marcus Porter, with malice aforethought, by shooting the victim, this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Indictments 2019-GS-18-0438 and 2019-GS-18-0418 are indictments for burglary in the first degree, allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Keoki Salazar did willfully and unlawfully enter the dwelling of Marcus Porter without consent and with the intent to commit a crime therein and, when, in effecting entry or while in the dwelling or in the immediate flight, the defendant or another participant in the crime is armed with a deadly weapon or

explosive, causes physical injury to a person who is not a participant in the crime, uses or threatens the use of a dangerous instrument, displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machinegun or other firearm and/or the entering or remaining occurs in the nighttime, this offense being in violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0441 and Indictment 2019-GS-18-0420 alleges that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Keoki Salazar did visibly display or have in his reach, possession, a handgun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended; to wit, burglary in the first degree and murder, thereby violating Section 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Ladies and gentlemen, Indictment 2019-GS-18-0443 and 2019-GS-18-0421, which are the indictments for ill-treatment of animals, in general, torture, allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar and the Defendant Muanah Aruna Fortune, Jr., did torture, torment, needlessly mutilate, cruelly kill or inflict excessive or repeated unnecessary pain or suffering upon an animal, or by omission or commission did cause the act to be done, in that the defendant did cruelly kill a dog by shooting

it, this offense being in violation of Section 47-1-40(b) of the South Carolina Code of Laws, as amended.

And as to Indictment 2019-GS-18-0439, which is indictment for possession, concealing, selling or disposing of a stolen vehicle where the value is more than two yet less than $10,000, with regards to the Defendant Polo Keoki Salazar, the state alleges that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle described as a 2007 Honda CR-V, with an approximate value of $6,000, and the defendant was not entitled to possession of the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully, this offense in violation of Section 16-21-80 of the South Carolina Code of Laws, as amended.

Now, ladies and gentlemen, again I hasten to tell you that, to each of these indictments and to each of the allegations within indictments, each of these defendants plead not guilty.

Now the question, ladies and gentlemen, Do any of you know or think you may know, have you heard or think you may have heard anything about these allegations? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, please allow me to introduce you

to Solicitor Osborne. And he is going to introduce the attorneys in his office and his co-counsel. Yes, sir.

ATTORNEY OSBORNE: Thank you, Your Honor. Again, as you know, I'm David Osborne, Assistant Solicitor. I work in the First Circuit. The First Circuit is Dorchester, Calhoun and Orangeburg. My boss, the solicitor here, is David Pascoe. In my office is First Assistant Kelly LaPlante, Mike Spears, John Rivers, Baker Allen, Nick Young, Meagan Chinnis, Jillian Frederick and Vergil Deas.

Rebecca Durr is my legal assistant. She'll be helping out, along with Stacy Cook, she's also a legal assistant, bringing in witnesses and whatnot. My investigator, Chor King, may also be around. And Chelsea Glover is a prosecutor, she is from Orangeburg County, and she has come down to help out in prosecuting this case.

THE COURT: Thank you so much. You're going to hear me use the term acquainted with, and I want my describe my definition of acquainted with. I am trying to find out if you have any connection with these folks at all. Let me give some examples.

It may be that you went to school with someone that I mention 20 years ago and you hadn't thought about this person, you hadn't seen him in 20 years, but you know you went to school with them. Believe it or not, that relationship, as limited as it is, would be encompassed in my definition of being acquainted with.

Maybe you work in the same location as someone that I'll ask you about, maybe you wave at each other across the parking lot. Believe it or not, that relationship, as limited it is, will be encompassed within my definition of acquainted with. I am trying find out if you have any connection with the folks I'm going to be asking you about.

With that in mind I ask, Are you related by blood or marriage or acquainted with Mr. Ms. Glover, Mr. Osborne or any of the folks in the First Circuit Solicitor's Office? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Ladies and gentlemen, please allow me to introduce you, please, to Mr. Fortune. If you'd stand. Mr. Fortune, thank you so much. And you may be seated.

Are you related by blood or marriage or acquainted with Mr. Muanah Fortune? If so, please stand at this time.

(No response.)

THE COURT: I find no one standing. Now, ladies and gentlemen, Mr. Fortune is represented by Ms. Hubrich and Mr. Wehman. Ms. Hubrich is going stand -- unless she wants to have Mr. Wehman to do it at this time. She's going to call and describe you, tell you whose lawyers are, the folks in her office.

ATTORNEY HUBRICH: Hi. My name's Michelle Hubrich. I've

also been known as Michelle Williams and Michelle Stubbs, but I go by Michelle Hubrich now.

Sitting with me at counsel table is another attorney in my office, Pierce Wehman. We both work for the Dorchester County Public Defender's Office, which is part of the First Circuit Public Defender's Office. Also present in trial today is Ms. Julie Beaks, she's the newest lawyer in our offers. Our chief public defender is Mark Winedecker. Other lawyers you may know in our office would be Mary Lematty, Ash Chisholm, Tom Squires. We have some juvenile public defenders, Gina McElhaney, John Loy. Our investigator is John Tilsdale. And the public defender's office represents Muanah Fortune.

THE COURT: Thank you. Are you related by blood, marriage, or acquainted with or have you or any member of your immediate family, to your knowledge, ever been represented by Ms. Hubrich, Mr. Wehman or any of the folks in their office? If so, please stand at this time.

JUROR NO. 272: Can I ask a clarifying question?

THE COURT: Can you ask a clarifying question? You can approach. Why don't you meet me down there. And you are Juror No?

JUROR: 272.

THE COURT: Juror no?

THE THE BAILIFF: No. 272.

THE COURT: Yes, ma'am?

JUROR NO. 272: You mentioned Mark Leiendecker. I believe Mark Leiendecker is married to a personal friend of mine.

THE COURT: Okay. And who is your personal friend?

JUROR NO. 272: Cindy Leiendecker.

THE COURT: Yes, he is.

JUROR NO. 272: That's what I thought. Okay. I don't know what if that qualifies as acquaintance.

THE COURT: Yes, it does. And do you visit in each others homes?

JUROR NO. 272: Yes.

THE COURT: Do you visit in his home?

JUROR NO. 272: Yes.

THE COURT: How often?

JUROR: Probably a couple times a year.

THE COURT: All right. As a result of that relationship, might that/could that interfere with your ability to be completely fair and impartial to the state, as well as to the state and the defendants?

JUROR NO. 272: I don't think so.

THE COURT: Well, let me ask this question. Can you set that relationship completely aside and make up your mind based upon what you hear in court while court is in session?

JUROR NO. 272: Yes.

THE COURT: All right, setting that relationship completely aside?

JUROR NO. 272: Yes.

THE COURT: Very well. Please stay with us.

All right. Anyone else?

(No response.)

THE COURT: Very well. Now, ladies and gentlemen, allow me to introduce you to Polo Salazar. Thank you, Mr. Salazar. This is Mr. Polo Salazar. You may be seated.

Are you related by blood or marriage or acquainted with Mr. Polo Salazar? If so, please stand.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, Mr. Salazar is represented by the Cornwell Law Firm, LLC, and Ashley Cornwell, and this is Ms. Cornwell. Ladies and gentlemen, are you related by blood or marriage or acquainted with or have you or any member of your immediate family ever been represented by the Cornwell Law Firm or Ms. Ashley Cornwell? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, I have additional questions to ask of you at this time. And I'm going to ask these first two together. Please don't respond to either until I've asked both.

Number one, Have you or any member of your immediate family, to your knowledge, ever had any criminal charges handled by the First Circuit Solicitor's Office? That's question number one.

Question number two, does any member of our jury panel have any personal, political or religious beliefs that would prevent you from sitting in judgment of another person?

Now, if you need to respond to either of those questions, I'm going ask you to please stand and approach.

(No response.)

THE COURT: I find no one standing.

Now, ladies and gentlemen, are you -- well, I need describe for you close, personal friend. You're going to hear me talk about a close, personal friend. This person is so close to you that you probably like this close, personal friend maybe even better than you like one of your siblings. This is someone that is so close to you, even though they're not related to you they are like a family member. These are just folks who are genuinely quite close like a family member.

Now, ladies and gentlemen, are you or any member of your immediate family or close, personal friend a member of any law enforcement agency? If so, please stand at this time.

(Juror stands.)

THE COURT: And your number, sir?

JUROR NO. 203: 203.

THE COURT: All right. And what law enforcement agency?

JUROR NO. 203: It was my father in-law. He's a retired police officer from Elmhurst, Illinois.

THE COURT: In Illinois?

JUROR NO. 203: Yes, ma'am.
THE COURT: Thank you. And your number?
JUROR NO. 386: 386.
THE COURT: And what law enforcement agency?
JUROR NO. 386: My nephew's a corrections officer in Summerville.
THE COURT: Correctional officer in Summerville?
JUROR NO. 386: Yes.
THE COURT: All right. Thank you very much. One more. Thank you. Your number, please?
JUROR NO. 221: 221.
THE COURT: Yes.
JUROR NO. 221: My son is a corrections officer at Lieber.
THE COURT: Thank you.
JUROR NO. 221: You're welcome.
THE COURT: Now, are you employed by or related by blood or marriage to or have a close, personal friend who is employed by the attorney general, the solicitor or any prosecuting attorney's office or does work with the attorney general or any prosecuting attorney's office? If so, please stand.
(Juror stands.)
THE COURT: And your number?
JUROR NO. 272: 272.
THE COURT: And all right. And is it you or?
JUROR NO. 272: So prior to being a stay-at-home dad, my

husband was employed by the Berkeley County Solicitor's Office for seven years.

THE COURT: Thank you very much.

Have you ever been employed by any civilian or military law enforcement agency? If so, please stand.

(Juror stands.)

THE COURT: And your number?

JUROR NO. 287: To 287.

THE COURT: 287. Okay, you want to put your mask on -- I mean, take your mask off, put your shield on. Thank you so much. All right. And was the law enforcement agency?

JUROR NO. 287: Public defense.

THE COURT: Okay. How long ago?

JUROR NO. 287: Two years.

THE COURT: Thank you. You may be seated.

Now, ladies and gentlemen, these lawyers help me, and they give me a list of potential, potential witnesses. In just a moment I am going to be asking you whether or not you are related, either by blood or marriage or acquainted with, and then I'm going to give you a list of folks. If you are related by blood or marriage or acquainted with any of these individuals, I'm going to ask you to please stand.

Here is the list of individuals. Leta Boehler, Joshua Scarborough, Jacob Cramer, Dylan Reynolds, Matthew Brooks, Kenneth Driscoll, Phillip Moy, Jonathan Davis, Rachel Nguyen,

Ryan DeWane, Nicole Hardin, James Green, Dr. Nicholas Batalis, David Swibaker, Marcus Porter, Salina Sheppard, Jamie Hall, Bethany Davidson, Vera Martinez, Charlotte Pitts, Daniel Greene, Christina Denson, Marie Wearing, Christopher Flynn, Christopher Hirsch, Taylor Jackson, Megan Wade, Jonathan James, Jaquavious, let me spell it, J-a-q-u-a-v-i-o-u-s, Jaquavious Washington. Wade Rallings, Bernard Seabrook, Shaneka Wright.

Are you related by blood or marriage or acquainted with any of those individuals? If so, please stand.

(Juror stands.)

THE COURT: All right, yes, sir. Now, listen. I need to you answer just the questions that I ask. I do not need a colloquy or a narrative. Let me ask the questions, okay.

JUROR NO. 264: I just had a question about Christopher Flynn, the name that you mentioned.

THE COURT: Yeah.

JUROR NO. 264: He's very close to me if that's the Christopher Flynn that I'm thinking of.

THE COURT: Okay. Christopher Flynn, all right. Put on your shield, take your mask down. If it's helpful, this gentleman, Christopher Flynn, is a Summerville police officer.

JUROR NO. 264: Yes, ma'am.

THE COURT: And I gather y'all are friends?

JUROR NO. 264: Yes, ma'am.

THE COURT: Do you visit in each other's homes?

JUROR NO. 264: No, ma'am.

THE COURT: Now, as a result of Mr. Flynn's involvement in this matter, would that have any affect on your ability to be fair and impartial to the state, as well as to Mr. Fortune and Mr. Salazar? Ask that's a yes or no.

JUROR NO. 264: No.

THE COURT: It would not?

JUROR NO. 264: It would not.

THE COURT: And can you evaluate his testimony as you would any other witness?

JUROR NO. 264: Absolutely. Yes, ma'am.

THE COURT: All right. And can you set your relationship aside and make up your mind based upon what you hear in court while court is in session?

JUROR NO. 264: I'm sorry?

THE COURT: That's okay. Can you set your relationship with Mr. Flynn aside and make up your mind based upon what you hear while court is in session?

JUROR NO. 264: Yes, sir.

THE COURT: Thank you. Please stay with us. And your number again, was?

JUROR NO. 264: I'm sorry. I'm blind. 264.

THE COURT: Thank you.

Ladies and gentlemen, I am going to ask three questions together. Please don't respond until I've asked all three.

Number one, have you or any member of your immediate family, to your knowledge, or close, personal friend ever been the victim of a violent crime such as burglary or robbery? That's question number one.

Question number two, Is any member of our jury panel or member of your immediate family, to your knowledge, or close, personal friend, a member of MADD or SADD or CAVE or any other similar organization which has the goal which is the promotion of law enforcement?

And then, three, Is there anything about the nature of the allegations in this case that would present, for you, a concern with being an impartial juror?

If you need to respond to any of those question, I'm going ask you to please stand and come forward.

(No response.)

THE COURT: All right. I find no one standing.

Now, ladies and gentlemen, I'm going to ask you three questions together. Please don't respond until I've asked all three.

This case may involve some testimony regarding the use of alcohol and/or illegal drugs. Does any member of our jury panel have any moral or religious or otherwise beliefs that would impact your ability to be a fair and impartial juror in this case? If so, please stand and come forward. That's question number one. Don't stand yet. Two more.

Question number two. Has any member of our jury panel ever sat on a jury before? That's question number two.

And, question number three. Has any member of our jury panel ever received assistance from the victim's advocacy program?

If you need to respond to question number one, question number two or question number three, please stand and come forward.

(Juror stands.)

THE COURT: Just come on forward. Yes. Juror number?

THE BAILIFF: No. 192.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: All right. I need just enough volume for my court reporter to hear and you and no one else. So come on forward.

JUROR NO. 192: I have a case pending. Lynn Goettee has been in correspondence with me as my victim advocate for a burglary that occurred at my house in Summerville.

THE COURT: All right. And it's being prosecuted by the First Circuit Solicitor's Office? Unless you're in Berkeley County. Are you in Berkeley County?

JUROR NO. No, ma'am. I'm in Summerville. I'm in Dorchester County.

THE COURT: In Dorchester County. It's going to be

prosecuted by this office. I'm going to ask you to sit this one out because of that. I just think it's appropriate.

JUROR NO 192: All right.

THE COURT: I'm going to excuse you then. And if you'd be so kind to not discuss this. You're not going to, but just don't discuss this with anyone.

JUROR NO. Absolutely.

THE COURT: But hang with me, because I need to give you some further instructions.

JUROR NO 192: Yes, ma'am.

THE COURT: Actually, let me do this. I'm going to ask you to call back to the juror information line. You were given ---

JUROR NO 192: The card?

THE COURT: After 6:00 tomorrow -- not tonight, but tomorrow night after 6:00. Okay.

JUROR NO 192: All right. Yes, ma'am.

THE COURT: Thank you. All right.

Can y'all hear me if I stay down here? Yes. Yes, great, thanks. Now I'm going to ask you two questions together. If you need to respond, I'm going to ask you to stand and come forward.

Have you or any member of your immediate family, to your knowledge, ever been prosecuted by the First Circuit Solicitor's Office or anywhere else? That's the first question.

Question number two. Has any member of our jury panel ever been a member of an organization dedicated to the protection of

animals such as PETA or the SPCA or the American SPCA, ASPCA, et cetera?

If you need to respond to either of those two questions, I'm going to ask you to please in forward.

(No response.)

THE COURT: No one's coming forward; no one's standing.

My last question is this. Do you know any reason why you ought not/should not/could not be a juror in this case, being ready, willing and able to listen to the evidence and make up your mind based upon what you hear in court while court is in session, being completely unaffected by -- the case law talks about -- matters extraneous, meaning matters outside the court?

In other words, you will listen to the evidence, you will make up your mind based upon what you hear in court while court is in session, being completely fair and impartial to the state, as well as to Mr. Fortune and Mr. Salazar.

If you have any concern whatsoever, for whatever reason, I'm going to ask you to please stand and come forward at this time.

(No response.)

THE COURT: All right. No one is standing.

Ladies and gentlemen, I find that you are now qualified as a potential juror in this case.

I need to give you some further instruction. Ladies and gentlemen, we're going to select a jury in this case at 9:30 tomorrow morning, 9. 30 I'm going to ask you please report back

to the courthouse for jury selection tomorrow morning at 9:30, at 9:30.

I'm going to ask you not to discuss this matter with anyone, with your family, your friends, or certainly anyone associated with this matter. In fact, should anyone try to talk to you about this case, please get their name, if not a description, and report that to me upon your return.

Now, you'd think, why would I give that you instruction at this juncture. The reason is that those that are selected to serve on the jury will receive an instruction every time we leave each other, do not discuss this matter or allow anyone to discuss it with you. You have a little bit of information. I've introduced you to some folks; I've read you some allegations, so you have a little bit of information and, therefore, it is required that I instruct you not to discuss this matter or allow anyone to discuss it with you.

Now you're going to be going home. I don't expect you to go home as your person at dinner asks, Ah, what did you do today? I can't discuss it. Oh, my goodness, that would cause you terrible, terrible drama. You can certainly say you were qualified for jury selection, and that it is a criminal term as opposed to civil term, it's General Sessions as opposed to any other term of court, and that you have to report tomorrow morning for the selection of the jury.

Next question is going to be, Well, tell me all about it

what did you learn, what, about the case? I have to ask you to put it on the Judge and not discuss it. I have to ask you to do that. But I don't want anybody upset with you. Let them be upset with me.

Now, does anybody normally got to work at night?

(Juror responds.)

THE COURT: Not tonight. Not tonight. Let me tell you why. If you were selected in the morning to serve on this jury, you'll be exhausted. It's unreasonable to ask you to do that, work at night, and be able to give the proper attention to these matters. So I'm going to ask you not to go in tonight, because we're going to go right into the trial of this case.

Now, if anybody asks you about that, put it on the Judge. If anybody wants to talk to me about it, I'm happy to speak with whomever. You just get me a name and a number, and I'm delighted to give a call, because I want you to rest, you must rest. You cannot be at work all night and then give the proper attention to these matters.

Very well. All right. Any questions about that? Yes, sir, any questions about that, about working this evening? Mr. Juror, red shirt? Got it?

JUROR: Yeah.

THE COURT: Thank you kindly. All right. Now, if any of you need something for your employers -- it's getting, it's almost 5:00, but if anybody's dashing off because you want to get

that last two and a half minutes in and you need something for the employer, be happy to get that for you down in the clerk's office, which is directly below where we are. So when you go downstairs, if you go into the clerk's office, which is the closest room part of the building next to the parking lot, they'll be happy to get that four.

I'm going to ask you to please leave your cellphones somewhere other than the courthouse. Please leave it in your car or leave it at home tomorrow. If you're selected to serve on a jury, you cannot have a cellphone or other communication device with you. So please keep that in mind, as well.

And, ladies and gentlemen, that will conclude the work that we will be doing with you today. I just ask you to please remember to report in the morning at 9:30 for our jury selection. Will not take particularly long. And those of you who are selected to serve, we'll get right into the trial of this case.

And thank you so much. Have a good evening. Remember, social distancing on the way out.

(WHEREUPON, the fifth jury panel is excused for the day at 4:21 p.m.)

(WHEREUPON, the Clerk of Court conducted roll call, and the Court conducted exemptions and transfers necessary to qualify the jury panel.)

VOIR DIRE OF THE JURY PANEL

THE COURT: I find that our jury panel is now qualified.

Ladies and gentlemen, let me share with you, that across the United States most prosecutors of the states are called district attorneys or state's attorney. We're a little different in South Carolina. Our prosecuting attorneys are called solicitors. And I am going to call on our solicitor's office, and I am going to ask our solicitor's office to please call the first case for trial. Mr. Osborne.

ATTORNEY OSBORNE: Thank you, Your Honor. The matter before you is State versus Muanah Fortune. Mr. Fortune has been charged with murder. The indictment number's 2019-GS-18-0416; some other charges are attempted murder at 0417; burglary in the first degree, 0418; possession of a firearm during the commission of a violent crime, 0420; and ill-treatment of animals, 0421.

The state also calls Polo Salazar. Mr. Salazar has also been charged with murder, the indictment number's 2019-GS-18-0437; burglary in the first degree, 0438; possession of a stolen vehicle, 0439; attempted murder, 0440; possession of a firearm during the commission of a violent crime, 0441; and ill-treatment of animals, 0443.

THE COURT: All right. Ladies and gentlemen, what has just occurred is that the solicitor has called the first case for trial this week, and he's read out numbers from what are called indictments.

I want to tell you what an indictment is and what it is not. An indictment, first of all, is a piece of paper, it is a notice

document. It is the means by which the state of South Carolina gives notice to a citizen that the state alleges that that citizen has violated one of the criminal laws of the state of South Carolina. And there is an indictment for each of the alleged offenses, for each of the alleged crimes, there is an indictment. And that is true with regards to each of these defendants.

Let me tell you what an indictment is not. An indictment is not evidence of any of the allegations that it contains.

I want to also hasten, I want to quickly tell you that, to each and every allegation of each of these indictments, each of these gentlemen has pled not guilty. And that places upon the state the burden to prove each of these gentlemen guilty beyond a reasonable doubt. The state maintains that burden.

Now, ladies and gentlemen, the reason that I mentioned that to you -- oh, and let me also say that those of you that serve on this jury will be told more than once that each of the allegations exist independently, each of these indictments exist independently, and these gentlemen, these defendants, are to be treated independently from each other, and individually and independently from each other.

Now, in just a moment, however, I am going to be reading to you some of the allegations of these indictments. The reason I'm doing that is I need to find out whether or not any of you know or think you may know or if you've heard or think you may have

heard anything about these allegations. The best way to do that is to read to you the allegations.

In the interest of time and judicial economy, I am going to be reading to you the indictments that these gentlemen have in common. And I'll read the allegations and both of their names rather than reading each indictment for each of them. It will save some time. Please, however, be mindful that these gentlemen and these indictments are all separate, individual, independent, one from the other.

Now I'm going to read to you some of the allegations. And my question to you is going to be, Do any of you know or think you may know or have you heard or think you may have heard, through to today, or think you may have heard, anything about these allegations? That will be my question once I have read to you some of these allegations.

Now, ladies and gentlemen, Indictment 2019-GS-18-0416 and 0437, which are indictments for murder, allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, with malice aforethought, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Keoki Salazar, did kill one Joe Weaver by means of shooting the victim. The victim did die as a proximate result thereof, this offense being in violation of common law and Section 16-3-10 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0417 and 0440, charging indictments for attempted murder, allege that in Dorchester County, South

Carolina, on or about January the 28th, 2019, the Defendant Polo Kioki Salazar and the Defendant Muanah Aruna Fortune, Jr., did, with the intent to kill, attempt to kill, one Marcus Porter, with malice aforethought, by shooting the victim, this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0418 and 0438, are indictments for burglary in the first degree, allege that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr., and the Defendant Polo Keoki Salazar did willfully and unlawfully enter the dwelling of Marcs Porter without consent and, with the intent to commit a crime there and, when, in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime is armed with a deadly weapon or explosive, causes physical injury to a person who is not a participant in the crime, uses or threatens to use a dangerous instrument, displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machinegun or other firearm and/or the entering or the remaining occurs in the nighttime, this offense being in violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Indictment 2019-GS-18-0420 and 0441 alleges that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar and the Defendant Muanah Aruna Fortune, Jr., did visibly display or have in his possession

a handgun during the commission -- and this is as to each of them, during the commission -- of a violent crime as defined by Section 16-1-60 of the Code of Laws of South Carolina, 1976, as amended; to wit, burglary in the first degree and murder, thereby violating Section 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

And Indictment 2019-GS-18-421 and 0443 alleges that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Muanah Aruna Fortune, and the Defendant Polo Keoki Salazar did torture, torment, needless mutilate, cruelly kill or inflict excessive or repeated, unnecessary pain or suffering upon an animal, or by omission or commission did cause the acts to be done, in that the defendant did cruelly kill a dog by shooting it, this offense being in violation of Section 47-1-40(b) of the South Carolina Code of Laws, as amended.

And as to Polo Keoki Salazar, Indictment 2019-GS-18-0439, an indictment for possessing, concealing, selling, disposing of a stolen vehicle, with a value of more than two yet less than $10,000 alleges that in Dorchester County, South Carolina, on or about January the 28th, 2019, the Defendant Polo Keoki Salazar did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle described as a 2007 Honda CR-V, with an approximate value of $6,000, and the defendant was not entitled to possession the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully, this offense in violation of

Section 16-21-80 of the South Carolina Code of Laws, as amended.

Again, to each of these indictments, each of the allegations contained therein, each of these defendants has pled not guilty.

Ladies and gentlemen, do you know or think you may know, have you heard or think you may have heard, anything about these allegations? If so, please stand.

(Juror responds.)

THE COURT: Come forward, please.

THE BAILIFF: Juror 209.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: Thank you. All right, come right here. Now, let me tell you what I need you to do. I need enough volume for my court reporter, and I don't need the rest of the jury panel to be able to hear.

JUROR NO. 209: Okay.

THE COURT: Don't worry about anybody else hearing but my court reporter. We'll all gather around.

JUROR NO. 209: I work for Key West Boats, and my lady that works with me said this sounds like the case that her cousin or nephew -- not nephew, uncle was killed.

THE COURT: Some association with that?

JUROR NO. 209: It all sounds exactly like.

THE COURT: Very familiar?

JUROR NO. 209: Yes.

THE COURT: Now, does she still work at Key West Boats?
JUROR NO. 209: Yes.
THE COURT: And how recently did y'all have this conversation?
JUROR NO. 209: Last week when I said ---
THE COURT: Gotcha.
JUROR NO. 209: She said his trial's coming up. She said more than likely that's it.
THE COURT: Very well. Here's what I'm going to ask you to do. I'm going to ask you to just go stand back there at the gate. Let me talk with these lawyers. I'll be right with you.
(WHEREUPON, a sidebar discussion is held on the record as follows:)
THE COURT: We have plenty of jurors. Is there any reason not to excuse him?
ATTORNEY HUBRICH: There's more coming.
THE COURT: All right. Come here. Come forward for me. I'm going to ask you to sit this one out. We have plenty of jurors, so I'm going to ask you to sit this one out. I need you to call the juror information number after 6:00 tomorrow night. Follow whatever the instructions are.
JUROR NO. 209: All right. Thank you very much.
THE COURT: Thank you very much. Excused, he's excused.
Now, ladies and gentlemen, please allow me to introduce you to Solicitor Osborne. He is going to introduce you also to his

co-counsel, Ms. Glover, Solicitor Glover, who is an assisting. And he will also introduce you to the folks in his office.

ATTORNEY OSBORNE: Thank you, Judge. My name's David Osborne, I'm an assistant solicitor, I work in the First Circuit. That is Dorchester County, Calhoun County, Orangeburg County. My boss is First Circuit Solicitor David Pascoe. In my office here in Dorchester is First Assistant Kelly LaPlante. Other prosecutors, Mike Spears, John Rivers, Baker Allen, Nick Young, Meagan Chinnis, Jillian Frederick and Vergil Deas.

And throughout the trial you'll see me assistant, or legal assistant, Rebecca Durr, she's going to be helping bringing in the witnesses and whatnot. Stacy Cook is also a legal assistant. They'll be tag-teaming those efforts. My investigator, Chor King, might be in and out, bringing up evidence and whatnot. And Chelsea Glover is a prosecutor who was brought down from Orangeburg to help me with the case.

THE COURT: Ladies and gentlemen, are you related by blood or marriage or acquainted with Solicitor Osborne, Solicitor Glover, or any of the folks who he has mentioned who are in the First Circuit Solicitor's Office, or anyone else that perhaps works in the First Circuit Solicitor's Office? Related by blood, marriage or -- you know what I need you to do, though.

Let me define for you acquainted with, acquainted with, by my definition. Because I am trying to find out if you have any connection with these folks at all. It is very, very general.

For example, if you went to school with someone 20 years ago and I mention him and you hadn't thought about him, you hadn't visited him in 20 years but you know him, that relationship would be encompassed within my definition of acquainted with. If you work at the same location with someone whose name I will mention and maybe you just recognize each other, maybe you wave to each other across the parking lot, that relationship, as limited as it is, would be encompassed within my definition of acquainted with. So please keep in that in mind.

With that in mind let me again ask this question. Are you related by blood or marriage or acquainted with Solicitor Osborne, Solicitor Glover, or any of the folks in the First Circuit's Solicitor's Office? If so, please stand at this time.

(Juror stands.)

THE COURT: Yes, sir. Your number?

JUROR NO. 366: 366.

THE COURT: 366. Now, I need to limit your communication, so I want just to answer what I ask, okay. Who do you know?

JUROR NO. 366: Vergil Deas.

THE COURT: Vergil Deas. And, of course, he's the juvenile prosecutor. I don't anticipate he will be involved in this matter.

ATTORNEY OSBORNE: No, ma'am.

THE COURT: And do you know Mr. Deas, Solicitor Deas, do you know him, are you acquainted as friends or do you know him in

some professional facility?

JUROR NO. 366: Just family friends.

THE COURT: Family friend. Y'all visit each other's homes?

JUROR NO. 366: No.

THE COURT: As a result of that relationship, do you think that would interfere with your ability to be completely fair and impartial to the state, as well as to the defendants?

JUROR NO. 366: Yes.

THE COURT: Can you set that relationship aside and try this case based on what you hear in court while court is in session?

JUROR NO. 366: Yes, ma'am.

THE COURT: Thank you. Please stay with us.

Now, ladies and gentlemen, allow me, please, to introduce you to Mr. Muanah Fortune. This is Mr. Fortune. Thank you, Mr. Fortune. And you may be seated.

Ladies and gentlemen, are you related by blood or marriage or acquainted with Mr. Muanah Fortune? If so, please stand.

(No response.)

THE COURT: And I find no one standing. Now, Mr. Fortune is represented by Mr. Hubrich and Mr. Wehman. And one of them, they will introduce themselves, as well as the folks in their office. Thank you, Ms. Hubrich.

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court.

THE COURT: Yes.

ATTORNEY HUBRICH: My name is Michelle Hubrich. I've also been known in past lives as Michelle Stubbs and Michelle Williams, so if you know me you may know me by those other names. I'm an attorney with the Dorchester County Public Defender's Office. We are part of the First Circuit Public Defender's Office. Sitting with me at counsel table is Attorney Pierce Wehman and Julie Beaks, the newest attorney in our office.

Some other attorneys in our office that you may know would be Mark Leiendecker, who is the chief public defender; Mary Banate, she's our magistrate public defender; Tom Squires, Ash Chisholm, they are both General Session attorneys; we have juvenile public defenders, Gina McElhany and John Loy; we have an investigator by the name of John Rivers.

THE COURT: Thank you. Ladies and gentlemen, are you related by blood or marriage or acquainted with or have you or any member of your immediate family, to your knowledge, ever been represented by Ms. Hubrich, Mr. Wehman or any of the folks in their office? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing. Ladies and gentlemen, please allow me to introduce to you Polo Salazar. Mr. Salazar, if you would stand. And thank you so much.

Ladies and gentlemen, are you acquainted by blood or marriage or acquainted with Mr. Polo Salazar? If so, please stand at this time.

(No response.)

THE COURT: I find no one standing. And Mr. Salazar is represented by Cornwell Law Firm, LLC, and Ashley B. Cornwell, and this is Ms. Cornwell. Ladies and gentlemen, are you related by blood or marriage or acquainted with or have you or any immediate family, to your knowledge, ever been represented by the Cornwell Law Firm or Ashley Cornwell? If so, please stand at this time.

(No response.)

THE COURT: And I find no one's standing.

Now, ladies and gentlemen, the lawyers help me at this juncture by giving to me the list of potential witnesses, because this is my time to ask if anyone knows anyone. And so I have a list of potential witnesses. I am going to go over that list of potential witnesses. My question as to each and every one of these, folks, on this list is, Are you related by blood or marriage or acquainted with any of these individuals? And I will begin and go through the list now.

Leta Boehler, Joshua Scarborough, Jacob Cramer, Dylan Reynolds, Matthew Brooks, Kenneth Driscoll, Phillip Moy, Jonathan Davis, Rachel Nguyen, Ryan DeWane, Nicole Hardin, James Green, Dr. Nicholas Batalis, David Swibaker, Marcus Porter, Salina Sheppard, Jamie Hall, Bethany Davidson, Vera Martinez, Charlotte Pitts, Daniel Greene, Christina Denson, Marie Wearing, Christopher Flynn, Christopher Hirsch, Taylor Jackson, Megan

Wade, Jonathan James, Jaquavious Washington, Wade Rallings, Bernard Seabrook, Shaneka Wright.

Are you related by blood or marriage or acquainted with any of those individuals? If so, please stand.

(No response.)

THE COURT: And I find no one standing.

Now, ladies and gentlemen, just a few additional questions. I'm going to ask these two questions together. If you need to respond to either, let you know, I'll have you approach.

Have you or any member of your immediate family or close, personal friend -- now this close, personal friend is somebody that's so close to you they're like a family member, you probably like them better than you like your siblings, that's how close this close, family member is. Have you or any member of your immediate family, to your knowledge, or close, personal friend, ever had any criminal charges handled by the First Circuit Solicitor's Office or any other prosecution in the prosecutor's office? That's question number one.

Question number two, Does any member of our jury panel have any personal, political or religious beliefs that would prevent from you sitting in judgment of another person? That's question number two.

If you need to respond to either of these questions, please stand and come forward at this time.

(Juror stands.)

Yes, ma'am. Just come forward.

THE COURT: All right. Yes, juror no?

THE BAILIFF: Juror 156.

THE COURT: All right. Yes, ma'am, come on forward.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: Hi. Yes.

JUROR NO. 156: I was raised a Jehovah's witness, so their beliefs are that we can't judge others and only Jehovah the God can judge. And I still believe a lot of what I was taught. I just wanted to be upfront with that.

THE COURT: Sure. And so you don't believe that you could be a juror in this matter because of that?

JUROR NO. 156: I believe so. Just even hearing some of it, I just don't believe I have the right to judge anyone or make that call. I'm sorry.

THE COURT: Okay. All right. I am going to ask you to go stand, if you will, back by Mr. Jenkins and let me talk about you.

JUROR NO. 156: Yeah. That's fine.

THE COURT: If you'll go over there and stand, and let me talk to these lawyers. All right.

(WHEREUPON, a sidebar discussion is held on the record as follows:)

THE COURT: I mean, my normal policy is to make them stay

and listen to the proceedings anyway. But, I mean, if she can't sit and judge, she can't sit in judgment. So I'll have to excuse her.

ATTORNEY HUBRICH: She couldn't be fair and impartial? I couldn't hear.

THE COURT: No, she can't do it. She said I've heard -- she said, based on the allegations that I've already heard, I know I can't, I don't believe I can, sit in judgment because I've been raised as a Jehovah's witness. Okay. All right.

All right. Yes, ma'am, if you'd come back forward for me. All right. Given your responses, I'm going to have to excuse you from this matter. Okay.

JUROR NO. 156: Okay.

THE COURT: Okay. Thank you.

JUROR NO. 156: Thank you.

THE COURT: She is out. Can you all hear me if I stand here? It will save a little bit of time.

Are you or any member of your immediate family or close, personal friend related -- well, are you or any member of your immediate family or close, personal friend a member of any law enforcement agency? Do y'all need me to ask it again? Nope, okay. No one? If so, please stand.

(No response.)

THE COURT: No one is standing.

On are you employed by or related by blood or marriage to or

close, personal friend of anyone employed by the attorney general, the solicitor or any prosecuting attorney's office? If so, please stand.

(Juror stands.)

THE COURT: All right. And your juror number is?

JUROR NO. 151: 151, ma'am.

THE COURT: Yes, sir. And tell me who you're speaking of.

JUROR NO. 151: Very close, personal friend with Brice Ash. He worked for Wigger Law Firm.

THE COURT: That is not a prosecutor ---

JUROR NO. 151: Oh, okay.

THE COURT: --- or an attorney general. They are a private law firm. Thank you.

JUROR NO. 151: Uh-huh (yes).

THE COURT: Has any member of our jury panel ever been employed by any civilian or military law enforcement agency? If so, please stand.

(No response.)

THE COURT: I find no one standing.

Have you or any member of your immediate family or close, personal friend ever been the victim of a violent crime such as burglary? That's question number one.

I'm going to ask another question. Question number two, Is any member of the jury panel, a member of your immediate family, to your knowledge, or that close, personal friend a member of

MADD or SADD or CAVE or any other similar type organization which has, as its goal, the promotion of law enforcement?

If you need to respond to either of those questions, please come forward.

(Jurors stand.)

THE BAILIFF: Juror 60.

THE COURT: Sixty. Yes, sir. Hi. Come forward.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: Yes, sir.

JUROR NO. 60: I was burglarized. My home was burglarized, broken into, when I was living in Goose Creek.

THE COURT: How long ago was that?

JUROR NO. 60: Five or six years ago.

THE COURT: Five or six years ago. As a result of that experience ---

JUROR NO. 60: No, ma'am.

THE COURT: --- would it have an affect?

JUROR NO. 60: No.

THE COURT: No. In other words, you believe you can set that experience aside and make up your mind based on what you hear in court while court is in session?

JUROR NO. 60: Yes, ma'am.

THE COURT: Thank you.

JUROR NO. 60: You're welcome.

THE BAILIFF: Juror 6.
THE COURT: All right.
(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)
THE COURT: Hello. Yes, ma'am?
JUROR NO. 6: I was robbed at Coca Cola at gunpoint.
THE COURT: Okay. How long ago?
JUROR NO. 6: Back in 2007.
THE COURT: Okay. And as a result of that experience do you think that that might or could interfere with your ability ---
JUROR NO. 6: Yes, ma'am.
THE COURT: Okay, thank you so much for your candor. Now, I'm going excuse you for the balance of this week, because I would think it is going to be a criminal offense. Do you know what I mean? It probably would be your response, don't you think, if it's any criminal offense, it would be tough for you; do you think?
JUROR NO. 6: No. Just this one, talking about is making me ---
THE COURT: You think, okay. Well, then call back in tomorrow after 6:00 at night, your juror information number.
JUROR NO. 6: Thank you, ma'am.
THE COURT: Thank you so much.
All right. She's out for this one, Juror 6. All right.
All right. And I'm going to ask three questions together.

Please don't respond to any of them until I ask all three.

This case may involve some testimony regarding the use of alcohol and/or illegal drugs. Does any member of our jury panel have any moral, religious or other feeling with regards to alcohol and/or illegal drugs such that it would make it inappropriate for you to be a juror in this case? In other words, your reaction's just going to be so strong it's going to be difficult for you to listen to all the evidence, make up your mind based on all the evidence that's presented? That's question number one.

Question number two, Has any member ever our jury panel ever been on a jury panel before?

And question number three, Has any member of our jury panel ever received assistance from the victim's advocacy program?

If you need to respond to any one of those three questions, please come forward at this time.

(Jurors stand.)

THE BAILIFF: Juror 154.

THE COURT: Okay.

(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)

THE COURT: Hi. Yes, ma'am?

JUROR NO. 154: I was a juror back in 1998, long time ago.

THE COURT: Was it civil or criminal? If you remember.

JUROR NO. 154: Criminal.

THE COURT: Thank you so much. Thank you.
JUROR NO. 154: Thank you.
THE BAILIFF: Juror 304.
(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)
THE COURT: Okay. Yes, sir?
JUROR NO. 304: Back in, I think, 2002, I served as a juror.
THE COURT: Was it civil or criminal? Do you remember?
JUROR NO. 304: I don't remember. It was right downtown central.
THE COURT: Thank you so much.
JUROR NO. 304: All right.
THE BAILIFF: Juror 60.
(WHEREUPON, an in camera colloquy is conducted outside the presence of the jury as follows:)
THE COURT: Yes.
JUROR NO. 60: My father was an alcoholic. Destroyed the family, and caused a lot of grief. But that's kind of where it stands on that whole issue. So I have strong feelings towards alcohol because of that.
THE COURT: I understand. And, as a result, do you believe that that could impact your ability to listen to the evidence and make up your mind, being able to hear everything that is presented, or do you think that's going to override, that one element will override?

JUROR NO. 60: I don't think so. I think I will be fine.
THE COURT: You think so, you're concerned?
JUROR NO. 60: I think I'll be fine. I can be impartial.
THE COURT: Oh, you think you'll be fine. In other words, as a juror, you are required to listen to all of the evidence, make up your mind based upon what you hear in court while court is in session, and you cannot be swayed by matters extraneous to the Court, in other words, you cannot be swayed by the fact that your own personal tragedy with regards to alcohol cannot drive your decisions. Does that make sense, what I'm saying?
JUROR NO. 60: I think. I think I can perform my duty.
THE COURT: And do you believe that you can set that completely aside and make up your mind based on what you hear in this courtroom while court is in session, unaffected by that?
JUROR NO. 60: I feel I can.
THE COURT: You can?
JUROR NO. 60: Yes.
THE COURT: Very well. Stay with us.
(WHEREUPON, a sidebar discussion is held on the record as follows:)
ATTORNEY CORNWELL: I believe Juror 154 must have misunderstood, because she walked out of the courtroom. Juror 154.
ATTORNEY HUBRICH: She came up to say that she sat on a criminal trial back in '98, and then she just walked out of the

courtroom.

THE COURT: She walked out of the courtroom.

ATTORNEY HUBRICH: I think she thought she was excused.

THE COURT: Okay, she thinks she's excused. The juror that just walked out, she wasn't excused.

ATTORNEY HUBRICH: 154.

THE COURT: One of them was a victim.

ATTORNEY HUBRICH: 154, Juror 154?

THE COURT: Go back and look at what happened with 154.

ATTORNEY CORNWELL: Victim was No. 60.

THE COURT: What did I do?

THE REPORTER: She was a juror.

THE COURT: A juror. Yeah, go find her. See if you can buzz them downstairs.

All right. All right. Ladies and gentlemen, have you or any member of your immediate family, to your knowledge, ever been a member of an organization dedicated to the protection of animals such as PETA, the SPCA or the American SPCA, or like organizations? If so, please stand at this time.

(No response.)

THE COURT: And I find no one standing. Ladies and gentlemen, this would be my concluding question, is this. Do you know of any reason why you ought not/should not/could not be a juror? You must be ready, willing and able to listen to the evidence, and to make up your mind based solely on what you hear

in court while court is in session, being completely unaffected by matters which are extraneous matters outside the court.

If you have any concern about your ability to do that, I'm going to ask you to please stand and come forward. It can be for any reason.

And 154, I've got to ask you two questions.

JUROR NO. 154: Sure.

THE COURT: Have you or any member of your family been a member of SPCA, PETA, American SPCA?

JUROR NO. 14: No.

THE COURT: And do you know any reason why you ought not/should not be a juror in this case, being ready, willing and able to listen to the evidence and make up your mind based upon what you hear in court while court is in session, being completely unaffected by matters extraneous, matters outside, the court, being completely fair and impartial to the state, as well as to the defendants? If you have any concern, I'm going to ask you to come forward.

And that with regards to the rest of the panel, if you have any concerns regarding your ability to do that, I'm going ask you to come forward at this time.

(No response.)

THE COURT: No one is standing, no one is coming forward. Therefore, our jury panel is qualified.

Ladies and gentlemen, I'm going to ask you to please report

tomorrow morning at 9:30, just as did you this morning, at 9:30. At 9:30 we will select the jury in this case. And those of you who are selected, we're going to go right into the trial, so you need to be prepared to go forward and go into the trial of this case.

Now, ladies and gentlemen, I have given you some information, it's not a lot, but gave you a little bit of information, I've introduced you to some people and I've read you some allegations, you have a little bit of information regarding this matter. Therefore, I must instruct you, do not discuss this matter and do not allow anyone to discuss it with you. And that means your family, your friends, and certainly anyone that has anything to do with this matter. In fact, should anyone try to talk to you about this case, please get their name, if you can't get a description, and report that to me upon your return to the courthouse.

Now, when you go home it's perfectly fine to tell your members who's curious about what you've been up to. You can say that you reported for jury selection. You can say that it is a General Sessions, a criminal term, as opposed to a civil term. Next question is going to be, What kind of case? Please do not respond, because I don't want to you discuss the matter or allow anyone to discuss it with you. So please be mindful of that, do not discuss this matter.

Please leave your cellphones or other communication devices

somewhere other than the courthouse because if you are selected to serve on a jury you cannot have a cellphone with you. So please do not bring it with you in the morning to the courthouse.

Now, does anybody typically/normally work at night, go in at night? Not tonight. I need you rested. If you're selected to serve on this jury, you're going to be exhausted. And it's not fair to you, it's not fair to these litigants. You need to be rested. So let whoever is expecting you that I've instructed you not to go in to work. If they're upset, concerned, let them be mad at me. Give me a number and name, and I'll be happy to talk to them tomorrow morning. Let me know. I certainly don't want them upset with you; let them be upset with me. I need you rested.

Now, ladies and gentlemen, you know, the clerk's office is now closed. I don't believe any of you would need an excuse for work. I don't want -- if you were going to go off and go to work, I would not want you to do that, I want you to go home and rest. This has been a long day. You've been so patient with us. And I need you back here 9:30 in the morning, rested and prepared to listen if you're selected to serve on this jury.

I think that concludes everything. As you exit the courtroom, please be mindful of the social distancing. And you will be in one of three places tomorrow for the jury selection. We are going to, some folks will be in this room, some folks will be in the courtroom next-door, and some folks will be in the jury

assembly room downstairs. And we intend to continue the now-current three feet instead of six feet, so we'll be a little bit closer. Those are the new CDC guidelines. We will be implementing those so that we can have ample spaces for our jurors.

And when we select our jury, those of you who do not serve on the jury, I'll give you some instruction about how we'll stay in contact with each other over the balance of the week.

Have a great evening. I look forward to seeing you tomorrow morning at 9340. Thank you.

(WHEREUPON, the fifth jury panel is excused for the day at 5:40 p.m.)

MATTERS OF LAW

THE COURT: From the state, anything before tomorrow?

ATTORNEY OSBORNE: No, ma'am.

THE COURT: On behalf of Mr. Fortune, anything before tomorrow?

ATTORNEY HUBRICH: Judge, I have a motion to quash the jury panel and the jury in this case, just to put on the record. I can do it now or I can do it in the morning.

THE COURT: Do it now, because we're going to be busy tomorrow.

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court. Judge, at this point I have a motion to quash the jury in this case and draw from a new panel.

What the case law is telling me -- and that's because I think my client's being denied the right to a fair trial of a jury of his peers. The state law instructs that you have a distinctive group, you have to show that there is a distinctive group, that is being represented. In this case, it would be African American, or black, after identifying on the jury questionnaire. It doesn't, there is not a reasonable relation to the numbers in the community.

The demographics in Dorchester County right now show that it is at 25.08 percent black community, 71.05 percent white community. Our jury today, the panel that we have and the jury that we have to choose from tomorrow, there are 12 black members, 68 white members, 2 Asian, that identified as Asian. What that puts us at is 14 percent black, 82 percent white and 2 percent Asian. That's a statistically relevant deviation from what the demographics are in Dorchester County, and it is inherently unfair.

And we would just ask this Court to quash this panel and we draw from another panel.

THE COURT: Do you want to weigh in?

ATTORNEY CORNWELL: Your Honor, I would join in that motion.

THE COURT: Very well. You know, that's not evidentiary, the fact that you just want to give me numbers. You have to be prepared to show me demographics and to show that the strike was a deviation from the demographics. You can't just walk in and

say those numbers are wrong; I don't like the way it works. That's not the way it works.

You all were kind enough to tell me your concerns, which is why we went through the entire number. Originally I had told you all that we do as we do in a capital case, when we get enough folks, we qualify enough people, to get enough to draw a jury. You all told me your concerns, so we've just done the entire panel. So the entire panel, the entire strike, has been qualified. And there is nothing that deviates, that you showed me that has deviated, from my normal strikes for selection of the jury.

So I thank you for it, and I respectfully deny your motion, both of you. Anything the state needs to add?

ATTORNEY OSBORNE: No, Your Honor.

THE COURT: All right, thank you so much. Anything further from the state?

ATTORNEY OSBORNE: No, ma'am.

THE COURT: Mr. Fortune?

ATTORNEY HUBRICH: No, ma'am.

THE COURT: Mr. Salazar?

ATTORNEY CORNWELL: No, Your Honor.

(WHEREUPON, court recessed for the day at 5:45 p.m., and reconvened at 10:21 a.m. on Wednesday, May 12, 2021.)

JURY SELECTION

THE COURT: Good morning. Thank you all so much for being

present this morning. We also have a group up here in Courtroom D, and we have folks in Courtroom C, and we have people in the jury assembly room. I am so grateful to each and every one of you for being here this morning. You have responded back today pursuant to my instruction, and I am truly grateful.

In just a moment we are going to begin the jury selection. And in just a moment you're going to be hearing numbers called. And if your number is called, then I'm going to ask you, if you're in the courtroom here with me, Courtroom D, just to stand in place. If you are in Courtroom C -- what? I can hear you. Courtroom C, we want you to stand ---

CLERK OF COURT: And go to the mark.

THE COURT: In Courtroom C, stand and go to the mark. The bailiffs and the clerk's office will help you do that, just so the attorneys who are here in the courtroom with me, Courtroom D, know exactly who you are. And just stand there. And I'll tell you what will happen in just a moment.

With regards to those of you who are in the jury assembly room, likewise if you stand and go to the mark, you can then be seen by the attorneys upstairs and folks upstairs.

Now, to everyone, you're first going to hear madam clerk, our esteemed clerk of court, who I know you had a chance to get to know yesterday, Ms. Graham, who is remarkable, but you're going to hear her say, What sayeth the state? And the state will say two things, one of the two attorneys for the state will say

two things, either, Present the juror, or, Excuse the juror.

You are then going to hear madam clerk turn to Mr. Fortune, Defendant Fortune, and she will say, What sayeth Defendant Fortune? And you will hear one of the attorneys for Mr. Fortune say, Either present the juror, or, Seat the juror, or, Excuse the juror. And then you will hear madam clerk say, What sayeth Defendant Salazar? And then you will hear Ms. Cornwell either, Say seat the juror, or, Excuse the juror.

Now, if you hear, at any point in that process, Excuse the juror, then just go have a seat back where you were. If you hear, Seat the juror, which will be from Ms. Cornwell, then you will, again, just take your seat back where you were and you'll be given a juror badge. But you'll just stay seated until we're finished with our process.

Is that clear to everyone? The bailiffs know what we're doing to be doing, so you're going to have lots of help.

So if you hear, Excuse the juror, let me tell you that there are hundreds at least, if not thousands, of considerations that go through these attorneys' minds as they select the jury. Let me tell you a consideration that doesn't go through their mind, and that is to cause you any discomfort or embarrassment whatsoever. That is not a consideration. So please understand if you're excused, just take your seat back out, it has to do with -- this is an ancient process. There are hundreds and hundreds, if not thousands, of considerations that go through

their minds. I promise you one that does not is to cause you any discomfort or embasement at all.

Now, without further ado, I am going to turn jury selection process over to our esteemed clerk of court. Before I do that, the state has 10 strikes; each of the defendants has 10 strikes. We're going to have three alternates, one for the state and two for each defendant.

MADAM CLERK (Cheryl L. Graham): Give us one second, Judge. As we are getting ready, I just want to make sure my employees in Courtroom C and jury assembly room can hear me.

CLERK OF COURT OFFICER: Yes. This is Courtroom C.

CLERK OF COURT OFFICER: Yes, we can hear you here.

MADAM CLERK (Cheryl L. Graham): And as I call the juror number and name, I'm also going to say what location they're at just to help, help my team keep up with what's going on.

THE COURT: And finally, your shields, mask down, shields, so the lawyers can just recognize or remember you all from yesterday.

MADAM CLERK (Cheryl L. Graham): Thank you, Judge.

THE COURT: Yes.

MADAM CLERK (Cheryl L. Graham): As I call your name, please stand.

Juror 262, Shirley Obry. And she is in the jury assembly room. And if someone could escort her to the mark.

CLERK OF COURT OFFICER: She's in the jury assembly room.

MADAM CLERK (Cheryl L. Graham): Please go to the X. I thought it was Amanda. We see Amanda. There we go. All right.

262, Shirley Obry. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Ms. Obry, you may have a seat back in the audience.

Juror No. 312, Thomas Saatela, jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Mr. Salazar, you're seated as a juror.

Juror 126, Mr. Christopher Greenhill. Mr. Greenhill is in the assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

CLERK OF COURT: The defense, Mr. Fortune?

ATTORNE HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Mr. Greenhill, you are seated as one of our jurors.

Juror No. 53, Evelyn Cassidy. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Salazar?

ATTORNEY CORNWELL: Please excuse in juror.

MADAM CLERK (Cheryl L. Graham): Excused from the trial in this case.

Juror No. 150, Carol Huggins. Ms. Huggins is located in the jury room assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Ms. Huggins is excused from the trial of this case.

Juror no. 153, Davon Hunter, in Courtroom C. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The Defendant Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Hunter, you're seated as one of our jurors.

Juror No. 28, Brandon Boykin. Mr. Boykin is in Courtroom C.

Mr. Hunter, you may be seated.

We are now on Juror No. 28, Brandon Boykin. And Mr. Boykin is in Courtroom C. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Mr. Boykin is seated as one of our jurors.

Juror 189, Karen Kuykendall. In Courtroom D here. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): You're seated as one of our jurors.

Juror No. 276, Alexandria Penino, Courtroom C.
ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): What sayeth the state?
ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?
ATTORNEY HUBRICH: Please seat the juror.
MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?
ATTORNEY CORNWELL: Please seat the juror.
MADAM CLERK (Cheryl L. Graham): Seated as one of our jurors. Thank you.
105, Sebastian Ford, in the jury assembly room. What sayeth the state?
ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?
ATTORNEY HUBRICH: Please excuse the juror.
MADAM CLERK (Cheryl L. Graham): Excuse the juror?
ATTORNEY HUBRICH: Yes, please.
MADAM CLERK (Cheryl L. Graham): Mr. Ford is excused from this trial.
Juror No. 57, Salvador Chaves, in the jury assembly room. What sayeth the state?
ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): What sayeth the Defendant Mr. Fortune?

ATTORNEY HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Mr. Chaves is seated as one of our jurors.

Juror 133, Linda Harrington. And she is in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse the juror.

MADAM CLERK (Cheryl L. Graham): Ms. Harrington is excused from this trial.

Juror No. 4, Diana Ancrum. Ms. Ancrum is in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Mrs. Ancrum is seated as one of our jurors.

Juror 345, Timothy Stewart. Mr. Stewart is in our jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?
ATTORNEY HUBRICH: Please excuse the juror.
MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?
THE COURT: She was excused by Ms. Hubrich.
ATTORNEY HUBRICH: Please excuse the juror.
MADAM CLERK (Cheryl L. Graham): Juror 366, Mr. Christopher Tucker. Mr. Tucker is in Courtroom C. What sayeth the state?
ATTORNEY OSBORNE: Please present the juror.
MADAM CLERK (Cheryl L. Graham): Mr. Fortune?
ATTORNEY HUBRICH: Please seat the juror.
MADAM CLERK (Cheryl L. Graham): And Mr. Salazar?
ATTORNEY CORNWELL: Please seat the juror.
MADAM CLERK (Cheryl L. Graham): Thank you. Mr. Tucker is seated as one of our jurors.
Juror 405, Paul Zoeller. Mr. Zoeller is in the jury assembly room. What sayeth the state?
ATTORNEY OSBORNE: Please excuse in juror.
MADAM CLERK (Cheryl L. Graham): Mr. Zoeller is excused from this trial.
Juror 342, Ted Steele. Mr. Steele is in Courtroom C. What sayeth the state?
ATTORNEY OSBORNE: Please present this juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.
MADAM CLERK (Cheryl L. Graham): And Mr. Salazar?
ATTORNEY CORNWELL: Please excuse the juror.
MADAM CLERK (Cheryl L. Graham): Mr. Steele is excused from this trial.
Juror No. 221, Rory McColly, in the courtroom here. What sayeth the state?
ATTORNEY OSBORNE: Please present this juror.
MADAM CLERK (Cheryl L. Graham): Mr. Fortune?
ATTORNEY HUBRICH: Please excuse this juror.
MADAM CLERK (Cheryl L. Graham): And defense, Mr. Salazar?
THE COURT: He was just excused.
MADAM CLERK (Cheryl L. Graham): Oh, I'm sorry. I was having trouble hearing you.
ATTORNEY HUBRICH: I'll talk louder. I'm sorry.
MADAM CLERK (Cheryl L. Graham): Juror No. 260, Jason O'Neil-Thomas, in this courtroom. What sayeth the state?
ATTORNEY OSBORNE: Please excuse this juror.
MADAM CLERK (Cheryl L. Graham): Juror is excused from this trial.
Juror 258, Anthony Nichols, in this courtroom. What sayeth the state?
ATTORNEY OSBORNE: Please present this juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?
ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the Defendant Mr. Salazar.

ATTORNEY CORNWELL: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Juror is excused from this trial.

ATTORNEY HUBRICH: No. 258?

MADAM CLERK (Cheryl L. Graham): 258, Anthony Nichols.

Juror No. 353, Shelia Summers. Ms. Summers is in this courtroom. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Fortune?

ATTORNEY HUBRICH: The Court's indulgence.

MADAM CLERK (Cheryl L. Graham): Thank you.

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): You are seated on this trial. Juror 338, Shari Smith. Ms. Smith is in the jury assembly room.

What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

CLERK OF COURT: Juror's excused from this trial.

Juror 287, Michael Rabasco. Mr. Rabasco's in the jury

assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Rabasco is excused from this trial.

Juror 51, Lyndy Carpenter. Ms. Carpenter is in this courtroom. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat there juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Juror is excused from this trial.

Juror 107, James Foss. Mr. Foss is in Courtroom D. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Thank you.

Juror 252, Alan Murray. Mr. Murray's in Courtroom C. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): The juror is excused from this trial.

Juror 386, George Webster. Mr. Webster's in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Webster is excused from this trial.

Juror 272, Jennifer Parvin. Ms. Parvin's in this courtroom. What sayeth the state?

ATTORNEY OSBORNE: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Ms. Parvin has been excused from this trial.

Juror 289, Carrie Rafferty, in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): I'm sorry?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): Thank you. The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And Mr. Salazar?

ATTORNEY CORNWELL: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): The juror is seated on the jury.

Juror 271, Donald Paro, Courtroom C. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Paro is excused from this trial.

Juror 335, Joanne Smith. Ms. Smith is in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Ms. Smith is seated as one of our jurors.

THE COURT: Now to alternates. Just to review, one strike for the state, two each for each defendant.

MADAM CLERK (Cheryl L. Graham): Juror 240, Christina Mills. Ms. Mills is in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.

MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?

ATTORNEY CORNWELL: Please seat the juror.

MADAM CLERK (Cheryl L. Graham): Juror is seated.

Juror No. 324, Kristine Shifty. Ms. Shifty is in the jury assembly room. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?

ATTORNEY HUBRICH: Please excuse this juror.

MADAM CLERK (Cheryl L. Graham): The juror is excused from this trial.

Juror 238, Rylie Middaugh. Ms. Middaugh is in this courtroom. What sayeth the state?

ATTORNEY OSBORNE: Please present this juror.

MADAM CLERK (Cheryl L. Graham): Mr. Fortune?

ATTORNEY HUBRICH: Please seat this juror.
MADAM CLERK (Cheryl L. Graham): And Mr. Salazar?
ATTORNEY CORNWELL: Please seat this juror.
MADAM CLERK (Cheryl L. Graham): Juror is seated on this case.
Juror No. 279, Nakilya Phillips, is in the jury assembly room. What sayeth the state?
ATTORNEY OSBORNE: Please present this juror.
MADAM CLERK (Cheryl L. Graham): The defense, Mr. Fortune?
ATTORNEY HUBRICH: Please seat this juror.
MADAM CLERK (Cheryl L. Graham): And the defense, Mr. Salazar?
ATTORNEY CORNWELL: Please seat this juror.
MADAM CLERK (Cheryl L. Graham): Juror seated on this trial. Thank you, Judge.
THE COURT: Thank you very much. Are there any objections with regards to the qualifications and selection of the jury from the state?
ATTORNEY OSBORNE: None, Your Honor.
THE COURT: From Ms. Fortune?
ATTORNEY HUBRICH: No, ma'am.
THE COURT: And from Mr. Salazar?
ATTORNEY CORNWELL: No, Your Honor.
THE COURT: Very well. Thank you all so much.
Now, here's what I am going to ask that we do. With regard,

well, first I'm going to ask the folks who are in Courtroom C, I'm going to ask that you all who were not selected as a juror to leave first. Don't go yet because I have some announcements I need to make. And then, of course, the folks in the jury assembly room, likewise they can exit, as well as the folks up here. I want everyone to please be mindful of the social distancing.

Those of you who have been selected to serve on the jury, I'm going to ask you to just keep your seats for just a moment while we clear, particularly Courtroom C, because Courtroom C is actually going to become our jury room for this trial.

But before we do all of that I need to make some announcements. First of all, of course, of course we thank you for all of your time that all of you have given us today. And I think what we're going to do, I think we're going to move this -- I was trying to figure out how I can be on the camera and be talking to everybody at the same time. I think maybe this is going to work a little bit better.

Now, ladies and gentlemen, those of you who have not been selected to serve, I need to tell you how we're going to stay in contact with each other over the balance of the week. What I'm going to ask you to do is to please call the juror information line, the juror information line, after 6:00 this evening. After 6:00 this evening. Now, our clerk of court just raised the little juror information card. That has the number for you to

call. I always wanted to hold up the card. I'm the card holder. Ta-da, this is the card, this little card, ta-da, there is a number. I'm going to ask you, please call that number after 6:00 this evening. Follow whatever the instruction is. I do not know what it will be at this point. You may be asked to return to the courthouse at a particular time; you may be asked to call back at a particular time. I simply don't know what our schedule will be until later on today. So whatever the instruction is, please follow.

Those are for our remaining jurors, not for our jurors. Our jurors, we're about to start this trial.

And for those of you who have not been selected to serve on this jury, if you need something for your employer because you're dashing off to work, please go to our clerk's office. Our clerk's office is on the first floor, the room closest to the parking lot. Just stay inside like you're going to the parking lot, and you'll go into the clerk's office, and they'll be happy to get that for you.

Ladies and gentlemen, now, with regards to calling the juror information line, please wait until after 6:00 this evening. That means you can call at 6:01, 7:22. If you're up tomorrow morning at 3:00, give it a call. But please give us until 6:00 to know what our schedule is and to place the recording on the machine for you after 6:00.

Now, ladies and gentlemen, those of you who are jurors,

please keep your seats. Those of you who are not jurors, remaining jurors on our panel, not selected to serve as a trial jury in this case, I want to thank you for every moment you have spent with us. And I look forward to seeing you later in the week. So, wait.

MADAM CLERK (Cheryl L. Graham): Judge, would it help if I just called the seated jurors out one time to make sure everybody ---

THE COURT: Oh, sure. Our clerk of court's going to call your name. When your name is called, please stand and leave.

MADAM CLERK (Cheryl L. Graham): No, no, no, these ones are staying. I'm just going to call the seated jurors.

THE COURT: I'm sorry, I wasn't paying close enough attention. Sorry about that. All right. We're going to review the names of our jurors so there's no question about who does not leave, who does not leave.

MADAM CLERK (Cheryl L. Graham): And this is also for the benefit of us, team in jury assembly room and Courtroom C.

CLERK OF COURT OFFICIAL: Yes, ma'am.

MADAM CLERK (Cheryl L. Graham): All right. Juror no. 312 is in the jury assembly room, and that juror is seated. Juror no. 126 is in the jury assembly room, and that juror is seated. Juror 153 is in Courtroom C, and that juror is seated. Juror no. 28 is in Courtroom C, and that juror is seated. Juror 189 is in the courtroom here, Courtroom D, and that juror is seated. Juror

276 is in Courtroom C, and that juror is seated. Juror no. 57 is in the jury assembly room, and that juror is seated. Juror no. 4 is in the jury assembly room, and that juror is seated. Juror 366 is in Courtroom C, and that juror is seated. Juror 353 is in this courtroom, and that juror is seated. Juror 289 is in the jury assembly room, and that juror is seated. Juror 335 is in the jury assembly room, and that juror is seated. Juror 240 is in the jury assembly room, and that juror is seated. Juror 238 is in this courtroom, Courtroom D, and that juror is seated. And Juror 279 is in the jury assembly room, and that juror is seated.

That should be 15. Thank you, Judge.

THE COURT: Thank you so much, Ms. Graham.

All right. Now, those you who have not been selected to serve as a juror in this case, please stand at this time. And you take with you the gratitude of everyone involved in our system. Thank you ever so much, have a wonderful day, and wave bye. Bye, everybody. See you later in the week.

And, please, as you exit, social distancing, which I think is three feet now. Right? Three feet. You can almost reach out. See you all later.

(WHEREUPON, the remaining panel members are excused at 11:42 a.m.)

THE COURT: Wonderful. Now I'm going to ask that our bailiffs who are down in the jury assembly room, if you will bring our jurors up to Courtroom C.

I'm going to remind our jurors, all of our jurors, two things. Number one, you must not discuss this matter or allow anyone to discuss it with you. Please be mindful of that admonition from yesterday. And if you have your cellphone or other communication device with you, I am going to ask you to relinquish it.

And you're going to have just a few minutes. If you want to take it out to your vehicle, that is perfectly fine. Otherwise, I do need you to give it to our bailiffs who will take good care of it until we break for lunch.

But I need for our jurors who are in the jury assembly room, please be escorted -- remember to maintain social distancing -- up to Courtroom C, which will serve as the jury room. Please, as you are in the jury room, also continue to exercise social distancing in that room, three feet apart. That will be fantastic.

THE BAILIFF: Judge, can we have five minutes? We got to get everybody out until the bleachers are sprayed. These benches there, we've got to sanitize them.

THE COURT: Hold off a minute, Mr. wonderful.

THE BAILIFF: Okay. Please. I want to make sure.

THE COURT: We've got quite a bit to do. But, yeah. Courtroom C. We probably need to send folks into Courtroom C, is where they really need to go right now.

THE BAILIFF: I've got to get over there and sanitize.

THE COURT: Exactly. What the folks are considered about, is they want us to walk slowly into Courtroom C just so we can sanitize quickly the seating in Courtroom C. But that's what the concern was.

Those you who are in the jury assembly room, come on upstairs. Come on. Thank you so much. Our bailiff will come with you.

And the same is going to be true here, although we need a couple of minutes just to wipe down. It won't take them but just a couple of moments. And y'all can head on over now. Remember, do not discuss this matter. Does anybody have a cellphone up here?

MADAM CLERK (Cheryl L. Graham): Security out front is keeping their cellphones if anybody brought them in.

THE COURT: If you have a cellphone, you cannot keep it with you.

(WHEREUPON, court recessed at 11:05 a.m. and reconvened at 11:35 a.m.)

MATTERS OF LAW

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court. Yesterday, maybe Friday during court, I don't remember which day, the state came to Your Honor and asked Your Honor if the eyewitness in this case, Mr. Marcus Porter, if he could bring his service dog to court. And I originally indicated to the Court that I had no real issue with that because I do believe in

service animals and I do believe in service dogs, as long as they are certified and that he's got proof that this service dog is certified and pertains to a specific disability that he has. And I'm assuming that the state looked into that and found that out.

The state indicated to Your Honor that the dog -- and I apologize if I'm misstating this, this was my interpretation, that it was a small dog, that it was a terrier-type dog.

And we're here in court now. At the time that we had this discussion I also believed that the witnesses and victims in this case would be sitting in a room outside of the courtroom, that they would be sitting in a room next-door, which would be audio-video feed. So that was what I was relying on when I informed the Court that I really had no issues with the service dog being involved.

The reason why it's even an issue is because the charge in this case is cruelty to animals. There's an allegation that my client shot a dog that actually belonged to this same person. And that's one of the reasons why that's even an issue in this case, because that is the charge.

Here we are here now, as we stand, getting ready to pick our jury, is that the jury is going to sit in the lobby, or the audience, of the courtroom. Literally less than 10 feet away this eyewitness/alleged victim of this case is going to be sitting with his service dog. The dog actually looks more like a black Lab to me, medium- to large-sized dog. As we were standing

in the courtroom, he's laying with his head in the walkway of the courtroom. The jurors will have to walk past the face of the dog to get to their seat, and they'll be sitting within 10 feet of this dog.

I think that accommodations can be made to have this service dog present if this alleged victim needs him, and it certainly doesn't include prejudicing the jury in a case where the charge is cruelty to animals. Thank you.

ATTORNEY CORNWELL: And, Your Honor, we would just join in that motion.

THE COURT: Okay. Yes, sir.

ATTORNEY OSBORNE: Judge, if it would be okay -- we're looking at the seating right now, I'm not -- for the record, I'm not buying into all that. But if we can have the dog switch, Mr. Porter switch with Swibaker, then he wouldn't be right in the hallway.

And I've already talked to him. He's prepared to testify and leave the dog with the girlfriend, and then when he comes back, the dog will be there.

THE COURT: Very well. I see he has his vest on. You know, service dogs, in my experience, you don't know they're there. He's been in here now for about 20 minutes. But for the fact that his nose has been out in the hall, he'll go anyplace you tell him to go and nobody will know he's there.

Also, we have a marvelous victims' advocate. I'm sure

she'll just add that to her tasks, to just help the service dog be where he can be. And the fact that he doesn't need him whne he can testify, which means walk out, come up here, it should not be an issue.

So thank you, I think we've got an accommodation worked out. Any objection given that we're going to make this switch?

ATTORNEY HUBRICH: No objection, Your Honor.

THE COURT: Okay. All right. Now, anything from the state before we bring our jury in, swear them in, go right into opening statements?

ATTORNEY OSBORNE: No, ma'am.

THE COURT: All right. Anything from Mr. Fortune before we do that?

ATTORNEY HUBRICH: I'm sorry, Judge. We're swearing and then going right into opening?

THE COURT: Yes, ma'am.

ATTORNEY HUBRICH: No objection.

ATTORNEY CORNWELL: None from me.

ATTORNEY OSBORNE: Judge, just in case you make an announcement as to who's doing the opening, Ms. Glover is going to do the opening for the state.

THE COURT: Great. Wonderful. Thank you.

ATTORNEY HUBRICH: Who starts first for us? Who decides ttat? Flip a coin? Rock paper scissors?

ATTORNEY CORNWELL: I just assumed we were going to continue

going the way ...

ATTORNEY HUBRICH: I'm good going first, Judge.

THE COURT: We can say she got the table. That's up, that table. Very well.

ATTORNEY CORNWELL: I was just informed that my client's family is here and they have not been placed in the jury assembly room.

THE COURT: Thank you for letting me know that. How are we coming downstairs with the feed? It's ready; it's up; it's operational? Go for it. They can go into the jury assembly room, jury assembly room downstairs. I'd like the defendant's family to be in place.

(WHEREUPON, an off-the-record discussion is held in open court.)

THE COURT: With regards to note-taking, anybody have an opinion about that? From the state?

ATTORNEY OSBORNE: None, Your Honor.

ATTORNEY HUBRICH: None.

ATTORNEY CORNWELL: No, Your Honor.

ATTORNEY HUBRICH: Are you going to let them, Judge?

THE COURT: I think I'm not. I think they can be fine, I think they can listen.

ATTORNEY HUBRICH: My only thought on that would be just if the DNA does come in, the statistical numbers. That would be my only concern.

THE COURT: Unfortunately, that is precisely what I was actually thinking at that time. You know, and to be honest with you, my consideration is I'm a little bit concerned with the set-up of notes. I feel like they're corralled better up here than out there.

If we wanted to put our hands on notepads and pencils, y'all got them?

(WHEREUPON, an off-the-record discussion is held in open court.)

ATTORNEY HUBRICH: One other consideration, Judge, that Mr. Wehman just brought up. Because this is a joint trial, that would be just the other, keeping what evidence applies to what person.

THE COURT: Might be helpful. You know what, I concur. And we'll just have to be very careful about securing their notepads. That's all. Yeah, go ahead and grab those. Yeah. And you can get them while I'm making preliminary remarks. We can go ahead and get started with them. All right.

Okay. Let's have the jury, please.

(WHEREUPON, the jury is seated in the courtroom at 11:47 a.m.)

THE COURT: Thank you so much. Thank you. All right. Ladies and gentlemen, members of our jury, I'm going to ask you to please stand at this time and raise your right hand. Ms. Westbury, our clerk, is going to swear you in as the jury in

this case.

CLERK OF COURT: Yes, ma'am.

OATH ADMINISTERED TO JURY

(WHEREUPON, the clerk of court administers oath to the jury.)

THE COURT: All right. Ladies and gentlemen, this is our COVID set-up, if you will. Normally this is our jury box in olden days. Today our jury box, of course, is what used to be our audience. The witness stand will be what used to be the jury box. And I certainly think that all should be able to see our witness.

I'm a little bit concerned about our juror back here. Can you see the witness stand from where you are? I thought you could. We sort of tried all of this out. Everyone can see the witness stand? Look at the yeses. Wonderful, fantastic.

Now, throughout the course of this trial, if you have any difficulty hearing or seeing, you need to raise your hand and let our bailiffs know, because you have to be able to see and hear, you have to be, that is obviously critical. So just keep us apprised in the event -- we have our mock witness. Can everyone see our mock witness? Wonderful. Thank you, M.W. So, ladies and gentlemen, please just let us know. I tend not to look at the jury. And the reason that I don't do that is because obviously I'm working here. But, you know, when you become a judge -- and I've been a judge for longer than I want to admit,

it's been a long time -- one of the things that you try not to, because it is my duty, is to not communicate, in any way, any opinions, which I have none, to a jury. So I tend not to look at jury.

Our bailiffs, however, do watch to make sure you're comfortable, that you have what you need. So if you cannot hear or you cannot see, if you will indicate, I promise you there will be a number people who will notice that and will bring that to my attention. So, please, be sure you're able to hear and see throughout.

Now, ladies and gentlemen, you are now the jury in this case. And in a moment I am going to give you what is known as the preliminary charge, preliminary instruction, and I'm going to give that to you in just a moment. I do want to talk about a couple of more mundane, housekeeping matters.

Cellphone, does anybody have a cellphone with you? Raise your hand if you do? Excellent, thank you very much for complying with that instruction. You must not have a cellphone with you while you're serving on the jury. And the reason for that is because it's been, gosh, it's been about seven years ago now, in Charleston, and it was a civil matter and the jury was deliberating, and they reached a moment where they really needed to review the evidence that they had heard, worked together to make the finding of fact. One of the jurors said, Hold on, I've got a buddy. So this juror phoned a friend. The juror had his

cellphone. Got the information. But when that was disclosed to the Court the entire trial had to be scrapped because, in reaching its decision, a jury must receive all the information from which the jury makes up its mind, meaning the jury, here in court while court is in session. Obviously that was information that was received outside of that forum, that environment. So the trial had to be scrapped.

Oh, and our chief justice is so bright and on top of everything, within 48 hours we had an administrative order from the chief justice that said no more cellphones. That's why, that's the why part of that.

Now, what I normally do, and I did not do yesterday because time was really of the essence, but I really like the jurors to know who is in the space with them. And so you had an opportunity to meet counsel and the litigants, so I won't go into that. But I do want you to know who are the other people who are here, and what is their role, I think that's good for you to know. So I'm going to take just a moment to do that.

And you met the clerk's office. Throughout this trial we're going to have to a clerk. It will probably be Ms. Westbury, but sometimes she has other matters to attend to and she will swap off with one of the other members of the clerk's office. This is their space in here.

We have Cathy, we have a marvelous court reporter, who is with us. This is a court of record. And what that means is that

all matters, all matters, that come before the court, everything that gets said during the course of this trial will be taken down by our court reporter, by Cathy. She is extraordinary. She actually is a steno writer. And they are, they are -- we're losing a lot of our steno writers. Most people are going to be mask writers. Steno writers, they're sort of the cream of the crop, if you will. I love our court reporters in the state, but the people who use the steno machine, they are extraordinary in their own very special way.

And what that means is, she has a little machine, and she has pieces of words on that machine, and she is steadily moving. Those of you that have the chance of serving on the jury, you won't be able to see her as much as folks that were serving juries in the olden days because you could really see her, or see our court reporter, really working. But this is a court of record, and she is recording absolutely everything that is said.

When exhibits are admitted into evidence, they're going to come to Cathy; she's going to mark them as exhibits; and she's responsible for those exhibits. She marshals them; she accounts for them; she keeps them throughout the trial until such time as they go back to the jury for the jury's deliberation.

And once the jury's finished, she, once again, marshals them, she has to make sure they're all there. Then she files them with the clerk of court's office, where they stay forever. And that's one of her critical functions. You cannot have court

without a court reporter.

So welcome, Cathy, thank you for being here with us.

THE REPORTER: Thank you.

THE COURT: Now, also present with us, you met the court security people who are extraordinary. You met Mr. Jenkins; met Deputy Smith and Marvin, who is -- and did you introduce yourself? You're new. Go girl.

THE BAILIFF: Ms. Higgins.

THE COURT: Our bailiffs. They will keep all of us where we are supposed to be when we're supposed to be there. And when you are in your jury room, which is going to be the adjoining courtroom, as you now know, they are stationed outside the doors so that you are assured of your privacy while you are in your jury room.

And so if you have a need, for example, Gosh, we need some more Diet Coke; I heard there was going to be coffee; anybody got any chips or anything, let them know because we certainly want you to be comfortable now.

Of course, you cannot talk about this case with anyone, and that includes all. Of course, they're not going to do that. But when I say if you need something, what I'm talking about, water, juice, snacks, whatever.

Now, ladies and gentlemen, our law provides that there should be one of your number who serves as a presiding juror. The presiding juror is a person who does three additional tasks

in addition to the other tasks of a juror. The presiding juror is the person who is responsible for writing the verdict of the jury. Doesn't control anything; doesn't dominate anything; doesn't lead anything, but the presiding juror simply is the scrivener, is the person who writes on the verdict slip, or circles on the verdict form, at the conclusion of the trial, at the conclusion of the deliberations of the jury. The presiding juror is the jury's spokesperson here in court. What does that mean? Judge, you need to speak up. And one of the jurors say, I can't hear that Judge. Well, write it down on a little note, presiding juror, give it to one of the bailiffs who will, in turn, give that to me. The jury's spokesperson is the presiding juror.

And the presiding juror also, during the deliberation, is the person to just make sure everybody has a chance to talk during deliberation. You don't control it; you don't control the conduct of the jury; you just make sure everybody has a chance to talk. And those are the additional tasks of the presiding juror.

I'm going to ask you during one of our breaks to please select your own presiding juror. When that person has been selected, you can let me know in one of three ways. Number one, you can write it down on a little note, give that to our bailiff who will give it to me. Say, I am, or my number is, or both, the presiding juror, give that to me. Or you can tell me when you come into the courtroom. Or, the presiding juror, I'm going to

ask the presiding juror to take this seat, front, on the, not-the-first row but the second row here on my right, your left, and closest to the aisle. Raise your hand. You're in the seat of a presiding juror. And sometimes that is the absolute number-one requirement, but whatever means you all use is perfect. Or the third way is just to see if I figure it out because you keep the seat. Because once a presiding juror is selected, you'll take that seat and keep that seat throughout the trial so I can keep up with you.

Our alternates, I have three. You know who are, you brilliant, wonderful people. I'm going to ask you to keep that row throughout the trial literally so I can keep up with you, because you are our alternates. Now, y'all don't have to keep that seat, but if all stay on that row, that way I can keep up with you as alternates.

Let me tell you, the CDC guidelines are now three feet apart, so you're having trouble seeing that far, you can move down a little bit. So if you'll all keep that in mind. There is no other assigned seating. But it's really kind of funny, after a number of years jurors kind of get a seat, they kind of like it and they'll keep it, which is perfectly fine.

Now, another housekeeping chore. We are going to pass out, for you, notepads and pencils. And I want to talk about taking notes.

(WHEREUPON, Notepads and pencils are distributed to the

jury.)

THE COURT: Does everybody have a notepad and a writing implement, be a pen or pencil? Everybody got one? Okay, great. Here's what I'm going to ask you to do. Here's your pad. I'm going to ask you to take that first sheet and flip it over. And then on the next sheet I'm going to ask you, on this sheet, to either write your juror number or your name. But don't put your juror number on it unless you know your juror number, because this is going to be your dedicated pad/notepad.

Each time you leave the courtroom, we're going to secure these for you. And for your informational purpose, at the conclusion of this trial, at the conclusion of this trial, if you wish to take your notes with you, that's perfectly fine. If you don't, for informational purposes, those notes are immediately brought to my chambers and I destroy them myself. So if you intended to take them and you didn't or you don't care -- either one is perfectly fine -- for your informational purposes, I obliterate them/I destroy them. So your notes are your notes. They are not meant to be shared with anyone.

Now, let's talk about notes. There's an ongoing debate throughout the judiciary about the taking of notes. There's a real concern that a juror can miss something as it's coming from the witness stand while they take a note. And that's a legitimate concern. I'm going to tell you, don't miss anything now that's happening on the witness stand while you're taking

notes, okay. The other person's note-taking is that, if one juror has a note and another juror doesn't have a note, there can be an undo amount of influence placed upon the notes during deliberation. I'm going to tell you, don't share your notes with anybody. It's for you to refresh your recollection for your deliberation, that's what they're for, not to be shared with anybody.

Now, what is the positive part of note-taking? Some people, it helps them concentrate. I'm one of those people. And it's not unusual for me to take notes as I'm listening and go back and look at my notes and they make absolutely no sense. But it helped me concentrate as I was listening. Some people are terrific note-taker. My law clerk is a terrific note-taker, and so you can go back and it almost looks like a transcript because she has great notes. She has great handwriting, too. I can't read my notes. I can read hers. But, anyway, so if you're a note-taker, enjoy taking notes.

There is absolutely no requirement for you to take notes. It's only there if it's of help to you. If it isn't, put it down and don't worry about it. It's more important that you listen attentively than it is that you're taking notes. It's only for those who are note-takers and want to take notes. Completely up to you.

Now, when you leave the courtroom, though, each and every time, leave your notepad at your seat. Do not use somebody

else's notepad. Many, many years ago I had a jury that had notepads and I didn't make that clear. It's my fault. But, gosh, everybody had notes on all the pads, and it wasn't a whole lot of help to them. But please try to keep your notepad so you can take notes that will be helpful, if you wish, to be helpful to you. Now, that's it about note-taking.

Oh, and by the way, you know lunch is coming, just so you know. Cheryl Graham is downstairs cooking. No, she's providing you lunch. All right.

PRELIMINARY INSTRUCTIONS BY THE COURT

Now, ladies and gentlemen, what I'm now going to say to you is intended as an introduction to the trial of this case. These remarks are not, are not, the charge or the law applicable to this case. I'll instruct you on the law applicable to this case at the end of the trial before you retire to consider your verdict. This is really meant to be an overview of the procedure that we will follow in the trial of this case so that you will just know, better know, what is happening.

Now, ladies and gentlemen, yesterday we went through the indictments, and you heard me go over some of the allegations contained in the indictments. I want to stress, and I'll do it again when I give you the concluding charge, but it is very important that you are mindful that each of these defendants is to be treated independently of the other. They are to be treated separately and independently and from the other. And each

indictment is, likewise, to be considered separately and independent and on its own. And that's very important that you understand that.

Now, ladies and gentlemen, I will tell you that the Defendant Mr. Fortune is charged in this court with the crimes of murder, attempted murder, burglary in the first degree, possession of a firearm during the commission of a violent crime, and ill-treatment of animals, in general, torture.

And Mr. Salazar is charged by indictments filed in this court with the crimes of murder, attempted murder, burglary in the first degree, possession of a firearm during the commission of a violent crime, ill-treatment of animals, in general, torture, and possession, concealing, selling or disposing of a stolen vehicle where the value is more than two yet less than $10,000.

Now, the elements of each of these offenses, of each of these crimes, are going to be explained to you later, to you later.

Ladies and gentlemen, indictments, indictments, as I told you yesterday, are simply the notice document, it's the charge by which the case is brought into court, and it is not, in any sense, evidence of any of the allegations that it contains. And that's true as to each one of these indictments.

Each of these defendants has pled not guilty to each of these indictments. The state, therefore, has the burden of

proving each of the elements of each of the indictments beyond a reasonable doubt.

And it will be your duty, ladies and gentlemen, to decide whether the state has met that burden.

Now, in order to determine whether the state has met its burden necessarily, it is your duty to find and to determine the facts. You are the sole, the only, judges of the facts. If, at any time during the course of this trial, I make any comment, I do something with my facial expression, or do anything that you think, perhaps, is a communication about the facts, I am going to ask you right now to please disregard that, because I don't have an opinion regarding these facts. The law doesn't allow me to have an opinion regarding these facts. That is a matter solely for you to determine. So, please, if you think I have done or said or intimated in any way anything regarding the facts, I ask you now to disregard that, because I don't have an opinion regarding these facts.

Now, you are to determine the facts from the sworn testimony that you hear and the other evidence which is introduced into court. It is up to you to determine what, if any, inferences you feel may be properly drawn from the evidence. And it is especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily there is no way, there is no way, to correct an erroneous determination of the facts by a trial jury. The facts, as

determined by you, by the trial jury, will be the facts for all time.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the judge of the law. The law, as given to you by the Court, is the only law you may consider. You must accept and follow the law exactly as I state it to you, even if you may disagree with it. I cannot tell you what the facts are and you cannot disagree with me about what the law is or should be.

It might be if you disagree with what I tell you the law is, you might want to have a meeting with your legislature after this trial. But for our system to work correctly, you must accept and apply the law exactly as I state it to you.

And you will take that law as I give it to you, you will apply it to the facts as you have found them to be, and that is how you will reach your decision with a determination regarding whether the state has met its burden of proof.

Now, ladies and gentlemen, until I advise you to begin your deliberations you must not discuss this case with anyone, including your fellow jurors, your friends, your family members and anyone involved in this case. This includes discussions face-to-face and those by telephone, email, texts, lines or any other method of communication like Facebook, LinkedIn, MySpace, Instagram and, what, like a hundred other platforms for social media.

A computer, cellphone or other electronic device with communication capabilities at any time, at any time you're in courtroom, must not be with you and must not be with you during your deliberations.

During your meals, well, I'll say overnight. You need a phone, we've got a little tiny lion line if you need to make a call during the breaks here. But overnight if you need to use your devices such as your cellphone, certainly you may. However, you may not, at any time, use these devices to send or to get information about this case.

Do not Google, do not search anything about this case or anyone that has anything to do with it.

Now, don't look for any information about a party, a witness, an attorney, a court officer, news accounts about the case or research any topics raised. Don't even look up a definition. That can cause the trial to need to be scrapped and redone.

Now, during this trial do not read, do not listen to and do not watch any news reports about this case. I have absolutely no information whether there will be any news accounts about this case but, for your purposes, presume there may be so that you'll be cognizant not to listen to any news reports about this case. That, of course, includes anything that may be in the newspapers, on the internet, radio or television.

You must not consider anything that you may have read or

heard about this case outside the courtroom, whether before or during the trial.

Now, after this case is submitted to you, you must discuss it only in the jury room with your fellow jurors. And I will tell you when that time has come. There will be no question in your mind that the time for deliberation has come, because I will tell you.

The attorneys and the parties in this case have been advised that they are not to talk to you at all. So if you see anyone involved in this case and they do not even say hello, please don't think they're being unfriendly; just know they're following my instruction.

Ladies and gentlemen, I will tell you that it is important that you keep an open mind and not decide any issue in the case until all of the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law applicable to this case.

It is your solemn responsibility to determine whether the state has met its burden of proof of beyond a reasonable doubt with regards to these defendants, again individually, separately, and your verdict must be based solely on the evidence as it is presented to you during this trial and on the law as I will instruct you during the close of the trial.

Now, in just a moment you're going to hear from Solicitor Glover in what is called an opening statement in which the

solicitor will explain to you what she believes the issues are in this case. The attorneys for the defendant will follow with their opening statements.

Ladies and gentlemen, I urge you, please give these attorneys your undivided attention. What they say to you is very important. However, I do need you to be mindful that the evidence in this case will come from the testimony of the witnesses and from evidence which is introduced into court.

Now, ladies and gentlemen, from time to time no doubt you're going to hear the attorneys say something like, Objection, or, Your Honor, we have a question of law, or, May we approach, something like that. I want you to understand exactly what is going on. To do that, I need to explain to you a little bit about the structure of a trial. You are learning that a trial is a very structured activity and, as in sports or business or any other structured activity, there are certain rules that all must obey when presenting evidence. These are called the rules of evidence. If you hear one of the attorneys say, Objection, or, May we approach, what is occurring is that they are raising a possible violation of the rules of evidence to my attention. And that is their duty. So you must not hold an attorney's objection against her or his client, or conclude from my ruling on the objection that I favor someone in this matter, because I do not.

Ruling on the admissibility of evidence, meaning can it be heard at all or not, those are matters of law. Once evidence is

admitted, whether you believe it or the weight you give to it, those are matters for you to determine. So when these attorneys object, that is their duty, and they are raising to my attention a possible violation of the rules of evidence.

Now, ladies and gentlemen, when the attorneys approach or from time to time I need to ask you to leave the courtroom, I want you to understand what's happening. Oftentimes when there's an objection I know what the objection is about, or they'll give me a word or two and that will give me the information that I need and I can make a ruling. But sometimes I need to hear a word or two from the attorneys, I'll have them approach, and sometimes I need to hear a little bit more.

When that occurs, I'll ask you to leave the courtroom. And I want you to understand what's happening. What is happening is is that I am obtaining information that I need to help me make a determination. And so when I ask them to approach or I need to ask you to leave the courtroom, what's happening is is that I need to have a discussion, I need to hear a little bit, and I would not want anything that I might say or do with regards to the facts to be perceived by you as being some sort of comment on the facts. So if I ask them to approach or I need to ask you to leave, that's what's going on. It gives me the space to do the work that I need to do.

Now, ladies and gentlemen, in determining what the true facts are in this case, you will necessarily decide whether or

not the testimony of the witness is believable. And in determining whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen and heard the matters and things about which the witness may testify, and you certainly may consider the way the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses.

That means it is your duty to pay close attention to these witnesses. Observe them, listen to them, and pay close attention to these attorneys and to the Court. Do not let your thoughts wonder, but give the strictest attention to the matters, to the testimony in this case, so that, at end of all the testimony, after the arguments of counsel, charge on the law, you will then be in a position to perform your solemn duty and determine the facts, apply the law to those facts and determine whether the state has met its burden.

Now, ladies and gentlemen, following the opening statements then there will be an opportunity for each of these parties to present evidence. Once the evidence is all in, then the attorneys will have an opportunity to have, or make to you, closing arguments, which is their opportunity to argue to you, and discuss, no doubt, certain evidence which has been received, try to agree -- try to advocate so that you will agree with their

version of the facts.

What they say is very important. Give them your undivided attention. But please remember that what the attorneys say is not evidence. That comes from the testimony and exhibits which are admitted into evidence.

Ladies and gentlemen, in order to preserve everyone's rights, it is necessary that I ask the attorneys whether or not there are matters additionally which I need to explore with you and to ascertain if there are any objections. From the state?

ATTORNEY OSBORNE: None, Your Honor.

THE COURT: Mr. Fortune?

ATTORNEY OSBORNE: None, Your Honor. But may we approach at the appropriate time?

THE COURT: Sure.

ATTORNEY CORNWELL: No, Your Honor.

THE COURT: That would be right now.

ATTORNEY HUBRICH: Thank you, Judge.

(WHEREUPON, an off-the-record discussion is held at sidebar.)

THE COURT: Now, did y'all hear that noise? Go to the beach; go to the ocean? Oh, come on, it sounded like the ocean to me. That literally is to cover up, again, what I'm doing to let me do the work that I must do. So you will hear that when the attorneys approach.

What the attorneys concerned about? They want you to have a

cushion. They said, Your Honor, the jurors need a cushion. So we will try to get you some cushions, okay. All right, so lunch and cushions. We're working on it; I got it. So hang tight. Comfort is on the way, hopefully.

Now, also, my gentleman who is on the front row, I want to make sure you can hear. Anybody can hear? Anybody have any difficulties? How you doing? You want earphones?

JUROR: It was good. Now I can barely hear you. What happened?

THE COURT: That's because I turned off my microphone.

JUROR: Oh, okay. That's much better.

THE COURT: Perfect. I might put you in charge of, Turn on the microphone, Judge. Wonderful, okay. Never well. Again, if you have any difficulty, let us know.

JUROR: Okay.

THE COURT: We're going to be in tune to you, as well. Now, does anybody -- let me just ask everybody to stand up, because I know those benches are -- and just wiggle around. That's okay. If you do, stand up, wiggle around, sit back down.

Now, ladies and gentlemen, at this time I'm going to ask you to please draw close as we listen to the opening statements. Ms. Glover.

OPENING STATEMENT ON BEHALF OF THE STATE

ATTORNEY GLOVER: May it please the Court.

THE COURT: Yes, ma'am.

ATTORNEY GLOVER: Thank you, Your Honor. Malice, a depraved heart, one void of social responsibility. These are the elements necessary to commit a murder. These are what the codefendants, Muanah Fortune, Jr., and Polo Salazar, are charged with doing on the night of January 27th, going into the morning of January 28th, 2019.

On that particular night they broke into the home of Mr. Marcus Porter; they shot him in the chest; and they shot his visiting friend eight times before leaving him in a puddle of his own blood.

Ladies and gentlemen of the jury, my name is Chelsea Glover, I'm assistant solicitor here with the First Judicial Circuit. I will be prosecuting this case, along with Solicitor David Osborne.

Seated at our table you will also see Sergeant Davis and Ms. Rebecca Durr. Seated behind you is Mr. Joe Weaver's family, Mr. Marcus Porter and Mr. David Swibaker.

Ladies and gentlemen of the jury, all we ask is that you listen carefully to the evidence that we'll present over the course of the next few days, and that you hold Muanah Fortune, Jr., and Polo Salazar responsible for this horrendous act.

Jury service is perhaps one of the most important duties that you can ever perform for your country. It is not only the state's day in court, it is not only must one Fortune's day in court, it is not only Polo Salazar's day in court, but it is also

Joe Weaver's day to seek justice, and his family appreciates you being here.

Let's talk about the charges briefly. As Judge Goodstein previously stated, the defendants are charged with murder, attempted murder, possession of a weapon during the commission a violent crime, ill-treatment of animals, and his burglary in the first degree. Additionally, Polo Salazar is charged with possession of a stolen vehicle.

Now let's talk about murder, briefly. Murder is one of the most heinous crimes and one of the most oldest crimes in the books. Murder is simply defined as the unlawful killing of another, with malice aforethought. The unlawful killing of another with malice aforethought.

Malice has numerous definitions. Hardness of heart, reckless disregard, a void of social responsibility. But how much more heinous can you get besides breaking into someone's house in the wee hours of the morning, shooting them in their chest and leaving their guest dead after being shot eight times and kicked in the face, literally kicked in the face?

On January 27th of 2019, Polo Salazar and Muanah Fortune, Jr., along with their friends who will later get their day in trial, wanted some marijuana, so they drove from Beaufort right here in Saint George to Marcus Porter's house to get them some.

Now, Marcus Porter, he's no saint, he's been known to sell a few drugs in his home to make a couple extra bucks. But that

does not give anyone the right to break into his home. It doesn't give anyone the right to take away his expectation of privacy in his home. It doesn't give anyone the right to gun down one of his guests and take things that do not belong to them.

Ladies and gentlemen of the jury, marijuana is never worth a person's life. And those are just some of the facts.

You'll hear about, later in this jury, later in this trial, about a high-speed chase that took place four minutes after this home invasion took place. This high-speed chase lasted about 30 minutes, a full half an hour, before the assailants were captured, before they were arrested. Before that happened, stop strips had to be deployed, their tires literally had to be flattened to get that getaway car to stop, a getaway car that was stolen.

Along that drive, that 30-minute drive that these defendants took, officers circled back around and, like Hansel and Gretel, if anyone remembers the old childhood story, they left breadcrumbs of the crime that they had just committed. They left an orange ski mask, they left a jumpsuit, they left four handguns, four, and, most important, they left Joe Weaver's wallet.

Later in this trial you'll hear about Marcus Porter, the owner of that home. You'll hear about David Swibaker, who is Marcus's roommate. Who you won't hear from is Joe Weaver, J.B.

Had he left five minutes earlier, he would be alive to testify in this trial; he would be alive to hug his mother one more time; he would be alive to ride his beloved moped.

But because of some marijuana, he's unable to do that today. So we're here to give him justice. We're here to seek justice on his behalf.

ATTORNEY HUBRICH: Objection, Your Honor. Improper burden shifting.

THE COURT: Just be mindful.

ATTORNEY GLOVER: Thank you, Your Honor. Over the course of the next few days numerous individuals are going to come over here, they're going to state the stand, they're going to testify about the events that took place on the night of January 27th, 2019, going into the morning of January 28th of 2019.

No one individual is going tell you everything that happened on that dreaded night, but we ask that you view each testimony as a piece of a puzzle. And at the conclusion of this trial that puzzle will have painted a bigger picture where only one conclusion can be drawn.

Just as in any criminal case, the state has the burden of proof. That proof is beyond a reasonable doubt. It is up to us to prove beyond a reasonable doubt that both Polo and Muanah are guilty of murder, guilty of attempted murder, guilty of ill-treatment of animals, guilty of possession of a weapon during the commission of a violent crime, guilty of burglary first, and

Polo guilty of possession of a stolen vehicle.

Ladies and gentlemen of the jury, there is no class that prepares you on how to be a good juror, there's no class that you can take that teaches you how to do that. But many of you have been preparing your whole life for this moment, as teachers, as program coordinators, as nurses, as engineers. So we ask that you listen attentively to all the evidence, and that you use your diversity of experience and knowledge during your deliberations to aid you in rendering a verdict.

And we ask that you hold these defendants responsible for the acts that took place on January 27th, going into the morning of January 28th. Thank you.

THE COURT: Thank you. Ms. Hubrich.

OPENING STATEMENT ON BEHALF OF DEFENDANT FORTUNE

ATTORNEY HUBRICH: May it please the Court.

THE COURT: Yes, ma'am.

ATTORNEY HUBRICH: Judge, may we move freely about the courtroom, or do you need me to stay at the podium?

THE COURT: Let me tell you what my concern is. My concern is is that our court reporter's able to hear. As long as there's sufficient volume -- that's why we put the microphone at the podium. But you're certainly free to move about. If you go away from the podium, lots of volume.

ATTORNEY HUBRICH: Thank you, Judge. Ladies and gentlemen of the jury, you know, the funny thing about the truth is that

it's easy to remember. It's usually the first story you tell. It's always the one that makes the most sense. That's the funny thing about the truth.

And this is what I need you to keep in mind over the course of this week as the state tries to bring pieces of evidence and testimony before you. I need you to keep in the back of your mind that the funny thing about the truth is that it's easy to remember and it's usually the first story you tell. I need you to think about that as you hear the evidence in this case.

The reason why we're here today is because the state, we call them the solicitor, they brought us here. They brought me here; they brought the Judge here; they brought you here; they brought my client, Muanah Fortune, here.

And what they did is they levied some of the most serious charges that you can levy against a human being against these men. Murder, burglary, cruelty to animals, possession of a weapon during a violent crime. These are some of the most serious charges you can levy against another human being. And they brought us all here today and they said, We promise you we can prove these people guilty beyond a reasonable doubt.

There are four men charged with these crimes. Some have more than others. Mr. Salazar has another crime, he's got possession of a stolen motor vehicle. Muanah is not charged with that because he never had possession of a stolen vehicle. But there are four men. Two of them are on trial this week. My

client, Muanah Fortune, Jr. Want to stand up, Muanah? This is my client, this is who I have the honor of representing this week. There is another defendant. His name is Polo Salazar. There are two other people that have been charged by the state, Elijah Green, Devonte Major.

The solicitor, in her opening statement, she told you that those two, they're going to be tried some other time; that those are older gentlemen; they're going to be tried, I think, maybe next week or the week after. And that's for another jury; that's not for this jury; that's not for you.

Your job -- and the Judge is going to tell you this, and she's going to tell you this better than I can tell you this -- your job is to consider the evidence separate against each person. So what that means is that the state has to prove to each and every one of you beyond a reasonable doubt that my client, Muanah Fortune, committed these crimes. That means each of you has to decide that they've done that; that you don't have a reasonable doubt about every element of the crime.

And that then you have to decide that same thing about Polo Salazar, independently, independently of how you are deciding the case against Mr. Fortune. And the Judge is going to say that much more eloquently than I can ever tell you that, but that's what your job is today and this week.

I want you to think about proof beyond a reasonable doubt. Reasonable, I want you to think what that means. When you think

about it I want to you think like a welder, like a welder, think about a chain, a metal chain, that you would weld together. And think about those links. I want you to think about each piece of evidence of links, linking them together. That's what the state has to do, right, they have to take these links and they have to link them together.

And if you have a weak link, if you come to a link that is weak, you can't rely on, you can't put it in the chain, and so you have to take it and you have to set it aside. And if you have to set it aside and the chain isn't complete, it's not a strong chain, it's not proof beyond a reasonable doubt, then you to find Muanah Fortune not guilty. That's what reasonable doubt is. That's the most basic way we can explain it. Every one has to be strong, every one has to be substantial, and every link, you can't doubt it.

What would you do with this chain that they've given you? If you have a doubt, you can't use it to tie the link in the chain. That's what proof beyond a reasonable doubt is.

There's two types evidence, and the Judge is going to tell you this and I think the state's probably going to talk to you about, it's called direct and evidence, and we call it circumstantial evidence.

Direct evidence is the good evidence, that's the evidence that has the most weight, it's the most reliable. An example of direct evidence would be an eyewitness saying, I saw that man

commit that crime. That's direct evidence.

The evidence in this case is going to show you that there is no eyewitness saying that they saw Muanah Fortune commit this crime or any crime.

Another piece of direct evidence would be fingerprint evidence. Fingerprint evidence would say, I saw or I tested this house and there is a fingerprint on the gun, on the kitchen table there's a fingerprint. That would be direct evidence. It's pretty weighty.

The evidence in this case is going to show you there is no fingerprints that puts Muanah Fortune at the scene of the crime. There's no fingerprints linking him at all.

Although piece of direct evidence would be, for example, DNA, DNA, evidence that shows that a man was at the house where this happened, 108 Myrtle Place, the place where this whole crime is alleged to have happened. The DNA evidence, we found DNA evidence on the kitchen table, on the gun; we found DNA testified in the dog's mouth, something like that, that would be direct evidence, because that's pretty weighty.

The evidence in this case is going to show you there is no DNA evidence that puts Muanah Fortune at the scene of the crime at all.

So then the state's going to talk to you about circumstantial evidence. Circumstantial evidence is the kind of evidence that you really have to question, the kind of evidence

that you have to put pieces together to maybe infer guilt. And you don't have to listen to me, you don't even have to trust me, because the Judge is going to tell you, circumstantial evidence has to be held to a greater weight, it's got to be substantial.

If it's not substantial, you can't rely on it. There's a reason for that. There's a reason why the Judge is going to tell you that if the state is asking you to put little tiny pieces together to create a strong link, then you have to test that evidence much, more stronger, it has to be substantial. And it's not, if you can question it, if you doubt it, if you don't think that chain is strong enough to wrap around a man and send him to prison, then you to find that man not guilty.

And I trust that, at the conclusion of this trial, you will find Muanah Fortune not guilty. Thank you.

THE COURT: Thank you. Yes, ma'am, Ms. Cornwell.

OPENING STATEMENT ON BEHALF OF DEFENDANT SALAZAR

ATTORNEY CORNWELL: May it please the Court.

THE COURT: Yes, ma'am.

ATTORNEY CORNWELL: Counsel. Solicitor. As human beings we have an enate tendency to jump to conclusions, to make judgments and render people, criminals and victims, without knowing all the facts, the circumstances of the situation.

In psychology, to jump to a conclusion means to render a judgment without knowing all the facts. If you ever heard the term, when you hear hoofbeats think horse is not needed, that is

an example of jumping to a conclusion because while, yes, the most common hooved animal that people think of is a horse, just because you hear hoofbeats coming doesn't mean that it's automatically a horse creating that sound, because to do that eliminates the possibility of any other animal that could create hoofbeats, zebras, donkeys, cows, goats, elk, antelope, moose, buffalo.

And by eliminating all of those possibilities and making an assumption based on what seems to be the obvious answer, oftentimes we find ourselves making rash decisions that lead to more harm than good. And that's exactly what law enforcement did on the early morning of January 28th, 2019, and, as a result, Polo Salazar was charged with crimes that he did not commit.

Now, throughout the course of this trial the state is going to try to get you to buy into those same assumptions and render an unwarranted verdict based on an ediant (phonetic sp) that doesn't look at all the possibilities, that doesn't examine all of the evidence critically. Don't let them do that.

Because as Polo Salazar and Muanah Fortune sit here today, they are presumed innocent. They are presumed innocent throughout this entire trial, and as you go back to your jury room to render a verdict, they are presumed innocent unless and until the state can prove to you, beyond a reasonable doubt, each and every element of each and every crime independently and separately for each and every person they've accused beyond a

reasonable doubt.

So what is a reasonable doubt? Well, a reasonable doubt is the type of doubt that would cause a reasonable person to hesitate to act. In other words, it's one of those things you just, makes you go, Uhm, you're not sure. Proof beyond a reasonable doubt is proof that must leave you firmly convinced of a person's guilt.

Now, as jurors, you are a part of our criminal justice system and in holding the state accountable for meeting that burden of proof and proving this case beyond a reasonable doubt.

And while our criminal justice system may not be perfect, it is the best criminal justice system in the world because of our jurors, because the law requires that, as jurors, you make sure that law enforcement and the state meet that burden, that they prove guilt beyond a reasonable doubt.

Because the last thing that anybody wants, including law enforcement and the state, is for an innocent person to be wrongfully convicted based on assumptions that have not proven a case beyond a reasonable doubt.

And, as jurors, you are going to get to hold them to that standard. And sometimes that is a hard thing to do as a juror, because you hear charges that seem awful, murder, attempted murder, burglary, torturing an animal, and your emotions want you to seek justice and wants you to find some sort of guilt somewhere.

But as the law instructs and, as the Judge is going to tell you, the only way that you can find somebody guilty is if the state has proven every element of every charge beyond a reasonable doubt, because we need assurances in our criminal justice system that you are sending someone who has firmly been convicted, someone who you firmly believe has committed a crime, not someone you think might have done it or maybe or more probably than not, you have to be firmly convinced beyond a reasonable doubt.

And if you are not firmly convinced beyond a reasonable doubt, then the only jury verdict you can render is not guilty.

And oftentimes in this courtroom the most just verdict will be not guilty because, in that verdict, you are telling law enforcement and you are telling the state, You've got to do more; you can't just assume; you can't jump to conclusions; you can't guess, because young men's lives are at stake.

So when you go back and you consider the evidence and the testimony in this case and you look at it through the standard of reasonable doubt, what are you considering? Well, as the Judge is going to tell you and as you've heard a few times already, you're going to look at a number of things. You're going to judge the credibility of the witnesses, and you're going to be told about different types of evidence and the weight that should be given to those types of evidence.

But the most important thing that the Judge is going to tell

you is that, in considering each of these charges and weighing the testimony and the evidence of each of these charges, you must do so for each of these young men independently and separately, not just from each other but also from the other two men that are not in this courtroom today, that are not on trial today. And you have to independently and separately consider their actions, as well.

And once you've done that, and once you've seen and heard the testimony and the evidence, or the lack thereof, I am confident that you are going to do your duty and that you are going to tell the state that they have not met their burden of proof, they have not left you firmly convinced beyond a reasonable doubt that these young men are guilty.

And when you go back and you consider the crime that they have charged my client with, you are going to see that they have no evidence, that the testimony doesn't make sense, and there are going to be those little things that make you go, Uhm.

And when they do, I need to you hold firm to your conviction to seek the just thing and to find Polo Salazar not guilty murder, not guilty of attempted murder, not guilty of burglary, not guilty of possessing a firearm, not guilty of torturing an animal, and definitely not guilty of knowing or possessing a stolen vehicle.

THE COURT: Thank you. All right. Ladies and gentlemen, I'm trying to find out if lunch is here. Because if it is, it's

a good time for us to stop. If it's expected in the next little bit, then we may go ahead and begin to just --

(WHEREUPON, an off-the-record discussion is held in open court.)

THE COURT: Ladies and gentlemen, we're going to stop for lunch. Now, your lunch is almost here. They'll bring it right to you when it's here. And we're going to take, we'll start up right at 2:00 for our afternoon. So that will give us a little over an hour.

I do need you to be mindful, though, over the lunch break, to remember, do not discuss this matter, do not allow anyone to discuss it with you. They will bring your lunch in separate containers, separate water, separate things for you, Coke, Diet Coke, whatever they may have, will be put in separate containers for you. Please be mindful to remember your social distancing. Again, there's lunch for you.

If you need to have access to your cellphone over the lunch break, hopefully you have it in your car. If not, we certainly can get you the ability to make a phone call. One of our bailiffs just needs to simply stand by for that reason and to help in that regard.

But do please be mindful, do not discuss this matter, do not allow anyone to discuss it with you. I remind you that sometime between now and when you begin your deliberations you do need to have a presiding juror, so don't forget to select your own

presiding juror at some point.

And if you will remember to honor the social distancing as you exit the courtroom, you may go with our bailiffs and have some lunch. I will see you at 2:00.

(WHEREUPON, the jury is escorted out of the courtroom at 12:55 p.m.)

THE COURT: All right. Anything before we take a break for lunch from the state?

ATTORNEY OSBORNE: No, Your Honor.

THE COURT: From Mr. Fortune?

ATTORNEY HUBRICH: No, ma'am.

THE COURT: And Mr. Salazar?

ATTORNEY CORNWELL: No, Your Honor.

THE COURT: Thank you all. I'm going to see you a little bit before 2:00.

(WHEREUPON, court recessed at 12:57 p.m. and reconvened at 2:04 p.m.)

THE COURT: Anything from the state before we bring our jury out?

ATTORNEY OSBORNE: No, Your Honor.

THE COURT: From Mr. Fortune?

ATTORNEY HUBRICH: No, ma'am.

THE COURT: Mr. Salazar?

ATTORNEY CORNWELL: No, Your Honor.

THE COURT: Okay. I'm ready. Bring in the jury. And do

you have your first witness ready to go? Excellent.

(WHEREUPON, the jury is seated in the courtroom at 2:08 p.m.)

(WHEREUPON, an off-the-record-discussion is held in open court.)

THE COURT: I hope you all had a very pleasant lunch. And at this time we are going to begin with the state's case. If you would call your first witness, please.

ATTORNEY GLOVER: Your Honor, the state calls Leta Boehler.

CLERK OF COURT: Ms. Boehler, if you'll please raise your right hand and state your full name for the record.

THE WITNESS: Leta Boehler.

LETA BOEHLER,

having first been duly sworn, was examined and testified as follows:

THE COURT: If you would spell your last name, please.

THE WITNESS: Boehler. It's B-o-e-h-l-e-r.

THE COURT: And your first name?

THE WITNESS: Leta, L-e-t-a.

THE COURT: Thank you. Your witness.

ATTORNEY GLOVER: Thank you, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY GLOVER:

Q Officer Boehler, could you tell us, what is your place of employment.

A Right now I'm at Dorchester County Sheriff's Office.
Q Could you tell us a little bit about your law enforcement background.
A I've been with Dorchester County since about September of last year. Before that, I worked for Summerville Police Department. I worked there from September until November of 2014. Before that, I worked for Consolidated Dispatch from like 2007 to '14.
Q And how about assignments?
A I've been on patrol as long as, from '14, once I went to the academy, from there until now, work on patrol, on the road.
Q And what was your assignment back on January 28th of 2019?
A I was working on the street on night shift.
Q And what was your rank?
A At the time, I was corporal.
Q Did you have the occasion to respond to 108 Myrtle Place?
A Yes.
Q And is that in the city of Summerville?
A Yes.
Q County of Dorchester?
A Yes.
Q What was the nature of the call for service?
A It was referenced to a shooting. They advised that someone had kicked in the back door and someone was shot.
Q Were you the first officer to arrive on scene?

A Yes, at the house.

ATTORNEY GLOVER: Your Honor, may I approach the witness?

THE COURT: You may.

Q Officer Boehler, could you tell us what you're looking at?

A This is an overview of the area, I guess like a Google image of the neighborhood.

ATTORNEY GLOVER: If the record could reflect, we're going to mark this for State's Exhibit 1. I'll get to that in just a second.

(WHEREUPON, State's Exhibit 1 is marked for identification.)

Q Did you go directly to 108 Myrtle Place?

A When I arrived on scene I first parked my vehicle a little further -- it's a cul de sac, so I parked it up a little.

And as I was approaching, I ended up going to the house that was actually to the right of it where one of the victims was. I had gotten flagged down.

Q When you got flagged down can you recall which address you were at?

A 107.

Q And when you got to 107 Myrtle Street, what did you see?

A There was the victim, Mr. Porter, was outside, standing near the driveway with, I'm assuming, the owner of the house at the time. And he said he had been shot. I could see that he was injured. And he said where his house was at 108, and pointed to it, and he said his friend was there and his dog, also, and they

were deceased.
Q So Mr. Porter was able to speak and relay what happened to him?
A Yes.
Q And how many suspects were you looking for?
A He had advised that it was four. He thought it was four.
Q And after talking to him what did you do?
A After I spoke with him I saw his injury was to, like, the upper part of his chest/shoulder area. Told him to stay there and wait for EMS, and that I was going to the house. And then I approached at house at 108.
Q And is this an accurate depiction of 108 Myrtle Place?
A Yes.
Q Did you see 108 Myrtle Place on this map?
A Like where it's at, yes.
ATTORNEY GLOVER: Your Honor, at this point in time the state would like to submit this overhead as State's Exhibit 1.
THE COURT: Any objection? First, Mr. Fortune?
ATTORNEY HUBRICH: Judge, I just don't know that it's been depicted as a fair and accurate representation.
THE COURT: So there is an objection?
ATTORNEY HUBRICH: Yes, ma'am.
THE COURT: Very well.
ATTORNEY GLOVER: Your Honor, if I could briefly lay more foundation.

THE COURT: Please.
ATTORNEY GLOVER: May I approach the witness?
THE COURT: Yes.
Q Officer Boehler, tell us again what you're looking at.
A This is an overhead view of the Robynwyn neighborhood. On it you can see the streets. Shamrock. And the first cul de sac off of it is where Myrtle Place is at.
Q And how exactly do you know that?
A Because I've worked that area during my time on shift with Summerville Police Department for several years.
Q So it's safe to assume that you are able to point on that map that you're looking at 108 Myrtle Place, as well as 107 Myrtle Place?
A Yes.
Q And I believe you mentioned Shamrock, as well?
A Yes. That's the road that comes in off of Maple.
Q And you covered this area for quite some time?
A Uh-huh (yes).
THE COURT: That's a yes?
A Yes, ma'am.
Q Does that seem like an accurate and fair depiction of the area of 108 Myrtle and the area surrounding it?
A Yes.
ATTORNEY GLOVER: Your Honor, at this point in time we'd like to offer the overhead as State's Exhibit 1.

THE COURT: Very well.
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No objection.
THE COURT: Very well.
ATTORNEY GLOVER: Thank you, Your Honor.
(WHEREUPON, State's Exhibit 1 is admitted into the record.)
ATTORNEY GLOVER: Thank you, Your Honor. Your Honor, if possible, we would like to display this for the jury.
THE COURT: Sure. You mean publish it. Go right ahead.
ATTORNEY GLOVER: Thank you, Your Honor.
THE COURT: And that's Exhibit?
ATTORNEY GLOVER: State's Exhibit 1, Your Honor.
Beg the Court's indulgence.
THE COURT: Okay.
ATTORNEY GLOVER: May it please the Court. Thank you, Your Honor.
Q Officer Boehler, I know this is a bit blurry, but if you can recall from our previous conversations, our previous conversations about the picture, I am going to point out what you stated was Shamrock. Could you let me know. And Shamrock is written on the map, but could you let me know if I am in the general vicinity of Shamrock Road? Does this seem familiar?
A Yes. That's where it meets North Maple.
Q Now, if we're looking for 108 Place on this map, do I need to go up or down?

A From there, you would take Shamrock across.
Q Okay.
A And then almost where your pen is, that is the cul de sac right there. And then right where your pen is now.
Q Okay. So this would be Robynwyn Place?
A That's Myrtle Place.
Q Myrtle Place. So this would be the location of the incident, 108 Myrtle Place?
A Yes.
Q Thank you, Officer Boehler. All right. When you got to 108 Myrtle, tell the jury what you saw.
A When I approached, the glass door was closed but the front door was open. I looked through and could see one victim on the ground right inside the door, in the living room area.

And then there was another gentleman that was with him, and he was trying to assess him and trying to render aid. I went into the door. He then advised me that Mr. Weaver was the victim on the ground, and that he had been shot several times. I asked if he was okay. He said that he was -- it was Mr. Swibaker. He said that he was not injured.

There was -- whenever I approached Mr. Weaver, he was laying on his back on the ground. He had several gunshot wounds to, like, his upper chest area. He had some blood coming from his mouth, and he wasn't breathing very well, his breathing was obstructed because of the blood.

So I tried to assess if he had any other injuries to him that I could see, any other exit wounds or anything like that. I had asked Mr. Swibaker to grab me some towels. And I started CPR on Mr. Weaver.

Q Could you assess what type of injuries it appeared as though Mr. Weaver was suffering from?

A It appeared to be gunshot wounds. He had said he had been shot -- Mr. Swibaker had said that he had been shot, and it was consistent with gunshot wounds.

Q Was EMS called?

A Yes. They usually stage for incidents like that, so they wait for us to get inside and secure it. So once I was inside the house and I could let them know it was secure for EMS, they could come on in.

Q All right. And what did you do then?

A I did CPR on Mr. Weaver until they got there. I believe they first assessed Mr. Porter outside in the driveway, and then sent EMS, and the head person came inside. When they came inside I told them what I had with Mr. Weaver.

And then I had Mr. Swibaker step outside. I did a quick sweep of the house to make sure there weren't any other victims.

While I was waiting, I had been talking to him, kind of asking, if there was anyone else in the house, and he said no, the dog was in the back room. So I did a quick sweep. The canine in the back room was deceased. There was no other people

in the house.

So I had him outside, and had him go out and meet with some other officers out there to do a statement on what he saw. And I just secured it and didn't let anyone else in.

Q Did you locate any of the suspects in the residence?

A No. There was not anyone inside.

Q Did you take any statements?

A I didn't take any written statements. Some of the other officers that had arrived on scene, they were handling that. I had other duties I was doing.

ATTORNEY GLOVER: Beg the Court's indulgence.

THE COURT: All right.

Q Officer Boehler, if you could stand and show to the jury where you saw with your own eyes where Mr. Porter was shot.

A Mr. Porter, it appeared that he was shot in the chest/shoulder area. I could see that he was favoring that side. So I'm not a medical professional, and he had a shirt on, but it appeared that it was to the chest/shoulder.

Q Thank you. Officer Boehler, please answer any questions the defense may have.

THE COURT: Yes. On behalf of Mr. Fortune?

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court.

THE COURT: Yes.

CROSS-EXAMINATION

BY ATTORNEY HUBRICH:

Q Officer Boehler, you were the first one on the scene; right?

A Yes, ma'am.

Q And it was unusual because you were the only person there, there was no -- you had no back-up?

A When I first arrived on scene, yes.

Q And so you went by yourself into this house where there was alleged to have been a shooting?

A Uh-huh.

Q And that's an unusual circumstance. Typically there's other officers or there's other back-up there. Correct?

A Usually there's other officers, but we had gotten information that the suspects had left.

Q So you go into this house. First you come up, and you testified, I think you testified, you spoke to Marcus Porter.

A Uh-huh.

Q Throughout the course of your investigation and coming onto the scene, I want to talk about the people that are involved. There was Marcus Porter; right? We're going to call him Porter. He lived in the house. Right?

A Uh-huh.

Q There were a David Swibaker. We're going to call him Swibaker. He lived in the house. Right?

A Yes.

Q And you spoke to both of them on scene?
A Yes.
Q And then there was a Joe Weaver, and he was the one that you said was on the floor and had been shot when you came in?
A Yes.
Q So we have Weaver, Porter, Swibaker; right?
A Yes.
Q Other than the 911 dispatcher, the person who took the 911 call, you were the first to talk to both witnesses Swibaker and Porter?
A Yes, the first officer on the scene.
Q And you specifically asked Mr. Porter, Who shot you? Right?
A I do not recall.
Q Did you have a body camera on that night?
A Yes.
Q And that body camera, would that record everything that happened that night?
A It should.
Q And if you were to hear that body camera, clips from that body camera, would that refresh your recollection as to what was told to you that night?
A Yes.
Q I'm going to play for you from your body camera.
ATTORNEY GLOVER: Objection. Your Honor, she's publishing it now and she has not thoroughly refreshed Officer Boehler's

memory.

THE COURT: It's not in evidence at this point. You can, however, authenticate it and it can be placed into evidence.

ATTORNEY HUBRICH: Judge, I'm not moving it into evidence. I'm just using it to refresh her recollection.

THE COURT: All right. Are you going to have the ability for her to see it and not publish it to the jury?

ATTORNEY HUBRICH: No, ma'am. It's just a body camera.

THE COURT: Okay. Well ...

ATTORNEY HUBRICH: It was provided to me in audio form. I can play it for her in audio form to refresh her recollection.

THE COURT: I understand. But the problem is you'll be publishing that to the jury. Do you have a transcript of it, perhaps?

ATTORNEY HUBRICH: No, ma'am.

THE COURT: Okay.

ATTORNEY HUBRICH: I have notes from what her in-car camera says that I created.

THE COURT: I understand. And tell me what you intend to play it on?

ATTORNEY HUBRICH: The computer that was -- it was provided to me digitally by the state. And I just intend to play it on the computer, or connect it to the court system.

THE COURT: Okay. And is what you have, is it a thumb drive or a CD? How is it that you have it? Or is it just an audio

file?
ATTORNEY HUBRICH: It was provided to me as an audio file.
THE COURT: As an audio file.
ATTORNEY HUBRICH: It's actually video. It's the in-car camera.
THE COURT: I'm sorry, I'm thinking about the words. Yes?
ATTORNEY GLOVER: Your Honor, if I may, we have no objection to Attorney Hubrich refreshing Officer Boehler's memory with her notes, as long as it is used to actually refresh her memory.
THE COURT: Okay. Have you seen the notes?
ATTORNEY GLOVER: No, Your Honor.
THE COURT: Why don't you take a look at the notes and satisfy yourself.
ATTORNEY GLOVER: Thank you, Your Honor.
THE COURT: Counsel, let my see you aside just a sec.
(WHEREUPON, an off-the-record discussion is held at sidebar.)
Q So, Officer Boehler, you had a body camera on that night, and you also had an in-car camera. Right?
A Yes, ma'am.
Q And that was recording what was being said and what was being done on the night in question?
A Yes, it should be.
Q Did you have a chance to review those before you came to testify today?

A No, ma'am.
Q When you approached Marcus Porter did you ask him, Who shot you; do you know who it was? Do you remember?
A I don't recall.
Q You don't remember. If I showed you notes from the in-car camera that recorded everything that was said that night, would that refresh your recollection?
A If you have it.
ATTORNEY HUBRICH: May I approach?
THE COURT: You may.
Q I'm going to hand you some notes. At the top of those notes it says L. Boehler. Is L. Boehler your name?
A Yes, ma'am.
Q In-car camera video notes?
A Yes.
Q The first one says, Leta Boehler, Question:
THE COURT: You're publishing it. Just hold on, just let her see if it refreshes her recollection. You can ask her.
Q In regards to the first, I guess, dot, that would be.
A The first dot?
Q Yes.
A Okay.
Q Do you recall now if you asked him, Who shot you; do you know who it was?
A I asked him if he knew who it was.

Q And his answer to you was, No, I don't know?
A Correct.
Q If you refer to the third one, I'm going to ask you, you asked again when you went in to talk to Mr. Swibaker. He was in the house; right?
A Yes.
Q And you asked him, Who shot him? You were referring to Mr. Weaver. Right?
A Yes.
Q And he advised you, I don't know, there's two or three black guys came through the back door.
A Yes.
Q So your testimony on direct was that there were four black males that were involved. But what Mr. Swibaker told you was that there were actually two or three black guys that came through the back door. Right?
A I believe it was during questioning him further and asking him while I was doing CPR and other things that he indicated it was four.
Q If you could watch your bodycam and listen to your bodycam would it refresh your recollection that, actually, he never corrected that statement to you?
A Okay.
Q Do you know whether or not he ever corrected that statement to you?

A Not off the top of my head. I do not recall.
Q Would it surprise you to know that he actually never corrected that statement to you, Mr. Swibaker? Would that surprise you? Yes? No?
A I don't recall what all was going on at the time. This was several years ago, so I don't ...
Q Would it help you to listen to the in-car video to refresh your recollection?
A I can listen to the in-car video. If you're saying that that's what it says, then okay.
Q Would it help you, to answer the question, to listen to your in-car video?
A I can listen to it.
Q I just need a yes or a no.
A Yes.
Q Yes.
ATTORNEY HUBRICH: Judge, at this point I'd ask for a recess so that she can listen to her in-car video to refresh her recollection.
THE COURT: All right. Very well. Counsel, any objection?
ATTORNEY GLOVER: Beg the Court's indulgence.
THE COURT: Sure, absolutely. And do you have it -- Ms. Hubrich, do you have it on your computer? Is that where it is?
ATTORNEY HUBRICH: I have it loaded on my computer and

burned to a disk, Judge, that my investigator burnt to a disk.

THE COURT: So your laptop is with it loaded?

ATTORNEY HUBRICH: Do I have it? Not currently. Is yours loaded? Not currently. I can.

THE COURT: Well, yeah. If you want her to listen to it, we better get it on something. Yeah.

ATTORNEY GLOVER: Your Honor, at this point in time we'd like to object and make the argument that this is hearsay. At the point in time when David Swibaker takes the stand, Ms. Hubrich will have the opportunity to impeach him then.

THE COURT: I gotcha. You know, if Ms. Hubrich thought it would refresh this witness's recollection, she can hand her the Manhattan phone book to see if it will refresh her recollection.

ATTORNEY GLOVER: Yes, Your Honor.

THE COURT: Which she's entitled to do. So on your laptop, what kind of plug? Do you have a typical ear, you know, little stick plugs as opposed to like --

ATTORNEY HUBRICH: Headphones. I do. Can I have the Court's indulgence for one second? I might be able to fix it.

THE COURT: Sure. Counsel, are you all trained in the computer that we're talking about?

ATTORNEY HUBRICH: I'd like these marked Defendant's Exhibit 1, and both of these as Exhibit 2.

(WHEREUPON, Defendant's/Fortune Exhibits 1 and 2 are marked for identification.)

ATTORNEY HUBRICH: I can try to correct it, Judge. If we can continue?
THE COURT: Sure.
Q So, Deputy Boehler, on the night in question you went out to the scene and you had a body camera on; correct?
A Correct.
Q And you also had an in-car camera?
A Correct.
Q And that records everything, both audio and video; right?
A Yes.
Q And at the end of your shift you turned those over into evidence and they were taken into evidence; right?
A Usually we have -- for something like that, yes, we have to make sure that it would be put into evidence.
Q And that would have been done in this case?
A Yes.
Q And that would have been provided to me. And would you be able to identify that if I was to show it to you?
A What was provided to you, or that it's my body camera?
Q That it's your in-car camera.
A I would have to see if it has my name on it.
ATTORNEY HUBRICH: Judge, permission to show Deputy Boehler's in-car camera so that she can identify it?
THE COURT: To her.
ATTORNEY HUBRICH: Sure, Judge. I don't know how to do that

in these parameters. Do you want me to use the red computer?

THE COURT: Yes. And do you need to have the audio, as well?

ATTORNEY HUBRICH: Yes, ma'am.

THE COURT: Okay. We are looking for headphones to go with -- if that's what you need to do, we need to be able to do it and not publish to the jury. But that ought to be doable. Do you know -- oh, here comes the calvary. Those are the ones I was sending for. Thank you. Here, we go, Ms. Hubrich.

(WHEREUPON, an off-the-record discussion is held at sidebar.)

(WHEREUPON, the witness privately watches/listens to disk.)

ATTORNEY HUBRICH: Judge, may we approach?

THE COURT: Sure.

(WHEREUPON, an off-the-record discussion is held at sidebar.)

Q So what I've shown you, was that a copy of your video, ---

A Yes.

Q --- Deputy Boehler?

A Yes.

Q And if I was to show you clips from that video, would it refresh your recollection as to statements that were made to you that night? If I was to have you individually listen to clips from this video, would that refresh your recollection as to what was said to you that night?

A Yes.

(WHEREUPON, the witness privately listens to a video.)

Q Can you hear it?

A Yes.

Q So you asked Mr. Porter, Who shot you; do you know who it was?, do you remember what the answer was?

A He said, No, I don't know.

Q Okay. When you asked Mr. Swibaker, Who shot him?, isn't it true he answered you, I don't know, there's two or three black guys that came through the back door.

A Yes.

Q That's important information; isn't it?

A Yes.

Q After you came to the scene, you took Mr. Swibaker to talk to another police officer so that they could get a written statement. Correct?

A Correct.

THE COURT: Let me just, at this point, the witness can be seated. And, Ms. Hubrich, she's able to answer without needing her recollection refreshed.

ATTORNEY HUBRICH: Perfect.

THE COURT: So you certainly may be seated at this point. Thank you. And you may proceed.

Q And when you took him to the other officer to have him give a statement, you continued to interview Mr. Swibaker; correct?

A I believe I asked him some questions. Yes.
Q And you asked him, Is it anyone you know?, and he answered, No?
A Correct.
Q And he said, I don't know their names?
A Correct.
Q And then he told you, I don't know anything about them?
A Correct.
Q You also interacted with Marcus Porter on the scene; right?
A Yes.
Q Did either one of them tell you that they knew who the perpetrators were?
A They did not tell me.
Q Did either one of them tell you that they recognized any of the perpetrators?
A Not that I recall; no.
Q Did either of them tell you that they knew they were being robbed for drugs?
A Not specifically, no.
Q Isn't it, in fact, true that Mr. Swibaker told you, We have no idea why they were robbing us?
A He didn't.
Q And neither of them told you a story about how they had been robbed 10 days prior?
A It was not any prior knowledge to me.

Q So, no, neither of them told you that they had been robbed 10 days prior?
A No.
ATTORNEY CORNWELL: Your Honor, I am going to object to that. *Lyle*.
THE COURT: It's already been asked and answered. So do you intend to go into it again?
ATTORNEY HUBRICH: I'm complete with my questions.
THE COURT: Okay.
ATTORNEY HUBRICH: Thank you, Deputy Boehler. And I apologize, you have one more attorney you have to deal with. I'm sorry.
THE COURT: All right. Yes, ma'am?
ATTORNEY CORNWELL: Thank you, Your Honor.

CROSS-EXAMINATION

BY ATTORNEY CORNWELL:
Q Deputy Boehler, you indicated that you were the first to arrive on scene when you were dispatched?
A Yes.
Q About what time was that?
A I do not recall what time that was. It was two years ago.
Q If I told you that it was after midnight, would that sound accurate?
A Possibly, yeah.
THE COURT: Keep up your voices just a little bit. I'm

having trouble hearing you. And I'm so sorry.

ATTORNEY HUBRICH: I apologize, Your Honor.

THE COURT: I'm hoping some of the jurors are having difficulty hearing, because I am.

Q And when you're dispatched to a call, that simply means that's when the call came in; correct?

A It's what time the call is. Sometimes it's what time the call is received into the center and when 911 is answered. Then they have like a dispatch time, that's what time they tell us to go to it.

Q But in no way are you saying the time that you were dispatched is necessarily the time that the incident occurred?

A That's just what time it's told to me.

Q And we just went through some of the dialogue that you had with Mr. Porter and Mr. Swibaker. But suffice it to say, you were told by Mr. Swibaker two to three guys came in the back door; correct?

A Yes.

Q And you do an incident report anytime you respond to a scene; correct?

A Yes.

Q And the purpose of that incident report is to reflect accurate information for instances like this when it's years later and you're having to testify about something that happened years ago?

A Yes.
Q So it's important to get that information in your incident report correct?
A Yes.
Q And you did your incident report the night that this occurred? When did you do your incident report?
A I believe it was that night before I left. Actually, it was probably at like 6:00 a.m., so ...
Q Have you had a chance to review your incident report?
A Not recently, no.
Q When you spoke to Mr. Swibaker, he told you two to three suspects; correct?
A That's what is in there.
Q So if you then put in your report subsequently that he told you four people, that would be wrong; correct?
A I don't know if there was other video that has more information. That's what I've heard.
Q Based on what you've heard.
A Based on what I've heard from my body camera video that has been shown to me in here. I have not heard him say four.
Q So your incident report would be wrong if that were the case?
A If that was the case based on the body camera that you showed me.
Q Did you speak to anybody else on scene that night?

A As far as?
Q Did you speak to other witnesses?
A I don't believe I spoke to the neighbors, because there was other officers that were on the scene that spoke to them. I attended to Mr. Weaver. EMS arrived on the scene. Relayed that information. Made notifications to my command staff.
I don't recall right now speaking to anyone else from the scene.
Q And so at no point did you ever go door to door to speak to neighbors to see if anybody else heard anything/saw anything?
A Again, this was two years ago. So not that I recall.
Q Thank you.
ATTORNEY CORNWELL: No further questions, Your Honor.
THE COURT: All right. Redirect?
ATTORNEY GLOVER: Yes, Your Honor.

REDIRECT EXAMINATION

BY ATTORNEY GLOVER:
Q Just briefly, Officer Boehler. So you stated that both Marcus and David don't know who shot them; is that correct?
A That's what they advised.
Q Marcus told you four black males?
ATTORNEY HUBRICH: Objection, Your Honor. Leading.
THE COURT: Sustained. Please don't lead.
ATTORNEY GLOVER: Thank you, Your Honor.
THE COURT: Yes.

Q And could you state for the jury how many individuals Marcus told you were at the incident location?
A Four.
Q And what was their nationality?
A Black males.
Q Is it accurate to say that David originally stated two or three, maybe four ---
ATTORNEY HUBRICH: Objection, Your Honor. Leading.
THE COURT: Let me hear the rest of the question. And don't answer it. Let me rule on it. So let me hear the question.
ATTORNEY GLOVER: Thank you, Your Honor.
Q Is it or is it not true that you previously stated David said two or three, maybe four?
THE COURT: No objection; right?
ATTORNEY HUBRICH: No objection.
THE COURT: You may answer.
Q I'll repeat the question.
A Okay, thank you.
Q Yes or no, David said he believed it was two or three, maybe four?
ATTORNEY CORNWELL: Your Honor, I'm going to object to this because it's an inaccurate reflection of what is in her body cam. That's not in evidence.
ATTORNEY GLOVER: It was previously stated on the stand, Your Honor.

THE COURT: Overruled.

ATTORNEY CORNWELL: No, that is not what was previously stated on the stand, Your Honor.

THE COURT: Overruled.

ATTORNEY GLOVER: Beg the Court's indulgence.

THE COURT: Sure.

Q Yes or no, David said it was two or three, maybe four, individuals?

ATTORNEY CORNWELL: Objection. Your Honor, if we need to have her refresh her recollection and play the clip, then she should do that. But the testimony ---

ATTORNEY GLOVER: The state withdraws that question, Your Honor. No further questions from us.

THE COURT: All right. Very well. All right. Recross?

ATTORNEY HUBRICH: Thank you, Judge.

RECROSS-EXAMINATION

BY ATTORNEY HUBRICH:

Q Your bodycam, you refreshed your recollection, right, with the clips?

A That was the in-car.

Q In-car, you refreshed that with the clips. Can you testify, did David Swibaker tell you that night, I don't know, there's two or three black guys came through the back door, period?

A He did make that statement.

Q And that's the only statement that you heard today?

A That's the only statement I heard today.
Q Do you remember, when you came into the house David Swibaker was standing there, and Joe Weaver was on the ground?
A Yes.
Q David Swibaker was smoking a cigarette. Do you remember that?
ATTORNEY GLOVER: Objection, Your Honor. This is beyond the scope.
THE COURT: It certainly does appear to be that way. Will you tie it in?
ATTORNEY HUBRICH: No, ma'am, I cannot tie it in.
THE COURT: All right. Then sustained.
Q Do you remember walking into the house? You testified on direct that you walked into the house and David Swibaker was there.
A Yes.
Q And Joe Weaver was on the ground. You testified to those things on direct. Correct?
A Yes.
Q And is there anything further that you remember David Swibaker doing when you walked into that house?
A Today, no.
ATTORNEY HUBRICH: I have no further questions.
THE COURT: All right. Any further cross?

RECROSS-EXAMINATION

BY ATTORNEY CORNWELL:

Q Ms. Boehler, Officer Boehler, we've gone over the statement, David Swibaker stated it was two or three suspects. What was he doing when he gave you that statement?

A What was?

Q What was Mr. Swibaker doing as he's giving you this statement?

A I don't recall.

Q Where were you when you took that statement from him, what were you doing when you got the statement from him?

A When I came into the house, I started attending to Mr. Weaver on the floor. So as far as what's going on, my attention is doing other things, so I'm paying attention to this, as well. So as far as what he was physically doing, I don't know.

Q Again, would it help refresh your recollection if you were to look at the clip of your camera?

A If you have the body camera. I don't.

ATTORNEY CORNWELL: Your Honor, I'm going to move on.

THE COURT: All right.

Q Officer Boehler, when you walked in and you saw Mr. Weaver on the ground and you started rendering aid, what is your recollection of Mr. Swibaker's demeanor when you walked into the house?

A He seemed nervous and upset.
Q Do you recall that he was smoking a cigarette?
A Today, no, I don't recall that.
Q Do you recall that he was talking on the phone and taking phone calls?
A I do not recall.
Q And if that were on your body camera, obviously that is a more accurate reflection of what happened that night?
A If it's on the body camera, then that's what happened.
ATTORNEY CORNWELL: Nothing further, Your Honor. Thank you.
THE COURT: Very well, thank you. You may step down.
THE WITNESS: Thank you.
THE COURT: Call your next witness, please.
ATTORNEY GLOVER: Thank you, Your Honor. The state calls Christina Denson.
CLERK OF COURT: If you'll please raise your right, and state your full name for the record.
THE WITNESS: Christina Nicole Denson.

CHRISTINA N. DENSON,

having first been duly sworn, was examined and testified as follows:

THE COURT: And would you please state your full name again, and spell your first name and then your last name, please.
THE WITNESS: Christina Nicole Denson. First name is C-h-r-i-s-t-i-n-a. Last name, D-e-n-s-o-n.

THE COURT: Thank you. Your witness.

ATTORNEY GLOVER: Thank you, Your Honor. May it please the Court.

THE COURT: Yes.

DIRECT EXAMINATION

BY ATTORNEY GLOVER:

Q Ms. Denson, how are you today?

A Good, how are you?

Q Good. If you could remove your mask just a bit so the jury can hear all of your answers. I promise I won't keep you long. Where are you currently employed?

A Summerville Police Department.

Q What is your current position with Summerville Police Department?

A I am the records custodian.

Q How long have you been employed there?

A Seven years.

Q Have you had any other jobs with law enforcement and/or 911 dispatch?

A I was a 911 dispatcher with Summerville before this position I have now.

Q What are your current duties as records custodian?

A I maintain discovery records, and I disseminate those records when it's requested.

Q What kind of records?

A Arrest records, police bodycam video, in-car video and telephone audio.

(WHEREUPON, State's Exhibit 2 is marked for identification.)

Q I'm showing you an item that has been marked State's Exhibit 2 for identification purposes.

ATTORNEY GLOVER: Your Honor, may I approach the witness?

THE COURT: You may.

Q Do you recognize this, Ms. Denson?

A Yes, ma'am, I do.

Q What is it?

A It's a CD disk with an audio.

Q What type of audio?

A It's the 911 phone call.

Q And this was received from Summerville Police Department?

A Yes, ma'am. It was received through our dispatch center, a request from law enforcement.

Q How do you know?

A I listened to it previously.

Q Did you create it?

A I did.

Q How often did you create these?

A I create these files on a weekly basis.

Q Are these records kept in the ordinary course of business?

A Yes, ma'am, they are.

Q Were these recordings captured at or near the time the 911

call was originally placed?
A Yes, ma'am, it was.
Q Are your initials on that disk?
A Yes, ma'am, they are.
Q And when did you put your initials on that disk?
A This morning.
Q After?
A Listening to it.
ATTORNEY GLOVER: Beg the Court's indulgence. No further questions, Your Honor.
THE COURT: All right. Cross-examination, Mr. Fortune?
ATTORNEY HUBRICH: No questions, ma'am.
THE COURT: Cross-examination, Mr. Salazar?

CROSS-EXAMINATION

BY ATTORNEY CORNWELL:
Q Ms. Denson, when a call comes into 911, is that the time the incident actually occurs or is that just the time that somebody called in an incident?
A I'm sorry. Can you repeat the question?
Q Sure. When you received a call from 911, that's just when the caller called about the incident, correct; that's not anything reflecting on when the incident may have actually occurred?
A Yes, ma'am.
Q And as a 911 operator, have you had occasion where people

have called hours, if not days, after an incident occurred?
A Yes, ma'am, I have.
ATTORNEY CORNWELL: Nothing further, Your Honor.
THE COURT: All right. Redirect?
ATTORNEY GLOVER: Nothing from the state, Your Honor. If I may approach to get State's Exhibit 2?
THE COURT: You may. Thank you. You're free to go. Your next witness, please.
ATTORNEY GLOVER: State calls Marcus Porter.
CLERK OF COURT: Mr. Porter, if you'll please raise your right and state your full name for the record.
THE WITNESS: Marcus Porter.

MARCUS PORTER,

having first been duly sworn, was examined and testified as follows:

THE COURT: And if you would state your full name for the record once you get seated, and spell your name, please.
THE WITNESS: It's Marcus Porter. M-a-r-c-u-s P-o-r-t-e-r.
THE COURT: Your witness.

DIRECT EXAMINATION

BY ATTORNEY OSBORNE:
Q All right, Marcus. How many guys broke into your house?
A Four.
Q All right. Let's get started with -- any doubt about that?
A No doubt.

Q All right. Where are you from?
A Originally?
Q Yeah.
A Iowa.
Q How old are you?
A Forty-three.
Q I'm just going to ask you some background questions to get you used to talking, get people used to listening to you, okay. You got any kids?
A Yes, sir. I have two.
Q How old are they?
A One is 18 and one is 20.
Q If you don't mind, can you move the microphone to you, or maybe scoot up a little bit. Just kind of speak up a little bit, okay. All right. So when did you move to South Carolina?
A In 2015.
Q What brought you here?
A My family.
Q You work?
A Yes, sir.
Q What type of work do you do?
A I own my own tree service.
Q I'm going to be a pest. Can you move the mic up a little bit closer to you and speak up a little bit more. You're kind of soft-spoken. You said you own your own tree-cutting business?

A Yes, sir.
Q Okay. Thanks, that's better. All right. So let's get a couple things out of the way, I'm sure it's going to come up. You got yourself in a little bit of pickle with some pending charges. Is that fair to say?
A Yes, sir.
Q All right. I'm going to go through some of them. And if I miss some, I'm sure it will come up. You've got a possession of a pistol charge. You've got distribution of a controlled substance charge within close prox. And I think both of those charges might have stemmed from this incident right here. Is that right?
A Yes, sir.
Q You've got, after that, okay, after that, you picked up a PWID, possession with intent to distribute a drug; right?
A Yes, sir.
Q Schedule I, II, III?
A Yes, sir.
Q Trafficking meth?
A Yes, sir.
Q The list keeps going. You've got distribution of meth?
A Yes, sir.
Q Distribution of a Schedule I through IV, some kind of, drug?
A Yes, sir.
Q All right. Then you got picked up again after that.

Stuff's kind of getting bad for you; is that right?
A Yes, sir.
Q You get a possession of a meth or a cocaine base?
A Yes, sir.
Q I'm not asking which one. And then you got unlawful carrying of a pistol, I think maybe two guns or something, the allegation?
A Yes, sir.
Q And that's from November of last year, about right when you were arrested?
A On the pistol?
Q Yeah. If you don't remember, that's fine. It doesn't matter.
A I don't remember.
Q Okay. And I don't even know what all those charges add up to, but you're looking at a lot of time.
A Yes, sir.
Q Is that fair to say?
A Yes, sir.
Q All right. So, in preparation for trial, you met with two assistant solicitors; is that correct? Well, maybe three, counting Ms. Glover.
A For this trial?
Q Yeah.
A Yes, sir.

Q Your first meeting was with Don Sorenson; is that correct?
A Yes, sir.
Q And you're represented on your charges; you have an attorney?
A I do.
Q Brady Benoit?
A Yes, sir.
Q So you, your attorney, Mr. Benoit, and Mr. Sorenson, the former assistant solicitor who had this case ---
ATTORNEY HUBRICH: Objection, Your Honor. Leading.
THE COURT: Let me hear the whole question.
Q You, Mr. Benoit, Assistant Solicitor Don Sorenson, y'all got together and talked about this case on one occasion; is that true or wrong, or am I wrong?
A Yes, sir.
Q About November the 4th of 2020?
ATTORNEY HUBRICH: Objection, Your Honor. Continuing to lead.
THE COURT: Don't lead.
ATTORNEY OSBORNE: Your Honor, may I approach?
THE COURT: You may.
(WHEREUPON, State's Exhibit 173 is marked for identification.)
Q I'm showing you what's been marked as State's Exhibit 173. Can you take a look at that and tell me if you recognize that.

A Yes, sir.
Q Did you or did you not enter into an agreement with Mr. Sorenson and Mr. Benoit regarding your testimony in this case?
A Yes, sir.
Q And does that document encapsulate the contents of that agreement?
A Yes, sir.
ATTORNEY OSBORNE: Your Honor, at this time I'd seek to admit and publish State's 173.
THE COURT: Any objection from Mr. Fortune?
ATTORNEY HUBRICH: Just relevance, Your Honor.
THE COURT: Mr. Salazar?
ATTORNEY CORNWELL: Same objection, Your Honor.
THE COURT: Relevance?
ATTORNEY CORNWELL: Yes, Your Honor.
THE COURT: Overruled.
(WHEREUPON, State's Exhibit 173 is admitted into the record.)
Q So let's just see if we can attach the way it is and talk about what y'all agreed to. I know that is going to be tough to read. Can you see it?
A Yes, sir.
Q You can see it? Okay, you've got better eyes than me. Can you read that?

A I believe.
Q Okay. Well, what if I read it? I can see it. Would that be okay?
A Yes, sir.
Q The following constitutes the agreement between the attorneys of the government and Marcus Porter, hereinafter referred to as the client. Right?
A Yes, sir.
Q The agreement. The purpose of this agreement is to provide the government with ---
THE COURT: You know you're going to have to slow down, because I really want my court reporter to come back tomorrow.
ATTORNEY OSBORNE: I've got a lot I want to get through. Thank you, Judge.
THE COURT: You're welcome.
Q The purpose of this agreement is to provide the government with an opportunity to assess the value, extent and truthfulness of your information.
A Yes, sir.
ATTORNEY HUBRICH: Objection, Your Honor. Improper bolstering of this witness.
THE COURT: Overruled.
Q This is not a cooperation agreement; is that correct?
A Correct.
Q Client has agreed to provide the government with statements

and information and to respond to questions so that the government may evaluate the client's statement and other information in making prosecutive decisions.
A Yes, sir.
Q Provided client is truthful and described above, remaining terms of the agreement are as follows. So now we're getting into it meat of it. No statements made or other information provided or information derived therefrom by you will be used against you in any matter. Right?
A Yes.
Q You, Marcus Porter, is hereby informed and understands that this agreement does not extend to any statements or other information involving the client being involved in a homicide or other acts of extreme violence.
A Yes, sir.
Q What is your understanding of the agreement that you entered into with Mr. Sorenson, which I've said -- all right, we'll keep it going -- and your attorney?
A That that right there gives the state the information that they need, and whatever I say here can get used against me later on down the road. So whatever I say here can be used against me.
Q In reference to your drug charges?
A Yes, sir.
ATTORNEY HUBRICH: Objection, Your Honor. Leading.
THE COURT: Don't lead.

Q Well, what would be used against you?
A I can't think of anything else. Judgment.
Q Okay. Or could information be used against you to prosecute you for those drug charges?
A Since I have pending charges?
Q Right.
A Yes, sir.
Q Okay. All right. So let's get into January of 2019. Where were you living then, what was your address?
A 108 Myrtle Place.
Q What subdivision was that in?
A It's in Robynwyn.
Q And did you have a roommate back then?
A I did.
Q And who was that?
A David Swibaker.
Q All right. How did you meet David?
A Through his girlfriend.
Q Do you remember her name?
A Jamie Middleton.
Q Okay. And so y'all were roommates. It was just you and him?
A Yes, sir.
Q Okay. So this happened in January of 2019. So about when did David move in?

A I believe it was June of 2018.
Q Okay, so we're looking at about six or seven months?
A Yes, sir.
Q All right. Let's talk about Joe Weaver. Did you know him -- did you have a nickname for him?
A J.B.
Q J.B. How would you describe your relationship with J.B?
A J.B. was a genuine friend. There's not many out there.
Q And how and when did you first meet J.B?
A He was one of the first people I met when I moved here in 2015.
Q Okay. How is it that you came about meeting J.B?
A Through his son, Steven.
Q Were you and Steven on the same age level, or were you and J.B., or how did that work out?
A J.B.'s just a few years older than me, and so obviously Steven's a little younger than I am. But J.B. and I had, we clicked just like that, anyway.
Q Was he the type of friend that you'd just kind of talk to and run into every now and then, or did he actually come to your house and hang out with you?
A No, he'd come to the house and hang out.
Q Do you know if J.B. carried a pocketknife?
A I believe he did. I don't know for a fact.
Q Okay. Had you ever you seen him with one before?

A Yes, sir.
Q All right. So, and, I mean, this kind of comes to the agreement and the questions that I'm going to ask you here. Is it fair to say, that back in 2019, that you were involved in selling marijuana?
A Yes, sir.
Q Now, were you like, you know, some kind of big, heavy pusher, pounds?
A No, sir. I'd say penny pusher, if that. Just for extra cash.
Q All right. Let's get right into why we're all here. Going back to the night of January 27th, going into the night or the early morning hours of January 28th, 2019, were you home that night?
A Yes, sir.
Q And who else was with you?
A J.B. and David Swibaker.
Q J.B. and David?
A Yes, sir.
Q And did you have a dog at that time?
A Yes, sir.
Q Was your dog there, too?
A My dog was with me.
Q All right. So about your dog, how long had you had him? Or, was it a boy or girl?

A It was a boy.
Q And how long had you had him it?
A Four to six months.
Q How did that come about?
A He was a stray that took a liken to me and I couldn't get rid of him, I couldn't shake him. Fell in love with him.
Q Did he just show up one day, or did you pick him up on the side of the road?
A He just showed up.
Q Well, I mean, I guess we might as well go ahead and get this out there. What was the dog's name?
A It was -- pardon the Court -- it was motherfucker.
Q That's quite an enduring name. How did he get that name?
A Like I said, I was trying to shake the dog. I like dogs, right, but I wasn't at a point in my life where I needed a dog. So I'm like, Get out of here, motherfucker; come on, motherfucker; let's eat, motherfucker. Next thing I know, he started responding to it.
Q Was he an inside dog or was he an outside dog?
A He was an inside dog.
Q At one point did you even try to call animal control to get rid of him?
A Yes, sir.
Q And what happened then?
A They showed up, and I couldn't. I couldn't. He hung out.

Q He wouldn't leave?
A Uh-uh.
Q All right. You said he was an inside dog. Where did he sleep?
A In my bed.
Q All right. Going back to the night of the incident, you said J.B. came by. Why was it that he came by?
A Main reason, I mean, to hang out and to show off his moped.
Q Okay. You said show off his moped. Was he particularly happy about it?
A Quite. Yes, sir.
Q Was it a new purchase, or something he had for a while?
A It was a new purchase.
Q And this was a normal occasion, for him to come by?
A Yes, sir.
ATTORNEY OSBORNE: Your Honor, may I approach?
THE COURT: You may.
(WHEREUPON, State's Exhibit 32 is marked for identification.)
Q All right. I'm showing you what's been marked as State's 32. Can you take a look at that and tell me if you recognize that.
A Yes, sir. That's J.B.'s moped.
Q And did you see it that night?
A Yes, sir.

ATTORNEY OSBORNE: Your Honor, at this time we'd seek to admit State's 32, and publish for the jury.

THE COURT: All right. Counsel, have you seen it, and is there any objection?

ATTORNEY HUBRICH: Can I take a look at it real quick.

ATTORNEY OSBORNE: Your Honor, for the record, we have provided both defense attorneys a copy of all of the exhibits that we plan on introducing.

THE COURT: All right. Any objection, Ms. Hubrich?

ATTORNEY HUBRICH: No objection, Judge.

THE COURT: Ms. Cornwell?

ATTORNEY CORNWELL: No objection, Your Honor.

THE COURT: All right. Exhibit is in evidence.

(WHEREUPON, State's Exhibit 32 is admitted into the record.)

ATTORNEY OSBORNE: And, your Honor, I'd also request, if I can go off my computer here, I can move through a lot of these pictures a lot faster fighting the ELMO.

Q Okay, so that's 32. State's 32 is what I'm showing you now. That's J.B.'s moped?

A Yes, sir.

Q And where is that parked?

A It's in my driveway at 108 Myrtle Place.

Q All right. So I'm going to ask you to sort of provide the jury with sort of like a visual layout of what your house looks like, okay. When I'm going through the front door and I first

walk in through the front door, what am I looking at there?
A It's, right when you walk in, there's a fish tank on the left. And it's an open concept, living room, dining room and kitchen all in one. Right when you walk in, there would be a fish tank right when you walk in. And the living room would be like a sofa, loveseat and a coffee table. And that's all carpeted. And then there's like a linoleum floor separating the dining room from the kitchen.
Q Okay. So when you walk in through the front door, you're in the living room. Couch is on the right?
A Yes, sir.
Q And then you keep going straight, you get into the kitchen?
A Yes, sir.
Q Is there a back door to the kitchen?
A There is, and the back laundry room.
Q And then I assume there's a hallway?
A Yes, sir.
Q All right. When you go down the hallway what rooms or doors do we have going down the hallway?
A So when you come in, there's only, you can only turn left or go straight in towards the kitchen and the back door. You go down the hallway, and the first room on the left would be where David Swibaker was staying. And then the next door would be on the right, and that's the bathroom.
Q Okay.

A And then keep going to the end of the hall, be the right, it would be the master bedroom. And the left would be like an office/storage area.
Q Okay. Going down the hallway, Swibaker's the first room on the left?
A Yes, sir.
Q Right across, the bathroom?
A Yes, sir.
Q Keep going, your room is to the right?
A Yes, sir.
Q And then just a spare room to the left?
A Yes, sir.
Q All right. Well, let me ask it like this. Let's get into the incident now. Just prior to the individuals making entry into your home, where were you, your dog and David and J.B. positioned in the home?
A I was sitting on the couch with the dog. J.B. was standing up in the living room putting on his clothes, or his gloves and stuff, because it was chilly that night. And David was in the kitchen working on something, on some wood, a piece of wood.
Q You said J.B. was putting on his gloves. Was he getting cold or was he about to leave?
A J.B. was on his way out the door.
Q Okay. Y'all were sitting there, you told us where you're all at. Tell the jury what happened.

A Roughly around 12:00 I heard a big old boom, and that's when some guys started coming in.
Q Okay. Where did the boom come from?
A The boom came from the back door by the, behind the, kitchen.
Q Okay. The kitchen and then the back door?
A Yes, sir.
Q And the back door leads to the back of the house?
A To the backyard.
Q Okay. You heard a boom and they started coming in?
A Yes, sir.
Q How many people came in?
A Four.
Q Were they armed?
A Yes, sir.
Q All right. What happened when the four individuals -- and when I say armed, what were they armed with?
A They were armed, they were all armed, with pistols.
Q All right. When the four subjects came in what did they do?
A They started screaming for us to get down on the ground.
Q Okay. They come in, telling everybody, screaming, Get down on the ground. What do y'all do?
A I was still in a shocked stage. And the dog took -- the dog didn't hesitate.
Q What did the dog do?

A The dog did his job and tried warning them off. He started barking and sniffing. And I don't know if he got at them, but he got -- he got shot.
Q Okay. He was going after them?
A Yes, sir.
Q How many shots went off, I guess, that shot the dog?
A Probably two.
Q Or ---
A Two.
Q And I'm going to ask this follow-up question a lot, okay.
A Yes, sir.
Q You believe it was two or you know it was two?
A I believe it was two.
Q All right. The first two -- well, did they all come in, you know, was it all four at the same time, or were they staggered in some way?
A I mean, all four can't go through the doorframe at once so, I mean, they all came in one at a time, single file.
Q Okay. So it wasn't like there was a gap in between them?
A No, sir.
Q Together? Yes?
A Yes, sir.
Q Okay. And were you able to ascertain, or do you know, of the four individuals -- and we'll just go one, two, three, four -- do you know which one of the four shot the dog?

A No, sir.
Q Okay. Could have been the second guy?
A Yes, sir.
Q Could have been the first guy?
A Yes, sir.
Q Third guy?
A Yes, sir.
Q Maybe even the fourth guy?
A Yes, sir.
Q Okay. All right. So they come in. The dog attacks them. The dog is shot. What does the dog do?
A He ---
Q After being shot?
A After being shot, he crawled off into a bed, our bed.
Q Went to your bed?
A Yes, sir.
Q All right. Well, what happened then?
A Then I could tell, whenever -- I don't know, it just seemed like everything changed then after the gunshots went off. I mean, everything happened fast anyway, so I really didn't get a feel on what was going on. However, when the guns went off, it just changed everything.

I mean, then they started asking for weed. I don't know who it was, but one of them, maybe even all of them, were screaming, Where's the weed; where's the weed?

Q Where's the weed; where's the weed?
A Yes, sir.
Q Okay. So we've got the four guys in there, everybody's screaming, Don't know; Where's the weed. The dog's shot. What happens with you? What happens then?
A With me? Can I get a glass of water, please?
THE COURT: Yes, you can get water. Hold on. We'll get you some water.
THE WITNESS: Thank you.
(WHEREUPON, an off-the-record discussion was held in open court.
Q All right, Marcus. Okay. So did they peel off in any way? Were there some guys with you; some guys doing other things?
A Yes, sir. I lost track of David. I mean, I seen him right when the door got kicked and I knew he was in the kitchen. After that, I didn't, he went somewhere else, I didn't know where he went.
And J.B. was the closest to them guys, and they were screaming, Get on the ground. And I believe I was still on the couch whenever they come in, shocked, basically. And like I said, J.B. was right in front, front row with them. And they had him get down on the ground.
Q Okay. Did J.B. get on the ground?
A He complied. Yes.
Q Okay. Did he ever get back up?

A No, sir.
Q Okay. At a certain point did J.B. make any attempts to try -- well, we'll go from there. All right. So he's on the ground. What happens then?
A He got kicked in the face.
Q Okay. Prior to being kicked in the face did J.B. do anything to try to diffuse the situation?
A Yes, sir, he did.
Q What did he do?
A He tried -- J.B.'s a big guy so he's, I don't know, kind of, you know, he's intimidating size. And I guess he just tried to make them feel at ease, tried to tell them, Hey, I can get you some; I don't know about any weed that's here, but I can get you some. You know. But he just tried to diffuse the situation.
Q In what way? What did he do then?
A By offering up whatever he had in his wallet, whatever weed he had, and told them he would make some phone calls for them and he can get them some if they needed some weed that bad.
Q How was that received amongst the guys that were in there doing the burglary?
A They accepted his wallet. They took the wallet, so.
Q Did that appease them?
A No, sir. No, sir.
Q Okay. Was J.B. doing anything to close the gap between him ---

A Yes, sir. As he was speaking he was, like, easing forward, I suppose.
Q He was getting closer to them?
A Yes, sir.
Q What was going on through your mind when you saw J.B., as big as he was, inching toward them?
A I just knew J.B. was going to get them. Big boy. I just knew he was going to save the day if he would have got his hands on them.
Q Was there something that stopped him from saving the day?
A Yes, sir.
Q And what was that?
A A gunshot.
Q How many times was he shot the first time?
A He was shot one time the first time.
Q And do you know if the same guy that shot your dog was the same guy that shot J.B?
A No, sir.
Q After J.B. was shot did you hear any comments that were made from the crowd in reference to J.B. being shot?
A Yes, sir. The timeline, I'm not 100 percent on because everything happened so fast, but I know I heard -- like -- sorry.
Q It's okay.
A They, as in them four, whoever came in, it was like -- I can't even recall at this moment. I'm sorry.

Q That's okay, that's okay. When J.B. was on the ground -- and I want to make sure that I got -- You know, as you remember it, was it him being shot that put him on the ground?

ATTORNEY HUBRICH: Objection, Your Honor. Leading.

Q Or did he get on the ground on his own accord?

THE COURT: You may answer.

A He got shot. That's all I know.

Q And again, I'm going to say this again. I know I already said it once. If you don't remember ---

A Yes, sir.

Q --- say you don't remember, okay. Don't let me or anybody else put words in your mouth.

A Yes, sir. Can I go back and say I don't remember?

Q What do you want to correct?

A I would like to correct, I don't know if it was the first gunshot that put him down or if he complied that put him down.

Q Okay. Okay.

A Sorry.

Q No, don't be. So at some point he's on the ground. Now, you had said that he had got kicked, and then I interrupted you.

A Yes, sir.

Q How did that go down?

A Like I said, he's big. When he's on the ground you better keep him on the ground, and I guess they knew it. So I can't recall, like I said, if it was the gunshot or him being

compliant, but someone kicked him in the face and knocked him out cold.
Q One of the guys kicked him in the face while he was on the ground?
A Yes, sir.
Q Did they say anything after they kicked him?
A Yes, sir.
Q What did they say?
A Said, I know it hurts, I know that shit hurts.
Q I know that shit hurts?
A Yes, sir.
Q All right. So is it fair to say you don't you know, you mentioned earlier that you don't know, what David was doing ---
A Yes, sir.
Q --- or words such as that? Do you know how many individuals were with you at that time with J.B. on the ground and you in the living room?
A No, sir.
Q What happened next with you?
A With me? With J.B. on the ground, it felt like he was knocked out forever. But with J.B. on the ground, someone snatched me up and led me back the hallway to the master bedroom.
Q Okay. So you end up going into your master bedroom?
A Yes, sir.
Q Is one individual escorting you? Two? All four? Three?

A One in front and one behind me.
Q Okay, so they kind of had you sandwiched?
A Yes, sir.
Q One in front, one behind?
A Yes, sir.
Q All right. When you end up getting into your room, what happens?
A Well, I see my dog on the bed shot, dying. And they were screaming, Where's the weed; just give us the fucking weed. Excuse my language. And I still kind of kept telling them, Well, there is none, there is no weed.

But I kept it in a jar and I had the jar, and it had, you know, it was empty, basically, maybe some crumbs. And that's what I handed them. And they got pissed about it.

Q All right. So where were the crumbs kept?
A In the jar.
Q In a mason jar?
A Yes, sir.
Q And you said you handed it to them?
A Yes, sir.
Q Okay. Now let's see if we can get a little bit of a description here, as best you can remember.
A Yes.
Q There's two guys in the room with you at this point?
A Yes, sir.

Q And you hand them a mason jar?
A Yes.
Q Of the two individuals, can you tell me anything about them so that we can kind of understand who did what while y'all are in the room? Description-wise.
A Description-wise, it was the light-skinned guy that was in there, he was kind of like the take-charge guy. And then the dude with the purple shoes, he was the one I handed the jar to.
Q Okay. The guy with the purple shoes that you handed the jar to ---
A Yes, sir.
Q --- was he skinny? Was he fat?
A He was fat.
Q He was fat?
A Yes, sir.
Q He was a fat guy, and you said he had purple shoes.
A Yes, sir.
Q Did you notice if he had anything covering his hands or not?
A I believe he had gloves on. Actually, I know he had gloves on.
Q How do you know that?
A Because I distinctively remember it being kind of comical, him digging his fat gloves in the jar and then trying to hold his coat pocket out. And he was just flimsy with it.
Q Okay. So he was trying to empty it into his jacket pocket?

A Yes, sir.
Q And you said fat gloves. So these weren't like, you know, like Isotoner gloves or something, they weren't real skinny; they were like fat, heavy gloves?
A Yes, sir. Yes, sir.
Q Okay. I mean, you had more marijuana than that, but that's what you told them you had; is that right?
A Yes, sir.
Q Okay, okay. So, all right, and they're not happy. What happens then?
A So after that, like you said, they're not happy, and they start pushing me towards, back towards, the living room. And they shoved, and one of them tripped me up as I was going down the hall.

And I had just, I had just had a cast put on my wrist so I was kind of one-handed at the time. Whenever I was going down, I was going down fast.

So I got pushed to the ground and landed basically face-to-face with J.B. And that's when they started getting pissed, and said, If someone don't come up with some weed I'm going to start killing motherfuckers in here.
Q Okay. Now, when you were in that back room and there were two guys with you ---
A Yes, sir.
Q --- do you know what the other two guys that broke in your

house were doing?
A No, sir.
Q Do you know what David was doing at that time?
A No, sir.
Q When you left the room and then you were pushed down, you said that you fell down and you were literally face-to-face with J.B.
A Yes, sir.
Q Was he conscious at that time? Was he talking?
A He was incoherent but he was alive. He was trying to say something, but I couldn't understand what he was saying.
Q All right. So the threat is made. Do you know who made the threat, Y'all give it up or we're going to start shooting mf'ers in here?
A No, sir.
Q When that's said, I mean, you then go back in the room and get the weed; right?
A Sir?
Q When that's said, you then go back into that master bedroom and get your weed and bring it back out to them; right?
A No, sir.
Q No, you didn't; did you?
A No, sir.
Q What did you say?
A Do what you gotta do.

Q What happened then?
A They shot J.B.
Q While he was on the ground?
A While he was on the ground.
Q Do you know how many times they shot him?
A I know they shot him one more time. So that would have been the second gunshot at that point.
Q What happens then?
A Then they started just ransacking the place, just tearing shit up and just looking all over the place. I don't know what they were doing exactly. I know I was trying, trying to figure out -- like, I was stunned.
Q Were you about ready to make your exit?
A Yes, sir.
Q What were you doing?
A I was kind of inching my way towards the front door, trying to stay out of their way. Like I said, they was tearing the house up.
Q And then what happened?
A Then it was, I kept hearing people in the background saying, We gotta go, we gotta go; let's go, let's go. Then ...
Q Let me stop you right there for one second.
A Yes.
Q Okay. You said you heard people in the background saying, Let's go, let's go?

A Yes.
Q Do you know if that was, you know, the fat guy who was making that comment?
A Do I know if it was him?
Q Yeah.
A No, sir.
Q Do you know if it was the -- how did you describe the other one, light-skinned dude?
A Yes, sir.
Q Do you know if either one of them were the ones that were making the comments?
A I don't believe so. No, sir.
Q You don't ---
A I don't know if they were.
Q Say it one more time. I'm sorry?
A Sorry.
Q I'm interrupting you. I'm sorry. What did you say?
A I said no to the light-skin.
Q No to the light-skin?
A Yes, sir. He was the one who was going rapid.
Q And was it more than one person that was saying, Let's go, let's go, or did it sound like one person?
A No, it was more than one person.
Q Okay. And you said the light-skinned guy was, you know, kind of ramping up. What happened then?

A He tripped. He tripped coming down the hall, and tripped over J.B. coming down the hall. And I think it pissed him off, because he shot him again and then just opened fire, unloaded the clip.
Q Was he the only one who was firing, or do you know?
A No, he wasn't.
Q He was not?
A He was not.
Q Again, you don't know, you don't know. Do you know how -- you know it was more than one, but do you know if there was more than two?
A No, sir.
Q Okay, so it might have been two? I mean, it might have just been two?
A It might have just been three. Yes.
Q Might it have been four?
A Might have been four.
Q You just don't know?
A I just don't.
Q Okay. All right. What happened then? I mean, you've got to be pretty close to the door at this point. Right?
A Yes, sir. I made my way up, got to my feet, and they started shooting. And somewhere in there I took a bullet in the chest. As is -- sorry, let me go back. Well, before I took the bullet, I was watching, I was getting, you know -- I don't know,

everything was happening fast.

But the same one, the same person, who shot J.B. the three times that I mentioned at that moment, three shots, locked eyes on me and started shooting. But they was all making their way out the back door, and I was making my way out the front door. And I got out, I got out, with only one bullet in me.

Q Okay.

A And they went out the back.

Q They went out the back?

A Yes, sir.

Q All right. Where were you shot?

A I was shot in the chest.

Q Okay. Do you want -- can you please stand up and show the jury where you were shot.

A Yes, sir. I was shot right here (indicating).

Q All right. After you were shot, what did you do?

A I made it out the front door, and I ran to my neighbor's house and pounded on their door and finally woke them up, told them to call 911.

Q Okay. And when you ran out of your house and you were running to your neighbor's, did you hear any cars leaving?

A Yes, sir. Well, before then, before the cars, when I was getting -- there was a fence dividing my house and the neighbor's house, and there's woods behind my house. I heard guys jumping the fence, the chain-linked fence. So I didn't know if they were

jumping into the neighbor's yard or behind my house, but I heard all four of them, you know, jumping the fence.
Q Okay, so you heard the people jumping the fence, but did you hear a car leaving?
A Yes, sir.
ATTORNEY OSBORNE: All right. Your Honor, may I approach?
THE COURT: You may.
Q I'm showing you State's Exhibit 2. Marked for ID before. Can you take a look at that and tell me if you recognize that.
A Yes, sir, I do.
Q And what is that?
A It's the 911 call, a CD of the 911 call.
Q That your neighbor made for you?
A Yes, sir.
Q First, how do you know that's a CD of the 911 call?
A Because of my initials, after I listened to it.
Q So you actually listened to that CD?
A Yes, sir.
Q And those are your initials?
A Yes, sir.
Q And how do you know that that's the 911 call from the night of the incident? Did you or did you not hear your voice on the 911 call?
A Yes, sir.
ATTORNEY OSBORNE: Your Honor, at this time I'd seek to

admit and publish State's 2 into evidence.

ATTORNEY HUBRICH: Objection, Your Honor. Hearsay in regards to the actual caller.

THE COURT: Double hearsay?

ATTORNEY HUBRICH: Correct.

THE COURT: Sustained.

ATTORNEY OSBORNE: You said sustained?

THE COURT: Yes.

ATTORNEY OSBORNE: Can we approach?

THE COURT: Sure.

(WHEREUPON, an off-the-record discussion is held at sidebar.)

THE COURT: Good time to take our afternoon break. Yes. Ladies and gentlemen, we will take our afternoon break. We will take about 15 minutes. Please remember your social distancing. We're going to take 15 minutes. Step to your jury room.

(WHEREUPON, the jury is escorted out of the courtroom at 3:59 p.m.)

THE COURT: All right. We will take a very short break, and then we'll come back and we will argue the matter.

Just be mindful not to discuss your testimony with anyone, because you're on the stand. But you certainly can take a break, as well. Is that clear?

THE WITNESS: Yes.

THE COURT: Thank you. Very well. We'll take about, I

don't know, seven minutes, and then we'll come back. And you'll pull that case for me. Mr. Osborne, you didn't offer it as a business record.

ATTORNEY OSBORNE: State that one more time?

THE COURT: You didn't offer it as a business record.

ATTORNEY OSBORNE: Oh, okay.

THE COURT: You did not. Because you had that opportunity because -- but if you have a case, let me see it, okay.

ATTORNEY OSBORNE: Okay.

THE COURT: Very well.

(WHEREUPON, court recessed at 4:00 p.m. and reconvened at 4:12 p.m.)

MATTERS OF LAW

THE COURT: Thank you so much. Please be seated. All right. You got any case?

ATTORNEY OSBORNE: Yes, Your Honor. In *State v. Thompson,* 420-SC-386 ---

THE COURT: Okay.

ATTORNEY OSBORNE: --- in that case right there, the prosecutor -- well, actually, the defense said you haven't done enough. They wanted someone to get on the stand and, under 901, authenticate the voice, which is the extra step that I was going to. Not only did we bring it in under, was it 806, the business records, 8036, I thought, Well, since we've been getting a lot of objection let's go above and beyond, let's authenticate that

voice, too. So that's why we went ahead and did it on that level.

THE COURT: Got it.

ATTORNEY OSBORNE: If it's admissible then, then it's admissible now. It doesn't become inadmissible later because we've extra-authenticated it.

THE COURT: All right. Anything, Ms. Hubrich?

ATTORNEY HUBRICH: Judge, if they're going to identify a voice, it needs to be the person that actually called. If you listen to the 911 call, it's not Marcus Porter, it's another woman, it's the neighbor who called. And so that would be the hearsay objection.

THE COURT: Sure.

ATTORNEY HUBRICH: I don't know if you noticed, when we went through the 911 dispatcher and you asked if there were any questions, I just sat here because I didn't know what to say at that point. I was a little befuddled why they didn't try to enter it under that person, and that was why I was confused.

THE COURT: Sure.

ATTORNEY HUBRICH: But at this point now we've got another human being that's actually on this that we don't have a right to cross. I need to bring her here so we can cross her on the 911 call. Thank you, Judge.

THE COURT: Thank you so much. And you would say the same?

ATTORNEY CORNWELL: Yes, Your Honor.

THE COURT: Very well. You know, I'm not going to be critical one way or the other. And it is clear that, either it was intended or unintended but it's being offered as a business record, that a 911 tape is a business record. And I gather that there isn't anything other than that.

And I suppose, quite frankly, my mind went somewhere like, Okay, so what are we doing; has it been altered in some way; has it been augmented in some way; is there some sort of problem? Apparently there isn't.

And it certainly could have been offered as a business record as an exception, as is typically done, and apparently there was no other issue with it. So it's admissible. I'm going to let it in.

ATTORNEY OSBORNE: Thank you, Judge.

THE COURT: That will teach you to be creative. Just kidding.

ATTORNEY OSBORNE: I'm learning the Dorchester flavor.

THE COURT: Yes, you are, slowly.

ATTORNEY OSBORNE: Thank you, Judge.

THE COURT: Very well. Let's have the jury back, please. And we need our witness.

(WHEREUPON, the jury is seated in the courtroom at 4:18 p.m.)

THE COURT: All right. Ladies and gentlemen, at this time we will continue with the state's case and the direct examination

of Mr. Porter. Mr. Osborne, you may continue.

ATTORNEY OSBORNE: Thank you, Your Honor.

THE COURT: You're going to move in the tape?

ATTORNEY OSBORNE: Yes, Your Honor. At this time we'd seek to admit and publish State's 2.

THE COURT: Very well. Over the objection of the defense, it is admitted.

(WHEREUPON, State's Exhibit 2 is admitted into the record.)

(WHEREUPON, State's Exhibit 2 is published to the jury.)

Q All right, Marcus. So we heard you give a description of a light-skinned guy, and then I think you even testified another guy being heavyset, with purple shoes. Can you tell us anything, anything, about the other two guys?

A I remember a pair -- something camo, camouflage.

Q In regards to what, clothing or shoes?

A Clothing. Yes, sir.

Q What about, let's talk about -- I'm going to ask you some questions. Again, don't let me put words in your mouth.

A No, sir.

Q What about height? The light-skinned guy, was he tall? Short?

A He is taller than six foot, I believe, so he is taller than me.

Q And how tall are you?

A I'm five-foot nine.

Q Okay. Thin? Medium? Heavy build?
A He was a medium build.
Q Okay. And black male?
A Yes, sir.
Q What age would you put him at, about 20s? Thirties? Forties?
A Older 20s.
Q Can you tell me anything about his clothes?
A Yeah.
Q And if you don't know, you don't know. But go ahead.
A Wore a pair of black-and-white Nikes. That's about it.
Q Okay.
A And his eyes.
Q And his eyes. What did his eyes look like?
A They were a different color. They weren't brown.
Q Were they lighter?
A Yes.
Q Darker?
A Lighter.
Q Light?
A Yeah.
Q And what about this heavyset guy, how tall was he?
A He was about my height, maybe a little bit taller.
Q How tall are you?
A Five-foot nine.

Q Okay. And you said he was large?
A Yes, sir.
Q Large guy. Twenties? Thirties? Forties?
A Say mid 20s.
Q Okay. Anything about his -- you said he had purple shoes on?
A Purple Nikes on.
Q Anything else that you can remember?
A Bulky gloves.
Q Bulky gloves.
A Coat.
Q Okay. And what about the other two, anything?
A I remember one of them had camouflage on.
Q Okay, I've already asked you that. I'm sorry.
A Yes, sir.
Q Height?
A I don't recall.
Q Okay. Do you recall anything about height, weight, anything like that?
A No, sir.
Q You said on the 911 they were all masked.
A Yes, sir.
Q Anything about the masks that you can remember, colors or anything like that?
A No, sir.

ATTORNEY OSBORNE: May I approach?
THE COURT: You may.
(WHEREUPON, State's Exhibits 26, 33, 34, 69, 76, 79 and 80 are marked for identification.)
Q All right. I'm going to show you -- well, sorry. I'm going show you 26, 33 and 34, 69, 76, 79 and 80. You just hang on to those.
And we're going to kind of take them, so I don't have to keep coming back and forth, we're going to take them one by one, okay. So looking at that, do you see the number that's at the top up there?
A The bottom.
Q Or the bottom, okay.
A Twenty-six.
Q Okay. Let's start with, then, State's 26. Do you recognize what that photo depicts?
A Yes, sir.
Q And what is that?
A It's the front of my house.
Q It is the front of your house?
A At 108 Myrtle Place.
Q Does it appear to you by looking at that photograph that that photograph accurately depicts your residence at 108 Myrtle Place on the night of the incident?
A Yes, sir.

ATTORNEY OSBORNE: Your Honor, at this time we'd seek to admit State's 26 into evidence.
THE COURT: Any objection?
ATTORNEY HUBRICH: No, objection.
ATTORNEY CORNWELL: No, Your Honor.
THE COURT: Very well. It's admitted.
(WHEREUPON, State's Exhibit 26 is admitted into the record.)
(WHEREUPON, State's Exhibit 66 is marked for identification.)
Q What's the next one you're looking at, is that State's 66?
A State's 66.
Q All right. States' 66, what are we looking at there?
A Back door, the back door, as it was locked.
Q The back door to your residence?
A Yes, sir.
Q Is that door in which the subjects made entry?
A Yes, sir.
Q Does that photo fairly and accurately depict your back door as you remember it on the night of the incident?
A Yes, sir.
ATTORNEY OSBORNE: Your Honor, at this time we'd seek to admit State's 66 into evidence.
THE COURT: Any objection?
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No, Your Honor.

(WHEREUPON, State's Exhibit 66 is admitted into the record.)
THE COURT: In fact, any objection to any of those photos?
ATTORNEY HUBRICH: Some of them, Judge.
THE COURT: Okay, very well.
Q All right. State's 34, is that what we've got next?
A Yes, sir.
Q And what are we looking at in 34?
A That would be the view coming in the front door, going into the kitchen of my ---
Q Fairly and accurately -- I'm sorry, go ahead.
A Of my house.
Q Okay, your house. Fairly and accurately depict your house on the night of the incident?
A Yes, sir.
ATTORNEY OSBORNE: Your Honor, at this time we'd seek to admit State's 34 into evidence.
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No objection, Your Honor.
THE COURT: Very well.
(WHEREUPON, State's Exhibit 34 is admitted into the record.)
Q All right. Next is State's 69.
A Yes, sir.
Q Okay. What are we looking at here?
A That would be a picture of my master bedroom.
Q Fairly and accurately depicted as it was that night?

A Yes, sir.
ATTORNEY OSBORNE: Seek to admit State's 69 into evidence.
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No objection, Your Honor.
THE COURT: So admitted.
(WHEREUPON, State's Exhibit 69 is admitted into the record.)
Q Seventy-nine.
A Yes, sir.
Q What is that?
A It would be the dresser inside the closet of the master bedroom.
Q Fairly and accurately depict your dresser on that night?
A Yes, sir.
ATTORNEY OSBORNE: Seek to admit 79.
THE COURT: Any objection?
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: None, Your Honor.
THE COURT: All right.
(WHEREUPON, State's Exhibit 79 is admitted into the record.)
Q Seventy-six, what are we looking at there?
A That would be a jacket that was in my closet.
Q The jacket had something in it; didn't it?
A Yes, sir.
Q Okay, we'll get to that. Fairly and accurately depict, the photograph, the way it was on that night?

A Yes, sir.
ATTORNEY OSBORNE: Seek to admit State's 76 into evidence.
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No objection, Your Honor.
THE COURT: Very well.
(WHEREUPON, State's Exhibit 76 is admitted into the record.)
Q All right. Now we get into 80. What is 80 showing?
A Eighty shows a picture coming in the master bedroom.
Q What else is in that picture?
A My bed. My dog.
Q Okay. And what state is your dog in at that point?
A The dog is dead right there.
ATTORNEY OSBORNE: Your Honor, at this time we'd seek to admit State's 80 into evidence.
ATTORNEY HUBRICH: Judge, objection. More prejudicial than probative.
ATTORNEY CORNWELL: Same objection, Your Honor.
THE COURT: All right. Let me see it.
(WHEREUPON, State's Exhibit 80 is published to the Court.)
THE COURT: All right. Counsel, let me see you at sidebar, please.
(WHEREUPON, an off-the-record discussion is held at sidebar.)
THE COURT: All right. With regards to Exhibit 80, it is admissible over the objection of the defense.

(WHEREUPON, State's Exhibit 80 is admitted into the record.)
THE COURT: And I'll put a little more of that on the record forward.
ATTORNEY OSBORNE: Thank you, Judge.
Q Next you have State's, the one after 80, I think, is going to be 33.
A Yes, sir.
Q And what are we looking at there?
A It's a picture of the living room, like, right when you walk in the door.
Q Does that fairly and accurately depict your living room as it was on the night of the incident?
A Yes, sir.
ATTORNEY OSBORNE: All right. Your Honor, at this time we'd seek to move 33 into evidence.
ATTORNEY HUBRICH: No objection.
ATTORNEY CORNWELL: No objection, Your Honor.
THE COURT: Very well.
(WHEREUPON, State's Exhibit 33 is admitted into the record.)
Q All right. I'm starting off by showing you State's 26. What are we looking at here?
A My watch.
Q No, no, no. Look up there on the screen.
A Oh, I'm sorry. Twenty-six is a picture of the front of my house at 108 Myrtle Place.

Q And earlier you had stated that this moped over here in the driveway, that belonged to?
A It belonged to J.B.
Q All right. Now we're showing you State's -- okay, let's take a second here. So we're showing you State's 66 now. And you said this was the back door?
A Yes, sir.
Q Okay. And this was the back door that entry was made by the four suspects?
A Yes, sir.
Q Okay. Is the frame of your door damaged?
A Yes, sir. Well, it appears, in the picture it appears it is. I don't believe it was.
Q Let me show you exactly what I mean. Talking specifically about this area right here of the frame. And I'm pointing next to the deadbolt lock.
A Yes, sir.
Q Does this seem splintered or damaged in any way?
A Yes, sir.
Q This seems splintered to you?
A I mean, it don't look 100-percent correct.
Q Was this deadbolt turned and locked at the time when they made entry?
A I'm not sure.
Q You're not sure. Okay, fair enough. This door, that door,

yes or no, yes or no, has that door been kicked in before?
A Yes, sir.
Q Okay. All right. Now I'm showing you State's 34. What are we looking at here?
A It's a picture of my kitchen and the entryway into my house.
Q Say it again? I'm sorry.
A I'm sorry. It is a picture of my kitchen and entry, like if you were standing at the front door, looking in.
Q Okay, so my back is to the front door?
A Yes, sir.
Q And then is the door that we just looked at, is that off to the left?
A Yes, sir, where the person is.
Q Okay. Showing you now State's 69. What are we looking at here?
A My master bedroom.
Q Do you normally keep your bed in that position?
A No, sir.
Q Okay. Who did that?
A It was not me. It was the guys that came in the house.
Q Okay. Okay. Now I'm showing you State's 79.
A Yes, sir.
Q That's the drawer in your master bedroom?
A Dresser drawer.
Q Dresser drawer, okay.

A Yes, the dresser that was in my master bedroom closet.
Q A little bit of weed in there?
A Yes, sir.
Q Okay. That wasn't the bulk of it; was it?
A No.
Q All right. Showing you now State's 76.
A Yes, sir.
Q That was what -- that's your weed right there; right? Or at least that's what was there that night?
A Yes, sir. That was there that night. Yes, sir.
ATTORNEY OSBORNE: May I approach, Your Honor?
THE COURT: You may.
(WHEREUPON, State's Exhibit 22 is marked for identification.)
Q I'm showing you State's 22. Can you take a look at that and tell me if you recognize that.
A It looks like cannabis.
Q Yours?
A Yes, sir.
Q Is this what was in your closet?
A I believe so. Yes, sir.
Q And this is what you did not tell them was there; right?
A I did not tell them. No.
ATTORNEY OSBORNE: Okay. I'll go ahead and move it in. Your Honor ---

ATTORNEY HUBRICH: Objection, Your Honor. Chain.
ATTORNEY OSBORNE: That's fine.
Q Now I'm showing you State's 80. What are we looking at?
A Master bedroom.
Q And?
A Picture of my dog.
Q This was after he was shot?
A Yes, sir.
Q Okay. Showing you State's 33. When you testified that after you left your room you were pushed and then you fell, when we're looking at this photograph right here, where would J.B.'s head have been positioned? If you can just describe it.
A It would be, it's probably just on the other side of that fish tank.
Q Okay.
A That's the hallway.
Q So he would have been almost in the hallway?
A Yes.
Q Okay. Would part of his body, or would it not have, been draped across the carpet, too, there?
A Yes, sir.
Q So are the feet toward the carpet and the head toward ---
A Yes, sir.
Q Okay. You testified -- well, I don't know if you did, but we heard it on the 911 call -- all four had handguns.

A Yes, sir.
Q All right. You spoke to the police. And after all of that happened, at some point did you watch the news and hear individuals had been arrested?
A Yes, sir.
Q Did you see who had been arrested?
A Yes, sir, on Channel 5 News.
Q Say it again.
A Channel 5 news had their faces on there.
Q Channel 5 news. Did you recognize anyone from the Channel 5 news report of this murder as someone that may or may not have been involved in the incident?
A Yes, sir.
Q And who was that?
A Well, I just recognized -- so let me tell you how I recognized it. It was just from that night. And prior to this I've never seen them before, but I recognized that one I now know as Elijah Green, and then one that I now know as Major.
Q Okay. So you kind of said this, but I want to make sure we are clear. You don't know these guys?
A No, sir.
Q So when you say Elijah Green and Major, you're saying what the news said ---
ATTORNEY HUBRICH: Objection, ---
A Yes, sir.

ATTORNEY HUBRICH: --- Your Honor. Leading.
THE COURT: Don't lead.
ATTORNEY OSBORNE: Okay.
Q Did you know their names prior to that night?
A No, sir.
Q How did you learn their names?
A Through the news.
Q Okay. And those were the only two that you recognized?
A Yes, sir.
Q And when you were telling the story, you had two descriptions. You had a light-skinned guy and you had a large, I think you might have said, fat guy.
A Yes.
Q Which was Elijah Green?
A He was the light-skinned.
Q And which was Major?
A The fat one.
Q With the purple shoes?
A With the purple shoes, yes, sir.
Q And just a little bit of housekeeping.
ATTORNEY OSBORNE: Your Honor, may I approach?
(WHEREUPON, State's Exhibit 25 is marked for identification.)
Q I don't want to approach too far. I'm just showing you State's 25. Do you recognize that?

A Yes, sir.
Q And what is that?
A It's a .380.
Q It's a .380?
A Yes, sir.
Q Is it your gun?
A Yes, sir, it was.
Q And where was this pistol on the night of the incident?
A In the back of my closet.
Q Does it work?
A No, sir.
Q Did you have the -- well, it doesn't work.
A No, sir.
Q So I guess you didn't go for it or anything?
A No, sir.
Q What's wrong with it?
A We took the firing pin out of it.
Q Oh, so that's one of the reasons why you got charged?
A Yes, sir.
Q Housekeeping matters. Did you have surveillance cameras in your home?
A I did.
Q Were they functional?
A They were.
Q I mean, but were they activated?

A They were not activated.
Q And what are they, are they motion detectors?
A Yes, sir.
Q So you say not activated. I suppose if they were activated it would have been going off all the time?
A Yes, sir.
Q So that's why you turned it off?
A Yes, sir.
(WHEREUPON, State's Exhibit 113 is marked for identification.)
Q Do you have State's 113?
A I do.
Q So what are you looking at in State's 113?
A My watch.
(WHEREUPON, State's Exhibits 114, 115 and 116 are marked for identification.)
Q And State's 114, what is that?
A My watch.
Q 113 and 114, can you tell, is that the same watch or is it two different watches, or do you know?
A Two different watches.
Q What about 114, do you recognize 114?
A I believe I've seen it.
Q Believe you've seen it?
A Yes, sir. I can't really tell. I'm not real certain.

Q 113 is yours?
A Yes, sir.
Q You think you've seen 114 but not sure?
A Yes, sir.
Q What about 115 and 116?
A 115 was my old watch.
Q And what about 116?
A 116 is the same watch, backside of it.
Q So just for clarification, 113 is yours; '15 and '16 is yours, is front and back ---
A Yes, sir.
Q --- and '14, you've seen before, but not yours?
A Yes, sir.
Q Do you want to see the watches, or are you sure? I mean, I'll show you the watches. You want to see them?
A I mean, I'm sure. Of the ones I told you, yes, sir, I'm sure those are mine.
Q Okay. I know I'm showing you pictures.
ATTORNEY OSBORNE: I'll go ahead and try to move them in now. 113. Your Honor, at this time we'd seek to admit 113 through 116 into evidence.
THE COURT: Any objection?
ATTORNEY HUBRICH: Yes, ma'am.
THE COURT: All right.
ATTORNEY HUBRICH: One, lack of foundation. No identifying

features made of this particular watch at all. Make, model, no way to identify it. These are fungible items.

Two, he can't identify 114 at all, he just calls it a watch.

And, three, as far as entering the physical watch into evidence, we're missing chain.

ATTORNEY OSBORNE: Your Honor, may I approach the witness?

THE COURT: You may.

Q You mind putting those gloves on right there.

(WHEREUPON, State's Exhibit 111 is marked for identification.)

Q I'm going to show you State's 111. So in reference to 111, I want you -- you can go ahead and open it, it's only/just a piece of Scotch tape holding it.

The watches that are in there, can you take a look at those. And get a good, close look at them. What are the colors of the watches, for everyone else, for later?

A Looks like, like a smoke gray, jet black, analog watch.

Q You said a smoke gray, black watch. And what's the other one?

A Same. It's just a different shade of black, like a shiny black or silverish.

Q Two sort-of-black watches?

A Yes, sir.

Q What color is the other one?

A It's a brown leather.

Q Which two did you say were yours?
A The two black-colored ones.
Q I mean, yours like those were your watches?
A Yes, sir.
Q Like you wore them?
A Yes, sir.
Q And how long did you have them? And I'm not asking for exact dates. I guess what I'm getting at is like approximations, like, I've had this watch for two days, or, I've had it for a year.
A I probably had it six months, roughly. I had it for a little while.
Q Both of them?
A Yes, sir.
Q Do you remember where you bought them from?
A This one was given to me. And I'm not exactly sure where the other dialog (sic) came from. But I remember the person who gave me that one.
Q Who gave it to you?
A His name was Michael Grooms.
Q Okay.
ATTORNEY OSBORNE: All right, Your Honor. We'll lay the foundation of where they came from later.
Q Do you mind kind of putting them all back into bag as best as you can.

ATTORNEY OSBORNE: Or, you know what? I'll go ahead and seek that into evidence now, State's 111.

ATTORNEY HUBRICH: Same objection, Judge. No identifying features. Lack of foundation. These are fungible objects. And two, chain.

THE COURT: Very well. The watches, here's my concern. Two of these watches he knows are his watches. And certainly you had the pictures of the two watches, and now you have the two watches. They're all tossed into 111, right, the watches themselves. His watches, he's identified his watches.

I'm not clear about whatever else is in 111, quite frankly.

ATTORNEY OSBORNE: Yes, Your Honor. And we can lay the foundation through later testimony on that.

THE COURT: All right.

ATTORNEY OSBORNE: I just wanted to flush out the objection to the weight, not the admissibility, of the watches.

THE COURT: Well, that's correct. But what I'd like to do is go ahead -- so we don't revisit, I would like to move ahead. But you have offered them in evidence. We will call those 111A and 111B. So why don't you pull those.

(WHEREUPON, State's Exhibits 111A and 111B are marked for identification.)

THE COURT: Put your gloves on and pull those two. And let's mark those as 111A and 111B.

ATTORNEY OSBORNE: All right, Your Honor. We may need to

get a bag, but I'll make that happen.

THE COURT: So we don't slow down, I'm going to give you these cups until you get your bags.

ATTORNEY OSBORNE: Thank you, Judge.

THE COURT: Be sure you don't publish to the jury the ones that are not in evidence. The two that are in are fine, they are now in.

ATTORNEY OSBORNE: Your Honor, I've separated them. We'll put one of the brown watches in a cup, we'll label that as 111C. And then 111A - 111B will be the two black watches that he identified as his.

THE COURT: Very well.

ATTORNEY OSBORNE: At this time we'd offer them into evidence.

THE COURT: Over the objection of the defense. Ms. Cornwell, I just presumed that you would join in the objection. Is that correct or not?

ATTORNEY CORNWELL: I have no objection, Your Honor.

THE COURT: Very well, you have no objection. Very well.

(WHEREUPON, State's Exhibits 111A and 111B are admitted into the record.)

ATTORNEY OSBORNE: No further questions.

THE COURT: Very well. Ms. Hubrich, cross-examination?

ATTORNEY HUBRICH: Yes, ma'am. With the Court's indulgence.

THE COURT: All right.

ATTORNEY HUBRICH: Judge, can we approach quickly?

THE COURT: Sure.

(WHEREUPON, an off-the-record discussion is held at sidebar.)

THE COURT: Ladies and gentlemen, we are not going to start cross-examination until in the morning. And let me get energized here. And counsel reminded me that I typically give a little more instruction the first day of trial with a jury that I need to give other evenings. And they reminded me of that. And they are correct. So we will start cross-examination in the morning.

Now, ladies and gentlemen, I'm going to instruct you with regards to not discussing, do not discuss this matter or allow anyone to discuss it with you.

However, you're going to be going home, and clearly there's going to be someone, no doubt, that's curious about what you have been up to, and I certainly do not expect you to go home and have the person in your world and life that's curious that says, Well, how was your day? Fine. What did you do? I can't tell you. I would not put you in that position.

However, you certainly can say that you returned to Saint George for the jury selection, and that you were selected to serve on the jury, and that it is a criminal matter as opposed to a civil matter. But beyond that, you must not discuss this matter, or allow anyone to discuss it with you. Put it on the Judge. Don't let anybody get upset with you. Just blame me, I'm

perfectly comfortable with that.

The reason for that, ladies and gentlemen, is this. What we know about ourselves as human beings is that, even if we intend not to, we cannot help it. When we begin to talk about something we begin to formulate opinions about what it is that we are discussing. We cannot help it. It's the way we are as people. And the reason that we give you the instruction, do not discuss this matter, do not allow anyone to discuss it with you, is because it is so very vital to your role as a juror that your able to listen open-mindedly to everything that is presented to you, and that you make up your mind about nothing until you have heard everything.

One of the ways that our system, our judicial system, supports your ability to do that is to give you that instruction. Do not discuss this matter; do not allow anyone to discuss it with you. Of course, that means your family, your friends, your fellow jurors. It's very important that you keep your own counsel with regards to these matters. So please keep that in mind.

Do not blog, do not go to, what, Facebook, MySpace, LinkedIn and however many other platforms of social media -- there seems to be one, what, every two or three days. You must not go to social media. You must not do any investigation. Do not look up anyone on the internet that has anything to do with this matter. Do not look for any information about this matter.

That would be a violation of your oath, and you would be injecting information into the jury's consideration that was not received in court while court was in session. So please be mindful of that, as well.

Now, with regards to your communication devices, your cellphones, clearly you're going to be -- the first thing you're going to do is grab your cellphone. And you can, no doubt. Please be mindful that you must not go to the internet and do any kind of research or have any kind of discussions about this matter at all.

That would be a violation of your oath and could cause the matter -- serious consequences about this matter. So please, please keep that in mind over the balance of the evening.

I don't know that there will be any news accounts about this case, I don't. But in an abundance of precaution, I'm going to instruct you not to read anything/to listen to anything, about this matter. And that, of course, is in the newspaper, on the radio, the television or on the internet.

You must receive all of the information from which you will make up your minds here in court while court is in session.

Now, no one's going to work tonight, right, nobody has to go to work tonight? Very good. You need to rest this evening so that you will be fresh and ready to proceed in the morning at 9:30, in the morning at 9:30.

That concludes the instructions that I have for you. And I

just ask, as you leave the courtroom, just be mindful of the social distancing.

I'm going to ask everyone else who's in the courtroom to please remain seated while our jurors exit the courtroom and then the courthouse. So have a very good evening. And I look forward to seeing you in the morning at 9:30.

(WHEREUPON, the jury is dismissed for the day at 5:08 p.m.)

THE COURT: Now, Mr. Porter.

THE WITNESS: Yes, ma'am.

THE COURT: You are the stand; you are testifying. It is very important that you not discuss your testimony with anyone over the evening.

THE WITNESS: Yes, ma'am.

THE COURT: Any questions about that?

THE WITNESS: No.

THE COURT: All right. You can talk about the Yankees, you can talk about the Braves. You just can't talk about your testimony. All right?

THE WITNESS: All right.

THE COURT: All right. Very well. And you're free to come down.

THE WITNESS: Thank you.

MATTERS OF LAW

THE COURT: Now, I wanted to talk a little bit about the photograph and tell you what I observed and, for the record, why

I allowed that photograph.

First of all, it is important to observe that the photograph does not show any blood. It's, in terms of the, you know, one of the items that's talked about, the concerns that are talked about in the case are the gruesomeness of the photographs, autopsy photographs, or lots of blood or lots of exposure to bodies, and the things that can happen to folks.

With regard to this photograph, it is not a gruesome photograph. It is a photograph of a dog. The dog has made its way to the bed. The dog clearly has died. What is, I think, important about the photograph, understanding that the statute under which this charge was brought, under which this indictment was brought, is 47-1-40(b), and it really is a statute that encompasses torture, torment. And it says, A person who tortures, torments, needlessly mutilates, cruelly kills -- not just kills but cruelly kills -- or inflicts excessive or repeated, unnecessary pain or suffering upon an animal, or by omission or commission, et cetera, causes this to be done.

So there would be an argument if the shooting, if there was an instantaneous death, would this statute apply. That's not, as I understand the state's case, that's not their position. And at sidebar we had some discussion about that.

What was testified to was that the dog was shot twice, and then the dog crawled into the bedroom, got up on the bed, and that is where the dog died. The dog has shoved himself in

between the mattress and the metal, the metal railing of the bed, and his neck is hanging over the metal railing. And I think that there's -- and it is not a gruesome photograph.

There is certainly some indication that this animal's death was neither quick, nor pleasant. And so that's the reason I allowed the photograph, because that, because this statute requires torture, torment, et cetera. And so that's the reason I allowed that photograph in.

So for the record, I put that on. Anything that the state needs to add to that or that defense counsel needs to?

ATTORNEY OSBORNE: No, Your Honor.

ATTORNEY HUBRICH: No.

THE COURT: Okay.

ATTORNEY CORNWELL: Your Honor, there is one thing I need to clarify about.

THE COURT: Sure.

ATTORNEY CORNWELL: When it came to the watches and you asked me if I had no objection and I said no, I have an objection to your ruling on Michelle's objection; I didn't have an additional objection.

I just wanted to note that for the record just so we can preserve the record on appeal. I was just trying not to object to your ruling on the objection.

THE COURT: Yes, I understand.

ATTORNEY CORNWELL: Thank you, Your Honor.

THE COURT: Very well. Now, tell me when SLED's coming and we've got some work to do.

ATTORNEY OSBORNE: So, we do, Judge. So I've got a couple issues. So Ryan DeWane is our SLED DNA analyst, forensic scientist. We have -- I don't care. We're going to do, we're going to do Porter, Swibaker, some officers that were involved in the pursuit, and then I want hopefully to then deal with Ryan DeWane, the SLED DNA girl. And if that turns out to work okay, then that kind of determines how I'm going to question the next witness, the crime scene tech.

But I have another issue that I need to bring up. I was notified by our SLED ballistics analyst that he was unaware when he got the subpoena that his son is getting a blood transfusion on Friday, and he needs to be there for that.

And so I would ask that we allow him to testify tomorrow, assuming we even get there, you know. But if we do get there, to allow him to testify tomorrow. And I'd ask Your Honor to admit it under 104(b), and that's relevancy conditioned on a fact. And I think the fact ---

THE COURT: You're talking about conditional admission into evidence?

ATTORNEY OSBORNE: Yes, Your Honor.

THE COURT: All right. That certainly is a possibility, and I've done that, just to admit a matter conditionally.

Now, I have a note that I received this morning from a juror

that we need to talk about. I need you all to think about. You know, and this is -- quite frankly, when I get notes like this I kind of wonder why -- it would be so much better if people would raise their concerns when we go through jury qualification.

Juror No. 238 says, I have a weekend trip to Charlotte (bachelorette party. I am the maid of honor). Need to be in Charlotte by 6:30, if possible.

I'm going to mark this as an exhibit, as the Court's Exhibit, because I have received it.

(WHEREUPON, Court's Exhibits 1 and 2 are marked for identification.)

THE COURT: I haven't responded to it. I thought I would just let everybody know. And, of course, we have our juror who has the son's graduation on Friday, as well. So we'll just keep that in mind. So anyway, we'll talk about it tomorrow. I just wanted to give y'all heads up that that's going to become an issue for our maid of honor.

ATTORNEY HUBRICH: Just so Your Honor's aware, she's an alternate. I don't know if that means anything.

THE COURT: Not in this trial, and not as long as we're going to go. You know what, it was raised. And I don't want to lose an alternate in a trial that goes longer than two days.

ATTORNEY HUBRICH: Right.

THE COURT: I mean, I'm already concerned about dad and graduation. Anything further from the state for this evening?

ATTORNEY OSBORNE: No, Your Honor.

THE COURT: From the defense?

ATTORNEY HUBRICH: No, ma'am.

THE COURT: Ms. Cornwell?

ATTORNEY CORNWELL: No, Your Honor.

THE COURT: All right. I will see you all in the morning at 9:30.

(WHEREUPON, court recessed for the day at 5:17 p.m., and reconvened at 10:13 a.m. on Thursday, May 13, 2021.)

MATTERS OF LAW

THE COURT: Yes, ma'am.

ATTORNEY HUBRICH: Thank you, Judge. May it please the Court.

THE COURT: Yes.

ATTORNEY HUBRICH: Judge, I wanted to put something on the record outside the presence of the jury quickly this morning. I've got my client's family who is seated downstairs in the jury assembly room. They are not present in the courtroom.

I know that we had -- I think Ms. Cornwell had made a pretrial motion on Friday asking for the families of the defendants to be present in the courtroom since the families of the victims in this case are present in the courtroom.

And that pretrial motion was denied and it was denied because there is a statute that requires the Court to allow the victims in the courtroom.

The way it was set up yesterday, because of COVID, we've got jurors sitting in the audience; we've got the victims' family, I think, which exceeds between 12 to 15 people sitting on the right side behind the jury. The left side is open. I know that I asked the Court yesterday if my client's family could come up and sit on the left side to show their support, and the Court denied that request.

During opening argument/during opening statement yesterday, Ms. Glover, for the state, indicated to the jury that the victim's family was present in the back of the courtroom. They could turn around and look and see the victim's family sitting there. It certainly put in the jurors' minds, Well, the victim's family is here; Where is the defendant's family, would obviously be the next question they would ask themselves. It was prejudicial to my client.

And at this point we would again request that this Court allow my client's family, that is present downstairs in the jury assembly room, to be present physically in the courtroom to observe the proceedings and to show their support of my client.

THE COURT: All right. I will put on the record, and I'll hear from the state. So here's what we have done specifically for the benefit many of the defendants' family. We had a live feed that is being sent down to the jury assembly room, and that way we do not have to limit, in any regard, the numbers of folks from the defendants' family. And we heard originally numbers

like 12 and perhaps more. And that allowed us to be able to accommodate those folks in that regard.

Now, obviously there are other folks. Counsel for the case next week wanted to be present. But I certainly accommodated the one lawyer that wanted to be present, up here.

But we certainly, the primary concern was to allow the defendant's family the opportunity to hear the proceedings. We've got a camera on the witness stand so that they can hear the witness. I am working the computer up here in addition to the other matters that I am doing so that the sound and the cameras can be activated so that they can see and they can hear.

Yesterday I was asked whether or not we could connect you, Ms. Hubrich, onto the teams so that your client could see them because that was a comfort to him, and I'm certainly happy to accommodate your joining onto the team's technology so that he could see his family members and be comforted. And I was certainly happy to do that, as well.

I've asked for any authority, there is no authority, for requiring that the defendants' families be present in the courtroom.

Now, let me say this, also, and then I'll hear from the state. I wish we never had COVID in this country. There are about 600,000 family -- or, family members of about 600,000 people that wish we had never had COVID in this country. We have COVID in this country.

And we have the unhappy task of accommodating as best we can. I wish that we had sufficient space to accommodate these defendants' family members being present. It's just simply not practical.

And, yes, there are statutory definitions that do differentiate between the family of defendants and the family of alleged victims, without a doubt, and so I am certainly mindful of that. But I'm also mindful that, when defendants are charged with crimes, there are family members that suffer. I certainly get that, and I'm not not empathetic to that.

It is simply the reality that, with COVID, we have to make accommodations. And I reached out to the fire marshal for Dorchester County so that we could put more folks in the courtroom. But I am satisfied that we have as many people in this room as we can accommodate appropriately and safely.

So I am really sorry for that. And we certainly have accommodated as best we can. And I do apologize that it is the way that it is. But I am happy and excited that our wonderful court staff has been able to do the live feed over the teams; that they've obtained the equipment from the county; and I'm grateful to Dorchester County for providing us with additional equipment so that we can connect the jury assembly room here.

I'm so grateful to all of the work of the clerk's office to be sure that the cameras are trained on the witnesses. And I'm so, so grateful that they've been able to do all that they have