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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge**

**Appellant Case № 2021-000982
Lower Court Case Nos. 2019GS3600356, 2019GS3600357, 2019GS3600359**

The State Respondent,

vs.

Xzavier Sharif Davis Appellant.

**RECORD ON APPEAL
VOLUME I**

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State of South Carolina) In the Court of General Sessions
County of Newberry) Eighth Judicial Circuit
2019-GS-36-00356
2019-GS-36-00357
2019-GS-36-00359

State of South Carolina,)
vs.) Transcript of Record
Xzavier Sharif Davis,)
Defendant.)
_____)

August 23-26, 2021
Newberry County Courthouse
Newberry, South Carolina

B E F O R E:

The Honorable Benjamin H. Culbertson, Judge; and a
jury

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Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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3	C-1	Jury Note	169	
4	C-2	Jury Note	789	
5	C-3	Jury Charge	792	
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7	S-1	Autopsy Report	186	614
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13	S-7	GSR Kit	186	319
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16	S-10	Fired Bullet	186	542
17	S-11	Fired Bullets	186	544
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19	S-13	Fired Bullet	186	521
20	S-14	Aerial Photo	186	481
21	S-15	Bullets	186	548
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24	S-18	Photograph	186	619
25	S-19	Photograph	186	258

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-20	Photograph	186	562
4	S-21	Photograph	186	461
5	S-22	Photograph	186	451
6	S-23	Photograph	186	472
7	S-24	Photograph	186	462
8	S-25	Photograph	186	464
9	S-26	Photograph	186	467
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15	S-32	Photograph	186	475
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17	S-34	Photograph	186	518
18	S-35	Photograph	186	518
19	S-36	Photograph	186	518
20	S-37	Diagram	186	347
21	S-38	Photograph	186	468
22	S-39	Photograph	186	565
23	S-40	Photograph	186	565
24	S-41	Photograph	186	565
25	S-42	Photograph	186	565

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-43	Photograph	186	565
4	S-44	Photograph	186	470
5	S-45	Photograph	186	565
6	S-46	Photograph	186	565
7	S-47	Photograph	186	565
8	S-48	Photograph	186	565
9	S-49	Photograph	186	565
10	S-50	Photograph	186	565
11	S-51	Photograph	186	565
12	S-52	Photograph	186	565
13	S-53	Photograph	186	565
14	S-54	Photograph	186	565
15	S-55	Photograph	186	565
16	S-56	Photograph	186	565
17	S-57	Photograph	186	565
18	S-58	Photograph	186	565
19	S-59	Photograph	186	565
20	S-60	Photograph	186	565
21	S-61	Photograph	186	565
22	S-62	Photograph	186	565
23	S-63	Photograph	186	565
24	S-64	Photograph	186	565
25	S-65	Photograph	186	565

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-66	Photograph	186	565
4	S-67	Photograph	186	565
5	S-68	Photograph	186	565
6	S-69	Photograph	186	565
7	S-70	Photograph	186	565
8	S-71	Photograph	186	565
9	S-72	Photograph	186	565
10	S-73	Photograph	186	565
11	S-74	Photograph	186	565
12	S-75	Photograph	186	565
13	S-76	Photograph	186	565
14	S-77	Photograph	186	565
15	S-78	Photograph	186	565
16	S-79	Photograph	186	565
17	S-80	Photograph	186	565
18	S-81	Photograph	186	565
19	S-82	Photograph	186	565
20	S-83	Photograph	186	565
21	S-84	Photograph	186	565
22	S-85	Photograph	186	565
23	S-86	Photograph	186	
24	S-87	Photograph	186	
25	S-88	Photograph	186	

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-89	Photograph	186	
4	S-90	Photograph	186	565
5	S-91	Photograph	186	258
6	S-92	Photograph	186	258
7	S-93	Photograph	186	258
8	S-94	Photograph	186	258
9	S-95	Photograph	186	258
10	S-96	Photograph	186	258
11	S-97	Photograph	186	306
12	S-98	Photograph	186	565
13	S-99	Photograph	186	565
14	S-100	Photograph	186	565
15	S-101	Photograph	186	565
16	S-102	Photograph	186	565
17	S-103	Photograph	186	565
18	S-104	Photograph	186	565
19	S-105	Photograph	186	565
20	S-106	Photograph	186	565
21	S-107	Photograph	186	565
22	S-108	Photograph	186	565
23	S-109	Photograph	186	565
24	S-110	Photograph	186	565
25	S-111	Photograph	186	565

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-112	Photograph	186	565
4	S-113	Photograph	186	565
5	S-114	Photograph	186	565
6	S-115	Photograph	186	565
7	S-116	Photograph	186	565
8	S-117	Photograph	186	565
9	S-118	Photograph	186	565
10	S-119	Photograph	186	565
11	S-120	Photograph	186	565
12	S-121	Photograph	186	565
13	S-122	Photograph	186	565
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15	S-124	Photograph	186	565
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17	S-126	Photograph	186	565
18	S-127	Photograph	186	565
19	S-128	Photograph	186	565
20	S-129	Photograph	186	565
21	S-130	Photograph	186	565
22	S-131	Photograph	186	565
23	S-132	Photograph	186	565
24	S-133	Photograph	186	426
25	S-134	Photograph	186	327

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3	S-135	Photograph	186	426
4	S-136	Photograph	186	427
5	S-137	Photograph	186	435
6	S-138	Photograph	186	435
7	S-139	Photograph	186	437
8	S-140	Photograph	186	440/565
9	S-141	Photograph	186	596
10	S-142	Photograph	186	565
11	S-143	Photograph	186	565
12	S-144	Photograph	186	565
13	S-145	Photograph	186	565
14	S-146	Photograph	186	565
15	S-147	Photograph	186	565
16	S-148	Photograph	186	565
17	S-149	Photograph	186	565
18	S-150	Photograph	186	428
19	S-151	Photograph	186	430
20	S-152	Photograph	186	431
21	S-153	Photograph	186	565
22	S-154	Photograph	186	565
23	S-155	Photograph	186	565
24	S-156	Photograph	186	432
25	S-157	Photograph	186	433

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NO.	DESCRIPTION	I.D.	EVID.
S-158	Photograph	186	565
S-159	Photograph	186	484
S-160	Photograph	186	437
S-161	Photograph	186	438
S-162	Photograph	186	565
S-163	Photograph	186	441
S-164	Photograph	186	565
S-165	Photograph	186	565
S-166	Photograph	186	565
S-167	Photograph	186	565
S-168	Photograph	186	
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S-170	Photograph	186	
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S-172	Autopsy Diagram	186	172
S-173	DVD	387	
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***Note:** Only a portion of State's Exhibit 174 was
admitted into evidence.*

1 generally do, is I'll look over these; I'm sure I'll ask
2 some of them; some of them, I won't. Those that I don't,
3 you just know that I denied ---

4 MR. GEOLY: Yes, sir.

5 THE COURT: --- asking them. All right?

6 MR. STUMBO: Just one last brief thing before we
7 break for lunch, Judge: In the indictments, because --
8 just because we're going to be calling these after lunch,
9 in the attempted murder indictment -- and just for the
10 record, that's 2019-GS-36-0359. And I mentioned this to
11 Mr. Geoly this morning.

12 The language in there includes either express or
13 implied on the attempted murder. Of course, I think
14 that's appropriate in the -- certainly appropriate, based
15 on recent case law the murder indictment. I -- I guess,
16 based on the current state of the law talk and the *King*
17 case and *Smith* -- and there's several others recently --
18 that talk about specific intent in attempted murder
19 cases.

20 Judge, we don't mind it. And we would ask and move
21 the Court to alter or amend that indictment just to
22 strike the phrase "either express or implied," just to
23 not raise any confusion on that and as to your
24 instructions to the jury. I don't know what Mr. Geoly's
25 position on that is, which ---

1 MR. GEOLY: Judge, I -- I mean, I -- I expect that
2 I'll be making a motion for directed verdict at the end
3 of the case, based on -- on *State v. King*, that, you
4 know, as you know, has come out and basically said -- I
5 think their theory of the case is such that it's not
6 going to support an attempted murder that gets by the
7 *State v. King* case.

8 MR. STUMBO: Well, Judge, I think will have evidence
9 that this ---

10 THE COURT: Well, I mean, any -- any objection to
11 amending the indictment to ---

12 MR. GEOLY: Yes, sir.

13 THE COURT: --- delete express and implied? Is
14 there any objection to that?

15 MR. GEOLY: Yes, sir.

16 THE COURT: Okay.

17 MR. GEOLY: I -- I would object to that. I think
18 that they're stuck with the indictment that's been true-
19 billed by the grand jury. And I think, for us at this
20 point, to take -- I think a problem they've got
21 additionally, Your Honor -- and -- and I will -- I'll
22 bring this up at the appropriate time, I think, as you
23 call the case. But I think they may have issues with the
24 murder indictment as well. It certainly doesn't include
25 the word "did," and I -- I think --

1 MR. STUMBO: Judge, I'm ---

2 MR. GEOLY: --- it doesn't ---

3 MR. STUMBO: --- getting to that, if he would ---

4 THE COURT: Okay.

5 MR. STUMBO: --- let me talk.

6 MR. GEOLY: Well, all right. But I don't think it
7 includes the ---

8 MR. STUMBO: But ---

9 MR. GEOLY: --- words "express or implied." And
10 certainly, we're not going to agree to amending that to
11 allow that to be added to the murder warrant now.

12 THE COURT: All right.

13 MR. STUMBO: If we could please handle the first one
14 first, Judge. If -- if Mr. Geoly is not -- doesn't have
15 a problem with this language and -- and ---

16 MR. GEOLY: Oh, I think that the Court should have a
17 problem with it. I just ---

18 MR. STUMBO: Then I --

19 MR. GEOLY: --- I'm not agreeable ---

20 MR. STUMBO: --- then I don't ---

21 MR. GEOLY: --- or amenable ---

22 MR. STUMBO: --- I don't have ---

23 MR. GEOLY: --- to ---

24 MR. STUMBO: --- a problem with Stephen ---

25 MR. GEOLY: I'm -- I'm not amenable to amending it.

1 THE COURT: Well ---

2 MR. GEOLY: I -- I think it's ---

3 MR. STUMBO: Just so you know, Judge, one of our
4 theories will be specific intent to kill as to this
5 indictment and this particular defendant.

6 THE COURT: Okay.

7 MR. STUMBO: However, we believe that the language
8 could potentially be contradictory to the -- to the
9 charges. And quite honestly, Judge -- but if Mr. Geoly
10 doesn't object to it, I don't think there's any prejudice
11 that -- that is going to be to -- attached to the
12 defendant here.

13 MR. GEOLY: Judge, I -- I -- I guess maybe I'm --
14 and -- and the solicitor, in fairness to him, has
15 mentioned that he may not go -- I -- I -- he's -- two
16 different things: One, we're going forward on the
17 murder, three attempted murders, and a possession of
18 pistol during ---

19 MR. STUMBO: That -- that's ---

20 MR. GEOLY: --- violent crime.

21 MR. STUMBO: --- not correct. We're just ---

22 MR. GEOLY: Okay.

23 MR. STUMBO: --- going to go forward on one count of
24 attempted murder.

25 MR. GEOLY: All right. But -- but clearly, we're --

1 we're -- we're acknowledging that this was all done at
2 once and jeopardy is attaching to -- he wouldn't be then
3 facing, if he gets acquitted or convicted, two additional
4 attempted murder.

5 MR. STUMBO: No. No. But let's ---

6 MR. GEOLY: Okay.

7 MR. STUMBO: --- not -- not conflate that. We can
8 get to that in a second.

9 MR. GEOLY: Okay.

10 MR. STUMBO: Correct, Judge. We're calling three
11 indictments: for murder, for attempted murder ---

12 THE COURT: Which indictments are you calling? Give
13 me the numbers.

14 MR. STUMBO: We're -- we're calling 2019-GS-36-0356.
15 That's *State v. Xzavier Davis*, indictment for murder.

16 THE COURT: All right.

17 MR. STUMBO: We are calling Indictment 2019-GS-36-
18 0357. That's an indictment for possession of weapon
19 during the commission of a violent crime. And then, one
20 of the attempted murder indictments, which is 2019-GS-36-
21 0359, it's Xzavier Sharif Davis -- *State v. Xzavier*
22 *Davis*, indictment for attempted murder of Indigo Penny
23 ---

24 THE COURT: All right.

25 MR. STUMBO: --- is the named victim in that

1 indictment.

2 THE COURT: So what are you going to do with 2019-
3 358 and 2019-360?

4 MR. STUMBO: We are going to resolve those as part
5 of this trial, Judge. So we're not going -- we -- we
6 would agree ---

7 THE COURT: I mean, how ---

8 MR. STUMBO: --- that we ---

9 THE COURT: --- are you ---

10 MR. STUMBO: --- can't call -- call those cases
11 later.

12 THE COURT: So are you dismissing them?

13 MR. STUMBO: Yes, sir.

14 THE COURT: Okay.

15 MR. STUMBO: Reason we're doing that today, quite
16 honestly, Judge, is state of the case law has -- we
17 believe the recent cases confused the issues. Quite
18 honestly, the -- probably the more appropriate charge or
19 the one that would survive DV for a nonspecific-intent
20 victim, which these two other children in the car, a
21 3-year-old, and a 1-year-old, we don't believe there's
22 any specific intent by this defendant to kill them. But
23 if there is a general-intent crime, it -- where they're
24 not hit, it's probably an A& -- assault and battery,
25 first degree, is what -- I think there was -- there was

1 a recent case actually out of Laurens, and we tried to
2 address that, Judge.

3 So quite honestly, one of the reasons why we're
4 paring this down is because the recent case law, we
5 believe, throws some of these issues in confusion. We
6 indicted this case two years ago. And we believe these
7 three indictments, based on the facts and evidence in the
8 case, are well supported by the facts and evidence, and
9 we're going to forward on these three.

10 Judge, so that -- that would be the first one. If
11 we -- I'll withdraw my motion if Mr. Geoly doesn't have
12 any objection to either express or implied in the
13 indictment.

14 THE COURT: All right. Well, he's moving to amend
15 it. So you can either consent to the ---

16 MR. GEOLY: I object.

17 THE COURT: All right. You object to amending it?

18 MR. GEOLY: Yes, sir.

19 THE COURT: Well, I'll deny your motion.

20 MR. STUMBO: All right.

21 THE COURT: We'll leave it in there.

22 MR. STUMBO: If -- yes, sir.

23 THE COURT: All right.

24 MR. STUMBO: Second one would be just that there's a
25 scrivener's error in the murder indictment. The word

1 "did" -- I don't know it got -- it got left out. But it
2 reads currently that (as read): "Xzavier Sharif Davis,
3 on or about April 20th, 2019, in Newberry County,
4 willfully, feloniously, and with malice aforethought,
5 killed one Iven James Caldwell by means of shooting and
6 that Iven James Caldwell did die as a proximate result on
7 or about -- on or about April 22nd, 2019, in violation of
8 Section 16-3-10 of the South Carolina Code of Laws 1976,
9 as amended."

10 Judge, we believe that just word "did" -- again, it
11 -- it's -- would ---

12 THE COURT: Where ---

13 MR. STUMBO: --- make this more grammatically
14 correct.

15 THE COURT: You're talking ---

16 MR. STUMBO: We would ---

17 THE COURT: --- about "did willfully" ---

18 MR. STUMBO: Did willfully ---

19 THE COURT: Okay.

20 MR. STUMBO: --- feloniously, and with malice
21 aforethought.

22 THE COURT: All right.

23 MR. STUMBO: We'd just ask this for -- motion to
24 just alter or amend to add the word "did."

25 THE COURT: All right. Mr. Geoly?

1 MR. GEOLY: Judge, I -- I don't want to belabor the
2 point. But I -- I don't think we should be the business
3 of going behind the grand jury to make changes to what's
4 been submitted to them. I -- I think that they have
5 ruled. I think at this point it would be impossible to
6 ask this grand jury, you know, what they meant. And it
7 -- the word "did" is not in there.

8 It -- it's -- it's interesting enough that while in
9 the attempted murder, there actually is express or
10 implied malice is, I think, probably not correct in an
11 attempted murder warrant, but that's what they got.
12 That's the indictment they got.

13 THE COURT: And that's ---

14 MR. GEOLY: It says that ---

15 THE COURT: --- why he was trying to correct it.

16 MR. GEOLY: Well, but ---

17 THE COURT: --- but you objected to the correction.

18 MR. GEOLY: Well, and I -- I agree, Judge. Because
19 that's what the grand jury has done. I don't think it's
20 for me or the Court or -- or the solicitor to go back
21 behind the grand jury. He submitted this to the grand
22 jury, and they -- they did what they did with it.

23 THE COURT: So your argument is that an indictment
24 can never be ---

25 MR. GEOLY: I -- I'm ---

1 THE COURT: --- amended after it's been true-billed
2 by a grand jury.

3 MR. GEOLY: I'm not saying that, Judge. If it's
4 clear it's a scrivener's error, which I -- I'll admit,
5 Your Honor, you know, not trying to talk out of both
6 sides of my mouth, that "did" is very close. I think I
7 have a lot bigger problem with both express or implied
8 being in the attempted murder, which I -- and realize
9 that my -- my -- my failure to -- to acquiesce and agree
10 with the solicitor doesn't mean we won't have a motion to
11 quash that -- before this trial begins. And I -- I --
12 you know, and I'll look at that over lunch, Judge.

13 But I think as to the murder charge, not having the
14 word "did" is -- is -- could be fatal, depending upon
15 what Your Honor decides. But I think they obviously then
16 have issues, too, if they're going to try and argue
17 implied malice. It's not listed as part of this.

18 And surely, you know, we're not going to amend to
19 include language now if -- you know, if -- if -- the
20 "did," I could see. I certainly couldn't see Your Honor
21 adding "express or implied" at this point. So ---

22 THE COURT: All right. Well, we're just dealing
23 with the motion to amend to include "did." I'm going to
24 allow that.

25 MR. GEOLY: Yes, sir.

1 MR. STUMBO: Yes, sir.

2 THE COURT: All right.

3 MR. STUMBO: Thank you. And I can pass that up to
4 Your Honor, if -- if you need to add the word and initial
5 it.

6 THE COURT: I can do that.

7 MR. STUMBO: Thank you, Judge.

8 MR. GEOLY: Thank you, Your Honor.

9 MR. STUMBO: And just -- just to -- for the record,
10 Judge, on the attempted murder indictment, it tracks the
11 statute 16-3-29, which includes the phrase "either
12 express or implied." We tracked the statute when we did
13 the indictment, Judge. We just were trying to -- to ---

14 THE COURT: Well, and ---

15 MR. STUMBO: --- essentially ---

16 THE COURT: --- I understand. And if you want to go
17 forward ---

18 MR. STUMBO: Yeah. I -- I don't ---

19 THE COURT: --- you ---

20 MR. STUMBO: --- think it's fatal to the indictment.

21 THE COURT: Well ---

22 MR. STUMBO: I think ---

23 THE COURT: -- and I'm ---

24 MR. STUMBO: --- we're trying to ---

25 THE COURT: --- I'm not making ---

1 MR. STUMBO: --- clarify ---

2 THE COURT: --- that decision ---

3 MR. STUMBO: --- things ---

4 THE COURT: --- right now. But I ---

5 MR. STUMBO: Yes, sir.

6 THE COURT: --- do know that you moved to amend it

7 ---

8 MR. STUMBO: Yes, sir.

9 THE COURT: --- to correct it, if you will, by your
10 argument, even though you didn't think it needs
11 corrected. He objected.

12 I'm going to be honest with you. I'm -- I'm -- if
13 you move to quash, based upon the fact that they didn't
14 correct it when they want to correct it, I don't know how
15 that's going to play out later. But ---

16 MR. STUMBO: Well, and -- and --- and quite
17 honestly, Judge, you know, I -- I -- I wouldn't even say
18 that -- that it's -- it's incorrect. Because according
19 to the statute, it is correct.

20 THE COURT: Right.

21 MR. STUMBO: Quite -- quite frankly, we just saw it
22 as a -- an opportunity before the jury hears the -- the
23 -- the -- it read that it's an unnecessary language, I
24 guess, more than anything else. We don't believe it
25 affects the validity of the charge itself it's --

1 particularly under *State v. Gentry* as a notice document
2 to put this defendant on notice of what he's facing.

3 THE COURT: I understand.

4 MR. STUMBO: And we don't think it's a fatal error.
5 Thank ---

6 THE COURT: All right.

7 MR. STUMBO: --- you, Judge.

8 THE COURT: Anything else we need to address before
9 we break for lunch?

10 MR. STUMBO: That's all from the state, Judge.

11 THE COURT: All right.

12 MR. GEOLY: Nothing from the defendant, Your Honor.

13 THE COURT: All right. I'll look over the *voir*
14 *dire*, as I said. Whatever I ask, I granted. Whatever I
15 don't ask, I'm denying. We'll do it ---

16 MR. GEOLY: I understand

17 THE COURT: --- that way.

18 All right. So come back at two o'clock.

19 MR. GEOLY: Yeah. Judge, I guess we've agreed in
20 terms of the situation. We're just going to turn this
21 back as defense table?

22 THE COURT: Well, I'm going to leave up to y'all
23 straighten out. As long as -- I mean, when we get
24 everybody satisfied as to everybody can see everybody ---

25 MR. GEOLY: Yes, sir.

1 go looking through the newspaper; don't go looking on the
2 Internet; don't try to find out anything about the case.
3 Whatever you need to make a decision in this case will be
4 presented to you during the trial of this case.

5 I hope everybody has a good evening. Enjoy your
6 evening. We'll see you back 9:15 tomorrow morning.
7 Thank you very much.

8 (Whereupon, the jury exited the courtroom at 3:51
9 p.m.)

10 (Off the record briefly.)

11 THE COURT: All right. They did send out a sheet of
12 paper that had "24 Peter Hill" on it. That was their
13 foreperson who they selected as the foreperson, Juror No.
14 24, Peter Hill.

15 I'm going to have the court reporter mark this as
16 Court's Exhibit 1?

17 THE COURT REPORTER: Yes, Your Honor.

18 THE COURT: Thank you.

19 (Whereupon, Court's Exhibit 1 was marked for
20 identification.)

21 THE COURT: All right. Anything from the state
22 before we recess for the evening?

23 MR. STUMBO: Just to -- I don't want to beat a dead
24 horse, Judge. But just to clarify the record from right
25 before lunch: Over lunch, I look at some of the jury

1 charges on attempted murder. And what I'd asked the
2 Court to do on that motion to alter or amend, it -- it
3 appears as if we've had jury charges that the Court has
4 given since the *King* case that includes that language,
5 "either express or implied." And it's in the statute,
6 Judge.

7 So I -- I probably should've looked at those charges
8 before I even made that motion. But just to make the
9 record clear, I don't believe it's an incorrect statement
10 in the indictment itself. We believe it to be ---

11 THE COURT: Yeah. There's a difference ---

12 MR. STUMBO: --- correct.

13 THE COURT: --- between -- the indictment basically
14 puts the defendant on notice as to what the charge is.

15 MR. STUMBO: Yes, sir.

16 THE COURT: That's separate from what you charge the
17 jury on the law in the case. As I understand ---

18 MR. STUMBO: Correct.

19 THE COURT: --- the *King* case basically says
20 attempted murder is a specific-intent crime ---

21 MR. STUMBO: Yes.

22 THE COURT: --- and that the Court cannot charge the
23 jury that it's a general-intent crime.

24 MR. STUMBO: Right.

25 THE COURT: So that's the way I read the *King* case.

1 MR. STUMBO: And -- and I read Judge Hocker's charge
2 in one of our cases right after that. And he included
3 the language "with specific intent, either express or
4 implied" ---

5 THE COURT: All right. Yeah.

6 MR. STUMBO: --- to -- to comport with the *King*
7 case, which I think will be appropriate here ---

8 THE COURT: Well, and I haven't seen anything that
9 ---

10 MR. STUMBO: Right.

11 THE COURT: --- distinguishes express or implied
12 versus specific intent.

13 MR. STUMBO: Correct.

14 THE COURT: I'm going to keep ---

15 MR. STUMBO: So ---

16 THE COURT: --- looking at it. I'm not saying it's
17 not out there. But I'm going to keep looking to see --
18 you know, and quite frankly, I'll probably check with
19 some other judges and say: "How are you charging
20 attempted murder now?" ---

21 MR. STUMBO: Yes, sir.

22 THE COURT: --- and see what they say. All right?

23 MR. STUMBO: So I -- I apologize for even ---

24 THE COURT: All right.

25 MR. STUMBO: --- maybe confusing that issue prior to

1 lunch. I ---

2 THE COURT: That's not ---

3 MR. STUMBO: We're ---

4 THE COURT: --- a problem.

5 MR. STUMBO: --- perfectly comfortable with the
6 indictment as written ---

7 THE COURT: All right.

8 MR. STUMBO: --- right now. Yeah.

9 THE COURT: Anything further from the state before
10 we recess?

11 MR. STUMBO: That's all from the state, Judge. We
12 -- you know, there's a couple of issues that I think will
13 probably come up during the trial. I'd -- I'd -- I don't
14 think we need to handle them pretrial. There's a hearsay
15 statement that may -- may come in that Mr. Geoly and I --
16 we can talk about it maybe at sidebar or in chambers.
17 And I'm sure we'll argue it on the record. I think it's
18 probably premature to talk about it ---

19 THE COURT: I mean ---

20 MR. STUMBO: --- tomorrow.

21 THE COURT: --- do we have any *Jackson v. Denno* or -
22 --

23 MR. STUMBO: We -- we ---

24 THE COURT: --- *Biggers* ---

25 MR. STUMBO: --- do not.

1 THE COURT: --- or anything like that?

2 MR. STUMBO: There's no -- there's no statement
3 after *Miranda*, Judge, by the defendant. So there's no
4 *Denno*. No *Neil v. Biggers* as to ID issues; all the
5 people know each other here involved ---

6 THE COURT: Okay.

7 MR. STUMBO: --- in this case. So ---

8 MR. GEOLY: Judge, just for you information purposes
9 as we go forward tomorrow, this -- this is not some
10 whodunit. I mean, I -- I -- I expect to probably stand
11 up in my opening statement and say: "Listen, this is
12 about, you know, malice aforethought and *mens rea* and
13 Judge is going to tell you about *mens rea*. And, you
14 know, I -- and -- and that's was this is going to be
15 about. It's not going to be some whodunit. It's -- you
16 know, hide the ball or somebody -- you know, some Plan B
17 phantom defendant that, you know, isn't here."

18 THE COURT: All right.

19 MR. GEOLY: We're -- we're going to stand up,
20 probably acknowledge that the death of a young man was
21 the result of some actions and that we don't think it
22 rises to murder because it lacks the -- the *mens rea* for
23 what happened.

24 So it's very much going to be a nuanced case, not
25 where we're trying to hide the ball, but it's going to be

1 there. I -- you know, our position is going to be their
2 decision to -- to determine whether or not this was done
3 with malice aforethought.

4 THE COURT: Okay. All right.

5 MR. GEOLY: Just to give you an idea of ---

6 MR. STUMBO: And -- and ---

7 MR. GEOLY: --- you know ---

8 MR. STUMBO: --- Judge ---

9 MR. GEOLY: --- what we're ---

10 MR. STUMBO: --- probably the only issue I could see
11 with us: There -- there is a -- a hearsay statement that
12 we believe may be an excited utterance or other reasons
13 why it's admissible through a child in the case, when
14 she's in the ER, one of the daughter -- the children who
15 was in the car at the time of the shooting. That's
16 something I think we can argue maybe *in limine* during the
17 trial, instead of doing that alone.

18 THE COURT: Well, just -- just ---

19 MR. STUMBO: Well, we'll give you a heads-up ---

20 THE COURT: Yeah. Give me ---

21 MR. STUMBO: --- before ---

22 THE COURT: --- a heads-up ---

23 MR. STUMBO: --- it's coming.

24 THE COURT: --- if you want it.

25 MR. STUMBO: Yeah. Yes, sir.

1 THE COURT: Who -- who's in -- who's going to object
2 to it, you think, the defense ---

3 MR. STUMBO: I --- I ---

4 THE COURT: --- or the state?

5 MR. STUMBO: --- would think Mr. Geoly would object
6 to it ---

7 MR. GEOLY: Well, I -- I'm ---

8 THE COURT: Okay.

9 MR. GEOLY: --- not sure what ---

10 MR. STUMBO: --- you know. But ---

11 THE COURT: Okay.

12 MR. STUMBO: --- I -- I ---

13 MR. GEOLY: --- he's even ---

14 MR. STUMBO: --- he hasn't ---

15 MR. GEOLY: --- talking about.

16 MR. STUMBO: --- told me ---

17 MR. GEOLY: But ---

18 MR. STUMBO: --- that yet.

19 MR. GEOLY: --- if they're ---

20 MR. STUMBO: But ---

21 MR. GEOLY: --- talking about some statement that a
22 3-year-old makes at the hospital that night, which is
23 what I think he's getting into, certainly not going to be
24 any -- I -- I don't know how they're ---

25 MR. STUMBO: Well, we ---

1 MR. GEOLY: --- going to ---

2 MR. STUMBO: --- could -- yes.

3 MR. GEOLY: --- portray it ---

4 MR. STUMBO: I think ---

5 MR. GEOLY: --- to excited utterance of my client.

6 But I'll -- I'll deal with it when he lets me know about
7 it, Judge.

8 THE COURT: All right. Well, if -- so if it's
9 something that you're going to get in, you think he might
10 object to, let's go ahead and give him the heads-up, what
11 it is ---

12 MR. STUMBO: Oh, yes ---

13 THE COURT: --- you're trying ---

14 MR. STUMBO: --- sir. I'll ---

15 THE COURT: --- to get ---

16 MR. STUMBO: --- do it ---

17 THE COURT: --- in. And ---

18 MR. STUMBO: --- tonight.

19 THE COURT: --- then, that'll ---

20 MR. STUMBO: Yeah.

21 THE COURT: --- give you overnight. You can come
22 back tomorrow morning. And if you want to address it
23 before we even start anything, we'll do it ---

24 MR. STUMBO: Right.

25 THE COURT: --- then. Or if you want to wait until

1 the appropriate time, however you want to try your case.

2 MR. GEOLY: I'm ---

3 THE COURT: But let's ---

4 MR. GEOLY: --- I'm ---

5 THE COURT: --- go ahead and put him on notice what
6 it is.

7 MR. STUMBO: Yes, sir.

8 MR. GEOLY: I'm -- I'm ---

9 MR. STUMBO: We ---

10 MR. GEOLY: --- a go through ---

11 MR. STUMBO: --- we would ---

12 MR. GEOLY: --- those 176 exhibits first ---

13 THE COURT: Yeah.

14 MR. GEOLY: --- Judge. And then I'll get to that

15 ---

16 THE COURT: They ---

17 MR. GEOLY: --- right after.

18 MR. STUMBO: Well ---

19 MR. GEOLY: So ---

20 MR. STUMBO: --- and -- and ---

21 THE COURT: All right.

22 MR. STUMBO: --- to -- to be fair, I will say that
23 the vast majority of those are photographs.

24 MR. GEOLY: Okay.

25 MR. STUMBO: So ---

1 THE COURT: Okay.

2 MR. GEOLY: Good.

3 THE COURT: All right.

4 MR. GEOLY: I'm glad to hear that.

5 THE COURT: Yeah.

6 MR. STUMBO: Judge, but I -- yes. We will give Your
7 Honor a heads-up before we put the witness on the stand
8 that would ---

9 THE COURT: Okay.

10 MR. STUMBO: --- elicit the -- the testimony.

11 THE COURT: All right.

12 MR. STUMBO: So we can put it before Your Honor; you
13 can make a ruling on it. We'll know which direction to
14 go.

15 THE COURT: All right. That sounds good.

16 MR. STUMBO: Yes, sir.

17 THE COURT: All right. Anything from the defense
18 before we recess?

19 MR. GEOLY: Judge, I -- I think you've pretty much
20 got a good handle on it. If anything comes up, we'll
21 handle, you know, real-time in the -- the courtroom.

22 The one thing I don't know yet, Judge, apparently,
23 you're getting, I think, realtime, kind of like they do
24 in federal court. I don't practice in federal court.
25 But it's my understanding that the court reporter is

1 making available to us a unique kind of situation where,
2 I think, she does a -- a transcript on -- on a realtime
3 basis daily that you would get it.

4 It -- and we do want to take advantage of that and
5 give her whatever funds I need to do to -- to make that.
6 So I just want to make sure I -- I -- I'm effectually
7 doing whatever we need to do to take advantage of that
8 realtime court reporter.

9 THE COURT: All right. Can you produce a transcript
10 like that or ---

11 THE COURT REPORTER: Yes, Your Honor.

12 THE COURT: Okay. I mean ---

13 THE COURT REPORTER: I can produce ---

14 THE COURT: --- this is a new one for me too, so ---

15 THE COURT REPORTER: I can produce a rough draft
16 right now of today's proceedings.

17 THE COURT: Okay. So whoever wants to take
18 advantage of her capabilities and what she's willing to
19 do, let's get with her before tomorrow morning ---

20 MR. GEOLY: Okay.

21 THE COURT: --- get whatever needs to be taken care
22 of, taken care of so she knows what to expect and you
23 know what you can get.

24 MR. STUMBO: I was just ---

25 MR. GEOLY: Thank you.

1 MR. STUMBO: --- reminded, Judge. One more thing,
2 just the defendant's bond: He's been out on bond for
3 about three weeks. He had been detained the rest of the
4 time in this case. My practice, just as solicitor -- and
5 this isn't anything personal with this defendant -- has
6 always been that during the trial, bond is -- is
7 suspended for the duration of the trial.

8 THE COURT: All right. Has there been any failures
9 to appear or anything ---

10 MR. STUMBO: Well ---

11 THE COURT: --- of that nature?

12 MR. STUMBO: --- there hasn't been an opportunity,
13 Judge. Today is the first time he has been ---

14 THE COURT: Okay.

15 MR. STUMBO: --- set to appear since he was released
16 a few weeks ago.

17 THE COURT: What I typically do, we haven't taken
18 any testimony; we haven't done anything. I will allow
19 him to go home, come back tomorrow.

20 You need to let your client know, if he does not
21 appear, the trial goes forward in his absence. All
22 right?

23 MR. GEOLY: I've explained that him, Judge.

24 THE COURT: You understand that, Mr. Davis?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. The trial will go forward in
2 your absence.

3 Now, I reserve the right to change my mind at any
4 point in time.

5 MR. GEOLY: Yes, sir.

6 THE COURT: Okay?

7 MR. STUMBO: Yes, sir.

8 THE COURT: Typically, depending on what happens
9 during the trial, we'll -- you know, I'll let him go
10 home. If he doesn't come back, we'll continue with the
11 trial. Something might happen during the trial that
12 might make me change my mind. I don't know that.

13 Typically, also, once we've completed all testimony
14 and all evidentiary portions, if the jury is still
15 deliberating or has not begun deliberations, then I
16 generally do hold the defendant then. Because -- there's
17 nothing else to be presented. So a lot of times, say, if
18 we finish the -- the testimony and the evidence but we're
19 going to wait until tomorrow to do the closing arguments,
20 jury charges, and things of that nature, a lot of times,
21 I will go ahead and hold him then, just simply because
22 there's nothing left ---

23 MR. GEOLY: Judge, he -- this is very much a -- a
24 family-oriented group.

25 THE COURT: All right.

1 MR. GEOLY: At the bond hearings, you know, that
2 we've had -- there were several before bond eventually,
3 you know, got put off, that if it doesn't get tried by
4 this date, then, you know, we'll set a bond. But that's
5 how he came to -- to making bond just, as they said,
6 about three to four weeks ago. He's had no problems
7 since then, Judge.

8 If you'll see right behind him, this is his
9 grandmother and grandfather. Well, he's staying at their
10 house. He has an ankle monitor. So, I mean, I'll
11 address all that with you at the time. But I don't ---

12 THE COURT: Okay.

13 MR. GEOLY: --- I certainly don't expect a problem.

14 He's been a great client; done everything I've asked
15 of him. And even since he's been out, every time I tell
16 him to come to my office, he does. If I say, "Hey, I'm
17 coming your way; meet me in such and such" ---

18 THE COURT: All right.

19 MR. GEOLY: And -- and I don't think that you're
20 going to have anybody from the victim's family ---

21 THE COURT: Well, we'll go ahead and we'll -- I'll
22 let him -- let him go home this evening. Keep the ankle
23 monitor in place.

24 MR. GEOLY: Yes, sir.

25 THE COURT: And we'll ---

1 MR. GEOLY: Thank you, Judge.

2 THE COURT: --- proceed that way. But ---

3 MR. GEOLY: I understand ---

4 THE COURT: --- because I've ---

5 MR. GEOLY: --- your ruling.

6 THE COURT: --- had this happen before, I can change
7 my mind at any time.

8 MR. GEOLY: Yes, sir.

9 THE COURT: Okay?

10 MR. GEOLY: He understands that too, Judge.

11 THE COURT: All right.

12 MR. STUMBO: And -- and we ---

13 MR. GEOLY: Thank you.

14 MR. STUMBO: --- would ask, obviously, no contact
15 tonight with any of the witnesses or victims ---

16 THE COURT: Yeah. No ---

17 MR. STUMBO: --- in the case.

18 THE COURT: --- contact with any -- are there any
19 codefendants or anything?

20 MR. GEOLY: No ---

21 THE COURT: Okay.

22 MR. STUMBO: No, sir.

23 MR. GEOLY: --- codefendants, Judge. But -- but ---

24 MR. STUMBO: No, sir.

25 MR. GEOLY: --- I will ---

1 THE COURT: All right.

2 MR. GEOLY: --- let Your Honor know: His wife is
3 the alleged victim. I mean, her -- you know, I -- we'll
4 get into the name stuff, I guess, tomorrow. But this
5 Indigo is actually Indigo Davis, who's been married to
6 him for a couple years. They have three children
7 together: two that were alive when this happened. She
8 was actually pregnant when this occurred.

9 THE COURT: But, I mean, are they in contact with
10 each ---

11 MR. GEOLY: They are.

12 THE COURT: --- other now?

13 MR. GEOLY: She -- she talks to him daily, I think.
14 It -- there is not -- there wasn't a prohibition of it.
15 It's -- I think she's talked to him. I think she saw
16 him, you know, at -- at a -- like, out and about.

17 I -- so it -- there has been contact. She does call
18 him. I think she'll probably expect to call him today.
19 So we certainly will follow the Court's guidance. But
20 there wasn't anything I -- in my knowledge to -- that
21 prohibited that in the -- the order.

22 MR. STUMBO: What -- do you have Judge Addy's order?

23 MR. GEOLY: Yeah.

24 MR. STUMBO: Okay. I -- I thought it had a no-
25 contact in it. But I can ---

1 MR. GEOLY: Well, I'll ---

2 MR. STUMBO: --- pull it.

3 MR. GEOLY: --- I'll double-check it. But ---

4 THE COURT: Well, check ---

5 MR. GEOLY: --- and again ---

6 THE COURT: --- what it ---

7 MR. GEOLY: --- it's not ---

8 THE COURT: --- even though ---

9 MR. GEOLY: --- him going ---

10 THE COURT: --- though the ---

11 MR. GEOLY: --- to her.

12 THE COURT: --- bond is not in place now, whatever
13 conditions were there ---

14 MR. GEOLY: Right.

15 THE COURT: --- let's leave the conditions there.

16 MR. STUMBO: Yes, sir.

17 MR. GEOLY: Yes, sir.

18 THE COURT: That just means that the bondsman's ---

19 MR. GEOLY: Yes, sir.

20 THE COURT: --- now off the bond. Okay?

21 MR. GEOLY: Okay.

22 THE COURT: All right. All right. Anything else?

23 MR. GEOLY: No, sir.

24 MR. STUMBO: Nothing from the state, Judge.

25 THE COURT: Y'all get with the clerk, whatever y'all

1 need to do as far as getting the courtroom arranged to a
2 way that is satisfactory with everybody, okay?

3 MR. GEOLY: Yes, sir.

4 MR. STUMBO: I think we are going to use the witness
5 stand here. And Mr. Daniel and I are going to move to
6 this table. We're going to move Mr. Geoly here so he can
7 see the witness and all the jurors and ---

8 THE COURT: Okay. Well, however -- y'all get it
9 worked out and I can ---

10 MR. STUMBO:

11 THE COURT: --- work with whatever y'all -- y'all
12 choose to do, okay?

13 MR. GEOLY: Yes, sir.

14 MR. STUMBO: Yes, sir.

15 THE COURT: All right.

16 MR. GEOLY: Thank you, Judge.

17 MR. STUMBO: Thank you, Judge.

18 THE COURT: All right. Thank y'all. We'll be in
19 recess until 9:30 tomorrow morning.

20 (Whereupon, the proceeding adjourned at 4:03 p.m.)

21 (Whereupon, State's Exhibits 1 through 172 were
22 marked for identification while off the record.)
23
24
25

1 TRIAL DAY 2 - 08/24/21

2 (Whereupon, the proceeding resumed at 9:42 a.m.)

3 THE COURT: All right. First thing we need to
4 address is the clerk of court got a call this morning.
5 Juror No. 31, Vanessa L. Matthews, she has a coworker who
6 she was around last week or Sunday or sometime. The
7 coworker started feeling bad. She called in this morning
8 and said the coworker tested positive for COVID
9 yesterday.

10 She says she's been vaccinated. She doesn't have
11 any of the symptoms. However, she said, with the
12 questioning, she has now been in contact with someone
13 even though the person hadn't tested positive when we
14 qualified the jury. She was in contact with somebody who
15 has now tested positive for COVID.

16 My suggestion, unless there's a strenuous objection
17 from someone, is to go ahead and excuse her and seat one
18 of the alternates. She's on standby. She's not here.
19 She said, "I didn't want to come in, having been around
20 somebody who now has tested positive for COVID." And we
21 told her just stick by the phone; we'll let her know.

22 What's the state's position?

23 MR STUMBO: We don't have any objection to just
24 seating the alternate, Judge. I mean ---

25 THE COURT: All right.

1 MR. STUMBO: --- that's why we have them.

2 THE COURT: All right. As I understand in general
3 sessions, unlike common pleas, you have the two
4 alternates; they'll be put -- names put in a cup.
5 Somebody will draw the name, and that'll be it. You
6 don't necessarily go to the first one and the second one.

7 MR. GEOLY: Judge, I apologize. Could you give me
8 the name again of the juror we're discussing?

9 THE COURT: The juror was Juror No. 31, Vanessa L.
10 Matthews. She's No. 2 on the jury strike sheet.

11 MR GEOLY: Beg the Court's indulgence, just a
12 moment.

13 THE COURT: That's fine.

14 MR GEOLY: I got -- got all these different lists,
15 Judge, if you . . .

16 (Off the record briefly.)

17 MR GEOLY: Judge, am I right in that she is not
18 feeling any symptoms and ---

19 THE COURT: She said she's been vaccinated; she does
20 not feel any symptoms; but she has been in contact with
21 somebody who has tested positive as of yesterday for
22 COVID. It was a coworker.

23 MR GEOLY: Judge, as you know, I had a issue with
24 the jury yesterday. I -- I felt good with our jury as
25 impaneled, so I withdraw all of that. And -- and I feel

1 good with the -- the jurors we have.

2 If -- if she's got no ill effects whatsoever, I'd
3 ask that we proceed as -- as we are. I'm certainly not
4 to the point ---

5 THE COURT: All right.

6 MR. GEOLY: --- I would ---

7 THE COURT: That's fine.

8 MR. GEOLY: --- object to ---

9 THE COURT: That's fine. All right. Let's call Ms.
10 Matthews; tell her to go ahead and get here. We'll wait
11 for her to get here.

12 CLERK OF COURT: Yes, sir.

13 MR. GEOLY: Yes, sir, Your Honor.

14 (Off the record briefly.)

15 THE COURT: All right. While we're waiting on her,
16 anything we need to address from the state before we get
17 started?

18 MR STUMBO: It may give us a -- a moment, Judge ---

19 MR. GEOLY: I'll look ---

20 MR. STUMBO: --- to take ---

21 MR. GEOLY: --- right now.

22 MR. STUMBO: --- a look at these exhibits and ---

23 MR GEOLY: Yes, sir. I'll be ---

24 MR. STUMBO: --- we'll -- we'll ---

25 MR. GEOLY: --- looking ---

1 MR. STUMBO: --- know what ---

2 MR. GEOLY: --- right now ---

3 MR. STUMBO: --- at's -- at ---

4 MR. GEOLY: I -- I feel ---

5 MR. STUMBO: --- issue.

6 MR. GEOLY: --- like we -- we're -- we're good with
7 most of it, Your Honor, just a couple ---

8 THE COURT: All right.

9 (Off the record briefly.)

10 MR STUMBO: Yeah. Judge, this may be felt helpful
11 so as we don't have to pass stuff up for you to look at.
12 But we have all the exhibits -- Taylor ---

13 MR GEOLY: I -- I have ---

14 MR. STUMBO: --- has them ---

15 MR. GEOLY: --- no objection ---

16 MR. STUMBO: --- on the ---

17 MR. GEOLY: --- to you looking at ---

18 MR. STUMBO: --- thumb ---

19 MR. GEOLY: --- them, Judge.

20 MR. STUMBO: --- thumb drive.

21 THE COURT: Well, I mean ---

22 MR. GEOLY: It's only ---

23 THE COURT: --- if I can -- I just didn't want to
24 download them onto my computer. If I could just view
25 them through the flash drive, we can do that.

1 MR. STUMBO: That -- that's fine.

2 MR. GEOLY: Certainly.

3 THE COURT: Okay.

4 MR. DANIEL: Yes, sir.

5 MR STUMBO: I think, as -- as long as you just --
6 you can pull up, you know your files ---

7 THE COURT: Yeah.

8 MR STUMBO: --- up on the computer. You don't have
9 to download them to view it.

10 THE COURT: All right.

11 MR. STUMBO: You can just look at them through the
12 flash drive.

13 (The Court went off the record at 9:47 a.m.)

14 (The Court went on the record at 9:52 a.m.)

15 THE COURT: All right. Anything from the state
16 before we bring the jury in?

17 MR STUMBO: We're ready.

18 THE COURT: All right. Anything from the defense?

19 MR GEOLY: No, sir, Your Honor.

20 THE COURT: All right.

21 (Off the record briefly.)

22 THE COURT: All right. We'll bring the jury in.
23 I'll let the clerk swear the jury. I'll do opening
24 charges, opening statements, and then -- then we'll
25 proceed. Okay?

1 MR STUMBO: Yes, sir.

2 (Off the record briefly.)

3 (Whereupon, the jury entered the courtroom at
4 9:55 a.m.)

5 THE COURT: All right. Ladies and gentlemen,
6 welcome back. Hope everybody had a good evening. We're
7 getting ready to start the trial of this case.

8 First of all, I want to thank you for being prompt
9 and returning on time. I apologize for keeping you in
10 the jury room as long as we did. But there are some
11 things that we had to tend to. Again, thank you for
12 being prompt.

13 I remind you, if you inadvertently brought any cell
14 phones or pager devices into the courtroom, make sure you
15 turn them off completely at this time.

16 As I said, we're getting ready to start the trial of
17 this case. But just like I told you in qualifications
18 and during *voir dire*, jurors, just like witnesses,
19 constantly take oaths. So I'll need all members of the
20 jury to jury to please stand and raise your right hand
21 while the clerk of court administers the oath for you to
22 serve as jurors on this particular case.

23 (Whereupon, the trial jury was duly sworn at 9:57
24 a.m.)

25 THE COURT: Thank you very much. Please be seated.

1 JURORS: (Complied.)

2 THE COURT: Excuse me. Now, is there any member the
3 jury that did not respond to the oath by saying "I will"?
4 If so, please stand.

5 (Whereupon, no juror stood.)

6 THE COURT: Very well. Also, as another
7 housekeeping matter, we have put some hand sanitizers on
8 the rails there. Because I don't know whether you'll be
9 actually physically touching any exhibits or not.
10 Sometimes in trials you do; sometimes you don't.

11 But you're at liberty to get any hand sanitizer
12 whenever you want. They are there for you. So it makes
13 you feel more comfortable or whenever you want to use
14 some, just grab some hand sanitizer and that won't be a
15 problem.

16 INTRODUCTION BY THE COURT

17 Now, we're getting ready to start the trial of the
18 case the *State of South Carolina v. Xzavier Sharif Davis*.
19 Now, before we begin the trial, I want to tell you that
20 the trial will probably be a little bit different than
21 what you're accustomed to. When you watch movies, TV
22 shows, read books, trials are often full of a lot of
23 suspense, a lot of action.

24 While that might be the case in this trial, it
25 probably won't be. In reality, trials are often slow,

1 deliberate, repetitive processes, the exact opposite of
2 what you might be accustomed to when you watch trials for
3 entertainment purposes or read about trials for
4 entertainment purposes. But I hope you do find the trial
5 entertaining. I hope you find it educational. And I
6 want to thank you from the outset for serving as jurors
7 in this case.

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

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

23 Now, the defendant is charged by indictments filed
24 in this Court with the crime of murder, attempted murder,
25 and possession of a weapon during the commission of a

1 violent crime. These are the indictments. And I'll
2 explain the elements of those crimes to you at a later
3 time. Excuse me one second.

4 (Off the record briefly.)

5 THE COURT: All right. Ladies and gentlemen, I
6 understand someone needs to use the restroom. We're
7 going to excuse to the jury room. We'll bring you back
8 out just a minute, okay?

9 THE COURT: All right. Let's excuse them to the
10 jury room.

11 (Whereupon, the jury exited the courtroom at
12 10:00 a.m.)

13 (Off the record briefly.)

14 THE COURT: All right. I apologize. The bailiff
15 just came and told the clerk of court that one of the
16 jurors, on the way in, said she had to use the restroom.
17 Why they went ahead and brought them in, I don't know.
18 But I don't want anybody sitting up there, having to use
19 the restroom and not paying attention to what's going on.

20 (The Court went off the record at 10:01 a.m.)

21 (The Court went on the record at 10:09 a.m.)

22 THE COURT: All right. Let's go ahead bring them
23 back in.

24 (Whereupon, the jury entered the courtroom at
25 10:10 a.m.)

1 THE COURT: All right. Ladies and gentlemen,
2 welcome back. I'll continue with my opening remarks.

3 As I told you before we broke, this is not a charge
4 on the law. I'll instruct you on the applicable to this
5 case at the end of the trial before you return to
6 consider your verdict. This is just an explanation of
7 the procedure that we will follow in the trial of this
8 case so that you may better understand what is happening.

9 Now, as I was telling you before we took our break,
10 the defendant has been charged by indictments. These
11 indictments charge the defendant with murder, attempted
12 murder, and possession of a weapon during the commission
13 of a violent crime. I'll explain the elements of those
14 crimes to you at a later time when I charge you with the
15 law to be applied in this case.

16 Now, these indictments are simply the charges by
17 which this case is brought into this Court. They are
18 not, in any sense, evidence of any of the allegations
19 contained in them. The defendant has pled not guilty to
20 these indictments. The state, therefore, has the burden
21 of proving each of the elements of all indictments beyond
22 a reasonable doubt. It will be your duty, ladies and
23 gentlemen, to decide whether or not the state has met
24 that burden.

25 Your purpose as jurors is to find and determine the

1 facts of this case. You are the sole judge of facts of
2 this case. If, at any time, I make any comment regarding
3 the facts of this case, you must disregard my comments.
4 You are to determine the facts from the testimony you
5 hear and the other evidence introduced during the trial
6 of this case.

7 It is up to you to determine the inferences which
8 you feel may properly be drawn from that evidence. It's
9 especially important that you perform your duty of
10 determining the facts diligently and conscientiously,
11 because ordinarily, there is no way to correct an
12 erroneous determination of the facts by a jury.

13 Now, on the other hand and with equal emphasis, the
14 same law that makes you the judge of the facts makes me
15 the judge of the law. The law as given to you by the
16 Court is the only law that you may consider. You must
17 accept and follow the law as I give it to you, even
18 though you may disagree with it.

19 Just as I cannot tell you what the facts of this
20 case are, you cannot disagree with me about the law to be
21 applied in this case. Your job is to take the law as I
22 give it to you and to apply it to the facts as you find
23 those facts to be from the testimony of the witnesses and
24 any other evidence that is introduced during the trial
25 this case. After doing that, you will render your

1 verdict, a true and just verdict under the solemn oath
2 that you just took as jurors.

3 Now, until I advise you to begin your deliberations,
4 you must not discuss this case with anyone, including
5 your fellow jurors. Don't discuss it with any friends,
6 family members, or anyone involved in the case. After
7 the case is submitted to you, you can then discuss the
8 case, but only in the jury room with your fellow jurors.

9 The attorneys and parties in the case have been
10 advised that they are not to talk to you at all about the
11 case, so they're not being rude. They're just follow the
12 instructions of the Court.

13 Now, during the trial you're not to read or listen
14 to or watch any news reports about the case. This
15 includes anything that may be in the newspaper, on the
16 Internet, radio, or television. You must not consider
17 anything you may have read or heard about the case
18 outside of the courtroom, whether that be before or
19 during the trial of this case.

20 It's important that you keep an open mind and not
21 decide any issue in this case until all of the evidence
22 has been presented, the parties have made their closing
23 arguments, and I have instructed you on the law to be
24 applied in this case.

25 It is your solemn responsibility to determine the

1 guilt or innocence of the defendant. And your verdict
2 must be based solely on the evidence as it is presented
3 to you in this trial and on the law as I instruct you
4 during and at the close of the trial.

5 Now, in just a moment, the solicitor will make what
6 is called an opening statement in which the solicitor
7 will explain to you the issues in this case or at least
8 what the solicitor thinks the issues in this case are.
9 The attorney for the defendant may also make an opening
10 statement, although he is not required to do so.

11 What the attorneys tell you during their opening
12 statements is not evidence in this case. It is only
13 their contention as to what they feel the issues in this
14 case are. The evidence in this case will be presented to
15 you by testimony of sworn witnesses from the witness
16 stand and any other exhibits that may be introduced into
17 evidence.

18 Now, in determining what the true facts are in this
19 case, you must decide whether or not the testimony of the
20 witnesses are believable. It is my responsibility to
21 rule as a matter of law as to whether or not certain
22 testimony is admissible at all or not. However, once the
23 testimony is admitted into evidence, whether or not you
24 believe it is solely for you to determine.

25 In deciding whether to believe a witness, you have

1 the right to consider the interest of any witness, the
2 bias of any witness, the prejudice of any witness, the
3 opportunity for the witness to have seen the matters and
4 things about which the witness may testify, and the way
5 the witness acts on the witness stand. You have the
6 right to consider anything that is in the record that
7 will help you evaluate the testimony of the witnesses.

8 That means that it is your duty to pay close
9 attention to these witnesses, to observe the witnesses,
10 to listen to the witnesses, and to pay close attention to
11 the attorneys and to the Court. Don't let your thoughts
12 wander, but give strict attention to the testimony in
13 this case so that at the end of all of the testimony,
14 after arguments of counsel and a charge on the law by the
15 Court -- excuse me -- Court, you will then be in a
16 position to determine what the true facts are and to
17 apply the law to those facts and thus render a true and
18 just verdict.

19 Now, are there any additional charges or
20 challengings -- challenges to the opening charges by the
21 state?

22 MR STUMBO: None from the state, Judge.

23 THE COURT: Any by the defense?

24 MR GEOLY: None from the defendant, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, we

1 will now begin the trial this case with the attorneys'
2 opening statements. And as I told you during these
3 charges, these opening statements are not evidence in
4 this case. It is simply the attorneys' contention as to
5 what they think the issues in this case are and the law
6 to be applied.

7 All right. Mr. Stumbo?

8 MR STUMBO: Mr. Daniel, Your Honor, is going to
9 deliver the opening for ---

10 THE COURT: That'll be fine.

11 MR. STUMBO: --- for the state. Yes, sir.

12 THE COURT: All right, sir.

13 MR DANIEL: Thank you, Your Honor. May it please
14 the Court?

15 THE COURT: Yes, sir.

16 OPENING STATEMENT BY MR. DANIEL

17 MR DANIEL: Good morning, ladies and gentlemen, Mr.
18 Foreman. I'm Taylor Daniel; I'm assistant solicitor in
19 Newberry. And I work for your elected solicitor, David
20 Stumbo, who I'm trying the case with.

21 And it's our job

22 -- we represent the State of South Carolina in these
23 proceedings. And it's -- it's our job to attempts to
24 attempt to secure a conviction against Xzavier Davis, who
25 stands before you on trial, charged with three offenses:

1 the murder of Iven Caldwell, 7-year-old -- and Iven
2 Caldwell was the stepson of this defendant, Xzavier Davis
3 -- also, the attempted murder of Indigo Penny. That's
4 Mr. Davis's wife. And then, lastly, the third charge is
5 possession of a firearm during the commission of a
6 violent crime.

7 And these three charges stem from April 20th, 2019,
8 incident that took place early-morning hours, still dark,
9 Saturday morning, [REDACTED]. And this is in the
10 Helena section of Newberry County, just outside the city
11 limits of Newberry: Drayton Street/Brown Chapel Road
12 area, just a few miles from the courthouse.

13 And I want to apologize to you for having to expose
14 y'all to the facts of this case, because the facts are
15 grim. Anytime is a murder case, it's going to be
16 difficult. Someone's life has been taken. But in this
17 case, we're dealing with life of a child.

18 And so this is not your occupation. This is not
19 your job. It's my job to be here. It's Solicitor
20 Stumbo's job to be here. Mr. Geoly, the defense
21 attorney, it's his job to be here. His Honor's job to be
22 here -- we're all getting paid. We're all on the clock,
23 so to speak.

24 You guys aren't the clock. You're not getting paid
25 in the traditional sense for your jury service. You

1 didn't volunteer for this. You didn't ask for this.

2 You were drafted. You're here out of a sense of
3 civic duty. You answered the call. You got that summons
4 in the mail. You guys reported to the courthouse.

5 And your presence is necessary for our criminal
6 justice system. Because under the Constitution, state
7 and federal Constitution, anytime someone is charged with
8 a serious crime such as murder, they have a right to
9 enter a plea of not guilty and demand to be tried by a
10 jury of their peers. That's residents of Newberry
11 County; that's you guys.

12 Only you guys can pass judgment on this case.
13 Issues of fact are for the jury. That means guilt or
14 innocence. It's going to be your call. And I know it's
15 unfair. You're thrust into this position. You didn't
16 ask for this. You did not ask this.

17 And I know it's a tall order. It's asking a lot.
18 But again, our system, our criminal justice system
19 demands that we resolve this case by means of a jury
20 trial.

21 His Honor has nothing to do with y'all's verdict.
22 That is entirely your call. And it's an enormous
23 responsibility. And you're to apply the law to the
24 facts.

25 But again, we're not asking you to be robotic.

1 There's not a sign at the courthouse that says: "Check
2 your humanity at the door."

3 We know a 7-year-old was killed. That's undisputed.
4 Shot in the head at the hands of his stepfather. There's
5 no way around it. It is difficult. But it's part of
6 what we do is, to go back, look at the facts, and for you
7 guys to make that call. And I submit to you, the
8 evidence is compelling and overwhelming by any objective
9 measure. This is a strong case suggesting that Mr. Davis
10 is guilty of all charges. I'll say that from the outset.

11 But it's our process that he gets to have a jury of
12 his peers actually make that call. So I can say he's
13 guilty till he's blue in the face. My opinion doesn't
14 matter. All I can do is present the case from my
15 respective position.

16 So there's no hope for a better yesterday. We can't
17 bring Iven back to life, obviously. But what we can do
18 is have a sense of justice.

19 But before you can do that, there is a process of
20 fairness. And I want to be fair to Mr. Davis; I do. He
21 has his day in court; he's getting it. He's allowed to
22 present a defense if he so chooses. But ultimately, the
23 burden is on the state to prove every element of the
24 offense -- the offenses with proof beyond a reasonable
25 doubt.

1 So what are you doing here? You're answering one
2 question: Are all of you firmly convinced that Mr. Davis
3 is guilty of those three crimes that he's charged with?
4 You're to answer that one question. So if you find
5 yourself intimidated by your surroundings, go back to
6 that one question.

7 All this is for your benefit. All the testimony
8 from the witness box, all the exhibits, it's all to help
9 paint a picture of what transpired on that fateful early-
10 morning hours of April 20th, 2019, over two years ago.

11 So I'll briefly just go over the facts of the case,
12 just a -- kind of a -- a blueprint, road map of the case.
13 April 20th, 2019, Mr. Davis lives at [REDACTED].
14 His stepson, Iven Caldwell; his wife, Indigo Penny; and
15 then, they have two children together as well at the
16 time: a Penelope Davis, 3-year-old; and Xzavier Davis,
17 Jr. He was an infant. I think he was about nine months
18 old at the time.

19 So all four of them -- or excuse me -- all five of
20 them lived at this trailer on [REDACTED] together.
21 And that weekend, Mr. Davis had been out at a social
22 gathering, really, that Friday night, April 19th, and
23 didn't come home until the early-morning hours of April
24 20th. And this is probably 2:30 a.m./3 a.m., that kind
25 of time, on April 20th.

1 So at that point, Indigo, she's with her kids.
2 She's with her three children. She has the doors locked
3 at that point. And Mr. Davis, when he comes home from
4 this social gathering he was at, he's knocking on the
5 door. She can't -- she won't let him in; he can't get
6 in, for whatever reason.

7 She's mad at him, clearly. He'd been out too long,
8 been drinking, things of that nature. Will not let him
9 in. Eventually, Mr. Davis had to break the glass window
10 of the front door to gain entry into the house.

11 So at that point, as you can imagine, an argument
12 ensues, a -- a very tense argument. Indigo Penny, as any
13 mother would, at this point, once things become heated,
14 at some point she makes the decision to take her children
15 -- Iven, 7 years old; Penelope, 3 years old; and Xzavier,
16 Jr., 9 months old -- she makes the decision to get all
17 three of them, put them in the car, and -- and vacate the
18 premises, just leave, get away from this man. He's
19 broken the window.

20 At that point, in the process of getting the
21 children to flee from the scene to avoid this
22 confrontation with her and her husband, that's when he
23 pulls out a firearm, brandishes a firearm -- and she'll
24 describe that when she testifies, Indigo will. And once
25 the kids are in the car, she is backing out to -- to

1 leave. He opens fire.

2 And it's a 9-millimeter pistol. Empties that
3 9-millimeter pistol, all eight bullets. That's the
4 capacity of this gun. Empties that 9-millimeter pistol
5 in that car with four souls in that car: his own
6 children, his stepson, his wife. Empties that
7 9-millimeter pistol into that car.

8 And I said it had eight bullets. Six of the eight,
9 as we'll show you with the physical evidence, strikes the
10 vehicle. It's a 2001 Toyota Camry.

11 And Indigo, his wife, she's hit in the left-lower
12 leg/ankle area. At then, the kill shot to 7-year-old
13 Iven hits him right in the head, just above his left ear.
14 And ultimately, the bullet nearly comes out the other
15 side of his head, just to give you an idea of the
16 velocity of the shot.

17 And when the crime scene is processed at [REDACTED]
18 [REDACTED], you'll see the shell casings, eight shell casings
19 for an eight-round gun. Six bullets holes -- or excuse
20 me -- six -- I'll call them bullet defects -- three of
21 them of them penetrating bullet defects, so three holes
22 in the car. But ultimately, six -- six bullet defects in
23 the car. You'll see photographs of that as well.

24 And we'll be able to match it to the gun. At the
25 autopsy they -- they pull out the -- the -- the fired

1 bullet; send it to South Carolina Law Enforcement
2 Division for forensic testing. It matches the
3 9-millimeter gun. But Ms. -- Ms. Penny, she was able to
4 flee, even though she's hit the left ankle. She is able
5 to go to the hospital, which is a few miles away to the
6 ER, drive herself there.

7 And it's really not -- not until she actually pulls
8 into the possible hospital that the gravity of the
9 situation comes to full realization. She's struck by a
10 bullet. Her son's fatally wounded in the head. And on
11 April 22nd, he -- he's actually -- Iven is officially
12 pronounced dead at that point. No brain activity, but he
13 died of a fatal gunshot wound to the head.

14 And I -- I wish I could tell you that there was more
15 to it than that. I mean, it -- it's -- it's an
16 unspeakable crime. I -- it's just a good thing we don't
17 have to prove why somebody does something. We don't have
18 to prove motive. Because there can never be any motive
19 for why somebody would empty a pistol into a car full of
20 kids and their wife. So the facts are very grim, and --
21 and -- and we understand that.

22 But that's the nature of the case. I don't know
23 what, if anything, Mr. Geoly will say in terms of his
24 state of mind, his client. He -- again, he doesn't have
25 to. It's our case to prove.

1 But I think a big part of this trial will come down
2 to intent, criminal intent. And one thing you have to
3 realize: It's clear that the two of them, Ms. Indigo
4 Penny had her husband, had argued prior to this incident.
5 They had a argument.

6 And as you'll see from the diagram of the car that
7 was struck by bullets, most of the bullets are centered
8 at the driver door. And Ms. Penny was the driver the car
9 when she's attempting to flee. But there was that one
10 fatal bullet that struck Iven towards the backseat area,
11 the driver-side backseat area. And we'll will talk about
12 the positioning of everybody.

13 But all three kids were in the backseat of that car.
14 And -- and we'll show you the trajectory, the flight
15 path, of this bullet. And all these kids were in harm's
16 way. Iven just happened to be in the middle of the
17 backseat and the tallest kid and catches a bullet in the
18 head.

19 And do we think that he had the specific intent to
20 kill Iven? Well, when someone empties a pistol into a
21 car, what can you say to their intent? Because at that
22 point, a bullet has no name. And he showed, by his
23 actions, his conduct, he consciously disregarded a risk
24 to human life here.

25 He demonstrated what we used to call in law school

1 -- I first learned about malice. And that's the
2 operative word, malice. If someone acts with an extreme
3 indifference to the value of human life by doing
4 something so dangerous that it just shows a total
5 disregard for human life, that's malice. And I think, at
6 a minimum, his actions demonstrate that. And that'll be
7 a big part of this trial.

8 Whether it's claimed that he had no intent to kill
9 Iven, it's irrelevant. You know, Oktoberfest, they close
10 down Main Street, crowd of people. If you had somebody
11 during Oktoberfest drive their car down Main Street going
12 a hundred miles an hour, hit multiple people, and die,
13 the -- the -- awful scene, right, in this hypothetical --
14 and they were to say that -- the driver of that car to
15 say, "Well, I was just trying to get from Point A to
16 Point B; I had no intent to kill anybody," would that not
17 just an absurd position? Indeed it would.

18 And -- and that is the proposition here: criminal
19 intent. Why else would you empty a pistol into a car
20 full of children and your wife?

21 And that's the issue that's going to be litigated.
22 And I think -- I've -- I've kind of crystallized and
23 pinpointed some the issues at play here. But again,
24 those are issues that we have to prove.

25 We have quite a few exhibits to show you because

1 there -- there's two different scenes, essentially: one
2 scene at the house; and then, the car at the hospital.
3 So there's -- there's two phases in this investigation.
4 But we have a story to tell. And think it's important
5 that we do it methodically and do it with respect,
6 because this is at the top of the food chain, this kind
7 of case. This is the most serious crime we deal with,
8 clearly.

9 And so we're -- we're leaving no stone unturned.
10 We're not getting into the -- to the specific dynamics of
11 their relationship. It's clear there was an argument
12 that happened night, and that's what precipitated these
13 events.

14 But ultimately, it'll be your call, once the judge
15 explains the law to you. And all we ask is that you
16 render a verdict that's consistent with the evidence and
17 speaks the truth. And I submit to you, it'll be a
18 verdict of guilty. And it is the verdict that makes
19 sense and that is logical.

20 And we look forward to -- to presenting this case to
21 you. Thank you.

22 THE COURT: All right. Mr. Geoly, does the defense
23 wish make an opening statement?

24 MR GEOLY: We do, Your Honor.

25 THE COURT: All right.

1 MR GEOLY: Please the Court, Judge?

2 THE COURT: Yes, sir.

3 OPENING STATEMENT BY MR. GEOLY

4 MR GEOLY: Ladies and gentlemen of the jury, my name
5 is Stephen Geoly. I'm a defense attorney. This is what
6 I do for a living. I've been doing it for about 26 years
7 now.

8 And this brings back a lot of memories. I -- I cut
9 my teeth in this courtroom 26 years ago. Miss -- Miss --
10 your -- your clerk of court was a -- I think a deputy
11 clerk back then. Might not have been a deputy yet.

12 But right out of law school, I actually worked for
13 Townes Jones, who was the solicitor here a couple of
14 solicitors ago. And this is where I came. I would drive
15 from Greenwood and I'd come over here and kind of do what
16 Taylor's doing for Solicitor Stumbo.

17 It's been a long time getting back here. I -- 26
18 years, I've been running a law practice over in
19 Greenwood. And I -- I try all kinds of cases.

20 The eighth circuit, which is what Newberry is part
21 of, the Eighth Judicial Circuit, is part of a four-county
22 circuit. It's Greenwood, Newberry, Laurens, and
23 Abbeville. A lot of you probably know that; some of you
24 maybe didn't. I -- I don't think I realized that, you
25 know, till I got out of law school.

1 But since leaving the solicitor's office 25 or so
2 years ago and opening my own practice, I've tried murders
3 and attempted murders in every -- every county in this
4 circuit, but here. I have a lot of respect for -- for
5 Newberry County. You have a top-notch sheriff. Lee
6 Foster is as good as they come. I think he might be the
7 longest-serving sheriff in the of South Carolina at this
8 point.

9 And he does a good job of representing the people of
10 Newberry County. They make good cases is here. It's
11 probably why I don't come back a whole lot. You know,
12 the officers here work hard at what they do. They take
13 pride in it.

14 But here -- the solicitor just told you, "We're
15 going to attempt to secure in this courtroom a verdict."
16 And then he tried to guess, kind of, what I'm going to
17 do.

18 Well, I -- I'm a tell you, this is different than
19 any case I've ever tried. This is not, you know, sadly
20 for y'all, some, you know, big entertaining thing that
21 you're going to come to court and it's going be some some
22 big whodunit. This is a tragedy on all counts. He's
23 right about that; it's a tragedy at all levels.

24 But what they have my client charged with -- and --
25 and -- and let me back up a couple steps. I apologize.

1 I'd like to introduce to you, this is Ellie. She just
2 graduated college. She's helping me as a paralegal.
3 She'll be here and you'll see her this week kind of
4 trying to help me with videos and keep up with, you know
5 -- the solicitor's told you, he's got a lot of exhibits.

6 And we're both here on behalf of Xzavier Davis.
7 This is Xzavier Davis, my client. He's Indigo's husband.
8 There's going to be some confusion maybe a little bit
9 about Indigo Penny. But -- but she's married to Mr.
10 Davis. And were they married or were they boyfriend-
11 girlfriend?

12 There's no question; they're married. They have
13 kids together. Today they have three kids together. At
14 the time -- and they -- they want to be quick to point
15 out -- this is his stepchild. You know, Iven Caldwell is
16 his stepchild.

17 Well, that's certainly not the way that Xzavier
18 Davis looked at it. Xzavier Davis was his son -- I mean,
19 excuse me -- Xzavier Davis' son was Iven Caldwell. That
20 was his boy. He was the older brother to his daughter
21 and son. And he cared about that boy as much or more
22 than anybody but maybe Indigo Penny, the boy's mother.

23 He -- he raised him. He was the older brother to
24 his -- his young boy and girl. You're going to learn
25 that that morning, he'd taken him for a haircut early

1 that morning because he was going to be going to his
2 papa's for a -- for a birthday party, a surprise birthday
3 party the next day. And he knew that.

4 And they had a fish fry they were going to that
5 night -- or he thought they were going to that night.
6 And he was to going to get me a haircut. And these are
7 things a father and son do together. This wasn't just
8 some stepson to Xzavier Davis.

9 And here's going to be the big, hard part, if you
10 want to call it that, for you, as a jury. They've
11 already told you, there's two judges in this courtroom.
12 The judge is the judge of the law. And he, at the end of
13 this case, is going to tell you the applicable laws that
14 apply. And that's where he's going to talk to you about
15 what's required for murder and what's required for
16 attempted murder and what's required for possession of a
17 pistol during the commission of violent crime.

18 The bottom line is -- and they know it; he's already
19 hit on it -- there has to be an intent, not just an
20 intent. We learned about law school -- way back when,
21 when I went to law school, there was what was called a
22 *mens rea*. And that's a Latin term. And I didn't know
23 what it meant.

24 But what, comes to find it means, *mens rea* is like
25 your mental outlook or -- or your -- your state of mind.

1 And to commit a crime like murder, you have to have an
2 evil *mens rea*, or an evil state of mind. What we call it
3 in our case law is malice aforethought. You have to have
4 malice aforethought.

5 And these are these words that people use. And it's
6 almost like abracadabra, you know, get to confusing me.
7 It -- it -- it's a very specific thing. People talk
8 about premeditation. And you'll hear about first-degree
9 murder and second-degree murder. We -- we don't have all
10 that in South Carolina. We just got murder.

11 But to somebody -- every killing's not a murder.
12 Killings happen. That doesn't mean murder somebody.
13 What they've charged my client with is not killing Iven,
14 but murdering him. To murder him, you have to find
15 beyond a reasonable doubt -- this -- these aren't just
16 word that get thrown around; these are important things.

17 And -- and we've asked you to come today. And you
18 -- you -- you know you all went through this process with
19 us yesterday, is we tried to make sure we got a good,
20 fair jury that will consider this completely and weigh
21 all these things. But at the end of the day, we're going
22 to ask you to make determinations, not just, "Oh, I think
23 it could be," but beyond a reasonable doubt. They have a
24 heavy burden to prove, not the just that a boy died, but
25 that a boy died while somebody was, with malice

1 aforethought, killing him.

2 It means they have to have the intent. They'll talk
3 about express or implied or -- they have to have the
4 intent to kill beforetime with malice. It's not just,
5 "Oh, I'm in the heat of a passion; oh, I'm in a fight
6 because she wouldn't let me in the door." It's not that.

7 It -- it's that I have the intent to kill you.
8 That's what they're going to be trying to say with Iven.
9 Or they're going to back off a little bit and go, "Well,
10 or we can do this applied malice, where we don't have to
11 prove he was trying to kill anybody. We can prove to you
12 he's so reckless, over the top, that that's going to
13 substitute that."

14 I submit to you, it's not. Malice aforethought is
15 just that: malice aforethought. What do those words
16 mean? It means before it happened. That's the
17 aforethought part.

18 I mean, you think about people talking about
19 premeditation. It's not exactly premeditation. And I'll
20 tell you, courts have limited it down to -- aforethought
21 can be like this (gestured). I mean, it doesn't have be:
22 "I thought about it for an hour; I thought about it for
23 15 minutes, or I thought about it for two minutes."

24 It can be kind of almost instantaneous. But it has
25 to happen. That intent to kill, that evilness, that --

1 that badness where I want to kill somebody, has to exist.
2 And if it doesn't, if you find that it doesn't, then a
3 murder didn't happen, plain and simple. That's what we
4 think you're going to realize, at the end of the day,
5 that -- that a murder didn't happen -- or at the end of
6 -- of this week, by the time this case is over, we think
7 you'll realize that there certainly was no attempt to
8 kill Indigo Penny; there certainly was no transferred
9 intent or intent to kill Iven.

10 I think you're going to have testimony that my
11 client was right in front of Indigo Penny and unloads a
12 gun into the air. This is after, you know, won't be let
13 in the house and -- let me back up again. I apologize.
14 I don't want to get ahead of myself, I want to make sure
15 I -- I tell you y'all all the relevant stuff.

16 Going back to the respect I have for Newberry
17 County, I -- I'm not to beat up on the sheriff's
18 department or -- or try to attack the things they did.
19 As I said, this is not some whodunit. At the end of the
20 day, the evidence is going to show that a gun got fired
21 and that, when that gun was fired, a bullet ended up
22 hitting a young boy, 7 years old.

23 I think Ms. Penny's going to give -- or excuse me --
24 Ms. Davis, that they're going to call Ms. Penny, is going
25 to give you the best evidence of how all that occurred.

1 But before that, she's going to tell you that they walk
2 out the house and he's as close, you know, as I am to the
3 solicitor right now and unloads a gun into the air. He
4 could've pointed at her and killed her right then, if --
5 if he was trying to kill Indigo Davis, his wife.

6 He wasn't trying to kill anybody. He was upset.
7 And the bottom line is: At the end of all this, you're
8 going to get evidence that he shoots at a car. He's
9 shooting at a tire. They tell you about eight shots, six
10 of which are the tire or below. She gets hit in the
11 ankle, where he's shooting at a tire. I think Ms. Indigo
12 is going to tell you, she knows he isn't trying to kill
13 her, because he had multiple opportunities to kill her.

14 That's not what this is about. They're in a fight
15 because he went to a fish fry and he was at his daddy's
16 at a fish fry, not out carousing at some bar; not out
17 living it up with some girl. He's at a fish fry with his
18 brother, his cousins. Some of them are sitting in the
19 courtroom today.

20 But you'll hear testimony that that's what's going
21 on. So when he gets home, door is not open. So he beats
22 on the back door. Then he goes to the front door. You
23 know, usually, he goes in the back and it's always open.
24 So it's not open.

25 Now he goes to the front door and knocks, looks. He

1 can tell somebody's standing there in the living room.
2 Knocks again; ends up breaking his window to get into his
3 house. Of course there's a fight. That's what happens
4 then. There's a fight going on; she's not listening.
5 They're back and forth with each other, and things get
6 out of control with the gun.

7 But the bottom line is -- and I think Indigo is
8 going to be the one to tell you -- he certainly didn't
9 mean to kill anybody. That's not what this was about.
10 And that's what's going to be for y'all to ultimately
11 determine: Was there malice aforethought with this
12 case?; not, "Hey, was there a killing?" I'm telling you
13 that now: There was a killing. It was a tragic,
14 terrible night.

15 And -- and going back to your police department,
16 your sheriff's department, you know, there's video of
17 Sheriff Foster out there at 3:30 in the morning, trying
18 to console these kids, trying to console this mother,
19 grandmother. Law enforcement does a good job here.
20 That's why I'm not often in this courtroom.

21 I am now, because this boy didn't mean to kill a
22 soul. And in the state of South Carolina, that still
23 matters. We have deteriorated and taken what you mean to
24 do kind of out of the law. But there are places where
25 intentions still do matter.

1 And if he didn't have malice aforethought, if he
2 didn't have that *mens rea*, that "I'm going to kill
3 somebody," then that's not sufficient. If they don't
4 prove that *mens rea*, that malice aforethought, they
5 haven't proven their case.

6 Now, there's other things with a killing. And
7 again, I -- I direct you to follow the judge. Judge is
8 way smarter than I am. I've been doing this a while, but
9 I -- I think he's probably been doing it -- it just as
10 long.

11 But he's going to tell you what the law is. And the
12 facts -- what I say is not testimony. What Taylor and
13 Solicitor Stumbo say, that's not testimony. You're going
14 to hear a lot of us talking over the next couple days.

15 What comes from the witness stand, that's the
16 testimony. At the end of this, the judge is going to
17 take the law and explain it to you and say: "Now you, as
18 a whole, you're the judge of these facts."

19 And you have to these facts and determine: Has he
20 violated the law? And where they're going to fall short,
21 I'll you right now, is malice aforethought. So they're
22 going to talk to you about other ways you could come up
23 with malice aforethought. The bottom line is: He has to
24 have malice aforethought prior to killing somebody.

25 Again, terrible, tragic situation. But there was

1 never any intent. And intent, in this state, still
2 matters when it comes to trying to convict somebody for
3 killing somebody, for murder.

4 There is a name for -- for killing somebody when you
5 don't mean to do it, where it's not intentional, where
6 you don't have that evil mindset. It's manslaughter;
7 sometimes involuntary manslaughter. But that'll be a
8 thing that, when the judge tells you the law, whether it
9 fits or doesn't fit or might not even be an option. It
10 might be murder or not guilty.

11 And I'd submit to you then, if that's the case,
12 you're going to realize, there's no malice aforethought.
13 It cannot be murder.

14 I want to thank you for being here. You know, I had
15 a old man tell me one time -- and I just I kind of
16 brushed it off. But it's -- it's come back to me several
17 times. You know how sometimes you just have a little
18 encounter, but then, you'll think about it after the
19 fact?

20 But -- but the guy was telling me -- he goes, "You
21 know, jury duty is one of the most important -- two most
22 important things you'll ever do for your country. You
23 can serve during a time of war in the military, or you
24 can serve on a jury."

25 Because we ask you to come here, take away from your

1 day. It's like -- like Taylor was telling you. You're
2 not getting paid for -- well, you might get paid 10/12/15
3 dollars a day. It's not worth your time, is what I'm
4 saying. You're not getting paid in that sense.

5 You have to come here. This is your civic
6 obligation. Because as an American, you're entitled to a
7 trial, a jury of your peers. It doesn't have to be okay
8 that the solicitor says it, the sheriff says it.
9 Sometimes as good as they are, they -- they maybe get it
10 wrong.

11 And that's why you're the -- the factfinder that he
12 gets to come in front of for you to determine these
13 facts. And here is the most equal, American place in the
14 world. You're all equal.

15 It doesn't matter if you got a trust fund and you
16 get a check every month or you work hard at the Piggly
17 Wiggly every day and stock. The bottom line is: In this
18 jury everybody's equal. And it takes a beyond-a-
19 reasonable-doubt, unanimous conviction.

20 And at the end of this, I just don't think that can
21 happen. And my client doesn't either. He's been waiting
22 over two years to clear his name because, while somebody
23 might've died out there that night, it certainly wasn't
24 his intention. And like I said, at this point,
25 intentions do matter.

1 We're going to be here for the next couple of days.
2 Going back to those Latin words, *mens rea* means evil
3 mindset, kind of. That's my understanding of it. I
4 never really took Latin, but, you know, you learn these
5 words.

6 Verdict is another one. It comes from the Latin
7 *verdicto*. What that means is to speak the truth. At the
8 time of this case, when y'all speak the truth, I think
9 it'll be clear.

10 Xzavier Davis might be a lot of things. And I'm
11 going to tell you: It's going to be tough for not to
12 dislike Xzavier Davis over the course of the next few
13 days. Because what they're going to present is that this
14 7-year-old boy -- precious, beautiful young man -- died
15 as a result of his actions.

16 Large part, that's true. But there was no malice
17 aforethought here. He certainly didn't mean to kill him.
18 It was a terrible tragedy. And -- and it continues to
19 affect Indigo and her children, his little brothers and
20 sisters. And now he has a -- a -- another sibling that's
21 been born since this happened.

22 These are a precious family that's already been
23 ripped apart once. And -- and to speak the truth and say
24 that he didn't murder anybody and send this young man
25 home to his family to continue being a husband and a

1 father, that's what we're going to be asking you to do.
2 And that's what we think a true verdict -- *veredicto*, or
3 verdict, speaking the truth, will be: that he certainly
4 didn't mean to kill anyone, especially his son, Iven.

5 We thank you for your time and attention. I -- I
6 hope you'll pay attention and see things the way I do,
7 which is this young man that they're going to paint a
8 picture of as a monster is certainly not that. When you
9 hear from the people that know him, you're going to hear
10 he was full of love for this boy, for his wife, and for
11 his children. He has a respect for himself and his
12 family.

13 You'll hear about his employment history. This is a
14 good man that a terrible thing occurred. And he's been
15 paining with it ever since. And -- and we hope that
16 y'all will help see it for what it was, which was a
17 terrible, terrible tragedy, but not a murder. Thank you
18 very much.

19 THE COURT: All right. All right. Ladies and
20 gentlemen, we'll now begin the evidentiary portion of
21 this trial with the state's case. Mr. Stumbo, Mr.
22 Daniels, state can call your first witness.

23 MR STUMBO: Thank you, Your Honor. If it please the
24 Court, the state would call Sheriff Lee Foster to the
25 stand.

1 THE COURT: All right.:

2 (Whereupon, the witness came forward.)

3 LEE FOSTER, having been first duly sworn,
4 testified as follows:

5 DEPUTY CLERK OF COURT: Have a seat and state your
6 name for the record.

7 THE COURT: Yes. You can remove your mask, please.

8 THE WITNESS: (Complied.)

9 THE COURT: Thank you.

10 THE WITNESS: James Lee Foster. I'm the sheriff of
11 Newberry County.

12 DEPUTY CLERK OF COURT: Okay. Thank you.

13 DIRECT EXAMINATION

14 BY MR. STUMBO:

15 Q Thank you for being here this morning, Sheriff.

16 A Good morning.

17 Q Some of the younger ones on this jury may not know
18 when you were first elected. Can you tell us when you
19 were first elected sheriff here in Newberry?

20 A I was sworn in, in 1989.

21 Q And I think Mr. Geoly referred to in the opening.
22 You may, I believe, now be the longest-serving sheriff in
23 -- in the state at this point; is that correct?

24 A That is correct. I -- I am the longest-serving
25 sheriff in the state right now.

1 Q Now, I -- prior to 1989 and -- '88 when you ran, '89
2 when you were sworn in, what was your experience in law
3 enforcement? When did you start your law enforcement
4 career?

5 A I began my full-time law enforcement experience in
6 1978 with the Town of Little Mountain. And then I
7 completed college at the University of South Carolina
8 while I was working at Town of Little Mountain. Then I
9 became employed at Newberry County Sheriff's Office,
10 where I worked myself through the ranks, reaching captain
11 over investigations. And then, for a five-year period,
12 from 1984 to 1989, I worked at the South Carolina
13 Criminal Justice Academy, where I was primarily a
14 firearms instructor and tactics instructor. And I ran
15 for sheriff and was fortunate enough to become elected
16 and have served as sheriff ever since.

17 Q Since 1970 -- I think you said '78 or '79 when you
18 started the amount?

19 A Seventy-eight.

20 Q Okay. Since 1978 to today, is it fair to say that
21 you or those under your supervision have investigated
22 thousands of cases?

23 A Yes, sir.

24 Q Okay. That would be everything from murders, all
25 the way down to, you know, B&E-autos and possession of

1 drugs or whatever, correct?

2 A From murders to people running over mailboxes to
3 getting cats out of the tree. We -- we do it -- we do a
4 full-service job with the sheriff's office.

5 Q One -- one of those --- Sheriff, one of those
6 thousands of situations that you've dealt with is the one
7 we're here for today, correct?

8 A Unfortunately, yes.

9 Q And that was early-morning hours of April the 20th,
10 2019; is that correct?

11 A On 20 April 219 [sic].

12 Q And, Sheriff, you ended up at the emergency room
13 that night at Newberry Hospital, correct?

14 A That's correct. At approximately 3:16 that morning,
15 I was -- I actually heard it on the radio that there was
16 two gunshot victims at the Newberry County Memorial
17 Hospital. At that time I called our shift supervisor,
18 which is Lt. Carnes and got a briefing from him that he
19 had two gunshot victims that -- that had arrived at the
20 Newberry County Memorial Hospital Emergency Department.
21 And the -- one was a child, and the other was the adult
22 mother of the child. I then proceeded to go to the
23 Newberry County Memorial Hospital to the emergency room.

24 Q And what time did you arrive at the -- at the
25 hospital, Sheriff?

1 A After getting the briefs and getting ready, I got
2 there about 3:30, 3:33 in the morning.

3 Q Okay. But the initial call had gone out over the
4 radio that there was gunshot victims at the hospital at
5 3:16; is that correct?

6 A Approximately 3:16. Yes, sir.

7 Q All right. So within 17 minutes, you were able to
8 get up and get ready and get to the ER?

9 A I -- I got a briefing first, because I wanted to
10 make sure I understood where it had happened and was it
11 in the jurisdiction of the sheriff's office, in which
12 they said it had happened in the Helena section over on
13 [REDACTED]. I did a -- a -- just a situational briefing
14 about what was going on. So I -- I knew what we would
15 have to respond.

16 Q That's correct. And when -- and actually, I think
17 you mentioned this maybe before. But the Hospital ER
18 actually in the city limits, correct?

19 A The hospital and the emergency department are all in
20 the city limits of -- of -- of Newberry, South Carolina.
21 But it's in the county of Newberry. It's on Kinard
22 Street in -- in Newberry. Yes, sir.

23 Q Okay. So between the time the call went out, that
24 17-minute time before you get there -- obviously, there's
25 uniform deputies and uniform officers with the city that

1 are working that night, and they get -- they -- they
2 respond to the ER first, correct?

3 A That is correct. In addition to the medical teams
4 that were there, there were some deputies and there were
5 city police officers that were there as well ---

6 Q Okay.

7 A --- that had arrived prior to my coming.

8 Q And you were able to speak, I'm assuming, with them
9 and get a -- more briefing from them before you walked
10 into the ER?

11 A Yes, sir. I was able to speak to two of the
12 deputies and got a briefing. And then I entered the
13 emergency department at that time.

14 Q Okay. Well, if you could, Sheriff, explain to this
15 jury and describe for them what you experience and see
16 when you walk into the ER?

17 A Well, I entered into the emergency department and it
18 was a beehive of activity. Newberry County's certainly a
19 small county. We got a wonderful hospital. But the ER
20 is not a full trauma center, like you would have at
21 Richland or Greenville. But they were busy, trying to
22 get the patients attended to.

23 I got a briefing -- a brief briefing from the nurse
24 was charge that night who had advised me that they had a
25 -- a child, approximately 7 years old, that had been shot

1 in the head and that the condition was very grave, and
2 the mother was shot as well.

3 Q Okay. And so when you into the ER, were the mother
4 and the 7-year-old child, Iven, were they in different
5 rooms?

6 A The 7-year-old who was later identified as Iven
7 Caldwell was in the trauma room. They have a -- of the
8 several rooms they have at the emergency department in
9 Newberry, the one room that's always at the back is
10 classified as the major traumas. So if someone was
11 having a heart attack or stroke or -- or a gunshot wound,
12 they would take them in there. And there was doctors and
13 several -- a doctor -- pardon me -- and several nurses,
14 who -- who were tending to him and trying to render
15 lifesaving measures.

16 Q At that time, Sheriff, he -- he was -- Iven was
17 unresponsive, though. You -- you saw him on the -- the
18 bed?

19 A Yes. He was unresponsive.

20 Q And had what was apparently a -- a -- a gunshot
21 wound in his head?

22 A The charge nurse is Phifer Suber. And she said he
23 had a gunshot wound to the left side of his head that had
24 traveled across and was coming out at that point on the
25 right side.

1 Q Sheriff, at -- at that point, one -- one of the, I
2 guess, first things as a law enforcement officer is to --
3 to secure safety, correct, at the scene?

4 A Well, we actually had -- crime scene was there at
5 the hospital. The trauma room where Iven was, was a
6 crime scene because the person was there.

7 The room where his mother, who was identified to us
8 as Indigo Penny, that was a crime scene because she was
9 shot and wounded as well. And her vehicle was parked
10 outside in the sally port at the hospital. She had
11 driven herself and the child and children -- the other
12 two children were there as well -- to the hospital. So
13 they were -- all those places were considered a crime
14 scene.

15 But we also another crime scene on [REDACTED] over
16 in the Helena section, which it's where the incident took
17 place. So it was important to get that crime scene
18 secured as well.

19 Part of my job is certainly to assist in the
20 investigation. But it is also to coordinate assets to
21 come do the investigation. And so at that point in time,
22 I was calling the State Law Enforcement Division and
23 other assets within the Newberry County Sheriff's Office
24 to come out to investigate this crime.

25 Q So -- and -- and, Sheriff, the two primary crime

1 scenes, as you say, are the ER where the car has pulled
2 in and -- and the victims are. The other one is where
3 this took place, which, you were being told at that time,
4 was [REDACTED].

5 A That is correct. The -- the hospital is a crime
6 scene and also the residence of Indigo Penny.

7 Q So, Sheriff, did you deploy assets to [REDACTED]
8 [REDACTED]?

9 A I did. Of course, we had deputies in the -- on the
10 scene outside the home. But we also asked for the State
11 Law Enforcement Division to send their crime scene unit.
12 We're capable at the sheriff's office of processing crime
13 scenes. But when you have so many different crime scenes
14 and the circumstances behind there, where you had a 7-
15 year-old and the mother shot, we need additional assets,
16 or additional people, to come in and help us.

17 The State Law Enforcement Division maintains the
18 state crime lab. And it's -- as with most places, they
19 send evidence technicians and forensic technicians to a
20 crime scene to help the local government.

21 Q And -- and, Sheriff, just to back up a little bit
22 from the -- the SLED -- you know, I -- you call them in.
23 It takes them a little bit to get from Columbia, right?
24 Because a lot of your SLED crime scene folks are going to
25 be coming ---

1 A Most of ---

2 Q --- from outside the county?

3 A That's correct. Most of the crime scene people do
4 live in the Columbia area because the statewide lab is
5 there. And so it takes a -- a while for them to go
6 through the procedure of getting their on-call person up,
7 briefed to -- to let them know what kind of equipment
8 they would need to bring here, and then, in the process
9 of transitioning from wherever they live to our location.

10 Q Right. Before they get here, you have [REDACTED]
11 [REDACTED] -- you mentioned Lt. Carnes earlier. Did he respond
12 out there to the scene?

13 A Lt. Carnes was at the scene and maintained presence
14 there at the scene on 633 while we were at the emergency
15 department. I had called in the investigator on-call for
16 the sheriff's office. And the investigator on-call was
17 Sgt. Ryan Dickert of the sheriff's office. And he
18 responded to my location at the -- at the sheriff's
19 office.

20 Q And Lt. Carnes -- I mean, at -- at -- at the time,
21 they get to [REDACTED] -- of course, he's on our
22 witness list and will be on the witness stand to describe
23 this. But part of his job to go there is to secure that
24 scene and make sure the suspect's detained, correct?

25 MR. GEOLY: Objection to leading, Your Honor.

1 A It -- his ---

2 THE COURT: All right. Let's ---

3 MR. STUMBO: Well ---

4 THE COURT: --- don't lead.

5 MR. STUMBO: That's fine.

6 THE COURT: Sustained.

7 Q Well, what -- what -- what is Lt. Carnes' duties at
8 that point, Sheriff?

9 A Lt. Carnes mission would be to protect the crime
10 scene and if -- make sure that no evidence was disturbed;
11 that it stayed in the condition that had happened when
12 the crime occurred. And he's also -- his job would be to
13 apprehend or contain anybody that may have been involved
14 in the crime.

15 Q And did he do that -- and his team?

16 A The apprehension was not until later. But he did
17 secure the crime scene with he and the other duties on --
18 on his shift.

19 Q Okay. At what time did -- was -- were you informed
20 that he was in custody?

21 A It was not on -- it was -- it was on into the
22 morning. We were still at the emergency department. I
23 would -- I'm -- I'm looking at the CAD sheet. And it is
24 approximately 4:07 a.m. ---

25 Q Okay.

1 A --- is when ---

2 Q And so ---

3 A --- he was detained.

4 Q And you -- you're at the -- even when you're at the
5 ER, you -- you are communicating with your radio with --
6 will all your guys?

7 A Communicating with the radio or either via cell
8 phone.

9 Q Okay. Now, you said you -- you -- you pulled in, I
10 -- I believe -- Investigator Dickert, who was the lead
11 investigator in the case that -- do you have a victim
12 advocate that works at your office?

13 A Yes. Connie Johnson. I had called her in as well.
14 We had the mother, who was shot. And then, we also had a
15 child that was shot, although the child was in a
16 condition that -- comatose, I guess, would be the great
17 word that I would use. It was not responsive.

18 And then, we also had two small children there that
19 she had brought to the emergency room as well. And the
20 emergency department staff, in addition to taking care of
21 our two victims -- and other people that were in the
22 emergency department that night -- in addition to that,
23 they were helping take care of these two small children,
24 who obviously were upset because they had just gone
25 through trauma themselves and witnessed trauma themselves

1 and seen their mother injured and their brother in a
2 horrific state. They were upset too.

3 And so Connie -- initially, her primary goal was to
4 try to take care of those children that survived. And --
5 but she also assisted when we tried to talk to Ms. Penny.

6 Q And you say some of the things she might to take
7 care of physical needs. Just immediate physical needs?

8 A Take of immediate physical needs; consoling. We --
9 would have to try to find some kind of placement for the
10 other two children, because they were minors, very young
11 children. And we'd have to find placement for them.

12 You know, obviously, like I -- the mother was
13 incapable of taking care of them at -- in her condition.
14 So it would've been Ms. Johnson's responsibility to find
15 somebody to help take care of the children. And she --
16 she proceeded to do that. But we also have to work the
17 Department of Social Services when something like this
18 happens, because we have to make sure that if we transfer
19 custody of a child to whomever, we have to make sure that
20 it is legal and appropriate.

21 Q And so you did notify DSS to come to the scene?

22 A Yes, sir. We notified DSS. Because under our
23 guidelines and the -- and the state laws, DSS, in these
24 situations, are responsible for helping make those
25 decisions of where the children would go once they could

1 be released from the hospital.

2 Q Okay. And, Sheriff, Investigator Dicker did arrive
3 after you did, correct?

4 A Shortly after I arrived, Investigator Dickert ---

5 Q Okay. And he's equipped with, you know, body cam
6 and cameras and that sort of thing?

7 MR. GEOLY: Objection to leading again, Your Honor.
8 Just if ---

9 Q Is he equipped with ---

10 THE COURT: I'll ---

11 Q --- those things ---

12 THE COURT: --- allow that. Go ahead.

13 A He is equipped with body-worn camera, which is a
14 videotaping device that they wear and are required to
15 have it on when they're interviewing or working a crime
16 scene.

17 Q And to your knowledge -- you were there -- he -- did
18 he have it on?

19 A He did.

20 Q Okay.

21 A He did. And as well as some of the other duties.
22 But Investigator Dickert had his on when he arrived at
23 the ED, emergency department.

24 Q Okay. And you've been able to review some of those
25 body cameras before you've come to court this week?

1 A I did.

2 Q Okay. And are you in those body cameras and in that
3 footage?

4 A Yes, sir. I -- I was in the footage.

5 Q Okay. Anything else, Sheriff -- your involvement
6 involved assisting with the investigation. I believe you
7 said that before; is that correct?

8 A That is correct. And in addition to trying to get
9 the assets to come in to help, in addition to trying to
10 help the two children that were there, I also attempted
11 to help talk to Ms. Indigo Penny. At the time she was in
12 -- in a state -- emotional state that she really wasn't
13 talking a lot. We were able to get her mother, Ms.
14 Hunger, to come in the room with her. And we began
15 trying to get information from Indigo about what had
16 happened.

17 At first, Indigo was -- was just not in a state of
18 mind to talk. But between her mother talking to her and
19 me talking with her, we got her to begin to open up and
20 start to tell us what had happened. At that point there
21 was a -- a -- a pause because they were going to attempt
22 to move Iven to a trauma center. And they wanted to give
23 her an opportunity to see her child and the grandmother
24 to see the child before they transferred the child.

25 Q Okay. And were you able to assist with the

1 grandmother and the mother during the middle of this?

2 A Well -- well, I -- obviously, it was a extremely
3 emotional situation. The -- the -- the visual of it is
4 very graphic. Not only to the grandparents or -- and the
5 mother, but the visual of it is very graphic to those of
6 us that do it every day. It's not every day that you see
7 a 7-year-old with a bullet wound to the head. And it's
8 not difficult to see parents and grandparents -- it is
9 difficult to see parents and grandparents suffering.

10 So it was a very emotional situation. Plus, your
11 emergency department staff, I mean, it's emotional for
12 them too. We -- we do it every day. And, you know, you
13 get a little -- you get a little hardened to it. But you
14 don't become impervious to it.

15 So everybody was quite emotional at the time. It --
16 once the -- the medical staff was able to move the child,
17 we were then able to go back and Investigator Dickert was
18 able to start to get her to open up and start to tell the
19 events that happened that night -- or this morning, the
20 morning that it happened.

21 Q Okay. Sheriff, you were able to stay on scene at
22 the hospital until -- what time did you leave the ER?

23 A I left the emergency department roughly 9:05 a.m.

24 Q Okay. And you have a little of people to work for
25 you, Sheriff. How many people work in your department at

1 the sheriff's office?

2 A Well, Newberry County's unique. And the sheriff's
3 office manages a number of different departments. We got
4 the jail; we got the sheriff's office that's law
5 enforcement. We got the court division that protects the
6 courts. We got the school-resource division.

7 So -- and then, we've got a section that's assigned
8 to the clerk of court that serves papers. So all told,
9 we have about a hundred employees, not all of them in law
10 enforcement but ---

11 Q Right. And did you have people you needed to have
12 in play, your assets that night, in this investigation?

13 A Yes, sir. We -- we called out people that we knew
14 from our agency that were trained and capable of handling
15 what turned out to be a homicide or a murder and a
16 wounding, a shooting, of another party.

17 Q And, Sheriff, you did, at some point, make your way
18 to [REDACTED] ---

19 A I -- I ---

20 Q --- or ---

21 A --- did. I did. It -- it was -- Investigator
22 Dickert was taking the statements. She had already told
23 us that -- she called him "Xzay," but I -- his name is
24 Xzavier Davis -- that he had -- he had done the shooting.
25 She had told us about one of the guns that he had had

1 that had a laser sight on it. And she had told us
2 basically that he had shot into the car and shot at them,
3 preventing them -- trying to prevent them from leaving.

4 After that happened, Investigator Dickert was
5 documenting that, not only with a body camera, but he
6 also was documenting it by writing it down, taking notes.

7 Q Okay.

8 A I then went to the scene of the crime, where I met
9 Lt. Carnes, Lt. Odell Schumpert -- who had come on from
10 the morning shift -- and the SLED forensic science
11 technicians.

12 Q Okay. And the -- so at that point, when you get to
13 [REDACTED], SLED is there investigating the crime
14 scene?

15 A That's correct. SLED had a team that -- that was at
16 the hospital that took evidence there at the hospital and
17 took evidence from the car that Ms. Penny drove up in.
18 But they also had a team that was working at the
19 residence over on [REDACTED].

20 (Off the record briefly.)

21 Q Sheriff, thank you for being here this morning.
22 Please answer any questions Mr. Geoly may have for you in
23 cross.

24 THE COURT: Cross-examination?

25 MR. GEOLY: Please the Court, Judge, thank you.

CROSS-EXAMINATION

BY MR. GEOLY:

Q Sheriff Foster, how you doing?

A I'm doing well. Thank you.

Q Yes, sir. Did you have occasion to know Xzavier before this night?

A I did not.

Q Did you happen to know Indigo before this night?

A I probably had seen her, but I -- I do not know her -- did not know her professionally or through any social contact. I probably had seen her. I -- I -- I knew her grandmother.

Q Okay. This wasn't a troublesome-type household prior to this night on April 20th, 2019, right? It wasn't somewhere that the cops were consistently responding to or anything like that, right? It wasn't a household that you would call a troublesome home?

A Not to my knowledge.

Q Okay. When -- you -- you describe some of the process and that your officers wear body cams. When -- when they're investigating something like this is it every appropriate for them to take that off?

A It would kind of depends on the circumstances. I mean, you wouldn't want to continue to -- like, Investigator Dickert, for instance, he wouldn't want to

1 run the body camera from the hospital to [REDACTED]
2 [REDACTED], unless, of course, he was doing something
3 that was ---

4 Q Relevant to the case or something, right?

5 A Yes.

6 Q Okay.

7 A Yes.

8 Q Now -- now, on this night do you recall talking to
9 Officer Dickert and him taking his body camera off and
10 setting it down while he talked to you?

11 A I do not,

12 Q You don't recall that?

13 A I do not.

14 Q Okay. Could that have been appropriate if he was
15 talking to you about something, like, confidential or
16 about the case? Is that something that would -- maybe
17 would be typical?

18 A I -- I can't answer that, because I don't know the
19 circumstances. I do not recall that.

20 Q Okay. If I -- if -- if ---

21 MR. GEOLY: Beg the Court's indulgence one minute,
22 Your Honor.

23 (Off the record briefly.)

24 MR. STUMBO: Judge, I don't -- I don't believe what
25 Mr. Geoly wants to show is in evidence yet. I mean, it

1 -- it may ---

2 THE COURT: If it's not ---

3 MR. STUMBO: --- be at ---

4 THE COURT: --- in evidence ---

5 MR. STUMBO: --- some point. But I ---

6 MR. GEOLY: That's probably true.

7 THE COURT: All right. If it's not in evidence, you
8 can't publish it.

9 (Off the record briefly.)

10 THE COURT: I mean, let me -- let ---

11 MR. GEOLY: Yeah.

12 THE COURT: --- me see ---

13 MR. GEOLY: Yeah. I ---

14 THE COURT: --- attorneys for a second.

15 MR. GEOLY: Yes, sir.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury, but out of the
18 hearing of the jury.)

19 Q So you don't recall him taking it off?

20 A I do not ---

21 Q But that ---

22 A --- recall ---

23 Q --- and that's not something you'd normally really
24 be necessarily paying attention to, right?

25 A No.

1 Q Okay. You didn't happen to see or -- or any of the
2 interaction, obviously, between Xzavier and Indigo that
3 night?

4 A Would you ---

5 Q Prior ---

6 A --- repeat ---

7 Q --- prior to this happening, I mean.

8 A Would you repeat that, please?

9 Q You -- you didn't happen to see any, obviously,
10 interaction that night between Indigo and Xzavier prior
11 to this event occurring?

12 A No, I didn't see that. I saw the aftermath.

13 Q Right. So you wouldn't have know, though, what was
14 going on as it was happening. The only people out there
15 were Indigo and -- and Xzavier -- is that right -- and
16 the kids?

17 A I -- I saw the aftermath. And I saw what she had
18 told us had happened.

19 Q Right.

20 MR. GEOLY: No further questions, Your Honor.

21 THE COURT: All right. Redirect?

22 MR. STUMBO: Just one, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Sheriff, how often have you seen have you seen the

1 -- the -- the events before a crime happened in your
2 career?

3 A Rare occurrence.

4 Q Okay.

5 A Because I doubt seriously, if I had been there, it
6 would've happened. We usually have to pick up the
7 pieces, just like we did in this situation. You see the
8 aftermath, which is not pleasant.

9 Q Yes, sir. Thank you, Sheriff. Thank you for being
10 here this morning.

11 MR. STUMBO: No further questions, Your Honor.

12 THE COURT: All right. You may step down.

13 (Whereupon, the witness exited the witness stand.)

14 (Off the record briefly.)

15 THE COURT: All right. All right. Ladies and
16 gentlemen, we're going to take a short break; give you an
17 opportunity to stretch your legs, use the restroom,
18 whatever the case may be.

19 I direct you to not discuss the case, even among
20 yourselves. It's too early for deliberations. Don't
21 conduct any independent investigations.

22 We'll take about a ten-minute break and bring you
23 back in just a minute. Thank you very much.

24 (Whereupon, the jury exited the courtroom at 11:23
25 a.m.)

1 (The Court went off the record at 11:23 a.m.)

2 (The Court went on the record at 11:44 a.m.)

3 THE COURT: All right. Anything from the state
4 before we bring the jury in?

5 MR STUMBO: No, sir.

6 THE COURT: Anything from the defense?

7 MR GEOLY: We're good, Your Honor.

8 THE COURT: All right. Let's go ahead and bring the
9 jury back in.

10 (Off the record briefly.)

11 MR GEOLY: Judge, if it please the Court, just it's
12 difficult from here to see that screen.

13 THE COURT: Okay.

14 MR GEOLY: So if could maybe just -- if he's
15 publishing there, maybe just go right here?

16 THE COURT: Whatever you need to do, as long as it
17 doesn't disrupt the ---

18 MR. GEOLY: Yeah. I won't go over ---

19 THE COURT: --- witnesses ---

20 MR. GEOLY: --- back by ---

21 THE COURT: --- or the jury or anything, that'll be
22 fine.

23 MR GEOLY: Thank you, Your Honor.

24 (Off the record briefly.)

25 (Whereupon, the jury entered the courtroom at

11:46 a.m.)

THE BAILIFF: They just need to be able to see the
-- they want the witness to turn a little bit more
towards the jury in the chair.

THE COURT: Okay. They're having trouble seeing the
witnesses?

THE BAILIFF: I think the end.

THE COURT: Okay.

THE BAILIFF: Just if they turn to the side a little
bit, I think ---

THE COURT: Well, I mean, can they turn to the side?

THE BAILIFF: Well, yeah. I mean, they've put a new
chair here, so ---

THE COURT: Okay. So if ---

THE BAILIFF: --- it can be ---

THE COURT: --- you tilt ---

THE BAILIFF: Yeah.

THE COURT: But we'll need to turn the microphone so
they can still speak into the microphone. So let's turn
the chair and -- all right. That -- all right.

THE BAILIFF: Turn it that way?

THE COURT: If that's what's they need. But, I
mean, they're still in place. I don't know if that's
going to change the position.

THE BAILIFF: Does this help?

1 JURY FOREPERSON: Yeah.

2 THE BAILIFF: If -- if it's sideways?

3 JURY FOREPERSON: Could he turn his chair?

4 THE BAILIFF: Oh, you want to turn your chair?

5 JUROR: Yeah.

6 THE COURT: Oh, yeah.

7 THE BAILIFF: Oh.

8 THE COURT: Yeah.

9 THE BAILIFF: Yes, sir.

10 THE COURT: You can ---

11 THE BAILIFF: Of course you ---

12 THE COURT: Yes.

13 THE BAILIFF: --- can.

14 THE COURT: So that'll be fine.

15 THE BAILIFF: Yeah.

16 THE COURT: That'll be fine. Matter of fact, I
17 think we can still maintain some social distancing if you
18 want to slide yours back a little bit in that direction
19 to give you a more direct view. You -- whichever --
20 whichever is better for you. That's fine. Is that --
21 can you see better there?

22 JUROR: Yeah.

23 THE COURT: All right. Is that good enough for
24 everybody? All right.

25 All right. Ladies and gentlemen, welcome back.

1 We're ready to resume with the state's case.

2 The state can call your next witness.

3 MR DANIEL: Thank you, Your Honor. The state calls
4 Vinnie Ray hunter.

5 THE COURT: All right.

6 (Whereupon, the witness came forward.)

7 MR. DANIEL: Ma'am -- Ms. Hunter, can you walk
8 around to that -- come to this area.

9 THE WITNESS: (Complied.)

10 (Off the record briefly.)

11 CLERK OF COURT: Ms. Hunter, raise your right hand.

12 THE WITNESS: I don't swear, ma'am, do to my
13 religion.

14 CLERK OF COURT: She doesn't swear, Judge.

15 THE COURT: Okay. You can -- can you affirm?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. If you would raise your
18 right hand, please.

19 VINNIE RAY HUNTER, having first duly affirmed,
20 testified as follows:

21 THE COURT: Thank you, ma'am. You may be seated.

22 CLERK OF COURT: All right. State your name for the
23 record.

24 THE WITNESS: (No audible response.)

25 THE COURT: Your name, please?

1 THE WITNESS: Vinnie Ray Penny Hunter.

2 THE COURT: All right.

3 DIRECT EXAMINATION

4 BY MR. DANIEL:

5 Q Ms. Hunter, you go by Vinnie Ray?

6 A Yes, sir.

7 Q Okay. And, Ms. Hunter, where do you live?

8 A 631 [REDACTED].

9 Q Okay. And -- I'm not trying to get in trouble or
10 anything, but how old are you, ma'am?

11 A Fifty-seven.

12 Q Okay. And are you born and raised in Newberry?

13 A I was born in Washington, D.C. And we moved here in
14 South Carolina. But I been here most of my life.

15 Q Okay. And are you married?

16 A Yes.

17 Q All right. Who you married to?

18 A Wallace E. Hunter, the young man that has a clean-
19 shave head.

20 Q Okay. And do you have children, ma'am?

21 A Yes, sir.

22 Q Okay. How many children do you have?

23 A I have five children.

24 Q And Indigo Penny, is that your daughter?

25 A Yes.

1 Q Okay. And how old is she?

2 A Indigo should be about -- about 30, 31 maybe.

3 Q All right. So early 30s?

4 A Right.

5 Q And is Indigo born and raised in Newberry?

6 A Yes.

7 Q Okay. And you said you lived -- or you currently
8 live at [REDACTED], correct?

9 A Yes, sir.

10 Q In Newberry?

11 A Yes.

12 Q And that's Helena?

13 A Right.

14 Q And how long have y'all been living there at that
15 address?

16 A I been living at 631 about 33 years.

17 Q So that's where Indigo was born and raised?

18 A Right.

19 Q And where does Indigo live?

20 A Indigo live right next to me.

21 Q Okay. So what -- what address is that?

22 A [REDACTED].

23 Q Okay. [REDACTED]?

24 A Uh-huh.

25 Q So she's your neighbor?

1 A Right.

2 Q Okay. And is Indigo married?

3 A Yes, she is.

4 Q Okay. And who's she married to?

5 A Xzavier Davis.

6 Q Is Xzavier Davis present in the courtroom, ma'am?

7 A Yes, he is.

8 Q Would you please identify him for the jury?

9 A Sitting right there in the blue-and-white shirt with
10 the T -- white T-shirt.

11 MR. DANIEL: And, Your Honor, I'd just ask the
12 record reflect that -- that the witness has identified
13 the defendant.

14 Q She's married -- so Indigo's married to Xzavier
15 Davis. How long have they been married?

16 A About three -- about three years.

17 Q Okay. And are they still married?

18 A Yes, they are.

19 Q Okay. Now, are you a grandmother?

20 A Yes, I am.

21 Q Okay. And Indigo has children, correct?

22 A Yes.

23 Q All right. Who are her children?

24 A Iven, Penelope, and little Xzavier. And now she has
25 a -- well, I call her Caroline, but her name is -- she

1 has another girl.

2 Q Okay. So since this incident happened that we're
3 here to discuss, which is April 20th, 2019, Indigo's had
4 another child?

5 A Yes.

6 Q Was she -- would she have been pregnant at the time
7 of this incident we're here to discuss?

8 A Yes.

9 Q Okay. Iven -- Iven is deceased, correct?

10 A Right.

11 Q Who was Iven's father?

12 A Iven father was Travis Wright.

13 Q All right. So Xzavier Davis is not the biological
14 father of Iven?

15 A No, sir.

16 Q All right. Would you consider to be a stepfather to
17 Iven?

18 A Yes.

19 Q All right. So y'all both live on [REDACTED] and --
20 and your neighbors with Indigo, correct?

21 A Right.

22 Q Okay. I want to take you back to April 20th, 2019,
23 which in the date in question, correct?

24 A Right.

25 Q Early-morning hours, it still would've been dark.

1 Do you have a recollection of that particular time
2 period?

3 A Yes, sir.

4 Q All right. Tell us what, if anything, you remember.

5 A Well, me and my husband was in the bed. We were
6 sleeping. And it seemed like it was right outside my
7 bedroom window. I heard about maybe six or seven
8 gunshot.

9 And I woke Wallace. I said, "Wallace," I said,
10 "somebody is shooting out there." I said, "It seem like
11 it's right here at our window."

12 He say, "Well, I ain't heard no shots."

13 I said, "Wallace, I got no reason to lie." I said,
14 "But I done heard Indigo car, you know, speed off in the
15 -- go out in the road." I said, "Something done happen."
16 I said, "Call and see have Indigo shot Xzay or Xzay shot
17 Indigo." I said, "But some bad done happen."

18 So he got up. I told him. I said, "I'm scared,
19 honey."

20 He said, "Come on."

21 So we always talk with our speakerphone, you know

22 ---

23 Q Let -- let me stop you, ma'am. All right. So you
24 awoke to the sound of gunshots early-morning hours of
25 April 20th ---

1 A Right.

2 Q --- correct?

3 A About 2:30.

4 Q And then you heard what sounded like a car?

5 A Right.

6 Q What -- why did -- how did you hear a car? Was
7 there anything distinct about this car?

8 A Indigo muffler need to have been fixed. And when
9 she mash on that gas, that muffler sound loud. The car
10 sound loud from the muffler.

11 Q Okay. And let me show you some ---

12 MR. DANIEL: Your Honor, I'm going to offer seven
13 exhibits through this witness. And I believe the defense
14 does not have objections. They're 91 through 96 and No.
15 19. They've been premarked for state's ID purposes. I'd
16 -- I'd offer to admit those into evidence if the defense
17 has no objections.

18 THE COURT: All right. State's Exhibit 19 and
19 State's Exhibits what?

20 MR. DANIEL: Your Honor, it would be 91 through 96;
21 those are six exhibits. And then, it would just be No.
22 19, which would make the seventh exhibit.

23 THE COURT: All right. Any objection to State's
24 Exhibit 19 or State's Exhibits 91 through 96?

25 MR. GEOLY: No, sir, Your Honor.

1 THE COURT: All right. State's Exhibit 19 and
2 State's Exhibits 91, 92, 93, 94, 95, and 96 are admitted
3 into evidence without objection.

4 MR. DANIEL: Thank you, Your Honor.

5 (Whereupon, State's Exhibits 19 and 91 through 96
6 were entered into evidence.)

7 MR. DANIEL: I -- and at this time, I would publish
8 91.

9 THE COURT: All right.

10 Q And, Ms. Hunter, if you could, if you need situate
11 yourself where you can see the TV, we're going to walk
12 through some of these photographs.

13 All right. What are we looking at there in State's
14 91?

15 A That's my house.

16 Q Okay. That's your house. That's [REDACTED]?

17 A Yes, sir.

18 Q All right. And that mailbox in there also says [REDACTED],
19 correct?

20 A Right.

21 Q Do you share a common driveway, your property and
22 Indigo's property?

23 A Yes.

24 Q Okay. All right.

25 MR. DANIEL: 92, please, Walter.

1 Q That's the common driveway?

2 A Yes, sir.

3 Q And that would be Indigo's house to the right?

4 A Yes, sir.

5 Q Okay.

6 MR. DANIEL: 93, Walter.

7 Q What is that?

8 A That's Indigo's house.

9 Q Okay. That's Indigo's house.

10 MR. DANIEL: 94.

11 Q Okay. That's just another -- whose vehicle was that
12 -- there's a vehicle in that driveway. Do you know who
13 that belongs to?

14 A Indigo and Xzavier. He drove that vehicle.

15 Q Okay. Now, you were describing hearing multiple
16 gunshots followed by the sounds of what you believed to
17 be Indigo's car, correct?

18 A I heard the car leaving out the yard.

19 Q And that's what -- you heard the sound of a car
20 accelerating, which ---

21 A Right.

22 Q --- you believed to be from the yard?

23 A Uh-huh.

24 Q And what -- what car are you referring to?

25 A I don't -- it's not there. It's a -- a Toyota

1 Camry, kind of like a green four-door.

2 Q All right. But who is that car -- who drives that
3 car primarily that we're looking at there?

4 A Xzavier.

5 Q Okay. Would that be a 2005 Buick Rendezvous SUV?

6 A It's a SUV, but I don't know what the name of it.

7 MR. DANIEL: 95, Walter.

8 Q All right. That's just another angle of Indigo's
9 house?

10 A Right.

11 MR. DANIEL: 96.

12 Q That's just a closer-up of the vehicle I just
13 described?

14 A Yes.

15 Q All right.

16 MR. DANIEL: And then, finally, 19, Walter.

17 Q All right. Is that the car associated with Indigo,
18 the -- the car with the -- the loud-muffler-type sound?

19 A Yes, sir.

20 Q Okay. And what kind of car is that?

21 A Toyota Camry.

22 Q Okay. So when -- all right. Now let's go back to
23 what -- after you hear the sound of the car, which you
24 believed to be leaving the property, what happens next?

25 A I woke my husband up; told him. And after I told

1 him, he said, "I didn't hear no gunshots."

2 I said, "Wallace, something went on." I said,
3 "Indigo car done sped away from the driveway." I say,
4 "I'm telling you." So he got up. And I told Wallace,
5 "I'm scared." I said, "I'm really scared."

6 So I said, "Get your cell phone" -- because I call
7 -- I took my phone, was calling Indigo. Indigo was not
8 picking up. And I told him to take his phone and call
9 Xzay phone, Xzavier phone. So Xzavier turn around and
10 picked his phone up.

11 Q All right. Let me stop you. Xzay -- y'all call
12 Xzavier Davis -- he goes by "Xzay"?

13 A Yeah. We -- we call him "Xzay."

14 Q All right. So your -- you get Wallace to call
15 Xzavier's cell phone?

16 A Right.

17 Q And is that -- you said that was on speakerphone
18 that your husband made that call?

19 A Yeah. We always talk on speakerphone.

20 Q All right. Tell us what happens next.

21 A And my husband said, "Xzay, what's going on over
22 there? I heard some gunshots. What done went on?"

23 He said, "Mr. Bo" ---

24 MR. GEOLY: I'm going ---

25 A --- "I ain't no" ---

1 MR. GEOLY: --- to object, Your Honor.

2 THE COURT: All right. This is his -- if this was
3 something said to the husband and not to her directly,
4 that's hearsay.

5 MR. DANIEL: Well, Your Honor, she -- she testified
6 that it was on speakerphone and she also recognizes the
7 voice to be Xzavier Davis. So she's hearing this.

8 THE COURT: Okay.

9 MR. DANIEL: She's in the same room with her
10 husband, who's on speakerphone, calling the defendant.

11 THE COURT: All right. Then, I'll allow it.
12 Overruled. Go ahead.

13 MR. GEOLY: Yes, sir.

14 MR. DANIEL: Thank you, Your Honor.

15 Q All right, Ms. Hunter. Please -- please continue.
16 Start from where your husband calls Xzay.

17 A So my husband called Xzay on his phone. And he
18 said, "Mr. Bo, I ain't no fucking chap. Nobody gone play
19 with me. Don't play with me. Ain't nothing to play
20 with." And he hung the phone up.

21 Q Okay. Let me stop you. So your husband asked him.
22 He said, "Xzay, what's going on?"

23 A Right.

24 Q And Xzay's response to that question was what,
25 again?

1 A He's not a fucking chap. Don't -- he ain't nothing
2 to play with.

3 Q And then immediately hangs up on your husband?

4 A And he hang up on my husband.

5 Q And you heard this because it was on speakerphone;
6 is that correct?

7 A Right.

8 Q And you recognized that person's voice to be Xzavier
9 Davis?

10 A Right.

11 Q All right. Anything about -- did Xzay say anything
12 about trying to shoot out tires?

13 MR. GEOLY: Objection, Your Honor: leading.

14 THE COURT: No. I'll allow that. Go ahead.

15 Q All right. And this phone call -- I just want to be
16 clear. That first phone call, did -- did Xzay tell your
17 husband, Wallace, that he tried to shoot out the tires of
18 Indigo's car?

19 A No.

20 Q You never heard that?

21 A He never said that.

22 Q All right.

23 A So when he hung up on my husband, I told him to call
24 him back again. And he called him back again on
25 speakerphone. He said, "Like I said, Mr. Bo, I ain't no

1 fucking chap. I ain't no chap. Ain't going play with
2 me." And he hung up again.

3 So I said, "Okay, Wallace. This is what I'm finna
4 do." I called all my children and my sisters and things.
5 And I told them -- I said, "You got to get" -- I'm
6 scared. I'm -- I stayed in the house, but my husband
7 went outdoors.

8 And I said, "We got to look and see. You know,
9 like, she might run into a gutter and something. We
10 don't know, you know, what's going on." I said, "You got
11 to think."

12 And I called my sisters. And I ---

13 Q All right. Let me stop you there. All right. "I
14 ain't no effing chap. Don't play with me."

15 What -- did that have any special significance to
16 you? What -- what does that mean? How -- how did you
17 ---

18 MR. GEOLY: Objection ---

19 Q --- and your husband ---

20 MR. GEOLY: --- Your Honor: asking her what he
21 means by making a comment.

22 THE COURT: Yeah. I'll sustain that objection.

23 MR. DANIEL: All right.

24 Q Are you on good terms with Xzay, speaking terms with
25 Xzay?

1 A Well, sometime. He be, like, a some-of-time person.
2 If he in a good mood, he'll jive and, you know, with you.
3 But he mostly stay sleep all day till time for him to go
4 to work. I didn't hardly get to see him like that,
5 unless it be on the weekend.

6 Q But -- all right. So there are just two phone calls
7 your husband made right after hearing shots and you --
8 and you -- what you thought was Indigo's car pulling out.
9 And each time your husband's asking him, "What's going
10 on?"

11 A Right.

12 Q And did he ask any other questions beyond that ---

13 A Well, he ---

14 Q --- your husband?

15 A --- he couldn't cause he hang the phone up on him.

16 Q But it was clear he was referring to the gunshots?

17 A Right.

18 Q Your husband?

19 A He's -- yes.

20 Q And -- and also, trying to figure out Indigo and her
21 children's whereabouts, correct?

22 A Right.

23 Q And essentially, you're saying you heard, on
24 speakerphone, Xzay make those comments to your husbands
25 [sic], not once but twice?

1 A Yes, sir.

2 Q Two different phone calls?

3 A Yes.

4 Q All right. So eventually -- and you tried to call
5 Indigo's phone multiple times; is that correct?

6 A Yes, I did.

7 Q What -- did it ring?

8 A The phone rung, but she never answered it.

9 Q Okay. And did you look outside at this point in
10 time?

11 A No. I didn't -- what you call it? I didn't look
12 out no window. What I did, my husband took and turn
13 around and said, "Come on."

14 We went to the front porch because we was trying to
15 see, you know. And I told him, "Don't go all way out
16 there on the porch." And I left the screen door -- you
17 know how you prop your door open? -- and left the big
18 door open. So we was trying to peek around, you know, on
19 the outside.

20 Q Eventually, though, did you go to the Newberry
21 County Hospital?

22 A Well, before I went to the hospital, like I said, I
23 calling my sister and my children and thing. And I had
24 some of my younger grandkids. I called they mother and
25 told them that it was an emergency; to get over there; I

1 need a ride. Because my husband just went out and just
2 left me, going -- say he going to the hospital.

3 So my daughter come. And just as we got on Drayton
4 Street to cross over 121, my daughter called me,
5 hollering and screaming. Say, "She at the hospital,
6 Mama? Yeah. She been shot. She been shot, Mama."

7 And I'm like, Oh, my God. What am I going to do?
8 And I said, "Okay. Just stay right there." And she was
9 just hollering.

10 Q At this -- what -- approximately what time did you
11 hear these shots that -- that woke you?

12 A About 2:30 in the morning.

13 Q Okay. But you're not exactly sure of the precise
14 time?

15 A No, I'm not sure. But I know it was, you know, over
16 the morning, like 2-something. I remember looking at the
17 clock. If I'm not mistaken, it was like 2:19.

18 Q Okay. And did you have an idea of Xzay's
19 whereabouts at this point in time?

20 A No, I didn't. I'm thinking, when he answer his
21 phone and the truck was there, that he was at the house.

22 Q Okay. So you were -- you were operating on the
23 assumption, when -- when your husband Wallace made that
24 phone call to Xzay, that he was at the house -- Xzay was?

25 A Yes.

1 Q Okay. All right, Ms. Hunter. Thank -- thank you.

2 Please answer any questions Mr. Geoly has for you.

3 THE COURT: All right. Cross-examination.

4 MR. GEOLY: Please the Court.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION

7 BY MR. GEOLY:

8 Q Hey, Ms. Hunter. How you doing?

9 A Fine. What about yourself?

10 Q Good. We've talked before, right?

11 A Yes.

12 Q But we never really met ---

13 A No.

14 Q --- face to face, have we?

15 A Unh-unh.

16 Q Have you ever met with the solicitor before today?

17 A The solicitor?

18 Q The solicitor. Solicitor Stumbo and Solicitor
19 Taylor, have you met with them before today?

20 A Yeah. Uh-huh.

21 Q To talk about this case?

22 A I come to talk to him about this case -- what name
23 -- Stumbo?

24 Q Stumbo, yeah.

25 A Uh-huh.

1 Q You did talk to him about it?

2 A Yeah.

3 Q Okay. Did you get much input?

4 A Did I do what?

5 Q Get much input in how the case was going be handled?

6 A No. He didn't really tell me how it was going be
7 handled.

8 Q Okay.

9 MR. DANIEL: Your -- Your Honor, objection, just to
10 the relevance of that -- that question. I don't know ---

11 THE COURT: Okay. Overruled. Go ahead.

12 Q You said Xzay is married to your daughter; is that
13 right?

14 A Right.

15 Q Well, did -- and you said Xzay would sleep a lot
16 when he wasn't working.

17 A Right.

18 Q Did he work a good bit?

19 A Yes.

20 Q Where did he work?

21 A Georgia-Pacific.

22 Q Okay. Was he full-time at Georgia-Pacific?

23 A Yes.

24 Q Did he have any kind of leadership out there, do you
25 know?

1 A I don't know about that, now.

2 Q Okay. He's pretty young though, right?

3 A Yeah.

4 Q Well, at the time that this occurred, I think he was
5 about 26; is that right, to your recollection?

6 A I think so.

7 Q Okay. How'd he do as far as taking care of the
8 family? Was he a good provider?

9 A Yes.

10 Q Okay. Took care of the children's needs? Took care
11 of your wife's needs -- I mean, took care of your
12 daughter's needs?

13 A He took care of everything he need to take care.

14 Q Okay. And they asked you -- they said -- now, Iven
15 was his stepson. If -- if you would see Xzay and Iven on
16 an ordinary day, there was no way to tell that -- that
17 Iven was his stepson, was it?

18 A No, not ---

19 Q I mean ---

20 A --- really.

21 Q --- as far as Xzay was concerned, that was his boy,
22 right?

23 A Yeah.

24 Q I mean, and -- and as far as the boy was concerned,
25 this was his dad, right?

1 A Right.

2 Q And they -- they had that kind of love for one
3 another, wasn't it?

4 A Uh-huh.

5 Q Okay.

6 THE COURT: I'm sorry. You need answer "yes" or
7 "no."

8 THE WITNESS: Oh. Yes.

9 THE COURT: Thank you.

10 Q They did have ---

11 THE WITNESS: Thank you.

12 Q --- that love for one another didn't they, a ---

13 A Yes.

14 Q --- father-son love?

15 You've certainly -- I know a lot happened this
16 night. And -- and I think you said at the beginning,
17 "Wallace, get up, honey. There's something bad done
18 happened. Either she shot him or he shot her."

19 A Uh-huh.

20 Q You didn't know at first, right?

21 A No, I didn't.

22 Q Okay. They're not the kind of couple to have
23 trouble, really, like that, right?

24 A They had a few little problems here and there.

25 Q Kind of tit for tat?

1 A No. I think, like, one time the baby was jumping on
2 the bed.

3 Q Uh-huh.

4 A And she fell off. And she had got a knot on her
5 head. And Xzay wanted to call the ambulance, and my
6 daughter said, "No. I'll just take her." And he --
7 they, you know, kind of dispute about something like
8 that.

9 Q But no fisticuffs, no hitting, no fighting in the
10 house?

11 A No. Unh-unh.

12 Q None of that kind of stuff?

13 A No.

14 Q No abuse of these children going on in that house?

15 A Not that ---

16 Q You live ---

17 A --- I know.

18 Q --- right next door. You'd have known if it was
19 happening, right?

20 A Yeah. Because Penelope would tell me if something
21 wrong.

22 Q She's a cute, precious, little child, isn't she?

23 A Uh-huh.

24 Q She's 5 now. I think she was 3 when this happened;
25 is that right?

1 A Right.

2 Q And that's who you see in the videos with you and
3 Indigo, right?

4 A Right.

5 Q Indigo loves her husband, doesn't she?

6 A Yes.

7 Q Okay. Now, that night, when you get him on the
8 phone -- or excuse me -- when Mr. Wallace gets him on the
9 phone, you didn't ask him what he was shooting at, did
10 you?

11 A No.

12 Q When Taylor says, "Hey, he didn't say he was
13 shooting at tires," that's not what he said. But nobody
14 asked him either, right?

15 A He -- my husband told him -- say he heard some
16 shooting went on over there and asked him what's going
17 on. And he said he was no fucking chap to play with.

18 Q Right. Now, do you know why that happened? Do you
19 know how that kind of all happened?

20 A I don't know. He sound like he mad. That what I
21 told my husband.

22 Q And -- and -- and they kind of got into it probably
23 because he had been at his fish fry over at his daddy's
24 folks' house, right?

25 A I don't know.

1 Q You hadn't talked to anybody about that since
2 either?

3 A Unh-unh.

4 Q Okay. Did you ask -- since then, have you talked to
5 Indigo about what happened that night?

6 A No. Because I been having trouble with Indigo.

7 Q Okay.

8 A You know, she have, like -- she tells me sometimes
9 she's, like, having, like, a nervous breakdown or
10 something.

11 Q And she still loves her husband, doesn't she?

12 A Yeah.

13 Q Want to stand by him, doesn't she?

14 A I guess.

15 Q She doesn't believe that he was shooting at her to
16 kill, does he ---

17 MR. DANIEL: Your Honor, objection. That ---

18 Q --- does she?

19 THE COURT: Sustained.

20 Q She's never said to you that she thinks that ---

21 MR. DANIEL: Objection to the hearsay, Your Honor.

22 THE COURT: Sustained.

23 Q Has she ever expressed to you that she ---

24 THE COURT: That's hearsay. I ---

25 MR. GEOLY: Yes, sir, Your Honor.

1 THE COURT: --- sustained the objection.

2 Q You don't believe Xzay was trying to kill her that
3 night, do you?

4 A In my mind?

5 Q Yes. Do you ---

6 A Yes.

7 Q --- think he -- you think he set out to kill your
8 daughter that night?

9 A I -- I can't say, you know, that he set out to kill
10 her. But you think about it. There was a revolver
11 involved. She's a lady, and every man can beat a lady.
12 You know what I'm saying?

13 Q Right. But you ---

14 A So it didn't take a gun.

15 Q In -- in -- but he didn't hit on her, does he?

16 A I don't know that. She never told me that.

17 Q Okay. Well, you know about -- that -- that he had
18 plenty opportunity to shoot her and didn't, right, that
19 night? Like ---

20 A I ---

21 Q --- admission.

22 A I don't know. I ---

23 Q You don't ---

24 A --- don't know.

25 Q --- know?

1 A I don't know.

2 Q Because you weren't there?

3 A That's right.

4 Q You was in the house?

5 A Sleep.

6 Q So in ---

7 A Yes.

8 Q --- terms of whether or not he had any malice
9 aforethought or whether he intended to shoot your
10 daughter or not or if he intended to shoot Iven or not,
11 you don't know?

12 MR. DANIEL: Your -- Your Honor, objection. That's
13 -- that's -- that's a question for the jury whether
14 there's malice ---

15 THE COURT: Overruled. I'll allow it. Go ahead.

16 Q I think you were saying you don't know, right?

17 A I don't know.

18 Q So you don't have anything to tell the jury about
19 that?

20 A No.

21 Q Prior to this happening, did you have a loving
22 grandson, Iven? Was he a loving grandson?

23 A Yes. He was marvelous. He was excellent. He was
24 ---

25 Q And ---

1 A --- everything you want in a child.

2 Q And he and all those other kids love Xzay, didn't
3 they?

4 A Yeah.

5 MR. GEOLY: No further questions, Your Honor.

6 THE COURT: All right. Redirect?

7 MR. DANIEL: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. DANIEL:

10 Q Ms. Hunter, I think Mr. Geoly asked you about
11 whether you knew of any marital difficulties between Xzay
12 and -- and your daughter Indigo. And I think you
13 indicated you didn't know, correct?

14 A I didn't know.

15 Q Because you don't know what happens behind closed
16 doors?

17 A That's right.

18 Q And as far as anything that was in Xzay's mind at
19 the time he fired that weapon, do you know what was in
20 his mind at the time he fired the weapon?

21 A To kill her.

22 Q Thank you.

23 THE COURT: All right. You may step down.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: All right.

1 (Off the record briefly.)

2 THE COURT: All right. The state can call your next
3 witness.

4 MR. DANIEL: Your Honor, my apologies. The state
5 calls Wallace Hunter.

6 THE COURT: All right.

7 (Off the record briefly.)

8 (Whereupon, the witness came forward.)

9 WALLACE HUNTER, having first duly affirmed,
10 testified as follows:

11 THE WITNESS: I don't swear, but I'll tell the
12 truth.

13 THE COURT: All right. Thank you very much.

14 CLERK OF COURT: State your ---

15 THE COURT: You ---

16 CLERK OF COURT: --- name ---

17 THE COURT: --- may be ---

18 CLERK OF COURT: Sorry.

19 THE COURT: That's fine.

20 You can take off your mask. State your name for the
21 record.

22 THE WITNESS: Yes, sir.

23 THE COURT: Your name?

24 THE WITNESS: Wallace -- Wallace Hunter.

25 THE COURT: All right.

DIRECT EXAMINATION

BY MR. DANIEL:

Q All right. Mr. Hunter -- where are you from, Mr. Hunter?

A Huh?

Q Where you from, Mr. Hunter? Where you live?

A [REDACTED] Newberry, South Carolina.

THE COURT: I'm sorry. You're going to need to speak up and into the microphone, okay?

A Now, what that you were saying?

Q All right. Where you live, sir?

A Where do I live?

Q Yes, sir.

A [REDACTED], Newberry, South Carolina.

Q Okay. And you lived there for a long time; is that correct?

A Yes, sir.

Q And your wife is Vinnie Ray Hunter, correct?

A Yes, sir.

Q She just testified, right?

A Yes, sir.

Q And Indigo Penny is your daughter, correct?

A Yes, sir.

Q Okay. And she has kids, correct, Indigo does?

A Yeah.

1 Q So you -- you're a grandfather to Indigo's kids,
2 correct?

3 A Yeah, right.

4 Q All right. I'm going to go back, Mr. Hunter, to
5 April 20th of -- of 2019, the early-morning hours. Do
6 you have a recollection of that time period?

7 A Well, like I said, my wife woke me up; said she hear
8 some gunshot. So I said, "I ain't no -- hear no
9 gunshot."

10 And she's, "Well, call over there to Xzay and see
11 what's going on."

12 So when I called over there, that when he told me --
13 he said, "I ain't no chap. I ain't nothing to be played
14 with."

15 Q All right. Let me get this straight, because it was
16 a little difficult hearing you. I don't know if all the
17 jurors necessarily hear you, because the air's going up
18 there.

19 You said your wife woke you up?

20 A Yes, sir.

21 Q All right. And said she heard -- and your wife said
22 she heard gunshots, correct?

23 A Yes, sir.

24 Q And your wife told you to tall Xzay?

25 A Yes, sir.

1 Q That's Xzavier Davis?

2 A Yes, sir.

3 Q All right. So you called, correct?

4 A Right.

5 Q And did you put it on the speakerphone?

6 A Well, my phone, when I usually call, I put it on
7 speakerphone.

8 Q And that's so your wife can hear the conversation as
9 well?

10 A Yeah.

11 Q All right. So when you called Xzay to find out
12 what's going on next door with gunshots ---

13 A Right.

14 Q --- Xzay answers the phone. And -- and tell me:
15 What, if anything, does he say?

16 A "I ain't no chap." He said a curse word, but -- you
17 want to say what he told me?

18 Q Please.

19 A He said, "Mr. Bo, I ain't no damn chap. I ain't
20 nothing to be played with."

21 Q So he -- he -- he -- Xzay calls you "Mr. Bo"?

22 A Yeah. He always do.

23 Q All right. So you -- so when you said, "What's
24 going on," he said: "Mr. Bo, I ain't no damn chap; don't
25 play with me," something like that?

1 A Yeah. Yes, sir.

2 Q Okay. And then, did he say anything after that?

3 A He hung the phone up. So my wife told me, "Call him
4 back." So I called him back. And he repeated the same
5 thing.

6 Q Almost the identical thing ---

7 A Yes ---

8 Q --- he said ---

9 A --- sir.

10 Q --- the first call?

11 A Yes, sir.

12 Q Did -- did -- did Xzay sound angry when he said
13 this?

14 A I can't tell you that.

15 Q I mean, how was -- what was the tone of his voice?
16 Was he yelling? Was he crying? Could you tell?

17 A Well, to me, he might've been angry.

18 Q You would describe his voice as -- as having an
19 angry tone to it?

20 A The way he said with the tone of voice he had.

21 Q All right. And at any point in time, did you ever
22 hear Xzay tell you anything to the effect about firing a
23 gun and someone actually getting hit, anything ---

24 A No. I ---

25 Q --- of that ---

1 A --- never heard ---

2 Q --- nature?

3 A --- that.

4 Q Say that again, sir?

5 A I said I never heard that. You said about a gun.

6 Q You're essentially saying all he told you was: "I
7 ain't no bleep chap; don't play with me."

8 A That's right.

9 Q And you're questioning him about what just happened,
10 related to the gunshots and all that, right?

11 A I guess -- gunshot was already been shot.

12 Q Well, you're asking about -- you heard gunshots or
13 "What's going on? Are you okay?" kind of thing, right?

14 A Right.

15 MR. GEOLY: Objection, Your Honor. I'm not sure
16 what the question was there myself. I mean, I -- I'd ask
17 that he ask a question ---

18 THE COURT: All right.

19 MR. GEOLY: --- and quit testifying.

20 THE COURT: Ask it again.

21 Q All -- all right. Mr. Hunter, what did you -- what
22 question did -- did you ask Xzay on both phone calls?

23 MR. GEOLY: I'd object to ---

24 A I asked ---

25 MR. GEOLY: asked and ---

1 A --- him what ---

2 MR. GEOLY: --- answered ---

3 A --- was going on.

4 MR. GEOLY: --- to that.

5 THE COURT: Overruled. Go ahead. Ask ---

6 A I asked ---

7 THE COURT: --- it again.

8 A --- him what was going on.

9 Q You -- you just simply asked what was going on?

10 A Yeah. What had happened over there.

11 Q And -- and there ---

12 A And ---

13 Q --- was just two phone calls, correct?

14 A Right. Yes, sir.

15 Q And -- and his response both times were ---

16 MR. GEOLY: Objection, Your Honor. He's ---

17 A Yes, sir.

18 MR. GEOLY: --- said this four times. I mean ---

19 THE COURT: Overruled. Go ahead.

20 Q Just one last time, so we can be clear: Both phone
21 calls, Xzay only made two statements in response to your
22 question about what's going on, correct?

23 A Yes, sir.

24 Q And that was what, one more time?

25 A Uh-huh. It was two time. I called him two time.

1 Q And he said what both times?

2 A "I ain't no chap. I ain't nothing to be played
3 with."

4 Q "I ain't no chap. Ain't nothing to be played with."
5 Right?

6 A Yeah.

7 Q All right. Thank you, Mr. Hunter.

8 THE COURT: All right. Cross-examination.

9 MR. GEOLY: Please the Court, Judge.

10 THE COURT: All right.

11 (Off the record briefly.)

12 CROSS-EXAMINATION

13 BY MR. GEOLY:

14 Q Had you gotten a call from Indigo that night, Mr.
15 Hunter?

16 A Do I have what?

17 Q Had you gotten a call from your daughter that night?
18 Indigo, had you gotten a call from Indigo that night?

19 A No. Indigo didn't call me.

20 Q Indigo did not call you?

21 A No.

22 Q Did you ---

23 A My wife ---

24 Q --- ever check ---

25 A --- woke me up.

1 Q Did you ever check to see if you had any phone
2 called you missed from her?

3 A No. I went out to the hospital.

4 Q Have you ever talked to Indigo about what he was
5 talking about that night?

6 A No.

7 Q No -- never have?

8 A No. I don't tell -- get in they business.

9 Q Don't get in their business?

10 A No, sir.

11 Q Okay. But if she was calling you about things going
12 on at the house that night, he might consider it, if you
13 got involved, that you're treating him like a chap. Is
14 that fair to say?

15 A Unh-unh. I don't know nothing about that.

16 Q Okay. Are you sure she didn't try to call you
17 earlier that evening, or you don't know?

18 A I -- how can she call me if she's shot?

19 Q Huh?

20 A She went to the -- she had got shot and went to the
21 hospital.

22 Q I'm talking about before anybody was shot.

23 A Well ---

24 Q I'm talking ---

25 A --- I'm just ---

1 Q --- about when she won't let him in the house.

2 A I -- I can't understand that.

3 Q You can't ---

4 A Because ---

5 Q --- understand ---

6 A --- I was ---

7 Q --- that she might've ---

8 A --- I was ---

9 Q --- called you?

10 A --- sleep. I was sleep when my wife woke me up.

11 Q So you don't know -- prior to your wife waking you
12 up, you don't know what was happening?

13 A She woke me up because she said she heard gunshot.

14 Q Right. And you didn't hear those shots, right?

15 A No. I was sleep.

16 Q Okay. You and Xzay get along pretty good, right?

17 A Oh, yeah.

18 Q Okay. Do you think he tried to kill Indigo?

19 MR. DANIEL: Your Honor, objection.

20 THE COURT: Overruled. Go ahead.

21 A Yeah.

22 Q That's what you think?

23 A I ---

24 Q I don't ---

25 A Repeat ---

1 Q --- want you ---

2 A --- that.

3 Q --- to say what ---

4 A Repeat that questions to me.

5 Q Do you think he tried to kill Indigo that night?

6 A Well, I -- to me, I don't think he -- I don't think
7 he meant to kill her.

8 Q You don't think that, do you? That's what Ms.
9 Vinnie thinks. But you don't think that, do you?

10 A That what Ms. Vinnie said.

11 Q But that's not what you think. I know what Ms.
12 Vinnie said. I'm asking you.

13 A Well, I said no. I don't ---

14 Q Right.

15 A --- really think ---

16 Q Now -- now ---

17 A --- he meant to ---

18 Q --- don't ---

19 A --- kill anybody.

20 Q Xzay loved -- Xzay loved Iven, didn't he?

21 A Yeah. But once you ---

22 Q It's okay.

23 A --- make a -- once you make a mistake, you got to
24 pay for it.

25 Q I -- I get that. But -- but part of this is whether

1 or not he had malice aforethought, whether he had this
2 evil intention to kill your grandson. And -- and you
3 just said you don't believe that, really, do you?

4 And I know you're in a tough spot with your wife and
5 your daughter. Now, Indigo doesn't believe that either,
6 does she?

7 MR. DANIEL: Your Honor ---

8 A I have no ---

9 MR. DANIEL: --- objection ---

10 A --- idea.

11 MR. DANIEL: --- to the -- that -- that's pitting, I
12 believe.

13 A I can't tell you what ---

14 THE COURT: I'll ---

15 A --- Indigo thinking.

16 THE COURT: --- I'll sustain the objection. Go
17 ahead and ask your next question.

18 MR. GEOLY: Yes, sir.

19 Q You -- you've known that they've been married for a
20 few years, right?

21 A Yes, sir.

22 Q She switched her name to Indigo Davis back then,
23 right?

24 A Yeah. They married.

25 Q Do you -- you realize they're still trying to call

1 her Indigo Penny, but she goes by Indigo Davis, doesn't
2 she?

3 A I think she still do.

4 Q Okay. As terms of -- of providing, were you happy
5 with your son-in-law in terms of what kind of provider he
6 was?

7 A Yeah.

8 Q Did he go to work every day?

9 A Yeah.

10 Q Work six days a week, every week?

11 A I don't know about no every week, now. But I know
12 he working a lot.

13 Q Okay. Worked a lot. Where -- where is he working?

14 A Georgia-Pacific.

15 Q Okay. Had a good job, right?

16 A I don't know.

17 Q You don't know if he had a good job?

18 A I don't know, now.

19 Q He took care of all the bills next door at 633,
20 though, right?

21 A Well, that's right.

22 Q Okay. But part of a contention maybe between he and
23 -- and Indigo, you actually -- is name is on that house,
24 right?

25 A My name on the house?

1 Q I'm asking.

2 A Yeah.

3 Q Okay. But who put down the down payment on that
4 house?

5 A Xzay did. Xzay and Indigo. I don't know. They --
6 they told me to go with them over there and -- and they
7 were going have to get a trailer.

8 Q And you basically helped them get a trailer by
9 putting it in your name, right?

10 A Yeah.

11 Q Who -- but who paid the down payment?

12 A Whose name it was in?

13 Q No. I ---

14 A It's in my name.

15 Q Well ---

16 A That the ---

17 Q --- but you ---

18 A --- way ---

19 Q --- didn't ---

20 A --- they got ---

21 Q --- pay the down payment, right? You didn't take
22 that out of your bank account to pay the down payment,
23 right?

24 A Yeah. That what they did. Q

25 A

1 Q All right. So -- so Xzay did that, right?

2 A (No audible response.)

3 Q And when the monthly payment would come up for the
4 mortgage every month, who would pay that?

5 A (No audible response.)

6 Q You would pay it or Xzay would pay it?

7 A Well, Indigo -- I told the lady out there to turn
8 everything over to Indigo.

9 Q Okay. And that's what's happened, right?

10 A That what happened.

11 Q All right. You don't pay those bills. He pays
12 those bills, right?

13 A Well, I have help.

14 Q So if you're calling -- she's calling over to put
15 him out the house and telling him, "You can't come in the
16 house," that might elicit a reaction like: "Mr. Bo, I
17 ain't no chap. I ain't nothing to be played with,
18 putting me out of own house that I pay the bills for.
19 Lock me out at 2:30 in the morning when I'm coming home.
20 I'm the bill-payer here." Right? I mean, you understand
21 where he was coming from with that, don't you?

22 A Yeah. You got to have understanding. If you can't
23 come in the house at a certain time of night that y'all
24 done agreed on ---

25 Q I -- I ---

1 A --- that day ---

2 Q --- understand the ---

3 A --- you shouldn't have it.

4 Q I understand that too, which is probably why they
5 were fighting, because he'd been drinking at his -- at
6 his aunt's a little bit with his dad ---

7 A I don't ---

8 MR. DANIEL: Your Honor ---

9 Q --- right?

10 MR. DANIEL: --- objection.

11 A --- what he ---

12 MR. DANIEL: This is ---

13 A --- was drinking.

14 MR. DANIEL: Your Honor, this ---

15 A I can't ---

16 MR. DANIEL: --- is testimony ---

17 A --- say nothing about that.

18 MR. DANIEL: Your Honor, this -- this is testimony
19 that would need to be elicited from Indigo, not -- not
20 Mr. Hunter. I don't ---

21 THE COURT: Well, if he knows. If he doesn't know,
22 he doesn't know. I'll allow it. Go ahead.

23 Q You like Xzay, don't you?

24 A Yeah. I loved Xzay. He was my son-in-law, wasn't
25 he?

1 Q Right.

2 A That's right.

3 Q And he likes you, doesn't he?

4 A I guess he did. You know, me and him have no
5 problem.

6 Q Right. And he was a good dad, wasn't he?

7 A I -- yes, sir. I'll say yes, sir.

8 Q And this was a terrible tragedy ---

9 A Yeah. It ---

10 Q --- all the ---

11 A --- was a ---

12 Q --- way around.

13 A --- terrible -- yeah. All around, it was a terrible
14 situation.

15 Q But some things -- sometimes bad things happen that
16 aren't meant to happen. You agree with that?

17 A Yeah.

18 Q No further questions.

19 A All right.

20 THE COURT: Redirect?

21 MR. DANIEL: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. DANIEL:

24 Q And Mr. Geoly asked you about Xzay's love for Iven,
25 correct?

1 A Say ---

2 Q Is that ---

3 A --- what, now?

4 Q --- correct, Mr. Hunter?

5 You were asked on -- by the defense about Xzay's
6 love for -- for Iven, right?

7 A Yeah. I reckon he did.

8 Q All right. But -- but you had a love for Iven;
9 still do; is that correct?

10 A Correct.

11 Q And you had a decent relationship with Xzay at -- at
12 some point in time; is that right?

13 A Oh, yeah.

14 Q Up until he opened fire on your daughter ---

15 A Uh-huh.

16 Q --- is that correct?

17 MR. GEOLY: Objection, Your Honor. Is he asking a
18 question or is he testifying again?

19 THE COURT: Sustained.

20 MR. DANIEL: Nothing further, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: All right.

23 (Whereupon, the witness exited the witness stand.)

24 THE COURT: All right. Ladies and gentlemen, it's
25 12:30. I think we're going to go ahead and break for

1 lunch.

2 I'm going to allow you to go to lunch on your own.
3 I remind you, while you're at lunch or during this break,
4 do not discuss the case, even among yourselves. It's too
5 early for deliberations. Don't conduct any independent
6 investigations.

7 Hope everybody has a good lunch. It's 12:30. I'm
8 going to ask that you please be back at two o'clock. And
9 we'll get started at two o'clock. Have a good lunch, and
10 we'll see you then.

11 (Whereupon, the jury exited the courtroom at 12:28
12 p.m.)

13 (Off the record briefly.)

14 THE COURT: Anything from the state before we recess
15 for lunch?

16 MR. STUMBO: Nothing from the state, Judge.

17 THE COURT: Anything from the defense?

18 MR. GEOLY: Nothing from the defendant, Your Honor.

19 THE COURT: All right. We'll be in recess till two
20 o'clock.

21 MR. GEOLY: Thank you, Judge.

22 (The Court went off the record at 12:30 p.m.)

23 (The Court went on the record at 2:12 p.m.)

24 THE COURT: All right. Anything from the state
25 before we bring the jury in?

1 MR STUMBO: Nothing from the state, Judge.

2 THE COURT: Anything from the defense?

3 MR GEOLY: No, sir, Your Honor.

4 THE COURT: All right. Let's go ahead and bring the
5 jury in.

6 (Off the record briefly.)

7 (Whereupon, the jury entered the courtroom at 2:14
8 p.m.)

9 THE COURT: All right. Ladies and gentlemen,
10 welcome back. We're ready to proceed with the trial of
11 the case.

12 The state can call your next witness.

13 MR DANIEL: May it please the Court, Your Honor.
14 The state calls Deputy Shawn Carnes.

15 THE COURT: All right.

16 (Off the record briefly.)

17 (Whereupon, the witness came forward.)

18 SHAWN CARNES, having been first duly sworn,
19 testified as follows:

20 DEPUTY CLERK OF COURT: Have a seat and state your
21 name for the record.

22 THE WITNESS: My name is Shawn Carnes. Spelling on
23 that last name is C-a-r-n-e-s.

24 THE COURT: All right. And how do you spell Shawn?

25 THE WITNESS: S-h-a-w-n.

1 THE COURT: All right. Thank you.

2 All right, sir.

3 MR DANIEL: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. DANIEL:

6 Q All right. Deputy Carnes of the Newberry Sheriff's
7 Office, correct?

8 A Yes, sir.

9 Q How long have you been with the Newberry Sheriff's
10 Office?

11 A A little over 19 years.

12 Q Roughly two decades with the sheriff's office and
13 you're on road patrol; is that correct?

14 A Yes, sir. Patrol division.

15 Q Okay. And I want to go back to April 20th of 2019,
16 so over two years ago. Were you working early-morning
17 hours, night shift, on that particular date?

18 A Yes, sir.

19 Q All right. And did you have an occasion to become
20 involved in a -- a shooting investigation that occurred
21 out in the Helena area of Newberry County?

22 A Yes, sir.

23 Q All right. Tell us how that came about.

24 A Initially, at about -- from what I'm looking at from
25 my incident supplemental report, we got a report at about

1 3:08 in the morning of emergency, shots fired in the Giff
2 Street/Upper Lane area. That's how we initially became,
3 you know, aware of the shooting incident.

4 Q Okay.

5 A Shortly thereafter, we were notified something else
6 at the hospital.

7 Q All right. Let me stop you there. So approximately
8 3:08 a.m., you're dispatched out to Giff and -- Giff
9 Street and Upper Lane area due to ---

10 A That's ---

11 Q --- to reports ---

12 A Yes, sir. That's where the initial -- that's where
13 the -- whoever called in the complaint, that's where they
14 said that the shots may have been coming from.

15 Obviously, shots can carry and they're heard at different
16 locations.

17 Q Is Giff Street/Upper Lane area -- is that -- would
18 that be in close proximity to [REDACTED]?

19 A Yes, sir.

20 Q How close?

21 A Way the crows fly, less than a tenth of a mile.

22 Q Okay. So maybe just a block or two over?

23 A Yes, sir.

24 Q Okay. All right. And what happened next after you
25 received that, I guess, anonymous call about shots fired?

1 A Yes, sir. At about 3:16, so eight minutes later, we
2 got -- we were notified by -- I was notified by
3 communications about two victims at the hospital with
4 gunshot wounds.

5 Q So you're dispatched to then go to the Newberry
6 County Hospital?

7 A I sent some -- I send units as well as the Newberry
8 City Police Department to respond that way as well, since
9 we -- we didn't know, like, the initial location of the
10 actual incident, the scene, would be.

11 Q Okay. So you personally then -- you go out to the
12 hospital as well to further investigate?

13 A I -- I -- yes, sir. I responded to the hospital
14 first before running -- going over to Helena area.

15 Q Okay. So approximately what time do you arrive at
16 the Newberry hospital?

17 A I would say just a few minutes thereafter, because I
18 don't actually have a documented time stamp in this
19 report to show -- I can pull from the CAD, but I'd say a
20 few minutes after, not -- not far after 3:16.

21 Q All right. So when you arrive at the hospital, what
22 -- what, if any, information do you learn about the --
23 the location of the -- the shooting?

24 A I was able to get information from there that the
25 incident location or where the shots were fired were at

1 [REDACTED]. And I was told that the shooter was
2 Xzay.

3 Q Okay. So you are able to develop a suspect who's
4 involved in this shooting; is that correct?

5 A Yes, sir.

6 Q And who was that suspect?

7 A Xzavier Davis.

8 Q And so then, at that point, then you go out to [REDACTED]
9 [REDACTED]; is that correct?

10 A Yes, sir.

11 Q All right. Approximately what time do you go out to
12 [REDACTED]

13 A It would be between the 3:16 and 4:06. I don't have
14 a time-stamped reference in the actual report, as far as
15 -- so between there.

16 Q Okay.

17 A I'm not sure, though, exactly.

18 Q All right. And so you and -- you go out there. Are
19 you the only unit that then goes out to [REDACTED]?

20 A No, sir. I have Deputy De'Quan Mitchell and I know
21 Deputy Gary Seibert -- all three of us responded there.
22 I actually had sent Deputy Mitchell there to that general
23 area at first to try and locate the source -- source of
24 the gunshots.

25 Q Okay. And did you take extra precautions, as it was

1 a shooting investigation?

2 A Yes, sir, absolutely.

3 Q All right. So when you -- when you personally
4 arrive at [REDACTED] -- and I'm going to show you
5 ---

6 MR. DANIEL: Mr. Bentley, if you could please pull
7 up 93 -- State's 93.

8 It's already in evidence.

9 Q Deputy Carnes, do you recognize that on the computer
10 screen?

11 A No issue with stepping down so I can see?

12 Q Please, if you need -- need to.

13 A Yes, sir. I recognize that as [REDACTED].

14 Q Okay. And so at that point what do you when you and
15 other units arrive at this location?

16 A We take a tactical position around the house,
17 meaning we set up a perimeter behind vehicles. I used my
18 P.A. system to try and establish contact with him.

19 Q So you use your -- your microphone system -- it's a
20 part of your patrol car -- to call out Xzavier Davis; is
21 that correct?

22 A Yes, sir.

23 Q Okay.

24 MR. DANIEL: Mr. Bentley, please go to 95.

25 That's in evidence.

1 Q All right. So are you staged around the front of
2 the house per that picture?

3 A Yes, sir.

4 Q Okay. All right. And ---

5 A We're ---

6 Q -- eventually ---

7 A --- I mean, we're able to view the -- we're able to
8 view the back of the house as well. But primarily, it
9 was in the front of -- of the house.

10 Q Okay. So units were covering the -- the back of the
11 house as well?

12 A And we'd -- we were able to see, in -- in case
13 somebody were to try to jump out a window or go out the
14 back door.

15 Q All right. And so are you -- tell us exactly what
16 you're saying on this P.A. system.

17 A Just trying to, you know, like I said, establish
18 contact with him to get him to come out of the house, you
19 know, peacefully so there's no threat to him getting hurt
20 or any threat to us getting hurt.

21 Q Okay. And approximately how long did it take for
22 Mr. Davis to -- to come out of the house?

23 A Like I said, I don't have exact -- any time stamps.
24 It wasn't very long, because it's referenced in the
25 report that at about 4:06, I actually took him into

1 custody.

2 Q All right. So 4:06 a.m. per -- and you -- I know
3 you probably don't have an independent recollection of
4 the time. But you're saying 4:06 is when he's taken into
5 custody?

6 A That's what I'm referencing from the incident report
7 that I have, which would've been -- those times would've
8 been obtained from communication, who keeps a CAD log of
9 all documented incidences in our radio traffic.

10 Q So as soon as you're able to get Mr. Davis to come
11 out of the house, you notified dispatch he's in custody
12 and that's how you know exactly what time he was taken
13 into custody?

14 A Uh-huh. Per their log. Yes, sir.

15 Q Okay. So there's a computer log that keeps track of
16 that?

17 A (No audible response.)

18 Q All right. And describe Mr. Davis's demeanor and
19 whether he was compliant or not, things of that nature.

20 A Calm and compliant and gave no issues. Did not
21 resist or anything. I had him come toward us, turn
22 around, and he -- he obeyed all commands.

23 Q And so he's handcuffed immediately?

24 A Was a search and then handcuffed. Yes, sir.

25 Q Did you note any injuries to Mr. Davis, anything

1 like that?

2 A Not a recollection, I didn't note any injuries.

3 Q Did Mr. Davis appear to be intoxicated in any way?

4 A I can't recall. I mean, it's been over two years.
5 But, I mean, I'm not -- can't recall.

6 Q But if that -- if that were something you would've
7 noted, would you have put that in a report?

8 A (No audible response.)

9 Q Things of ---

10 A It's ---

11 Q --- that nature.

12 A It's possible. But I -- I didn't put it in the
13 report ---

14 Q Okay.

15 A --- on this particular report.

16 Q And then ---

17 MR. DANIEL: And, Your Honor, I'm a offer State's 97
18 into evidence and -- it's without objection, according to
19 ---

20 THE COURT: Any ---

21 MR. DANIEL: --- Mr. Geoly.

22 THE COURT: --- objection to State's ---

23 MR. GEOLY: No objection ---

24 THE COURT: --- Exhibit ---

25 MR. GEOLY: --- Your Honor.

1 THE COURT: --- Number 97?

2 State's Exhibit 97 admitted into evidence without
3 objection.

4 (Whereupon, State's Exhibit 97 was entered into
5 evidence.)

6 Q All right. And, Deputy Carnes, what are we looking
7 at there, just . . .

8 A We're looking at a view of the front of the house
9 from looking at the side of the house. I guess that's --
10 you can see tire tracks is the -- where a car would
11 usually have been parked ---

12 Q And ---

13 A --- or something.

14 Q --- when you arrived on scene, there was no car
15 parked in that area; is that correct?

16 A No, sir.

17 Q And that crime-scene tape, did y'all set up a
18 perimeter there?

19 A We would have set up the crime-scene tape to try to
20 keep people -- personnel that did not need to be in the
21 scene so you could keep from contaminating the scene.

22 Q So once Mr. Davis is taken into custody, then y'all
23 set up a -- the crime-scene perimeter to -- to preserve
24 the scene; is that correct?

25 A As best as possible. Yes, sir.

1 Q Okay. All right. Thank you, Deputy Carnes. Please
2 answer any questions that Mr. Geoly has for you.

3 A Yes, sir.

4 THE COURT: All right. All right. Cross-
5 examination.

6 MR. GEOLY: If it please the Court, Your Honor.

7 THE COURT: All right.

8 MR. GEOLY: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. GEOLY:

11 Q Is it -- is it Lt. Carnes now?

12 A Yes, sir.

13 Q Lieutenant, thank you for being here today.

14 A Thank you, sir.

15 Q And -- and thank you for the way you treated my
16 client that night.

17 A Yes, sir.

18 Q I know this was a difficult situation and the way
19 y'all handled it professionally, I -- I'm sure.

20 Do you recall him that night and as you sit here and
21 look at him? I know you deal with a lot of people. But
22 do you recall Mr. Davis?

23 A Yes, sir.

24 Q Okay. That night, I know you responded. And it was
25 a tense situation and -- and maybe not everybody knew

1 what was going on.

2 When you got to the house and communicated him with
3 the -- the loudspeaker system, y'all already had the back
4 covered, right, before you -- you made contact, so to
5 speak or tried to make contact?

6 A I had a deputy that was supposed to be having
7 covered the back. Yes, sir.

8 Q Right. A couple of them, right?

9 A Initially, there was three of us on scene.

10 Q Okay. And -- and -- the -- the -- is it Da'Quan
11 Mitchell, I think, had -- had gotten there first maybe
12 and ---

13 A He was ---

14 Q --- and did ---

15 A --- he should've been the first -- he was in the
16 area, so, you know, he would probably had been the first
17 on scene. Yes, sir.

18 Q And then, when y'all get there, y'all decide to make
19 contact. When you made contact, do you recall whether or
20 not it was pretty quickly that he responded or did there
21 seem to be a lot of, you know, movement in the house or
22 did -- did you get a response pretty quickly from the
23 occupant?

24 A I know I document in the report that I did see
25 movement, as far as passing by the window, like a shadow.

1 But like I said earlier, I don't have an exact time stamp
2 as far as when I tried to establish contact with the P.A.
3 system and he came out.

4 Obviously, you're looking at here you -- information
5 about victims at the hospital about 3:16. And I -- and
6 we actually take him into custody at 4:06. So you're
7 looking at a 50-minute time frame. So even if it was 50
8 minutes, that's -- in this type of incident, that's not a
9 lot of time.

10 Q That's pretty quick, isn't it?

11 A Yes, sir.

12 Q And -- and when he got out, he was cooperative,
13 right?

14 A Yes, sir.

15 Q Obeyed commands?

16 A Yes, sir.

17 Q Didn't give you any trouble whatsoever?

18 A No, sir.

19 Q Did it seem like he even knew, really, exactly what
20 was going on or -- or did you have any kind of way to
21 gauge that at that point?

22 A Like I said, I -- I took him into custody. And I
23 read him his rights. And after that, we were done.

24 Q Okay.

25 A So ---

1 Q Now, he was out there for a while. And it was
2 pretty cool that night. Do you remember? Even though it
3 was April, wasn't it pretty cool that evening?

4 A Recollection, I believe, looking at some of the body
5 cameras, so people had on some jackets. For me, usually,
6 a bigger guy ---

7 Q I understand.

8 A --- it takes a lot of something to be, like, colder
9 for me to get cool so ---

10 Q I got you. Do you remember that he was in shorts
11 and maybe didn't have shoes on, I think?

12 A I don't recollect what exactly he was wearing. No,
13 sir. I'm sorry.

14 Q No. No, not at all. I was just going point out --
15 I'm not trying to be funny. But while y'all were out
16 there, I don't know if you -- do you recall allowing him
17 to use the restroom ---

18 A I do.

19 Q --- in the ---

20 A I have that actually documented in my report that I
21 actually let him use the restroom.

22 Q And -- and there was no problem; he complied with
23 everything and then ---

24 A Yes, sir.

25 Q --- went and cooperated with y'all, right?

1 A Like I say, he -- he was compliant with everything
2 on the scene, as far as I know. And with my interaction
3 with him, I had no issues.

4 Q Not -- and I know this sounds ridiculous. But just
5 to get it out and make sure: You had no dealings with
6 Mr. Davis prior to this happening, right?

7 A Not that I recall.

8 Q Okay. And you -- you -- you didn't certainly have
9 any kind of dealings with him and Indigo or him and Iven
10 that night, right?

11 A With that -- you talking about that night?

12 Q Right. Like, you -- what I'm saying is: You have
13 no idea what went on before the incident occurred?

14 A Other than what I was told. But ---

15 Q Right.

16 A No, sir. I don't -- I didn't respond to a domestic
17 call for service earlier in the night or anything like
18 that.

19 Q Okay. And -- and as far as what you were told, I
20 think you testified to -- to Taylor that you developed
21 the suspect based on your investigation. In fact, Indigo
22 told you, "He's at the house," and -- and that's --
23 that's how this all happened, right?

24 A I was -- yes, sir. I was -- I was told.

25 Q So Indigo Davis told you. And then you went out.

1 And sure enough, he was there, kind of waiting, and y'all
2 took him into custody?

3 A Yes, sir.

4 Q Without -- without incident?

5 A Without incident.

6 Q Okay. No further questions.

7 THE COURT: All right. Redirect?

8 MR. DANIEL: No, Your Honor.

9 THE COURT: All right. You may step down.

10 THE WITNESS: Thank you, sir.

11 (Whereupon, the witness exited the witness stand.)

12 (Off the record briefly.)

13 THE COURT: The state can call your next witness.

14 MR. STUMBO: Thank you, Judge. The state calls Lt.
15 Michael Stribble to the stand.

16 THE COURT: All right. If you'd hold for just a
17 second and let us get the witness stand wiped down.

18 (Off the record briefly.)

19 (Whereupon, the witness came forward.)

20 MICHAEL STRIBBLE, having been first duly sworn,
21 testified as follows:

22 CLERK OF COURT: Have a seat and state your name for
23 the record.

24 THE WITNESS: My name's Michael Stribble.

25 THE COURT: All right.

DIRECT EXAMINATION

BY MR. STUMBO:

Q Good afternoon. You're Lt. Michael Stribble, correct, sir?

A Yes, sir.

Q Okay. And ---

A It's just a title.

Q Lt. Stribble, what division do you work at, at the Newberry Sheriff's Office?

A I'm currently assigned to the investigations division.

Q Okay. And how long have you been in law enforcement?

A I began in 2001, so a little over 20 years.

Q All right. And you've done road patrol and other stuff in that ---

A Yes, sir. I worked road patrol to begin with. I did a little time here at the courthouse. I spent some time as a school resource officer. I worked narcotics for a long time. And now I'm the lieutenant over investigations.

Q Okay. Would it be fair to say you've worked hundreds, thousands of cases since you've been there?

A Yes, sir.

Q Okay. One of those cases the one we're here on this

1 week, Lt. Stribble?

2 A Yes, sir.

3 Q And take you back to April the 20th, which was
4 early-morning hours on a Saturday, 2019. Were you
5 working?

6 A No, sir.

7 Q Okay. And what were you planning to do that -- that
8 was the weekend.

9 A Yes, sir. I was actually planning to go fish a bass
10 tournament.

11 Q Okay. Did you end up responding to a call early-
12 morning hours that night, though?

13 A Yes, sir.

14 Q Okay. Were you lead investigator on this case?

15 A No, sir. Not on this case.

16 Q Okay. Who was that?

17 A Investigator Dickert.

18 Q All right.

19 A Ryan Dickert.

20 Q Ryan Dickert, who's ---

21 A Yeah.

22 Q --- been in the courtroom here? Okay.

23 A Yes, sir.

24 Q But you did respond. Where did you respond to that
25 night?

1 A The first place I responded was the hospital, the
2 emergency room.

3 Q Okay. Sheriff Foster was there?

4 A Yes, sir. I live, like, two minutes away ---

5 Q Okay.

6 A --- right around the corner from my house. So
7 that's where I went first.

8 Q Okay. What -- if you could explain to the jury,
9 what -- what was your role after you get briefed at the
10 hospital? Where did you go from there?

11 A Once I got briefed, I was the one that was tasked
12 with getting the search warrant for the residence. I
13 also -- I know this is fast-forwarding, really, but when
14 -- once I left the hospital is when I'm talking about.
15 So I had to start working on the search warrant for the
16 residence then for SLED's crime scene unit.

17 And then, also, once I got to the scene, Lt. Carnes
18 had already had the suspect in custody. He was already
19 Mirandized. And then we transported him to the jail.

20 And Sgt. Henderson and I were at the jail with him.
21 And we then did a GSR kit, which is a gunshot-residue
22 kit, on Xzavier's hands.

23 Q Okay. I'm going to, through the clerk here, hand
24 you -- so I don't have to walk around this way -- what's
25 as ID, State's 7.

1 MR. STUMBO: Would you hand that to . . .

2 Q Okay. What -- what's been marked for ID as State's
3 7, what's inside that package?

4 A Inside here is the -- the gunshot-residue kit that I
5 collected.

6 Q And how do you know it's -- it's the one you
7 collected?

8 A On the outside of it, it's labeled Xzavier Sharif
9 Davis. The officer's name is Michael Stribble, which is
10 me; my badge number, Sierra 11; the agency name, Newberry
11 County Sheriff's Office; and the agency case number,
12 which is 19-03447.

13 Q Okay. And -- and you've said "collected GSR kit."
14 Could you just briefly explain to the jury how you
15 collect a ---

16 A Yes.

17 Q --- gunshot-residue ---

18 A Yes, sir.

19 Q --- kit?

20 A It's -- inside this packet are two small cylinder-
21 type containers that have, for lack of a better term, a
22 blotting-type instrument inside it so -- so that able to
23 collect the residue off someone's hands or if you took it
24 off a car or whatever. You take it and you blot one --
25 they're labeled, one for your right hand, one for you

1 left -- or one for your right hand, one for your left
2 hand. And you actually use the one that's labeled for
3 that particular hand.

4 You then put gloves on yourself and then start to do
5 the GSR kit on the suspect. And once you complete that,
6 you seal it. It seals itself. It's got a -- a --
7 through -- it twists like a -- a regular -- I don't know
8 how to explain it but just like a -- a Coca-Cola bottle,
9 so to speak. It twists so it -- it's -- does not get
10 contaminated.

11 And then once I do both of those on his hands, you
12 see the red tape that's around it. I seal it. And then
13 I mark it where it -- my initials are on the front side
14 of it. And that shows that it has not been tampered with
15 when SLED gets it.

16 Q Okay. So SLED gets it and it -- it's not cut open,
17 hopefully, until the analyst at SLED gets it.

18 A That's correct.

19 Q Okay. And so you did collect this -- what's in
20 State's 7 off of the defendant, Xzavier Davis's, hands?

21 A Yes, sir.

22 Q Okay. And you recognize him? He's in the
23 courtroom?

24 A Yes, sir.

25 Q Okay. And you said you were going fishing, a bass

1 tournament that day. So assuming you didn't take this
2 with you to the bass tournament.

3 A No, sir. It was then placed into our evidence. And
4 then on April the 22nd, 2019, it was turned over to
5 Jaclynn McKay with SLED and -- for her to have it
6 processed.

7 Q Okay. And you -- you've got a documentation of the
8 time you gave it to her?

9 A That's correct. It was April 22nd, 2019, at 10:40
10 a.m.

11 Q Okay. And Agent McKay with SLED was the one who had
12 done the crime scene out at [REDACTED] as well?

13 A That's correct.

14 Q Okay.

15 A This -- this form is the chain-of-custody form.

16 Q Right. And it documents that did give it to her to
17 take down to the lab in Columbia.

18 A That's correct.

19 Q All right.

20 MR. STUMBO: Beg the Court's indulgence, Your Honor.

21 THE COURT: All right.

22 (Off the record briefly.)

23 MR. STUMBO: Okay. Judge, we, without objection, I
24 believe, from Mr. Geoly, will go ahead and put State's 7
25 into evidence at ---

1 THE COURT: All right.

2 MR. STUMBO: --- this time.

3 THE COURT: Any objection?

4 MR. GEOLY: No objection, Your Honor.

5 THE COURT: All right. State's Exhibit No. 7 is
6 admitted into evidence without objection.

7 (Whereupon, State's Exhibit 7 was entered into
8 evidence.)

9 Q Okay. After a GSR kit was put into -- given to the
10 SLED agent, for the most part, your involvement with the
11 case was done?

12 A Yes, sir.

13 Q Okay. That's all the questions I have, Lt.
14 Stribble. Please answer anything Mr. Geoly may have.

15 A Yes, sir.

16 MR. GEOLY: If it please the Court, Judge.

17 THE COURT: All right, sir.

18 MR. GEOLY: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY MR. GEOLY:

21 Q Lt. Stribble, you -- you been this 20 years?

22 A Yes, sir.

23 Q Both getting kind of old.

24 A Yeah. I can tell.

25 Q I understand. This basically -- the gunshot residue

1 that you get ---

2 A Yes, sir.

3 Q --- that's sent in, and they analyze it. And that
4 basically tells you if a weapon was fired, right?

5 A That's -- that's correct.

6 Q And -- and -- and that's all you know and did with
7 -- with -- with my client, right?

8 A That's correct.

9 Q And -- and all that's showing is whether or not he
10 fired a weapon, right?

11 A That's correct.

12 Q Do you have any knowledge about what he was firing
13 at or -- or what was going on that night? Or it -- was
14 that all before you got involved?

15 A I mean, of course, I knew a little bit about what
16 was going on. But, I mean, it's what has been stated
17 earlier.

18 Q Okay.

19 A But no. I mean, I wasn't involved in that part of
20 the investigation.

21 Q Right. And -- and so in terms of what was going on
22 with him and Indigo or what motivated this whole thing,
23 you don't really have any knowledge of that. Your --
24 your involvement came where you actually helped transport
25 him with -- with ---

1 A --- Sgt. Henderson.

2 Q I'm sorry. Didn't it?

3 A Yes, sir.

4 Q Okay.

5 A That's it.

6 Q Do -- do you recall anything kind of funny about the
7 situation with his handcuffs?

8 A Yeah. The key broke.

9 Q Okay. And he got stuck in the handcuffs.

10 A Yeah.

11 Q Do -- do you typically do a GSR while the guy is
12 still in cuffs?

13 A No. I mean ---

14 Q But -- but you did this time, right?

15 A Yeah.

16 Q And there was no trouble and ---

17 A Oh, no ---

18 Q --- and that ---

19 A --- no.

20 Q --- shouldn't mess with the test or anything ---

21 A No ---

22 Q --- right?

23 A --- no, no, no.

24 Q And -- and he was cooperative the whole time. But
25 the -- actually, the handcuffs broke ---

1 A It did.

2 Q --- and -- and you couldn't get them off of him for
3 a ---

4 A Yes, sir.

5 Q --- minute, right?

6 A The key -- the end of the key of the handcuff key
7 broke inside the handcuff and ---

8 Q Right.

9 A --- I could not get them off.

10 Q But going ---

11 A So ---

12 Q --- back to -- all of your involvement was after
13 this event had already happened; you don't ---

14 A Yeah.

15 Q --- have any idea about malice aforethought or any
16 of that, right?

17 A No, sir.

18 Q No further questions. Thank you.

19 THE COURT: All right.

20 MR. STUMBO: Nothing from the state, Your Honor.

21 THE COURT: Redirect?

22 MR. STUMBO: Nothing in redirect, Judge.

23 THE COURT: All right. You may step down.

24 (Whereupon, the witness exited the witness stand.)

25 (Off the record briefly.)

1 THE COURT: All right. The state can call your next
2 witness.

3 MR STUMBO: Thank you, Judge. The state calls
4 Indigo Penny to the stand.

5 THE COURT: All right.

6 (Off the record briefly.)

7 (Whereupon, the witness came forward.)

8 INDIGO DAVIS, having been first duly sworn,
9 testified as follows:

10 DEPUTY CLERK OF COURT: Okay. Come on up. Have a
11 seat and state your name for the record.

12 THE COURT: All right. Excuse me. You need to
13 remove your mask while you testify.

14 THE WITNESS: (Complied.)

15 THE COURT: Thank you. All right.

16 THE WITNESS: Indigo Davis.

17 THE COURT: I'm sorry. Your last name?

18 THE WITNESS: Davis.

19 THE COURT: Ms. Davis?

20 THE WITNESS: (No audible response.)

21 THE COURT: All right.

22 DIRECT EXAMINATION

23 BY MR. STUMBO:

24 Q Okay. And was Penny your last name at some point?

25 A Yes.

1 Q Okay. Yes?

2 A Yes.

3 Q Okay.

4 THE COURT: All right. I need you to speak up loud
5 and clearly into the microphone.

6 THE WITNESS: It -- it's just that my voice keep
7 going in and out.

8 THE COURT: Okay. But if you get closer to the
9 microphone, I think we can pick you up good.

10 THE WITNESS: (Complied.)

11 THE COURT: Thank you.

12 Q Indigo, thank you for being here this week. I know
13 this is not a -- this is a difficult week for you. So
14 I'm going try to make this as brief as we possibly can
15 for you.

16 The defendant, Xzavier Davis, is your husband; is
17 that correct?

18 A Yes.

19 Q Okay. When'd y'all get married?

20 A April the 29th, 2017.

21 Q Okay. And y'all have how many biological children
22 together?

23 A At that time we had two.

24 Q Okay. You have two?

25 A (Nodded head up and down.)

1 Q Now?

2 A At the time that the accident happened, we had two
3 biological kids.

4 Q Okay. And tell me: At the time of the accident,
5 who your biological children with Mr. Davis were.

6 A Penelope ---

7 Q Okay. How old is ---

8 A --- Davis.

9 Q --- how old is Penelope?

10 A Five.

11 Q How old was she at the time of this ---

12 A Three.

13 Q Three?

14 A (No audible response.)

15 Q And who's the other one?

16 A Xzavier, Jr.

17 Q Okay. How old was Xzavier, Jr., at the time this
18 happened?

19 A About 8/9 months.

20 Q Okay. And you had another son who's no longer with
21 us, correct?

22 A Yes.

23 Q What was his name?

24 A Iven.

25 Q Okay. Iven?

1 A (Nodded head up and down.)

2 Q Was how old when he passed away?

3 A Seven.

4 Q Okay. And who is Iven's biological father?

5 A Travis Wright.

6 Q Okay. And -- but his last name -- he went by went
7 by Iven Caldwell?

8 A Uh-huh.

9 Q Okay. He [sic] said he was seven. Where -- was he
10 in school at -- at the time?

11 A Yes.

12 Q Where was he in school?

13 A Gallman.

14 Q Which one?

15 A Gallman Elementary.

16 Q Okay. And what grade was he in?

17 A (No audible response.)

18 Q First grade, would ---

19 A First.

20 Q --- that be fair to say?

21 Okay. So this was April, so end his first grade
22 year?

23 A Right.

24 Q All right.

25 MR STUMBO: If you could, Walter, pull up State's 30

1 -- 134.

2 (Off the record briefly.)

3 MR STUMBO: Judge, we'd ask for State's 134. I
4 don't believe there's any objection to the family
5 picture.

6 MR GEOLY: I'm sorry, Solicitor.

7 MR. STUMBO: Yeah.

8 (Off the record briefly.)

9 MR GEOLY: No objection, Your Honor.

10 MR. STUMBO: Okay. Could ---

11 THE COURT: All right. State's Exhibit No. 134 is
12 admitted into evidence without objection.

13 (Whereupon, State's Exhibit 134 was entered into
14 evidence.)

15 Q Okay. Indigo, I'm just going to have you just turn,
16 if you could see the screen at all. If you need to lean,
17 that's fine. This is a family picture of y'all before
18 this incident occurred, correct?

19 A Yes, sir.

20 Q And just so the jury has a reference point here:
21 You are in this picture, holding a baby. Was at Xzavier,
22 Jr.?

23 A Yes.

24 Q Okay. And then, standing down at the bottom, the
25 little girl is -- that's Penelope?

1 A Yes.

2 Q Okay. And in the middle there is a picture -- is --
3 is Iven, correct?

4 A Correct.

5 Q All right. And his birthday was when? When was his
6 birthday?

7 A April 13th, 2012.

8 Q Okay. So this picture, he's probably 6 in this
9 picture, just judging by -- well, it was probably
10 sometime before his seventh birthday?

11 A Correct.

12 Q Okay. And so he turned 7 on April the 13th, 2019,
13 correct?

14 A Yeah.

15 Q Okay. All right.

16 MR STUMBO: Walter, you can take that down now.
17 Thank you.

18 Q Indigo, you have since had a fourth child -- is that
19 correct? -- it's my understanding.

20 A Correct.

21 Q Okay. And it's a girl?

22 A Yes.

23 Q What's her name?

24 A Ivory.

25 Q What -- say that again?

1 A Ivory.

2 Q Ivory?

3 A (No audible response.)

4 Q Okay. Is that who your mother referred to earlier
5 as Caroline -- is what she called her?

6 A Yes, sir.

7 Q Okay. Is that her middle name?

8 A No.

9 Q Okay. She just calls her Caroline?

10 A Nickname.

11 Q Okay. But her -- her given name is -- is Ivory?

12 A Correct.

13 Q Okay.

14 Q When -- what's her birthday? When was she born?

15 A October the 31st.

16 Q Of 2019?

17 A Yes.

18 Q Okay.

19 A Yeah, during that.

20 Q So was she full-term when she was born it, or was
21 she a preemie? I mean, was it ---

22 A She ---

23 Q --- she nine ---

24 A --- full-term. She was fine.

25 Q Okay. And she's healthy?

1 A Yes.

2 Q The night of the incident we're here for this week
3 was April the 20th -- 19th into the early-morning hours
4 of the 20th, 2019, correct?

5 A Correct.

6 Q So you were pregnant with Ivory the -- the day this
7 happened?

8 A Correct.

9 Q Okay. And if my math's correct, if she was born
10 full-term, you were about three to four months pregnant?

11 A Might be off a little bit.

12 Q Okay. But you were in towards the end of maybe
13 first trimester; is that -- is that fair to say?

14 A You could say that, first trimester.

15 Q Okay. All right. You knew you were pregnant at
16 that point, correct?

17 A Yes, sir.

18 Q Okay. And did Xzavier know that y'all's fourth
19 child, or third child together, was -- was on the way at
20 that time?

21 A Yes.

22 Q I'm going to take you to the afternoon of April the
23 19th, which would have been a Friday, before this
24 happened that night. Can you tell the jury what you were
25 doing that day with -- with -- did you have the kids with

1 you?

2 A No, I didn't have my kids with me. I was giving my
3 dad a surprise birthday party.

4 Q Okay. When --

5 A So I was ---

6 Q --- was ---

7 A --- at the Helena Community Center.

8 Q All right. I'm sorry. I cut you off.

9 A No. Go ahead.

10 Q The party was -- was that Friday, or was it going to
11 be the next day?

12 A It was going to be the next day.

13 Q Okay. So you were there, getting the party ready
14 for your daddy?

15 A Correct.

16 Q Okay. And who had -- at that point, who had the
17 children?

18 A They father, Xzavier.

19 Q Okay. At what point -- and I'm assuming, at some
20 point, you get them back from him?

21 A Correct.

22 Q About what time did you get the three kids back from
23 him?

24 A I can't remember.

25 Q Daylight? Night?

1 A It was ---

2 Q I mean, just ---

3 A --- daylight.

4 Q Okay. It was during ---

5 A During ---

6 Q --- the day?

7 A --- the day.

8 Q All right. At -- did y'all have some discuss at
9 that point of where he was going to go and where you were
10 going to go?

11 A We already knew where. He knew where he was going;
12 I knew what I was doing. And he knew what I was doing.
13 I -- ain't that why he watching the kids, so they
14 wouldn't be running around.

15 Q Okay. Where did he go, then, when -- when he left
16 you? Where -- where did you understand that he was going
17 to?

18 A To his dad's fish fry.

19 Q Okay. A fish fry at his dad's house?

20 A I just know his dad was giving it. I don't know who
21 house it was.

22 Q Say that again?

23 A I don't know who house it was. I just know that he
24 said his dad was giving a fish fry.

25 Q Okay. So going to a fish fry. In Newberry or

1 somewhere else?

2 A Somewhere else.

3 Q Okay. Clinton? Is it fair to say? He went to a
4 fish fry up in that area?

5 A Uh-huh. Yes, sir.

6 Q Okay. After he left you with the kids to go to the
7 fish fry, what was the plan for you for the rest of the
8 day with the kids?

9 A I had to go right on back to the Helena Community
10 Center to make sure that she had -- the lady had the
11 decoration and stuff right. Then I left; went to the
12 store. Then after we left the store, I went and me and
13 my kids got something to eat. We came back to the house.

14 Q Okay. You go get something -- go out to eat ---

15 A Yes.

16 Q --- that night?

17 Okay. You go through a drive-through, I believe,
18 Zaxby's? Does that ---

19 A Yes.

20 Q --- sound right?

21 Okay. After you -- you take the -- the kids and get
22 something to eat at Zaxby's, where do you go after that?

23 A Home.

24 Q Okay. And home is where -- what's the address?

25 A [REDACTED].

1 Q Okay. Now, what'd y'all do that night? You had
2 already eaten, so did you put the kids to bed when you
3 got home?

4 A No. We stayed up and watch a little bit of TV.

5 Q Okay. TV out -- just in the living room area, I'm
6 -- I ---

7 A Right.

8 Q --- guess?

9 Okay. And that's a yes, that ---

10 A Yes.

11 Q --- in the living room?

12 And at what point did the kids go to sleep? They go
13 to sleep in the living room, correct?

14 A Yeah. They'll sleep on the -- in the living room on
15 a little pallet.

16 Q Okay. And where you sit in the living room?

17 A I was laying on the chair.

18 Q Okay. So you're on the chair, and you said they're
19 on a little pallet on the floor?

20 A Uh-huh.

21 Q And that was ---

22 A Yes.

23 Q --- all three kids?

24 A Yes.

25 Q And they fall asleep there?

1 A Yeah. They'll go to sleep watching TV.

2 Q Okay. When did Xzay come home?

3 A I guess over in the morning.

4 Q Okay. Were you asleep ---

5 A Yes.

6 Q --- when he got home?

7 A He got home.

8 Q All right. What -- what happened when he got home?

9 A He was knocking at the back door. He left the back
10 door, came to the front, and bust the glass. And he
11 opened the door from the, you know, outside from where he
12 bust it.

13 Q Okay. So bust the glass -- the -- were the doors
14 locked?

15 A Yeah, the doors was locked.

16 Q And you said he went to the back and then back to
17 the front and was ---

18 A Correct.

19 Q --- was banging on the door?

20 A Yeah. He knocking on door.

21 Q Okay. And, Indigo, why didn't you let him in? Did
22 you hear him knocking on the door?

23 A Yeah. But I had done took two Benadryls prior to,
24 because I a party to deal with. So I'm just, like,
25 really just waking up.

1 Q Okay. Okay. And he busted the class and opened the
2 door himself and came in; is that what you said?

3 A Yeah.

4 Q Okay. Can you describe that for us? What -- what
5 -- what's he saying or doing when he comes inside,
6 Indigo?

7 A Then he come in and he went to the room. He just
8 asked me why I ain't opened the door. I said, "Why you
9 want to argue with me?" like that, and he just went on
10 back there. He had a jacket on. He took his jacket off.
11 He came up to the through the front part of the house.

12 "You could've opened the door."

13 I said, "I don't feel like arguing with you, you
14 know, about no door being open."

15 Q Okay. Was he calm, or was he angry?

16 A Well, you could say he was mad.

17 Q Okay. He was mad?

18 A (Nodded head up and down.)

19 Q Anything else he said to you at that point?

20 A No.

21 Q Okay. Anything he say about going to jail and if --
22 "if I'm going to jail tonight, nobody's going to be in
23 this house or this trailer?"

24 A Hmm.

25 Q You don't remember saying that?

1 A I can't remember. I mean, you talking about two
2 years ago.

3 Q Okay. Okay. But if you said that to law
4 enforcement in a statement, you wouldn't that you told
5 him that? Do you admit or -- that or did you not tell
6 him that?

7 A I admit to it.

8 Q Okay. You did tell law enforcement that, that he
9 said: "I -- if I'm going to jail tonight, ain't -- ain't
10 nobody staying here, if I gotta" ---

11 A Right.

12 Q --- "go to jail tonight"?

13 A Right.

14 Q Okay. So he did say that?

15 A Yeah.

16 Q Okay. Okay. What about the kids at this point?
17 Are they still asleep when this conversations is going
18 on?

19 A No. The kids are up.

20 Q Okay. They woke up?

21 A Yes.

22 Q Okay. And what'd you do next?

23 A Well, I mean, he would -- we would -- he would want
24 to argue and I was saying something back to him. And I
25 said, "Look, we'll just leave." And I got the kids up

1 off the pallet and stuff like that. And after that, I
2 left, going out the back door. I put my kids in front of
3 me, and we left, you know, trying to get away from the
4 arguing and stuff.

5 Q Okay. So you're trying to get away from -- from
6 him, right?

7 A Just -- just get away, period, from arguing.

8 Q All right. And it's, at this point, around three in
9 the morning? Is that fair to say?

10 A I can't recall the time.

11 Q Okay. But it's in the middle the night?

12 A Right.

13 Q Okay. All right. Well, where is he standing at
14 that point when you make the decision to get the kids up
15 and -- and leave?

16 A He's standing in the front.

17 Q Okay. Close to the front door?

18 A Correct.

19 MR STUMBO: Walter, if you could pull up -- let's
20 see -- State's -- State's No. 4. That's not in evidence
21 yet.

22 But is there any objection to State's 4?

23 (Off the record briefly.)

24 MR. GEOLY: Judge -- Judge, I have no problem with
25 her looking at this. It's not to scale. I mean, so long

1 as it's coming in with the understanding it's -- it's not
2 to scale and let her describe or -- or whatever the
3 differences that that has. I have no problem using that
4 as a reference. I just don't want to agree that it's
5 accurate. Is -- is that ---

6 THE COURT: Okay. Well, I mean, do you object to it
7 coming into evidence?

8 MR GEOLY: I -- I don't, so long as with the
9 exception that I can ask her questions about it and that
10 I think they're admitting that, obviously, it's not
11 accurate. Because ---

12 THE COURT: Well ---

13 MR. GEOLY: --- it says right there not to ---

14 THE COURT: I mean, you can always cross-examine.

15 MR GEOLY: Yes, sir.

16 MR STUMBO: The crime scene investigator that
17 produced this item will be on the stand tomorrow.

18 MR GEOLY: I -- I have no problem admitting it for
19 her to use, Judge, just with the idea that I certainly
20 get to -- to question the veracity, I guess, of the --
21 the ---

22 THE COURT: Well, yeah. You can always do that.

23 MR. GEOLY: Yes, sir. So no ---

24 THE COURT: All right.

25 MR GEOLY: --- no objection to it ---

1 THE COURT: All right.

2 MR. GEOLY: --- coming in.

3 THE COURT: State's Exhibit 4 is admitted into
4 evidence without objection.

5 (Whereupon, State's Exhibit 4 was entered into
6 evidence.)

7 MR STUMBO: Okay. If you could pull up 4, just so
8 the jury can see it better, Walter. This is kind of a
9 small drawing here.

10 Q All right. Indigo, just so you have kind of an idea
11 of -- of what we're talking about here, this here would
12 represent your house, the trailer, this rectangle. And
13 this car here is the -- the Buick Rendezvous, the -- the
14 red car. And by the way, who -- who drove the -- which
15 car were you driving that day?

16 A A Toyota Camry.

17 Q You were driving the Camry, the green Camry, right?

18 A Yes.

19 Q Okay. And this -- this here, which was parked at
20 the house, was the car that Xzay was driving?

21 A Yes.

22 Q Okay. And what -- what kind of car was he driving
23 that day?

24 A A Buick Rendezvous.

25 Q Okay. Got you. All right. And this is the car

1 parked on that corner -- back corner of the house. The
2 front door would be where these stairs are here and the
3 -- that are sticking out of the front, and the back door
4 would be where these back stairs are. Okay.

5 So if you could just -- and if -- if you could just
6 get down from the stand briefly, and I'm going to ask for
7 you to give me an idea of where your Camry was parked
8 before you left that night with the kids and where Xzay
9 -- where -- when Xzay got home, where had you parked the
10 Camry?

11 A In the front.

12 Q Okay. So it was parked -- if this thing where it
13 says "[REDACTED]," it was parked kind of between
14 there and -- and here right in front of the house?

15 A It was in front of the park in front of the house
16 ---

17 Q Okay.

18 A --- by the ---

19 Q Which ---

20 A --- stairs.

21 Q --- direction was it pointed when it was parked,
22 Indigo? Towards the front steps or ---

23 A Right.

24 Q --- away from the front steps?

25 A Forward.

1 Q Okay. So you pull in. When you park the car,
2 you're looking at kind of the -- the front steps or out
3 ---

4 A Right.

5 Q --- in front of -- okay.

6 All right. Which door did you say you took the kids
7 out of?

8 A The back door.

9 Q Okay. And you parked in front of the house. Why'd
10 you decide what the back door to take the kids?

11 A It was glass.

12 Q What's that?

13 A It was glass.

14 Q It was -- there was glass. Okay. So there was
15 glass in -- at the front door where Xzay had busted the
16 front glass out, right?

17 A Correct.

18 Q Okay. Glass can cut you, right, I mean, if you step
19 on it with bare feet, correct?

20 A Correct.

21 Q All right. Indigo, while you're taking the kids out
22 -- could Xzay, Jr., walk at that point?

23 A No.

24 Q Okay. Were you having to carry him?

25 A Yes.

1 Q Okay. Was Xzay trying to help you out the door?
2 get you in the car? Was he carrying any of your kids?

3 A No.

4 Q What was he doing?

5 A He was talking to me.

6 Q He's following you out the back door.

7 A Uh-huh.

8 Q What did he have, if -- did he have anything in his
9 hand?

10 A At the time I ain't know what he had.

11 Q Say that again?

12 A At the time I didn't know what he had.

13 Q Okay. At any point when you're getting the kids out
14 and around the house to the -- your car, which is around
15 the front of the house ---

16 A On the pavement?

17 Q --- did he have anything his hand?

18 A Oh, yeah.

19 Q What did he have?

20 A He had a gun.

21 Q Okay. What -- anything to describe this gun?
22 Anything that made it distinct to you?

23 A Well, it had a laser.

24 Q What'd you say it had?

25 A A laser.

1 Q Okay. It had a laser?

2 A Uh-huh.

3 Q Like a laser -- red laser pointer ---

4 A Right.

5 Q --- on it? Okay.

6 All right. Because this is zip-tied to this box for
7 now.

8 MR STUMBO: Judge, what's been marked for ID as
9 State's No. 8. And I don't really want to walk it
10 around, you know, with the jury being right here.

11 Q But ultimately, Indigo ---

12 THE COURT: Well, now ---

13 Q --- does that ---

14 THE COURT: --- you're ---

15 Q --- look like ---

16 THE COURT: --- the jury can see this, and it's not
17 in evidence yet.

18 MR STUMBO: Yes. Yes, sir. It's for ID purposes.
19 And I know this is kind of awkward. I normally ---

20 THE COURT: Well, but ---

21 MR. STUMBO: --- would walk ---

22 THE COURT: --- it's -- still, you're ---

23 MR. STUMBO: --- to her.

24 THE COURT: --- we're not supposed to publish
25 anything to the jury until it's ---

1 MR. STUMBO: Yes, sir.

2 THE COURT: --- admitted into evidence. So it's
3 going to require you to come around and show it to her
4 ---

5 MR. STUMBO: Okay.

6 THE COURT: --- without allowing the jury ---

7 MR. STUMBO: I can ---

8 THE COURT: --- to see it.

9 MR STUMBO: --- do that.

10 THE COURT: Okay.

11 MR STUMBO: I'll put my mask on, Your Honor.

12 THE COURT: All right.

13 (Off the record briefly.)

14 Q Indigo, I'm going to ---

15 MR STUMBO: Your Honor, if may I approach ---

16 THE COURT: All right.

17 MR. STUMBO: --- the witness?

18 THE COURT: That's fine.

19 Q This is what's been marked for ID at this purposes
20 as State's No. 8. Okay. And it's got a gun lock on it,
21 so it's not able to be shot so -- for court purposes.

22 But do you recognize what's in this box?

23 A What you mean, recognize?

24 Q Have you ---

25 A If it ---

1 Q --- ever seen ---

2 A --- was the gun?

3 Have you ever seen this ---

4 THE COURT: I'm sorry.

5 Q --- before?

6 THE COURT: You're going to need to speak into the
7 microphone. I can't hear you.

8 Q Have you ever seen what's in this box before?

9 A Yeah. I done seen the gun before.

10 Q Okay.

11 (Off the record briefly.)

12 MR GEOLY: No objection, Your Honor.

13 THE COURT: All right. We're putting that into
14 evidence now?

15 MR STUMBO: Yes, sir.

16 THE COURT: All right. State's Exhibit No. 8 is
17 admitted into evidence without objection.

18 (Whereupon, State's Exhibit 8 was entered into
19 evidence.)

20 Q Indigo, you indicated that that that gun, you
21 recognize as State's 8. That's the gun that Xzay had in
22 his hand when he followed you out the door?

23 A Yes.

24 Q Okay. And at any point, did he fire that gun?

25 A Yes.

1 Q Okay. To get that gun that's in State's 8 that we
2 just saw in the box here, where did he shoot that gun?

3 A in the air.

4 Q Okay. One time or more than one time?

5 A More than one.

6 Q Okay. Is he saying anything to you at that point?

7 A I can't recall.

8 Q And he's shooting the gun at the air as you're
9 loading -- loading the kids -- getting the kids to the
10 car and loading them in?

11 A No, not while I'm loading them in. He wasn't
12 shooting no gun.

13 Q Okay. Were you able to get the kids into the car?

14 A Yes.

15 MR STUMBO: Beg the Court's indulgence, Your Honor.

16 THE COURT: All right.

17 (Off the record briefly.)

18 MR STUMBO: Judge, we'd move State's 37 in without
19 objection ---

20 MR GEOLY: Yes, sir, Your Honor.

21 MR. STUMBO: --- photograph.

22 THE COURT: All right. State's Exhibit No. 37 is
23 admitted into evidence without objection.

24 (Whereupon, State's Exhibit 37 was entered into
25 evidence.)

1 Q Okay. Indigo, if you could, where were the kids
2 sitting in your vehicle when you got them in the car?

3 A Behind the driver's seat was Xzavier, Penelope in
4 the middle, and Iven on the far-right side.

5 Q Okay. So were there any car seats in that backseat
6 at that point?

7 A No.

8 Q Okay.

9 A It wasn't.

10 Q And so behind the driver's seat, you had Xzavier and
11 Penelope?

12 A It was Xzavier, Penelope, and then Iven.

13 Q Okay. So Iven was sitting where? Where was he
14 positioned? I mean, you -- right in the middle or all
15 the way on the -- by the door on the passenger's side?

16 A On the door by the passenger's side.

17 Q Okay. He was the furthest over -- if you're sitting
18 in the backseat, the furthest to the right ---

19 A Correct.

20 Q --- side?

21 Okay. Can you explain to the jury what happened
22 next once you got them in the car?

23 A I was backing back to leave out the driveway, and
24 Xzavier was shooting.

25 Q Okay. At -- did he briefly go back in the house at

1 any point? I mean, what -- how -- when you were putting
2 the kids in the car?

3 A Yeah.

4 Q Okay. And you indicated you're parked facing the
5 door, so did you have to put it in reverse to get into
6 the driveway to get out?

7 A Correct.

8 Q Okay. And Indigo, where -- where was Xzay when he
9 was shooting at you? I mean, just approximately, where
10 was he?

11 A On the porch.

12 Q Okay. So right out -- right outside the front door
13 on the steps ---

14 A Yeah. I was ---

15 Q --- of the ----

16 A --- backing ---

17 Q --- front door.

18 A --- back. I wasn't really trying to pay him no
19 attention of what he was doing, you know, by what he was
20 saying then. I'm just trying to get out the way.

21 Q Right. And the shots are coming, though, from that
22 -- the steps right there at the front door, correct?

23 A Yeah. The car parked ---

24 Q Okay.

25 A --- by the front.

1 Q Tell me what you felt physically when the shots were
2 fired. Did -- did you get hit?

3 A Yes.

4 Q Where did ---

5 A I got ---

6 Q --- you get ---

7 A --- struck.

8 Q Okay. Where'd you get hit?

9 A Lower part of my -- by my ankle.

10 Q Okay. What'd you say when you -- you got hit?

11 Anything or were you just communicating with the kids?

12 A Yeah. I said, "Oh, sh--. I got hit."

13 Q Okay. Were you telling them anything when he was
14 shooting?

15 A No. I just telling them to stay down. "Y'all just
16 stay down."

17 Q What was the kids -- your three children, was their
18 demeanor like when you're loading them in the car and
19 then the shots are coming? What -- were they calm? Were
20 they upset? What -- what was it like?

21 A Nothing ---

22 Q Were they ---

23 A --- because they did what I told them.

24 Q Were they crying?

25 A No, they wasn't crying.

1 Q So you didn't tell law enforcement at any point that
2 they were crying?

3 A No, not that I recall that I told him they were
4 crying.

5 Q Okay.

6 A I was just trying to, like, hurry up and get them in
7 the car.

8 Q If you told them that they were crying, you wouldn't
9 dispute that?

10 A I don't think they were crying.

11 Q Okay.

12 A I mean -- because, I mean, Iven ---

13 Q fair enough

14 A --- he was on the far right, Penelope in the middle
15 -- well, and Xzavier was on -- by the left door.

16 Q All right.

17 A Now, on the -- at the hospital they, you know, were
18 crying. Yeah. That was stated. But when I got them in
19 the car -- they couldn't be crying then. We were -- me
20 and Iven trying to talk and I told them to stay down.

21 Q All right. You told Iven to -- to stay down?

22 A Yeah. Because Penelope and Xzavier, they was
23 already low.

24 Q Did Iven -- was he able to -- able to respond to
25 you?

1 A Yes.

2 Q What did he say?

3 A He said, "Mama, it's going be okay. It's going be
4 all right, Mama."

5 Q Okay. And at what point did you realize he was
6 shot?

7 A When Penelope was saying, "Mama," saying, "Iven, go
8 over. He won't go over, Mama."

9 And I looked back. And when I looked back, he was
10 laying over. And I had to drive to the hospital because
11 I wanted to save my baby.

12 Q So, Indigo, I -- just to follow up on that, I
13 believe you said when you looked back, Iven was laying
14 over on -- on Penelope?

15 A Yes.

16 Q And was she saying anything at that point?

17 A She just said, "Mama, tell Iven go over. He won't
18 go over."

19 Q He won't go over?

20 A (No verbal response.)

21 Q How long does it take you to get to the hospital? I
22 mean, just an estimate. That -- that's not a far drive,
23 is it?

24 A No. Newberry County Hospital we went to.

25 Q So five minutes -- no more -- five/ten minutes?

1 That -- is that fair to say, about -- it takes that long?

2 A Yeah.

3 Q You went straight to the hospital?

4 A Correct.

5 Q Indigo, did you have any concerns, when you were at
6 the hospital, that Xzavier was still out there somewhere
7 with a gun?

8 A I don't -- no.

9 Q You ever ask law enforcement where is he or where --
10 where's he at?

11 A Yeah, I did ask ---

12 Q Okay.

13 A --- where he was.

14 Q Okay. And they were able to tell you, before they
15 talked to you, that they had him in custody; that we got
16 him ---

17 A Right.

18 Q --- that ---

19 A Correct.

20 Q Okay. And after that, you told them what -- what
21 had happened that night, correct?

22 A Correct.

23 Q What kind of relationship did you have with Iven?

24 A What kind of relationship I had with Iven, it's
25 undescrivable.

1 Q Undescribable? Is that what you said?

2 A Correct.

3 Q Was Iven a good boy?

4 A Yes.

5 Q He get along with his -- his sister and his little
6 brother?

7 A Yes.

8 Q Was he protector, big brother of little sister, kind
9 of?

10 A Uh-huh. Yeah, just say.

11 MR STUMBO: Beg the Court's indulgence, Your Honor.

12 THE COURT: All right.

13 (Off the record briefly.)

14 MR STUMBO: No further questions at this time, Your
15 Honor.

16 THE COURT: All right.

17 MR. STUMBO: Thank you, Indigo.

18 THE COURT: Thank you.

19 Cross-examination?

20 MR GEOLY: If it please the Court.

21 THE COURT: All right.

22 MR GEOLY: Beg the Court's indulgence just a moment,
23 Your Honor.

24 THE COURT: All right.

25 (Off the record briefly.)

CROSS-EXAMINATION

BY MR. GEOLY:

Q Ms. Indigo, you've been married for a few years; is that right?

A Correct. Four.

Q Do you remember the first time I saw you?

A Correct.

Q Standing in this courtroom?

A Yes.

Q Do you remember what they said Xzay was to you?

A Correct.

Q And what they said say was you?

A Correct.

Q They didn't call him your husband, did they?

A No.

Q What'd they say he was?

A My boyfriend.

Q And y'all have been married how long?

A Four years.

Q Okay. You -- you've talked to victim witness advocates during this whole process, right?

A No.

Q Well, did you ever talk to a victim witness advocate?

A Only person I ever talked to was Connie.

1 Q And she ---

2 A And that was the beginning.

3 Q She's the ---

4 A Anybody else from prior, no.

5 Q She's the victim witness advocate for sheriff's
6 department, right?

7 A Correct.

8 Q Did you ever get notified by any victim witness
9 advocate with the solicitor's office?

10 A No.

11 Q Did anybody ever ask you or -- or seek your input
12 about how you wanted this case handled?

13 A No.

14 Q Okay. I don't think you ever that night said that
15 Xzay was shooting at you. Did you ever tell an officer
16 Xzay shooting at you?

17 A No.

18 Q Do you think Xzay was shooting at you?

19 A No.

20 Q Do you think Xzay was shooting at Iven?

21 A No.

22 Q I'm sorry for your loss. Next to you, who loved
23 Iven as much as anybody?

24 A Xzavier.

25 Q Did you consider that to be a stepson-stepdaddy

1 relationship or a father-son relationship?

2 A Father-son relationship.

3 Q Solicitors talked about the fact that there was a --
4 a birthday party or that he just turned 7 years old the
5 week before this happened. Do you remember that?

6 A Correct.

7 Q Did Iven have a party that day?

8 A Yes.

9 Q Was it a little party, like a little 7-year-old
10 birthday party; or was it one of those over-the-top,
11 you're-turning-7 birthdays?

12 A Over the top.

13 Q Okay. You remember what all was there?

14 A Yes. Spider-Man, Shimmer Shine, anything a kid
15 could ask for.

16 Q Did he have fun that day?

17 A Oh, yeah.

18 Q And -- and this was the 13th. I think this all
19 happened on the 20th, right? So we're talking about
20 literally a week later?

21 A Right.

22 Q Is that right?

23 A (No audible response.)

24 Q Who threw that party?

25 A Xzavier.

1 Q He's the one did it?

2 A Correct.

3 Q Well, like, you were getting one ready the next day
4 for your dad. He did for his son, didn't he?

5 A Correct.

6 Q Any doubt in your mind whether or not he was trying
7 to shoot you?

8 A No, ain't no doubt in my mind. He was ---

9 Q What ---

10 A --- not trying to ---

11 Q --- what ---

12 A --- shoot me.

13 Q What was he trying to shoot?

14 A Well looking at the pictures, he was trying to shoot
15 at the tires.

16 Q When you went out the back door -- and he asked you
17 about this laser on this gun -- you said Xzay followed
18 you out the door, right?

19 A Right.

20 Q Did he ever threaten you ---

21 A No.

22 Q --- at that point?

23 Y'all were in an argument, right?

24 A Right.

25 Q And let's just be real. Y'all -- y'all kind of in a

1 fight over he's home at 2:30 in the morning and wanting
2 to come in after he's been drinking a little bit; is that
3 fair enough to say?

4 A Fair enough.

5 Q And you didn't want him to come in. And his
6 attitude is: "This is my house; I paid for this house;
7 why is my door locked?"

8 A Correct.

9 Q Is that pretty much right?

10 A Correct.

11 Q Well, let -- let me talk about that for a second,
12 because some people don't, you know, live in a community
13 where they're surrounded by the mom and the family and
14 the -- typically, is that door locked?

15 A Well, it -- it don't normally be locked. But it
16 was, like, a break-in, like, right behind on the other
17 road. So we start locking the doors.

18 Q Right. But the point I'm getting at: Typically,
19 for that two/three years y'all been living there together
20 ---

21 A Right.

22 Q --- the door is open when he gets home, right?

23 A Right.

24 Q He usually comes and the door is wide open?

25 A Correct.

1 Q He just turns the door and walks right in?

2 A Uh-huh.

3 Q This day -- and he typically parks where y'all have
4 ---

5 MR GEOLY: Mr. Bentley, if you don't mind, if you'd
6 pull up the -- the picture -- is it 134? With -- with
7 the house and with the ---

8 MR. STUMBO: That's ---

9 MR. GEOLY: --- the vehicle parked there?

10 MR STUMBO: That's No. 4.

11 MR GEOLY: Four. I'm sorry.

12 MR. BENTLEY: That's a picture of the diagram.

13 MR. GEOLY: No, not the diagram. The picture with
14 the house with the car parked. Okay.

15 MR STUMBO: You may be ---

16 MR. GEOLY: Keep ---

17 MR. STUMBO: --- referring to 96.

18 MR GEOLY: --- keep -- go -- keep going to -- yeah,
19 that one right there.

20 Q That's around typically where he would park, right?

21 A Correct.

22 Q Okay. So he pulls up there. And then, it's easier
23 for him to just walk to the back door?

24 A Correct.

25 Q That's how he typically would come in?

1 A (Nodded head up and down.)

2 Q So this day, the door is not open. Do you hear him
3 at the back door?

4 A I heard him knock.

5 Q Okay. Then he walks to the front door.

6 A (Nodded head up and down.)

7 Q Maybe looking in to see if anybody there and he's
8 knocking on the front door, right?

9 A Right.

10 Q Eventually, nobody answers and he breaks the glass
11 to open the door, right?

12 A Right.

13 Q Now, this glass, it -- it's more like one of those
14 door glasses, right, where it's -- it kind of runs along
15 the -- the side of the door. It's not a full, like, six
16 or eight ---

17 A Oh, no, no, no.

18 Q --- windows. It's one little skinny window right
19 there kind of by the door handle, right?

20 A Correct.

21 Q Or above the door handle, I guess.

22 A Yeah.

23 Q So he knocks that in and then reaches in?

24 A Uh-huh.

25 Q And then y'all get to, I guess, arguing?

1 A Yes.

2 Q Okay. When you walk out the back door and he walks
3 out with the gun, is there anything to stop him from
4 putting it to your head or shooting at you?

5 A No.

6 Q If he'd have wanted to kill you, he had every
7 opportunity, didn't he?

8 A Correct.

9 Q Did he try to?

10 A No.

11 Q Did he threaten you with any words like ---

12 A No.

13 Q --- "I'm going to shoot you"?

14 Was it maybe typical -- I -- my understanding is
15 y'all didn't really have a hostile relationship, right?

16 A No, we didn't.

17 Q No putting hands on each other?

18 A No.

19 Q Not that kind of relationship?

20 A No.

21 Q When y'all would get to arguing, though, sometimes
22 you'd want to leave, right, just ---

23 A Right.

24 Q --- to avoid the confrontation?

25 A Correct.

1 Q To the point, I've actually been a told a story
2 where, you know, he'd call and plan a trip then ---

3 A Right.

4 Q --- to say, "Well, we going to" -- and -- and I'm,
5 you know, probably wrong about this, but whatever --
6 "Pigeon Forge. You can't leave Pigeon Forge. We're
7 going finish talking about that."

8 Is it that kind of thing ---

9 A Right.

10 Q --- y'all would do?

11 A Yeah.

12 Q But you'd ---

13 A He would ---

14 Q --- never ---

15 A --- rather talk it out.

16 Q You'd never get physical with each other?

17 A No.

18 Q But there'd be a "Well, I'm leaving; I'm not talking
19 about it" kind of thing.

20 A Right.

21 Q And that's what -- kind of what was happening that
22 night?

23 A Right.

24 Q And he wanted you to stay and talk it out, right?

25 A Right.

1 Q And in your mind, what was he doing when he was
2 shooting at the tire?

3 A He was trying to stop me from leaving with the kids.

4 Q So y'all could talk it out?

5 A So we could talk it out.

6 Q You think he ever intended to kill anybody that day?

7 A No.

8 Q Did he have a hatred in his heart for you that day?

9 A No.

10 Q Do you think he ever had an appreciation for how
11 reckless it was to be shooting at that car?

12 A Say that again.

13 Q Do you think he had an appreciation of how reckless
14 -- do you think he even imagined this could've happened,
15 where his son died?

16 A Oh, no, he couldn't imagine that.

17 MR STUMBO: Judge, I'm going to object to that
18 question about imagining and I -- I mean, she -- that's
19 -- it's calling for speculation, I think.

20 THE COURT: I'll sustain.

21 Q Not imagine. Real-world, do you think there's any
22 chance he intended to cause what happened?

23 A No.

24 Q Do you love your husband?

25 A Yes.

1 Q Do you feel like your husband loves you?

2 A Yes.

3 Q Did he love Iven?

4 A Yes.

5 MR GEOLY: Beg the Court's indulgence for one
6 moment, Your Honor.

7 THE COURT: All right.

8 (Off the record briefly.)

9 Q And you were aware that this night he was going to a
10 fish fry with his father's family, right?

11 A Right.

12 Q Now, you don't know if that was at his dad's house
13 or not. And -- and actually, I think it was at his
14 aunt's house. Would -- that wouldn't surprise you,
15 right?

16 A No, that wouldn't surprise me.

17 Q Okay. And it's your understanding, he was with
18 family, right -- his cousins, his brothers? I mean,
19 that's the kind of thing it was. It was kind of like a
20 family event?

21 A Right.

22 Q Did he want you to go?

23 A Yes.

24 Q Asked you to go, right?

25 A Right.

1 Q But you kind of were: "Well, look, I got this thing
2 for my dad tomorrow." Is that ---

3 A Right.

4 Q --- kind of how it -- so he had his thing he wanted
5 to do with the family with the fish fry, but you were "We
6 need to get ready for this thing tomorrow." So there was
7 kind of a thing about watching the kids a little bit,
8 right?

9 A Right.

10 Q But he had the kids earlier in the day, right?

11 A Correct.

12 Q Were -- do remember him -- why he got up that
13 morning, what the first thing he did that morning was?

14 A Yeah. He went to a car dealership, but it's out of
15 business now.

16 Q Uh-huh.

17 A He was going go get me a Tahoe.

18 Q Okay. Do you remember him going to the barbershop
19 that morning?

20 A Yes.

21 Q Who'd he go to the barbershop with?

22 A Iven.

23 Q Okay. Getting Iven a cut, right, to ---

24 A Right.

25 Q --- to go to the -- the -- the birthdays.

1 A Correct.

2 Q This is hard on you, isn't it?

3 A Yes.

4 Q I -- I see you kind of at odds with your mom. She
5 said y'all having a problem or -- or she had a problem
6 with you. Y'all ---

7 A Yeah.

8 Q --- actually get along pretty good, don't you?

9 A Yeah.

10 Q You live right beside each other?

11 A Correct.

12 Q She doesn't have any special knowledge of what
13 happened that night, right?

14 A No, she don't.

15 Q The people that know what happened are -- are you
16 and Xzay; is that right?

17 A Correct.

18 Q You want your husband to come home?

19 A Yes.

20 MR. GEOLY: I don't have any further questions,
21 Judge.

22 THE COURT: All right. You can step down.
23 Cross -- redirect examination?

24 MR STUMBO: Just briefly, Your Honor.

25 THE COURT: All right.

REDIRECT EXAMINATION

BY MR. STUMBO:

Q Indigo, Mr. Geoly asked you if -- if anyone from the solicitor's office had talked to you, and you said no. That's not correct, though, is it?

A When you talked to me?

Q Okay. So you --

A I mean ---

Q --- you don't ---

A --- might've been miscommunication because they -- first I didn't have a phone. But the only out we knew was one time to come down here was due to someone calling for my mom to tell her. And then, that's when they told me.

Q Now, but a couple weeks after this all happened, there was a meeting at the sheriff's department and -- and I was there personally. You remember we sat at the table and ---

MR. GEOLY: Objection ---

A Yeah.

Q --- Judge Addy ---

MR. GEOLY: --- Your Honor ---

Q --- was there?

THE COURT: Hold for ---

MR. STUMBO: He opened ---

1 THE COURT: --- a second.

2 MR. STUMBO: He opened the door to it.

3 THE COURT: Well, let him get his objection ---

4 MR. STUMBO: Yeah.

5 THE COURT: --- on the record.

6 MR. STUMBO: Yes, sir.

7 THE COURT: Go ahead.

8 MR GEOLY: Leading.

9 THE COURT: All right. Let's don't lead. Just ask
10 your question.

11 MR. STUMBO: Okay.

12 Q Did you ever have a meeting with me at the sheriff's
13 department?

14 A Yes, I had meeting with you.

15 Q Okay. And was your father there?

16 A Yes.

17 Q All right. Was Penelope there?

18 A Yes.

19 Q Okay. And wasn't just me; it was my staff with me.
20 Is -- is that correct?

21 A Correct.

22 Q Okay. Mr. Bentley, who's sitting behind you over
23 there, was he there?

24 A I can't remember.

25 Q Okay.

1 A all I know is it was you that came in, Sheriff
2 Foster, me, Penelope, my daddy ---

3 Q Dickert, was he there?

4 A Yeah, he was there. And Connie sitting at the
5 table. I can't remember everybody.

6 Q All right. And you wouldn't dispute, if my victim
7 advocate Rhetta was there, that that -- that if I had a
8 body camera of my victim advocate there, that's correct.
9 Are you -- do you admit that?

10 A I know you said your staff was there, but ---

11 Q Uh-huh.

12 A --- I can't recall everybody sitting around the
13 table.

14 Q Okay. And -- and we had a -- a big discussion about
15 how you were doing, your injury. Do you remember talking
16 about that?

17 A Yeah. We talked about my injury.

18 Q Okay. And how you were recovering?

19 A Yeah.

20 Q Okay. We talk about Iven?

21 A Yeah, we talk about Iven.

22 Q And we talked about how we were going to progress
23 and -- and what things were going to happen in this case,
24 potentially.

25 A Yeah. We talked about that.

1 Q Okay. So I ---

2 A But I'm ---

3 Q --- just want ---

4 A --- saying just to -- to -- to notify me, they
5 didn't. Nobody notified me. We only had a meeting one
6 time.

7 But I'm talking about to notify me, as in what
8 Geoly's saying, or talking to me, you know, coming by. I
9 mean, this been over two years, and ain't nobody really
10 stopped to talk to me about this whole situation. We
11 only had one meeting.

12 Q That meeting that you had with me personally ---

13 A Right.

14 Q --- right? Okay.

15 A That's the only one.

16 Q And we gave y'all phone numbers and contact
17 information, all you needed to contact us, right, that
18 day?

19 A Right.

20 Q Okay. So when you told Mr. Geoly that you didn't
21 talk to anybody in my office, that -- you -- you did,
22 correct? Just wanted to clarify that.

23 A What -- what you mean, sitting at the table?

24 Q Yes.

25 A Oh, okay. If you clarifying that, yeah, we talked.

1 Q Okay.

2 A But I just thinking Geoly might've been saying,
3 like, have anyone called me or something like that.
4 Because we -- we ain't never get notification of a phone
5 call due to my mom just one time, saying we got to go to
6 the courthouse.

7 Q Okay.

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

9 THE COURT: All right. You may step down.

10 (Whereupon, the witness exited the witness stand.)

11 THE COURT: All right. Ladies and gentlemen, I
12 think it's a good time for us to go ahead and take our
13 afternoon break. I'm going to let you go to the jury
14 room to stretch your legs, get something to drink, use
15 the restroom, whatever the case may be.

16 Do not discuss the case, even among yourselves.
17 Don't conduct any independent investigations. We'll take
18 about a 10- or 15-minute break, and then we'll come back
19 and resume the trial.

20 Everyone else, please remain seated while the jury
21 is excused. Thank you.

22 (Whereupon, the jury exited the courtroom at 3:33
23 p.m.)

24 (Off the record briefly.)

25 THE COURT: All right. Anything from the state

1 before we take a break?

2 MR STUMBO: Nothing from the state, Judge.

3 THE COURT: Anything from the defense?

4 MR GEOLY: Nothing from the defendant, Your Honor.

5 THE COURT: All right. We'll go ahead and let's
6 take about a 10- or 15-minute break.

7 MR. GEOLY: Thank you, Judge.

8 MR. STUMBO: Thank you, Judge.

9 (The Court went on the record at 3:34 p.m.)

10 (The Court went on the record at 3:51 p.m.)

11 THE COURT: All right. Before we get started back,
12 the clerk said Juror No. 5, Shalyne Bradwell, told her
13 that she realized, after Officer Stribble -- when Officer
14 Stribble took the stand, that she went to school with
15 him; it was about 25 years ago; but that she said she was
16 in school with him. Another that's going to make a
17 difference.

18 I don't know that that's going to make any
19 difference. I didn't know if we wanted to bring her in,
20 question her whether or not it affects her ability to be
21 fair and impartial. If it does, we'll excuse her and
22 seat an alternate. If it doesn't, we'll leave her in
23 place.

24 I mean, she just -- made it sound like she didn't
25 recognize the name; she didn't recall him. But once he

1 took the stand, she recognized him as someone she went to
2 school with about 25 years ago.

3 MR STUMBO: Judge, I don't have a problem with her
4 staying on, just in the sense that Lt. Stribble's
5 testimony was pretty short. His involvement with the
6 case was pretty minimal.

7 THE COURT: Well, do ---

8 MR. STUMBO: We don't ---

9 THE COURT: --- you want ---

10 MR. STUMBO: --- have a problem with it ---

11 THE COURT: All right. So you ---

12 MR. STUMBO: --- with her ---

13 THE COURT: --- don't even need -- want me to bring
14 her in and question her?

15 MR STUMBO: Not -- not from ---

16 THE COURT: Okay.

17 MR. STUMBO: --- our perspective ---

18 THE COURT: What does the ---

19 MR. STUMBO: --- Judge.

20 THE COURT: --- defense prefer?

21 MR GEOLY: Judge, I apologize. What -- what is her
22 name again? Because I ---

23 THE COURT: It was Juror No. 5.

24 MR. GEOLY: Yeah. I got three different 5s, Judge.

25 CLERK OF COURT: Bradwell.

1 THE COURT: Shalyne -- S-h-a-l-y-n-e ---

2 MR. GEOLY: Okay. Bradwell?

3 THE COURT: --- Bradwell, B-r-a-d-w-e-l-l.

4 MR. GEOLY: Yes, sir. One second, Judge.

5 (Off the record briefly.)

6 MR GEOLY: Your Honor, I -- I defer to your
7 judgment. I -- I don't -- I -- I'm fine with her not
8 being brought in, brought in and asked the relevant
9 questions that you feel are necessary, but we certainly
10 are not -- we're not making a motion for you to ---

11 THE COURT: All right.

12 MR. GEOLY: --- do anything.

13 THE COURT: All right. Well, if nobody wants me to
14 bring her in and question her, we'll just let it ---

15 MR. GEOLY: Yeah. I'm ---

16 THE COURT: --- go as is.

17 MR GEOLY: --- I'm fine.

18 THE COURT: All right. Thank you very much.

19 MR. STUMBO: Yes, sir.

20 (Off the record briefly.)

21 THE COURT: Anything from the state before we bring
22 the jury in?

23 MR DANIEL: Judge, our next witness, Investigator
24 Ryan Dickert, he's the lead investigator in this case
25 with Newberry Sheriff's Office. We -- we would move to

1 play a portion of his body-camera interview of Penelope
2 Davis, which is Indigo Penny's 3-year-old daughter, at
3 the Newberry hospital on the date in question. We'd like
4 to proffer his testimony and perhaps also play a portion
5 for His Honor to determine whether it's admissible under
6 a hearsay exception. I know Mr. Geoly's obviously going
7 to object to that. So we -- we would ask maybe to -- to
8 proffer that -- that particular testimony.

9 THE COURT: All right. Well, let me ask this. How
10 long do you think it's going to take? Because it's four
11 o'clock. Do we want to go ahead and send the jury home
12 while you do the proffered testimony?

13 MR DANIEL: Judge, it would probably be about three-
14 minute clip or so, give or take, of -- of actually
15 watching, a three-minute portion; and then, obviously,
16 the preliminary foundation testimony before we play it;
17 and then, legal arguments that I don't -- I'm trying to
18 budget for time here, however the Court wants to do that.

19 THE COURT: Well, I mean, is it something -- if it's
20 going to take us an hour, I say let's let the jury go
21 home. Or if it's going to take 30 minutes; but then,
22 when you call him to the stand, his testimony is going to
23 be an hour/hour and a half between direct/cross/redirect,
24 I mean, I -- I think you see. I don't want to be keeping
25 a jury here until six o'clock.

1 MR DANIEL: Yes, sir.

2 MR STUMBO: Right. Yeah. I -- Judge, I would -- I
3 would say that the clip itself's probably not the issue.
4 We proffer the clip. Then, we got to make legal
5 arguments; then Your Honor has to make a ruling. And
6 then, by that time, that's probably 30 minutes -- 20 to
7 30 minutes.

8 And then, we have, you know, I -- Investigator
9 Dickert's the next -- next witness. He's the lead
10 investigator. So it will take some time to -- to plow
11 through some of the exhibits. It might not be a bad idea
12 for us to proffer this; argue it; whether it comes in or
13 not, you can make a ruling; and then, we start fresh in
14 the morning ---

15 THE COURT: Okay.

16 MR. STUMBO: --- in front of the jury. That may
17 not be a bad idea.

18 MR. GEOLY: Your Honor, I ---

19 THE COURT: How does that ---

20 MR. GEOLY: --- defer -- I -- I have ---

21 THE COURT: Okay.

22 MR. GEOLY: --- no preference.

23 THE COURT: All right. Well, let's go ahead, then,
24 and we'll bring the jury in and I'm going to go ahead and
25 cut them loose for the evening; have them be back, I

1 guess -- start at the same time as we did today: have
2 them back at 9:15; start at 9:30. And then, once we
3 excuse them, you can go ahead and proffer and we'll make
4 a decision on that.

5 MR. STUMBO: Yes, sir.

6 THE COURT: Okay?

7 All right. Anything from the state before we bring
8 the jury in?

9 MR. STUMBO: No, sir.

10 THE COURT: Anything from the defense?

11 MR. GEOLY: No, sir, Your Honor.

12 THE COURT: All right. Let's go ahead and bring the
13 jury in.

14 (Off the record briefly.)

15 (Whereupon, the jury entered the courtroom at 3:58
16 p.m.)

17 THE COURT: All right. Ladies and gentlemen,
18 welcome back. We're ready to proceed with the trial.
19 However, the next witness is going to take some time. So
20 given the time of day, the attorneys have discussed that
21 it's probably a good time, rather than keeping you here
22 late tonight, it's a good time to go ahead and break for
23 the day.

24 So I'm going to go ahead and allow you to go home
25 for the day. Please be back again at 9:15 tomorrow

1 morning. And we'll be starting soon thereafter.

2 Again, I caution you: Don't discuss the case.
3 Don't conduct any independent investigations. I hope
4 everybody has a good evening, and we'll see you back at
5 9:15 tomorrow morning. Thank you very much.

6 Thank you. If everybody remain seated while the
7 jury is excused.

8 (Whereupon, the jury exited the courtroom at 4:00
9 p.m.)

10 (Off the record briefly.)

11 THE COURT: All right. The state want to go ahead
12 and proffer the testimony?

13 MR DANIEL: Yes, Your Honor. We -- we'd proffer
14 Investigator Ryan Dickert's testimony. He's the lead
15 investigator in this case.

16 THE COURT: All right.

17 (Whereupon, the witness came forward.)

18 THE COURT: All right. Let's go ahead and put him
19 under oath.

20 RYAN DICKERT, having been first duly sworn,
21 testified as follows:

22 THE COURT: And your name?

23 THE WITNESS: Ryan Dickert.

24 THE COURT: All right.
25

DIRECT EXAMINATION

BY MR. DANIEL:

Q All right. Investigator Dickert, you are -- you were the assigned lead investigator as it pertains to the investigation of the shooting death of Iven Caldwell; is that correct?

A That's correct.

Q Okay. So April 20th of 2019, were you dispatched out to the Newberry County Memorial Hospital?

A That's correct.

Q Okay. Approximately what time did you arrive at the hospital?

A Looking at the CAD report, it'd be sometimes between 3:50 and 4 a.m.-ish.

Q Sometime after 4 a.m., you arrived at the hospital?

A Sometimes between 3:50 and 4.

Q Okay. All right. And when you arrive at the hospital, what do you -- what do you observe?

A I observe a greenish-blue-in-color Toyota Camry parked in the emergency entrance.

Q Okay. And had you identified any potential victims of this shooting?

A I was aware that there was two victims that were in the hospital being treated, but didn't have much information on who they were at the time.

1 Q All right. But eventually, who did you learn those
2 two gunshot victims were?

3 A One was Iven Caldwell; the other was Indigo Penny.
4 And I was made aware that there were two juvenile
5 children also in the vehicle with her and Iven.

6 Q Okay. And did you learn of any other occupants of
7 that vehicle?

8 A Yes, that's correct. It would've been Penelope and
9 Xzavier, Jr. They would've -- they were in the back-
10 passenger seat of the vehicle.

11 Q Okay. And did you check on the welfare status of
12 the other two children, Penelope Davis and Xzavier Davis,
13 Jr.?

14 A We did.

15 Q Okay. All right. So tell us -- I want to focus --
16 and first of all, you were -- you were wearing your body
17 -- your body-worn camera. Is that how you refer to it?

18 A That's correct.

19 Q All right. You were wearing that on your person; is
20 that right?

21 A Correct.

22 Q All right. So it was activated the entire time at
23 the hospital -- well, not the entire time, but you had it
24 activated when you did a welfare check on Penelope Davis
25 and Xzavier Davis, Jr.; is that correct?

1 A That's correct.

2 Q All right. Who else was with you that assisted you
3 in -- in checking on the welfare of these two children?

4 A Our victims advocate, Connie Johnson, would've been
5 present.

6 Q Okay. And where exactly were they located, these
7 two children?

8 A They were located in Room 1 in the emergency room --
9 department area, which is typically the first room that
10 you come to.

11 Q And were they in there with medical personnel, those
12 two children?

13 A There was a nurse that was in the room when we
14 entered the room who apparently had been taking care of
15 them.

16 Q Okay. And at that time when you enter the room, did
17 you know what, if any, injuries Xzavier Davis, Jr., and
18 Penelope Davis had at that time?

19 A No, we weren't.

20 Q Okay. So first and foremost, you wanted to see if
21 they were injured in any way, as it pertains to that
22 shooting incident; is that correct?

23 A That -- that's correct.

24 Q All right. So walk us through -- when you enter
25 that room, you said you and Deputy Connie Johnson entered

1 that room?

2 A Yes, the victims advocate.

3 Q Okay. All right. Tell us what -- what happens
4 next.

5 A We went into the room. If I remember, Xzavier, Jr.,
6 was on the -- the bed closest to the door; Penelope was
7 closer to the inside of the room. And we just asked her
8 if she was okay.

9 Q You asked Penelope and -- correct me if I'm wrong.
10 She's 3 years old at this time, right?

11 A That's -- that's correct.

12 Q And you -- you're simply asking her a generic "Are
13 you okay"-type question?

14 A That's correct.

15 Q All right. And she's verbal, this -- this child?

16 A That's correct.

17 Q All right. And what was her response?

18 A "My had shoot my mama and she in there," as she
19 pointed over to Room 2, which would be where Indigo was
20 located.

21 Q Okay. And what else -- what, if anything, else was
22 asked of -- of this Penelope?

23 A I believe my follow-up to that was: "What happened
24 to Mom?" I think it was a -- trying to figure out
25 exactly what she said.

1 And her response was: "Um, my daddy had shoot my
2 mama. And then you need to come."

3 Q All right. Did y'all ask any other questions about
4 Penelope's medical condition?

5 A Yes. Victims advocate confirmed the statement that
6 she made about her daddy shooting her mom and us needing
7 to come. And she asked if she had any boo-boos, any
8 injuries. And she referred to a scratch that she had on
9 her right ankle. I believe it was the back of her right
10 ankle.

11 Q Okay. And did she elaborate on how she got that
12 scratch, Penelope?

13 A Give me just a second, please.

14 When she was asked how she got that scratch, her
15 response was that Iven was pinning her in the car.

16 Q Okay. So when you're -- when you're asking -- or --
17 did you ask or did -- did your victims advocate ask that
18 question, "How'd you get that scratch?"

19 A I think Connie asked that -- that question
20 specifically.

21 Q All right. And Penelope said something to the
22 effect of Iven pinned her in the car?

23 A Right.

24 Q And did you visibly see an injury to ---

25 A I did not. I believe the -- the victims advocate

1 photographed her.

2 Q And did hospital staff hand over the clothes that
3 Iven and Penelope were wearing at the time of this
4 incident?

5 A Yes. And we got Iven's clothes, and I believe it
6 was a T-shirt that Penelope had on.

7 Q And did you know what, if any, type blood-type
8 evidence was on any of these articles of clothing that
9 were handed over to you by hospital staff?

10 A I don't know that I opened the bags. I think, when
11 they gave them to me, I left them like they were, since
12 SLED crime scene was en route, and then turned those
13 items over to them.

14 Q But the primary purpose for going in there and, I --
15 I'm going to call it interview of this 3-year-old,
16 Penelope, was to assess what, if any, injuries she may
17 have sustained in this shooting incident; is that
18 correct?

19 A Correct. But I -- I wouldn't refer to it an
20 interview. But it was more of a less concern for her
21 well-being, her safety, make sure she wasn't injured.
22 Because all we had heard at that point in time was about
23 Iven and Indigo. So ---

24 Q So you already knew that two people had confirmed
25 gunshot wounds, Iven and Indigo. So you were determining

1 whether the two other occupants of the car had injuries
2 themselves; is that correct?

3 A Yes. That was the purpose.

4 Q And you also said a nurse was present in the room at
5 the time you asked these questions of Penelope?

6 A That's correct.

7 Q Okay. Is there any specific reason for making sure
8 the nurse is in the room while you're asking these
9 questions?

10 A If she was going to give us -- if she had an injury
11 or something that needed to -- to be addressed, then,
12 obviously, the nurse would need to be the one to do that.

13 Q All right. So -- so it would not -- will -- will --
14 was it for purely purposes of your criminal investigation
15 or more so a welfare check of these two children?

16 A Honest to God, it wasn't for any other reason than
17 I'm a father and I wanted to make sure that the other two
18 kids were okay.

19 Q All right. And State's 173 is a -- have you had a
20 chance to watch your body cam interview ---

21 THE COURT REPORTER: Your Honor ---

22 Q --- of Penelope Davis?

23 THE COURT REPORTER: --- I haven't marked that yet.
24 Do you want it marked?

25 MR. DANIEL: This is -- we'll -- we'll mark this,

1 Your Honor, as State's 173 for purposes of this hearing.

2 THE COURT: Is that the correct identification?

3 MR. DANIEL: For ID only. Yes, sir.

4 (Whereupon, State's Exhibit 173 was marked for
5 identification.)

6 Q And, Investigator Dickert, you've had a chance to
7 watch that interview that -- that we're referring to with
8 Penelope Davis?

9 A That's correct.

10 Q All right.

11 MR. DANIEL: And, Your Honor, I -- at this time I
12 would ask permission to play that for purposes of
13 determining its admissibility.

14 THE COURT: All right. Any objection to the Court's
15 in-camera review of State's Exhibit 173?

16 MR. GEOLY: Judge, obviously, we object to it coming
17 in. But we certainly have no problem with you watching
18 it, Your Honor.

19 THE COURT: All right. Let's go -- you can go ahead
20 and -- for purposes of this proffered testimony, I'll
21 allow you to -- to play it.

22 MR. DANIEL: Yes, sir. And -- and, of course, we --
23 we do -- we -- we believe this could be construed as a
24 excited-utterance statement for purposes of medical
25 diagnosis under 803 for the hearsay exceptions. It's

1 nontestimonial in that sense as well, Your Honor, as
2 Investigator Dickert said it's -- more or less, it was
3 for purposes of a welfare check. So we're going to go to
4 ---

5 THE COURT: So I guess I need to step down there and
6 take a look at it?

7 MR. GEOLY: It's right behind ---

8 MR. STUMBO: I think you've ---

9 MR. GEOLY: --- you, Judge.

10 MR. STUMBO: --- got it behind you, Judge.

11 THE COURT: Oh, it's ---

12 MR. STUMBO: We can ---

13 THE COURT: --- right here.

14 MR. DANIEL: Oh, yes.

15 MR. STUMBO: --- turn the ---

16 THE COURT: Okay.

17 MR. DANIEL: Yes.

18 MR. STUMBO: --- volume up.

19 THE COURT: All right. Good. Thank you.

20 MR. STUMBO: Walter, can you make sure the volume's
21 up?

22 (Off the record briefly.)

23 MR. GEOLY: That's not it.

24 MR. STUMBO: Oh, yeah, it is. That's where it
25 starts, when they walk in.

1 (Whereupon, a portion of video was played for in-
2 camera review by the Court.)

3 MR. DANIEL: And, Your Honor, that -- that is the
4 extent of the testimony we would elicit as it pertains to
5 Penelope's statements to -- to law enforcement and
6 medical staff, as you can see, as to the source of her
7 injuries. If -- if you'll note, her -- her question --
8 or that law enforcement's question, I believe, that
9 Connie Johnson, the victims advocate, you can see with
10 the sheriff's office, asked: "How you doing?"

11 And Penelope's response is -- is almost -- it's
12 nonresponsive to the question. He just -- or she brings
13 up: "My mommy got shot by my daddy, and then y'all had
14 to come," something to that effect. I -- I'd have to
15 play it back.

16 But again, it was -- it was kind of a very
17 spontaneous statement. Further, she describes how she
18 got the injury to her left ankle -- or her ankle area
19 with the scratch and how Iven had pinned her down,
20 presumably in the backseat, after Iven had sustained the
21 -- the gunshot wound to the head.

22 THE COURT: Okay.

23 MR. DANIEL: And that's -- that -- that's the extent
24 of it, Your Honor, that we ---

25 THE COURT: All right.

1 MR. DANIEL: --- would play under the hearsay ---

2 THE COURT: Mr. Geoly?

3 MR. DANIEL: --- exceptions.

4 MR. GEOLY: Judge, I don't think it's an exception
5 to hearsay. I don't think it's a spontaneous statement.
6 If you'll follow, you know, right after the -- Connie
7 Johnson says that, the next question is: "What happened
8 to your mama?" I mean, that's what they asked her.

9 I mean, it -- it's -- it's -- it does not sound like
10 a spontaneous excited utterance to me. I think they're
11 asking the child stuff. That -- you know, Judge, she --
12 she's very verbal. I mean, she's about as impressive a
13 5-year-old as you're going to come across.

14 You know, I -- I don't know Your Honor's position in
15 terms of putting her on the stand. But it seems like:
16 (1) they're trying to get evidence, Your Honor, that's
17 cumulative, number one.

18 It -- it certainly would be, I think, prejudice to
19 my client because you see the baby. I mean, the -- the
20 scene starts with the -- actually Xzavier, Jr., crying.
21 They're just -- the fact that they're having to deal with
22 all this, I think, is obviously -- becomes prejudicial to
23 inflame the -- the passions, basically, of the jury of
24 the children being involved with this, is their -- their
25 plan, because there's no question in this case that Daddy

1 shot Mommy.

2 I mean, it's not even like it's -- it's not proving
3 anything that wouldn't be cumulative proof of what's
4 already there. But it is hearsay. And I don't think
5 that this is an exception to the rule, Your Honor.

6 THE COURT: All right. Yeah. I'm not going to --
7 I'm not going to allow it.

8 The -- the problem I have with it is I can't
9 understand what she's saying. But then, you have the
10 officer and nurse or whoever repeating what she's saying.
11 So it's almost like they're giving the testimony; they're
12 interpreting what she's saying.

13 If you just played what she said without them
14 repeating what she said, then you might have a better
15 thing. But I couldn't -- I mean, I think it's
16 inadmissible to say -- you know, to come in. "How are
17 you doing?"

18 And then she says something that I don't understand.
19 But then, the officer says: "Your daddy shot your mama?"

20 And so that's -- that's the problem I have with it,
21 is them -- because the jury's not going to be paying
22 attention to what the little girl says. The jury's going
23 to be listening to them repeating what they say the
24 little girl said.

25 MR. STUMBO: Judge, I -- I would just say -- and

1 this is just kind of a big picture with hearsay. And it
2 was one of the reasons why we believed that this was
3 admissible. And I completely respect ---

4 THE COURT: All right.

5 MR. STUMBO: --- what Your Honor's saying. I think
6 purpose for hearsay rules is -- you know, and I -- I
7 remember way back, Professor Flanagan in law school
8 telling us the reason why we have these is to make sure
9 there's a sufficient indicator or indicia of reliability
10 in ---

11 THE COURT: Well ---

12 MR. STUMBO: --- whatever the declarant says.

13 THE COURT: And I agree with that.

14 MR. STUMBO: Right.

15 THE COURT: So let's -- if you can, I'll readdress
16 this if you go back and let me listen to it again, but
17 you delete what the officer and the others in the room,
18 where they repeat the little girl says, where all we hear
19 is his initial comment when he walks in and then what she
20 says without them repeating what she says.

21 MR. STUMBO: Okay.

22 THE COURT: That's the biggest problem I have with
23 this, is them saying -- I couldn't tell what the little
24 girl was saying. But I could understand, when the
25 officer said -- Officer Dickert, when he said: "Your

1 daddy shot your mama?" I could understand him clearly.

2 I could understand what the other person in the room
3 said clearly when they are purportedly repeating what the
4 little girl says. But I can't verify that that's what
5 the little girl said or not, because I couldn't
6 understand it.

7 MR. STUMBO: Yeah. Could ---

8 THE COURT: So ---

9 MR. STUMBO: --- Judge, if we play it again and you
10 listen to it and we stop it before anything comes out of
11 -- I mean, I know you've already heard what he said now.

12 THE COURT: Yeah. That's ---

13 MR. STUMBO: But ---

14 THE COURT: --- what ---

15 MR. STUMBO: --- by -- but -- but -- but if you can
16 listen again, I -- I -- just -- first time I ever heard
17 this, I heard what she said, Judge. And why -- it's why
18 I thought it was important, because we believed it to be
19 spontaneous ---

20 THE COURT: Well ---

21 MR. STUMBO: --- really is what -- what's on her
22 mind. I mean, clearly, she's very distraught. I think
23 under ---

24 THE COURT: I think ---

25 MR. STUMBO: --- I just ---

1 THE COURT: --- that initial comment when he walks
2 into the room is spontaneous. But then, when he says,
3 "What happened," after that, that's in response to his
4 question. That's not spontaneous.

5 MR. STUMBO: Okay. Yes, sir.

6 THE COURT: So everything after that, no. That
7 initial comment she makes, when he walks into the room
8 and says: "Oh, pizza. How are y'all doing?" And then
9 she says something, whatever it is she says -- let me
10 watch it again -- that might be spontaneous. But I don't
11 know -- certainly, you can't get in where he repeats ---

12 MR. STUMBO: Well, if -- if ---

13 THE COURT: --- what she says.

14 MR. STUMBO: We -- we can redact the audio when he
15 said -- he and/or ---

16 THE COURT: Well, let me take ---

17 MR. STUMBO: --- Johnson ---

18 THE COURT: --- a look at ---

19 MR. STUMBO: --- says ---

20 THE COURT: --- it again.

21 MR. STUMBO: --- anything, if you need ---

22 THE COURT: And let ---

23 MR. STUMBO: --- us to.

24 THE COURT: --- me see.

25 MR. STUMBO: Okay.

1 THE COURT: But stop -- I mean, from when he walks
2 into the room and that -- just that first comment she
3 makes, and then stop it after that. Let me just take
4 another look at it.

5 MR. STUMBO: Yes, sir.

6 (Whereupon, a portion of video was played for in-
7 camera review by the Court.)

8 THE COURT: Okay. About that -- "What happened to
9 Mama" -- everything -- that's the only thing that may be
10 admissible.

11 THE COURT: When he says, "What happened to Mama?"
12 everything after that is not spontaneous. That's in
13 response ---

14 MR. STUMBO: Right.

15 THE COURT: --- to his ---

16 MR. STUMBO: I think ---

17 THE COURT: --- question.

18 MR. STUMBO: --- the only -- yeah. She does
19 afterwards. And I agree, Judge. After she -- he says,
20 "You said your daddy shot your mama?" and then she said
21 the same thing, but then said, "And then you had to
22 come." That was what she added, I think, the second
23 time, which, quite honestly, I think her identifying just
24 her utterance of here's what happened ---

25 THE COURT: Well ---

1 MR. STUMBO: --- "My daddy shot my mama and she's in
2 there." I -- I mean, I think that's important ---

3 THE COURT: Well ---

4 MR. STUMBO: --- in this ---

5 THE COURT: --- I mean ---

6 MR. STUMBO: --- case.

7 THE COURT: --- that -- I still can't understand
8 what she's saying.

9 MR. STUMBO: Yeah.

10 THE COURT: I don't know. I mean, I -- I can't
11 understand it. I understand she's verbal. But -- back
12 it up and play it one more time and stop it after the
13 little girl makes her comment, okay?

14 (Whereupon, a portion of video was played for in-
15 camera review by the Court.)

16 THE COURT: All right. I understand "my daddy" and
17 "she" and I see her pointing.

18 MR. STUMBO: I think "Daddy" ---

19 THE COURT: I'm not ---

20 MR. STUMBO: --- "shot Mama" ---

21 THE COURT: Well, that's what you're saying ---

22 MR. STUMBO: Okay.

23 THE COURT: --- she said.

24 MR. STUMBO: I know.

25 THE COURT: I didn't ---

1 MR. STUMBO: Okay ---

2 THE COURT: --- hear that.

3 MR. STUMBO: --- Judge.

4 THE COURT: Yeah.

5 MR. STUMBO: I ---

6 THE COURT: I didn't hear that.

7 MR. STUMBO: I understand your ruling.

8 THE COURT: Yeah. So ---

9 MR. GEOLY: Judge, and just to make the record
10 complete, Your Honor, I -- even if it is spontaneous --
11 and I get your point --- I -- I don't think it's
12 necessarily an excited utterance, under the rules.

13 THE COURT: Well -- and I'm -- I'm thinking that
14 might be. But I'm still finding that it's hearsay; it's
15 cumulative. I don't know that it's credible -- I mean,
16 that it's going to assist the jury any, because I
17 certainly can't understand what she's saying.

18 And I think it's more prejudicial than probative for
19 them to hear that and then y'all argue: "This is what
20 she said," rather than just letting a jury decide on
21 their own what she said. So I'm going to sustain the
22 objection ---

23 MR. STUMBO: Yeah.

24 THE COURT: --- as to ---

25 MR. STUMBO: Yes, sir.

1 THE COURT: --- the -- as to -- what's the little
2 girl's name?

3 MR. STUMBO: Penelope.

4 MR. GEOLY: Penelope.

5 THE COURT: Penelope. Especially the fact that it
6 is cumulative, I mean, the defendant is admitting that he
7 shot ---

8 MR. STUMBO: Well ---

9 THE COURT: --- in the ---

10 MR. STUMBO: --- Judge ---

11 THE COURT: --- argument ---

12 MR. STUMBO: --- I -- I have no statements that it
13 -- it -- if -- if he takes the stand, he admits it.

14 THE COURT: I see.

15 MR. STUMBO: But I ---

16 THE COURT: Well, in ---

17 MR. STUMBO: --- I don't ---

18 THE COURT: --- opening arguments ---

19 MR. GEOLY: And let ---

20 THE COURT: --- they admit it.

21 MR. GEOLY: --- me say ---

22 MR. STUMBO: So ---

23 MR. GEOLY: --- our ---

24 MR. STUMBO: --- for the ---

25 MR. GEOLY: --- his entire defense, Your Honor,

1 we've taken the position that he shot ---

2 THE COURT: Yeah.

3 MR. GEOLY: --- the gun and everything in terms of
4 their -- their evidence, the -- the -- everything they've
5 presented, we've taken the position: "Look, this isn't a
6 whodunit." I said it in opening statement: "This isn't
7 a whodunit."

8 You know, but we've taken the -- the -- the position
9 of we fired the weapon but there was no -- and I've made
10 this clear -- his defense is: There was no *mens rea*;
11 there was no malice aforethought. And that ---

12 THE COURT: All right.

13 MR. GEOLY: --- what we're relying on, not the rest
14 of it.

15 THE COURT: Well, as -- for purposes for right now,
16 I'm going to rule that it's inadmissible. As I said, my
17 primary ruling is based upon the fact that the only way I
18 know what she said was based upon the witness repeating
19 what she said and not any -- me being able to decipher
20 what she said. All -- I mean, the only thing I really
21 understood her say is "my daddy." And I saw her pointing
22 the finger. So ---

23 MR. STUMBO: Judge, and just -- I -- just to follow
24 up, because Mr. Geoly ---

25 THE COURT: Yeah.

1 MR. STUMBO: --- I -- I -- I -- we're not trying to
2 -- to do a bridge too far here. Our position was: It
3 was extraordinarily probative because the only person
4 that identified who shot the gun in Mr. Dickert's case
5 was Indigo, who's testified. But, you know, if I have
6 one witness that says she's shot, I -- I'm assuming he --
7 he's going to get on the stand and admit that he shot the
8 gun. But he never gave a statement to law ---

9 THE COURT: Well, I mean ---

10 MR. STUMBO: --- enforcement ---

11 THE COURT: --- if you want ---

12 MR. STUMBO: --- so ---

13 THE COURT: --- to tell the little girl in testify
14 ---

15 MR. STUMBO: I ---

16 THE COURT: --- we can do that. I'm just ---

17 MR. STUMBO: Yes, sir.

18 THE COURT: --- not going ---

19 MR. STUMBO: Which I ---

20 THE COURT: --- to allow ---

21 MR. STUMBO: --- which I can go ahead and tell Your
22 Honor, I'm not going to do.

23 THE COURT: Okay.

24 MR. STUMBO: Because she's 5. I don't want to put
25 her through that. I -- I -- we did believe that the

1 video showed her still under the stress of the incident
2 and describing an injury, which we thought -- there
3 again, and I understand ---

4 THE COURT: Yeah.

5 MR. STUMBO: --- Your Honor's ruling. I'm not
6 trying to ---

7 THE COURT: And I ---

8 MR. STUMBO: --- continue ---

9 THE COURT: --- understand that.

10 MR. STUMBO: --- to argue.

11 THE COURT: I understand ---

12 MR. STUMBO: But ---

13 THE COURT: --- that. But yeah. Number one, it is
14 clearly hearsay. It's whether ---

15 MR. STUMBO: Yes, sir.

16 THE COURT: --- or not it comes in under the
17 excited-utterance objection ---

18 MR. STUMBO: Yes, sir.

19 THE COURT: --- and -- and I'm -- I'm going to rule
20 that it's not; it doesn't come under that exception. All
21 right?

22 Anything else before -- now, as far as -- does that
23 knock out that body cam entirely or is there other
24 portions that you're going to be playing on it?

25 MR. STUMBO: Judge ---

1 THE COURT: Or is there anything else we need to
2 proffer before we get the jury back tomorrow?

3 MR. STUMBO: We may need to proffer Indigo's --
4 Indigo's interview with Mr. Dickert. She did deny one
5 thing that she said. And I -- I -- you know, to not have
6 the confusion of a body cam that he took that's not in
7 evidence yet with her on the stand, I do believe she --
8 she talked about the kids crying and describing the event
9 a lot differently.

10 And I asked her: "Were the kids crying?"

11 And she said: "No."

12 My intention was to play that portion of her
13 interview with Detective Dickert, his body cam, just as a
14 -- coming in as a prior ---

15 THE COURT: Okay. So ---

16 MR. STUMBO: --- prior inconsistent statement.

17 THE COURT: So what was her testimony?

18 MR. STUMBO: I -- I -- I asked her what were -- was
19 the -- were the kids crying was her -- you know, what
20 were their -- their demeanor when she's getting them in
21 the car and leaving. And she had said to law enforcement
22 in her interview that they were crying; they were upset.

23 And her description today was not that. And I said:
24 "So you're saying they weren't crying?"

25 And she said: "No."

1 And I asked her: "Well, did -- did you -- do you
2 admit or denying saying that to law enforcement?" And
3 she said she didn't remember that.

4 So I -- I did think that was important, the kids'
5 demeanor. We believe that's probative. We believe it's
6 a prior inconsistent statement under Rule 801 that can be
7 -- now that she's testified and denied saying it.

8 So I -- that was the -- the primary thing, Judge. I
9 ---

10 MR. GEOLY: Your Honor ---

11 THE COURT: Okay.

12 MR. GEOLY: --- my recollection is that she
13 testified she didn't remember; it'd been two years ago.
14 So I don't know that she actually denied it, so much as
15 said: "I don't remember; that was two years ago," is the
16 -- what I recall. But certainly, you know, I -- I'm not
17 necessarily opposed to them playing some of that either,
18 if -- if I can get the total context of it in. You know,
19 I'm ---

20 THE COURT: All right.

21 MR. GEOLY: --- not -- not saying that I necessarily
22 object. But, I -- I think it ---

23 THE COURT: Well, I mean, as I understand prior
24 inconsistent statements, you have to -- it has to be an
25 inconsistent statement that differs from their testimony

1 and you have to ask them, did they make this, your prior
2 inconsistent statement. And if they said, "No, I never
3 said that," then it comes in.

4 MR. STUMBO: Right. And I recall that. I believe
5 -- and we can look at the transcript. I ---

6 THE COURT: Yeah. We're ---

7 MR. STUMBO: --- I do ---

8 THE COURT: --- going to need to look at the
9 transcript ---

10 MR. STUMBO: I do remember asking her, Judge:
11 "Didn't you tell law enforcement they were crying?" I
12 think that's how ---

13 THE COURT: Well ---

14 MR. STUMBO: --- I asked ---

15 THE COURT: --- and I didn't recall it at -- at all
16 until -- I do recall her saying something about: "That
17 was two years ago. I don't remember."

18 I don't know if that was the same testimony ---

19 MR. STUMBO: Yeah.

20 THE COURT: --- or not. But we'll need to look that
21 ---

22 MR. STUMBO: Yeah.

23 THE COURT: --- up.

24 MR. STUMBO: I -- I ---

25 THE COURT: Do we want to address that now or ---

1 MR. STUMBO: I -- I guess we could to just save us
2 some time in the morning. But, Judge, I -- I -- I
3 believe when she said I -- referring to two years ago, I
4 think she was talking about -- she said -- she talked to
5 Investigator Dickert two years ago. That was my ---

6 THE COURT: Well ---

7 MR. STUMBO: --- recollection ---

8 THE COURT: --- that's okay.

9 MR. STUMBO: --- but we can ---

10 THE COURT: We've got ---

11 MR. STUMBO: --- look at it.

12 THE COURT: --- realtime transcript? How long would
13 it take you to take a look at that?

14 THE COURT REPORTER: I mean, I can start looking now
15 and let you know when I find it.

16 THE COURT: Well, I mean, would you rather come back
17 tomorrow morning or -- how about ---

18 MR. STUMBO: Judge, my ---

19 THE COURT: --- let's just ---

20 MR. STUMBO: --- daughter has a volleyball game at
21 six o'clock in Greenwood. So I -- I -- I didn't know if
22 I'd make it tonight. But it -- it wouldn't ---

23 THE COURT: Well ---

24 MR. STUMBO: --- disappoint me if I could make it to
25 that if we did it in the morning. That's fine.

1 THE COURT REPORTER: How about if we do it in the
2 morning, Your Honor?

3 THE COURT: Do what?

4 THE COURT REPORTER: How about if we do it in the
5 morning?

6 THE COURT: Okay. Give you an opportunity -- okay.

7 What she's going to do is she's going to take a look
8 at it. And I think we all -- I mean, the law is pretty
9 clear. If she says, "I didn't say that," and the prior
10 statement shows she did say it, then it comes in.

11 MR. STUMBO: Yes, sir.

12 THE COURT: If it's a case of she said, "I don't
13 remember saying that; I may have said that; I don't
14 remember what I said earlier; I do remember talking to
15 him," then I don't know that that's a prior inconsistent
16 statement. Because the purpose of letting the prior
17 statement in is to impeach the testimony of the witness.

18 MR. GEOLY: Judge, I ---

19 THE COURT: So ---

20 MR. GEOLY: --- certainly could be faulty. But --
21 but my recollection is that she initially kind of says
22 no. He kind of browbeats -- "You sure you didn't?"

23 And then I think she corrects it and says: "Well, I
24 certainly don't recall saying it."

25 THE COURT: Okay.

1 MR. GEOLY: "That was two years ago."

2 THE COURT: Well, let's -- I'm going to let the
3 court reporter overnight take a look at it, and then
4 we'll come back tomorrow morning and we'll readdress that
5 issue. Okay?

6 MR. GEOLY: Yes, sir.

7 THE COURT: All right.

8 All right. Anything else before we break for the
9 evening?

10 MR STUMBO: Nothing from the state, Judge.

11 THE COURT: Anything from the defense?

12 MR GEOLY: No, sir, Your Honor.

13 THE COURT: All right. Thank ---

14 MR GEOLY: Well, Judge, I -- I certainly don't want
15 to be the one to bring this up and -- and would be
16 remiss. But yesterday you mentioned that once the jury
17 is sworn, if something changed -- I think you gave us
18 kind of your indication. But I would certainly beg that
19 you allow my client to stay out ---

20 THE COURT: Yeah.

21 MR. GEOLY: --- tonight. He'll be ---

22 THE COURT: He can ---

23 MR. GEOLY: --- here in ---

24 THE COURT: --- right now.

25 MR. GEOLY: --- in the morning.

1 THE COURT: Yeah. He can -- certainly can right
2 now, as long as he knows that there will be a trial in
3 his absence if he doesn't appear -- come back. But I'm
4 going to allow him to go home this evening as well.

5 MR GEOLY: Thank you, Your Honor.

6 THE COURT: All right.

7 MR STUMBO: Thank you, Judge.

8 THE COURT: All right. Thank you.

9 (Whereupon, the proceeding adjourned at 4:31 p.m.)
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1 TRIAL DAY 3 - 08/25/21

2 (Whereupon, the proceeding resumed at 9:44 a.m.)

3 THE COURT: All right. Good morning, everyone.
4 Anything we need to address before we bring the jury in?

5 MR STUMBO: I believe, Judge, the way we left
6 yesterday, and one of our witnesses -- our first witness
7 is actually Mr. Schumpert, who with -- was -- found the
8 firearms in the house and the search warrant. He should
9 be very a short witness.

10 THE COURT: All right.

11 MR STUMBO: The next witness will be Investigator
12 Dickert, who's the lead investigator.

13 And I believe we left it with this, you know, could
14 -- could extrinsic evidence of a prior inconsistent
15 statement that Indigo denied making on the stand as to
16 whether the children or crying or not. If -- if I could
17 just cite a couple of cases for the Court in support of
18 our position.

19 THE COURT: Well, I mean, I -- I think understand
20 the law. But, I mean, I'm trying -- I guess the critical
21 question in my mind was: Did she deny making the
22 statement or what ---

23 MR. STUMBO: Yes.

24 THE COURT: --- I guess ---

25 MR. STUMBO: And -- and I ---

1 THE COURT: --- what I need -- what did she say --
2 read her testimony in its entirety from -- from when she
3 started it. Don't just -- that one thing, where she
4 said, "No, I didn't make it."

5 Because you continued to question her: "Mr. Davis
6 you tell the police . . . "

7 What did -- what was her testimony?

8 MR STUMBO: I -- Judge, I haven't gotten the
9 transcript. Just based ---

10 THE COURT: Okay.

11 MR. STUMBO: --- on what the court reporter relayed
12 to us, kind of, at sidebar yesterday afternoon, I asked
13 her: "Were the children crying?"

14 She said: "No" -- when -- when she was loading them
15 into the car.

16 THE COURT: Right.

17 MR. STUMBO: I said: "But do you recall making a
18 statement to law enforcement where you explained that the
19 children were crying and said that they were upset,
20 crying?" And she said no; she didn't make such a
21 statement or didn't recall that.

22 But Judge, I think the law says if she equivocates
23 at all, she's not admitting it. And if she admits in --
24 and there were several times yesterday where I confronted
25 her with stuff and said: "Well, you said this to law

1 enforcement."

2 And she said: "Yeah, I did."

3 But at that one point, she still said "no" or "I
4 don't remember" or -- and -- and still denied recalling
5 whether the kids were crying or whether she said that,
6 both. And to me, the -- the case *Caymack* [sic] and *State*
7 *v. Blalock* say that the admission must be unequivocal.
8 And I -- there's -- I don't see under any circumstances
9 where her admission to the statement that she made to law
10 enforcement that the kids were crying when she was
11 putting them in the car, that was an unequivocal
12 admission.

13 I mean, I -- I think she really denied it. And
14 then, she kind of -- she said: "No, no," and then, "I
15 don't remember that. That was two years ago."

16 And, Judge, I think, under the law, that's a --
17 that's a -- it's -- it's -- under Rule 613, that triggers
18 the admissibility of extrinsic evidence of the prior
19 inconsistent statement. So, Judge, we have it on body
20 camera. It -- it's a short part of the body-cam
21 interview that Investigator Dickert did with Indigo. We
22 got it -- the -- the time and place of it.

23 I -- I believe the law admit -- it would -- would
24 say it's admissible, Judge ---

25 THE COURT: All right.

1 MR. STUMBO: --- based on what she said. But that
2 -- that would be our position, based on *Caymack* [sic] and
3 *State v. Blalock*, which is 357 S.C. 74. That's a Court
4 of Appeals case from 2004.

5 Court said (as read): The witness must admit to
6 making to making the prior statement unequivocally and
7 without qualification." And I -- Indigo's response to me
8 was -- was far from unequivocal.

9 THE COURT: All right. Mr. Geoly?

10 MR GEOLY: Please the Court, Judge. I'm not sure
11 exactly what part of the video they're saying is -- is
12 prior inconsistent. But I think she was very clear on
13 the stand that she said: "Well, I -- I'm not sure what I
14 said to law enforcement; I -- I don't really recall; this
15 was two years ago."

16 But then, it was like she -- she took count and
17 thought in her mind and said: "But I don't think they
18 were crying." I mean, so I think she, under oath,
19 addressed thinking back to -- to -- to the moment to
20 recollect, Hey, were they crying?

21 Now, I don't know what she said. I don't know what
22 they're going to put forward. There was a lot of video,
23 Judge, you know, probably over 30 hours' worth that -- so
24 I -- I'm not sure what they're -- they're claiming.

25 But a lot of things could've happened when she was

1 making that statement. Even if you're going to call the
2 statement, I don't think it was in -- it certainly wasn't
3 a sworn something. I don't think it was any kind of
4 waiver of rights.

5 I don't think there's any kind of -- you -- not that
6 -- that she necessarily had any, but I -- I -- I think
7 what you're talking about is a conversation that happens,
8 at -- at the very best. And -- and I'm not sure of the
9 language. But I -- I don't recollect her saying whether
10 they were crying while I got them in the car.

11 Now, if it was that specific, "Yes, they were crying
12 while I get them in the car," she says, I think,
13 yesterday under oath, you know, when she is under oath
14 from the stand, I -- I took it to mean: "I'm thinking
15 now, and I just don't remember them crying."

16 So I -- I think she's cleared up any kind of
17 misunderstanding. She did say no; then said: "No, I
18 certainly don't recall them crying." And then, I -- you
19 know, kind of like, "I'm thinking about it, and I just
20 don't remember them crying, Solicitor."

21 I think that's the testimony. I don't think there's
22 anything that -- that they're going to be able to show
23 that says much different. So now, for the solicitor to
24 impeach his own witness like this, I just think is -- is
25 -- I doubt it's going to be very specific to -- to be:

1 "Oh, I'm a liar." You know: "Oh, this guy did versus
2 me."

3 I think you've quoted the seminal case yesterday,
4 where you've got a guy who goes: "No, no. That not it.
5 I lied." That's far different from her being able to
6 remember as she's, you know, dealing with this horrific
7 circumstance, admittedly, and getting the kids in the car
8 for her to think back and recall.

9 It's not like she was making a huge shift to her
10 story. I think, at -- at best -- and again, I'm not sure
11 what reference the -- what they're referencing. But I --
12 -- I can't imagine it's a -- a affirmative --
13 affirmative: "Oh, yes, my kids were crying; they were
14 bawling."

15 You know, I -- I guess I'll look at like you will,
16 Judge. But I can't imagine that what she said yesterday
17 was really much substantially different. Because it
18 seemed like she was very earnest in her attempt to
19 remember yesterday and said: "I just don't think they
20 were crying then when I was putting them in the car."

21 She -- she relates some conversation that they have
22 with her. You know, some talking is going on between her
23 and the kids. And -- and she doesn't discuss them
24 crying. So that -- that's -- that's our position, Your
25 Honor.

1 THE COURT: All right. Well, I think her testimony
2 was that they weren't crying and then she just doesn't
3 remember. If the statement was she told police, "Yeah,
4 they were crying," then yeah, that comes in as a prior
5 inconsistent statement. Because it is directly contrary
6 to what her testimony was.

7 MR STUMBO: Judge, and I believe there's -- there's
8 about a 30-second -- probably where she's explaining to
9 the investigator this -- when this is going on. When
10 she's trying to get them in the car, he's got a gun,
11 shooting in the air.

12 THE COURT: But it's just the -- the prior
13 inconsistent statement is what comes in.

14 MR STUMBO: Right.

15 THE COURT: You can't put up any hearsay from her
16 that bolsters the facts of this case.

17 MR STUMBO: Right. And -- and I -- I -- I think we
18 can do the best we can to just narrow it down to that
19 phrase. I mean, I -- I think -- or sentence where she --
20 she talks about getting the kids in the car ---

21 THE COURT: Well, that's ---

22 MR. STUMBO: --- that were crying.

23 THE COURT: Wherever -- wherever it is that she
24 says, "they're crying," that's the inconsistent
25 statement.

1 MR. STUMBO: Okay.

2 THE COURT: You can't get in anything that she
3 could've testified to here as to what happened, the
4 course of events. I mean, as -- as I understand, you're
5 claiming basically that her testimony on the stand was
6 different than her prior testimony, to the extent that
7 then she said the children were crying; now she's saying
8 the children were not crying.

9 MR STUMBO: Right.

10 THE COURT: So that what comes in.

11 MR STUMBO: Correct. When -- when they're getting
12 in the car. And I think ---

13 THE COURT: Right.

14 MR STUMBO: --- that sentence and -- and when she's
15 talk about that. And I think it's at -- just for the
16 record, it was at 5:10. I believe we found it this
17 morning at 5:10 of -- and -- and I'm going to just --
18 we'll offer it as State's 174 for ID purposes, which
19 would be a new exhibit for the court reporter.

20 THE COURT: Well, let's get it marked.

21 MR. STUMBO: We can go ahead and get it marked.

22 (Whereupon, State's Exhibit 174 was marked for
23 identification.)

24 MR. STUMBO: So it would be the -- the 5:10 point of
25 the video on State's 174.

1 MR GEOLY: Judge, we're just taking -- I think that
2 this video -- I mean, can we review this in-camera to --
3 to see if it actually is a ---

4 THE COURT: Well, that's why we broke earlier ---

5 MR. GEOLY: Yeah.

6 THE COURT: --- yesterday, is for y'all to do it and
7 to get ready as to what we needed to do.

8 MR GEOLY: That -- and this is the first I've heard,
9 you know, as ---

10 THE COURT: Well, I mean, you knew it was out there.
11 We ---

12 MR. STUMBO: Judge ---

13 THE COURT: --- could've taken a look at it. But, I
14 mean, he's certainly entitled to see it before it's
15 presented.

16 MR. STUMBO: Well, I -- I ---

17 THE COURT: So I'm not going to watch it in-camera.
18 But if ---

19 MR. GEOLY: Yes, sir.

20 THE COURT: --- you have never seen it before, then
21 you're ---

22 MR. GEOLY: I -- I ---

23 THE COURT: --- entitled ---

24 MR. GEOLY: Judge ---

25 THE COURT: --- to see it.

1 MR GEOLY: --- I've -- I've looked at all the
2 videos. I'm sure I've seen it. But for me to -- I -- I
3 certainly don't know what video it's on or -- or where I
4 would find this.

5 THE COURT: Okay. Well, if they provided it to you
6 ---

7 MR. STUMBO: It's ---

8 THE COURT: --- then they've ---

9 MR. GEOLY: It's -- it's ---

10 THE COURT: --- done what they needed to do. All
11 right?

12 MR. GEOLY: Well, but ---

13 THE COURT: So I'm not going to review it in-camera
14 ---

15 MR. GEOLY: Yes, sir.

16 THE COURT: --- if this is something that has been
17 presented to you.

18 MR. GEOLY: Judge, I ---

19 THE COURT: No.

20 MR. GEOLY: --- have about -- I -- between 30 and 40
21 hours, I think, of video.

22 THE COURT: I understand ---

23 MR. GEOLY: For me to ---

24 THE COURT: --- that.

25 MR. GEOLY: --- know where a ---

1 MR. STUMBO: Judge, I just ---

2 MR. GEOLY: --- three-second ---

3 MR. STUMBO: --- gave him the minute ---

4 MR. GEOLY: --- you know ---

5 THE COURT: I'm ---

6 MR. GEOLY: --- statement that she -- yes, sir. But
7 -- and -- and again, I -- surely, this wasn't testimony.
8 I mean, there's no testimony that I've reviewed. So this
9 isn't prior testimony. This is a prior conversation with
10 an officer, at best.

11 THE COURT: Okay.

12 MR STUMBO: This is the statement she gives to Ryan
13 Dickert at the sheriff's department on April the 29th,
14 2019. And it is at five minutes and ten seconds of that
15 video, which you've had a discovery for months.

16 MR GEOLY: So it's when she's on pain pills one week
17 after being shot is when he says this and then ---

18 MR STUMBO: I'm done, Judge.

19 MR GEOLY: All right. I -- yes, sir, Judge.

20 THE COURT: All right. All right. Anything else?

21 MR STUMBO: We're ready, Judge.

22 THE COURT: All right. Let's bring the jury in.

23 (Off the record briefly.)

24 (Whereupon, the jury entered the courtroom at 9:56
25 a.m.)

1 THE COURT: All right. Ladies and gentlemen,
2 welcome back. I hope everybody had a good evening. I
3 remind you, if you brought any cell phone or pagers into
4 the courtroom, please make sure you turn them off
5 completely at this time.

6 We're ready to resume with the trial of the case.
7 We're still in the plaintiff's case.

8 The state can call -- excuse me -- not plaintiff,
9 state's case. The state can call your next witness.

10 MR DANIEL: Thank you, Your Honor. May it please
11 the Court. The state calls Deputy Odell Schumpert.

12 (Off the record briefly.)

13 (Whereupon, the witness came forward.)

14 ODELL SCHUMPERT, having been first duly sworn,
15 testified as follows:

16 DEPUTY CLERK OF COURT: Have a seat and state your
17 name for the record.

18 THE WITNESS: Odell Caldwell Schumpert.

19 DIRECT EXAMINATION

20 BY MR. DANIEL:

21 Q All right. And you're Deputy Odell Schumpert with
22 the Newberry Sheriff's Office, correct?

23 A Lieutenant, sir.

24 Q Okay. Lt. Odell Schumpert with the sheriff's
25 office. How long have you been employed with the

1 sheriff's office?

2 A As of today?

3 Q Yes, sir.

4 A Twenty-five years, ten months, and fourteen days.

5 Q Oh, wow. That's great.

6 And you are a lifelong resident of Newberry; is that
7 correct?

8 A That's correct.

9 Q All right. And -- and where do you live, Deputy --
10 or Lieutenant? Excuse me. I'm sorry.

11 A [REDACTED]. That's here in Newberry.

12 Q Okay. So you actually -- you live on [REDACTED],
13 which is in close proximity to the scene of this crime;
14 is that correct?

15 A That's correct.

16 Q And would that be walking distance to [REDACTED]
17 [REDACTED] from your house?

18 A That's correct.

19 Q Okay. All right. Well, I want to take you back to
20 the incident in question, April 20th of 2019. Were you
21 working early-morning hours on that date?

22 A My shift was scheduled to start at 6 a.m.

23 Q Okay. And let me ask you this: Did you hear any
24 gunfire that night from your house?

25 A No, sir, I did not.

1 Q Okay. In any event, do you respond to this -- this
2 particular incident location at [REDACTED]?

3 A Yes, I did.

4 Q Okay. Approximately what time as that?

5 A That's approximately about a quarter till six that
6 morning.

7 Q Okay. About 5:45 a.m.?

8 A Yes, sir.

9 Q Okay. And what was -- what was your reason for
10 responding? What was your -- your function there?

11 A Lt. Carnes called me and told me that they were down
12 the street, and my shift went to relieve that night
13 shift.

14 Q Okay. And was the crime scene -- had it been
15 secured at that point -- taped off? things like that?

16 A It was in the process of being done, sir.

17 Q Okay. And do you know if any search warrants had
18 been obtained to search the premises for anything of
19 evidentiary value?

20 A A search warrant was later obtained.

21 Q Okay. So did you -- did you stay on the scene to
22 help execute that search warrant/participate in the
23 search?

24 A Yes, I did.

25 Q Okay. And who all, if you recall, helped search the

1 -- the -- the house?

2 A It was myself, Sgt. Ryan Dickert, Sgt. Ran
3 Henderson, Sgt. Rusty Fulmer.

4 Q Was there assistance from -- from the South Carolina
5 Law Enforcement Division? Do you recall ---

6 A Yes.

7 Q --- that? Okay.

8 A SLED crime scene unit did respond.

9 Q And what, if anything, were you trying to locate --
10 [REDACTED]? What kind of evidence were you looking
11 for?

12 A Anything that was pertinent to the incident.

13 Q Okay. Firearms-related evidence?

14 A Yes.

15 Q Okay. All right.

16 MR DANIEL: Mr. Bentley, if you could, pull up 93.
17 It's in evidence.

18 Q Okay. And Lt. Schumpert, if you need to -- to
19 adjust your seat to -- to see the TV screen -- all right.
20 That's [REDACTED], correct?

21 A That's correct.

22 MR DANIEL: And, Your Honor, without walking past
23 the jury -- and I don't think Mr. Geoly has -- has agreed
24 to the admissibility. But I want to show State's 133 so
25 Deputy Schumpert can -- can look on Mr. Bentley's

1 computer without the -- the jury being able to see the
2 image.

3 THE COURT: All right. And they can't see this one,
4 can they?

5 MR DANIEL: No, sir. I don't think they can. Oh --
6 I'm being told he can't disconnect.

7 THE COURT: Okay. Have you got the paper ---

8 MR. DANIEL: I -- I do ---

9 THE COURT: --- exhibit?

10 MR. DANIEL: --- Your Honor.

11 THE COURT: All right. Well, let's use the paper
12 exhibit, then. Show it to him. You can do it through
13 that.

14 MR DANIEL: Your Honor, if -- to be more efficient,
15 may I just pass forward my computer screen to the deputy?

16 THE COURT: That'll be fine.

17 MR. DANIEL: And he can navigate through the
18 corresponding numbers.

19 THE COURT: That'll be fine.

20 (Off the record briefly.)

21 MR. DANIEL: You can just use the arrows.

22 THE WITNESS: The arrows?

23 MR DANIEL: And, Your Honor, I'm just instructing
24 Lieutenant, he can use the arrows to shift back to the --
25 to the numbers for ID.

1 Q All right, Deputy Schumpert. Do you recognize
2 State's 133?

3 Q Yes, sir, I do.

4 Q Okay. And what is that?

5 A That is the living room, once you enter the front
6 door, along with the kitchen area.

7 Q Okay. And you entered that -- you entered the
8 living room to search for, essentially, firearm-related
9 evidence?

10 A Yes, sir.

11 Q Okay. All right. And that's a fair and accurate
12 representation of what you observed when you entered the
13 633 residence; is that correct?

14 A Yes, sir.

15 MR DANIEL: Your Honor, I'd offer State's 133 for
16 admission into evidence.

17 THE COURT: Any objection?

18 MR GEOLY: Yes, sir, Your Honor.

19 THE COURT: All right. Grounds for ---

20 MR GEOLY: Relevance.

21 THE COURT: All right.

22 MR DANIEL: Your Honor, this is the crime scene. I
23 ---

24 THE COURT: Okay. State's 133 is admitted into
25 evidence over defendant's objection.

1 MR. DANIEL: Thank you, Your Honor.

2 (Whereupon, State's Exhibit 133 was entered into
3 evidence.)

4 Q All right. Deputy Schumpert, if you could, go to --
5 to 135. You recognize that image?

6 A Yes, sir.

7 Q Okay. And describe what you're seeing.

8 A That is the kitchenette area of the residence.

9 Q Okay. And -- pardon me. All right. Did you find
10 anything of evidentiary value in the living room, you
11 personally?

12 A Not in the living room. No, sir.

13 Q Okay. All right.

14 MR DANIEL: Your Honor, I'd offer State's 135 for
15 admission into evidence.

16 THE COURT: Any objection?

17 MR GEOLY: Without objection, Your Honor.

18 THE COURT: All right. State's Exhibit 135 admitted
19 into evidence without objection.

20 (Whereupon, State's Exhibit 135 was entered into
21 evidence.)

22 Q All right. On the left side of that -- that
23 photograph, 135, Lt. Schumpert, was that that we see on
24 the left side?

25 A It's, like, a green storage container, something

1 like what they call Tupperware which you have stored your
2 clothes or something in like that.

3 Q Okay. And in the middle of that image on -- looks
4 like kitchen table, what are we looking at there?

5 A Look like a old birthday cake.

6 Q Okay. All right. At this green storage container,
7 did you further search the contents of that green storage
8 container?

9 A Yes, sir, I did.

10 Q Okay. If you could, Lt. Schumpert, go to 136. All
11 right. What are we looking at there?

12 A The storage container.

13 Q All right.

14 MR DANIEL: Your Honor, I'd offer State's 136 for
15 admission into evidence.

16 THE COURT: Any objection?

17 MR GEOLY: Without objection, Your Honor.

18 THE COURT: All right. State's Exhibit 136 admitted
19 into evidence without objection.

20 (Whereupon, State's Exhibit 136 was entered into
21 evidence.)

22 Q All right. That's just another vantage point of the
23 green storage container?

24 A Yes, sir.

25 Q All right. Go to 150, Lt. Schumpert. Do you

1 recognize that?

2 A Yes, sir.

3 Q Okay.

4 A That is the back door with a cooler and a storage
5 container.

6 Q All right. That green storage container is right
7 near the back door; is that correct?

8 A That's correct.

9 Q Okay.

10 MR DANIEL: Your Honor, I'd offer State's 150 for
11 admission into evidence.

12 THE COURT: Any objection?

13 MR GEOLY: Objection, Your Honor: relevance and
14 cumulative.

15 THE COURT: All right. State's Exhibit 150 admitted
16 into evidence over defendant's objection.

17 (Whereupon, State's Exhibit 150 was entered into
18 evidence.)

19 Q All right. 151, Lt. Schumpert, if you could, look
20 at that. All right. Do you recognize that?

21 A I do, sir.

22 Q All right. And tell us -- tell us what we're
23 looking at.

24 A That is a black-in-color .22 eight-shot revolver.

25 Q Okay. And did you personally discover that .22

1 pistol?

2 A I did.

3 Q Okay. And it was located just as it's portrayed in
4 that particular image, 151; is that correct?

5 A That is correct.

6 Q All right.

7 MR DANIEL: Your Honor, I'd offer State's 151 for
8 admission into evidence.

9 THE COURT: All right. That's -- there must be
10 something wrong with what you gave me.

11 MR GEOLY: Is that 151?

12 MR DANIEL: No. We haven't -- it hadn't been
13 admitted in evidence ---

14 THE COURT: Oh, I see. Okay. Let me take a look at
15 it again.

16 All right. I see. Any objection to State's Exhibit
17 151?

18 (Off the record briefly.)

19 MR GEOLY: Your Honor, I would object to relevance
20 and cumulative. This is the third picture we have of
21 this green container.

22 THE COURT: All right. State's Exhibit 151 is
23 admitted into evidence over to defendant's objection.

24 MR GEOLY: Thank you, Your Honor.

25 THE COURT: Thank you.

1 (Whereupon, State's Exhibit 151 was entered into
2 evidence.)

3 MR DANIEL: And, Your Honor, the -- the -- the
4 picture at 152, I'll -- I'll -- is just a closer-up image
5 of that. I'd -- I'd offer 152 for admission into
6 evidence as well.

7 THE COURT: Well, you're going to have to lay some
8 foundation. You can't just say -- unless there's an --
9 is there an objection?

10 MR GEOLY: Yes, sir, Your Honor.

11 THE COURT: Okay. You're going to need to lay a
12 foundation for it.

13 MR DANIEL: All right.

14 Q Lt. Schumpert, if you look at 152, do you recognize
15 that image?

16 A Yes, sir, I do.

17 Q And -- and what is that image of?

18 A It is a .22 revolver which was located in a crate
19 and is in the exact position is I found it.

20 Q Okay.

21 MR DANIEL: Your Honor, I'd offer State's 152 for
22 admission into evidence.

23 THE COURT: All right. Objection?

24 MR GEOLY: I'd object, Your Honor. By the state's
25 own words, it's just a -- basically a closer-up picture

1 of the last picture they've admitted into evidence. We'd
2 argue it's cumulative.

3 THE COURT: All right. State's Exhibit 152 admitted
4 into evidence over defendant's objection.

5 MR GEOLY: Thank you, Judge.

6 (Whereupon, State's Exhibit 152 was entered into
7 evidence.)

8 THE COURT: Yeah.

9 Q And, Lt. Schumpert, this is in evidence already as
10 State's No. 8.

11 MR DANIEL: I'll -- I'll ask the clerk to pass that
12 to the witness, Your Honor.

13 Q Do you recognize State's No. 8?

14 A Yes, sir, I do.

15 Q Okay. And that is -- and what is that?

16 A This is the Ruger .22 eight-shot revolver that was
17 located in the crate.

18 Q Okay. And that was right near the back door; is
19 that correct?

20 A That is correct.

21 Q Okay. All right. Lt. Schumpert, if you could go to
22 156 for ID purposes and -- and tell us if you recognize
23 that image.

24 A I do.

25 Q All right. And -- and what is that?

1 A When I moved the -- a couple of the things that were
2 on top of the crate, that bag is a paper bag which had
3 what appeared to be a box of ammunition.

4 Q Okay. So that was -- a box of ammunition was right
5 next to the .22 pistol that you discovered?

6 A Yes, sir.

7 MR DANIEL: Your Honor, I'd offer State's 156 for
8 admission into evidence.

9 THE COURT: Any objection?

10 MR GEOLY: Yes, Your Honor.

11 THE COURT: All right.

12 MR. GEOLY: Objection to relevance and cumulative.

13 THE COURT: All right. State's Exhibit 156 admitted
14 into evidence over defendant's objection.

15 (Whereupon, State's Exhibit 156 was entered into
16 evidence.)

17 Q And then, 157, Lt. Schumpert, if you could look at
18 that. Tell us what -- tell us if you recognize State's
19 157.

20 A Yes, sir. That's the box of ammunition.

21 Q Okay?

22 MR DANIEL: Your Honor, I'd offer State's 157 for
23 admission into evidence.

24 THE COURT: Any objection?

25 MR GEOLY: Your Honor, I object twofold: (1) It's

1 cumulative; and (2) I believe it would be confusing to
 2 the jury inasmuch as you just have a -- a box of -- of
 3 ammunition that we've got another box of ammunition we
 4 just admitted a picture to. I don't know how we're going
 5 to differentiate; don't know whether that establishes
 6 it's the same box or a different box. And so I believe
 7 that would also tend to confuse the jury, Your Honor, as
 8 well as being cumulative again.

9 THE COURT: All right. State's Exhibit No. 157 is
 10 admitted into evidence over defendant's objection.

11 MR GEOLY: Thank you, Judge.

12 (Whereupon, State's Exhibit 157 was entered into
 13 evidence.)

14 Q All right. And 157, Lt. Schumpert, that is a -- a
 15 box of ammunition; is that correct?

16 A That is correct.

17 Q What kind of ammunition is that?

18 A 9-millimeter.

19 Q Okay. And is that ammunition consistent with any
 20 physical evidence located at the scene?

21 A Yes. It's consistent with the shell casings that
 22 were located outside.

23 Q Okay. So that 9-millimeter shell casings -- there
 24 were 9-millimeter spent shell casings on the premises --
 25 front -- front of the premises; is that correct?

1 A That's correct.

2 Q And that's a box of 9-millimeter ammunition?

3 A That is correct.

4 Q Okay. All right. Tell us why -- all right. So we
5 -- we've covered the green -- green storage container; is
6 that correct, Lieutenant?

7 A That's correct.

8 Q All right. So tell us what you do next as part of
9 your search?

10 A I go down the hall to the master bedroom.

11 Q Okay. If you could, Lieutenant, look at State's
12 137. Do you recognize that?

13 A That's correct.

14 Q All right. And what is that?

15 A That is looking down the hall, past the back door to
16 the master bedroom.

17 Q Okay. So the green storage container was right near
18 the back door, correct?

19 A That's correct.

20 Q So if you keep walking towards that direction,
21 that's the entry way up to the master bedroom?

22 A Yes, sir. To the left.

23 Q Okay.

24 MR DANIEL: Your Honor, I'd offer State's 137 for
25 admission into evidence.

1 THE COURT: Any objection?

2 MR GEOLY: No objection, Your Honor.

3 THE COURT: All right. State's Exhibit 137 admitted
4 into evidence without objection.

5 (Whereupon, State's Exhibit 137 was entered into
6 evidence.)

7 Q All right. 138, Lt. Schumpert, do you recognize
8 that?

9 A Yes, sir.

10 Q And what is that?

11 A That is standing at the doorway of the master
12 bedroom ---

13 Q Okay.

14 A --- looking into it.

15 Q All right. And then, you did make entry into that
16 master bedroom to continue your search, correct?

17 A That is correct.

18 MR. DANIEL: Your Honor, I'd offer State's 138 for
19 admission into evidence.

20 THE COURT: Any objection?

21 MR. GEOLY: Objection, Your Honor. It's literally
22 almost the same exact photo; cumulative.

23 THE COURT: All right. State's Exhibit 138 admitted
24 into evidence over defendant's objection.

25 (Whereupon, State's Exhibit 138 was entered into

1 evidence.)

2 Q All right. And upon entering the master bedroom,
3 did you locate anything of evidentiary value?

4 A I did.

5 Q All right. What did you -- what did you first
6 locate in the ---

7 A Up underneath ---

8 Q --- master bedroom?

9 A --- the mattress was a semi-automatic 9-millimeter
10 pistol.

11 Q Okay. I'm -- I think I may have cut you off a
12 little bit. Tell us what you first discovered?

13 A When I went into the bedroom, I raised the mattress.
14 And underneath the mattress was a semi-automatic 9-
15 millimeter pistol.

16 Q All right. So if you'd take a look at 139 and also
17 take a look at 160. You recognize 139 and 160,
18 Lieutenant?

19 A Yes. 139 is the bed itself. And 160 is with the
20 mattress with the pistol where I found it.

21 MR. DANIEL: Your Honor, I'd offer 139 and 160 for
22 admission into evidence.

23 THE COURT: Any objection?

24 MR. GEOLY: Without objection, Your Honor.

25 THE COURT: All right. State's Exhibits 139 and

1 State's Exhibit 160 admitted into evidence without
2 objection.

3 (Whereupon, State's Exhibits 139 and 160 were
4 entered into evidence.)

5 Q All right. So 139, that's the -- the bed in the
6 master bedroom you just described?

7 A Yes.

8 Q And you lifted -- you lifted up the mattress; is
9 that correct?

10 A That's correct.

11 Q And then, that's when you located a -- a firearm; is
12 that correct?

13 A That is correct.

14 Q All right.

15 MR. DANIEL: 160, Walter.

16 Q All right. And is that what you observed when you
17 lifted up the mattress, what's in 160?

18 A That is correct, sir.

19 Q Okay. And that was -- what type of firearm was it?
20 Do you recall?

21 A 9-millimeter.

22 Q All right. 161, you recognize that?

23 A Yes, sir. That is a closer picture of the 9-
24 millimeter with serial number.

25 Q All right.

1 MR. DANIEL: Your Honor, I'd offer 161 for admission
2 into evidence.

3 THE COURT: Any objection?

4 MR. GEOLY: Without objection.

5 THE COURT: All right. State's Exhibit 161 admitted
6 into evidence without objection.

7 (Whereupon, State's Exhibit 161 was entered into
8 evidence.)

9 Q And, Lt. Schumpert, I'll pass -- pass what's been
10 marked for ID purposes as State's No. 9. I ask the clerk
11 to pass that to you. Tell us if you recognize that.

12 A Yes, sir. This is ---

13 Q Okay.

14 A --- the firearm that was located under the mattress.

15 Q But you were the first officer -- you actually were
16 the first officer to actually located that 9-millimeter
17 pistol; is that correct?

18 A Correct, sir.

19 Q All right.

20 MR. DANIEL: Your Honor, I'd offer State's No. 9 for
21 admission into evidence.

22 THE COURT: That's No. 9?

23 MR. DANIEL: Yes, sir.

24 THE COURT: All right. Any objection?

25 MR. GEOLY: No objection, Your Honor.

1 THE COURT: All right. State's Exhibit No. 9
2 admitted into evidence without objection.

3 (Whereupon, State's Exhibit 9 was entered into
4 evidence.)

5 MR. DANIEL: And, Your Honor, I'll represent to the
6 Court that that firearm has been inspected by the
7 sheriff's office. It's been cleared for safety, and it
8 has a trigger lock on it.

9 THE COURT: All right.

10 Q All right. Lt. Schumpert, still on this master
11 bedroom, did you locate any other items of evidentiary
12 value in this master bedroom?

13 A Yes, I did.

14 Q Okay. What'd you -- what else you locate?

15 A In the dresser drawer, the second one closest to the
16 door of entry, it was cracked open. So I pulled it open
17 further.

18 Q Okay. Go to 140, Lt. Schumpert. You recognize
19 that?

20 A Yes, sir. That is the drawers that was slightly
21 open, and I pulled it open.

22 Q Okay. And what was located in that drawer?

23 A Several rounds, unspent rounds.

24 Q Okay. Several, I guess I'll call it, live rounds or
25 unfired rounds of ammunition?

1 A That's correct.

2 Q All right.

3 MR. DANIEL: Your Honor, I'd offer State's 140 for
4 admission into evidence.

5 THE COURT: Any objection?

6 MR. GEOLY: Beg the Court's indulgence one moment,
7 Your Honor.

8 THE COURT: All right.

9 (Off the record briefly.)

10 MR. GEOLY: Your Honor, without objection.

11 THE COURT: All right. State's Exhibit 140 admitted
12 into evidence without objection.

13 (Whereupon, State's Exhibit 140 was entered into
14 evidence.)

15 Q All right. If you could, go to 163, Lt. Schumpert.
16 You recognize that?

17 A Yes, sir, I do.

18 Q Okay. And what is that?

19 A Those are the live rounds which were located in the
20 drawer.

21 Q Do you know the exact count of those live rounds, or
22 did you -- did you personally count them?

23 A I have to look back at my report to get the actual
24 ---

25 Q Okay.

1 A --- number.

2 Q All right.

3 MR. DANIEL: Your Honor, I'd offer State's 163 for
4 admission into evidence.

5 THE COURT: Any objection?

6 MR. GEOLY: Your Honor, no objection.

7 THE COURT: State's Exhibit 163 admitted into
8 evidence without objection.

9 (Whereupon, State's Exhibit 163 was entered into
10 evidence.)

11 Q All right. And that's just a closer image of what
12 you observed when you pulled out that drawer, correct?

13 A That is correct, sir.

14 Q And each time you would something of evidentiary
15 value -- like the .22; the box ammunition; the 9-
16 millimeter; and then, of course, what's in the drawer
17 that we're looking at on -- on State's 163 -- what would
18 you do upon discovering the -- these items?

19 A It was left in place until after it was
20 photographed.

21 Q Okay.

22 A Uh-huh.

23 Q Okay. Who did you -- who -- who did you notify that
24 you had located these items, firearms-related evidence?

25 A I notified the technician from SLED. And they

1 photographed it, along with Investigator Sgt. Ryan
2 Dickert and Sgt. Ren Henderson.

3 Q Okay. So then you notified SLED crime scene agents
4 of the items that you located and they took it from
5 there; is that correct?

6 A That is correct.

7 Q All right, Lt. Schumpert. Was that the --
8 essentially, the extent of your role in this
9 investigation?

10 A That is correct, sir.

11 Q All right. All right. Thank you, Lieutenant.
12 Please answer any questions Mr. Geoly has.

13 THE COURT: All right. Cross-examination.

14 MR. GEOLY: Yes, sir. If it please the Court?

15 THE COURT: Yes.

16 CROSS-EXAMINATION

17 BY MR. GEOLY:

18 Q If you could pull up that last photo you have.

19 A 163?

20 Q I'm sorry?

21 A Is it 163? It's the last photo?

22 Q Yes, sir, that one right there.

23 A Yes, sir.

24 Q Can you see that okay from where you're sitting?

25 All right. I guess you've got it on the computer as

1 well, Lieutenant?

2 A Yes, sir.

3 Q Okay. Lt. Schumpert, that -- that right there, that
4 -- that's basically from the box, right, that you found?

5 A I'm not for sure, sir.

6 Q Okay. Isn't that typically what a box, like that
7 green box that you -- you were looking at just a minute
8 ago, that's the kind of thing it would hold to then hold
9 the bullets within that green box, wouldn't it?

10 A Yes, sir. They're in a Styrofoam or plastic ---

11 Q Okay.

12 A --- which may have five or so in a row.

13 Q So -- and it looks like that that -- I -- I don't
14 even know what to call it. But -- but the bullet holder,
15 let's call it, that would typically be in that box,
16 that's still in that drawer, right?

17 A No, sir. I didn't see it.

18 Q Well, do you see the bullet holder right there -- I
19 mean, the -- the -- the -- beside the bullets, isn't that
20 from the box?

21 A Oh, the gray thing. Yes, sir.

22 Q Do you see what I'm saying? I mean, that's from
23 that green box, isn't it?

24 A I'm not for sure.

25 Q All right. The green box that you found in -- in

1 the -- the green tub, the -- the green bullet box,
2 ammunition box, do you -- do you remember on ---

3 A Yes, sir.

4 Q --- the photo before?

5 A Well ---

6 Q All right.

7 A --- I can't ---

8 Q Did ---

9 A --- speculate.

10 Q --- did it have one of those in it? Or is that from
11 the same box of bullets?

12 A I'm not sure, sir. I can't ---

13 Q Okay.

14 A --- speculate because I did not move the box of
15 rounds that were in the container. I left that and other
16 people moved it ---

17 Q Okay.

18 A --- after ---

19 Q Do you know ---

20 A --- they brought ---

21 Q --- if anybody else moved it?

22 A I'm not sure who moved it ---

23 Q Okay.

24 A Or who ---

25 Q Is the ---

1 A --- collected it.

2 Q Is there a chance it got moved from that drawer to
3 that box by somebody other than you and other than my
4 client?

5 A I can't answer that. I can't speculate.

6 Q So you don't know?

7 A No, sir.

8 Q Okay. Let me ask you, just because you indicated
9 you live in this neighborhood; is that right?

10 A That is correct.

11 Q And your -- your middle name, is that a family name?

12 A That is correct.

13 Q All right. And the defendant -- or excuse me -- the
14 -- the victim, the young man in this case, the 7-year-
15 old's actually last name was Caldwell. Are you some
16 relation to him?

17 A No, sir, I'm not.

18 Q Okay. Are you some relation to the Hunters? I know
19 they got a lot of family that lives there ---

20 A No, sir, I'm not.

21 Q You're not a cousin or distant relation to the
22 Hunters at all?

23 A No, sir, I am not.

24 Q Okay. What time did you get out there on the scene
25 that day?

1 A Roughly about a quarter till six.

2 Q Okay. So this had all happened before you got
3 there?

4 A That is correct.

5 Q Okay. You -- you don't have anything to offer this
6 jury in terms of with all these pictures and the evidence
7 that you have to offer, this was kind of the aftermath,
8 right?

9 A Yes, sir.

10 Q You don't have anything to testify regarding my
11 client's intent?

12 A No, sir, I ---

13 Q You ---

14 A --- do not.

15 Q --- you don't know what was going on at this house
16 that night?

17 A No, sir, I did not.

18 Q Okay.

19 MR. GEOLY: No further questions, Judge.

20 THE COURT: All right. Redirect?

21 REDIRECT EXAMINATION

22 BY MR. DANIEL:

23 Q Your -- Lt. Schumpert, you'd have no way of knowing
24 what -- what transpired prior to getting on the scene at
25 -- at a particular incident location, would you?

1 A No, sir. I would have no idea.

2 Q Thank you.

3 THE COURT: All right. You may step down.

4 (Whereupon, the witness exited the witness stand.)

5 (Off the record briefly.)

6 THE COURT: All right. The state can call your next
7 witness.

8 MR DANIEL: Your Honor, the state calls Investigator
9 Ryan Dickert.

10 THE COURT: All right.

11 (Off the record briefly.)

12 (Whereupon, the witness came forward.)

13 RYAN DICKERT, having been first duly sworn,
14 testified as follows:

15 DEPUTY CLERK OF COURT: Have a seat and state your
16 name for the record.

17 THE WITNESS: Ryan Dickert.

18 DIRECT EXAMINATION

19 BY MR. DANIEL:

20 Q All right, Investigator Dickert. I've already said
21 it. You're an investigator with the Newberry Sheriff's
22 Office; is that correct?

23 A Yes, sir. That's correct.

24 Q Okay. How long have you been employed by the
25 Newberry Sheriff's Office?

1 A This year will make 18 years.

2 Q Okay. So 15 years with the sheriff's office. Any
3 other law enforcement agencies prior to going to the
4 sheriff's office?

5 A I started at the detention center back in 2003, if
6 -- but it's still with the same agency.

7 Q Okay. All right. And so you've been -- you've been
8 in investigations for some time, though, correct?

9 A Yes, sir.

10 Q All right. I want to go back to the incident in
11 question, April 20th, 2019. Now, I looked at my
12 calendar. That was a Saturday; is that correct?

13 A That's correct.

14 Q Okay. Do you -- were you working as the weekend
15 investigator on that particular date?

16 A Yes, sir. I would've been the on-call investigator.

17 Q Okay. And if you could, just speak up just a little
18 bit ---

19 A I'm sorry.

20 Q --- Investigator Dickert.

21 All right. So you were the on-call investigator
22 that weekend. And so y'all rotate amongst other
23 investigators who's the -- the weekend on-call
24 investigator?

25 A Well, we actually rotate by week. So you'd get it

1 for seven days at a time.

2 Q Okay. All right. Well, I'll get right to it. Did
3 you have an occasion to respond out to the Newberry
4 County Hospital on the early-morning hours of April 20th,
5 2019?

6 A Yes, sir.

7 Q Okay. And tell us: What was the nature of that --
8 that call that you responded to out there?

9 A I had received a call from our dispatch center,
10 advising that the two -- county had two gunshot victims
11 that were at the Newberry Hospital. They couldn't
12 provide much more information, other than I was being
13 requested to -- to respond at that time.

14 Q Okay. Approximately what time -- what time are you
15 dispatched out there -- or -- or should I say: What time
16 did you actually arrive at the hospital?

17 A According to our CAD record, it would've been, I
18 believe, 3:49 a.m.

19 Q Okay. All right. So when you respond out to the
20 hospital, what's the first thing that you observe,
21 relevant to this investigation?

22 A I parked at the emergency entrance for the general-
23 public side. It was a greenish-blue-in-color Toyota
24 Camry. I believe that all the doors were open, which was
25 odd.

1 Q Okay. And just like with the last witness,
2 Investigator Dickert, I'm going to hand you my computer.
3 That way I'm not back and forth ---

4 A Taylor ---

5 Q --- in this area ---

6 A --- I'm good.

7 Q --- with the jury.

8 A I've got mine.

9 Q You can look at them on the -- my computer.

10 A I got my photos, if ---

11 Q Okay.

12 A --- that'll help you.

13 Q Well, go ahead and take my computer, just ---

14 A Okay.

15 Q --- in case.

16 All right. If you could, look at -- you just
17 described a Toyota Camry at the front of the emergency
18 room entrance, is what you observed?

19 A That's correct.

20 Q All right. Do you recognize State's 22, then?

21 A I do.

22 Q All right. And what is that?

23 A That would be the vehicle that Indigo Penny drove to
24 the hospital that morning.

25 Q Okay.

1 MR. DANIEL: Your Honor, I'd offer State's 22 for
2 admission into evidence.

3 THE COURT: Any objection?

4 MR. GEOLY: Judge, having a computer glitch, if --
5 bear with me one moment, please.

6 THE COURT: All right.

7 MR. GEOLY: No objection, Your Honor.

8 THE COURT: All right. State's Exhibit 22 admitted
9 into evidence without objection.

10 (Whereupon, State's Exhibit 22 was entered into
11 evidence.)

12 Q All right. So that's one of the first things you
13 observe when you responded to the hospital a little
14 before 4 a.m.; is that correct?

15 A That's correct.

16 Q Okay. Take us through what you did next.

17 A I was briefed, I believe, by Deputy Longshore in the
18 -- in the parking area with what was being dealt with in
19 the ER, as far as victims were concerned. Kind of gave
20 me an idea that there was a -- a child that had been
21 involved in this, as well as the -- the mother of the
22 child.

23 Q Okay.

24 MR. DANIEL: Go to 19, Walter. That's in evidence.

25 Q All right. And did you take that photograph?

1 A Yes, sir. I believe I did.

2 Q Okay. And did you note anything else as it pertains
3 to -- to the vehicle at that point in time?

4 A On the hood of the vehicle ---

5 THE COURT: I'm sorry, sir. If you -- you're going
6 to need to speak into the microphone. I can't really
7 hear you.

8 THE WITNESS: I -- I am. I'm trying.

9 THE COURT: Okay.

10 A On the hood of the vehicle, there is a -- a bullet
11 defect almost in the center of the vehicle, the hood of
12 it.

13 Q Okay. And then, also, right underneath the driver's
14 side door on the ground, what do we note -- do you note
15 anything there?

16 A Yes. It -- it appeared to be an entry hole where a
17 bullet went into the vehicle.

18 Q No. On the ground. I'm sorry.

19 A Oh, on the ground. I'm sorry. Yes. It was bloody
20 footprints.

21 Q Okay. And was that bloody footprint, was that
22 leading into the entrance of the Newberry ER?

23 A That's correct. You can tell from the photograph
24 that they started at the -- the car and actually come up
25 onto the curbing and go towards the entrance.

1 Q Okay. All right. So those are your first
2 impressions upon arriving at the scene; is that correct?

3 A That's correct.

4 Q All right. So then, take us to when you actually go
5 into the hospital. I think you said you were briefed by
6 one of the responding officers?

7 A That's correct.

8 Q All right. Go ahead. Take it from there.

9 A Well, upon entering the -- the hospital ER
10 department, you could tell it was very chaotic. There
11 was a lot of activity, which is not normal for Newberry.
12 The nurses all seemed to be very concerned about what
13 they were dealing with.

14 Room 4, which would be the -- the trauma room, had a
15 lot of activity: doctors and nurses and equipment coming
16 and going. And I believe that's where -- where Iven was
17 -- was being treated. And then, Ms. Indigo was in, I
18 think, Room -- I believe it's Room 2 or 3.

19 Q Okay. So at that point in time, what -- it's your
20 understanding you had identified the two gunshot wound
21 victims?

22 A Yes, sir.

23 Q Okay. And what was Iven's condition at that point
24 in time when you first arrived?

25 A According to the hospital staff, it was grim.

1 Q Grave condition?

2 A Yeah.

3 Q Okay. All right. So obviously, you're unable to
4 speak with him. Do you go talk to Indigo at some point?

5 A Yes, sir. We attempted to -- to speak with her.
6 The hospital advised that they were going to transfer
7 Iven to a trauma center so that hopefully they could
8 provide better service. And we took time to allow Ms. --
9 Ms. Indigo and Ms. Vinnie to -- to see him prior to
10 leaving the -- the hospital.

11 Q Okay. So -- so Newberry Hospital does not have the
12 capacity to treat somebody, well, with -- with serious
13 injuries such at what Iven had sustained?

14 A That's correct.

15 Q Okay. All right. So at that point had y'all
16 developed any type of suspect, as it pertains to the
17 shooting, at this point in time?

18 A I had received limited information from the deputies
19 on scene that it may have been her husband that committed
20 this. But I had not spoken with her directly and -- and
21 gotten that information.

22 Q Did you have a location of the actual shooting
23 incident at this point in time?

24 A Yes, sir. It'd have been [REDACTED] in -- in
25 the Helena section of -- Helena Community of Newberry

1 County.

2 Q Okay. And so once you go speak with -- so you
3 obviously, at this point in time, want to do a follow-up
4 with Indigo, because she's conscious and alert; is that
5 correct?

6 A Correct.

7 Q All right. And who else was -- did you -- were you
8 recording all this? I -- I know you're equipped with
9 body cams; is that correct?

10 A Yes, sir. I had my -- my body cam activated and on.

11 Q Okay. Were there other law enforcement present when
12 you go to Indigo Penny's room?

13 A Yes, sir. Sheriff Lee Foster was present, as well
14 as our victims advocate, Connie Johnson with the
15 sheriff's office, and -- and numerous medical staff was
16 in and out of the room.

17 Q What -- what injuries did you observe Indigo had
18 sustained?

19 A She sustained a gunshot to the lower-left leg, just
20 above her ankle. It appeared to be through and through.

21 Q All right. That was a through-and-through gunshot
22 wound to the lower-left leg ---

23 A Yeah.

24 Q --- lower-left leg/ankle area?

25 A Yes, sir.

1 Q Okay. And was -- what was her condition at that
2 point when you interview her?

3 A Obviously, based off the circumstances, she was
4 extremely upset. I don't know that she knew the
5 condition of her -- her child at that point in time. I
6 know that she understood that it wasn't good. And she
7 was obviously in some pain from -- from the gunshot.

8 Q Okay. Did Indigo identify the source of her
9 injuries?

10 A She did.

11 Q Okay. And who did she identify as -- as -- as the
12 shooter?

13 A She identified Xzay as being the shooter and was
14 asking who Xzay was. And she identified Xzavier Sharif
15 Davis as being the person who shot her.

16 Q Okay. Being the person who shot her?

17 A Shot into the vehicle.

18 Q Okay. All right. So at that point in time, do you
19 proceed to -- to interview her fully about what
20 transpired -- of what let up to the shooting and so
21 forth?

22 A Yes, sir. We attempted to try to gain as much
23 information as we could to try to understand why this
24 took place. She couldn't really advise that a whole lot
25 went on: that he had gone to some kind of fish-fry

1 gathering and she had stayed home; she'd been out
2 preparing for a surprise birthday party for her father,
3 which would've been, I guess -- I think it was --
4 would've been given to him on the 20th of April.

5 Q Okay. Did you -- at this point in time, when she's
6 disclosing all this information, at what point in time
7 was Xzavier Davis taken into custody?

8 A According to the CAD notes, it would've been
9 approximately 4:06 a.m.

10 Q Okay. And according to -- and your body cam comes
11 with time stamps; is that correct?

12 A That's correct.

13 Q And so when you're interviewing Indigo Penny, did
14 you go back and look at the -- the time stamp of -- of
15 when you actually talked to her about the shooting at the
16 hospital?

17 A I honestly can't recall what time it was. I would
18 say it would -- if I've gotten there at ten till four, it
19 would be the 4-to-4:15 time range.

20 Q But at the time you're talking to her, was that
21 before or after Xzavier Davis had been taken into
22 custody?

23 A I believe it was after.

24 Q Okay. All right. What about the other two -- were
25 there other victims associated with this incident that

1 you interviewed?

2 A Yes, sir. There were two other children that were
3 in the vehicle, along with Indigo and Iven. And that was
4 3-year-old Penelope and 8 -- I think he was either 8 or 9
5 months old, but Xzavier, Jr.

6 Q Okay. So there was a -- a -- 3-year-old Penelope;
7 and then, an infant, 9-month-old Xzavier, Jr.?

8 A Yes, sir.

9 Q Okay. What, if any, injuries did they have?

10 A Penelope complained about a scratch or advised on a
11 scratch that was on the back of her -- her right ankle, I
12 believe.

13 Q And was a nurse present when Penelope disclosed this
14 injury?

15 A Yes, sir.

16 Q Okay. What -- what -- what was the emotional
17 condition of these children at that time?

18 A You could tell that they had experienced something
19 very traumatic. It -- it was definitely difficult.

20 Q And were Xzavier, Jr., and Penelope -- were they --
21 were they crying, things like that?

22 MR. GEOLY: Objection to leading, Your Honor.

23 THE COURT: No. That's not leading. I'll allow it.
24 Go ahead.

25 A Truthfully, he -- he seemed to be in good spirits

1 with the nurse that was in there. She was doing a -- a
2 fantastic job. And I spoke to him, and he cried. But I
3 -- I think overall, for him, he was happy with -- with
4 the treatment that he was getting from the nurse.

5 Penelope, having a child that was much her age -- I
6 think they're just a couple months apart -- you could
7 tell that she knew something bad had happened, because
8 she just sat there.

9 Q Uh-huh. And what about the clothing? Because there
10 was, as we saw in that photograph that we're looking at
11 right there, State's -- is that -- is that 20? -- there's
12 blood leading into the hospital. Were there blood on the
13 clothing that the occupants of this vehicle had, things
14 like that

15 A When we went into the room, there wasn't any blood
16 on the clothing that she had. But we were advised that
17 she had been given a shirt by medical staff -- Penelope
18 -- due to her shirt having blood on it.

19 Q Okay. So at the time you are, I guess, assessing
20 Penelope's injuries, she had had a change of clothes?

21 A She had been given a new shirt. Yes, sir.

22 Q Okay. Did hospital staff transfer the clothing
23 items to you that these kids had on, these three
24 children?

25 A Yes, sir. I received two bags. One had a T-shirt

1 that Penelope had on. And the other bag contained
2 clothing that Iven would've been wearing.

3 Q And Indigo's condition -- I mean, she had just been
4 shot, correct?

5 A Correct.

6 Q What -- was she given pain medication, to your
7 knowledge?

8 A I'm not a medical doctor. But I would assume so.

9 Q Okay. Did her -- her condition -- when you
10 interviewed her, did she appear to be under the influence
11 of some type of anaesthesia? morphine? that kind of
12 thing?

13 A I honestly couldn't tell you whether she was or
14 wasn't.

15 Q Okay. All right. Now let's go back out. SLED
16 crime scene -- Sheriff Foster testified that he notified
17 SLED. Is that correct?

18 A Yes, sir. That's correct.

19 Q And they were called to assist in the investigation?

20 A That's correct.

21 Q All right. But you were the lead investigator for
22 the Newberry Sheriff's Office, correct?

23 A Yes, sir. That's correct.

24 Q All right. I want to go back to the vehicle. Did
25 you photograph the vehicle prior to SLED arriving on

1 scene?

2 A Yes, sir. I had -- I photographed it prior to their
3 arrival.

4 Q Okay. Let's go to -- if you could, just,
5 Investigator Dickert, look at 21.

6 A Okay.

7 Q You recognize that?

8 A Yes, sir.

9 Q Okay. What is that?

10 A That is a photograph of the driver's side of the
11 vehicle. The door is open. There's a large amount of
12 blood in the driver's floorboard, along with a pair of
13 sandals; and then, the bloody footprints that lead from
14 the car to the hospital.

15 Q Okay.

16 MR. DANIEL: I'd offer State's 21 for admission into
17 evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. GEOLY: No objection.

20 THE COURT: State's Exhibit 21 admitted into
21 evidence without objection.

22 (Whereupon, State's Exhibit 21 was entered into
23 evidence.)

24 Q And then, if you could, Investigator Dickert, go to
25 24. You recognize that?

1 A Yes, sir.

2 Q Okay. What is that?

3 A That is a photograph of the hood of the Toyota
4 Camry.

5 Q Okay. And why is that significant to your
6 investigation?

7 A There appears to be a defect in the middle of the
8 hood from a bullet strike.

9 Q Okay.

10 MR. DANIEL: Your Honor, I'd offer State's 24 for
11 admission into evidence.

12 THE COURT: Any objection?

13 MR. GEOLY: No objection, Your Honor.

14 THE COURT: State's Exhibit 24 admitted into
15 evidence without objection.

16 (Whereupon, State's Exhibit 24 was entered into
17 evidence.)

18 Q All right. Now, when you say "bullet defect," do
19 you mean -- just can it be a hole or does it -- or an
20 indentation or anything?

21 A It -- it appeared to be a glancing blow, where it
22 struck the hood and ricocheted off/bounced off.

23 Q Okay. All right. If you could, look at State's 31,
24 Investigator. You recognize that?

25 A Yes, sir, I do.

1 Q All right. What is -- what is that?

2 A In this photograph it -- it appears that there is
3 also a defect in the A post or A pillar, depending on who
4 you're speaking with about it. But there's a bullet
5 defect where it appeared as though a bullet had struck
6 the A post of the vehicle.

7 Q All right.

8 MR. DANIEL: Your Honor, I offer State's 31 for
9 admission into evidence.

10 THE COURT: Any objection?

11 MR. GEOLY: No objection, Your Honor.

12 THE COURT: All right. State's Exhibit 31 admitted
13 into evidence without objection.

14 (Whereupon, State's Exhibit 31 was entered into
15 evidence.)

16 Q All right. And then, so we just saw a bullet
17 defect, kind of an indentation in the hood. Now we're
18 seeing another indentation? You're calling it a bullet
19 defect on the A post?

20 A That's correct. It actually starts on the driver's
21 side door just above the mirror.

22 Q Point to the -- if you could, step down and just
23 point to it with your finger, just to make sure all the
24 jurors can see exactly what we're talking about.

25 (Whereupon, the witness exited the witness stand.)

1 A This area right here and right here.

2 Q Okay. All right.

3 (Whereupon, the witness resumed the witness stand.)

4 Q Look at -- next, look at 25 -- State's 25, please.
5 What are we looking at there?

6 A This would be the front-driver's side quarter panel.
7 And there were bullet deflect -- defects, as well as a
8 hole ---

9 Q So ---

10 A --- in the lower portion of the -- the fender
11 between the tire and the door.

12 Q Okay. So we're looking at three different bullet
13 defects in this particular photograph?

14 A Yes, sir.

15 Q Okay.

16 MR. DANIEL: Your Honor, I offer State's 25 for
17 admission into evidence.

18 THE COURT: Any objection?

19 MR. GEOLY: No objection, Your Honor.

20 THE COURT: State's Exhibit 25 admitted into
21 evidence without objection.

22 (Whereupon, State's Exhibit 25 was entered into
23 evidence.)

24 Q All right. If you could again, just step down for
25 the jury and point to each bullet defect that's

1 highlighted in this photograph, please, for the jury.

2 (Whereupon, the witness exited the witness stand.)

3 A You have the -- the one on the A post. You have a
4 -- a defect here, here, as well as the one on the
5 driver's door.

6 Q Okay.

7 (Whereupon, the witness resumed the witness stand.)

8 Q So actually, really, you can see four bullet defects
9 in that photograph.

10 MR. GEOLY: Objection, Your Honor. Is that a
11 question or testifying?

12 THE COURT: Sustained.

13 Q How -- how many bullet defects do you see in this
14 photograph?

15 A Four.

16 Q Okay. Because I know -- I think I -- my question
17 earlier, I think, maybe three bullet defects, but you
18 just actually just counted four; is that correct?

19 A That's correct. I believe you were referring to the
20 -- the fender and the actual door panel ---

21 Q Okay.

22 A --- at that point in time.

23 Q All right. And so are they all concentrated on the
24 driver's side door?

25 A Yes, sir. They appear to be.

1 Q Okay. And so two of them are -- are lower-level
2 bullet defects, correct?

3 A Yes, sir. On the fender. Yes.

4 Q Okay. So those are tire-level?

5 A Yes, sir.

6 Q But then, there are also two that are well above the
7 tire level; is ---

8 A Yes, sir.

9 Q --- that correct?

10 A The one on the hood and the one above the mirror on
11 the A post.

12 Q Okay. If you could, look at 26, Investigator
13 Dickert. All right. What -- what is that?

14 A That's a -- an entry hole ---

15 Q Okay.

16 A --- into the driver's side door.

17 Q All right. That's actually a bullet hole.

18 A Yes, sir.

19 Q All right. And then, underneath that, on the
20 ground, is -- is that suspected blood?

21 A Yes, sir. Those are what appear to be bloody
22 footprints.

23 Q All right.

24 MR. DANIEL: I offer State's 26, Your Honor, for
25 admission into evidence.

1 THE COURT: Any objection?

2 MR. GEOLY: No objection, Your Honor.

3 THE COURT: State's Exhibit 26 admitted into
4 evidence without objection.

5 (Whereupon, State's Exhibit 26 was entered into
6 evidence.)

7 Q Okay. If you could, go to 38, please, Investigator.
8 All right. You recognize that?

9 A You said 38?

10 Q 38, yes, sir.

11 A Yes, sir.

12 Q Okay. And what is that?

13 A That's a hole in the fender -- lower-fender area of
14 the driver's side door -- not door -- but driver's side
15 of the vehicle ---

16 Q That's ---

17 A --- just behind the wheel well.

18 Q Okay. And that's just a closer image of what we've
19 already seen; is that correct?

20 A That's correct.

21 Q Okay.

22 MR. DANIEL: Your Honor, 38 I'd offer for admission
23 into evidence.

24 THE COURT: Any objection?

25 MR. GEOLY: No objection, Your Honor.

1 THE COURT: State's Exhibit 38 admitted into
2 evidence without objection.

3 (Whereupon, State's Exhibit 38 was entered into
4 evidence.)

5 Q All right. And so you continued to search beyond
6 just the driver-door area. You -- you've seen bullet
7 defect on the hood and the driver-door area. Did you
8 look elsewhere on the vehicle for more suspected bullet
9 defects?

10 A Yes, sir. I checked the entire vehicle and located
11 one area on the C post, which would be the area that is
12 behind the rear door. So if you're looking at a vehicle,
13 you have your front door and your back door. And it's
14 typically that strip of metal is commonly referred to as
15 a C post. There was a -- a hole present there as well.

16 Q Okay. Look at 27 for me, Investigator. Is that
17 what you just described?

18 A Yes, sir. That's correct.

19 MR. DANIEL: Your Honor, I'd offer State's 27 for
20 admission into evidence.

21 THE COURT: Any objection?

22 MR. GEOLY: Without objection, Judge.

23 THE COURT: State's Exhibit No. 27 is admitted into
24 evidence without objection.

25 (Whereupon, State's Exhibit 27 was entered into

1 evidence.)

2 Q All right. If you could, just step down and point
3 to the bullet defect that you just described.

4 (Whereupon, the witness exited the witness stand.)

5 A It's -- it's in this area right here.

6 Q That's what you call a C post?

7 A Yes, sir. That's correct.

8 Q And that's the driver's side rear-seat area?

9 A Yes, sir. That's -- that's correct.

10 Q That's an actual hole in the car?

11 A Yes, sir. That's -- that's a hole.

12 Q Not just a indention or imprint?

13 A No, sir. It's a hole.

14 Q Okay.

15 (Whereupon, the witness resumed the witness stand.)

16 Q If you could, look at State's 44, Investigator. Is
17 that just another vantage point of the same -- same
18 bullet hole?

19 A Yes, sir. That's correct.

20 MR. DANIEL: Your Honor, I'd offer State's 44 for
21 admission into evidence.

22 THE COURT: Any objection?

23 MR. GEOLY: Objection: cumulative, Your Honor.

24 THE COURT: All right. State's Exhibit No. 44
25 admitted into evidence over defendant's objection.

1 (Whereupon, State's Exhibit 44 was entered into
2 evidence.)

3 Q All right. And did you actually -- did you search
4 the interior of the vehicle?

5 A Yes, sir. Myself and the SLED crime scene
6 technicians ---

7 Q Okay.

8 A --- searched the inside of the vehicle.

9 Q All right. State's 29, if you could look at that
10 for me. And what -- do you recognize that?

11 A Yes, sir. That's a closer image of what we
12 previously viewed as far as the -- the shoes and the
13 blood. And just on the inside of the driver's side door,
14 you can actually see where the plastic panel was broken.

15 Q Okay.

16 MR. DANIEL: Your Honor, I offer State's 29 for
17 admission to evidence.

18 THE COURT: Any objection?

19 MR. GEOLY: No objection, Your Honor.

20 THE COURT: State's Exhibit 29 admitted into
21 evidence without objection.

22 (Whereupon, State's Exhibit 29 was entered into
23 evidence.)

24 Q All right. And that is the driver's seat
25 floorboard, correct?

1 A Yes, sir, that's the driver's seat floorboard.

2 Q Okay. And you described a -- a hole in the interior
3 of the vehicle in ---

4 A Yes.

5 Q --- this photograph?

6 A Yes. You can see there. In the door the -- there's
7 a piece of plastic that is broken away.

8 Q Please step down and just point to that for the
9 jury.

10 (Whereupon, the witness exited the witness stand.)

11 A It's right here in this area.

12 (Whereupon, the witness resumed the witness stand.)

13 Q And that -- would that -- would that be consistent
14 with the -- the shot that would've struck Ms. Indigo in
15 the leg?

16 A Yes, sir. I -- I felt that it was consistent.

17 Q All right. State's 30, recognize that?

18 A Yes, sir. That's a -- a photograph of the actual
19 door panel itself.

20 MR. DANIEL: Your Honor, I offer State's 30 for
21 admission to evidence.

22 THE COURT: Any objection?

23 MR. GEOLY: Beg the Court's indulgence one moment,
24 Your Honor.

25 THE COURT: All right.

1 MR. GEOLY: No objection, Judge.

2 THE COURT: State's Exhibit 30 admitted into
3 evidence without objection.

4 (Whereupon, State's Exhibit 30 was entered into
5 evidence.)

6 Q All right. Did you go to the backseat area to
7 document anything?

8 A Yes, sir. We did. We photographed everything.
9 There was -- appeared to be two children's coats on the
10 back there. There was blood on the seat as well as the
11 coats as well.

12 Q Okay. Do you recognize State's 23?

13 A Yes, sir.

14 MR. DANIEL: Your Honor, I'd offer State's 23 for
15 admission to evidence.

16 THE COURT: Any objection?

17 MR. GEOLY: No objection, Your Honor.

18 THE COURT: State's Exhibit 23 is admitted into
19 evidence without objection.

20 (Whereupon, State's Exhibit 23 was entered into
21 evidence.)

22 Q Okay. And you described children's coats and blood
23 being in the backseat area?

24 A Yes, sir. That's correct.

25 Q Excuse me. All right. Go to 28, Investigator. Do

1 you recognize that?

2 A Yes, sir. That's just a -- it's a more direct
3 photograph of the back seat.

4 Q All right.

5 MR. DANIEL: Your Honor, I -- I'd offer State's 28
6 for admission into evidence.

7 THE COURT: Any objection?

8 MR. GEOLY: No objection, Your Honor.

9 THE COURT: State's Exhibit 28 is admitted into
10 evidence without objection.

11 (Whereupon, State's Exhibit 28 was entered into
12 evidence.)

13 Q All right. Go to 32, please. You recognize that?

14 A I do.

15 Q And what is that?

16 A It's a picture from the rear window of the vehicle,
17 looking back towards the driver's side C post. And you
18 can see a hole in the plastic. It would be on the
19 interior of the vehicle.

20 Q And why did you document that?

21 A Because at that point in time, I felt that -- that
22 hole there corresponded with the -- the hole that was on
23 the exterior of the vehicle.

24 Q And do you believe -- and -- and you had spoken to
25 Indigo and ascertained the seating arrangements of the

1 children; is that correct?

2 A Yes, sir. The best that she could provide.

3 Q Okay.

4 MR. DANIEL: Your Honor, I offer State's 32 for
5 admission to evidence.

6 THE COURT: Any objection?

7 MR. GEOLY: Yes, sir, Judge. May we approach, Your
8 Honor?

9 THE COURT: All right.

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 Q All right. I may have -- I may have jumped ahead.
14 I'm sorry.

15 MR. DANIEL: Did I offer State's 32 for admission to
16 evidence, Your Honor?

17 THE COURT: You did.

18 MR. DANIEL: Okay.

19 THE COURT: And he raised -- raised the objection,
20 which I sustain at this point in time.

21 MR. DANIEL: All right.

22 Q State's 32, you -- you recognize that to be a bullet
23 hole in the interior of the -- the back seat, correct?

24 A Yes, sir.

25 Q Above the C post?

1 A Up -- on the C post.

2 Q On the C post. Excuse me.

3 A Correct.

4 Q And you believe that interior, suspected bullet hole
5 corresponded to a photograph we've already seen on the
6 outside of the C post ---

7 A Yes, sir. That is correct.

8 Q All right.

9 MR. DANIEL: Your Honor, I'd offer State's 32 for
10 admission in evidence.

11 THE COURT: Any objection?

12 MR. GEOLY: No -- no, sir, Your Honor.

13 THE COURT: Okay. All right. State's Exhibit 32 is
14 admitted into evidence without objection.

15 (Whereupon, State's Exhibit 32 was entered into
16 evidence.)

17 Q All right. Investigator, if you could, just step
18 down and identify the suspected bullet hole in the
19 interior of the C post.

20 (Whereupon, the witness exited the witness stand.)

21 A It's in this area right here.

22 Q And why is that significant to this investigation?

23 (Whereupon, the witness resumed the witness stand.)

24 A Based off the information that we had received from
25 Indigo in the hospital; and, obviously, the -- the

1 children being in the back seat, the -- the injury to
 2 Iven being a -- a -- a shot that was fired from a gun to
 3 -- and it ended up striking him in the head that it was
 4 important. Because it would at least show where he was
 5 sitting and where the bullet came from.

6 Q So -- so you believe that was the corresponding
 7 bullet hole to the -- to the gunshot wound of the head
 8 that Iven sustained?

9 A That's correct.

10 Q Okay. All right. If you could, look at State's 33.
 11 And that -- and what is that?

12 A It's just a closer view of the -- the -- the hole.

13 Q All right.

14 MR. DANIEL: Your Honor, I'd offer 33 for admission
 15 to evidence.

16 THE COURT: Any objection?

17 MR. GEOLY: Objection to cumulative, Judge. It
 18 looks like it's the same photo.

19 THE COURT: All right. State's Exhibit 33 admitted
 20 into evidence over defendant's objection.

21 (Whereupon, State's Exhibit 33 was entered into
 22 evidence.)

23 Q There we get a better -- better picture.

24 A Yes, sir. That's correct.

25 Q Okay. And then, I want to go to 37. It's already

1 been admitted into evidence. All right. Describe this
2 for us, this -- did you produce this -- this diagram of
3 the seating arrangements in the Toyota Camry?

4 A Yes, sir.

5 Q Okay. Describe this for us.

6 A Based off the information that we were able to
7 obtain from Indigo at the time, trying to, more or less,
8 reconstruct where the children were sitting in the
9 vehicle, I used this diagram to -- to at least help, in
10 my mind, lay out where the children would've been
11 located.

12 Q Okay. Step down and -- and -- and outline for us
13 the parties and where they're seated.

14 (Whereupon, the witness exited the witness stand.)

15 A Indigo would've been in the driver's seat.
16 According to the information that we had received at that
17 time, Penelope Davis and Xzavier Davis, Jr., would've
18 been behind the -- the driver's seat. And Mr. Iven
19 Caldwell would've been somewhere in the -- the middle of
20 the -- the rear seat.

21 (Whereupon, the witness resumed the witness stand.)

22 Q All right. And you documented with your photographs
23 of the back seat. You said there was -- there was
24 suspected blood in the -- the backseat area?

25 A That -- yes, sir. That's correct.

1 Q Where was the most concentration of that blood in
2 the back seat?

3 A The center area of the seat.

4 Q And according to that diagram, that -- that's where
5 Iven was seated?

6 A Yes, sir. That's correct.

7 Q Okay. All right. If you could -- it's already in
8 evidence. I will -- excuse me. Let me stop myself
9 there.

10 All right. So at that point in time, SLED
11 eventually arrives at the hospital -- is that correct? --
12 to help process the crime scene?

13 A Yes, sir. That's correct.

14 Q Or process the -- the vehicle, which is at the
15 hospital; is that correct?

16 A Yes, sir. That's correct.

17 Q All right. But eventually, do you go out to [REDACTED]
18 [REDACTED]?

19 A Yes, sir. Once we completed processing the vehicle
20 at the hospital, we did respond to [REDACTED].

21 Q All right. So Phase I of the investigation is just
22 processing the Toyota Camry at the hospital; is that
23 correct?

24 A Would probably -- more Phase III, because I and II
25 were the victims that were in the hospital and the

1 vehicle would've potentially been Phase III, if you want
2 to title it with something. And then, the house would've
3 been a -- a Phase IV.

4 Q Okay. But -- but phase -- I guess I'm -- Phase I is
5 everything that happened at the hospital, right?

6 A Okay. Yes, sir. That's correct.

7 Q And Phase II of your investigation is going out to
8 the actual scene of the shooting at [REDACTED]?

9 MR. GEOLY: Objection ---

10 A Yes, sir. That ---

11 MR. GEOLY: --- Your Honor.

12 A --- would be correct.

13 MR. GEOLY: He just testified that that was Scene
14 IV, not -- or -- or -- I mean, not II, and now he's
15 asking was it II. I mean, he -- he testified contrary to
16 that.

17 THE COURT: All right. Overruled. I'll allow that.
18 Go ahead.

19 Q All right, Investigator. I want to show you 91
20 through 94. It's already been admitted into evidence.

21 MR. DANIEL: So, Mr. Bentley, just start with 91.

22 Q All right. And just take us through these
23 photographs, Investigator Dickert.

24 A This is a photograph of the residence of actually
25 631 [REDACTED] with the mailbox for [REDACTED]

1 being present and a shared driveway between the two
2 residences.

3 Q Okay. 92 just shows the common driveway?

4 A It shows the residence of 631 and 633 now, as well
5 as the common driveway.

6 Q All right. 90 -- 93?

7 A The same photograph. It actually shows the -- more
8 of the residence of [REDACTED].

9 Q All right. 94?

10 A The shared driveway between the two residences.

11 Q All right. All right. And if you could, look at
12 State's 14. You recognize that?

13 A Yes, sir. That's an aerial photograph of [REDACTED]
14 [REDACTED]. And 633 is actually circled.

15 Q Okay. That's an aerial of the -- of the crime
16 scene?

17 A Yes, sir. That's correct.

18 Q All right. And that's a fair and accurate
19 representation of the crime scene from an aerial vantage
20 point, correct?

21 A Yes, sir. That's correct.

22 MR. DANIEL: Your Honor, I'd offer State's 14 for
23 admission to evidence.

24 THE COURT: Any objection?

25 MR. GEOLY: Beg the Court's indulgence one moment,

1 Your Honor. No objection, Judge.

2 THE COURT: All right. State's Exhibit 14 is
3 admitted into evidence without objection.

4 (Whereupon, State's Exhibit 14 was entered into
5 evidence.)

6 Q All right. And just -- and based on your
7 understanding -- if you could, step down, Investigator.

8 (Whereupon, the witness exited the witness stand.)

9 Q And point to 631 [REDACTED] -- or excuse me -- [REDACTED]
[REDACTED].

11 A [REDACTED] would be this residence right here.

12 Q All right. And where is 631 [REDACTED]?

13 A This residence right here.

14 Q All right. Who lives at 631 [REDACTED]?

15 (Whereupon, the witness resumed the witness stand.)

16 A Mr. Wallace and Ms. Vinnie Hunter ---

17 Q Okay.

18 A --- her parents -- Indigo's parents.

19 Q All right. And based on your information, Indigo
20 Penny and Xzavier Davis lived at [REDACTED].

21 A Yes, sir. That's correct.

22 Q And there's that common driveway.

23 A Yes, sir. That's correct.

24 Q And based on your investigation, where is your
25 understanding -- the Toyota Camry that you photographed

1 at the hospital, where was that originally parked on the
2 date in question?

3 A In front of the residence. There was an -- an area
4 that you could tell that vehicles had been previously
5 parked. The grass hadn't really grown there.

6 And I think we had gotten some rain earlier in the
7 day. So it was somewhat muddy, and you could see some
8 tire impressions there.

9 Q Okay. Point to -- point to that where the car
10 would've been parked, based on your understanding.

11 (Whereupon, the witness exited the witness stand.)

12 A It would've been in this area right -- right here at
13 the front of the house.

14 Q Okay. All right. If you could, go to 156. That's
15 in evidence, I believe. Do you recognize that
16 photograph?

17 A Yes, sir. I do.

18 Q Now, I know I'm jumping ahead. But SLED crime scene
19 agents, they did a bulk of the -- the processing of the
20 scene -- photographs, collecting forensic evidence -- is
21 that right?

22 A Yes, sir. That's correct.

23 Q All right. Tell us what 156 is. It's already in
24 evidence, so ---

25 A 156 is a photograph of the green storage container

1 that was located at the back door. There was a brown
2 paper bag that had -- I would -- it's -- it was a yellow
3 piece of paper, a receipt, and -- as well as a -- an
4 ammunition box and a gun lock.

5 Q Okay. So you examined the contents of that bag?

6 A Yes, sir. That's correct.

7 Q All right. And there was an empty box of
8 ammunition?

9 A Honestly, I -- I don't know.

10 Q Okay. All right. I want to go to -- look at 159,
11 Investigator. Do you recognize that?

12 A Yes, sir, I do.

13 Q What is that?

14 A It's a receipt from th Village Pawnshop for the
15 amount of \$223.63 from a purchase that was made July 16,
16 2018.

17 Q Okay. And where was that located?

18 A Village Pawnshop, which would be on Wilson Road in
19 Newberry city's ---

20 Q Okay. And they're a firearms dealer?

21 A Yes, sir.

22 Q But where did you locate that actual receipt?

23 A That receipt was in the brown bag that was in the
24 green container that was located at the back door.

25 Q Okay. So it's in that picture right there, that

1 receipt?

2 A Yes, sir, that receipt right there. Yes.

3 Q All right.

4 MR. DANIEL: Well, then, Your Honor, I'd offer
5 State's 159 for admission to evidence.

6 THE COURT: Any objection?

7 MR. GEOLY: No objection, Your Honor.

8 THE COURT: All right. State's Exhibit 159 is
9 admitted into evidence without objection.

10 (Whereupon, State's Exhibit 159 was entered into
11 evidence.)

12 MR. DANIEL: And -- and, Mr. Bentley, if you could,
13 just zoom in on the receipt.

14 Q All right. And that just -- that has Xzavier
15 Davis's name on it, correct?

16 A Yes, sir. That's correct.

17 Q A \$223 purchase, right?

18 A Yes, sir. That's correct.

19 Q And it says Village Pawnshop?

20 A Yes, sir. That's correct.

21 Q All right. Did you follow up on -- did you
22 investigate anything as it pertained to that receipt?

23 A Yes, sir. I actually called the -- the pawnshop and
24 spoke with the -- the manager, Katie, about this receipt
25 to see what information they could provide in reference

1 to what was purchased and get a copy of that receipt as
2 well.

3 Q Okay. So you -- you -- you contact an employee at
4 Village Pawnshop by the name of Katie?

5 A Yes, sir.

6 Q Do you have her full name?

7 A Katie Perry.

8 Q Not -- not the singer.

9 A No, sir.

10 Q Okay. All right. So Katie Perry. Was -- and she
11 was able to furnish you a transaction receipt?

12 A Yes, sir. That's correct.

13 Q All right. I want to show you -- or excuse me -- I
14 want you to look at State's No. 2. Do you recognize No.
15 2?

16 A Yes, sir. It's a copy of the sales receipt from
17 7/16/2018 where Xzavier Davis purchased a firearm.

18 Q Okay. What kind of firearm did he purchase?

19 A It was a Taurus 709 Slim, a 9-millimeter handgun.

20 Q Okay. And this is a -- a business record that
21 Village Pawnshop maintains in their regular course of
22 business to maintain these type of records.

23 A Yes, sir. That's correct.

24 Q All right.

25 MR. DANIEL: Your Honor, I'd offer State's No. 2 for

1 admission to evidence.

2 THE COURT: Any objection?

3 MR. GEOLY: No objection, Your Honor.

4 THE COURT: All right. State's Exhibit 2 is
5 admitted into evidence without objection.

6 (Whereupon, State's Exhibit 2 was entered into
7 evidence.)

8 Q All right. So you said that -- it indicated the
9 handgun was purchased in July of 2018?

10 A Yes, sir. That's correct.

11 Q All right. That's on the receipt. It says Xzavier
12 Davis was the purchaser of the 9-millimeter firearm?

13 A Yes, sir. That's correct.

14 Q Does it provide the serial number of the firearm?

15 A Yes, sir. It does.

16 Q Did that serial number match what's in evidence
17 already as State's No. 9?

18 A Yes, sir. It did.

19 Q All right. And that's the 9-millimeter handgun?

20 A Yes, sir. That's correct.

21 Q Okay. All right. And defense attorney alluded to
22 this in opening statements and his questioning of
23 previous witnesses. But Indigo Penny and Xzavier Davis,
24 they're married; is that true?

25 A Yes, sir. That's my understanding.

1 Q Okay. And the fact that we're referring to her as
2 Indigo Penny, we're not questioning the validity of their
3 marriage, are we?

4 A No, sir.

5 Q So why was -- what do we still have Indigo Penny in
6 the records?

7 A All our records from the hospital showed Indigo
8 Penny. DMV record showed Indigo Penny. And then, our
9 in-house records all show Indigo Penny. So my
10 assumption, based off the DMV, is that she hasn't gone
11 through the process to change her last name.

12 Q Okay. So she could still have the marriage license;
13 she just hadn't changed her name with DMV, Social
14 Security, things like that?

15 A Yes, sir. That's correct.

16 Q Okay. So that's all that is; that's why we're
17 referring to her still as Indigo Penny.

18 A Yes, sir. That's correct.

19 Q All right. And how far is it from [REDACTED]
20 to the Newberry Hospital?

21 A Approximately 3.1 miles.

22 Q Okay. So it was very close.

23 A Yes, sir.

24 Q And how old -- and you have information-database
25 access. How -- how old are -- is Xzavier Davis?

1 A His date of birth is 3 -- 3/5 of '93, so that
2 would've made him 26 at -- you talking about the incident
3 ---

4 Q Yeah. How ---

5 A --- date?

6 Q --- old was Xzavier Davis on the -- the date of the
7 incident in question?

8 A Twenty-six, I believe.

9 Q And you -- you said his birthday was when?

10 A 3/5 of '93.

11 Q So he's 26 years old?

12 A That's correct.

13 Q How old was Ms. Indigo Penny on the date in
14 question?

15 A Her date of birth was 4/22 of '91. So that would've
16 made her 27, I believe, almost 28.

17 Q Okay. 4/22/91 was Indigo Penny's?

18 A Yes, sir.

19 Q Okay. So she was just shy of 28. And did -- did
20 --- both records indicate that they both lived at [REDACTED]

[REDACTED], correct?

22 A Yes, sir. I believe -- which records are we talking
23 about?

24 Q Just it -- your records for your database, DMV.

25 A Yes, sir. That's ---

1 Q Okay.

2 A The records from our database, yes.

3 Q Okay. All right. Please answer ---

4 MR. DANIEL: Beg the Court's indulgence.

5 (Off the record briefly.)

6 MR. DANIEL: Your Honor, may we approach?

7 THE COURT: All right.

8 (Whereupon, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: All right. Ladies and gentlemen, we've
12 been at it a little while. I'm going to go ahead and
13 we're going to take our morning break. I'm going to
14 excuse you back to the jury room for about 10 or 15
15 minutes; give you an opportunity to stretch your legs,
16 get something to drink, whatever the case may be.

17 Do not discuss the case, even among yourselves.
18 Don't conduct any independent investigations. We'll take
19 about a 10- or 15-minute break, and then we'll bring you
20 back in just a minute.

21 Everybody else, please remain seated while the jury
22 is excused.

23 (Whereupon, the jury exited the courtroom at 11:15
24 a.m.)

25 (Off the record briefly.)

1 THE COURT: All right. Yeah. If anybody needs to
2 be excused from the courtroom, they can go ahead and be
3 excused now. That'll be fine.

4 All right. Do we want to go ahead and review a
5 portion right now?

6 (Off the record briefly.)

7 (Whereupon, a portion of video was played for in-
8 camera review by the Court.)

9 (Off the record briefly.)

10 THE COURT: Just show me what you want introduced.

11 MR. DANIEL: I think that's all she says, in terms
12 of actually the kids were crying ---

13 THE COURT: Give me ---

14 MR. DANIEL: --- that four second.

15 THE COURT: Give me the portion. If I granted your
16 motion and introduced everything you wanted introduced,
17 show me what you'd want to do.

18 MR. DANIEL: Yes, sir.

19 (Off the record briefly.)

20 (Whereupon, a portion of video was played for in-
21 camera review by the Court.)

22 MR. DANIEL: That was about four seconds, Judge.

23 MR. GEOLY: Judge, I -- I mean, now -- now that
24 we've heard this, I'd -- I'd like to make the record a
25 little more complete. They asked her was she crying

1 they're getting in the car. She's describing there out
2 the back door when he shoots the gun. There -- there's
3 some lapse between there and her actually putting them in
4 the car.

5 Because where she's talking about there, she's in
6 the back; he's shooting in the air; and the kids are
7 crying and whatnot, she says. Then she has to continue
8 around the house, the driveway to the front -- well, you
9 know, she's at the back porch when all that's happening.
10 Then she get the car -- kids in the car in the front.

11 And what she said yesterday was: "I'm remembering
12 now. I don't remember them crying when they're getting
13 in the car," is -- is what I recall her saying. This is
14 talking about out the back of the house, she says they're
15 crying. I don't think that's a prior inconsistent
16 statement.

17 THE COURT: All right. Well, let's go back a little
18 bit further, because I -- I didn't pick up on that. Let
19 me -- let's go back a little bit before that so we can
20 talk about what she's talking about.

21 (Off the record briefly.)

22 (Whereupon, a portion of video was played for in-
23 camera review by the Court.)

24 MR. STUMBO: Judge, I think the -- the -- the --
25 what -- the scene that she described there is

1 extraordinarily inconsistent with what she described on
2 the stand yesterday, which is why I asked her: "Did you
3 tell law enforcement before that they were crying and
4 upset?" And I -- there again, I -- I can't remember word
5 for word what Ms. Nevers told us yesterday when she said:
6 "No. I don't remember that; that was two years ago" or
7 something to that effect.

8 And I said: "So you're denying you told law
9 enforcement that she was -- when they -- the kids were
10 crying?"

11 And she said -- I -- I think, there again, just --
12 just kind of a equivocation of it. I don't -- I can't
13 remember exactly how she responded. But she didn't admit
14 to it, for sure.

15 THE COURT: Well, see, that's -- that's the critical
16 point, is how did she respond to it? Is this a prior
17 inconsistent statement? You're saying she said they were
18 not crying. He's saying that I don't remember.

19 MR. STUMBO: Well, I think Mr. Geoly just said --
20 and I -- I -- my recollection would be correct too. The
21 last question was: "So you deny that they were crying?"

22 And she said: "No. They weren't crying," which,
23 there again, is very inconsistent with what she said in
24 this interview. So I ---

25 THE COURT: I mean ---

1 MR. STUMBO: --- I think she certainly equivocated;
2 did not admit to the statement that she made before,
3 which ---

4 THE COURT: Can you ---

5 MR. STUMBO: --- was certainly inconsistent with the
6 kids were crying.

7 THE COURT: Hold for a second.

8 Madam court reporter, can you get us what her
9 testimony was?

10 (Off the record briefly.)

11 THE COURT: All right. Y'all listen up.

12 Start with his question, the solicitor's question.

13 (Whereupon, the court reporter read back the
14 requested portion of testimony.)

15 THE COURT: All right. Well ---

16 MR. GEOLY: If I might, Judge, the difference in --
17 in the two statements: When she's talking in the
18 interview on the body cam, she's talking about right as
19 they walk out the door. He's asking about their demeanor
20 as they're in the car.

21 We're literally talking about at least a 20-second
22 different from her when she's out the house and he's
23 saying he shoots -- remember, she talks about where the
24 crumbling concrete or whatever, that's on the back side.
25 She has to walk all the way around the trailer to the --

1 I don't think that that is necessarily an inconsistent
2 statement at all.

3 THE COURT: Well, and you might be right. But I'll
4 let you address that on cross-examination.

5 MR. GEOLY: Yes, sir, Your Honor.

6 THE COURT: I mean, so that's something you can
7 definitely bring out on cross-examination.

8 MR. GEOLY: Yes, sir.

9 MR. STUMBO: And that ---

10 THE COURT: So ---

11 MR. STUMBO: --- would be my argument, Judge. It
12 goes to weight, rather than the admissibility, what he's
13 arguing at this point.

14 THE COURT: Well, I mean, I'm going to allow you to
15 go to the part where she's saying that he goes bang and
16 the children are crying. That's it.

17 MR. STUMBO: Okay.

18 THE COURT: Now, you know, and then, on cross-
19 examination, they're arguing it's a prior inconsistent
20 statement. You can show that it's not a prior
21 inconsistent statement by you're talking about two
22 completely different times.

23 I can't tell. That's going to be up for the jury to
24 decide.

25 MR. GEOLY: Yes, sir.

1 THE COURT: All right?

2 MR. GEOLY: Thank you, Judge.

3 THE COURT: All right. Anything before we take a
4 break?

5 (Off the record briefly.)

6 MR. STUMBO: Yeah. So what I think -- what -- what
7 His Honor is saying is when she says that he was -- had
8 the gun in his hand, bang -- so when ---

9 THE COURT: When he ---

10 MR. STUMBO: --- she's saying ---

11 THE COURT: --- fired in the air.

12 MR. STUMBO: Yeah.

13 THE COURT: Yeah.

14 MR. STUMBO: When he ---

15 THE COURT: When he -- when -- that kind of gives
16 you the context.

17 MR. STUMBO: Yeah.

18 THE COURT: That -- it's like -- I think it was,
19 like, he came out the back door, bang -- or whatever you
20 said right before he held the gun and went bang and the
21 kids were crying.

22 MR. GEOLY: Right.

23 MR. STUMBO: And then, just pause it there.

24 THE COURT: Yeah.

25 MR. STUMBO: Okay.

1 THE COURT: All right.

2 MR. GEOLY: Thank you, Judge.

3 THE COURT: All right. Anything from the state
4 before we take about a 10-minute recess?

5 MR. STUMBO: Nothing from the state, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. GEOLY: Judge, just in anticipation of us
8 potentially having to argue some law this afternoon, this
9 is Mike Gambrell. He's a lawyer out of Greenville.
10 We've had a lot going on. So I just brought him to
11 assist me, if -- if we get that far. I don't know that
12 we will. But -- but he may end up assisting, if -- if we
13 get in a position of having to argue some law Your Honor.
14 But otherwise, he -- he's not involved.

15 THE COURT: Okay. As long as he's not participating
16 in front of the jury ---

17 MR. GEOLY: He's not, Judge.

18 THE COURT: --- or anything. Okay.

19 MR. GEOLY: No, sir.

20 THE COURT: That's good. Thank you.

21 MR. GEOLY: Yes, sir.

22 THE COURT: All right. Let's take about a 10-minute
23 recess.

24 (The Court went off the record at 11:28 a.m.)

25 (The Court went on the record at 11:44 a.m.)

1 THE COURT: All right. Anything from the state
2 before we bring the jury in?

3 MR STUMBO: Nothing from the state, Your Honor.

4 THE COURT: Anything from the defense?

5 MR STUMBO: Nothing for the defendant, Your Honor.

6 THE COURT: All right. Let's bring the jury in.

7 (Off the record briefly.)

8 (Whereupon, the jury entered the courtroom at 11:46
9 a.m.)

10 THE COURT: All right. Ladies and gentlemen,
11 welcome back. We're ready to continue with the trial of
12 this case.

13 Mr. Daniel, you can continue with your direct
14 examination.

15 MR DANIEL: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. DANIEL:

18 Q All right. Investigator Dickert, I think we left
19 off on the sales receipt for the purchase of that 9-
20 millimeter handgun; is that correct?

21 A Yes, sir. That's correct.

22 Q Okay. And lastly, so SLED assisted with the crime
23 scene investigation, correct?

24 A That's correct.

25 Q And going back to Iven Caldwell, he had to be

1 transferred from Newberry Hospital to another hospital to
2 treat his injuries?

3 A Yes, sir. I believe he was transported to
4 Richland's Children.

5 Q Okay. When was he officially pronounced deceased?

6 A Give me just a second. According to my notes, I
7 received a phone call on 4/22/2019 at approximately 2:54
8 p.m., advising that he was no longer alive.

9 Q All right. And -- and speak up just a little bit.
10 But you -- you said that you received notification that
11 he had been pronounced deceased April 22nd, that
12 afternoon?

13 A Yes, sir. That's correct.

14 Q So -- okay. Early-morning hours on April 20th of --
15 that's when he sustained the -- the shot to the head,
16 correct?

17 A Yes, sir. That's correct.

18 Q And then, April 22nd -- that would be on a Monday at
19 that point, correct?

20 A Yes, sir. I believe you're right.

21 Q That afternoon he is pronounced deceased at the
22 Columbia hospital?

23 A Yes, sir. I believe it's Richland but ---

24 Q Okay. And when was his body examined by a
25 pathologist to determine cause of death?

1 A I would have to look back at my notes. But I would
2 assume it was probably the 23rd.

3 Q And did you attend the autopsy?

4 A I did not.

5 Q Did SLED attend the autopsy?

6 A Yes, sir. That's correct.

7 Q Okay. And this is going back, I know. Well, it's
8 actually -- in terms of your investigation, did you ever
9 -- did you follow up with Indigo Penny once she was
10 discharged from the hospital to interview her about the
11 events at April 20th?

12 A Yes, sir. We spoke with her on a couple different
13 occasions: either went to her house and spoke with her
14 or asked her to come to the office to speak with us.

15 Q Okay. Do you -- according to your records, did
16 Indigo Penny ever come in to the sheriff's office after
17 the incident for a follow-up interview?

18 A Yes, sir. Like I said previously, we had a couple
19 different meetings with her at -- at the office.

20 Q All right. Does April 29th of 2019 -- do you have
21 any indications that Indigo came to the sheriff's office
22 for a follow-up interview?

23 A Yes, sir.

24 Q Okay.

25 A According to body-cam footage.

1 Q All right. You conducted that interview with
2 Indigo?

3 A Yes, sir.

4 Q All right. And where was that?

5 A It would've been in the investigations suite at the
6 sheriff's office.

7 Q And it was recorded with your body-worn camera?

8 A Yes, sir. That's correct.

9 Q Okay. And when Indigo testified, Solicitor Stumbo,
10 on his direct examination, asked her a question related
11 to the condition of her children, whether they were
12 crying at some point just prior to -- to the -- to the
13 shots being fired; is that correct?

14 A I believe that's correct.

15 Q Okay. So at some point in time, when she's leaving
16 with the children, Solicitor Stumbo asked her about
17 whether the children were crying; is that correct?

18 A Yes, sir. I believe ---

19 Q All right. And ---

20 A --- yeah.

21 Q --- she indicated on the witness stand that no, her
22 children were not crying; is that correct?

23 A Yes, sir.

24 Q All right. But on April 29th, 2019, interview at
25 the sheriff's office that you conducted, did Indigo

1 indicate that her children were crying at that point in
2 time when she's fleeing the scene in the car?

3 A Yes, sir. She indicated that her children were
4 crying as she was exiting the residence and going around
5 to the her vehicle.

6 Q Okay. But she denied on the witness stand ever
7 telling y'all that her children were crying at that point
8 in time; is that correct?

9 A I believe you're correct.

10 Q All right. And I'm going to show you what's been
11 marked for ID purposes as State's 174. It's a disc. Do
12 you recognize this?

13 A Yes, sir.

14 Q All right. And what is that?

15 A It would be a disc that contains either multiple
16 body cams or this particular body cam on -- just depends
17 on the size.

18 Q Okay. Does it contain that portion of the interview
19 discussing on April 29th her kids crying?

20 A Yes, sir.

21 Q Okay.

22 MR. DANIEL: Your Honor, at this time, I -- I'd ask
23 for permission under Rule 613 to play that portion of
24 this interview related to the prior inconsistent
25 statement.

1 THE COURT: Well, first, you're going to have to
2 introduce it into evidence.

3 Any objection to it coming into evidence?

4 MR. GEOLY: I have no objection to the part coming
5 into evidence that he's intending to play, Judge. I -- I
6 -- my understanding is there's several things --
7 apologize to the Court.

8 THE COURT: I understand. I understand. Okay. So
9 that brief portion we'll admit into ---

10 MR. GEOLY: Yes, sir.

11 THE COURT: --- evidence. Okay.

12 MR. DANIEL: Yes, sir. Subject to the -- the motion
13 in limine, that particular portion, and we would offer
14 that into evidence.

15 THE COURT: All right. Without objection.

16 (Whereupon, a limited portion of State's Exhibit 174
17 was entered into evidence.)

18 MR. DANIEL: All right. Mr. Bentley, if you could,
19 play that particular portion.

20 (Whereupon, a portion of video was published in open
21 court.)

22 Q That was very brief, right?

23 A Yes, sir.

24 MR. DANIEL: Your Honor, could everybody in the jury
25 hear that? I -- I don't know if ---

1 THE COURT: Well, you've already played it. Let's

2 ---

3 MR. DANIEL: Okay.

4 THE COURT: --- go ahead.

5 MR. DANIEL: Okay.

6 Q All right.

7 MR. DANIEL: Beg the Court's indulgence.

8 Q All right. Investigator Dickert, please answer any
9 questions Mr. Geoly has.

10 A Okay.

11 CROSS-EXAMINATION

12 BY MR. GEOLY:

13 Q Hey, Investigator Dickert. How are you?

14 A Good.

15 Q You've been here the entire time, right? I mean, I

16 ---

17 A Yes.

18 Q --- people have been coming and going from the --
19 the courtroom, but -- but you're the lead investigator;
20 you've been here this whole time to listen to everybody,
21 right?

22 A Yes, sir. That's correct.

23 Q Okay. And I guess this last little video part was
24 to clarify that at some point Ms. Indigo had told you --
25 or I guess she testified yesterday the kids weren't

1 crying as they were being put in the car; is that
2 correct?

3 A Yes, sir. I believe you're correct.

4 Q Okay. Now, when she's describing what's happening
5 right there, she's actually talking about as they go out
6 the back door and he unloads the -- the first pistol into
7 the air; is that correct?

8 A It would be at the point where they're going to the
9 car. Yes.

10 Q But clearly, when she says they're crying, they're
11 not to the vehicle yet, right? They're out the back door
12 kind of at the corner of the trailer ---

13 A Your speculation is as good as mine. I just know
14 ---

15 Q Well ---

16 A --- that they ---

17 Q --- she actually ---

18 A --- were ---

19 Q --- says in that tape, doesn't she, that it's by the
20 crumbled little concrete area that's -- that's along the
21 side, right?

22 A Around -- or going to the house ---

23 Q Right.

24 A --- running around the house.

25 Q Right. And she got to walk past that to the

1 driveway, around to the front where the front porch is,
2 b. to get to the car, right?

3 A I would agree to that.

4 Q Okay. So if she thinks back and thinks to as she's
5 getting them in the car and they're not crying and that's
6 what she did yesterday, that's not necessarily
7 inconsistent at all, is it?

8 A From the point that they were ---

9 Q The fact they're ---

10 A --- crying when they ---

11 Q --- crying in ---

12 A --- went out ---

13 Q --- the back ---

14 A --- the house?

15 Q --- when they come out and shoots a gun in the air
16 does ---

17 A Right.

18 Q --- not mean when she has them -- putting them in,
19 as she says, the vehicle. They're listening to her. At
20 that point she said they weren't crying. That's not
21 necessarily inconsistent at all, is it?

22 A If that's your belief.

23 Q Well, what about your belief? Isn't your belief
24 that ---

25 A I ---

1 Q --- he could be crying in the back but not crying by

2 ---

3 MR. DANIEL: Your Honor ---

4 Q --- by the time they're in the car?

5 MR. DANIEL: Objection to the form of that question

6 ---

7 MR. GEOLY: Your Honor ---

8 MR. DANIEL: --- Your Honor.

9 MR. GEOLY: --- he -- he ---

10 THE COURT: Overruled. Go ahead. Ask it.

11 A I would have a hard time believing that if the
12 children were crying as she left the back of the house
13 after a gun was fired, that they were -- just suddenly
14 stopped crying as they got to the car.

15 Q Did you see how suddenly Xzavier started crying when
16 you walked in the room and asked him how he was?

17 A I do.

18 Q And then ---

19 A I do.

20 Q --- he -- when the nurse grabbed him, he immediately
21 stopped, didn't he?

22 A You're right. Because that was his -- that was his
23 comfort.

24 Q Can happen in an instant, can't it?

25 A (No audible response.)

1 Q Can't it?

2 A I wouldn't agree ---

3 Q It's ---

4 A --- to that.

5 Q --- all right. I mean ---

6 A Not -- not in that situation. I wouldn't ---

7 Q All right.

8 A --- agree ---

9 Q But ---

10 A --- to that.

11 Q --- and -- and from the back of that trailer to the
12 front, putting them in the car, that's certainly not in
13 an instant, is it? It's longer than an instant.

14 A A couple seconds, I -- I would say.

15 Q Couple? To walk from the back to the front and get
16 three kids in a car? Couple of seconds?

17 A If you're being shot at, I would assume that she was
18 ---

19 Q Okay. Well, she wasn't being shot at. She told you
20 clearly she wasn't being shot at; he ---

21 A If ---

22 Q --- shot in the air, right?

23 A If a gun was fired behind me, I ---

24 Q Right.

25 A --- would assume ---

1 Q No.

2 A --- that ---

3 Q And -- and into ---

4 A --- she would be ---

5 Q --- the air.

6 A --- hurrying.

7 Q Didn't recover any of those bullets, right?

8 A The bullets?

9 Q Right.

10 A No.

11 Q Okay. Don't think they were shot at her. She
12 testified that they weren't, right?

13 A Right.

14 Q Okay.

15 MR. GEOLY: Beg the Court's indulgence one moment,
16 Your Honor.

17 THE COURT: All right.

18 (Off the record briefly.)

19 Q Have -- have you reviewed these videotapes in
20 preparation for your testimony today?

21 A I've reviewed some.

22 Q Okay. The -- this one that we just went to, that
23 that's a portion of, I mean, do -- do you remember that
24 one? Have you reviewed that one?

25 A I'm sure at some point in time. Yes.

1 Q And -- and that is actually nine days after this
2 incident occurred, right?

3 A That would be correct. Yes.

4 Q Okay. Did you inquire, when you're interviewing her
5 or debriefing her, whatever y'all would call that, as to
6 whether or not she was on any pain medication at that
7 time for her injuries?

8 A I'm sure she was probably on antibiotics and maybe
9 something for the pain. But no, we didn't expressly ask
10 her.

11 Q You didn't ask her whether she was under the
12 influence of any narcotics that were prescribed by a
13 doctor at that point?

14 A No, sir. We didn't.

15 Q Okay. She seem coherent to you?

16 A She did.

17 Q Okay. Do you remember, at some point in the
18 investigation, she's asking you about -- or y'all are
19 talking about -- you just talked her, I think, actually,
20 about that at some point he may try for a bond? This was
21 nine days after this happened. Do you remember that?

22 A I don't remember that particular point. No, I
23 don't.

24 Q Do you remember talking to her about DSS?

25 A I'm sure that we did. Yes.

1 Q And the fact that you wouldn't necessarily have a
2 problem, but that DSS would be liable to try and take
3 custody of her kids if she visited with Xzavier?

4 A Yes, sir. It was possible, since they were
5 involved.

6 Q So essentially, you -- you kind of threatened her
7 that: "DSS could come try and take your kids if -- if
8 you visit your husband or you allow you kids to visit
9 with him"?

10 MR. DANIEL: Objection, that's a ---

11 Q They're not ---

12 MR. DANIEL: --- a little argumentative, Your Honor,
13 that ---

14 THE COURT: Overruled.

15 MR. DANIEL: --- they threatened ---

16 THE COURT: Go ahead.

17 A No, sir. I wouldn't call it a threat.

18 Q Just making her aware?

19 A I -- well, yes. I wanted her to be aware that these
20 are the possibilities, should you choose to do this.

21 Q Because she was the victim of an alleged murder at
22 that point; her -- her 7-year-old was dead, right?

23 A Yes, sir.

24 Q She's been ---

25 A That's correct.

1 Q --- shot by herself. You bring her in for a meeting
2 debriefing, and then discuss with her that potentially,
3 if she tries to visit her husband, she's liable to lose
4 her kids to DSS.

5 A She wouldn't have been allowed to visit her husband
6 by jail policy anyway. So ---

7 Q Okay. But that's what you talked about: that if
8 you did, you could lose custody of your kids to DSS?

9 A I don't believe that mentioned, that she would lose
10 -- I -- that DSS would obviously be looking into it.

11 Q You don't ---

12 A Yes.

13 Q --- believe that was said?

14 A I -- it's possible. But -- but I don't control what
15 DSS does.

16 Q All right.

17 MR. GEOLY: If we could, Judge, on that same video,
18 if we could bring it to -- at 14:42:37.

19 (Off the record briefly.)

20 MR. DANIEL: Your Honor, is this being offered as a
21 defense exhibit? Because I believe it was only
22 admissible for our four-second portion.

23 THE COURT: Are you putting the ---

24 MR. GEOLY: Judge, I -- I'm asking him about his
25 body cam. He said that he didn't recall it. So I'm --

1 I'm ---

2 THE COURT: And ---

3 MR. GEOLY: --- playing this to refresh his memory.

4 THE COURT: He moved into evidence and you said only
5 that portion.

6 MR. GEOLY: I -- I'm ---

7 THE COURT: So this ---

8 MR. GEOLY: --- not necessarily ---

9 THE COURT: --- other portion is not in. Are you
10 putting it into evidence?

11 MR. GEOLY: I'm -- I'm -- I'm not seeking to put it
12 in at this time, Your Honor.

13 MR. DANIEL: I don't object ---

14 THE COURT: Well, you ---

15 MR. DANIEL: --- if he ---

16 THE COURT: --- can't play it to the jury, then.

17 MR. GEOLY: Okay.

18 MR. DANIEL: I don't object if he wants to put in,
19 Your Honor. That's fine.

20 MR. GEOLY: Just this limited portion, I'm ---

21 THE COURT: No. You can put it in or you can keep
22 it out, whichever you prefer.

23 MR. GEOLY: Beg the Court's indulgence one moment,
24 Your Honor.

25 THE COURT: All right.

1 (Off the record briefly.)

2 THE COURT: I need -- hold for one second. Let me
3 see the attorneys on the sidebar.

4 MR. GEOLY: Yes, sir.

5 (Whereupon, a bench conference was held off the
6 record in the presence of the jury, but out of the
7 hearing of the jury.)

8 Q So -- so let me be clear: You do remember talking
9 to her about DSS and what they may do, or you don't?

10 A I know we had several discussions with her. And I'm
11 sure that at some point in time during those meetings,
12 that DSS was brought up. Because they were actively
13 involved in ---

14 Q And ---

15 A --- this case from the early onset.

16 Q And when you talked about DSS, do you remember
17 talking about the fact that potentially, they would try
18 and take her kids from her if she allowed a visit or if
19 she visited?

20 A Now, say that again?

21 Q That -- that DSS -- you said that you wouldn't
22 necessarily have a problem with it, but that DSS would
23 probably try to take custody of her children if she
24 visited Isaiah or allowed the kids to.

25 A Isaiah?

1 Q I'm sorry. Xzavier. I just ---

2 A I'm sorry.

3 Q Is that -- Xzay.

4 A I mean, it's possible ---

5 Q He's called Xzay.

6 A --- I mean, honestly.

7 Q Okay. No further questions. Thank you.

8 THE COURT: All right. Redirect.

9 MR. DANIEL: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. DANIEL:

12 Q Investigator Dickert, what -- what is a mandatory
13 reporter? What does that mean?

14 A We're mandated by law to notify -- we would have to
15 notify DSS -- a mandated reporter could be a nurse, a
16 doctor, counselors -- of any type of abuse. They're --
17 they're required by law -- state law to notify DSS and/or
18 law enforcement.

19 Q All right. So -- so police officers, like yourself,
20 are notified or -- or are required to notify DSS if a
21 child is -- is -- basically, if their health, safety, and
22 welfare is put in jeopardy -- or potentially put in
23 jeopardy; is that correct?

24 A Yes, sir. That's correct.

25 Q All right. So you were simply notifying Indigo

1 Penny, if she were to have contact with her husband, who
2 is alleged to have just emptied a pistol into her, that
3 potentially puts her kids in jeopardy. That -- that's
4 all you were doing; is that correct?

5 A Yes, sir. That's correct.

6 Q All right. Thank you.

7 THE COURT: All right. You may step down.

8 (Whereupon, the witness exited the witness stand.)

9 (Off the record briefly.)

10 THE COURT: All right. Let me see the attorneys for
11 one second.

12 (Whereupon, a bench conference was held off the
13 record in the presence of the jury, but out of the
14 hearing of the jury.)

15 THE COURT: All right. The state can call your next
16 witness.

17 MR DANIEL: Thank you, Your Honor. The state calls
18 Dalila Jazic.

19 (Off the record briefly.)

20 (Whereupon, the witness came forward.)

21 DALILA JAZIC, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Okay. Have a seat and state
24 your name for the record.

25 THE WITNESS: Thank you. Dalila Cirencione. At the

1 time of the case, it was Jazic.

2 THE COURT: All right. And could you spell your
3 name, please?

4 THE WITNESS: Cirencione is C-i-r-e-n-c-i-o-n-e.

5 DIRECT EXAMINATION

6 BY MR. DANIEL:

7 Q Cirencio?

8 A Cirencione.

9 Q Okay. All right. Ma'am, would you -- and -- and
10 please speak into that microphone as well. There's air
11 going above you. But -- so at the time of this
12 particular investigation, April -- April of 2019, you
13 were Dalila Jazic, correct?

14 A That's correct.

15 Q And you were -- you were then and now employed by
16 the South Carolina Law Enforcement Division, SLED.

17 A That's correct.

18 Q All right. And what was your job at SLED?

19 A My job was and still is -- I'm a special agent,
20 assigned to the crime scene unit. And at that time I
21 attended an autopsy for this case.

22 Q Okay. And tell us how that came about.

23 A I was notified by Special Agent Jaclynn McKay to
24 attend an autopsy on April 23rd for the victim, Iven
25 Caldwell.

1 Q Okay. And where -- where was that autopsy
2 conducted?

3 A The autopsy was at the Newberry County Memorial
4 Hospital.

5 Q Okay. And -- and what was the purpose of -- of your
6 attendance at this autopsy?

7 A To attend the autopsy. I collected any evidence by
8 the pathologist that could've been taken from the victim
9 himself. And I documented the victim with digital
10 photographs.

11 Q Okay. And so your job was to collect anything of
12 evidentiary value that was extracted from Iven Caldwell
13 at this autopsy?

14 A That's correct.

15 Q And what, if anything, was extracted?

16 A The pathologist recovered one fired projectile from
17 the right side of the victim's head.

18 Q Okay. And it's your understanding that was a 7-
19 year-old boy; is that correct?

20 A Yes, sir.

21 Q Okay. All right. If you could -- Agent Cirencione
22 now --- on that computer, can you pull up 34, 35, and 36?

23 A This is exhibit -- or this is Item 34?

24 Q Yes, 34. What -- what are those, starting with 34?

25 A 34 is a digital photograph of a fired projectile,

1 the one that was collected from the right side of the
2 victim's head.

3 Q Okay. And the pathologist would've actually --
4 who's examined the body, have actually collected that
5 personally while using medical tools, correct?

6 A Yes, sir. The pathologist collected it.

7 Q All right. And then -- then, 35?

8 A 35 is a closer photo with a scale of the fired
9 projectile recovered from the victim's head.

10 Q And 36?

11 A 36 is another close-up photograph of a fired
12 projectile with a scale, recovered from the victim's
13 head.

14 MR. DANIEL: Your Honor, I'd offer those three
15 exhibits, 34 through 36, for admission into evidence.

16 MR. GEOLY: No objection ---

17 THE COURT: Any ---

18 MR. GEOLY: --- Your Honor.

19 THE COURT: All right. State's Exhibit 34, State's
20 Exhibit 35, and State's Exhibit 36 are admitted into
21 evidence without objection.

22 (Whereupon, State's Exhibits 34, 35, and 36 were
23 entered into evidence.)

24 Q All right. All right. There's 34, Agent
25 Cirencione. And that just has measurements of the

1 extracted projectile?

2 A Yes, sir.

3 Q Okay. And then, 35 -- well, what is the -- well,
4 what is the -- the measurements there? Can you tell?

5 A I would say approximately 1 centimeter.

6 Q Okay. That would be the diameter across?

7 A From what I could tell. But ---

8 Q All right.

9 A --- I'm not sure.

10 Q Go to -- I'm sorry. What?

11 A It looks like it. Yes.

12 Q Okay.

13 MR. DANIEL: 36, Mr. Bentley.

14 Q And then, what would the actual length be, according
15 to that measurement?

16 A According to the measurement, 1 1/2 centimeters.

17 Q Okay. All right. So once that's extracted by the
18 pathologist from the head of -- of -- of Iven Caldwell,
19 what do you do? What's your involvement at that point?

20 A I received the fired projectile from the pathologist
21 via chain-of-custody form. And then I responded back to
22 the SLED Forensic Services Laboratory, where I did
23 another chain-of-custody and transferred any evidence
24 collected from the victim to the lead agent, which was
25 Special Agent Jaclynn McKay.

1 Q Okay. And where -- where is the headquarters or
2 your office where you would've transferred custody of
3 this projectile to Agent McKay?

4 A 4416 Broad River Road, Columbia, South Carolina.

5 Q All right. Would that be assigned -- would this
6 piece of evidence be assigned a -- a case number?

7 A Yes. Every piece of evidence is submitted into our
8 system and assigned a -- an item number and it has a lab
9 number associated with it.

10 Q Okay.

11 A But that only would've been done through Special
12 Agent McKay.

13 Q All right. I'm going to hand you what's been marked
14 for ID purposes through the clerk here as State's No. 13.
15 Do you recognize that?

16 A Yes, sir. I do.

17 Q All right. And what is that?

18 A This is the fired projectile, or Item 33, as it was
19 logged in by Jaclynn McKay.

20 Q Okay. And that's what you just described getting
21 from the ---

22 A It is.

23 Q --- autopsy in Newberry, taking it to SLED, and
24 giving it to Agent McKay?

25 A Yes, sir. It is.

1 Q All right.

2 MR. DANIEL: Your Honor, I'd offer State's 13 for
3 admission into evidence.

4 THE COURT: Any objection?

5 MR. GEOLY: Without objection, Your Honor.

6 THE COURT: All right. State's Exhibit 13 is
7 admitted into evidence without objection.

8 (Whereupon, State's Exhibit 13 was entered into
9 evidence.)

10 Q It's your understanding, Agent, that's the -- that
11 is the -- the fatal bullet, correct?

12 A Yes, sir.

13 Q All right.

14 A It is.

15 Q All right. Thank you. Please answer any questions
16 Mr. Geoly has for you.

17 MR. GEOLY: Please the Court, Judge.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. GEOLY:

21 Q Ms. Dalila, what -- what's your current last name
22 again?

23 A Cirencione.

24 Q All right. Nice to meet you.

25 A Nice to ---

1 Q And this ---

2 A --- meet you.

3 Q --- is the first time we've talked, right?

4 A Yes, sir. It is.

5 Q This pretty much a ordinary, cheap bullet?

6 A I'm sorry?

7 Q Is this pretty consistent with an ordinary, cheap
8 bullet, for lack of a better word?

9 A Cheap?

10 Q Cheap.

11 A I am ---

12 Q Like -- like ---

13 A --- not a firearms examiner. I don't know what a
14 cheap bullet is.

15 Q All right.

16 A So I can't testify to that.

17 Q Just a typical bullet, then?

18 A It is a bullet.

19 Q Okay. And -- and that is the bullet, as far as you
20 know, that is in those three pictures?

21 A Yes, sir. This is.

22 Q Okay. Do you have any other information to give us
23 in terms of malice aforethought or what was going on when
24 -- when this event actually occurred?

25 A No, sir. I do not. Only thing I did was attend an

1 autopsy and collect and evidence that was recovered from
2 the victim and then transfer it to Special Agent McKay.

3 Q So you have nothing to offer regarding guilt or not
4 guilt of my client as to this matter. You just ---

5 A No, sir.

6 Q --- collected the bullet?

7 A Yes, sir.

8 Q No further questions.

9 THE COURT: All right. Redirect?

10 MR. DANIEL: No, Your Honor.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Do you want me to leave this here?

13 THE COURT: Hand it to the court reporter, please.

14 Thank you.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness exited the witness stand.)

17 (Off the record briefly.)

18 THE COURT: All right. Ladies and gentlemen, I
19 think we're going to go ahead and break for lunch. Like
20 yesterday, I'm going to allow you to go to lunch on your
21 own.

22 I direct you again: Do not discuss the case with
23 anyone, even among yourselves. Don't conduct any
24 independent investigations.

25 It's 12:15. I'm going to ask that you please be

1 back at 1:45, about a quarter to two. That'll give you
2 an hour and a half to eat lunch and get back. Hope you
3 have a good lunch, and we'll see you back at 1:45.

4 Keep your seats while the jury is excused, please.

5 (Off the record briefly.)

6 (Whereupon, the jury exited the courtroom at 12:15
7 p.m.)

8 THE COURT: All right. Anything from the state
9 before we recess for lunch?

10 MR. STUMBO: Nothing, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. GEOLY: Nothing, Your Honor.

13 THE COURT: Well, all right. We'll be in recess
14 until 1:45.

15 (The Court went off the record at 12:15 p.m.)

16 (The Court went on the record at 1:53 p.m.)

17 THE COURT: All right. Anything from the state
18 before we bring the jury in?

19 MR STUMBO: Nothing, Your Honor.

20 THE COURT: Anything from the defense?

21 MR GEOLY: No, sir, Judge.

22 THE COURT: All right. Let's go ahead and bring the
23 jury in.

24 (Off the record briefly.)

25 (Whereupon, the jury entered the courtroom at 1:55

1 p.m.)

2 THE COURT: All right, ladies and gentlemen.
3 Welcome back. Hope everyone had a good lunch. We're
4 ready to resume the trial of the case.

5 The state can call your next witness.

6 MR STUMBO: Thank you, Judge. The state calls Ila
7 Simmons to the stand.

8 THE COURT: All right.

9 (Off the record briefly.)

10 (Whereupon, the witness came forward.)

11 ILA SIMMONS, having been first duly sworn,
12 testified as follows:

13 DEPUTY CLERK OF COURT: Have a seat and state your
14 name for the record.

15 THE WITNESS: My name is Ila Simmons.

16 DIRECT EXAMINATION

17 BY MR. STUMBO:

18 Q Good afternoon, Ms. Simmons. Where do you work?

19 A I am currently not unemployed.

20 Q Okay. Where did you work before back in 2019?

21 A At the South Carolina Law Enforcement Division, also
22 known as SLED, in the forensic laboratories trace-
23 evidence department.

24 Q Okay. And what was your background that gave you
25 any training and education, if you could explain to the

1 jury, what you went through to become a trace evidence
2 analyst.

3 A I had received a bachelor's of science degree in
4 chemistry. After completing that, I came to work at
5 SLED, where, for the first three years, I went through
6 the trace-evidence training program with a certified
7 trace-evidence examiner. I had to take written and
8 practical examinations and complete them with 100 percent
9 efficiency. And after that, I was deemed to be competent
10 in trace evidence.

11 Q Okay. And during your time in SLED in that unit,
12 how -- how many cases, estimated, did you work on in that
13 time?

14 A I probably analyzed 100,000 gunshot-residue samples
15 and as long as -- as well as paints; probably 25,000
16 cases in general.

17 Q And how many cases -- or how many years did you work
18 in that department?

19 A About 16.

20 Q Did you ever testify in court as an expert during
21 those 16 years?

22 A Yes, sir. Over 300 times.

23 Q Okay. Over 300 ---

24 A Yes, sir.

25 Q --- you said?

3 || A Yes.

4 Q Okay.

10 THE COURT: All right. Any questions or challenges?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. GEOLY:

16	Q	Where did you study?

17 | A At Columbia College.

18 Q Okay. And you indicated your unemployed now; is
19 that right?

20 | A Yes, sir.

21 Q Did -- did that have anything to do with your work
22 performance at all or ---

23 A No, sir.

24 Q --- was it ---

25 | A I retired.

1 Q You retired?

2 A Yes, sir.

3 Q Okay. So you're not really unemployed; you're
4 retired?

5 A Yes, sir.

6 Q Okay.

7 MR. GEOLY: Your Honor, I have no further questions.
8 And we agree that she is an expert in firearms -- or
9 trace evidence or whatever they offered ---

10 MR. STUMBO: It's traced evidence and gunshot
11 residue.

12 MR. GEOLY: Yes, sir ---

13 THE COURT: All right.

14 MR. GEOLY: --- Your Honor.

15 THE COURT: All right. I'll find this -- I find
16 this witness to be an expert in the field of trace
17 evidence and gunshot-residue analysis.

18 Now, ladies and gentlemen of the jury, I'll charge
19 you on the law regarding expert testimony when I charge
20 you on the law to be applied in this case. But all you
21 need to know for right now is, ordinarily, a witness can
22 only testify as to her or her personal observations:
23 what they saw, what they tasted, what they smelled, what
24 they felt, things of that nature.

25 There is an exception for witnesses who are

1 qualified as expert, which means that in addition to her
2 personal observations, this witness will be allowed to
3 give an opinion in the field in which she is qualified as
4 an expert.

5 All right, sir.

6 MR. STUMBO: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MR. STUMBO:

9 Q Ms. Simmons, I'm going to pass you what's in
10 evidence as State's Exhibit 7 through the clerk.

11 MR. STUMBO: If you could pass that to ---

12 Q If you could take a look at that, that's State's 7,
13 Ms. Simmons?

14 A Yes, sir.

15 Q Okay.

16 A This is a gunshot-residue kit that was submitted to
17 my department, and I analyzed it.

18 Q Okay. And how do you know? Do you have any
19 writings or markings on it?

20 A Yes, sir. It -- every -- every case that comes in
21 to our laboratory is given an -- unique identification
22 number. Each piece of evidence that comes in each case
23 is given an item number. That is all present here, as
24 well as my initials. And it would be handwritten and --
25 as well as the date that I opened it to begin my

1 analysis.

2 Q Okay. And after you -- did you analyze the contents
3 of this package?

4 A Yes, sir. I did.

5 Q Okay. And when you get done with your analysis --
6 and I believe it's sealed up now, so you seal it back?

7 A Yes, sir. I do.

8 Q Okay. And that's your initials on there on the
9 place where it's sealed back?

10 A Yes, sir.

11 Q Okay. Now, is there a name on State's 7 as to -- to
12 who the -- the suspect -- suspect was in this case or ---

13 A Yes, sir.

14 Q --- defendant?

15 Who was that?

16 A It's Xzavier Davis.

17 Q Okay. All right. You can pass that back. And I'm
18 going to have you pass that back, and I'm going to hand
19 you what's been marked at this point just as ID, State's
20 -- State's 6 for ID purposes.

21 What is -- do you recognize State's 6?

22 A Yes, sir. I do.

23 Q Okay. What is that?

24 A This is a copy of the report that I generated after
25 completing my analysis.

1 Q Okay. Fair and accurate representation of the
2 report that you -- you submitted in this case?

3 A Yes, sir. It is.

4 Q Okay.

5 MR. STUMBO: Your Honor, we'd offer State's 6 into
6 evidence at this time.

7 THE COURT: Any objection?

8 MR. GEOLY: I'm sorry, Your Honor. No objection.

9 THE COURT: All right. State's Exhibit No. 6
10 admitted into evidence without objection.

11 (Whereupon, State's Exhibit 6 was entered into
12 evidence.)

13 Q Now, Ms. Simmons, if you could, just briefly tell
14 the jury: What -- what's involved -- what are you
15 looking for when you examine a gunshot-residue kit?

16 A Gunshot residue is a mixture of chemicals that come
17 out of a gun when it's discharged. It can get on
18 anything in close proximity to the gun, including the
19 hands of the person that's shooting the gun.

20 It's -- the elements that we're looking for are
21 comprised of lead, barium, and antimony. As what the
22 gunshot-residue kits consists of is double-sided sticky
23 tape on a handle. And the double-sided sticky tape is
24 dabbed over the -- over the palms and backs of -- of the
25 suspect's hand. And then it's all put into an envelope

1 and submitted to us.

2 Q Okay. And when you went to examine the package that
3 Newberry sent to you and it went through -- your crime
4 scene investigator brought it into evidence and they
5 brought it to you to handle; is that correct?

6 A That -- yes. They brought it in; logged it into our
7 login department. It was -- then I came downstairs and I
8 received it to my custody.

9 Q Okay. And when you received that package that we're
10 -- had it opened or tampered with at all before you got
11 it?

12 A No, sir. It was sealed by the crime scene agent
13 that brought it into the laboratory, as well as the
14 specific gunshot-residue kit was sealed and initialed by
15 the person who collected it from Newberry County.

16 Q Okay. So Newberry County had it and sealed and --
17 and then -- there's no indication that any of those seals
18 were broken when you received it.

19 A That's correct.

20 Q Okay. What were your findings on this case, Ms.
21 Simmons?

22 A Particles -- particles characteristic of gunshot-
23 primer residue were found.

24 Q Okay. And that -- that means that there were
25 multiple particles. Is there a number that you stop at

1 when you ---

2 A There's not a number we stopped at. But there was a
3 large amount of gunshot residue found. Yes, sir.

4 Q Okay. And after you did that analysis, you were
5 able to seal the kit back up and put it back to evidence
6 to go back to Newberry County?

7 A That's correct.

8 Q Okay. That's all the questions I have for you, Ms.
9 Simmons. Thank you for being here today. Please answer
10 anything Mr. Geoly may have.

11 MR. GEOLY: If it please the Court, Judge.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. GEOLY:

15 Q Hey, Ms. Simmons. How are you?

16 A Hello. How are you?

17 Q How long you been retired?

18 A Almost two years.

19 Q I hope you're enjoying it.

20 Couple questions: Gunshot residue, you found that
21 he did have gunshot residue on his hands; is that right?

22 A That's correct.

23 Q And to be clear, that just means he shot a gun
24 recently, right?

25 A Yes. That is one way that you can get gunshot

1 residue on your hands. You can also be near a gun when
2 it's discharged, or you can handle something that has
3 gunshot residue on it and it can be transferred to your
4 hands.

5 Q And it -- it -- actually, gunshot residue can -- can
6 kind of easily be removed by taking a shower, washing
7 your hands, or wiping off with a towel, that could
8 disturb -- disturb those results; is that ---

9 A That's correct.

10 Q --- fair to say?

11 A Yes, sir.

12 Q And nothing like that, obviously, had been done in
13 this case, because he did test positive for gunshot
14 residue, right?

15 A That's correct.

16 Q Which, again, just means he had fired a gun, right?

17 A Yes, sir.

18 Q Do you have anything to offer this jury in terms of
19 what happened prior to him firing a gun?

20 A No, sir. I do not.

21 Q Do you have any testimony regarding his intentions
22 or malice aforethought? You don't have anything to offer
23 this jury regarding that, do you?

24 A No, sir. I do not.

25 Q I don't have any further questions. Thank you.

1 THE COURT: All right. Redirect.

2 MR. STUMBO: Just one more -- one question, Judge.

3 REDIRECT EXAMINATION

4 BY MR. STUMBO:

5 Q In those thousands of cases that you've looked at
6 over the years, have you ever had an opportunity to be a
7 crime scene where you end up having evidence that you
8 analyzed later before the crime took place?

9 A No, sir.

10 Q Okay. It's always after; is that right?

11 A Yes, sir.

12 Q Okay. Thank you.

13 MR. STUMBO: No further questions, Your Honor.

14 THE COURT: All right. You may step down.

15 (Whereupon, the witness exited the witness stand.)

16 (Off the record briefly.)

17 THE COURT: All right. The state can call your next
18 witness.

19 MR. DANIEL: All right. Your Honor, the state calls
20 Michele Eichenmiller.

21 THE COURT: All right.

22 (Off the record briefly.)

23 (Whereupon, the witness came forward.)

24 MICHELE EICHENMILLER, having been first duly
25 sworn, testified as follows:

1 DEPUTY CLERK OF COURT: Please have a seat and state
2 your name for the record.

3 THE WITNESS: My name is Michele Eichenmiller.

4 DIRECT EXAMINATION

5 BY MR. DANIEL:

6 Q All right. Ms. Eichenmiller, where are you
7 currently employed?

8 A I employed at the South Carolina Law Enforcement
9 Division. I work in the forensic laboratory in the
10 firearms department.

11 Q Okay. And what is your job title in the firearms
12 department?

13 A I'm a firearms-identification analyst.

14 Q Okay. And briefly entail what that -- what that
15 means, your job description.

16 A My job at SLED is to analyze any evidence that is
17 submitted to us from a crime scene, to include firearms,
18 bullets, cartridge cases, anything else I would just
19 consider part of a firearm.

20 Q Okay. So if, for instance, shell casings -- spent
21 shell casings are found at a crime scene or the actual
22 projectile or bullets are at a crime scene and, say,
23 there's also a gun found, too, you would test those items
24 to see if they were fired from a particular gun?

25 A That's correct.

1 Q Okay. All right. And what's your -- your training
2 and background to be a firearms-identification analyst?

3 A I have a bachelor's degree in biology. And I also
4 have a master of science in forensic science. In order
5 to be a firearms examiner, though, there's no college you
6 can attend. You have to be an apprentice.

7 So you learn with court-qualified examiners that are
8 at your agency. So I learned with the examiners that
9 were at SLED during the time of my training, which was
10 approximately four years. I did practical exercises,
11 written exercises, microscopic work. And then, at the
12 end of that, I took a test and they deemed me competent
13 to do casework on my own.

14 Q And how long have you been a -- a firearms-
15 identification analyst?

16 A Approximately 15 years.

17 Q Okay. And have you ever been qualified as an expert
18 in South Carolina state courts?

19 A I have.

20 Q Approximately how many times?

21 A Approximately 100 times.

22 Q And what is the terminology they use for your field
23 of expertise?

24 A Firearms identification.

25 Q Okay.

1 MR. DANIEL: Your Honor, at this time I would tender
2 Ms. Eichenmiller as an expert in firearms identification.

3 All right. Any questions or challenges?

4 MR. GEOLY: None, Your Honor.

5 THE COURT: All right. I find this witness to be an
6 expert in the field of firearm identification.

7 Q Okay. All right. I want to go to this specific
8 case. We're dealing with an April 20th, 2019, incident.
9 Did you have an occasion to analyze firearms-related
10 evidence as it pertains to this particular case involving
11 a suspect by the name of Xzavier Davis?

12 A I did.

13 Q Okay. And so you received firearm -- physical
14 firearm-related evidence. Did -- was there a specific
15 case number assigned to this evidence?

16 A The SLED lab number for this case is L1908244.

17 Q Okay. And approximately -- this evidence -- who
18 logged this into evidence at SLED, all this firearm-
19 related evidence as it pertains to this case?

20 A I believe it was our crime scene analyst.

21 Q Okay. Who would that be?

22 A Jaclynn McKay.

23 Q Okay. And when was that evidence submitted to your
24 agency for forensic testing?

25 A The time on the packing slip that I have is 4/22 of

1 2019.

2 Q Okay. And I want to hand you what's already been
3 admitted into evidence as State's 8 and 9. I'll pass
4 those up through the clerk. Start with -- start with No.
5 8, please, and tell us what that is.

6 A It's a revolver. It's the one I examined in this
7 case.

8 Q Okay. And what type of weapon, make, and model?

9 A It's a Ruger LCR in .22-long-rifle caliber.

10 Q And is there a -- is there anything specific about
11 that firearm additional? Does it have any attachments to
12 it?

13 A It has a laser sight that's attached to the frame.

14 Q Okay. There is a laser sight attached to that .22-
15 caliber revolver?

16 A Uh-huh.

17 Q And how many rounds does that revolver hold?

18 A Eight.

19 Q Okay. So that was submitted to you for testing
20 against some of the -- some of the evidence found at the
21 crime scene -- shell casings? projectiles? etc.?

22 A Yes.

23 Q Okay. And then, go to No. 9, please, in the box.

24 A All right.

25 Q And you recognize that?

1 A It's the pistol I examined in this case. It's a
2 Taurus Model 709 Slim in 9-millimeter Luger caliber.

3 Q Okay. And so you tested that against, again -- what
4 did you test that firearm against to see if that was a
5 firearm that was used in this particular incident? What
6 items did you test that against?

7 A I would've tested that against the fired cartridge
8 cases I received and the fired bullets I received.

9 Q Okay. Let's walk through that. I'm going to hand
10 you what's been marked for ID purposes as State's 10, 11,
11 12, 13, 15, 16, and 17. I know that's a lot. But I'm
12 going to go to pass that up to you through the clerk, and
13 we'll try to go in numerical order.

14 All right. Let's start with what's been premarked
15 for ID purposes as No. 10. You can see that on there
16 with the evidence sticker. It says 10.

17 A Yes.

18 Q What is that?

19 A This is a fired bullets. It's identified for me as
20 Item 7.

21 Q Okay. So the -- your internal item number is Item
22 7. But it's -- it's State's Exhibit 10. And what are we
23 -- what is that?

24 A It's a fired bullet.

25 Q And is there a description of where that fired

1 bullet was collected from?

2 A According to the paperwork I have, it was collected
3 from the back seat of a Toyota Camry.

4 Q And that's an actual fired bullet, like a
5 projectile?

6 A Yes.

7 Q Okay. All right. And did you test that against the
8 two firearms, the .22-caliber firearm and the 9-
9 millimeter?

10 A I did.

11 Q Okay. And what, if any, findings did you make to
12 determine whether that projectile came from either one of
13 those particular guns?

14 A I test-fired both firearms. And then I compared
15 this bullet using my comparison microscope. I can --
16 it's like a set of binoculars. I can put one piece of
17 evidence on one side and then test-fire on the other
18 side. I can turn them so that I can get the lighting
19 right; look for individual characteristics to make it --
20 to make an opinion if it was fired by that firearm.

21 That's what I did in this case. And it is my
22 opinion that matching individual identifying
23 characteristics were found, and Item 7, State's Item 10,
24 was fired by State's Item 9, which is the Ruger -- or the
25 Taurus pistol.

1 Q All right. So the -- the fired bullet that was
2 collected from the back seat of the Toyota Camry, you
3 determined that that was fired by the 9-millimeter
4 pistol?

5 A Yes.

6 Q Okay.

7 MR. DANIEL: Your Honor, I'd offer State's No. 10
8 for admission into evidence.

9 THE COURT: Any objection?

10 MR. GEOLY: No objection, Judge.

11 THE COURT: State's Exhibit 10 is admitted into
12 evidence without objection.

13 (Whereupon, State's Exhibit 10 was entered into
14 evidence.)

15 Q All right. Let's go to -- let's go to No. 11,
16 please, Ms. Eichenmiller -- State's No. 11. Tell me if
17 you recognize that.

18 A I do.

19 Q All right. What is that?

20 A These are three items I examined in this case. I
21 had one fired bullet. I had one piece of metal which was
22 not a firearm component. And there is one more fired
23 bullet in here. So there's two fired bullets and a piece
24 of metal.

25 Q Okay. So the -- excuse me -- the two fired bullets,

1 were you able to make a determination what, if any, of
2 the two firearms you had to test up against, were these
3 two fired bullets fired from any -- either one of those
4 firearms? Were you able to make a determination?

5 A Due to damage, I couldn't determine if these were
6 fired by Items -- or State's Exhibit 9. They are the
7 right caliber. So I did compare them to that firearm.
8 But they were too damaged for me to make a determination.

9 In firearms we have a couple different answer. We
10 can say positive, it was fired; negative, it was not
11 fired; and then, inconclusive. Inconclusive is the
12 answer for these two bullets.

13 Q But they are consistent with being fired from a 9-
14 millimeter weapon, though?

15 A Correct.

16 Q And tell us about what kind of characteristics
17 you're looking for. I mean, each -- each time you fire a
18 weapon, are there unique imprints left on the projectile?

19 A Yes. Each firearm can mark a projectile with --
20 with its barrel. And any marks that are in the barrel
21 can translate to the bullet.

22 What I look for is little -- we call them
23 striations, but they're scratches on bullets. Primarily,
24 first off, though, I will evaluate it to see if it's the
25 correct caliber for a firearm I've received; if the

1 general characteristics are consistent with that firearm;
2 and then I'll evaluate it microscopically.

3 Q Okay. But there could be damage to these
4 characteristics? If, say, they -- they hit something, it
5 can alter the shape of the bullets?

6 A Correct.

7 Q Okay. And where were these two -- on State's No.
8 11, these two fired bullets, where they collected from,
9 according to your description?

10 A One of the bullets was collected from Marker 9, and
11 one was collected from Marker 10.

12 Q And the crime scene agent would -- would be able to
13 testify to Markers 9 and 10 at the crime scene ---

14 A Correct.

15 Q --- location? Okay. All right.

16 MR. DANIEL: Your Honor, I'd offer State's No. 11
17 for admission to evidence.

18 THE COURT: Any objection?

19 MR. GEOLY: No, sir, Your Honor.

20 THE COURT: State's Exhibit 11 admitted into
21 evidence without objection.

22 (Whereupon, State's Exhibit 11 was entered into
23 evidence.)

24 Q All right. Let's go to State's No. 12, Ms.
25 Eichenmiller.

1 A Okay.

2 Q All right. Do you recognize State's No. -- No. 12?

3 A I do. These are the cartridge cases I examined in
4 this case.

5 Q Okay. And -- well, what exactly -- are they -- are
6 they spent shell casings, meaning they've been fired?

7 A Yes.

8 Q Okay. How many shell casings are in that -- that
9 bag in State's No. 12?

10 A Eight.

11 Q Eight?

12 A (No audible response.)

13 Q Okay. And so you're also able to determine certain
14 shell casings, whether they're fired from a particular
15 gun; is that correct?

16 A Correct.

17 Q Okay. What conclusion did you reach regarding these
18 eight spent shell casings?

19 A I microscopically compared these shell casings --
20 cartridge cases to test fires from the firearm. And I
21 concluded that these were fired by State's Exhibit 9,
22 which is the Taurus pistol.

23 Q The 9-millimeter pistol?

24 A Correct.

25 Q Okay. So those eight shell casings came from the 9-

1 millimeter pistol ---

2 A Yes.

3 Q --- you have? Okay.

4 MR. DANIEL: Your Honor, I'd offer State's No. 12
5 for admission to evidence.

6 THE COURT: Any objection?

7 MR. GEOLY: None, Your Honor.

8 THE COURT: State's Exhibit 12 admitted into
9 evidence without objection.

10 (Whereupon, State's Exhibit 12 was entered into
11 evidence.)

12 Q All right. Let's go to -- let's go to 13. It's
13 already in evidence. What is -- what is 13, Ms.
14 Eichenmiller -- State's No. 13?

15 A State's 13 is a fired bullet.

16 Q And what is the exact description on that -- that
17 exhibit, State's 13?

18 A It says (as read): "Ballistics 4/23/2019 FA19-291
19 Newberry Caldwell, Iven J."

20 Q All right. So what does that mean to you? Is that
21 a -- is that saying that is a fired bullet collected from
22 a victim at the autopsy? Is that ---

23 A Yes.

24 Q --- what that ---

25 A This is typically how autopsy evidence arrives at

1 the lab.

2 Q Okay. So that -- that bullet was -- was extracted
3 from the victim at the autopsy?

4 A Correct.

5 Q All right. Were you able to test that up against
6 the -- the two firearms, the .22-caliber pistol and the
7 9-millimeter pistol?

8 A I did.

9 Q All right. What determination were you able to
10 make?

11 A I determined that item -- State's Exhibit 13 was
12 fired by the 9-millimeter pistol.

13 Q Okay. So that was -- your determination is that was
14 fired by the 9-millimeter pistol?

15 A Correct.

16 Q All right. Excuse me. Let's go to No. 15, State's
17 15. All right. What is that?

18 A These are unfired cartridges.

19 Q And what are they -- what caliber cartridges are
20 they for -- or they're live rounds, correct?

21 A They are.

22 Q All right. Well, for ---

23 A They're ---

24 Q --- what type ---

25 A --- 9-millimeter ---

1 Q --- of gun?

2 A --- Luger caliber.

3 Q 9-millimeter Luger caliber?

4 A Yes.

5 Q Which -- which is the appropriate ammunition for a
6 9-millimeter handgun, correct?

7 A Correct.

8 Q Okay.

9 MR. DANIEL: Your Honor, I'd offer State's 15 for
10 admission to evidence.

11 THE COURT: Any objection?

12 MR. GEOLY: No objection, Your Honor.

13 THE COURT: State's Exhibit 15 admitted into
14 evidence without objection.

15 (Whereupon, State's Exhibit 15 was entered into
16 evidence.)

17 Q And where were they collected from?

18 A According to the packaging, they were with a
19 magazine -- they came from a magazine.

20 Q Okay. And that would -- you would have to check
21 with the SLED crime scene agent -- the -- the exact
22 location that was collected?

23 A It says on here: "Item 18." Typically, crime scene
24 will put the cartridge -- cartridges that were retrieved
25 from a firearm in a separate package. So these came from

1 the 9-millimeter pistol.

2 Q Okay. So that was -- those live, unfired eight
3 rounds of ammunition came from the 9-millimeter pistol?

4 Is that what you're saying?

5 A I think it was a magazine that perhaps was with Item
6 18 ---

7 Q Okay.

8 A --- my Item 18.

9 Q Which would be the 9-millimeter pistol.

10 A Correct.

11 Q Okay. But that -- that was one -- one package
12 originally; is that -- is that what you're saying?

13 A Yes.

14 Q Okay. All right.

15 MR. DANIEL: I did offer 15 to evidence, Your Honor,
16 if I'm ---

17 THE COURT: Yes.

18 MR. DANIEL: --- not mistaken.

19 THE COURT: 15 is in evidence.

20 MR. DANIEL: All right.

21 Q Let's go to 16, Ms. Eichenmiller. Do you recognize
22 State's 16?

23 A I do.

24 Q And what is that?

25 A They're fired cartridge cases.

1 Q Okay. Were you able to make a determination what --
2 what caliber cartridge cases?

3 A They're .22 long-rifle.

4 Q Are they fired or unfired ---

5 A These are ---

6 Q --- cartridge cases?

7 A These are fired.

8 Q Fired?

9 A (No audible response.)

10 Q Okay. So they're spent .22 shell casings, in other
11 words?

12 A Yes.

13 Q And you said how many of them are there?

14 A There's eight, but one is in the bag.

15 Q Okay. Got you. So there's eight of them. Did you
16 test those against the two pistols, the .22 pistol and
17 the 9-millimeter pistol?

18 A Due to the recovery location of these cartridge
19 cases, which was from the revolver, we didn't do any
20 forensic testing on them.

21 Q Okay. So those were still -- so you're saying those
22 .22-caliber spent casings were still in the cylinder of
23 the .22-caliber pistol; is that correct?

24 A I believe they were taken out of the revolver by
25 crime scene.

1 Q Got you.

2 MR. DANIEL: Your Honor, I'd offer State's 16 for
3 admission to evidence.

4 MR. GEOLY: No objection ---

5 THE COURT: Any objection?

6 MR. GEOLY: --- Your Honor.

7 THE COURT: All right. State's Exhibit 16 admitted
8 into evidence without objection.

9 (Whereupon, State's Exhibit 16 was entered into
10 evidence.)

11 Q All right. And then, just got one more piece of
12 physical evidence, State's 17. You recognize that?

13 A Yes.

14 Q And what is that?

15 A These are unfired cartridges, 26 of them.

16 Q Twenty-six unfired rounds of ammunition?

17 A Correct.

18 Q What caliber of ammunition?

19 A They're 9-millimeter Luger.

20 Q 9-millimeter Luger?

21 A (No audible response.)

22 Q Okay. And that would be consistent with the
23 ammunition you'd need for a 9-millimeter pistol; is that

24 ---

25 A Correct.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge**

**Appellant Case № 2021-000982
Lower Court Case Nos. 2019GS3600356, 2019GS3600357, 2019GS3600359**

The State Respondent,

vs.

Xzavier Sharif Davis Appellant.

**RECORD ON APPEAL
VOLUME II**

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1 Q --- correct?

2 MR. DANIEL: Your Honor, I'd offer State's 17 for
3 admission into evidence.

4 THE COURT: Any objection?

5 MR. GEOLY: No objection, Your Honor.

6 THE COURT: State's Exhibit 17 admitted into
7 evidence without objection.

8 (Whereupon, State's Exhibit 17 was entered into
9 evidence.)

10 Q And where were those collected from, according to
11 the description?

12 A According to the packaging, they were from "dresser
13 drawer in master bedroom."

14 Q Okay. And then, lastly, you generated a report of
15 your findings?

16 A I did.

17 Q Okay. I'm going to pass forward what's been marked
18 for ID purposes as State's No. 3. Sorry. I know I'm
19 giving you a lot there.

20 A Thank you.

21 Q Do you recognize State's No. 3, Ms. Eichenmiller?

22 A It's a copy of the report I generated in this case.

23 Q All right.

24 MR. DANIEL: Your Honor, I would offer State's No. 3
25 for admission to evidence.

1 THE COURT: Any objection?

2 MR. GEOLY: No objection, Judge.

3 THE COURT: All right. State's Exhibit 3 admitted
4 into evidence without objection.

5 (Whereupon, State's Exhibit was entered into
6 evidence.)

7 Q All right. And I'll just briefly -- you just
8 essentially testified to your findings. But focus on the
9 9-millimeter language in your report. If you could, just
10 read that off, the evidence you tested up against the 9-
11 millimeter pistol. And we have it published on the TV
12 for the jury to look at, if you need to draw their
13 attention to a certain paragraph or area on the page.

14 A Page 3 is basically where all the results are.
15 Items 20 through 27, which were the fired cartridge cases
16 -- those are SLED item numbers -- were physically
17 examined and microscopically compared with each other and
18 with cartridge cases test-fired by the Item 18 pistol,
19 which is the 9-millimeter Taurus. Matching individual
20 identifying characteristics were found, and it was
21 concluded that Items 20 through 27 were fired by Item 18,
22 the 9-millimeter.

23 In addition, I looked at five bullets -- four
24 bullets and a piece of metal. Physical and microscopic
25 examination of 7, 28, 29, and 33 revealed that they were

1 most consistent with bullets loaded into 9-millimeter
2 Luger-caliber cartridges. Physical and microscopic
3 examinations of Item 8 revealed it was not consistent
4 with being an ammunition component. Nothing further --
5 no further analysis was performed on Item 8.

6 Matching individual identifying characteristics were
7 found on Items 7, 33, and bullets test-fired by the Item
8 18 pistol. It was concluded that 7 and 33 were fired by
9 Item 18.

10 Q All right. So SLED Items 7 and 33 -- I know the
11 numbers are different -- but that's the bullet found in
12 the back seat of the Toyota Camry and then the bullet
13 extracted from the victim at the autopsy. They all
14 matched that 9-millimeter pistol ---

15 A Correct.

16 Q --- as being fired from a 9-millimeter pistol.

17 A Correct.

18 Q All right. Thank you, ma'am. Please answer any
19 questions Mr. Geoly has for you.

20 THE COURT: Cross-examination.

21 MR. GEOLY: Please the Court.

22 CROSS-EXAMINATION

23 BY MR. GEOLY:

24 Q I'm sorry. I don't want to mispronounce your last
25 name. Can you tell me again?

1 A Eichenmiller.

2 Q Eichenmiller?

3 A Uh-huh.

4 Q Have we ever met before?

5 A I don't believe so.

6 Q I don't think so either.

7 Basically, what you and your expertise is to
8 identify if a gun has fired a projectile, right?

9 A Correct.

10 Q There's nothing special about what you do where you
11 could tell why a bullet was fired or it was fired with
12 malice aforethought, right?

13 A No.

14 Q You have nothing to offer this jury regarding any of
15 that, right?

16 A Correct.

17 Q No further questions.

18 THE COURT: All right. Redirect?

19 MR. DANIEL: No, Your Honor.

20 THE COURT: All right. You may step down.

21 (Whereupon, the witness exited the witness stand.)

22 (Off the record briefly.)

23 THE COURT: All right. We need to -- how we going
24 to collect these exhibits from the witness stand?

25 (Off the record briefly.)

1 THE COURT: All right. The state can call your next
2 witness.

3 MR. DANIEL: Thank you, Your Honor. The state calls
4 Jaclynn McKay.

5 THE COURT: All right.

6 (Off the record briefly.)

7 (Whereupon, the witness came forward.)

8 JACLYNN MCKAY, having been first duly sworn,
9 testified as follows:

10 DEPUTY CLERK OF COURT: Have a seat and state your
11 name for the record.

12 THE WITNESS: My name is Jaclynn McKay.

13 MR. DANIEL: Your Honor, for this witness there's
14 going to be a lot of photos for this witness. And I -- I
15 don't know if Mr. Geoly has any ---

16 MR. GEOLY: Judge, may ---

17 MR. DANIEL: --- precise objections. But ---

18 MR. GEOLY: --- may -- may ---

19 MR. DANIEL: --- I've given him a list.

20 MR. GEOLY: May -- may we approach, Your Honor?

21 Just to ---

22 THE COURT: All right.

23 MR. GEOLY: --- might save some time, Judge.

24 (Whereupon, a bench conference was held off the
25 record in the presence of the jury, but out of the

1 hearing of the jury.)

2 MR. DANIEL: Your Honor, are we going to do this
3 outside the presence of the jury?

4 THE COURT: No. We're going to go ahead and you
5 just tender it, and he'll raise his objection, and I'll
6 make a decision.

7 MR. DANIEL: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. DANIEL:

10 Q All right, Ms. McKay. Where are you currently
11 employed?

12 A I'm currently employed at RTI International in North
13 Carolina.

14 Q And -- and what -- what entity is that? What --
15 what kind of place is that?

16 A It's a research-based nonprofit in North Carolina.
17 And I'm employed as a forensic scientist there.

18 Q Okay. Forensic scientist is your title there with
19 that -- that agency?

20 A That's correct.

21 Q Okay. Well, prior to that, where were you employed?

22 A Prior to that, I was employed at the South Carolina
23 Law Enforcement Division, which is commonly referred to
24 as SLED.

25 Q Okay. And what was your job title there?

1 A From January of 2017 to June of this year, I was a
2 special agent in the crime scene department.

3 Q Okay. And what does that -- excuse me -- what does
4 that entail, being a crime scene agent?

5 A As a crime scene investigator at SLED, we process
6 crime scenes throughout the entire state. We assist
7 local as well as state law enforcement agencies. In
8 processing those crime scenes, we document the scenes
9 with photographs, collect evidence, and take all that
10 back to the forensic-services laboratory at SLED in order
11 to be analyzed later on.

12 Q All right.

13 A And then, we write reports based on everything we
14 did on scene.

15 Q Okay. So you just assist other law enforcement
16 agencies -- taking photos, collecting evidence, etc. --
17 just providing assistance?

18 A That's correct.

19 Q Okay. So how long did you work at SLED in that
20 capacity?

21 A I was a crime scene investigator at SLED for about 4
22 1/2 years.

23 Q Okay. And you just left SLED when?

24 A In June.

25 Q Okay. June of 2021. All right.

1 So I want to go back to April 20th of 2019. Did you
2 have an occasion, as a SLED crime scene agent at that
3 time, to -- to respond to Newberry County in reference to
4 a shooting investigation?

5 A Yes, I did.

6 Q Okay. And how did that come about?

7 A A call was received at our operations department,
8 and they notified me via telephone that Newberry County
9 Sheriff's Office was requesting crime scene assistance
10 for a shooting investigation.

11 Q All right. So on April 20th, 2019, what time of day
12 did you receive this notification that ---

13 A I got the call at approximately 3:42 in the morning.

14 Q And so as a crime scene agent, you have to be ready
15 to go at a moment's notice; is that correct?

16 A That's correct.

17 Q All right. So you were just -- were you just on-
18 call that weekend?

19 A At that time it probably would've been for a
20 weeklong stint. But that's correct.

21 Q Okay. All right. So where do you first respond in
22 relation to this -- this case?

23 A The first location that I responded to was the
24 Newberry County Memorial Hospital.

25 Q Okay. And who were you briefed by when you arrived

1 -- what -- approximately what time did you arrive at the
2 Newberry Hospital?

3 A At -- I arrived at the Newberry Hospital at
4 approximately 4:35 in the morning.

5 Q Okay. And did you discuss -- did you meet with
6 sheriff's deputies who were investigating the case
7 already?

8 A Yes, I did. Shawn -- Sgt. Ryan Dickert was my main
9 point of contact.

10 Q Okay. All right. So at that point what do you do?
11 What are you next steps in -- in -- in further
12 investigation? What evidence had you received at that
13 point?

14 A Especially, we're briefed on the details of the case
15 up till that point. We were directed to a vehicle that
16 was parked outside in the emergency room, at which point
17 we were notified that this was the vehicle that brought
18 the victim to the hospital. And then we started our
19 crime scene investigation of the vehicle.

20 Q Okay. All right. So I want to go to No. 19; it's
21 already in evidence. And actually, I'm going to pass up
22 ---

23 MR. DANIEL: I did with the previous witness,
24 Beverly.

25 Q --- I'm going to pass my computer to you. And

1 they're already premarked on the computer. You can just
2 use the arrows.

3 All right. All right. Number 19, that is -- you
4 discussed the vehicle at the hospital. Is that the
5 vehicle you're referring to?

6 A Yes. That's correct. .

7 Q All right. What information did you -- had you
8 received about this vehicle?

9 A Essentially, we were informed that this vehicle had
10 been shot at and that the victim was located in the back
11 seat and the mother was driving the vehicle.

12 Q Okay. And what, if anything, did you note about the
13 -- the condition of the vehicle?

14 A We observed several bullet defects to the vehicle,
15 as well as some suspected blood located in the vehicle.

16 Q All right. Number 20, if you could go to that. And
17 what is that?

18 A State's Exhibit 20 is another photograph of the
19 Toyota Camry that was parked outside the emergency
20 department.

21 MR. DANIEL: Your Honor, I -- I'm going to -- I need
22 to offer State's into evidence, I believe.

23 THE COURT: Let me see. Yeah. I don't ---

24 MR. GEOLY: If it ---

25 THE COURT: --- have it.

1 MR. GEOLY: --- it please the Court, Judge. As to
2 all of these photos that they've indicated they wish to
3 introduce, the defendant has no objection.

4 THE COURT: All right. So any objection to State's
5 Exhibit 20?

6 MR. GEOLY: No, sir. Or any of the others that
7 they've indicated they wish to -- my understanding, these
8 are crime scene photos. So as -- certainly, as -- if
9 there's something else, as -- certainly, as to all the
10 photos she takes that night, Judge, we -- we have no
11 problem with them all coming into evidence.

12 THE COURT: All right. State's Exhibit 20 is
13 admitted into evidence without objection.

14 (Whereupon, State's Exhibit 20 was entered into
15 evidence.)

16 THE COURT: Anything else you want to go ahead and
17 put in now?

18 MR. DANIEL: Your Honor, I guess, as I just call out
19 the numbers, when I direct Ms. McKay's attention to the
20 numbers, can we just go ahead and assume they're in
21 evidence without ---

22 THE COURT: How ---

23 MR. DANIEL: --- me ---

24 THE COURT: --- however you want to present your
25 case is fine with me.

1 MR. DANIEL: Yes, sir. That would be my preference.

2 THE COURT: All right.

3 Q All right. Go to 21, Agent -- Ms. McKay. And you
4 know -- is -- is that one of your observations?

5 A Yes. So State's Exhibit 21 is going to be another
6 photograph of the Toyota Camry, specifically looking
7 towards the driver's compartment inside the vehicle. And
8 you can see suspected blood on the driveway just outside
9 the vehicle, as well as in the floorboard of the driver's
10 compartment.

11 Q Okay. Go to 47.

12 THE COURT REPORTER: Your Honor, I -- I'm sorry. So
13 does that mean, if he asked her about something, it's --
14 do I need him to say something that it's actually in
15 evidence to give me the number?

16 THE COURT: Well, 21 is already in evidence.

17 MR. DANIEL: 21 was in evidence. But if I say the
18 number -- Mr. Geoly is not objecting -- so it's -- by me
19 saying it, it's being admitted into evidence at that
20 point.

21 THE COURT: Well, not at that point. You'd ---

22 MR. DANIEL: Or ---

23 THE COURT: --- still need to say ---

24 MR. DANIEL: Oh, we -- okay.

25 THE COURT: Unless you want to go ahead and identify

1 all of your exhibits and put them in now.

2 MR. DANIEL: I could do that as well, Your Honor.

3 THE COURT: All right. Let's -- what that?

4 MR. DANIEL: All right. Yeah. 47, 48, 49, 50, 53,
5 70, 71, 72, 73, 51, 52, 57, 78, 79, 80, 81, 54, 55, 40,
6 56, 69, 58, 59, 60, 61, 45, 39, 41, 42, 43, 62, 74, 75,
7 63, 76, 77, 64, 65, 66, 67, 68, 82, 83, 84, 85, 90, 46,
8 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109,
9 110, 111, 143, 112, 113, 114, 115, 116, 117, 118, 119,
10 120, 132, 121, 122, 123, 124, 125, 126, 127, 130, 131,
11 144, 145, 146, 147, 148, 149, 128, 129, 153, 154, 155,
12 167, 158, 140, 165, 166, 162, 164, 142, and that's it,
13 Your Honor.

14 THE COURT: All right.

15 MR. GEOLY: Please the Court, Judge. It's our
16 understanding, these are all photos that she took that
17 night. We have no objection to any photos that she took
18 that night coming in.

19 THE COURT: All right. These are all photos taken
20 by the witness that night?

21 MR. DANIEL: Yes, Your Honor.

22 THE COURT: All right. Those exhibits will be
23 admitted into evidence without objection.

24 THE WITNESS: Your Honor, I don't know if this
25 matters, but they were taken by the other crime scene

1 agent that worked the team with me.

2 MR. GEOLY: Again, no objection, Your Honor.

3 THE COURT: All right.

4 MR. GEOLY: As long as she's out there with him, we
5 have no objection to the photos from that night.

6 THE COURT: All right. Admitted without evidence
7 (verbatim).

8 MR. DANIEL: Yes, sir. My apologies.

9 (Whereupon, State's Exhibits 47, 48, 49, 50, 53, 70,
10 71, 72, 73, 51, 52, 57, 78, 79, 80, 81, 54, 55, 40,
11 56, 69, 58, 59, 60, 61, 45, 39, 41, 42, 43, 62, 74,
12 75, 63, 76, 77, 64, 65, 66, 67, 68, 82, 83, 84, 85,
13 90, 46, 98, 99, 100, 101, 102, 103, 104, 105, 106,
14 107, 108, 109, 110, 111, 143, 112, 113, 114, 115,
15 116, 117, 118, 119, 120, 132, 121, 122, 123, 124,
16 125, 126, 127, 130, 131, 144, 145, 146, 147, 148,
17 149, 128, 129, 153, 154, 155, 167, 158, 140, 165,
18 166, 162, 164, 142 were entered into evidence.)

19 Q They were -- y'all -- you and your other crime scene
20 agent were working in tandem. She was photographing; you
21 were documenting. Is that correct?

22 A That's correct.

23 Q All right.

24 MR. DANIEL: My -- my apologies, Judge.

25 Q And let -- let's be clear: I -- I just read a lot

1 of photos. But approximately how many photos did you
2 take as it pertains to this case, if you had to guess?

3 A I would assume over 500 photos, around the ballpark.

4 Q Oh, okay. All right. Okay. Now let's go -- I
5 think we're on State's 47. Tell us what you observed --
6 well, first, let -- let's go to number -- let's go to No.
7 5. That is an actual -- what are we looking at? Have to
8 rotate to view it. What are we looking at there?

9 A So State's Exhibit No. 5 is going to be the crime
10 scene diagram I created of the Toyota Camry.

11 Q Okay. And that's what's on this posterboard here.
12 We kind of just enlarged it. But it's also on the TV.
13 But this is for the jury when they deliberate.

14 But you generated that diagram of the Toyota Camry
15 at the hospital?

16 THE COURT: Excuse me. Is 5 in evidence?

17 MR. DANIEL: Yes, sir. I read out -- was 5 one of
18 them?

19 THE COURT REPORTER: No, sir.

20 THE COURT: The court reporter is telling me 5 is
21 not in evidence.

22 MR. DANIEL: Okay. That was not -- okay. That's is
23 a -- Your Honor, I'd offer State's Exhibit No. 5 for
24 admission to evidence. That was -- it's not a
25 photograph. It -- it -- it's a actual PDF generation.

1 That's probably why I missed it. I was ---

2 MR. GEOLY: Beg the Court's indulgence one moment,
3 Your Honor.

4 THE COURT: All right.

5 (Off the record briefly.)

6 MR. GEOLY: No objection, subject to cross, Your
7 Honor.

8 THE COURT: State's Exhibit 5 admitted into evidence
9 without objection.

10 (Whereupon, State's Exhibit 5 was entered into
11 evidence.)

12 Q All right. And now, this is -- foreperson, this is
13 a diagram of the Toyota Camry at the hospital, correct?

14 A That's correct.

15 Q All right. Tell us what we're looking at. What
16 highlighted on this particular diagram?

17 A So essentially, this diagram is rendered from a
18 photograph of the vehicle that we took on scene. And if
19 you notice, there's a bunch of markers for Defect A
20 through Defect F. And essentially, that just means that
21 they're suspected bullet defects. So that's where damage
22 was done to the vehicle, and it's assumed to be done most
23 likely by a bullet or projectile fired from a firearm.

24 A lot of the numbers that you can see in the line,
25 that's just scale tape that we add on scene as part of

1 our processing. And the defects are just labeled,
2 essentially, from the front of the vehicle to the rear
3 ---

4 Q Okay.

5 A --- not in order of the -- how the shots were fired.

6 Q Because you have no idea at what point the bullets
7 hit. You can't -- you can't say that clearly.

8 A That's correct.

9 Q All right. So you said you labeled them marker --
10 or Bullet Defects A through F?

11 A That's correct.

12 Q So that means you noted six different bullet defects
13 in the vehicle.

14 A That's correct.

15 Q And whether -- whether it actually creates a hole or
16 an indentation, you're still characterizing that as bullet
17 defect?

18 A That's correct.

19 Q Okay. All right. Let's go to 47. All right. What
20 -- what marker is that?

21 A So State's Exhibit 47 is a photograph of the hood.
22 This is essentially a midrange photograph of Defect A,
23 which was an -- essentially, damage or an indentation done
24 to the hood of the vehicle by a suspected bullet. And
25 the scale tape was added for documentation purposes by me

1 and my team.

2 Q Okay. Defect A. All right.

3 Let's go to 48. All right. What are we looking at
4 in 48?

5 A State's Exhibit 48 is a photograph of the driver's
6 side of the vehicle. This is a -- kind of the overall
7 photo, showing the location of all the defects that were
8 labeled on the vehicle.

9 Q So essentially, you can see all -- all six defects,
10 A through F, in that photograph; is that correct?

11 A That's correct. All the white scale tape is
12 highlighting each of the six defects.

13 Q Approximately how many defects are above the tires
14 -- above tire level?

15 A I would say about three of them are definitely above
16 tire level.

17 Q Okay. And then, three of them you would
18 characterize as tire level?

19 A Tire level or just at the very top. Yes.

20 Q So have above tire level; half are approximately
21 tire level?

22 A That's correct.

23 Q Okay. Is that 48?

24 A That's correct.

25 Q Okay. Let -- let's go to 49. Again -- all right.

1 Tell -- tell us what's -- what markers are -- or excuse
2 me -- what defects are those, in terms of the letters?

3 A So State's Exhibit 49 depicts Defects A through E.
4 You have A on the hood; B is going to be above the
5 driver's side rearview mirror.

6 Q If you could, step down and point -- point for the
7 jury it -- when you say it real quick, please.

8 (Whereupon, the witness exited the witness stand.)

9 Q Might -- I know it might be kind of hard with that
10 -- that computer.

11 A So right -- right here is going to be Defect A.
12 Approximately here is going to be Defect B. Defect C is
13 located here. Defect D and E is here.

14 Q Okay. Go to 50. And you look on the TV there, Ms.
15 McKay. All right. That's just a closer view. 53?

16 MR. DANIEL: Is that 53, Walter?

17 Q All right. Let's -- what's on 53?

18 A State's Exhibit 53 is a close-up photograph of
19 Defect F.

20 Q Okay. That would be the sixth, Defect F.

21 Okay. And where is that on the car?

22 A This is the C pillar on the driver's side of the
23 vehicle. And this is the -- where the gas tank would be.

24 Q All right. 70? All right. Those are -- these are
25 just closer up. 71?

1 (Whereupon, the witness resumed the witness stand.)

2 Q All right. So 70 and 71 don't appear to be holes.
3 But you're still classifying them as defects?

4 A That's correct.

5 Q And then, 72? Same thing. 73 ---

6 A That's correct.

7 Q All right. 51?

8 A (No audible response.)

9 Q 52?

10 A (No audible response.)

11 Q 57?

12 A (No audible response.)

13 Q All right. What are we looking at in 57?

14 A So 57 is going to be a close-up of Defect E-1. And
15 essentially, what that means is the bullet hole that was
16 on the exterior of the driver's door actually entered the
17 driver compartment. And this is the -- the damage that
18 was done on the inside of the driver door due to the
19 flight path of the bullet that traveled through the
20 driver's door. So this is just a continuation of the
21 flight path of the bullet that created Defect E on the
22 outside of the vehicle.

23 Q Okay. And that's consistent with finding the blood
24 in the driver's side -- driver's side floorboard area,
25 that particular defect we're looking at?

1 A That's correct. It relatively lines up with the
2 location the driver's floorboard area.

3 Q 78?

4 A (No audible response.)

5 Q And again, that's just another -- all right. Tell
6 us what we're looking at there. You just have a -- looks
7 like a rod going through Defect E?

8 A That's correct. Essentially, it's just a straight
9 rod that helps display the flight path of the bullet.
10 And it helps us connect, essentially, what bullet holes
11 are lined up with each other to kind of show the
12 direction that a bullet was traveling.

13 Q All right. 79? Same thing. Is that the same --
14 same image?

15 A Just a closer-up version ---

16 Q 80?

17 A --- but yes.

18 Q 80? I'm sorry. All right. That's just a -- a --
19 inside of the vehicle, correct?

20 A Correct. And it also shows the other side of that
21 flight-path rod coming into the vehicle.

22 Q 81? Again, same thing.

23 54? All right. What are we looking at there,
24 again?

25 A This is going to be a close-up photograph of Defect

1 F, which was located on the C pillar of the driver's side
2 of the vehicle.

3 Q There, you're measuring the -- the size of that
4 bullet hole; is that correct?

5 A Essentially, the scale tape is used in order to kind
6 of demonstrate the -- the size. That's correct.

7 Q 55? Another close-up of -- of Defect F?

8 A That's correct.

9 Q All right. 40?

10 A (No audible response.)

11 Q All right. And what -- what's relevant there?

12 A So in State's Exhibit 40, near the headrest, there's
13 essentially a hole on the inside of that C pillar. So
14 this would be the Defect F-1, which is the suspected
15 bullet defect on the interior of the vehicle that would
16 follow the Defect F flight path.

17 Q Okay. 42? What are we looking at there? Is that
18 the -- the headliner, I guess, inside the car?

19 A That's correct. This would be the headliner above
20 the rear seat. It appears to be some biological matter
21 on the hood -- or -- I'm sorry -- on the headliner.

22 Q And when you say "biological matter," what -- I mean
23 ---

24 A It -- it looks -- it appears similar to most likely
25 brain matter. But it's definitely a biological

1 substance.

2 Q And what particular area of the car is that?

3 A This is going to be the headliner above the rear
4 seat.

5 Q Okay. 42? 43? Excuse me. What's that?

6 A This the back seat of the Toyota Camry. There's
7 some suspected blood on the seat, as well as some
8 clothing.

9 Q Okay. 62?

10 A (No audible response.)

11 Q What are we looking at there?

12 A In State's Exhibit 62, this is just a jacket that
13 was opened by myself or my team member. And it just has
14 some suspected blood on it.

15 Q All right. 60 -- 63 -- or -- excuse me. Well,
16 let's go -- 77. Excuse me.

17 A State's Exhibit 77 depicts some sort of plastic-like
18 sword that has suspected blood on it.

19 Q And all this blood, did -- was that all concentrated
20 in the back seat?

21 A There -- there is a concentration of blood in the
22 back seat. That's correct.

23 Q Okay. 64?

24 A 60 -- State's Exhibit 64 depicts suspected blood on
25 the seats, as well as a Zaxby's bag. And this is the

1 rear seat of the Toyota Camry once we have moved off all
2 the clothing items that was on top of it.

3 Q Okay. So a Zaxby's food bag, and y'all had removed
4 the jackets?

5 A That's correct.

6 Q All right. All right. And then, 65? What are we
7 looking at there? Is there anything ---

8 A May I step down?

9 Q Sure. Yeah.

10 (Whereupon, the witness exited the witness stand.)

11 A So State's Exhibit 65, you can see a area of
12 suspected blood. And then, here we have a projectile
13 that was collected.

14 Q Okay. So 66?

15 (Whereupon, the witness resumed the witness stand.)

16 Q That's a closer image of that projectile?

17 A That's correct.

18 Q All right. 67? That's just another closer image.

19 68? That's when you pulled it out; is that correct?

20 A That's correct.

21 Q All right. And then, No. 10 -- it's been admitted
22 into evidence. But I'll show you anyway. Is State's No.
23 10 the physical evidence? Is that what's depicted in
24 that photograph on the TV?

25 A Yes. That's correct.

1 Q Okay. Let's go to -- let's go to 83. And what is
2 that?

3 A 83 is a picture of the picture of the glove box in
4 the Toyota Camry.

5 Q And you're just searching for anything of
6 evidentiary value?

7 A That's correct.

8 Q All right. 84? What is that?

9 A State's Exhibit 84 is a photograph of a Newberry
10 Electric Cooperatives. Inc., bill with the account name
11 as Xzavier Davis.

12 Q With -- what address ---

13 A The ---

14 Q --- does it have ---

15 A --- service address is [REDACTED].

16 Q Okay. So that's relevant to your investigation.

17 A Yes, it is.

18 Q All right. 85? What is that?

19 A State's Exhibit 85 depicts a series of cards, which
20 include social security cards, a Visa debit card, and
21 some business cards, one of which, I believe, is a
22 business card for a concealed-pistol instructor. And all
23 of these items came out of the brown wallet that's in the
24 top of the photograph. And that brown wallet was located
25 on the front-passenger seat of the Toyota Camry.

1 Q Okay. All right. So business card for a concealed-
2 weapons class; and then, also, some social security
3 cards?

4 A That's correct.

5 Q Primarily ---

6 A And -- and a Visa debit card ---

7 Q Okay.

8 A --- and a Mastercard.

9 Q All right. Now -- I think we've gone through
10 everything that's the main part of when you processed the
11 Toyota Camry. Did you have information of where the
12 actual shooting incident took [REDACTED]e?

13 A We were informed by Newberry County Sheriff's Office
14 that it occurred at [REDACTED].

15 Q All right. Let's go -- let's go there. Let's go to
16 some photographs there. Let's go to 93. And is that the
17 incident location you responded to?

18 A Yes, it is.

19 Q Okay. All right. Let's go to 98. Okay. That's
20 just -- is that just the backyard?

21 A That's correct.

22 Q Oh. All right. 99? And approximately what time
23 did you arrive on scene? You processed the vehicle
24 first. When did you arrive at the house, [REDACTED]

■ [REDACTED]?

1 A I arrived at [REDACTED] at approximately 9:14
2 in the morning.

3 Q Okay. All right. And on this photograph -- is that
4 99, I believe, you're -- on the TV? What are we looking
5 at there? Why is that relevant?

6 A So in Photograph 99, there's a mark in the dirt that
7 ---

8 (Whereupon, the witness exited the witness stand.)

9 A --- we believe was a suspected bullet strike. And
10 then, in this dirt, you can kind of see tire-track
11 impression. And this is the stairwell to the front door
12 of the residence.

13 Q Okay. All right. Let's -- 100?

14 (Whereupon, the witness resumed the witness stand.)

15 Q Just a closer image of the -- where the dirt had
16 been disturbed?

17 A That -- that's correct.

18 Q And that's consistent with a bullet strike? Is that
19 what you said?

20 A That's what we believed it to be.

21 Q Okay. 101? All right. Is that the front -- front
22 of the house?

23 A That's correct.

24 Q 102? What is that -- with that flag?

25 A So State's Exhibit 102 ---

1 (Whereupon, the witness exited the witness stand.)

2 A --- depicts the front side of the stairs to the
3 front door. And we put a flag in the ground to
4 preliminarily mark a cartridge case that we saw in the
5 grass.

6 Q Okay. That's one shell casing there.

7 (Whereupon, the witness resumed the witness stand.)

8 Q 10 -- let's do 104. What do we note there?

9 A 104 is a picture of the stairs.

10 Q Okay. 105?

11 (Whereupon, the witness exited the witness stand.)

12 A State's Exhibit 105 depicts two cartridge cases that
13 were found on one of the stairs to the front door.

14 (Whereupon, the witness resumed the witness stand.)

15 Q Okay. So, so far, I counted three shell casings,
16 one beside the steps on the -- on the grass; and then,
17 two so far on the steps.

18 A That's correct.

19 Q So a total of three thus far you've demonstrated to
20 us. All right.

21 (Off the record briefly.)

22 Q All right. 106?

23 A (No audible response.)

24 Q That's just a closer-up image of one of them?

25 A That's correct.

1 Q All right. 107? Another closer image?

2 A That's correct.

3 Q All right. Let's go to 108. And what do we note
4 there?

5 (Whereupon, the witness exited the witness stand.)

6 A In State's Exhibit 108, you can see the landing at
7 the top of the stairs. Here's the front door. We have
8 the two cartridge cases that were on the stair below the
9 landing. We have a fourth cartridge case here. There's
10 some broken glass on this landing. And there's a tissue
11 paper -- or a tissue-like material with some suspected
12 blood on it.

13 Q All right. I think you just identified a fourth
14 spent shell casing; is that correct?

15 (Whereupon, the witness resumed the witness stand.)

16 A That -- that's correct.

17 Q All right. 109? A closer-up of that shell casing?

18 A That's correct.

19 Q All right. 110? Closer-up of a shell casing ---

20 A That ---

21 Q All right.

22 A --- correct.

23 Q 111? All right. What is that indicating?

24 A 111 is just a closer-up photo of some of the broken
25 glass at the landing at the top of the stairs, as well as

1 a piece of tissue that had suspected blood on it.

2 Q All right. 143?

3 A (No audible response.)

4 Q So you're taking -- or -- excuse me -- your partner
5 is probably taking photos as they're -- as they're
6 entering the residence, like, in a -- kind of a
7 sequential way? Is that correct?

8 A That's correct.

9 Q All right. 143, I think you described earlier, but
10 that's just a closer-up of the tissue paper with blood?

11 A That's correct.

12 Q Okay. 112?

13 A (No audible response.)

14 Q All right. So there's the actual front door -- or
15 -- excuse me -- like a storm door?

16 A (No audible response.)

17 Q And it's -- 113? All right. What are we -- what
18 are you depicting -- what's depicted in that photo?

19 A State's Exhibit 113 depicts, essentially, the first
20 view inside the house from the stairs.

21 (Whereupon, the witness exited the witness stand.)

22 A And here is a fifth cartridge case that we found.
23 And there is some broken glass on the floor.

24 (Whereupon, the witness resumed the witness stand.)

25 Q Okay. So you -- you're identifying a fifth

1 cartridge case on that mat in the entryway of the living
2 room?

3 A That's correct.

4 Q Okay. All right. What -- what number is that?

5 A 113.

6 Q 113?

7 A (No audible response.)

8 Q Okay. Go to 114. That's just a -- another image,
9 closer up, correct?

10 A Another vantage point looking into the residence.

11 Q All right. 115?

12 A (No audible response.)

13 Q Is that a closer image of the shell casing -- spent
14 shell casing?

15 A That's correct.

16 Q All right. 117, what are we looking at there?

17 (Whereupon, the witness exited the witness stand.)

18 A In State's Exhibit 117, it's kind of getting closer
19 to the TV stand that you saw in previous photos. But
20 here is another cartridge case. So this would be a sixth
21 cartridge case.

22 (Whereupon, the witness resumed the witness stand.)

23 Q All right. So that would be a -- a sixth spent
24 shell casing right there? Okay.

25 A That's correct.

1 Q All right. 118?

2 (Whereupon, the witness exited the witness stand.)

3 Q What are we looking at in 118?

4 A In State's Exhibit 118, we adjusted the bag just a
5 hair. And you can see a seventh cartridge case that was
6 located near that bag by the TV stand.

7 (Whereupon, the witness resumed the witness stand.)

8 Q All right. So that would be the seventh shell
9 casing; is that correct?

10 A That's correct.

11 Q All right. 119, what's -- what are looking at
12 there?

13 A In State's Exhibit 119, we're seeing the actual
14 front door. And there's a small window where the glass
15 has been shattered and/or completely removed from the
16 window.

17 Q Okay. 120?

18 A This is just a closer-up photograph of that window
19 in the front door to the residence.

20 Q Okay. 132?

21 A 132 ---

22 Q Just ---

23 A --- depicts the interior view of that front door and
24 the broken glass window. So if you were essentially
25 standing on the inside of the residence, looking at the

1 front door.

2 Q Okay. And would the -- the hole in that window --
3 glass window, would an individual be able to stick their
4 arm through and unlock from the inside? Or from the
5 outside, I should say.

6 A It -- it's possible.

7 Q Okay. 121?

8 A (No audible response.)

9 Q What are we looking at there?

10 A 121 is essentially looking towards the TV stand.
11 Right here is the front door. And this is going to be
12 the eighth cartridge case that we found on scene.

13 Q Okay. And what markers did you use to identify
14 these shell casings -- these spent shell casings?

15 A I believe it was Marker 1 through 8.

16 Q Okay.

17 MR. DANIEL: And I'll represent to the Court, those
18 -- those photographs we admitted do depict, once you mark
19 those casings.

20 Q And you're saying 1 through 8 are -- are when you
21 actually mark where you found these spent shell casings;
22 is that correct?

23 A That's correct.

24 Q Okay. All right. Lastly -- well, were the firearms
25 -- were any firearms located in the residence?

1 A Yes. There were two firearms located inside the
2 residence.

3 Q Okay. And what were those firearms?

4 A We found a Ruger LCR .22-LR-caliber revolver in a
5 green plastic container inside the kitchen. And then, in
6 the master bedroom, we found a Taurus 709 Slim 9-
7 millimeter-caliber handgun that was under the bedroom
8 mattress.

9 Q Okay. I'm going to hand you 8 and 9. Do you
10 recognize those as being the two firearms located inside
11 this residence?

12 A Yes. I do recognize State's -- State's Exhibit 9
13 and 8 as the firearms I collected from the residence.

14 Q Okay. And let me ask you something about this 9-
15 millimeter handgun. You said it was located under a
16 mattress in the master bedroom. Was that handgun -- was
17 that handgun loaded or unloaded?

18 A That handgun was loaded.

19 Q Okay. If we could, go to 162. All right. Tell me:
20 What are we looking at there?

21 A State's Exhibit 162 is a photograph of the handgun,
22 the Taurus 9-millimeter handgun that was recovered from
23 under the master-bedroom mattress. And we had extracted
24 the magazine in order to render this handgun safe.

25 Q How many rounds does that magazine hold to that

1 pistol?

2 A I believe -- I believe around seven.

3 Q Okay. And then, does it hold an additional one in
4 the chamber?

5 A That's correct. So the mag would hold seven; and
6 then, one in the chamber, for a total of eight.

7 Q All right. So -- so seven in the magazine, one in
8 the chamber, for a total of eight rounds?

9 A I believe that's correct.

10 Q All right. And you found eight spent shell casings
11 on scene.

12 A That's correct.

13 Q But this gun had been reloaded. Is -- is that what
14 you're -- you're testifying to?

15 A That's correct.

16 Q Okay. All right.

17 A Well ---

18 Q And then ---

19 A --- let me say that this gun was loaded when we
20 found it on scene. A firearms examiner would be the one
21 to attribute the cartridge cases we found to this gun.
22 But we did find this gun loaded. And we also found eight
23 9-millimeter cartridge cases on scene.

24 Q Okay. And did you locate any other ammunition in
25 the -- in this master bedroom?

1 A Yes. We located unfired 9-millimeter rounds in the
2 dresser in the master bedroom.

3 Q Approximately how many unfired rounds or ---

4 A Approximately 26 unfired rounds.

5 Q Okay. All right. If you could, go to 165. Is that
6 what you're referring to?

7 A That's correct. State's Exhibit 165 depicts the
8 unfired rounds that we found in the dresser in the master
9 bedroom.

10 Q What that at the top of that image that we're
11 looking at in the dresser drawer?

12 A That is going to be a plastic ammunition tray. That
13 is -- it's used to hold the rounds when they're inside of
14 a cardboard box.

15 Q But you discovered these 26 unfired rounds. They
16 were not located in that plastic ammunition tray, were
17 they?

18 A That's correct. They were not.

19 Q All right. Going back to the -- to the yard, did
20 you recover any other -- aside from the spent shell
21 casings -- well, at least on the front porch, did you
22 recover any other items -- firearms-related evidence in
23 the yard?

24 A Yes. We did.

25 Q What did you recover?

1 A At Marker 9 we recovered a fired projectile. And at
2 Marker 10, which was a projectile strike in the ground,
3 we dug up the ground and were able to recover a second
4 projectile.

5 Q All right. Let's go to 144. All right. What do
6 those flags represent?

7 A So the flags essentially represent areas of interest
8 where we thought there could potentially be a bullet
9 strike to the earth. So we essentially dug up those
10 areas in order to see if there was a bullet or firearms-
11 related evidence in those locations.

12 Q Okay. 147?

13 A (No audible response.)

14 Q What are those -- are those yellow markers?

15 A That's correct.

16 Q All right. What numbers are on those markers?

17 (Whereupon, the witness exited the witness stand.)

18 A So in the marker closest to us, this is going to be
19 Marker 10. And then, this yellow marker is Marker 9.

20 Q Okay.

21 A And we recovered projectiles from both markers.
22 Marker 10 was a bullet strike to the ground that we dug
23 up and were able to recover a projectile from.

24 (Whereupon, the witness resumed the witness stand.)

25 Q And does that appear to be -- are those -- the earth

1 -- are -- are those tire tracks in that area?

2 A Yes. There was tire tracks in the mud in -- in that
3 general area.

4 Q Okay. And I'm going to hand you what's already been
5 admitted into evidence as State's No. 11. Do you
6 recognize State's 11?

7 A Yes. I do recognize State's Exhibit 11.

8 Q And what are those?

9 A So State's Exhibit 11 contains a fragment that was
10 collected from the Toyota Camry, as well as a projectile
11 collected from Marker 9 and a projectile collected from
12 Marker 10.

13 Q And was that eventually submitted to SLED firearms
14 department?

15 A Yes. It was.

16 Q To analyst Michele Eichenmiller; is that correct?

17 A It was submitted to the lab, and she ended up being
18 the assigned analyst and got the evidence in order to
19 analyze. That's correct.

20 Q All right. And lastly, did you collect, at the
21 hospital, any clothing items from anybody associated with
22 this case?

23 A Yes. I collected two bags of clothing items that
24 were said to be worn by the victim in this case, as well
25 as his sister.

1 Q Okay. You -- all right. Let's go to 168. All
2 right. What is that?

3 A This is tank top that was collected from the
4 hospital. It was said to have been worn by the victim in
5 this case.

6 Q Which -- which -- which victim?

7 A Iven Caldwell.

8 Q Let's -- 169?

9 A State's Exhibit 169 is the pajama pants that were
10 said to have been worn by Iven Caldwell.

11 Q 170?

12 A 170 depicts a pair of shoes that were said to have
13 been worn by Iven Caldwell.

14 Q And then, 171?

15 A 171 depicts a T-shirt that was said to have been
16 worn by Penelope Davis.

17 Q Okay. And are you aware of when the autopsy took
18 place on Iven Caldwell?

19 A Yes, I am.

20 Q Okay. Did you participate in the -- or did you
21 attend this autopsy?

22 A I was unable to be -- attend the autopsy. However,
23 a crime scene agent did respond and then transferred me
24 the evidence that was collected after the autopsy was
25 conducted.

1 Q Okay. And what evidence was collected from the
2 autopsy that was then transferred to you?

3 A There was photographs taken. The -- a blood spot
4 from Iven Caldwell was collected, as well as a projectile
5 that was collected from Iven Caldwell.

6 Q Okay. You recognize State's 13?

7 A Yes. I do -- yes. I do recognize State's Exhibit
8 13.

9 Q What is that?

10 A State's Exhibit 13 is going to be the projectile
11 that was collected from Iven Caldwell at his autopsy.

12 Q Okay. And that was sent to the SLED firearms --
13 SLED firearms department; is that correct?

14 A That's correct.

15 Q And Michele Eichenmiller tested that evidence?

16 A That's correct.

17 (Off the record briefly.)

18 Q Ms. McKay, please answer any questions Mr. Geoly has
19 for you. Thank you.

20 THE COURT: All right. Before we get into cross-
21 examination, I think we're going to go ahead and take a
22 short break. We've been at it a pretty good while.

23 Ladies and gentlemen, I'm going to excuse you back
24 to the jury room; take our afternoon break. We'll take
25 about a 10- or 15-minute break.

1 Do not discuss the case, even among yourselves.
2 We'll take a short break and bring you back in just a
3 minute.

4 Everyone else, please remain seated while the jury
5 is excused.

6 (Whereupon, the jury exited the courtroom at 3:23
7 p.m.)

8 (Off the record briefly.)

9 THE COURT: All right. Anything from the state
10 before we take a break?

11 MR. STUMBO: Nothing, Your Honor.

12 THE COURT: Anything from the defense?

13 MR. GEOLY: No, sir, Your Honor.

14 THE COURT: All right. Ms. McKay, we're still in
15 your testimony. So you can't discuss your testimony with
16 anyone, whether that be what you've testified to thus far
17 or what you anticipate testifying to in the future.
18 Okay? All right.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you. We'll take about a 10- or
21 15-minute break.

22 (The Court went off the record at 3:24 p.m.)

23 (The Court went on the record at 3:41 p.m.)

24 THE COURT: All right. Matter of fact, let's --
25 let's go ahead and go back on the record now and correct

1 whatever we need to do. What is -- what do we got now?

2 MR. DANIEL: All right. Your Honor, Solicitor
3 Stumbo, when he examines the pathologist, which is the
4 state's last witness, he intends to get in three exhibits
5 -- admit those into evidence. And those are going to be
6 No. 1, 18, and 172. But if Mr. Geoly has no objection,
7 we would ask that -- or -- excuse me -- 2 through -- 2
8 through 85 be admitted into evidence, with the exception
9 of 18, because that -- that -- that will be done
10 momentarily with -- with Dr. Rose, the pathologist.

11 THE COURT: So 2 through 17 ---

12 MR. DANIEL: All right. 2 through ---

13 THE COURT: --- and 19 through 85?

14 MR. DANIEL: Yes, sir. Yes, sir. That's a better
15 way to say it.

16 THE COURT: Okay. And some of those are already in?

17 MR. DANIEL: Yes, sir. We're just making sure
18 they're in because we're -- we're trying to reconcile our
19 lists with the court reporter.

20 THE COURT: All right. And which ones ---

21 MR. GEOLY: Can I -- can I -- excuse me, Judge. I'm
22 sorry. But can I maybe know what y'all's ---

23 MR. STUMBO: This ---

24 MR. GEOLY: --- difference is?

25 MR. STUMBO: That's 172. One is ---

1 MR. GEOLY: I understand the 1, 18 ---

2 MR. STUMBO: --- one is ---

3 MR. GEOLY: --- and 172.

4 MR. STUMBO: --- the -- yeah.

5 MR. GEOLY: I'm just wondering: What's the
6 difference between your list and the court ---

7 THE COURT: Well ---

8 MR. GEOLY: --- reporter's list?

9 THE COURT: --- yeah. That's what I need to find
10 out too. What does -- madam court reporter, what do you
11 not have in evidence between 2 and 17, 19-85?

12 THE COURT REPORTER: Your Honor, I don't have 58 and
13 61.

14 THE COURT: So basically, you're moving to introduce
15 State's Exhibits 58 and 61.

16 MR. DANIEL: Yes, sir.

17 MR. GEOLY: Without objection, Your Honor.

18 THE COURT: All right. State's Exhibit 58 and 61
19 are admitted into evidence without objection.

20 (Whereupon, State's Exhibits 58 and 61 were entered
21 into evidence.)

22 THE COURT: So that now -- the state's list
23 corresponds with the court reporter's; is that correct?

24 THE COURT REPORTER: No, Your Honor.

25 THE COURT: No.

1 THE COURT REPORTER: That's just through No. 85.

2 And then ---

3 THE COURT: Oh.

4 THE COURT REPORTER: --- I believe Mr. Daniel said
5 90 through 171.

6 MR. DANIEL: 90 through 171, we would -- we would
7 offer into evidence as well, in case ---

8 THE COURT: 90 through 171?

9 MR. DANIEL: Yes, sir.

10 THE COURT: All right. And what do you not have in
11 between 90 and 171?

12 THE COURT REPORTER: Those would be Exhibits 134,
13 141, 145, 146, 148, 149, 158, 161, and 167.

14 THE COURT: All right. So we're talking about
15 Exhibits -- State's Exhibits 134 -- do you need to look
16 at these individually ---

17 MR. GEOLY: Your Honor, I'm ---

18 THE COURT: --- Mr. Geoly?

19 MR. GEOLY: --- I'm looking as you say them, Judge.

20 THE COURT: All right. 134 -- you want me to -- let
21 me just give you -- have you got them written down?

22 MR. GEOLY: Yes, sir.

23 THE COURT: All right. Let me just give you a few
24 minutes to take a look at them and ---

25 MR. GEOLY: Well, let ---

1 THE COURT: --- then let me know.

2 MR. GEOLY: Judge, let me double-check with you.

3 134, 141, 145, 146, 148, 149, 153 ---

4 THE COURT: No. I had 158.

5 MR. GEOLY: Oh, I'm sorry. 158. And then, what did
6 you say after that?

7 THE COURT: 161 and 167.

8 MR. GEOLY: Okay. I've got them, Judge, if you'll
9 just give me just a moment.

10 THE COURT: All right. Take -- take your time.

11 (Off the record briefly.)

12 MR. GEOLY: No more -- no -- no objection, Your
13 Honor.

14 THE COURT: All right. So State's Exhibits 134,
15 141, 145, 146, 148, 149, 158, 161, 167, are admitted into
16 evidence without objection.

17 (Whereupon, State's Exhibits 134, 141, 145, 146,
18 148, 149, 158, 161, and 167 were entered into
19 evidence.)

20 THE COURT: Anything else we need to address?

21 MR. STUMBO: I don't believe so, Judge. I think ---

22 THE COURT: All right.

23 MR. STUMBO: --- the only exhibits -- I think that
24 we're still to offer through the last witness would be 1,
25 18, and 172.

1 THE COURT: Okay.

2 MR. STUMBO: So three.

3 THE COURT: All right. Anything from the state
4 before we bring the jury in?

5 MR. STUMBO: Nothing, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. GEOLY: No, sir, Your Honor.

8 THE COURT: All right. Let's go ahead and bring the
9 jury in.

10 (Off the record briefly.)

11 (Whereupon, the jury entered the courtroom at 3:48
12 p.m.)

13 THE COURT: All right. Ladies and gentlemen,
14 welcome back. We're ready to resume the trial of the
15 case.

16 Mr. Geoly, cross-examination.

17 MR. GEOLY: Thank you, Judge.

18 (Off the record briefly.)

19 CROSS-EXAMINATION

20 BY MR. GEOLY:

21 Q Madam witness, please state your name on the record
22 again.

23 A My name is Jaclynn McKay.

24 Q Thank you, Ms. McKay.

25 MR. GEOLY: Could -- could we pull up 100, Mr.

1 Bentley?

2 Q Now, I understood you to say, kind of back at the
3 beginning of your testimony, that you marked this,
4 thinking this was a -- a striking to the ground; is that
5 right?

6 A Yes.

7 Q Okay. And did you eventually determine that it was
8 a strike to the ground or there wasn't a strike to the
9 ground?

10 A We eventually determined that it was. We recovered
11 a projectile from the spot.

12 Q So that's actually the spot where you dig up, and
13 then, you have a picture of the bullet from right there?

14 A Correct. And this is going to be Marker 10.

15 Q Okay. And then, how many other bullets did you find
16 in the ground that day?

17 A This was the only one we recovered from digging in
18 the ground. However, we found a projectile just laying
19 on top of the ground at Marker 9.

20 Q So two?

21 A Correct.

22 Q Okay. Are found in the ground.

23 And how many are found in the car?

24 A There was one recovered from inside of the vehicle.

25 Q The back seat?

1 A That's correct.

2 Q So two, then, enter the vehicle?

3 A That's correct.

4 Q Okay. And you were actually describing ---

5 MR. GEOLY: Give me the picture of the -- the
6 defects of the car. Tell me number that is.

7 I'm sorry, Judge.

8 MR. STUMBO: Number ---

9 MR. GEOLY: Beg the ---

10 MR. STUMBO: --- Number 5.

11 MR. GEOLY: --- Court's indulgence one moment.

12 THE COURT: That's fine.

13 MR. STUMBO: Number 5. You talking about ---

14 MR. GEOLY: Number 5 ---

15 MR. STUMBO: --- the ---

16 MR. GEOLY: --- probably.

17 MR. STUMBO: Yeah. The diagram? Diagram or the
18 picture?

19 MR. GEOLY: Well, actually, we have a picture, I
20 think.

21 Beg the Court's indulgence one moment.

22 (Off the record briefly.)

23 Q If you'd give us just a moment; let me find the
24 right picture for you.

25 (Off the record briefly.)

1 Q All right. Let me ask you about -- I think it's
2 what you called Defect B that's ---

3 A Uh-huh.

4 Q --- on the B post?

5 A Defect B is going to be on the A pillar.

6 Q The -- okay. The A pillar?

7 A Uh-huh.

8 Q That -- that's one of the higher alleged strikes,
9 right?

10 A That's correct.

11 Q How positive are you that's a bullet?

12 A We called it a suspected bullet defect because we
13 have no way of 100 percent knowing on scene.

14 Q Okay.

15 A But based on the damage, it's relatively consistent
16 with what I've seen in my training and experience.
17 However, we can only call it a suspected bullet defect.

18 Q This car is pretty old, right?

19 A Say that one ---

20 Q The vehicle is pretty old. It's not a new vehicle.

21 A That's correct.

22 Q And it does have several indentions maybe that --
23 that maybe are and -- and maybe aren't actual bullet
24 strikes, right?

25 A That's possible.

1 Q Okay. In terms of bullets that strike this car
2 above, let's call it, the window line, you -- you
3 basically said as to the tire line, there were three
4 above and three below. That's right?

5 A That's correct.

6 Q That first one, what we're calling A, if -- if I
7 represented to you that -- you -- you remember the porch?

8 A Uh-huh.

9 Q And if you'll note, in -- in the porch pictures,
10 when you see the front of the house, that tire marks go
11 almost to the front porch, maybe even just a little
12 beyond, like she parks all the way where you open the
13 door and you get out and just go up the steps. Did you
14 take note of that?

15 A It's possible. However, we can't time-state --
16 time-stamp the ---

17 Q Sure.

18 A --- tire tracks. So I'm not exactly sure where the
19 vehicle was ---

20 Q But ---

21 A --- parked on this particular incident.

22 Q But is it logical that that A mark is when he steps
23 out onto the landing, I think you called it -- the -- the
24 front porch, but the top step's the landing -- and that
25 he's pointing down, essentially, and -- and doesn't it

1 seem to skid off to what we would call the passenger's
2 side of the vehicle?

3 A It is a ricochet defect from essentially the
4 driver's side of the vehicle to the passenger's side.
5 But ---

6 Q And -- and -- and wouldn't it indicate the fact that
7 it defects like that and goes off, that that's pretty
8 much point-blank range.

9 A I -- that's not necessarily what it means.
10 Sometimes with ricochet defects, if you're shooting in a
11 relatively equal angle as the substrate that's being
12 struck, that's kind of how it can ricochet off versus
13 going into.

14 Q Okay.

15 A So ---

16 Q So then ---

17 A --- I ---

18 Q --- actually, what I was saying could be wrong and
19 it be more indicative that he's actually on the ground
20 when he fires that into what would -- it seems like would
21 be firing into the engine.

22 A With this scenario, since there's so many moving
23 pieces at play, I can't really speculate on the shooter's
24 position, just because this vehicle was possibly in
25 motion during when this occurred. But it is possible

1 that he was on the ground.

2 Q Are there people that do, do that, though?

3 A That?

4 Q That -- that would analyze the situation and say,
5 "Hey, I can, from the trajectory, you know, determine
6 that this shot was fired from such-and-such or
7 somewhere," or -- and so that you could have somebody
8 come out there that works with your department that
9 actually does do that kind of thing.

10 A It's possible. But again, I think, even with all
11 the variables in this case, it would still be hard to
12 determine exactly where the vehicle was located when it
13 struck, as well as where the shooter's position was.

14 Q Did -- did any of those people come out from SLED?

15 A No. Normally, we do have people signed off in
16 shooting-incident documentation. That is more so done
17 kind of after the fact. But all of the measurements and
18 the scale tape and stuff is placed on the vehicle in
19 order to aid in that reconstruction, if it were deemed
20 necessary.

21 Q Okay. This bullet that hits Indigo's ankle ---

22 A Uh-huh.

23 Q --- we think that is D?

24 A It's going to be Defect E.

25 Q Okay. And -- and in fairness, it's about halfway up

1 the tire, maybe?

2 A I -- I would say that's accurate.

3 Q So midtire level is what actually hits her. Is that
4 the bullet that hits her that's found in the back seat?

5 A It's possible.

6 Q So it could've gone through her leg, bounced around
7 the compartment, and ended up -- did anybody come to look
8 for the -- the last one that I think everybody's assuming
9 or -- are -- are you assuming that F is the bullet that
10 -- that actually probably takes Iven's life?

11 A That's correct.

12 Q And did anybody look to see what trajectory it is
13 coming from?

14 A I measured the angles; essentially, put a -- a
15 flight-path rod through. And I measured the vertical
16 angle, as well as left-to-right angle. However, I did
17 not do anything further than that, as far as shooting
18 reconstruction is concerned.

19 Q Is that more of a straight shot, as opposed to -- it
20 seems like most of these bullets, he's near the porch,
21 either on it or down by it, and he's shooting kind of as
22 she's backing up at the tires. And we see all these low
23 shots, and we -- you've told me about one or two that
24 enter -- one's on the ground; one's in the ground. Then,
25 you have at least three that are tire level or below. Do

1 we think these other shots -- or as she's now backed up
2 and driving up the drive, or do you have no opinion of
3 that?

4 A I have no opinion on that.

5 Q All right. For -- for where it's to be hit, though
6 -- and if you assume that -- that Indigo testified he's
7 standing right there at the bottom of the steps -- for --
8 for F to exist, it wouldn't be while she's backing up,
9 right? It would be while she's driving down the
10 driveway.

11 A (No audible response.)

12 Q I mean, didn't you put a -- a metal pole through ---

13 A Yeah. Can ---

14 Q --- through F?

15 A --- you inform me on how the vehicle was oriented in
16 ---

17 Q My -- my understanding from what Indigo said was
18 that it was pulled up in front of the -- the -- the
19 house; that she basically backed up through those tire
20 marks that you see that have a little puddle in them; and
21 then drove up the driveway to the road.

22 A Unfortunately, I can't really tell you exactly when
23 that shot was fired.

24 Q Okay. You don't know why he was shooting at this
25 car, do you?

1 A I do not.

2 Q You weren't here prior to this, obviously. I mean,
3 you couldn't be here before it happened.

4 A That's correct.

5 Q So you got nothing to say in -- in terms of malice
6 aforethought or whether they were in a fight or what was
7 going on prior to this. You have no knowledge of any of
8 that, right?

9 A I just have preliminary case information that was
10 given to me.

11 Q Okay. So nothing else to offer this jury?

12 A I don't believe so.

13 Q Thank you very much for your time.

14 MR. GEOLY: No further questions, Judge.

15 THE COURT: All right. Redirect?

16 MR. DANIEL: Very -- very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. DANIEL:

19 MR. DANIEL: 123, Mr. Bentley.

20 Q All right. What are we looking at there, Ms. McKay?

21 A In State's Exhibit 123, you can see Markers 1
22 through 4. And they all indicate the cartridge cases
23 that were found on the front steps or on the ground
24 beside the front step.

25 Q All right.

1 MR. DANIEL: 127, Mr. Bentley.

2 A In State's Exhibit 127, you can see Markers 5
3 through 8. And they mark the cartridge cases that were
4 found just inside the front door inside the residence.

5 Q All right. So all eight shell casings -- spent
6 shell casings are found -- there's four of them on the
7 porch area, correct?

8 A Yes.

9 Q And then, the other four are just inside the
10 entryway to the house?

11 A That's correct.

12 Q All right. And that storm door, did it have a
13 spring in it to where it would close automatically or
14 would it stay open?

15 A I'm not sure. I don't recall.

16 Q Okay. So all the shell casings are in that area,
17 the front porch inside the threshold to the house; that's
18 correct?

19 A That's correct.

20 Q All right. And typically, when you -- you fire a
21 weapon, how far will shell casings eject from the weapon?

22 MR. GEOLY: Objection, Your Honor: not in response
23 to direct.

24 THE COURT: Sustained.

25 MR. DANIEL: All right. Let's go to 58, Walter.

1 Q Mr. Geoly asked you about the flight path of the --
2 of the bullets. All right. What are we looking at in
3 58?

4 A In State's Exhibit 58, you can see Defect F, which
5 is in the C pillar on the driver's side of the vehicle.
6 And it has a flight-path rod through it to indicate the
7 flight path of the bullet.

8 Q All right. Go to 60, please. All right. And that
9 is just a -- what -- what do you call that? Is that a
10 dowel rod?

11 A Yes. A dowel ---

12 MR. GEOLY: I'm going ---

13 A --- rod is ---

14 MR. GEOLY: --- to object again, Your Honor. We're
15 not in response to cross-examination.

16 THE COURT: All right. How did the -- how has this
17 not been addressed on your ---

18 MR. DANIEL: He -- he ---

19 THE COURT: --- direct?

20 MR. DANIEL: Your Honor, he was asking about angles
21 in his cross. And I was just -- I was simply trying to
22 show the flight path. I -- I didn't highlight this -- or
23 Mr. Geoly broached that in his cross ---

24 THE COURT: Yeah. But ---

25 MR. DANIEL: --- about angles ---

1 THE COURT: --- I mean, you addressed it in your
2 direct, didn't you?

3 MR. DANIEL: (No audible response.)

4 THE COURT: I mean, you can't -- you can address
5 things on redirect that he addressed in cross that you
6 have not already addressed. You can't go back over what
7 you've already done.

8 MR. DANIEL: Yes, sir. I didn't -- he addressed the
9 angle. I -- my question is angle-specific ---

10 THE COURT: All right. I'll ---

11 MR. DANIEL: --- which ---

12 THE COURT: --- allow this one question. Go ahead.

13 MR. DANIEL: Thank you, Your Honor.

14 Q Does that dowel rod -- what does -- does that
15 indicate what kind of trajectory, a downward or upward
16 trajectory?

17 A So in this case, it's an ever-so-slight downward
18 angle.

19 Q And again, most of the shell casings were from an
20 elevated position; is that correct? At the house?

21 A That is where the shell casings were. That's
22 correct.

23 Q All right. All right.

24 THE COURT: All right.

25 MR. DANIEL: Thank you. That's all I have.

1 MR. GEOLY: If it please the Court, Judge. He --
2 may I ask permission to address that last point that ---

3 THE COURT: No. That's ---

4 MR. GEOLY: Yes, sir.

5 THE COURT: You can bring it out.

6 All right. You may step down.

7 (Whereupon, the witness exited the witness stand.)

8 (Off the record briefly.)

9 THE COURT: All right. The state can call your next
10 witness.

11 MR. STUMBO: Thank you, Your Honor. The state calls
12 Dr, Kelly Rose.

13 (Off the record briefly.)

14 (Whereupon, the witness came forward.)

15 KELLY ROSE, having been first duly sworn,
16 testified as follows:

17 DEPUTY CLERK OF COURT: Have a seat and state your
18 name for the record.

19 THE WITNESS: My name is Kelly Rose, like the
20 flower.

21 DIRECT EXAMINATION

22 BY MR. STUMBO:

23 Q Afternoon, Dr. Rose. What -- what are you a doctor
24 of?

25 A I am doctor of pathology with a -- an extra

1 subspecialty in forensic pathology.

2 Q Okay. And what kind of training and education did
3 you have to become a forensic pathologist?

4 A I did four years of college, where I studied
5 biology, chemistry, the normal stuff. Then I went to
6 medical school. After that, I did additional training.
7 I started it at MUSC and then finished in Emory in
8 Atlanta. After that, I did an additional year in just
9 forensics through Emory at Fulton County Medical
10 Examiners in Atlanta.

11 Q Okay. And so how long have you -- have you -- are
12 you board-certified?

13 A Yes.

14 Q How long ---

15 A I am ---

16 Q --- how long have you been board-certified?

17 A That's a good question. I've been board-certified
18 in anatomic and clinical pathology for going on -- not
19 quite ten years; and then, forensics for going on two
20 years.

21 Q Okay. And during that time when you're -- as you've
22 been board-certified, where have you worked?

23 A I've -- I worked in Newberry for about a year and a
24 half, doing autopsies. I also worked in Atlanta. I've
25 worked down in Florida, where I did not just autopsies,

1 but oncologic pathology, which is cancer. So I looked at
2 slides of people's cancer. I also did autopsies when I
3 was there. And now I've been back here since 2018,
4 November, doing strictly autopsy pathology.

5 Q Okay. Your first time in Newberry, did you work
6 with Dr. Ross over here at ---

7 A Yes.

8 Q --- the Newberry -- okay.

9 And since you've been back, have you essentially
10 taken over Dr. Ross's practice?

11 A Yes.

12 Q Okay. And since you've been a pathologist, how many
13 deceased individuals have you conducted autopsies on?

14 A Approximately 3,000.

15 Q Okay. You ever testified in a court of law in this
16 state as a -- an expert in pathology and forensic
17 pathology?

18 A Yes.

19 Q Okay. How many times?

20 A Approximately ten.

21 Q Okay.

22 MR. STUMBO: Judge, at this time, based on Dr.
23 Rose's extensive experience, qualifications, education,
24 and the fact that she's been qualified ten times in this
25 state before, we would ask her to be qualified as an

1 expert in pathology and forensic pathology.

2 THE COURT: All right. Any questions or challenges?

3 MR. GEOLY: No, sir, Your Honor.

4 THE COURT: All right. I find this witness to be an
5 expert in the field of pathology and forensic pathology.

6 Q Dr. Rose, did you have occasion to conduct an
7 autopsy on a young boy, 7 years old, by the name of Iven
8 Caldwell?

9 A I did.

10 Q Okay. And I'm going to hand -- and -- and did you
11 conduct that autopsy and produce a report as a result of
12 that ---

13 A I did.

14 Q --- autopsy?

15 All right. I'm going to hand you through the clerk
16 what's been marked for ID as State's No. 1. If you
17 could, just briefly look at that and -- and do you
18 recognize that document?

19 A I do. It's my autopsy report.

20 Q Okay. And you have a -- another copy of that ---

21 A I brought ---

22 Q --- on the ---

23 A --- another ---

24 Q --- stand, right?

25 A --- copy.

1 Q Okay. If you could pass that back through the
2 clerk, No. 1 -- State's No. 1.

3 A (Complied.)

4 Q That's a fair and accurate representation of your
5 autopsy findings ---

6 A Yes.

7 Q --- Dr. Rose?

8 MR. STUMBO: Judge, we would offer State's 1 into
9 evidence.

10 THE COURT: Any objection?

11 MR. GEOLY: Without objection, Your Honor.

12 THE COURT: All right. State's Exhibit 1 admitted
13 into evidence without objection.

14 (Whereupon, State's Exhibit 1 was entered into
15 evidence.)

16 Q Now, Dr. Rose, it -- it -- just to -- I want to
17 clarify this. What -- what's the date of the autopsy
18 again?

19 A The date of autopsy is April 23rd, 2019.

20 Q Okay. And what's the date of death -- what is it
21 noted as on State's 1 of your report?

22 A It's noted as 4/22/12, which is a typographical
23 error. It was 4/22/2019.

24 Q Okay. So that was just a -- a transcription error
25 by ---

1 A Yes. And I have a new transcriptionist.

2 Q Okay. So the date of death was actually the day
3 before your autopsy?

4 A Yes.

5 Q And that would be April 22nd, 2019?

6 A Yes.

7 Q Okay. And what was Iven's date of birth?

8 A His date of birth was 4/13/2012.

9 Q And so he had just turned 7 years old.

10 A Yes.

11 Q Okay. Now, Dr. Rose, just to kind of cut to the
12 chase on this -- your -- your findings, did you -- were
13 you able to develop a cause of death for Iven?

14 A I was.

15 Q Okay. And -- and what was his -- his cause of
16 death?

17 A Pulpification of brain subarachnoid and subdural
18 hemorrhage. And I can explain that a little bit, since
19 ---

20 Q Well ---

21 A --- those are some ---

22 Q Okay. We -- we can follow up on ---

23 A Okay.

24 Q --- it in a moment. But that was ---

25 A That was ---

1 Q --- the cause ---

2 A --- due ---

3 Q Due to what?

4 A Due to a gunshot of the head.

5 Q All right. And the manner of death?

6 A Homicide.

7 Q Okay. Which just simply means caused by someone
8 else's hand, right?

9 A Yes.

10 Q Okay. Now, if you could, you've mentioned a second
11 ago that -- that -- tell me, you know, just medically or
12 tell -- not -- the jury, not me, if you could explain to
13 the jury what happens to the brain when a bullet passes
14 through it.

15 A Okay. An average handgun round that is consistent
16 with what I found in Iven travels about 1200 to 1300 feet
17 per second. And the speed of sound is 1100 --
18 approximately 1100 feet per second. So something that's
19 traveling faster than sound enters the brain.

20 The brain is very well protected by the skull. But
21 it doesn't have a lot of room to move. So something
22 traveling supersonic enters the brain; travels through
23 the tissue. As it travels, that energy that it carries
24 with it -- because it's traveling so fast -- causes the
25 tissue surrounding the -- surrounding it to expand like

1 this.

2 So you have a bullet traveling through, fracturing
3 skull, causing bleeding. You have the tissue that the
4 bullet is in direct contact with that they have done
5 studies, and they're not even sure where that goes. It
6 almost vaporizes. And then, you have the surrounding
7 tissue that the bullet doesn't travel through that's
8 still being affected by this pressure wave.

9 It leads to a cascade of events: swelling; you
10 don't have much room in your skull for your brain to
11 swell. It short-circuits the -- you know, the brain --
12 the neural circuits. The communication of your brain
13 that keeps you alive, it short-circuits. Then, actual
14 blood itself is highly irritating and can lead to death
15 in and of itself.

16 Q Okay. Can your heart continue to beat after this
17 happens to ---

18 A It ---

19 Q --- your brain?

20 A --- can.

21 Q Okay. Can your -- your lungs continue to operate
22 and breathe ---

23 A Yes. For some period of time. It doesn't mean that
24 it's a survivable injury. It just means that the lower
25 part of your brain that controls your heartbeat and

1 respirations, that did not have bullet travel through it
2 or sustains an injury that would've immediately stopped
3 it. But the cascade of events that happens from the
4 wound traveling through the brain just sets off a chain
5 of events that you can't recover from. But it might take
6 some time.

7 Q Now, Dr. Rose, in -- in this particular case, to a
8 reasonable degree of medical certainty, what's your
9 opinion as to -- after this bullet travels through this
10 young boy's head, it -- can he feel anything after that?

11 A No. I don't believe so. It -- with that traumatic
12 a brain injury, he's basically alive in that his heart
13 and -- is still pumping and his lungs are still
14 breathing, but for what we consider to be alive, he's
15 dead. He's -- he's already dead.

16 Q Is that what's often referred to as being brain-
17 dead?

18 A Correct.

19 Q Okay. Would there have been anything that the
20 medical staff at Newberry emergency room that -- anything
21 they could've done to prevent Iven's death?

22 A No. Absolutely nothing.

23 Q Okay. All right. Dr. Rose, I'm going to -- I -- I
24 was able to show you before you got on the witness stand
25 State's for -- what's, for ID purposes right now, State's

1 18. And it was a -- a picture. Do you -- did you
2 recognize State's 18?

3 A Yes. I did.

4 Q Okay. And -- and what is in State's 18?

5 A During an autopsy, especially with gunshot wounds,
6 we'll take X-rays, looking for bullets, projectiles. And
7 that is an X-ray that we took of Iven during the autopsy
8 of his head.

9 Q Okay. And it's a fair and accurate representation
10 of -- of that X-ray that ---

11 A Yes.

12 Q --- you took at the autopsy?

13 MR. STUMBO: Judge, we'd offer State's 18 into
14 evidence.

15 THE COURT: Which one is that?

16 MR. STUMBO: State's 18.

17 THE COURT: Any ---

18 MR. GEOLY: Without objection, Your Honor.

19 THE COURT: State's Exhibit 18 is admitted into
20 evidence without objection.

21 (Whereupon, State's Exhibit 18 was entered into
22 evidence.)

23 Q Okay. Dr. Rose, if you could explain, just -- just
24 briefly for the jury, what's in State's 18.

25 A Okay. Can I get down there so I can ---

1 Q Yes.

2 A --- see myself?

3 Q You can.

4 (Whereupon, the witness exited the witness stand.)

5 Q Just if you could keep your -- your voice up for ---

6 A Okay.

7 Q --- the court reporter.

8 A All right. This is the X-ray of the head. This is
9 the marker designating right or left, because X-rays are
10 not necessarily like pictures. So you have to leave the
11 marker so you know. That's the right.

12 This is Iven's skull. It -- this is where his eyes
13 were. And this is the bullet right here. It's traveled
14 through the skull, through the brain, back out the skull,
15 and is in the very swollen soft tissue of his head on the
16 right. It was a big bulge, a lot of swelling. And
17 that's where the bullet was.

18 Q Okay. You can return to the stand.

19 (Whereupon, the witness resumed the witness stand.)

20 Q Were you able to recover this bullet out of Iven's
21 body?

22 A I was.

23 Q Okay. I'm going to show you what's already in
24 evidence as State's 35 -- or -- excuse me.

25 MR. STUMBO: Let's go to State's 34, Walter.

1 Q Okay. Is this the bullet that you pulled out at the
2 autopsy?

3 A That is. Yes.

4 Q Okay.

5 MR. STUMBO: State's 35, Walter.

6 Q Okay. Closer up, same bullet?

7 A Yes.

8 Q State's 36?

9 A Yes.

10 Q And this is just a measurement of that. Okay. Is
11 that correct?

12 A Yes, it is.

13 Q All right. And at that time after you were able to
14 document it and -- and you had a SLED crime scene
15 analyst, Ms. Jazic ---

16 A Yes.

17 Q --- at the time?

18 A Yes.

19 Q And she was able to take some photographs of ---

20 A Yes.

21 Q Okay. I'm going to hand you through the clerk
22 what's in evidence already as State's No. 13. It may be
23 easier to look at through the back side of it.

24 A Uh-huh.

25 Q What's in State's 13?

1 A It's the projectile that I recovered during autopsy.

2 Q Okay. And you know that from the little container
3 inside?

4 A Yes.

5 Q Okay.

6 A And it matches the pictures my recollection.

7 Q Right. And that -- that's the kind of container you
8 would use in your autopsy?

9 A Yes. When I recover any kind of projectile, I put
10 it in a heat-sealed bag, clear plastic, just like this.
11 Yes.

12 Q Okay. All right. Thank you. If you could pass
13 that back to the clerk. Thank you, Dr. Rose.

14 A (Complied.)

15 Q All right. Just one last thing, Dr. Rose: I did
16 show you a posterboard which is marked for ID as State's
17 172 right before you were called earlier. You recognize
18 this posterboard?

19 A I do.

20 Q Okay. And -- and it's a blown-up copy of what?

21 A Of a body diagram that we use in autopsies.

22 Q Okay. And fair and accurate representation of
23 something ---

24 A Yes.

25 Q --- you produced?

1 A Yes.

2 Q Okay. And it's a depiction of bullet entry, exit,
3 that sort of thing?

4 A Yes.

5 MR. STUMBO: Judge, we would offer 172 into evidence
6 at this time.

7 MR. GEOLY: I -- I want to object to relevance,
8 Judge.

9 THE COURT: All right. State's Exhibit 172 is
10 admitted into evidence over defendant's objection.

11 MR. GEOLY: Thank you, Your Honor.

12 MR. STUMBO: Thank you, Judge.

13 THE COURT: Thank you.

14 (Whereupon, State's Exhibit 172 was entered into
15 evidence.)

16 MR. STUMBO: All right. Walter, if you could pull
17 up 172 for Dr. Rose. It may be easier than the
18 posterboard.

19 Q Okay. And if you need to get down, just if you
20 could keep you voice up, Dr. Rose, and explain to the
21 jury what we see in this diagram.

22 (Whereupon, the witness exited the witness stand.)

23 A All right. This is a body -- or a diagram of a head
24 that I'll use in an autopsy. I will have the -- the name
25 of the person that's being autopsied; in this case, Iven.

1 This is my depiction of the entrance wound.
2 Initially, I drew it here. And then I -- when I looked
3 at it after it was all cleaned up, I was, like, that's
4 not the right position. I'm going to put it in the right
5 position. So that's what you see there. So I just did a
6 -- I crossed it out and initialed.

7 And then, this is showing where the bullet was
8 recovered. So the bullet was right here under the skin
9 here. And the bullet entered here above the ear.

10 Q Okay. You can return to the stand, Dr. Rose.

11 (Whereupon, the witness resumed the witness stand.)

12 Q Just one last question, Dr. Rose: To a reasonable
13 degree of medical certainty, what is your opinion as to
14 what killed Iven?

15 A The gunshot of his head.

16 Q Okay. Actually, I'd -- I said one last question.
17 One more: Was this a healthy young boy by your
18 examination?

19 A Yes. I found no evidence of any natural disease:
20 no disease he had developed; none that he had been born
21 with.

22 Q Okay. So other than the gunshot wound through the
23 head, this was a healthy 7-year-old boy?

24 A 100 percent.

25 Q All right. Thank you, Dr. Rose. Please answer any

1 questions Mr. Geoly may have.

2 MR. GEOLY: Please the Court, just a couple, Your
3 Honor.

4 THE COURT: All right.

5 CROSS-EXAMINATION

6 BY MR. GEOLY:

7 Q Hey, Dr. Rose.

8 A Hi.

9 Q Have we ever met before?

10 A I don't believe so.

11 Q I don't think so either.

12 You said this was a healthy boy prior to this
13 gunshot wound. Any signs of abuse or prior abuse to this
14 boy?

15 A No.

16 Q Doesn't look like he was a victim of parental abuse
17 of any kind, does it?

18 A No.

19 Q Okay. In terms of what you do -- and I appreciate,
20 you know, that you -- you basically just did your job;
21 here's a deceased young man; and -- and you filled out
22 the charts and stuff that you really do. Do you have any
23 special knowledge that tells you whether or not this
24 death was a result of murder or whether it was the result
25 of involuntary manslaughter?

1 A We have five manners of death in forensic pathology.
2 And that's out of my wheelhouse.

3 Q Okay. You don't have anything to say whether it's
4 one or the other, right?

5 A No.

6 Q No further questions, Doctor. Thank you.

7 THE COURT: All right.

8 MR. STUMBO: Just one more, Judge.

9 REDIRECT EXAMINATION

10 BY MR. STUMBO:

11 Q Dr. Rose, have you been trained in the law and what
12 the different degrees of homicide are?

13 A No. We actually aren't trained in that. That's not
14 -- we determine cause and our manner of death. And the
15 -- the courts and the legal field picks up after that.

16 Q Right. And all homicide means is a person was
17 killed by someone else.

18 A Yes.

19 Q Okay.

20 A That -- the person's death was the result of the
21 actions, whether it be on purpose or not on purpose, of
22 another. So if your actions leads to someone else's
23 death, that is a homicide.

24 Q Okay. And that's what you found here?

25 A Yes.

1 Q All right.

2 A He did not shoot himself.

3 Q Thank you, Dr. Rose.

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

5 THE COURT: All right. You may step down.

6 (Whereupon, the witness exited the witness stand.)

7 (Off the record briefly.)

8 THE COURT: All right. Let me see the attorneys for
9 a second.

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 MR STUMBO: Your Honor, the state rests at this
14 time.

15 THE COURT: All right.

16 All right. Ladies and gentlemen, the state has
17 rested their case. And now is the time of the trial when
18 I have address some matters of law with the attorneys.
19 Given the time of day, I think we're going to go ahead
20 and let you go home for the day while I address these
21 matters of law with the attorneys.

22 And I'll tell you why we do it outside the presence
23 of the jury. It's not that we're trying to hide anything
24 from you or keep anything from you. But as I told you in
25 the opening charges, you and you alone decide the facts

1 of this case. And you decide those facts based upon the
2 testimony of witnesses and exhibits that are introduced
3 into evidence.

4 Well, when I discuss the law and the -- and the
5 procedures require that I discuss the law with attorneys
6 at this time, when I discuss the law and when the
7 attorneys discuss the law, it often requires us to
8 factual issues. Well, what we say is not evidence. So
9 we don't want you to be influenced by anything that I
10 might say or anything that the attorneys might say when
11 we discuss the law. We don't want that to influence your
12 decision on what the facts of this case are. And that's
13 why we excuse you.

14 In any event, it's a good time for us to go ahead
15 and break for the day. I'm going to let you go home for
16 the evening. Please be back at 9:15 tomorrow morning.

17 Again, do not discuss the case, even among
18 yourselves. It's too early for deliberations. Don't
19 conduct any independent investigations.

20 I hope everybody has a good -- good evening, and
21 we'll see you back at 9:15 tomorrow morning. Thank you
22 very much.

23 Everyone else, please remain seated while the jury
24 is excused.

25 (Whereupon, the jury exited the courtroom at 4:24

1 p.m.)

2 (Off the record briefly.)

3 THE COURT: All right. Any motions?

4 MR GEOLY: Please the Court, Judge, if I could ---
5 Here you go, David.

6 Your Honor, I took the opportunity at lunch. I -- I
7 figured they would finish up this afternoon, and so I
8 filed a motion. Judge, if -- if I -- I miscalculated for
9 some reason. Can I get a copy of this, Ms. Beth ---

10 CLERK OF COURT: Sure.

11 MR. GEOLY: --- and then give this to the judge.

12 CLERK OF COURT: Okay.

13 MR GEOLY: But I -- I have a motion, Your Honor, and
14 a memorandum in support of our motion for directed
15 verdict, if I could hand that up as soon as I get her to
16 make one copy, Your Honor.

17 THE COURT: All right. We'll let her make a copy.
18 That's fine.

19 MR GEOLY: Yes, sir. Thank you. Judge, while she's
20 doing that, I can lay the basis for you if you want.

21 THE COURT: All right.

22 MR GEOLY: Your Honor, since *Belcher* in 2009 and
23 then the *Burdette* case, which recently come out, you
24 know, since, it -- it's not appropriate to charge the
25 jury that they can presume malice by the use of a deadly

1 weapon. Since that is not acceptable charge -- because I
2 think *Burdette* is clear; that's -- that's not an
3 acceptable charge anymore -- I think that the state has
4 to produce at -- at least some credible evidence that all
5 elements of the crime have been met.

6 And, Judge, I think that in this case, malicious
7 aforethought is an element of the crime. It would be my
8 position, Your Honor, that the state has done nothing to
9 produce anything that could be considered by the jury to
10 be express or implied malice. There's been no testimony
11 of any maliciousness.

12 And -- and, in fact, I think the totality is
13 certainly the other: that he loved this child; he -- he
14 wasn't shooting at Mrs. Indigo Davis -- or Indigo Penny,
15 whichever you want to call her. But he wasn't shooting
16 at his wife; he wasn't shooting at his son. He was
17 shooting at the tires. Indigo Penny expressed that.

18 You couldn't -- toward that end, Judge, I -- I think
19 it would be impossible for a reasonable jury to find
20 beyond a reasonable doubt that he had acted with malice
21 aforethought, from what's been admitted. You know, I
22 would ask you, Judge, to -- that -- that's basically
23 the -- the -- the basis of my motion for directed verdict
24 at this time: that even with the -- considered in the
25 light most favorable to the state, the evidence put into

1 evidence at this point is insufficient that a reasonable
2 jury could give my client a fair trial and find beyond a
3 reasonable doubt unanimously that he -- he actually had
4 malice aforethought.

5 I -- I see the clerk is back, Judge. And I would --
6 would ask ---

7 THE COURT: Okay.

8 MR. GEOLY: --- you to consider our memorandum in
9 support of this motion. I've given the solicitor's
10 office a copy of it, Judge.

11 THE COURT: All right. Thank you.

12 All right. Mr. Stumbo, Mr. Daniel, who wants to
13 argue?

14 MR STUMBO: I -- I can argue it, Judge. Obviously,
15 on -- Your Honor is well aware of the -- the standard on
16 DV. You view the evidence in light most favorable to the
17 state as to whether there is sufficient evidence to put
18 forth to a jury whether this defendant killed Iven
19 Caldwell with malice aforethought and attempted to -- to
20 kill his wife, Indigo Penny. Also, the -- obviously, the
21 -- the possession of a weapon during a violent crime kind
22 of piggybacks off the -- the murder indictment.

23 Judge, evidence in this case has -- far exceeds the
24 threshold for what a jury could consider to find this
25 defendant guilty of murder, attempted murder, and

1 possession of a weapon during the commission of a violent
2 crime.

3 First of all, Judge, it was clear the night of, when
4 he comes home -- when this defendant comes home, he's
5 angry. Ms. Vinnie Hunter testified that he was angry in
6 the -- his voice over the phone and -- and Mr. Wallace
7 Hunter, right after this incident happened. Before the
8 incident happened, Indigo admitted on the stand to me
9 that he was -- he was mad; he was angry.

10 I said, "Well, he -- was he calmly talking to you,
11 or was he angry?"

12 And she said, "He was mad."

13 And so the -- there was a -- there was an anger to
14 him that -- that several witnesses has -- have testified
15 to. She admitted that he said to her: "There ain't no
16 one living here if I'm going to jail tonight."

17 And that showed this anger, Judge, that -- he also
18 said, essentially, to her -- you know, he's trying to --
19 not to get her to leave, and he has a gun in his hand.
20 He fires into the air eight times with another gun as a
21 -- a -- as a threatening manner, that -- his actions,
22 again, showing that he was -- he was angry that night and
23 -- and -- and malicious.

24 Judge, the call that -- that was made right after
25 the gunshots, when he's saying to the parents -- his --

1 his in-laws, essentially, that: "I ain't no effing chap.
2 Don't play with me." It shows this -- this anger, this
3 aggression; Judge, and then, the fact, ultimately, in
4 combination with his words that he empties a pistol one
5 time into the air; goes back into the house; gets a
6 second pistol; and shoots every bullet that that gun can
7 hold into a car where knows there are four human beings
8 inside.

9 And, Judge, we would say that -- that the evidence
10 is far sufficient for a jury to find him guilty of
11 specifically trying to kill Indigo and the anger that he
12 had against her, based on his words and his actions.
13 Reasonable inferences can be drawn, from those words and
14 action, that he intended to kill Indigo; and the
15 transferred intent, which the law is fairly clear on, if
16 there's a specific intent to kill her and one of the
17 bullets ends up striking Iven and killing him.

18 So the evidence is sufficient to convict him of
19 murder and attempted murder, under that specific-intent
20 theory, based on his words and actions, Judge. And this
21 jury can draw reasonable inferences, viewing the light --
22 or the evidence, as Your Honor is in DV here, most
23 favorable to the state, a jury could find that.

24 Even if the jury goes with Indigo's, I believe,
25 testimony on the stand, which is -- is difficult to -- to

1 comprehend, that his sole purpose is to try to shoot the
2 tires out of this car -- Judge, even under that scenario,
3 on the totality of the evidence of this case, I believe
4 the Court will charge a theory of malice here, which is
5 essentially -- I believe the state -- *State v. Mouzon* --
6 M-o-u-z-o-n -- an old 1925 case that talks about this
7 depraved-heart condition of malice, an extreme
8 indifference to the value of human life, that even if
9 they don't believe that he specifically intended to kill
10 Indigo, that they can find him guilty under a theory of a
11 -- an -- acting in an extreme indifference to human life,
12 when he's emptying a pistol into a car from short range
13 that has four human beings in it, Judge.

14 I think, under either theory, I think both could
15 apply here, quite honestly. But we believe that the
16 evidence is sufficient for the jury, once Your Honor
17 charges them the law, to find him guilty of -- of what
18 he's accused of.

19 THE COURT: All right.

20 MR. STUMBO: Thank you ---

21 THE COURT: Anything ---

22 MR. STUMBO: --- Your Honor.

23 THE COURT: --- in reply?

24 MR. GEOLY: I'm sorry, Judge?

25 THE COURT: Anything in reply?

1 MR. GEOLY: Yes, sir, Judge. That -- that we think
2 that the evidence supports -- and I put also in my
3 memorandum -- that, you know, even though I'm asking you
4 to dismiss this, obviously, there's lesser-included
5 offenses to murder. We've said from the outset, we think
6 that this is an involuntary manslaughter. And we think
7 that -- that that could survive.

8 We don't see where anything's been introduced or
9 that the jury's going to be able to be instructed that
10 they can presume malice or raise an inference of malice
11 from use of a deadly weapon. And we think that leaves
12 them short, Your Honor, in having evidence before this
13 jury that a reasonable jury could find him guilty beyond
14 a reasonable doubt. We ask that you direct a verdict and
15 allow involuntary manslaughter and the attempted murder
16 perhaps to go to the jury.

17 THE COURT: All right. I'm going to deny your
18 motion. I think ---

19 MR. GEOLY: Yes, sir.

20 THE COURT: --- there's enough to get around a
21 directed verdict.

22 Anything else?

23 MR. GEOLY: Not right now, Your Honor.

24 THE COURT: All right. Do you anticipate putting up
25 any type of defense?

1 MR. GEOLY: Judge, I need to talk to my client about

2 ---

3 THE COURT: All right.

4 MR. GEOLY: --- that.

5 THE COURT: All right. And we'll do that. And I
6 just didn't know if you wanted me to question him now or
7 wait ---

8 MR. GEOLY: I ---

9 THE COURT: --- until tomorrow morning to ---

10 MR. GEOLY: I -- I'm fine ---

11 THE COURT: --- question him ---

12 MR. GEOLY: --- with you ---

13 THE COURT: --- on his ---

14 MR. GEOLY: --- questioning him now, Judge.

15 THE COURT: Okay. I won't make him make a decision
16 now.

17 MR. GEOLY: Yes, sir.

18 THE COURT: But I'll certainly go over his rights
19 and he can think about it overnight, okay?

20 MR. GEOLY: Thank you, Your Honor.

21 THE COURT: All right. Hold for one second.

22 (Off the record briefly.)

23 THE COURT: All right. Mr. Davis, if you would
24 please stand.

25 THE DEFENDANT: (Complied.)

1 XZAVIER DAVIS, having been first duly sworn,
2 responded and stated as follows:

3 THE COURT: All right. Thank you very much. You
4 can put your hand down now.

5 THE DEFENDANT: (Complied.)

6 THE COURT: Your name is Xzavier Sharif Davis?

7 THE DEFENDANT: Yes, sir. I'm a senior.

8 THE COURT: Huh?

9 THE DEFENDANT: Xzavier Sharif Davis, Sr.

10 THE COURT: Xzavier Sharif Davis, Sr.; is that
11 correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Mr. Davis, at this time I'm
14 going to explain to you certain rights that you have. If
15 you do not understand what I'm saying to you, please let
16 me know. And if you want me to explain anything in more
17 detail, please let me know. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. We've now reached the stage
20 of the trial where you may present your defense. You
21 have the right to claim the protections given to you by
22 the Fifth Amendment to the United States Constitution,
23 which states, in part, that no person shall be compelled
24 in any criminal case to be a witness against himself.

25 This means that you cannot be required to testify in

1 this case. You have the right to testify on your own
2 behalf. However, no one can make you testify. This is a
3 personal right, and no one can waive that right except
4 for you.

5 If you decide to testify, you will be subject to the
6 same rules that govern other witnesses. And you may be
7 examined and cross-examined on any relevant issue in this
8 case.

9 In addition, if you have any convictions involving
10 dishonesty or false statements or for crimes punishable
11 by imprisonment for more than year and this Court
12 determines that the probative value of admitting this
13 evidence outweighs its prejudicial effect to you, the
14 solicitor will be able to introduce your record to attack
15 your credibility.

16 Now, at this time are there any prior convictions
17 that the state would be using to attack his credibility?

18 MR. STUMBO: There are not, Your Honor.

19 THE COURT: Okay. All right. There are none that
20 they would be using.

21 If you decide to testify, this decision on your part
22 must be freely, voluntarily, and intelligently made, with
23 knowledge of the protections given to you by the Fifth
24 Amendment and the consequences of your decision to
25 testify. If you decide not to testify, I will instruct

1 the jurors that they cannot give the fact that you did
2 not testify any consider what -- any consideration
3 whatsoever and that there is to be absolutely no
4 prejudice to you because you did not testify.

5 It's left entirely up to you whether or not you
6 testify. You may talk with your attorney, your family
7 and friends, or anyone else. But the final decision will
8 be left entirely up to you.

9 Now, do you understand what I've explained to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions about what I
12 explained to you?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay. What we're going to do is we're
15 going to go ahead and break for the day. I'm going to
16 give you an opportunity to speak on this issue with your
17 lawyer or with anybody that you want to talk to about
18 whether or not you testify. And then when we come back
19 tomorrow morning, I'm going to go over these rights with
20 you again. And at that time I'm going to ask you whether
21 or not you wish to testify in this case. Okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Thank you very much.

24 THE DEFENDANT: All right. Thank you.

25 THE COURT: All right. Now, if he chooses not to

1 testify, are there any other witnesses that you
2 anticipate calling or do you know?

3 MR. GEOLY: Judge, we had several witnesses on our
4 witness list.

5 THE COURT: Okay.

6 MR. GEOLY: It -- it's going to depend greatly if --
7 I -- I'll say this: If -- if I call Xzay to the stand,
8 Your Honor, then I will have other witnesses. If he
9 chooses not to testify, then we have a decision to make.

10 THE COURT: Okay. All right. That'll be fine.

11 All right. Anything from the state before we recess
12 for the evening?

13 MR. STUMBO: Nothing from the state, Your Honor. Do
14 -- I -- I don't know if Your Honor wanted to go ahead and
15 -- and preliminarily start looking at charges on this.
16 Or if you want to wait, that's fine.

17 THE COURT: Well, I -- we can do one of two things.
18 I've been preparing some proposed charges that are
19 straight out of our charge book.

20 MR. STUMBO: Yes, sir.

21 THE COURT: If you've got any you want me to take a
22 look at, you can go ahead and give them to me and I'll
23 take a look at them. Or if you want to wait and see what
24 I do and -- and make an objection then, however you want
25 to handle it.

1 If you've got anything you want to hand up -- well
2 -- hand up, I can go ahead and take a look at it.
3 Because there are some charges that kind of go routinely
4 out of the charge book. Now ---

5 MR. STUMBO: Yes, sir.

6 THE COURT: --- which raises a point. I mean, and
7 Mr. Geoly might be right. I was of the impression that
8 *Belser* -- *Belcher* said that the use of a deadly weapon
9 could not infer malice if the defendant was -- put forth
10 a defense where they legally had the right to have a gun.

11 MR. GEOLY: I'll -- I'll give it you that I think
12 *Belcher* is a little confusing, Your Honor, which is ---

13 THE COURT: Right.

14 MR. GEOLY: --- why I think the Supreme Court made
15 the decision they did in *Burdette*, which, you know,
16 *Burdette* is a good ten years later. I think it's maybe a
17 2019 case because ---

18 THE COURT: Maybe that's the one I need to go back
19 and ---

20 MR. GEOLY: And -- and ---

21 THE COURT: --- look at.

22 MR. GEOLY: --- and then, I don't think that *Mouzon*
23 has really been dealt with since we, you know, had
24 *Burdette*, whether this idea of *Mouzon* implied malice can
25 really exist, when I think our bench is prohibited now

1 after *Burdette* from saying: "Hey, you can infer malice."

2 I think it puts it in a difficult spot. But ---

3 MR. STUMBO: Well, Judge ---

4 MR. GEOLY: --- but that -- I mean, that would be my
5 position as to that.

6 Judge, the only, I think, charge that I can
7 anticipate me requesting, depending upon what you have,
8 would be kind of a -- an extension of what I've already
9 done, which would then be requesting that you -- you
10 charge involuntary, obviously. That -- that's kind of
11 how we've positioned it.

12 I know there's some cases out there, Judge, that
13 talk about if you intentionally fire a weapon, which I
14 think arguably he certainly did, that -- that then you're
15 prohibited from that charge. But all of those cases are
16 self-defense cases, where they're claiming: "Hey, I'm
17 acting in self-defense." And well, you can't claim self-
18 defense on firing, you know, intentionally.

19 But here, you have a whole different scenario, where
20 he's trying to stop her from leaving. She's testified
21 he's trying to stop her from leaving. She's testified he
22 isn't trying to kill anybody.

23 So you have facts that exist that we would argue
24 that are either he's doing a lawful act that is so, you
25 know, reckless that could rise to -- if that's the case

1 and a death occurs, then that's one of the definitions.
2 If he's doing an illegal act that doesn't rise to the
3 level of a felony, like malicious injury to property --
4 he's trying to shoot at, you know, car -- and -- and a
5 death results, that also could be -- could be involuntary
6 manslaughter.

7 So we think even though he intentionally fires a
8 weapon, that he's certainly not prohibited. We're
9 distinguishable from all of the self-defense case that
10 come. And we think now, the way the law sits with --
11 with both *King*, which has been recently decided, that
12 says there has to be specific intent for an attempted
13 murder, so your *Mouzon* malice isn't going to work for
14 that at all on -- on the attempted murder charge against
15 Indigo. And then, on the murder itself, we feel like, if
16 -- if -- if you are going to keep that, that it would be
17 appropriate to -- to charge involuntary manslaughter as
18 well. Because certainly, the jury, the trier of fact,
19 could determine that those are the facts.

20 THE COURT: Well, I mean, let me go back and read
21 the cases again. I don't know what I'm going to do at
22 this ---

23 MR. STUMBO: Yeah.

24 THE COURT: --- point in time. I was thinking, you
25 know, maybe -- maybe the *Bennett* case, *Mouzon* case, are

1 the ones I need to look at. But I was thinking *Belcher*.
2 *Belcher* was just if you're claiming self-defense, then
3 use of a deadly weapon cannot infer malice.

4 MR. GEOLY: Yeah.

5 MR. STUMBO: Right.

6 THE COURT: It was basically it. So ---

7 MR. STUMBO: And -- and ---

8 MR. GEOLY: But -- but then ---

9 MR. STUMBO: --- Judge ---

10 MR. GEOLY: --- *Burdette* cleaned that up, Your
11 Honor, if you go ---

12 THE COURT: All right.

13 MR. GEOLY: --- back and look.

14 THE COURT: All right, sir.

15 MR. STUMBO: And -- and -- and, Judge, just to -- to
16 give you a couple cases maybe that you and your law clerk
17 can pull tonight: *State v. Gibson* is a 2010 Court of
18 Appeals case. That's 390 S.C. 347, a 2010 case. Stood
19 for the proposition here that he voluntarily and
20 intentionally fired his weapon. And the trial court
21 properly denied involuntary manslaughter.

22 Judge, there's several other cases that stand for
23 that proposition as well. *Douglas v. State*, 332 S.C. 67,
24 that's a 1998 Supreme Court case, Judge. And *State v.*
25 *Sams* is a 2014 Supreme Court case that has a -- a -- a

1 very similar discussion as these other cases. That would
2 be 410 S.C. 303.

3 Judge, based on those cases and the facts of this
4 case, you know, clearly, it's not even just an -- one
5 intentional shot. It's -- it's multiple intentional
6 shots, Judge. And I think most of the case law would
7 reflect that an involuntary manslaughter is only
8 appropriate when there's an accidental discharge of the
9 gun for some reason or some other negligent purpose that
10 -- that's out there, Judge.

11 But I -- we don't believe that it's appropriate here
12 under the case law and the facts of this case for
13 involuntary. But we would stand on those.

14 As to -- I think Mr. Geoly brought this up as well.
15 If, you know, it -- the jury finds that there's no
16 specific intent to shoot and kill Indigo, we still
17 believe, under some of the very recent cases -- in fact,
18 *State v. Jeter* is one that came out last week, Judge.
19 And it's -- kind of piggybacks off *State v. King* and
20 *State v. Williams*.

21 But it seems to say that for -- that -- the Court of
22 Appeals said from a public-policy standpoint, the Supreme
23 Court has strongly suggested in both *Williams* and *Smith*
24 -- and Smith was the -- the girl that was paralyzed in
25 Five Points with a -- a bullet in a gang shootout -- but

1 that the lesser offense of ABHAN in cases would serve as
2 the appropriate punishment.

3 So I think there's some -- based on this recent case
4 law, Judge, it might be appropriate, as to the attempted
5 murder on Indigo, to charge ABHAN as a lesser-included.
6 But we don't believe that voluntary manslaughter applies
7 here, Judge, because we don't see any sufficient legal
8 provocation in -- in the case and the facts. And
9 involuntary manslaughter also, we believe, would be
10 inappropriate under the law.

11 THE COURT: Okay. Well, I was thinking the *Jeter*
12 case -- do we still have common law ABHAN?

13 MR. STUMBO: No, sir. That would be a statutory
14 ABHAN, if the -- if the individual ---

15 THE COURT: Okay.

16 MR. STUMBO: --- was struck. So like in this case,
17 Indigo was struck in the leg. And we -- we believe that
18 even if a jury -- we think that, based on the facts, they
19 could find that he was intending to kill her and it's an
20 attempted murder, specific intent.

21 If they find that it was just a -- a extreme
22 indifference to the value of human life in the way she
23 [sic] acted, they could find her [sic] guilty of murder
24 and ABHAN under that theory ---

25 THE COURT: All right.

1 MR. STUMBO: --- instead of murder and attempted
2 murder. So ---

3 THE COURT: All right.

4 MR. GEOLY: Judge, I would just echo: There's three
5 cases he cited initially. I -- I'm not positive of the
6 third. But two of them are self-defense cases, which I
7 mentioned. And -- and I think the third is probably as
8 well. I'll go back and look at it.

9 But I think all three are self-defense. This
10 clearly is not a self-defense case; hasn't been argued as
11 a self-defense case. And I think it's distinguishable
12 from all of those.

13 THE COURT: Okay.

14 MR. GEOLY: I ---

15 THE COURT: All right. Well, it's a little bit too
16 early to even be making a final decision on ---

17 MR. GEOLY: Yes, sir.

18 THE COURT: --- what the charges are ---

19 MR. GEOLY: Sure.

20 THE COURT: --- at this point in time. But ---

21 MR. GEOLY: Yes, sir.

22 MR. STUMBO: Yes, sir.

23 THE COURT: --- but we'll address these issues when
24 we get done with all the evidentiary portion. Okay?

25 MR. GEOLY: Thank you, Judge.

1 MR. STUMBO: Thank you, Judge.

2 THE COURT: All right. Anything from the state
3 before we recess?

4 MR. STUMBO: Nothing from the state, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. GEOLY: Nothing from the defense, Judge. Judge,
7 could we be in a posture that if -- if -- if indeed we
8 didn't go forward or we rest or whatever point in time we
9 actually finish the trial, we -- we could get about a
10 15/20-minute break to -- to submit those charges to you
11 -- for our proposed charges, rather?

12 THE COURT: Yeah. But, I mean, go ahead and be
13 getting ---

14 MR. GEOLY: I'll work ---

15 THE COURT: --- them together.

16 MR. GEOLY: --- certainly, Judge.

17 THE COURT: Get them ---

18 MR. GEOLY: I -- I'll ---

19 THE COURT: --- together now.

20 MR. GEOLY: --- be working on them.

21 THE COURT: Yeah.

22 MR. GEOLY: Yes, sir.

23 THE COURT: Okay.

24 MR. GEOLY: Thank you, Your Honor.

25 THE COURT: All right.

1 MR. STUMBO: Thank you, Judge.

2 MR. GEOLY: Not ---

3 THE COURT: And I can ---

4 MR. GEOLY: --- not ---

5 THE COURT: --- tell you right now: I don't know
6 what we're going to do.

7 MR. GEOLY: Yes, sir.

8 THE COURT: And I don't want to influence one thing.
9 But generally, my practice is I am not going to charge a
10 jury after four o'clock.

11 MR. GEOLY: Yes, sir.

12 THE COURT: Okay?

13 MR. GEOLY: I understand.

14 THE COURT: Just because once I finish with the
15 charges and then they get in there and they're looking at
16 the clock and it's too close to five o'clock, so we're
17 not going to do it. So if we're getting close to four
18 o'clock tomorrow and I haven't charged them yet, we're
19 probably going to have to come back on Friday, okay?

20 MR. STUMBO: Yes, sir.

21 MR. GEOLY: Yes, sir.

22 THE COURT: So -- which I'll be here anyway, so it
23 doesn't really matter. It's just what will we be doing
24 Friday, whether it be finishing this up or I think
25 they've got some probation revocations and stuff they

1 want me ---

2 MR. STUMBO: Well, we ---

3 THE COURT: --- or that they ---

4 MR. STUMBO: --- might have a handful of pleas ---

5 THE COURT: Okay.

6 MR. STUMBO: --- Judge, to ---

7 THE COURT: Whatever they've ---

8 MR. STUMBO: --- to do. Yeah.

9 THE COURT: --- whatever we've got. But so -- but
10 that's generally my practice and I'll ---

11 MR. GEOLY: Yes, sir.

12 THE COURT: --- you know, that we won't go until ---

13 MR. GEOLY: Thank you for ---

14 THE COURT: --- after four.

15 MR. GEOLY: --- telling us, Your Honor.

16 THE COURT: All right.

17 MR. GEOLY: Are -- are we 9:30 again in the morning?

18 THE COURT: Nine-thirty tomorrow morning, yeah.

19 MR. GEOLY: Thank you, Judge.

20 MR. STUMBO: Thank you, Judge.

21 THE COURT: All right. Thank you.

22 (Whereupon, the proceeding adjourned at 4:49 p.m.)

23

24

25

1 TRIAL DAY 4 - 08/26/21

2 (Whereupon, the proceeding resumed at 9:35 a.m.)

3 THE COURT: All right. Good morning, ladies and
4 gentlemen. Before we get started, I don't know if -- if
5 the clerk has mentioned it to you or not.

6 CLERK OF COURT: No, sir, I haven't.

7 THE COURT: You haven't? Have not.

8 CLERK OF COURT: I have not.

9 THE COURT: You have not. Okay.

10 The juror we had that was with an employee that
11 tested positive for COVID, Juror No. 31, Vanessa
12 Matthews, No. 2 on the strike list, she has tested
13 positive for COVID. So I've gone ahead and excused her
14 to seat the alternate. If she has a positive test for
15 the coronavirus, then I'm going to go ahead and -- and
16 seat one of the alternates. Okay?

17 Anything the state wants to put on the record in
18 that regard?

19 MR STUMBO: No. I think that's wise, Judge. And --
20 and honestly, I think that's why I'm glad we do these
21 protocols with six feet apart and masks ---

22 THE COURT: Right.

23 MR. STUMBO: --- and cleaning. I think that
24 sufficiently has kept others safe, even if she's
25 positive.

1 THE COURT: All right. Anything defense wants to
2 put on the record in that regard?

3 MR GEOLY: Yes, sir, Your Honor. If it please the
4 court, one moment.

5 THE COURT: All right.

6 (Off the record briefly.)

7 MR GEOLY: Please the Court, Judge, obviously, we --
8 we don't have any -- apologize, Judge.

9 (Off the record briefly.)

10 MR. GEOLY: Judge, I apologize again. Beg the
11 Court's indulgence just a moment.

12 THE COURT: All right. Take your time. That's
13 fine.

14 MR. GEOLY: Yes, sir.

15 (Off the record briefly.)

16 MR GEOLY: Your Honor?

17 THE COURT: Yes.

18 MR. GEOLY: Please the Court, I apologize for the
19 delay.

20 THE COURT: That's all right.

21 MR. GEOLY: I wanted to consult with my client,
22 Judge. And I understand your decision, Your Honor. But
23 this -- this woman, who's obviously been here with all
24 us, has been here this week. I think -- I've actually
25 spotted her; certainly didn't make any contact with any

1 jurors, but spotted her eating lunch, I think, with other
2 jurors this week. So they've all been around each other.

3 It's my understanding the she is has actually had
4 the COVID vaccine. Now, maybe I'm misremembering. But I
5 -- I thought, the other day, you had indicated that she's
6 had the vaccine.

7 I -- I would ask that you consider if she -- if
8 she's not showing any symptoms, us considering finishing
9 this up. I think it would go quick today, and we
10 wouldn't even go into tomorrow. Or we consider declaring
11 a mistrial because now these other people are going to
12 have fears.

13 You know, I made a continuance motion at the
14 beginning of this case because of the kind of explosion
15 that we had going on. My concern now is if we've had one
16 juror already moved, other jurors are worried that
17 they've been around her. Now they're going to have to
18 all be in -- you know, if -- if they're saying, "Oh, no,
19 I'm sitting here with the lady and had lunch with her
20 yesterday; I want to get out of here as quickly as
21 possible," and then, they kind of shortchange giving my
22 client a fair trial at that point.

23 And I think that now this pressure is going to be on
24 them more than ever, as they sit there, you know, in this
25 jury room today probably or tomorrow, thinking, I want to

1 get out of here as quickly as possible.

2 So I would ask that you consider keeping her on if
3 -- if there's no symptoms and us finishing this trial.
4 We -- we've been at it for three days. I think it could
5 -- could potentially wrap up today or -- or you declare a
6 mistrial, Judge.

7 THE COURT: All right. I'm going to deny both
8 motions. I am going to go ahead and substitute her. And
9 that's why we have the alternate, so I'm going to bring
10 the alternate on.

11 MR GEOLY: Thank you ---

12 THE COURT: Okay?

13 MR. GEOLY: --- Judge. And -- and appreciate it;
14 understand your ruling.

15 THE COURT: All right. Now, the way we do it in
16 general sessions, I've got the two alternates. Who wants
17 to draw?

18 MR GEOLY: I'm fine with the clerk drawing ---

19 MR. STUMBO: Yeah. The ---

20 MR. GEOLY: --- Your Honor, or ---

21 MR. STUMBO: Ms. Beverly ---

22 MR. GEOLY: --- or you or ---

23 MR. STUMBO: --- or Ms. Beth ---

24 MR. GEOLY: --- whoever ---

25 MR. STUMBO: --- could draw, Judge.

1 (Off the record briefly.)

2 THE COURT: Who have we gotten?

3 CLERK OF COURT: Carl Cox.

4 THE COURT: All right. Carl J. Cox, III, Juror No.
5 8, No. 31 on the list.

6 (Off the record briefly.)

7 THE COURT: All right. Mr. Geoly, are we ready to
8 go ahead and question your client regarding his right to
9 testify?

10 MR GEOLY: Your Honor, you're welcome to do that.
11 But as you know, you did it yesterday.

12 THE COURT: Right.

13 MR. GEOLY: We've had opportunity to have
14 conversations. And after discussions with my client and
15 his family, we rest, Your Honor.

16 THE COURT: Okay. All right. Let me go ahead and
17 get -- Mr. Davis, if you would please stand.

18 THE DEFENDANT: (Complied.)

19 XZAVIER DAVIS, having been first duly sworn,
20 responded and stated as follows:

21 THE COURT: All right, sir. You can put your hand
22 down now. Thank you.

23 Your name is Xzavier Sharif Davis?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And I think yesterday you

1 said Xzavier Sharif Davis, Sr.?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. All right, Mr. Davis.

4 Again, we did this yesterday. But I'm going to do it
5 again today because you did not -- I did not complete it
6 yesterday with regard to getting your decision on this
7 matter.

8 At this time I'm going to explain to you, like I did
9 yesterday, certain rights that you have. If you do not
10 understand anything that I say, please let me know. And
11 if you want me to explain anything in more detail, please
12 let me know. Now, do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. We've now reached the stage
15 of the trial where you may present your defense. You
16 have the right to claim the protections given to you by
17 the Fifth Amendment to the United States Constitution
18 states, in part, that no person shall be compelled in any
19 criminal case to be a witness against himself.

20 This means that you cannot be required to testify in
21 this case. You have the right to testify on your own
22 behalf. However, no one can make you testify. This is a
23 personal right; no one can waive this right except for
24 you. If you decide to testify, you will be subject to
25 the same rules that govern -- that govern other

1 witnesses. And you may be examined and cross-examined on
2 any relevant issue in this case.

3 In addition, if you have any convictions involving
4 dishonesty or false statement or for crimes punishable by
5 imprisonment for more than a year and this Court
6 determines that the probative value of admitting this
7 evidence outweighs its prejudicial effect to you, the
8 solicitor will be able to introduce your record to attack
9 your credibility.

10 And now, as I understand, the state has no prior
11 criminal record that they would introduce to attack the
12 credibility of this defendant; is that correct? ?

13 MR STUMBO: That's correct, Judge.

14 THE COURT: All right. If you decide to testify,
15 this decision on your part must be freely, voluntarily,
16 and intelligently made with knowledge of the protections
17 given to you by the Fifth Amendment to the United States
18 Constitution and the consequences of your decision to
19 testify.

20 If you decide not to testify, I will instruct the
21 jurors that they cannot get the fact that you did not
22 testify into any consideration whatsoever and that there is to
23 be absolutely no prejudice to because you did not
24 testify. It is left entirely up to you whether or not
25 you testify. You may talk with your attorney, your

1 family and friends, or anyone else. But the final
2 decision will be left entirely up to you.

3 Now, do you understand what I've explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you have any questions about what
6 I explained to you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you discussed this with your
9 lawyer, whether or not you wish to testify or not
10 testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You discussed with your lawyer?

13 THE DEFENDANT: (Nodded head up and down.)

14 THE COURT: Have you discussed it with anybody else
15 that you wanted to discuss it with?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Do you need any more time to
18 make a decision as to whether or not you testify in this
19 case?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Do you wish to testify in
22 this case?

23 THE DEFENDANT: No, sir.

24 THE COURT: Is this your decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Is this what you want to do?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Anything further you want on
4 the record, Mr. Geoly, with regard to his right to
5 testify?

6 MR GEOLY: No, sir, Your Honor. It -- it's properly
7 protected. And -- and this is the result of discussion
8 with my client at -- at length about basically where we
9 are and -- and where I feel the case is and where he
10 feels the case is. And he's just made the decision that
11 at this point, Your Honor -- and I will -- the -- let
12 Your Honor know, we came in this trial fully intending to
13 testify. That had kind of been our game plan.

14 But over the last couple days, he has changed his
15 mind and I agree with that decision, Judge.

16 THE COURT: All right. Anything further the state
17 wants placed on the record with regard to the defendant's
18 decision not to testify in this case?

19 MR STUMBO: Nothing from the state, Judge.

20 THE COURT: All right. Is there any further defense
21 or any defense that the defendant will place -- present
22 to the jury?

23 MR GEOLY: Judge, there is nothing -- we -- we do
24 have some matters for the Court, we believe. I'd like to
25 renew and kind of supplement my motion yesterday.

1 THE COURT: Yeah. And I'll give you an opportunity
2 to -- to -- to raise any motions. I guess my question
3 is: Are you going to introduce any exhibits or call any
4 witnesses?

5 MR GEOLY: No, sir, Your Honor. We -- we
6 intentionally -- and I know there was kind of a moment
7 yesterday where I looked like I was caught deer in the
8 headlights. I wasn't really worried about the rule of
9 completeness as much as I was concerned that if I -- I
10 went further with the video, that I would give up last
11 argument. We've put nothing in, and -- and we intend to,
12 at this point, protect last argument. So we don't wish
13 to introduce any evidence, Your Honor.

14 THE COURT: All right. Any motions?

15 MR. GEOLY: Yes, sir, Your Honor.

16 THE COURT: All right.

17 MR GEOLY: Your Honor, if I could kind of go
18 backwards and -- and not address what I addressed
19 yesterday. As Your Honor know, recently in this case --
20 or recently in this state, we've had a case that -- that
21 directly weighs on attempted murders versus murders,
22 specific intent versus general intent. And my client is
23 actually charged today, as well as the -- the more
24 serious murder charge, he's charged with attempted murder
25 as to Indigo Davis, his wife.

1 We feel like that there's been nothing presented
2 that would justify or substantiate an attempted murder
3 charge at this point. It has to be a specific-intent
4 crime as the result of *State v. King*. I think it's a
5 2017 case, actually, Judge, that came out more recently
6 than that. But I -- I think it's 2017, *State v. King*.

7 If you look at that, Judge, for an attempted murder
8 charge to stand or even go to the jury, I think it has to
9 be a specific-intent crime. I think there's no question
10 he was trying to intend to kill his wife here. For
11 attempted murder, unlike murder, it can't just be a -- a
12 general-intent crime. It's a specific-intent crime.

13 And I think they've done nothing to present anything
14 in the way of his hope to attempt to murder Indigo. So
15 we would ask for directed verdict as to the attempted
16 murder.

17 And, Your Honor, we basically put on the record
18 yesterday -- nothing new has happened. But we would
19 renew our -- our motion to direct a verdict, just
20 weighing on, again, yesterday, Judge, not to beat a dead
21 horse, but to -- to remind you we -- we would take the
22 position that no reasonable jury, based on this limited
23 evidence, that there's any kind of malice aforethought.
24 Nothing has been introduced to that.

25 I think they're hoping to intend to rely on

1 basically a *Mouzon*-type theory. I think that's actually
2 a -- a '50s case, maybe '57 or so, Your Honor, and not
3 the 20s. But it has been around a long time and we just
4 really haven't addressed, since *Burdette* has come out. I
5 believe that's a 2019 case, which really shored up
6 *Belcher* beyond -- Your Honor was exactly right about what
7 *Belcher* did yesterday when you commented on it.

8 It's where he claimed self-defense and then, you
9 know -- but here, that's not the case. Certainly, we
10 don't have a self-defense claim. Certainly, he's not
11 claiming he shot a gun in self-defense. So things that
12 would normally disqualify it and -- and the -- that's our
13 basis for the motion for the -- the directed verdicts,
14 Your Honor, as to attempted murder and to murder.

15 If you want me to kind of roll in so that I don't
16 have to argue the -- the appropriateness, I guess, of the
17 involuntary manslaughter. Or I could do that at the time
18 that we talk about charges, Judge.

19 THE COURT: Well, I mean, I'm going to deny your
20 motion for directed -- for direct verdict as to attempted
21 murder, as well as your motion for directed verdict as to
22 murder.

23 MR GEOLY: Yes, sir.

24 THE COURT: All right. Any other motions?

25 MR GEOLY: I would just then, based on -- I guess,

1 would you let us read your charge before we propose ---

2 THE COURT: Yeah. Well, I've been working on
3 charges. First -- well, what I wanted to do is go over
4 with you now -- we've got -- if you -- if you want to ---

5 MR. GEOLY: Thank you, Judge.

6 THE COURT: --- be seated, that'll be fine.

7 All right. We've got the indicted charge for
8 murder. What -- are there any lesser-included?

9 MR. GEOLY: I -- I believe there are, Judge. And --
10 and I will tell you this: If you take the facts of this
11 case that -- that have come out from the stand the last
12 two days, it is absolutely beyond just reasonable -- it
13 would be likely than this jury could decide, Here's a man
14 shooting at his tires on his car in his yard. That is a
15 lawful act that results in the death of his son. And --
16 and that is literally a definition of involuntary
17 manslaughter in this state.

18 Now, let -- let's take a step back and say: Okay.
19 What if the jury doesn't find that's the facts? What if
20 the jury says: No; it's her car. Because there's
21 testimony it's her car, not his. And they say it's not
22 marital property; it could be a crime; it's malicious
23 injury to property because he's shooting at her tires.

24 Well, then, it's an act that doesn't -- isn't likely
25 to -- to -- to -- it is illegal, but it's not likely to

1 result in death. And it -- it does result in death.
2 That is another definition in this state of involuntary
3 manslaughter.

4 So you have not one, but two absolutely reasonable
5 factual scenarios that this jury could take from what's
6 happened -- or what's been presented from the stand the
7 last two days. Because that's what happened. He's doing
8 a legal act, shooting at his tires on his property out in
9 the county, but it resulted in death. That is
10 definition.

11 So when -- when the facts fit the -- the crime,
12 which in this case would be the felony involuntary
13 manslaughter, it's proper for it to be charged. And
14 certainly, that -- those facts fit this scenario both
15 ways, really.

16 So that jury certainly should have the opportunity
17 to say: Okay. This is law in South Carolina; this is
18 what we have here; this is what we're finding.

19 So I would give the finder of fact, Your Honor, the
20 ability to give him a fair trial, as guaranteed by the
21 Constitution and the South Carolina Constitution, that
22 all possibilities -- and certainly, you -- you, I would
23 think, acknowledge that either of those could be -- can
24 -- what the -- the jury decides are the facts in this
25 case. And if that's the case in either/or, it's

1 appropriate that they could find him guilty of
2 involuntary manslaughter. So think that would be an
3 appropriate lesser-included offense at this point, Judge.

4 THE COURT: All right. So what's the state's
5 position?

6 MR STUMBO: Judge, I know we sent you a -- an -- an
7 e-mail and your clerk this morning that cited some cases.
8 And I'll do it on the record here. *State v. Sullivan's* a
9 PCR case 407 S.C. 241, 2014, Court of Appeals case. It
10 basically says when a victim was killed by an -- by a
11 gunshot, no -- and no evidence is presented that the
12 defendant fired the gun unintentionally, the defendant is
13 not entitled -- entitled to an involuntary manslaughter.
14 That's -- and it's ---

15 THE COURT: Well, what are the -- excuse me for
16 interrupting.

17 MR. STUMBO: Yes, sir.

18 THE COURT: What are the facts of that case?

19 MR STUMBO: Judge, I'm not sure on *Sullivan*. I know
20 that in *Bozeman* -- it was another one I was going to cite
21 -- and *Morris*, there were two cases where: one the
22 defendant claimed to be shooting over the head of the --
23 the target or the person; one when they were shooting at
24 their feet.

25 And that was their excuse: Well, I didn't mean to --

1 to -- to kill them; I didn't mean to shoot them.

2 I was just shooting at them for some other purpose, to
3 scare them or whatnot.

4 And I think the *Bozeman v. State*, which is 307 S.C.
5 172, 1992, I believe that's the one was shooting over the
6 head. And I believe in *Morris*, it was -- that's 307 S.C.
7 480, a 1991 Court of Appeals case, shooting at the feet.
8 *State v. Cooney* stands for the same proposition. *State*
9 *v. Gibson* cites the same thing, Judge.

10 So I -- I think the cases are consistent that when
11 you're shooting in the direction at -- at someone, where
12 you know there's a person there -- and in fact, Mr. Geoly
13 says it's a lawful act. I would -- I would find -- take
14 exception to that. We have a statute in this state
15 that's a separate crime -- of course, he's not charged
16 with it here -- but discharging into a vehicle.

17 Judge, certainly, we could've indicted that and
18 called it. But it's 16-23-440.

19 THE COURT: All right.

20 MR. STUMBO: So it's ---

21 THE COURT: Hold on ---

22 MR. STUMBO: --- not a -- I don't believe this is a
23 lawful act that he committed when he's shooting at -- at
24 -- at a car with -- an occupied car, Judge. I don't -- I
25 just don't think that's the law in this state. I believe

1 all of these cases say that the Court was correct in not
2 charging voluntary in an intentional gunfire.

3 And, Judge, this wasn't just a -- a -- one --
4 one-shot intention. If there was some evidence that
5 maybe he tripped and fell or slipped and the gun
6 discharged once and happened to kill Iven, then we may be
7 talking about a completely different thing. But, Judge,
8 he empties a gun eight times, intentionally firing the
9 gun.

10 And every case that I could find on this, Judge, the
11 ones we -- the five we've just cited for Your Honor, were
12 very clear that this -- this intentional gunfire -- and
13 you know there's a person or people right there and
14 you're firing at that person, that that's not an
15 involuntary manslaughter. And there, again, to have
16 these cases -- he's not saying -- or the defense is not
17 alleging -- they're talking about shooting the tire out,
18 which is, there again, being built off one witness who
19 doesn't really see what -- even when he's doing. She's
20 trying to get out of the driveway as quickly as she can.

21 The physical evidence, Judge, I think corroborates
22 that he is intentionally shooting at her. But honestly,
23 Judge, I -- I don't think under any circumstances, if you
24 read these cases, that involuntary manslaughter is
25 appropriate with -- with this intentional gunfire here,

1 Judge.

2 THE COURT: All right. Hold ---

3 MR GEOLY: If it please the Court, Judge.

4 THE COURT: All right. One -- give me one second.

5 MR. GEOLY: Yes, sir.

6 THE COURT: I'll give you an opportunity.

7 MR STUMBO: And, Judge, if I could just -- just one
8 more case to cite: *Harris v. State* is 354 S.C. 382.

9 That's a 2003. And that's the defendant admitted he --
10 he was firing intentionally but it was warning shots.

11 And I think that's very similar to here. I guess
12 it's a -- it's shots to try to turn her around or scare
13 -- I -- I don't know, Judge. I -- I -- there again, he
14 -- he has the constitutional right not to take the stand
15 and testify to what was in his mind.

16 But I think there's plenty of physical evidence. If
17 you compare it to Indigo's testimony of what happened
18 that night, it -- this is not, in any sense of the word,
19 an unintentional, accidental shooting.

20 (Off the record from 9:59 a.m. until 10:08 a.m.)

21 THE COURT: All right, sir.

22 MR GEOLY: If it please the Court, Judge, Solicitor
23 Stumbo's absolutely right -- or at least he could be,
24 Judge. But -- but he's not the finder of the facts. And
25 -- and, Your Honor, with all due respect, you're not the

1 finder of the facts, and I'm not the finder of the facts.
2 But jury is the finder of the facts, Judge.

3 And -- and -- and I -- Your Honor, the -- with all
4 due respect, the case you were reading, if it was one of
5 the ones the solicitor gave to you, it's distinguishable,
6 because it's an attempted -- I mean, excuse me -- it --
7 it's a self-defense case.

8 And -- and the reason self-defense cases are -- are
9 -- are prohibited from an involuntary manslaughter charge
10 is because kind of the nature of self-defense is you're
11 trying to kill somebody to stop them from killing you.
12 So to say, "Wait, I wasn't trying to kill anybody," that
13 doesn't work.

14 But that's not the case here at all, Judge. The
15 case you have here -- and -- and my -- my client is
16 entitled to that the jury, as the finder of fact, could
17 find -- all the evidence is already in. Solicitor talks
18 about a lot of different stuff. But this isn't some
19 theory of his.

20 This is the state's witness who testified he was
21 shooting at tires. If he's shooting at his own tires on
22 his own property, that certainly could be considered by
23 the jury, the finder of fact, an unlawful act that
24 results in death -- or, excuse me -- a -- a -- a lawful
25 act, his tires on his property, that results in death.

1 That's a lawful act that results in death. That is a
2 definition in this state of involuntary manslaughter.
3 The cases have it over and over and over.

4 Well, this is involuntary manslaughter. Well,
5 you're not entitled to this charges if you're engaged in
6 self-defense. That's clear. That's the law. But all
7 these cases he's given are self-defense.

8 As Your Honor know -- you've been sitting here the
9 last few days -- we -- we've not claimed self-defense.
10 That's not what this case is at all. This case is he's
11 shooting at some tires, which, again, the jury could take
12 as he's shooting at his own tires, lawful act that
13 results in death. That is involuntary manslaughter in
14 this state.

15 Now, likewise, they could find what the solicitor's
16 saying. I don't think they will, but they could.
17 They're the finder of fact. They could find that. And
18 -- and that is certainly going to be one of the charges:
19 murder.

20 But, Judge, I want a clean trial as much as anybody
21 else. And -- and part of what could come back is
22 involuntary manslaughter. Once that is a reasonable set
23 of facts for the jury to determine -- and -- and I would
24 say, Judge, it's not just that. They could determine
25 that he is engaged in an unlawful act that doesn't rise

1 to the level of felony that -- that doesn't tend to
2 normally cause death, and it did. That's another --
3 that's the second set of -- way they could determine,
4 from this set of facts, that this is a -- literally a
5 definition for involuntary manslaughter.

6 If there's two different scenarios that the jury
7 could say, "Yes, we find this was the facts," that could
8 then fit the definition of involuntary manslaughter, then
9 for him to have a fair trial and due process, he has to
10 have the ability for them to find him guilty of that. So
11 we would respectfully request that you include it and put
12 it in your charge, Judge.

13 We think every, you know -- he's obviously, Your
14 Honor, distinguishable. And, Judge, I guess the other
15 part is: What does it hurt? I mean, if -- if -- if
16 we're, you know, asking this jury to come to a
17 determination of what this set of facts is, they're going
18 to have murder.

19 So if they believe he's got -- done the heinous
20 thing that they -- they're saying, he intentionally set
21 out and killed this 7-year-old, which is essentially what
22 they're saying -- because it can't be a negligent act;
23 it's not murder if it's negligent. So either they're
24 going to find that or the jury's going to say: Wait. We
25 believe what the witness, the state's witness, said from

1 the stand, that he was shooting at some tires.

2 That's evidence that's before this jury that the
3 state basically put in; their witness put it in. Now,
4 they kind of turned on their witness a little bit. But
5 she was clear that she doesn't think he was trying to
6 kill her. Her dad was clear. No way; he loved him.

7 All the evidence they have, they've done nothing to
8 show any malice aforethought. But they hope to get it in
9 by some old implied malice that Your Honor is not even
10 allowed to tell the -- the jury about anymore. You're
11 not going to be able to tell them: "Hey, you can imply
12 malice from this."

13 So when they're faced with what they've seen over
14 the last few days is certainly reasonable that they find
15 one of these two theories of involuntary manslaughter.
16 Both fit. I don't know that the solicitor's for murder
17 fits, but there's nothing that we're hurting to give them
18 that option. And if they, as the factfinder, find that
19 what he's saying is true, that's an option. But if they
20 find like I'm saying, either one of these scenarios, then
21 those are definitions for involuntary manslaughter. We
22 think that's distinguishable from any of these
23 self-defense case and would hope you would grant that for
24 him, Your Honor.

25 THE COURT: All right. All right. I'm going to

1 deny your motion. I think the case law is pretty clear.
2 This is not a voluntarily or involuntary manslaughter
3 case. I mean, involuntary manslaughter is the killing of
4 another without malice and unintentionally but while one
5 is engaged in the commission of some unlawful act not
6 amounting to a felony and not naturally tending to cause
7 death or bodily harm; or the killing another without
8 malice and unintentionally while engaged in doing a
9 lawful act with a reckless disregard of the safety of
10 others.

11 I think walking out of the door and firing a gun,
12 whether or not it's warning shots or whatever, that tends
13 to cause death and bodily harm naturally.

14 MR. DANIEL: If ---

15 THE COURT: So ---

16 MR GEOLY: If it please the Court, though -- but --
17 but with all due respect, Your Honor, you're not the
18 finder of fact in this case. They could find
19 differently.

20 THE COURT: Yeah. Well, I get -- I'm -- I just --
21 viewing these cases, I mean, the case -- you've got --
22 what is it? I don't even know this one ---

23 MR. GEOLY: Judge, I ---

24 THE COURT: --- that I just ---

25 MR. GEOLY: --- would beg you ---

1 THE COURT: --- cited ---

2 MR GEOLY: --- that as each one you look at, ask
3 yourself first: Is it self-defense? Because if it is,
4 it's distinguishable.

5 THE COURT: Well, it's -- *State v. Smith*, it doesn't
6 really deal with the -- it just says that two guys got in
7 a argument and one pulled a knife; wound up stabbing the
8 other. And they said whether or not he intended to kill
9 or unintended to kill, that he was not entitled to a
10 charge of involuntary manslaughter.

11 MR GEOLY: But ---

12 THE COURT: Pulling a knife ---

13 MR. GEOLY: Absolutely, Judge.

14 THE COURT: --- naturally causes seriously bodily
15 harm or death. And I think firing a gun is the same.

16 MR GEOLY: But that's the thing, Judge. It's --
17 it's their ---

18 THE COURT: Okay.

19 MR. GEOLY: --- their facts are -- and I --
20 absolutely, I -- I won't ---

21 THE COURT: Yeah.

22 MR. GEOLY: --- try to argue against you, Judge.
23 But I -- I think that if you look at it rationally, they
24 -- they could find differently than I find it or
25 solicitor or yourself. And if this fits -- and if it

1 fits, then I think he gets the benefit of in the light
2 most favorable to him. And -- and if they could find
3 that -- and I think that both the definitions you read
4 just now could fit this factual scenario, such that they
5 -- and the difference in the stabbing, Judge, is he's not
6 trying to do some lawful act. And I understand your
7 decision, Judge, that you would say that that does
8 naturally tend to cause death.

9 That's not what the jury may find. They may find
10 that shooting the tires doesn't naturally intend to cause
11 death and should be considered. That's why I think it's
12 a proper charge. But I understand your ruling. I
13 apologize for -- if you think I'm ---

14 THE COURT: That's all right. Well, I'm just going
15 to charge the murder. And it's going to be either or not
16 guilty of murder.

17 MR GEOLY: Yes, sir.

18 THE COURT: All right. No -- no lesser-included
19 offense on that. I mean, you've just -- is there -- I
20 can't think of another lesser-included.

21 MR GEOLY: I -- I just don't think voluntarily ---

22 THE COURT: So ---

23 MR. GEOLY: --- is appropriate, Judge. I think
24 involuntary ---

25 THE COURT: Yeah.

1 MR GEOLY: --- is appropriate for what we've had
2 come from this witness stand. I don't think voluntarily
3 is.

4 Judge, I -- I would, I guess, seek permission,
5 because I'm not going to try the Court's patience.
6 Obviously, I stood up at the beginning of this and argued
7 that I think that this is manslaughter. I still think it
8 is. I -- I would ask permission to then -- then at least
9 argue to the jury that the solicitor has failed to charge
10 him with something that he's guilty of and that that's
11 not their fault that -- that they're left with guilty or
12 not guilty.

13 And as to -- to murder, because he's not charged
14 with one of the other homicides that we've talked about
15 from the witness stand, so I think that's a proper
16 comment. And I -- I wouldn't want to ---

17 THE COURT: I understand.

18 MR. GEOLY: --- try the Court's patience without
19 seeking permission to allow that, Judge.

20 THE COURT: All right, sir.

21 MR STUMBO: Judge, if I -- I could, just for the
22 record, *State v. Condrey* -- C-o-n-d-r-e-y -- it's a 2002
23 Court of Appeals case, 349 S.C. 184. Judge, that's --
24 it's right on point, that particular case. And -- and it
25 was set -- essence that -- it -- it says that the judge

1 actually instructed the defense, when it was not a
2 charge, not to talk about it in closing.

3 Obviously, Mr. Geoly's brought it up in opening.
4 That was his choice to do. I don't think the law and the
5 facts here ever justified involuntary. So that's my
6 argument -- going to be the argument to the jury: that
7 the law is ---

8 THE COURT: So what ---

9 MR. STUMBO: --- what the judge ---

10 THE COURT: --- is that case ---

11 MR. STUMBO: --- gives it to you.

12 THE COURT: What's the case you just cited?

13 MR STUMBO: *State v. Condrey*, C-o-n-d-r-e-y.

14 THE COURT: C-o-n ---

15 MR. GEOLY: --- d-r-e-y ---

16 MR. STUMBO: --- d-r-e-y.

17 MR. GEOLY: --- is what he said, Judge.

18 MR STUMBO: You know, this was not a homicide case,
19 Judge. But it just stands for the holding that a -- an
20 attempt to argue a lesser-included offense that's not
21 charged by the Court's improper.

22 THE COURT: Well, I mean, did he argue that he was
23 -- they could find a lesser-included offense? Or did it
24 say, "You can't mention it at all"? \

25 MR. STUMBO: It -- the way I'm reading the holding

1 in the case, it said -- they found -- because it was
2 challenged on appeal. It says (as read): "The trial
3 judge did not err in limiting defense counsel's closing
4 argument."

5 And, of course, that was a discretionary call for
6 him to do that. I'm not ---

7 THE COURT: All right. I'll ---

8 MR. STUMBO: --- I -- I'm not asking Your Honor to
9 -- to do that. I -- you know, if he wants to continue to
10 argue a charge that's not even an option for the jury, I
11 -- I do think that's improper. But quite honestly, if he
12 wants to do that, I'm going to address that with ---

13 MR. GEOLY: Your -- Your Honor, I ---

14 MR. STUMBO: --- the jury.

15 THE COURT: Well, I mean ---

16 MR. GEOLY: --- I -- I -- if -- if it please the
17 Court, to be clear: I don't want to argue a charge not
18 to the jury. I want to be able to comment that he's
19 charged with murder; the solicitor could've charged him
20 with other homicides, which has been talked about in this
21 record. But he chose not to.

22 So, you know, you -- your decision here isn't to
23 consider any of those, but just murder with malice
24 aforethought or not. And I just want to comment on that:
25 that -- that they haven't given the opportunity to have

1 homicide.

2 THE COURT: All right. The whole ---

3 MR. STUMBO: Judge, for him to turn that on me, I
4 think, would be completely improper.

5 THE COURT: Well, I mean, I think -- well, let me
6 take a look at these cases.

7 The question is: It's one thing for him to stand up
8 and say, you know, "Y'all can find him guilty of
9 manslaughter," when I'm not charging manslaughter.
10 That's totally improper.

11 MR. STUMBO: Uh-huh.

12 THE COURT: Is it improper for him to stand up and
13 say, "The state has overcharged my client. They have
14 charged him with something that he did not commit, and
15 you can't find him guilty of this because you think he
16 committed another crime and you don't want him to go
17 free. He didn't commit murder. He committed
18 manslaughter. But because they didn't charge
19 manslaughter, you can't find him guilty of murder.

20 And that's what he's -- what he wants ---

21 MR. STUMBO: Well ---

22 THE COURT: --- to argue.

23 MR. STUMBO: And that's fine, Judge, as long as I'm
24 permitted to argue to the jury: "Look, the -- the judge
25 is going to instruct you on what the law in this state.

1 And these other offenses that have been mentioned by the
2 defense are not appropriate in this case. And it's the
3 reason why they're not being charged to you."

4 And I -- that's -- that would be my argument, Judge.
5 And I -- that -- if he wants to go that route, I -- long
6 as I'm at liberty to -- to address that, I think I'm fine
7 with it. I mean, I can't put ---

8 THE COURT: Well ---

9 MR. STUMBO: --- you know, I can't -- I can't unring
10 the bell. He -- he said that in opening. He said it in
11 his cross-examination of Dr. Rose yesterday; mentioned
12 involuntary.

13 Quite honestly, Judge, I -- I didn't object because
14 I -- I didn't really think it was worth, you know, making
15 that big deal in front of the jury. I -- I ---

16 THE COURT: What was that case you just stated?

17 MR STUMBO: *State v. Condrey*, C-o-n-d-r-e-y. That's
18 a 2002 case out of ---

19 THE COURT: Okay. Let me check and see what it
20 says.

21 MR. STUMBO: Yeah.

22 (Off the record briefly.)

23 MR. STUMBO: Yeah. Looks like Ralph -- Judge Ralph
24 King Anderson, Judge, was the -- wrote that opinion.
25 And, you know, essentially, it was challenged that --

1 that the trial judge, before closings, I -- I -- I don't
2 know -- it appears like the state asked the judge to
3 limit defense counsel's closing as to noncharged or -- or
4 lesser-includes that were not appropriate.

5 Quite honestly, Judge, I -- I think, because Mr.
6 Geoly's already talked about it in his opening and
7 mentioned it in a cross-examination, I -- I just would
8 prefer just to deal with it with the jury as is.

9 (Off the record briefly.)

10 MR. STUMBO: You know, ultimately, Judge, if he --
11 if he argues that we overcharged -- because it should
12 have been charged at all, because this was a big
13 misunderstanding and accident, then that's ---

14 MR. GEOLY: Not what I'm saying.

15 MR. STUMBO: --- he can argue that. But I -- I just
16 don't think he can say we overcharged and should've
17 charged something that's not even legally appropriate.

18 (Off the record from 10:21 a.m. until 10:25 a.m.)

19 THE COURT: Yeah. I think *State v. Condrey* is going
20 to prohibit you from arguing that this is a manslaughter
21 case. It's just going on the murder charge.

22 MR. GEOLY: Judge, I'm -- I'm not allowed to say that
23 this is a homicide, but this doesn't fit the crime of
24 murder?

25 THE COURT: I think you can say: Yes. This is a

1 homicide, but it is does not fit the crime of murder."

2 But you can't say that he should've charged voluntary or
3 involuntary manslaughter.

4 MR GEOLY: I'm not going to say, "You should've
5 charged anything." I'm going to say that this a homicide
6 that -- that doesn't amount to murder; that there's other
7 ---

8 THE COURT: You ---

9 MR. GEOLY: --- homicides he's not charged with.

10 THE COURT: Well, and I think you can say that.

11 MR GEOLY: That's all I want.

12 THE COURT: Yeah.

13 MR. GEOLY: That -- that's ---

14 THE COURT: You can say that.

15 MR GEOLY: --- that there are other homicides that
16 he's not ---

17 THE COURT: Yeah.

18 MR. GEOLY: --- charged with, but this homicide,
19 they've got to prove malice aforethought. And that, they
20 haven't done. That's ---

21 THE COURT: Yeah.

22 MR. GEOLY: --- that's what I want. Thank you,
23 Judge.

24 MR. STUMBO: I would ---

25 THE COURT: All right.

1 MR STUMBO: --- say, as long as he says that it's --
2 that this is a homicide that's accidental or justified,
3 but there is no other homicide that he could be charged
4 with, under these facts.

5 THE COURT: That's ---

6 MR. STUMBO: I just think that's inaccurate.

7 MR. GEOLY: Judge, he ---

8 THE COURT: There are not ---

9 MR GEOLY: --- he's not charged this. But, I mean,
10 this same solicitor's office, I mean, the hypocrisy's
11 getting ridiculous. We -- this same solicitor's office
12 ---

13 THE COURT: Well, name ---

14 MR. GEOLY: --- has a -- has a white man shooting --
15 or a boy shooting at a stop sign -- intentionally
16 shooting at a stop sign. Bullet ricochets and kills a
17 man on his porch. That young man gets an involuntary
18 manslaughter and a recommendation of YOA shock.

19 But a black man, similar circumstance, we're looking
20 at murder. And no offers; I mean, it -- you know,
21 murder. That's it.

22 I mean, the -- the -- the hypocrisy from here to say
23 that this shouldn't be involuntary, when -- when -- I
24 mean, certainly this solicitor's office here has done
25 cases very similar to involuntaries. But we're sitting

1 here at trial, where the -- the -- their witness has
2 testified that she believes that this is how this
3 occurred. She's testified she never met with the -- the
4 victim witness advocate from the solicitor's office.

5 He's had one meeting with her in 2 1/2 years to -- I
6 mean, we do have a victim's dish I mean we do have a
7 Victims' Bill of Rights. She's had no say-so with this
8 case -- zero. And -- and -- and now he sits here this --
9 and the solicitor's going to stand up and say this
10 doesn't fit, when this same solicitor's office
11 consistently takes charges just as severe and turns them
12 into involuntary manslaughter. So I, you know ---

13 THE COURT: So what other charge out there --
14 homicide charge do you say is available?

15 MR. GEOLY: It -- Your Honor, I ---

16 THE COURT: Because I've already ruled ---

17 MR. GEOLY: Yes, sir.

18 THE COURT: --- that involuntary and voluntarily
19 manslaughter do not apply. You can argue that this is a
20 homicide, but it does not arise to murder.

21 MR GEOLY: Yes, sir. I -- I ---

22 THE COURT: You cannot argue that there are other
23 charges out there that could've been brought and the
24 solicitor brought the wrong charge. Voluntary
25 manslaughter doesn't fit this case ---

1 MR. GEOLY: I -- yes, sir, Judge. I would ---

2 THE COURT: --- involuntary ---

3 MR. GEOLY: --- just like to ---

4 THE COURT: --- manslaughter ---

5 MR. GEOLY: --- object and -- and have my objection
6 noted for the record that what I would like to show is
7 that if they find, as the finder of fact, that this is
8 what occurred -- that there was an unlawful act that
9 doesn't typically cause death that did in this case --
10 that -- that -- but that that would be involuntary
11 manslaughter. But if I'm prohibited from arguing that to
12 them, then he's being denied due process of -- of the
13 facts. Because those facts sit -- fit this. I mean,
14 what ---

15 THE COURT: No, they don't.

16 MR. GEOLY: You've got ---

17 THE COURT: That ---

18 MR. GEOLY: --- because we ---

19 THE COURT: Firing the gun tends to cause great
20 bodily harm ---

21 MR. GEOLY: But that's ---

22 THE COURT: --- or injury ---

23 MR. GEOLY: --- us saying that, Judge ---

24 THE COURT: --- or death.

25 MR. GEOLY: --- not the jury saying that.

1 THE COURT: And I understand your argument.
2 MR. GEOLY: That -- that ---
3 THE COURT: But I'm -- I'm not going to allow you
4 ---
5 MR. GEOLY: And -- and I just ---
6 THE COURT: --- to argue ---
7 MR. GEOLY: --- wanted it clear ---
8 THE COURT: --- that.
9 MR. GEOLY: --- for the record, Judge, for ---
10 THE COURT: Yeah.
11 MR. GEOLY: --- to make ---
12 THE COURT: I'm not ---
13 MR. GEOLY: --- a clean ---
14 THE COURT: --- going to ---
15 MR. GEOLY: --- record.
16 THE COURT: --- let you.
17 MR. GEOLY: And -- and I certainly respect, Your
18 Honor. I ---
19 THE COURT: I'm not ---
20 MR. GEOLY: --- apologize for ---
21 THE COURT: --- going to let you argue about
22 voluntary manslaughter or involuntary manslaughter.
23 MR. GEOLY: I won't say any of those words, Judge.
24 THE COURT: All right.
25 All right. Anything else ---

1 MR. STUMBO: Not -- nothing ---

2 THE COURT: --- on the charge?

3 MR. STUMBO: --- Judge. Just the -- the last attack
4 on my office, I think, was improper and ---

5 THE COURT: Let's deal with ---

6 MR. STUMBO: --- but -- but ---

7 THE COURT: --- this case ---

8 MR. STUMBO: Yes, sir.

9 THE COURT: --- right now.

10 MR. STUMBO: I understand.

11 THE COURT: Okay?

12 MR. STUMBO: I -- I'm not ---

13 THE COURT: I'm just ---

14 MR. STUMBO: --- and I'm not going to ---

15 THE COURT: Okay.

16 MR. STUMBO: --- go down that road. I understand.

17 THE COURT: All right. Let's just deal with this.

18 MR. STUMBO: I'll deal with it later.

19 THE COURT: All right. Anything else? I need to go
20 back and work on these charges. Anything else?

21 (No audible response.)

22 THE COURT: What about attempted murder?

23 MR. STUMBO: Yeah. Judge, the attempted murder, I
24 do think, under the -- the *Jeter* case that came out last
25 week with the Court of Appeals, and they cite both the

1 *Smith* case, the -- which was the Five Points shooting,
2 and the *Williams* case. And the -- the whole discussion,
3 there was about specific intent not applying to attempted
4 murder -- or -- or specific intent being necessary for
5 attempted murder, which we think needs to be part of the
6 charge here.

7 THE COURT: It's in there.

8 MR. STUMBO: Yeah.

9 THE COURT: Yeah. I've put ---

10 MR. STUMBO: Yes.

11 THE COURT: --- that in there.

12 MR. STUMBO: Just -- just to make that clean. But
13 we do believe that if they don't find that he
14 specifically intended to kill Indigo but acted with kind
15 of a more general malignant-heart, *Mouzon* malice, that he
16 would still be guilty of ABHAN as to Indigo, because she
17 was shot in the leg.

18 THE COURT: I was going to charge ABHAN as a lesser-
19 included of attempted murder.

20 MR. STUMBO: Okay. And I think that's ---

21 THE COURT: What's your ---

22 MR. STUMBO: --- appropriate, Judge.

23 THE COURT: --- position on that?

24 MR. GEOLY: Judge, I -- I don't think that fits. I
25 mean, in a similar, you know -- let me back up and

1 reverse my ---

2 THE COURT: So you say just attempted murder and no
3 lesser-included offense of -- than attempted murder?

4 MR. GEOLY: Yes, sir. That's what I think would be
5 appropriate.

6 THE COURT: But ---

7 MR. GEOLY: Because if it -- if what they're
8 claiming is true, it's attempted murder. And he's --
9 he's ---

10 THE COURT: Oh, and I understand that. But if what
11 you're claiming is true ---

12 MR. GEOLY: I -- I'm just letting the facts be what
13 they are to the jury, Judge. He -- he's made no
14 affirmations other than not guilty.

15 THE COURT: Let's see. (As read): Assault and
16 battery of a high and aggravated nature is a lesser-
17 included offense of attempted murder. To convict the
18 defendant of assault and battery of a high and aggravated
19 nature, the state must first prove beyond a reasonable
20 doubt that the defendant unlawfully injured another
21 person. The state must also prove that the defendant's
22 act either caused great bodily injury to another person
23 or the defendant's act is accomplished by means likely to
24 produce death of great bodily injury.

25 MR. GEOLY: If it please the Court, Judge, focusing

1 on that last part right there ---

2 THE COURT: Yeah.

3 MR. GEOLY: --- there's been no medical testimony;
4 there's been no testimony that she ever had -- if
5 anything, the testimony's been that a week later, she's
6 meeting with law enforcement at their place and had no
7 problems. So there's been nothing elicited from this
8 stand to say that there was great bodily injury.

9 THE COURT: Okay. All right. I'm going to charge
10 assault and battery of high and aggravated nature as a
11 lesser-included offense of attempted murder.

12 All right. Anything else?

13 I note your objection.

14 MR. GEOLY: Thank you, Judge.

15 THE COURT: I mean -- well, let me ask this: Can I
16 charge a lesser-included offense that applies where the
17 defense does not want the lesser-included offense? Is
18 that a right of the defendant, or is it -- does the state
19 have the right to charge a lesser-included offense?

20 MR. STUMBO: Here -- here ---

21 THE COURT: Are the ---

22 MR. STUMBO: Here's my fear, Judge -- and -- because
23 there's been two different cases that, you know, we've
24 seen with this. One I was personally involved in here in
25 Newberry. We -- we tried this case in front of Judge

1 Knox McMahon before he retired back in 2013 in Newberry.

2 He did not charge voluntary manslaughter in a case
3 that was -- it was a -- a situation where there were
4 three different versions by the defendant. One of the
5 versions that might be a heat-of-passion thing, the --
6 the defendant herself took the stand and repudiated.

7 So I just said to the judge: "I'd kind of prefer
8 the jury not have that option."

9 And, of course, that came back and they said:
10 "Well, if there's any evidence, the any-evidence standard
11 for lesser-included offense -- if there's any evidence of
12 the lesser-included and it's not charged, then it's
13 reversible error," is what the Court said in *Mandy Smith*.

14 And that was my case. It came back. We ended up
15 pleading it on a -- when it came back, Judge.

16 But the second situation we've had -- and this has
17 -- hasn't involved me. But the -- the court -- the
18 appellate courts have chastised the -- some of the
19 solicitors -- and I don't have the cases right in front
20 of me -- for, at times, asking for lesser-included
21 offenses, I guess, to kind of hedge their bets, so to
22 speak. Maybe I'll get ---

23 THE COURT: Right.

24 MR. STUMBO: --- at least that, when it's maybe not
25 appropriate.

1 Here, Judge, I just think the law is what it is. I
2 think there is evidence here ---

3 THE COURT: Well ---

4 MR. STUMBO: --- that they could find ---

5 THE COURT: And I agree ---

6 MR. STUMBO: --- that it's ---

7 THE COURT: --- with you ---

8 MR. STUMBO: --- an ABHAN.

9 THE COURT: --- 100 percent.

10 MR. STUMBO: Yes, sir.

11 THE COURT: My question is: Is the state limited to
12 the charge that they indicted the defendant for, when the
13 defense says: "I'm indicted for attempted murder, so
14 it's either guilty or not guilty"?

15 MR. STUMBO: And ---

16 THE COURT: There's no ---

17 MR. STUMBO: Yeah -- yes.

18 THE COURT: --- "I don't want a lesser-included
19 offense because you overcharged and we're going to hold
20 your feet to the fire."

21 MR. STUMBO: And I -- I -- I kind of agree with you,
22 Judge, as long as the record's clear here when it goes up
23 on appeal. And I think we've made a clear record that
24 the defense doesn't want that option. And it's not the
25 state standing in its way, because there is evidence of

1 an -- could be if -- I mean, the jury could find a whole
2 number of different scenarios here, as far as general
3 intent versus specific in this case.

4 But I -- as long as the defense is waiving that as a
5 -- as a -- an issue they could bring up on appeal later,
6 I'm fine with it. I -- I just don't want them saying:
7 We don't want ---

8 THE COURT: Well, I don't ---

9 MR. STUMBO: --- it now ---

10 THE COURT: --- that he's ---

11 MR. STUMBO: --- and then it ---

12 THE COURT: --- waiving ---

13 MR. STUMBO: --- comes up ---

14 THE COURT: --- it ---

15 MR. STUMBO: --- on appeal, though.

16 THE COURT: --- on appeal. I think he's ---

17 MR. STUMBO: Yeah.

18 THE COURT: --- saying: "You're not giving me the
19 lesser-included on murder. It's straight up guilty or
20 not guilty, and so let's do the same thing with attempted
21 murder."

22 MR. STUMBO: Okay.

23 THE COURT: Now, I -- I disagree with the defense,
24 to the extent that I don't think, in this case, voluntary
25 manslaughter and involuntary manslaughter are lesser-

1 included offenses. Because I don't think there's
2 evidence of involuntary manslaughter, and I don't think
3 there's evidence of voluntary manslaughter to meet --
4 meet all those elements.

5 MR. GEOLY: Judge, may I ask ---

6 THE COURT: But ---

7 MR. GEOLY: --- a question?

8 THE COURT: Yeah.

9 MR. GEOLY: And -- and I -- I certainly don't want
10 to argue something that's already been decided. But --
11 but you kind of addressed the -- the one prong.

12 But what if this jury were to decide he is shooting
13 at his tires in his yard? That's not a lawful -- that's
14 not an unlawful act.

15 THE COURT: You're telling me that it is a lawful
16 act to shoot at the tires of car in a yard with people
17 sitting in the car, trying to leave in the middle of an
18 argument?

19 MR. GEOLY: It -- if he's shooting at the tires of
20 his car in his yard, I -- I think that's legal. I think
21 the problem you've got here is he doesn't realize the
22 kids are in the car. And I realize they can certainly
23 believe he realized the kids are in the car from the
24 thing.

25 I think the reality is he doesn't realize the kids

1 are in the car. He's trying to stop her from leaving.

2 And he's shooting at the tires.

3 And as much as the solicitor wants to say, "That's
4 not the evidence," we have five bullets that -- at --
5 that's halfway into the tire or below in the ground. How
6 they couldn't find he's shooting at tires, that's not
7 unlawful because he's shooting at tires on his land.

8 I'm not saying that -- that we find that, Judge.
9 But I'm saying the triers of fact could find that and
10 that, as such, what -- what he just said -- I mean, I
11 almost like his argument for my argument, is if there's
12 anything that -- that -- that they could find that the
13 defendant did -- and that fits. They could find he's
14 innocently shooting at tires, but that results in a
15 death.

16 I mean, he's almost arguing it. But he's saying,
17 "He's so unreasonable, I -- you know, that -- that --
18 that he's -- he is being so reckless." And that's no
19 question, it was reckless. But it wasn't illegal.
20 That's ---

21 THE COURT: Well ---

22 MR. GEOLY: --- something ---

23 THE COURT: --- no. I'm ---

24 MR. GEOLY: --- they could ---

25 THE COURT: --- ruling that it is illegal to shoot

1 at the tires of a car with people in it in the middle of
2 the heated argument.

3 MR. GEOLY: Judge, but you're -- you're taking that
4 as a fact that he knew that people were in it. And I
5 don't know that the jury's going to do that. But I
6 understand your ruling. And I'm sorry. I ---

7 THE COURT: Okay.

8 MR. GEOLY: --- feel like I've already argued it too
9 much.

10 THE COURT: All right. Well, I'm ruling that that
11 is not a lawful activity.

12 MR. GEOLY: And I -- I feel like we've protected the
13 record. But I -- I feel like ---

14 THE COURT: All right.

15 MR. GEOLY: --- what I'm saying is, I'm not trying
16 to say it is or isn't. I'm saying the jury certainly
17 could find that.

18 THE COURT: You're saying that the jury can find
19 that it is lawful to shoot at tires and a car with people
20 in the car?

21 MR. GEOLY: No. I'm saying that it -- they could
22 find that it's lawful to shoot at tires of your car in
23 your yard and that if that results in death, that --
24 that, I think, is a definition. So in terms of, you
25 know, what the solicitor just told you, in terms of is

1 there evidence that the jury could reasonably find that,
2 yes. We do have that evidence here.

3 THE COURT: Okay. All right. You've got it on the
4 record.

5 MR. GEOLY: Thank you.

6 THE COURT: All right.

7 MR. STUMBO: Did you intend to charge ABHAN? I -- I
8 just didn't know ---

9 THE COURT: Well ---

10 MR. STUMBO: --- if you ---

11 THE COURT: --- I mean, that's my question. Do you
12 -- does the state want me to charge ABHAN?

13 MR. STUMBO: I -- I fear, if I don't ask for it, it
14 could lay a landmine for appeal, unless the defense is
15 saying they absolutely don't want an ABHAN charge as a
16 lesser-included offense here on the record today.

17 MR. GEOLY: I'm saying -- I -- I mean, I think I've
18 made that clear. I want it to be the same way: guilty
19 or not guilty.

20 THE COURT: So, in other words, you do not want a
21 lesser-included offense charged for attempted murder?

22 MR. GEOLY: Correct.

23 THE COURT: All right. Now ---

24 MR. STUMBO: Well, I'm ---

25 THE COURT: --- what is the state ---

1 MR. STUMBO: I'm content -- I'm content with that,
2 Judge, if -- you know, I -- I don't care about that.
3 Because he's, you know -- Judge, the bottom line is: I
4 want it to be clear, when the appeal -- appellate courts
5 read this record later, that if we are -- happen to get a
6 conviction, that we believe that there could be some
7 evidence here, if they were to find that he just acted in
8 a general disregard or a *Mouzon*-type malice, disregard
9 for human life, that it could ultimately find to be
10 murder and ABHAN, instead of murder and attempted murder.

11 But if the defense would rather it be all or
12 nothing, I'm fine with that too. So I guess I want the
13 -- I want the -- the record to be clear that we think it
14 could be appropriate, if -- if Your Honor found it was.

15 But if the defense is saying, "We don't want it,"
16 I'm not going to force it either. I think that's the ---

17 THE COURT: All right.

18 MR. STUMBO: --- position I need to take, so I don't
19 have, you know, appellate courts upset with me later that
20 I either did ask for it to try to hedge my bet or I
21 didn't ask for it and it should've been charged. I -- I
22 just -- it puts us in a difficult position, Judge.
23 Because I've seen two different scenarios with cases that
24 that that's exactly what I thought when I read those
25 cases, the second case that chastised the -- the state

1 for asking for it.

2 And I thought, Well, you know, with *Mandy Smith*,
3 they -- they told me I -- I should've asked for -- I get
4 -- that -- that -- that I should've asked for it there.
5 And I just -- quite honestly, Judge, I think, if a jury
6 found it, they could have -- they would have a sufficient
7 basis to find it.

8 But if the defense is saying that they would rather
9 the jury not have that option -- it'd be all or nothing
10 like the murder charge -- I don't think that's
11 inappropriate either. I don't think it's a clear right
12 or wrong issue, I guess, is what I'm saying, based on my
13 reading of the case law.

14 THE COURT: All right. Is there -- so there's no
15 case on point on that, is there?

16 MR. STUMBO: I don't think so. The cases ---

17 THE COURT: Okay.

18 MR. STUMBO: --- I've seen have kind of depended on
19 the facts said different things. I -- I -- is there --
20 you know, under that any-evidence standard for the
21 general intent, could they find it? Yes. But if they
22 choose to find that they -- they may nullify ---

23 THE COURT: Well ---

24 MR. STUMBO: --- on that issue anyway. I -- I don't
25 know.

1 THE COURT: I can tell you, this is my feeling and
2 what I think the law says, is if there's any evidence of
3 a lesser-included offense, then I have to charge it. I
4 know I have to charge it, if it's requested by the
5 defense. I think I probably have to charge it if it's
6 requested by the state.

7 But right here, where neither side requests that it
8 be charged, am I bound by the parties' desire and not
9 charge it?

10 MR. STUMBO: I -- I don't think you're bound by it,
11 Judge. I think it's probably a discretionary call. That
12 -- that would be my reading of the case law. It'd be ---

13 THE COURT: Okay.

14 MR. STUMBO: --- probably in a -- you -- you know,
15 know of an -- on appeal, some kind of abuse-of-discretion
16 standard. But I think it would only -- it would only
17 maybe put in jeopardy that particular charge. I don't
18 think it would really affect the murder case, which is,
19 in our mind, really the most important one here anyway.

20 THE COURT: Yeah. Well, I'm going to have to just
21 do what I think. I don't think that there's any -- any
22 real guidance. I note -- I'm going to go ahead and let's
23 just put on the record and verify the defense does not
24 want the lesser-included; the state does not want the
25 lesser-included offense. But I'm going to charge it

1 because I think that there is evidence of the lesser-
2 included. So ---

3 MR. STUMBO: Yes, sir. I ---

4 THE COURT: --- I'm going to ---

5 MR. STUMBO: --- understand.

6 THE COURT: --- put it in there. But that's an
7 issue for an appellate court to deal with at a later
8 time.

9 All right. Anything else from the state?

10 MR. STUMBO: Nothing from the state, Your Honor.
11 I'm assuming that just -- and one more thing. I don't --
12 transferred intent is in your charge. I just hadn't seen
13 it yet.

14 THE COURT: Transferred intent applies to the murder
15 charge. Transferred intent does not apply to the
16 attempted murder charge.

17 MR. STUMBO: Correct. Yes, sir.

18 THE COURT: Yeah. It has -- matter of fact, I put
19 in there this -- I can tell you. I can go ahead and show
20 you. This is how I deal with -- and I'll give this to
21 you.

22 I say (as read): "Unlike the crime of murder,
23 attempted murder requires a specific intent to kill. A
24 specific intent to kill is an element of attempted
25 murder. Intent means intending the attempted result, not

1 accidentally or involuntarily causing the result.

2 "Also unlike murder, the intent required to prove
3 attempted murder cannot be transferred from one person to
4 another. The state must prove beyond a reasonable doubt
5 that the defendant intended to kill a specific person
6 with malice aforethought but failed in that attempt. In
7 other words, to convict the defendant in this case of
8 attempted murder, the state must prove beyond a
9 reasonable doubt that the defendant intended to kill
10 Indigo Davis with malice aforethought but failed in that
11 attempt."

12 And I think that's what the law is on attempted
13 murder ---

14 MR. STUMBO: Yes.

15 THE COURT: --- in this case, given those recent
16 cases, *Jeter* and all of those.

17 MR. STUMBO: Yes, sir. I -- I think you're -- I --
18 -- I ---

19 THE COURT: Matter of fact ---

20 MR. STUMBO: --- I agree.

21 THE COURT: --- I know -- I think it's the *Jeter*
22 case where they go into depth, talking about the
23 different jurisdictions, which seem to be pretty split as
24 to whether or not you can have transferred intent for
25 attempted murder. But they came down on the side that in

1 South Carolina, there is no transferred intent for
2 attempted murder.

3 MR. STUMBO: Okay.

4 THE COURT: You know, and it is what it is.

5 MR. STUMBO: Right.

6 THE COURT: So ---

7 MR. STUMBO: Which is -- I don't -- going back to
8 the first day of this case, why we didn't call those
9 other two indictments because of that very issue, the --
10 the other -- the two children in the car that were not
11 hit, we initially indicted ---

12 THE COURT: Yeah.

13 MR. STUMBO: --- I think because of the *Jeter* case.
14 After I read that last week, it seemed pretty ---

15 THE COURT: Right.

16 MR. STUMBO: --- pretty firm on that.

17 THE COURT: All right. Let me go back and finish
18 working on the charges some.

19 Now, it's quarter till 11. Do we want to let the
20 jury go ahead and leave and come back, or do we want to,
21 you know, give them a little early break to go eat lunch
22 and then come back and we'll do closing arguments,
23 charges, and deliberations? Or do we want to go ahead
24 and try to get this stuff together but then break for
25 lunch 12:30 ---

1 MR. GEOLY: Judge ---

2 THE COURT: --- one o'clock?

3 MR. GEOLY: --- I -- I would -- I don't necessarily
4 have a preference, Your Honor. But if you're still
5 working on your charge and it's going to be a while,
6 maybe we bring them in, you let them know that the
7 defense rests, and then release them and -- or I don't
8 know -- however you want to -- I mean, you don't have to
9 do ---

10 THE COURT: I would ---

11 MR. GEOLY: --- that but ---

12 THE COURT: Well, I was thinking about bringing them
13 in and saying ---

14 MR. GEOLY: They'll kind of relax a little and know
15 that ---

16 THE COURT: Yeah.

17 MR. GEOLY: --- that it's ---

18 THE COURT: We'll do the -- the substitution of the
19 seating of the alternate, let you rest on the record,
20 tell them that we're working on final phases of the --
21 the case, and have them come back at, say, one o'clock.
22 And we'll do closing charge -- closing arguments,
23 charges, and deliberations. How does that sound?

24 MR. STUMBO: That -- that's -- that's fine with us,
25 Judge.

1 THE COURT: Okay. All right.

2 (Off the record briefly.)

3 MR. STUMBO: Judge, I would -- one -- one more
4 thing. I -- I believe you said at the beginning of the
5 case -- and I do think this is appropriate. Now that all
6 the evidence is in and it's just time to close and charge
7 and for the jury to deliberate, I would ask the defendant
8 be in custody today while we're doing that.

9 THE COURT: Yeah. And I am going to need to go
10 ahead and hold him, since the defense is not putting up
11 anything; all of the evidence and testimony has been
12 presented. All we've got is closing arguments and
13 charges. We're going to have to go ahead and detain him
14 today. Okay?

15 Now, another thing that just came to mind -- mind.
16 I was looking through this (as read): "Possession of a
17 weapon during the commission of a violent crime." It can
18 be either guilty or negligence, but it can only be guilty
19 if they find the defendant guilty of murder or attempted
20 murder.

21 I've been looking, and I don't know ---

22 MR. STUMBO: Well ---

23 THE COURT: --- that involuntary manslaughter is
24 classified as a ---

25 MR. STUMBO: What ---

1 MR. GEOLY: You -- well, it ---
2 MR. STUMBO: --- you mean ---
3 MR. GEOLY: --- can't be ---
4 THE COURT: I mean ---
5 MR. GEOLY: --- that, Judge.
6 MR. STUMBO: You mean ---
7 THE COURT: --- assault and battery ---
8 MR. STUMBO: --- the ABHAN?
9 THE COURT: --- of a high and ---
10 MR. STUMBO: Yeah.
11 THE COURT: --- aggravated nature ---
12 MR. STUMBO: Right.
13 THE COURT: --- is that classified as ---
14 MR. STUMBO: Well ---
15 THE COURT: --- a violent crime?
16 MR. STUMBO: Judge, we're looking at ---
17 MR. DANIEL: Your -- Your Honor, it is violent ---
18 MR. STUMBO: Right.
19 MR. DANIEL: --- under 16-1-60 of ABHAN. It's ---
20 THE COURT: It is in there?
21 MR. DANIEL: Yes. And ---
22 THE COURT: Okay.
23 MR. DANIEL: And I ---
24 THE COURT: All right.
25 MR. DANIEL: --- I believe the language in the

1 indictment covers any lesser-included offenses. If they
2 were to come back guilty on the ABHAN ---

3 THE COURT: Okay. So -- but they have to find them
4 guilty of murder, attempted murder, or ---

5 MR. STUMBO: Or ---

6 THE COURT: --- ABHAN.

7 MR. STUMBO: --- ABHAN. Correct.

8 MR. DANIEL: Yes, sir.

9 MR. STUMBO: Judge, I think the only ABHAN -- the
10 old common law was not ---

11 THE COURT: Yeah.

12 MR. STUMBO: --- in that 16-1-60.

13 THE COURT: Well, and I ---

14 MR. STUMBO: The new ---

15 THE COURT: --- was thinking ---

16 MR. STUMBO: --- statutory ---

17 THE COURT: --- of the involuntary ---

18 MR. STUMBO: --- is.

19 THE COURT: --- manslaughter too. But I'm not ---

20 MR. STUMBO: Yeah.

21 THE COURT: --- not charging involuntary
22 manslaughter as well.

23 Okay. All right. Anything from the state before we
24 bring the jury in?

25 MR. STUMBO: Nothing from the state, Your Honor.

1 THE COURT: Anything from the defense?

2 MR. GEOLY: No, sir.

3 THE COURT: All right. Let's bring the jury in.

4 (Off the record briefly.)

5 THE COURT: Now, when we get to closing arguments,
6 the state will close in full, then defense; no rebuttal
7 or reply.

8 MR. STUMBO: Yes, sir.

9 (Off the record briefly.)

10 (Whereupon, the jury entered the courtroom at 10:50
11 a.m.)

12 THE COURT: All right. Ladies and gentlemen,
13 welcome back. I apologize for keeping you in the jury
14 room for so long. And I appreciate your patience, and I
15 appreciate you being on time today.

16 First thing we had to deal with, when we got back
17 this morning, is we did have a juror that called in sick.
18 I think you can tell that we are missing one. To let you
19 know, she did test positive for COVID. So I'm glad
20 whatever socially distanced and things of that nature.

21 Having said that, we have excused her. And the
22 alternates' names were put in a hat, drawn out, and Mr.
23 Cox, you are now part of the 12-panel jury. All right?
24 So you are part of the jury. You can keep that seat
25 where you are right now. Okay?

1 So -- now, we are -- as you recall yesterday, the
2 state rested their case. Now is the time where the
3 defense can present a defense, if they choose to.

4 Defense can call your first witness.

5 MR. GEOLY: If it please the Court, Your Honor,
6 after consultation with my client, we rest.

7 THE COURT: All right.

8 All right. Ladies and gentlemen, the defense has
9 rested. The state has rested. So all of the evidence
10 and testimony to be presented has been presented to you.

11 The only left is for the attorneys to make their
12 closing arguments, me to charge you on the law to be
13 applied, and for you to begin your deliberations on this
14 case. However, it will take a while for the attorneys to
15 get their arguments and me to get the charges together.
16 So I'm going to go ahead and excuse you for lunch.

17 We're going to take an earlier lunch today. I'm
18 going to give you a little bit longer break. I'm going
19 to ask that you please be back and one o'clock, okay? So
20 that'll give you an opportunity to get something to eat
21 or -- and -- and get back at one o'clock, and we'll
22 proceed then.

23 Again, it's still too early to deliberate on this
24 case. So don't discuss the case, among yourselves or
25 with anyone else. Don't conduct any independent

1 investigations.

2 I hope you have a good lunch, and we'll see you back
3 at one o'clock. Thank you very much.

4 (Whereupon, the jury exited the courtroom at 10:52
5 a.m.)

6 (Off the record briefly.)

7 THE COURT: All right. All right. Anything from
8 the state before we recess? I'm going to -- I've -- I've
9 gotten these closing charges where I've just thrown
10 everything in, so all I've got to do now is go back and
11 make some deletions. And then I'm going to -- I'll have
12 a copy out here for you to review.

13 As I said, the state will close; then the defense
14 will close. I'll charge and deliberate -- I'm assuming
15 y'all -- do y'all want me to charge after your closing
16 arguments? I -- I ask that simply because that's what
17 I've always done; that's what I think most judges do. I
18 know of one judge that does charge before closing
19 arguments.

20 MR. GEOLY: I -- I -- I mean, if you're going to
21 give us a druthers, Your Honor, I'd rather you charge so
22 that they know the law before we argue to them.

23 MR. STUMBO: I -- I kind of prefer after -- I think
24 afterwards, Judge, is -- I don't -- I -- I've -- I've
25 heard of that being done, but I don't know, in my 18

1 years, if I've ever had a judge charge before. So I'm --
2 I'm ---

3 THE COURT: Okay. Well ---

4 MR. STUMBO: --- comfortable ---

5 THE COURT: --- and I never have, so I'll do it
6 afterwards. But I'm doing it afterwards simply because
7 that's the way I've always done it. And I -- but I do
8 know ---

9 MR. STUMBO: Yes, sir.

10 THE COURT: --- of another judge that does it. And
11 he says it works well. And I've kind of ---

12 MR. GEOLY: I -- that -- that -- I just -- I think
13 that them hearing us but not yet knowing the law
14 sometimes it's -- and then, you know, depending on how
15 long, you know, I -- I always think it's a little funny
16 that we expect a jury to, you know, consume a -- a
17 15/16/20-page charge when it's read to them one time. I
18 think that's difficult after completing -- I -- I would
19 ask, Judge: You -- you don't give them the charge, do
20 you? I mean, I know some judges have started doing that
21 too.

22 THE COURT: If they request it ---

23 MR. GEOLY: --- then you give it to them?

24 THE COURT: --- then I give it to them. But I also
25 give it to them with an instructions that they're getting

1 the entire charge; they must consider the entire charge
2 as a whole and can't pick and choose parts of it and
3 ignore other parts of it.

4 MR. GEOLY: But you won't give it them unless they
5 ask?

6 THE COURT: Unless they request it.

7 MR. GEOLY: Thank you.

8 THE COURT: Yeah.

9 MR. STUMBO: And, Judge ---

10 THE COURT: Okay.

11 MR. STUMBO: --- the reason why I always prefer it
12 afterwards, I believe -- you know, obviously, the Court's
13 the final word on the law. What we say ---

14 THE COURT: Yeah.

15 MR. STUMBO: --- is not. The last thing they need
16 to hear on the law, to me, is from you, not from myself
17 or the defense. So ---

18 THE COURT: Well, I don't think that there's any
19 right or wrong. I think it's probably within the Court's
20 discretion. And just because I've always done it that
21 way, I'll keep doing it that way.

22 MR. STUMBO: Yes, sir.

23 THE COURT: All right?

24 All right. Anything else ---

25 MR. STUMBO: Nothing from ---

1 THE COURT: --- before we ---

2 MR. STUMBO: --- the state ---

3 THE COURT: --- take a break?

4 MR. STUMBO: --- Judge.

5 MR. GEOLY: Judge, should we -- would -- should we
6 wait around and you think the charge will be that quick,
7 or should we come back early and get the charge or ---

8 THE COURT: Whichever you prefer. It's probably
9 going to take me another 30/45 minutes ---

10 MR. GEOLY: Okay. But ---

11 THE COURT: --- and I'll have it.

12 MR. GEOLY: But then, we'll just be able to come by
13 the clerk and grab it?

14 THE COURT: Or what I -- well, I'll have them bring
15 it out and put it on your desk here.

16 MR. GEOLY: Thank you so much, Your Honor.

17 THE COURT: Okay. And we'll ---

18 MR. STUMBO: Yes.

19 THE COURT: --- do that it that way.

20 And I'll give you two opportunities to raise an
21 objection. Number one is after you read it; and then,
22 again after I charge the jury. Because sometimes it does
23 sound differently when you hear it charged than when you
24 just read it. So I'll give you two opportunities to
25 raise an objection.

1 MR. GEOLY: Thank you, Judge.

2 THE COURT: And I also will be preparing a -- a
3 verdict form. I generally don't send the indictment
4 where they -- unless it's -- if it was just a single
5 charge, guilty or not guilty on one single charge, I'll
6 -- a lot of times, I'll send the indictment back there.
7 But here, when you've got multiple charges and a lesser-
8 included offense, then I'll -- I'll usually just do a
9 verdict form, where they check the appropriate verdict.
10 All right?

11 MR. GEOLY: So will -- Your Honor, will you put it
12 murder, not guilty; attempted murder, assault and
13 battery, high and aggravated nature, not guilty; and
14 then, possession of a pistol during commission of a
15 violent crime, not guilty? Or ---

16 THE COURT: Well, what I'll do is I'll probably do a
17 verdict form for each indictment.

18 MR. GEOLY: Okay.

19 THE COURT: And then, for murder: We, the jury,
20 find the defendant guilty; we, the defendant -- we, the
21 jury, find the defendant not guilty. You check the
22 appropriate verdict.

23 Then, I'll do another verdict form on the charge of
24 attempted murder: We find the defendant guilty of
25 attempted murder; we find the defendant guilty of assault

1 and battery of high and aggravated nature; we find the
2 defendant not guilty.

3 Then, I'll do a separate verdict form, possession of
4 a weapon during the commission of a violent crime. And
5 then, I'll have instructions -- can only -- where -- we
6 find the defendant guilty. And I'll have under that:
7 Can only be if you find him guilty of one of these
8 others.

9 MR. GEOLY: Thank you, Judge.

10 THE COURT: And then, or not guilty. I'll give you
11 an opportunity to take a look at it. All right?

12 All right. Thank you ---

13 MR. STUMBO: Thank you.

14 THE COURT: --- very much.

15 MR. STUMBO: Thank you, Judge.

16 THE COURT: It -- and like I say, it'll probably
17 take me about 30/45 minutes to get it printed out and get
18 it out here. So if you want to come back a little bit
19 early or if you want to wait, whichever you prefer.

20 MR. GEOLY: Thank you, Judge.

21 THE COURT: All right. Thank you.

22 MR. STUMBO: Yes, sir.

23 (The Court went off the record at 10:58 a.m.)

24 (The Court went on the record at 12:57 a.m.)

25 THE COURT: All right. Gentlemen, I wanted to come

1 back a little bit earlier before the jury got -- got back
2 so we can discuss the charges, if necessary.

3 As I told you, I'll give you two opportunities to
4 raise any objections. You can raise one now after
5 reviewing them. And then, after I charge the jury, you
6 can raise any objections. I'll give you an opportunity
7 after that.

8 But at this point in time, are there any challenges
9 to the proposed charged from the state?

10 MR. STUMBO: No, sir, Your Honor. We're -- we're
11 satisfied with ---

12 THE COURT: All right. The verdict forms look okay
13 as well?

14 MR. STUMBO: Yes, sir.

15 THE COURT: Okay. All right. Mr. Geoly?

16 MR. GEOLY: Yes, sir, Judge. Your Honor, I -- I
17 don't think at this time that I have necessarily an
18 objection to the charges. I -- I would ask that -- a --
19 a couple of things, actually, kind of housekeeping,
20 Judge. I would ask that you consider adding this to your
21 instructions.

22 I don't have a copy of that. But I'll -- after I
23 give it to the judge, I'll get copies for all of us if we
24 need it.

25 MR. STUMBO: Judge, I -- I would just object. I

1 think it's confusing to ---

2 THE COURT: All right.

3 MR. STUMBO: --- but I'll ---

4 THE COURT: I can ---

5 MR. STUMBO: --- let Your Honor ---

6 THE COURT: --- I take a look ---

7 MR. STUMBO: --- take a look ---

8 THE COURT: --- and see ---

9 MR. STUMBO: --- at it.

10 THE COURT: --- what it says.

11 Yeah. I think -- that *Barfield* case, wasn't that
12 where they were cleaning a gun or something of that
13 nature? It was a completely different fact situation, as
14 I recall.

15 MR. GEOLY: Admittedly, it was, Judge.

16 THE COURT: Okay. Yeah. I think that was a
17 different fact situation.

18 MR. GEOLY: But I do think it still applies, Judge.

19 THE COURT: Well -- well, let me take a look at it.

20 MR. GEOLY: Your Honor, if I may, as to some other
21 things, I'm remiss I didn't address this before lunch,
22 Judge. I -- I -- and -- and I don't want to waive my
23 objection to assault and battery, high and aggravated
24 nature, being included. I -- I -- I hope that I made the
25 record clear that I objected to that. And -- but that

1 you -- you know, I understood your ruling and ---

2 THE COURT: Yeah.

3 MR. GEOLY: --- I appreciate it.

4 THE COURT: Because I ---

5 MR. GEOLY: And I ---

6 THE COURT: --- understand ---

7 MR. GEOLY: --- and I like it ---

8 THE COURT: --- assault and battery of a high and
9 aggravated nature ---

10 MR. GEOLY: I think you're right. But ---

11 THE COURT: Well, I mean, I think there's -- so the
12 record is clear -- I want to make sure the record is
13 clear. The defense does not want me to charge the
14 lesser-included offense of assault and battery of
15 aggravated nature?

16 MR. GEOLY: Correct. I'm objecting to that.

17 THE COURT: The state, likewise, would be happy if I
18 did not charge the lesser assault and battery of a high
19 and aggravated nature and that you do not oppose not
20 charging that. But the Court, because I find that the
21 evidence in this case supports that lesser-included
22 offense, I am including it over the objections of both
23 the defendant and the state.

24 MR. GEOLY: And thank you so much, Judge. I wanted
25 to make that clear.

1 THE COURT: Yeah.

2 MR. GEOLY: But once I find myself in this position,
3 then I think it's incumbent upon me to request that you
4 include what is statutorily defined as a lesser-included
5 of assault and battery, high and aggravated nature:
6 assault and battery, first-degree. And then, I think
7 it's incumbent upon me to ask you that to -- I think,
8 define statutorily, a lesser-included of assault and
9 battery, first-degree, is assault and battery, second-
10 degree. And I think that statutorily defined, assault
11 and battery, second-degree, a lesser-included is assault
12 and battery, third-degree, or what's commonly referred to
13 as simple assault and battery.

14 So I feel like if, once I'm in the position that it
15 is being charged, that assault and battery, high and
16 aggravated nature, and while I don't wish to waive my
17 objection, I think you've absolutely correctly stated
18 where we stand now. I do think it's incumbent upon me,
19 for my client to have a fair trial, to make everything
20 that's properly before the jury before them.

21 They can also find from these facts, Judge, that
22 it's an assault and battery, first-degree. They could
23 also find, then, from these same facts that it's assault
24 and battery, second-degree; or that it's assault and
25 battery, third-degree.

1 So we would ask that you include these in that
2 charge as well, because they are absolutely statutorily
3 defined, we believe, as natural lesser-includes of
4 assault and battery, high and aggravated nature.

5 THE COURT: All right.

6 MR. GEOLY: Thank you, Judge.

7 THE COURT: All right. I'm just going to leave it
8 as-is with assault and battery, high and aggravated
9 nature. I'm not going to do the first/second.

10 MR. GEOLY: Well, then, I would ask you to consider
11 at least assault and battery, first-degree, Judge. I
12 think it is literally defined ---

13 THE COURT: Well ---

14 MR. GEOLY: --- as a lesser-included.

15 THE COURT: I think it might be. But there still
16 has to be evidence of it. Let me -- let me check and
17 see.

18 MR. GEOLY: Yes, sir.

19 (Off the record briefly.)

20 THE COURT: All right. And what's the state's
21 position? Because ---

22 MR. STUMBO: Judge, the reason why we -- why I would
23 -- have argued this -- and our office has in the past.
24 And I don't think A&B-first here is appropriate for
25 Indigo because she was actually injured. There was an

1 injury that, under any circumstance, Judge, a gunshot
2 wound, from the intent of the defendant, is likely to
3 cause death or great bodily injury, by means likely to
4 cause those things. And there was an actual injury.

5 And I think the -- the ABHAN statute is right on --
6 on point with that. the streets can we mentioned before.
7 A&B-first -- and I -- and I think this is where we've
8 kind of landed on this, Judge, and why I mentioned before
9 -- if you have a -- a nonspecific intent case, where
10 there's shooting into, say, a house or a car, and
11 individuals are not struck with the bullets, then I think
12 the language of A&B-first fits. Because there's a --
13 there's language there that talks about not only an
14 injury, but -- to injure but an attempt to injure.

15 And here, Judge, I think, because she was struck
16 with the bullet, I don't think -- if -- if the jury
17 believes that he pulled the trigger, had a general
18 depraved-heart malice, and hit her with a bullet from his
19 gun, I think it's either an ABHAN or nothing, as far as
20 the assault statutes.

21 And again, Judge, I -- I think at some point the
22 legislature may need to revisit. But the state of the
23 law now, I think that's what we're -- what we're stuck
24 with.

25 THE COURT: Well, I think what I'm going to do ---

1 MR. STUMBO: I do think A&B-first would be
2 confusing, though, Judge. That -- that's -- that's why
3 -- you know, because the language, there's a lot of
4 overlap. And -- but I don't think it's the appropriate
5 charge or -- for these facts.

6 (Off the record briefly.)

7 THE COURT: All right. After looking at the
8 definitions, I think I am going to have to charge -- if I
9 charge high and aggravated nature, I think I have to
10 charge assault and battery, first-degree; and assault and
11 battery, second-degree. And I say that because of the
12 different definitions between great bodily injury and
13 moderate bodily injury.

14 MR. STUMBO: Right. Yeah. I -- I understand, Your
15 Honor. It's ---

16 THE COURT: And so I think he's -- now, I don't
17 think I can have -- I don't think third-degree is
18 applicable. But I think, because ---

19 MR. GEOLY: I understand, Judge.

20 THE COURT: Assault and battery of a high and
21 aggravated nature, you have to have great bodily injury.
22 First-degree, you just have to have the -- an act likely
23 to produce death or great bodily injury. An assault and
24 battery, second-degree, is if it's moderate bodily injury
25 ---

1 MR. STUMBO: Right. Judge ---

2 THE COURT: --- if it occurs.

3 MR. STUMBO: --- and our -- my position's generally
4 been -- and I -- I completely understands the Court's
5 position. The -- that part of ABHAN where it says "by
6 means likely to produce death or great bodily injury," my
7 position's always been a -- a gunshot wound, fired by
8 somebody intentionally, kind of what that general
9 criminal intent -- can't be anything less than an ABHAN.
10 But with the language, there's so much overlap between
11 the language.

12 THE COURT: There is.

13 MR. STUMBO: I -- I get the -- the problem with
14 that.

15 THE COURT: Well, and I think it is a jury question
16 as to whether or not ---

17 MR. STUMBO: Yes, sir.

18 THE COURT: --- there was moderate bodily injury or
19 great bodily injury, even though ABHAN, it just has to be
20 -- let's see -- it either has to be great bodily injury
21 or an act likely to produce death or great bodily injury.
22 I agree with you. If you fired a gun, it is likely to
23 produce death or great bodily injury. But I still think
24 that they can find that there was just moderate bodily
25 injury in this incident. And I think I'm going to have

1 to charge that.

2 MR. STUMBO: Yes, sir.

3 THE COURT: All right?

4 MR. GEOLY: Thank you, Your Honor.

5 THE COURT: All right. So I'm going to add first-
6 degree and second-degree with definitions of moderate --
7 of great bodily injury and moderate -- moderate bodily
8 injury.

9 MR. GEOLY: And -- and I appreciate that, Your
10 Honor. Thank you.

11 THE COURT: Yeah.

12 MR. GEOLY: I -- I did want to be clear, you know,
13 kind of how I started this. I -- I -- I'm doing that
14 because of the situation we find now. And I wouldn't
15 want it to be misinterpreted that by asking for this,
16 I've waived my objection to the -- the lesser-included.
17 I hope I've made that record clear. I -- I ---

18 THE COURT: Well, and I understand that. Yeah.

19 MR. GEOLY: Thank you, Judge.

20 THE COURT: All right.

21 All right. Anything else the state wants on the
22 record in that regard?

23 MR. STUMBO: No, sir, Your Honor. I just assume
24 that the verdict form for attempted murder will change to
25 add ---

1 THE COURT: Yeah. I ---

2 MR. STUMBO: --- two check boxes. And then, the
3 last box would say: "We, the jury, find the defendant
4 not guilty of" ---

5 THE COURT: Uh-huh.

6 MR. STUMBO: --- all four of those and ---

7 THE COURT: Yeah. It's ---

8 MR. STUMBO: --- just list them ---

9 THE COURT: --- going to be ---

10 MR. STUMBO: --- list them.

11 THE COURT: --- the -- the attempted murder is going
12 to be guilty of attempted murder; guilty of assault and
13 battery of a high and aggravated nature; guilty of
14 assault and battery in the first degree; guilty of
15 assault and battery in the second degree; or not guilty.

16 MR. STUMBO: Okay. Yes, sir. I understand.

17 THE COURT: All right.

18 MR. GEOLY: Thank you, Judge.

19 THE COURT: All right. It's going to take me a
20 while to get this done. Anything else that we need to
21 address?

22 MR. STUMBO: That's all, Judge.

23 MR. GEOLY: I think that's all, Judge.

24 THE COURT: All right. I'm not going to include
25 this -- that you handed up on that.

1 MR. GEOLY: I understand, Judge.

2 THE COURT: All right?

3 MR. GEOLY: Thank you.

4 THE COURT: All right. Is the jury back or do we
5 know?

6 CLERK OF COURT: Yes, sir.

7 THE COURT: Okay. All right. Y'all give me a
8 minute and let me go make these changes. Okay.

9 MR. STUMBO: Okay.

10 (The Court went off the record at 1:15 p.m.)

11 (The Court went on the record at 1:40 p.m.)

12 THE COURT: All right. Gentlemen, I've made those
13 corrections, the changes on the charges. I've sent them
14 to the clerk to print out for us. I've also added --
15 since I'm charging assault and battery in the second
16 degree, I've added the definitions of great bodily injury
17 and moderate bodily injury to the charges as well.

18 MR. STUMBO: That is straight out of the statute?

19 THE COURT: Yeah. Straight from ---

20 MR. STUMBO: Yeah?

21 THE COURT: --- the statute ---

22 MR. STUMBO: Okay. That's ---

23 THE COURT: --- verbatim.

24 MR. STUMBO: --- that's fine.

25 THE COURT: Okay?

1 MR. GEOLY: Judge ---

2 MR. STUMBO: Yeah.

3 MR. GEOLY: --- one other housekeeping matter, a --
4 a -- nothing really to do with the case. And I really
5 think Newberry might've already been so on top of it.
6 But when I came back in from lunch, we're apparently
7 having some demonstrators outside. One of the -- the
8 signs I -- I felt was particularly disturbing, all babies
9 -- you know, they got a little probably 4-year-old girl
10 out there carrying a -- "All babies' lives matter."

11 I'd hate if any of the jurors encountered that and
12 that has an impact on them. I mean, these people were
13 close enough that -- you know, obviously, they got First
14 Amendment rights, Judge. But I -- I think they were
15 probably closer than people allowed on election day, you
16 know, to -- to where this jury trial's taking place.

17 So it -- I -- I think it might be in our interest to
18 determine whether or not any of the jurors encountered
19 those people and/or that sign, "All babies' lives
20 matter," and whether it would impact them.

21 THE COURT: Okay. No. I'm not ---

22 MR. GEOLY: Yes, sir, Your Honor.

23 THE COURT: --- going to get into that.

24 All right. Anything from the state before we bring
25 the jury in?

1 MR. STUMBO: No, sir. We're ready.

2 THE COURT: Anything from the defense before we
3 bring the jury in?

4 MR. GEOLY: No, sir, Your Honor, other than we -- we
5 are going to, I guess, receive those new charges or were
6 ---

7 THE COURT: No. I'm ---

8 MR. GEOLY: --- we not?

9 THE COURT: --- not printing them out again. I've
10 just ---

11 MR. GEOLY: Okay.

12 THE COURT: --- gone ahead and added them in there.

13 MR. GEOLY: Sure.

14 THE COURT: All right.

15 MR. GEOLY: Then, no objection. Thank you, Judge.

16 THE COURT: All right. Let's go ahead and bring the
17 jury in.

18 (Off the record briefly.)

19 (Whereupon, the jury entered the courtroom at 1:43
20 p.m.)

21 THE COURT: All right. Ladies and gentlemen,
22 welcome back. We're ready to resume the trial of this
23 case. As I told you before we broke for lunch, the state
24 has presented their case, all of the evidence and
25 testimony has been presented to you, and now is the time

1 of the trial when the attorneys will make their closing
2 arguments.

3 Now, just like their opening statements, these
4 closing arguments are not evidence in this case. It is
5 simply the attorneys' contention as to what they think
6 the evidence has shown and the law to be applied in this
7 case. If, at any time, an attorney references a factual
8 matter that is different from the facts as you find them
9 to be or references the law that is different from the
10 law as I will charge you at the end of their closing
11 arguments, then you're to disregard that portion of their
12 closing arguments. Because these closing arguments are
13 not evidence of the facts, and they are not a charge on
14 the law. It is simply the attorneys' contention or
15 opinion as to what the facts are and the law to be
16 applied.

17 All right. Mr. Stumbo?

18 MR. STUMBO: Thank you, Your Honor. If it ---

19 THE COURT: Yeah.

20 MR. STUMBO: --- please the Court.

21 CLOSING ARGUMENT BY MR. STUMBO

22 MR. STUMBO: Newberry County Hospital. We all that
23 live around town in Newberry and probably those of you
24 who live in -- down in Prosperity or Little Mountain or
25 up in Silverstreet or Kinards, that's probably a building

1 that you encounter a good bit; probably drive by it on
2 Wilson Road; you see it up there on the left or the
3 right, depending which direction you're coming from; see
4 several times a week.

5 The building, folks, represents the bookends of Iven
6 Caldwell's life. April the 13th, 2012, Iven's born.
7 Birth, happy time. Anytime a new life enters the world,
8 it's happy; it's joyous. Iven came into this world and
9 on this earth April the -- April the 13th of 2012, over
10 at the hospital.

11 Seven years and seven days exactly, he returns to
12 that hospital with a bullet through his head, never to
13 see the light of day again. That building represents
14 that, the bookends of that young man's life.

15 Now, in the meantime of that seven years, seven days
16 -- and that's -- that's this young man right here. Seven
17 years and seven days, this young man, he thought; he
18 heard; he saw; he spoke. He did all the things that a
19 young, 7-year-old child does. Because of the actions of
20 Xzavier Davis, that seven years and seven days is all
21 that that young man had on this earth.

22 Now, I want to thank y'all. I know Mr. Daniel did
23 this in opening. But folks, I -- I know this. It -- it
24 is not lost on me that this is not something that you
25 folks have to deal with day in and day out in your lives.

1 Some of you may have been public servants or attorneys or
2 had other interaction with the legal system and seen some
3 of this stuff.

4 But, folks, as you saw Sheriff Foster on this
5 witness stand -- and the sheriff, your elected sheriff,
6 has been doing this for 45 years. And nothing prepares
7 you -- nothing prepared him for what he had to see that
8 day. No matter how many cases he works or has worked
9 over the years, the thousands, nothing prepares you for
10 seeing a boy that age come into an emergency room with a
11 bullet through his head.

12 And so, folks, I want to thank you. Because now you
13 have been brought into this situation where -- that we're
14 dealing with in the criminal justice system, where
15 there's an investigation. And there was a thorough, full
16 investigation in this case. And the sheriff's department
17 and SLED and all of their partners did a fantastic job.
18 Sheriff Foster should be proud of his guys; and then, the
19 prosecution of the case, what we're here for today.

20 Y'all have been brought into that. And it's a great
21 honor and duty. I know you didn't ask for it. I know,
22 when you got that summons in the mail, you had to come.
23 I get that. This isn't volunteer work. But y'all have
24 sat here attentively and you've listened to this case.

25 Folks, I know it was boring probably, you know, some

1 of the pictures, going through them one at a time, and
2 the -- the exhibits and the reports and everything that
3 we had to put in front of you. I know at times that got
4 very laborious or very tedious.

5 But the reason for that, y'all -- and -- and -- and
6 Taylor told y'all at this -- the beginning of this case
7 that the state always bears the burden of proof, okay?
8 Now, as your elected solicitor, I gladly bear that
9 burden, okay? The Constitution requires me to bear the
10 burden of proof and prove a case beyond a reasonable
11 doubt. And so I gladly bear that. I've -- I've spent
12 most of my adult life as a -- in -- in my professional
13 life doing that.

14 And in this case, I gladly bear the burden again,
15 folks, because the evidence is clear. The law is clear.
16 And there is one answer at the end of this that should
17 come out of that jury room after you deliberate.

18 Let's talk about the law a little bit. For what
19 kind of -- this is a road map here. We're going to talk
20 a little bit about the law. The judge, Judge Culbertson,
21 now -- and he told you this at the beginning -- he is the
22 judge of the law in this case. So if there's anything he
23 says different from me, obviously, he is the boss when it
24 comes to the law that you are to apply.

25 But I think what you'll find is, as you see some of

1 the -- the phrases that we're going to talk about here,
2 you're going to hear those from the judge's mouth in a
3 few minutes during his charge. Proof beyond a reasonable
4 doubt, if I can direct your attention on screen, each
5 element must be proved. And I want you to listen to this
6 -- for this phrase: firmly convinced. The judge will --
7 will say that phrase when he talks about the burden of
8 proof.

9 So the question you have to ask yourself as to these
10 offenses charged are: Are you firmly convinced? If you
11 are firmly convinced that Xzavier Davis did what he's
12 accused of doing, then we have met our burden and the
13 verdicts must be guilty.

14 So firmly convinced, that breaks it down to a little
15 more simple term. You don't hear "beyond a reasonable
16 doubt much" in everyday life. But firmly convinced is
17 something that -- that in a -- that happens
18 intellectually as you -- as you hear the testimony, as
19 you see the exhibits. Are you firmly convinced that he's
20 guilty of what we have indicted him for?

21 Murder is the first charge. That's the lead charge.
22 And I would -- I would indicate to y'all that from the
23 state's perspective, it's a most heavy charge here,
24 because we're dealing with Iven Caldwell, 7-year-old boy.
25 And in South Carolina you have to prove murder by these

1 two primary elements: Killing another person -- that's a
2 homicide. Like you heard Dr. Rose say yesterday, that's
3 one of the manners of death, is homicide, that she can
4 determine as a -- as a pathologist.

5 And this is the key here: with malice aforethought,
6 either express or implied. And y'all have heard this
7 term now numerous times over the past several days in
8 this case. Mr. Geoly talked a lot about it in his
9 opening, and he talked about every time he crossed a
10 witness: "Well, do you know if they had malice
11 aforethought?"

12 Well, of course, they don't -- that -- that's not
13 their job to determine whether there's malice
14 aforethought and that standard's met; it's the jury's.
15 And we're going to talk a little bit about what malice
16 aforethought is, because it can be very easily
17 misunderstood, okay?

18 What is malice? The judge is going to tell you that
19 malice is the intentional doing of a wrong act without
20 just cause or excuse and with an intent to inflict an
21 injury or death. That's a -- the first kind of broad
22 view of what is malice.

23 Now, it can be either express or implied. So
24 express malice -- and the judge will tell you about this.
25 It's -- it's kind of more of a deliberate intent. You

1 know, you see this from the stuff like lying in wait for
2 someone or words coming out of somebody's mouth that,
3 "I'm going to kill you." That -- that is the sort of
4 express malice that we're talking about, where there is a
5 specific intent to kill.

6 And this is very important, ladies and gentlemen.
7 Because from the beginning in this case, the defense
8 attorney has told you that you have to have a specific
9 intent to kill, in terms of a *mens rea*, to be guilty of
10 murder. And, folks, that's not the law in our state.

11 Because an implied malice is this -- and the judge
12 is going to -- going to use this -- this phrase -- total
13 disregard for human life and that you can tell this by
14 circumstances, okay, words. Some words, they may not be
15 the words: "I am going to kill you."

16 But there may be words that -- that lead you,
17 combined with actions, to demonstrate this -- this
18 reckless indifference to life or a total disregard for
19 human life, okay, folks? This is a critical point in
20 this case. I can't emphasize this any more. In South
21 Carolina this has always been the law.

22 And it's that way for a reason, okay? And I want
23 you to think about this for a second. If it is, as Mr.
24 Geoly has said in his opening statement to you, the
25 defense attorney's position is you have to have a

1 specific *mens rea*, a specific intent to kill a specific
2 person.

3 Think about this -- and Mr. Daniel, I think, said it
4 real well in his opening. He talked about going down
5 Main Street here at 100 miles an hour during Oktoberfest
6 and hitting someone and killing them. Well, it's not
7 enough to afterwards to say: "Well, I was just trying to
8 get to work," or "I was just trying to get to school," or
9 "I was -- I was trying to get from Point A to Point B."

10 Driving that fast through a crowded area and killing
11 someone with a vehicle would demonstrate this total
12 disregard for the lives of the people that are out there.
13 When you see people there and you do it anyway, you do
14 care. There is an indifference to that. And that is
15 murder. In that -- that fact scenario, it'd be murder.

16 Think about this: Under this theory that -- that he
17 wants y'all to buy into, we see drive-by shootings
18 commonly. So in a drive-by shooting, someone comes by
19 and -- and empties a gun at a crowd of people. Is it
20 enough for that -- and say -- say, in that crowd of
21 people, there's a 7-year-old child that may not have been
22 the intended target of that drive-by shooting; they get
23 hit and killed.

24 Is it enough for the person that committed the
25 drive-by shooting to later say: "Well, I never meant to

1 kill that -- that 7-year-old," or to say, "I was just
2 trying to scare him," or "I was just trying to prove a
3 point." It's -- anything, that's not enough.

4 If you act in a total disregard of -- for human life
5 in the way that you conduct yourself, your actions, and
6 those circumstances show that, folks, that is malice.
7 And our -- and under our law, that is murder. It -- it
8 was yesterday; it is today. And that -- likely, that's
9 the way it will always be.

10 Because our -- we understand, under the law, that
11 this type of behavior that results in somebody's death
12 should result in a murder conviction, folks. So that is
13 what we have here.

14 But what I would -- I would propose to you is that
15 express malice matters too, okay? We're going to talk a
16 little bit more about that a second when we talk about
17 the other indictment, which is the attempted murder of
18 Indigo, who gets hit in the leg with a bullet. So it --
19 it's the state's position that both types of malice exist
20 in this case. And we're -- I'm going to tell you why.

21 Now, let's talk about aforethought. Premeditated is
22 a word you hear on TV and movies a lot. Premeditated
23 murder -- some states have what, you know, you would call
24 kind of a premeditation element.

25 In South Carolina we've never had that. In our

1 state it's called malice aforethought. And it's a
2 similar concept. But basically, there's no requirement
3 under the law that the malice has to be planned out.

4 So in other words, as it applies in this case, there
5 was an escalation of Xzavier Davis's anger and malice
6 here when he got home that night. Couldn't get -- wasn't
7 let in. He bangs on the front door, back door; goes
8 back; busts a window out. He's arguing; the kids wake
9 up. It's three in the morning.

10 He goes outside. He shoots in the air, okay? The
11 malice is building, folks. And ultimately, he has the --
12 the time, as Indigo gets her three kids into the backseat
13 of that car, to go back through the house, switch out the
14 guns -- and you'll have guns back in the jury room, the
15 .22 with the laser sights that she describes. He empties
16 that in the air and puts it in that green bin at the back
17 door.

18 And then he gets this 9-millimeter full of eight
19 bullets, which is the most that'll hold. And he comes
20 out that door. And, folks, his malice is evident at that
21 point, when he comes out that door and he empties that
22 clip, okay?

23 So doesn't require him planning out this shooting,
24 okay? The law doesn't require that. You'll -- what
25 you'll hear is that there's no requirement that must

1 exist for any appreciable length of time. It may be
2 conceived actually the moment that the assault occurs,
3 okay? So just to -- just to know, this is not
4 premeditation. It is malice aforethought.

5 Now, this is an important doctrine here. You're
6 going to hear the judge tell you about transferred
7 intent. And this is applicable in cases where there is a
8 specific intent to kill one person, okay.

9 And we believe that by his words and actions, he
10 intended to kill Indigo that night. And then he hit
11 somebody else that he didn't mean to kill. I don't think
12 our position is that he was trying to kill those kids.
13 He was trying to kill Indigo.

14 And we'll talk more about the facts in a second and
15 -- and -- and show you this. But six of the bullets hit
16 the car, and five of the six that hit the car right here
17 around the front driver's area, folks. Based on what he
18 said in the house to her: "If -- if -- ain't nobody
19 staying here tonight if I got to go to jail." He empties
20 a gun in the air. He's angry.

21 And then, ultimately, afterwards -- you heard Mr.
22 Wallace and Ms. Vinnie, Indigo's parents, say immediately
23 after the shooting -- they're trying to figure out what
24 happened. They call, and he says, "I ain't no mother-
25 effing chap. Don't play with me." That was that state

1 of mind and that intent, folks.

2 So that's the *mens rea*. Mr. Geoly has been talking
3 about this *mens rea*. And you won't hear the words *mens*
4 *rea* in the judge's charge, by the way. But that is just
5 a Latin term that talks about state of mind or this
6 criminal intent that the judge will tell you about.

7 But this is the doctrine of transferred intent: If
8 the defendant, with malice aforethought, attempts to kill
9 or seriously injure one person, but by mistake or
10 inadvertence kills a different person, the defendant
11 still has the intent to kill. That intent is merely
12 transferring the intent from the original person to the
13 actual person killed, okay?

14 So, folks, if you find that the malice, based on
15 Xzavier Davis's words and actions and the circumstances
16 around what he did -- shooting eight times into an
17 occupied car; and that his anger towards Indigo, furious
18 at her by this point; he shoots and one of those bullets,
19 as it did here, catches Iven and kills him. And that's
20 transferred intent. This is a classic case of
21 transferred intent, folks.

22 It's also been said at times, malice follows the
23 bullet. That's kind of a -- a -- a -- a -- a more
24 succinct way to -- to put the longer legal charge
25 transfer intent. Taylor ---

1 MR. GEOLY: I'm going to ---

2 MR. STUMBO: --- told you ---

3 MR. GEOLY: --- object, Your Honor, to "malice
4 follows the bullet."

5 MR. STUMBO: Case law says, Judge, that that is not
6 a charge, but it's ---

7 THE COURT: I've already ---

8 MR. STUMBO: --- can be ---

9 THE COURT: --- instructed the ---

10 MR. STUMBO: --- argued ---

11 THE COURT: --- jury ---

12 MR. STUMBO: Yeah.

13 THE COURT: --- that if it's different than as I'll
14 instruct -- overruled.

15 MR. STUMBO: Yes, sir.

16 THE COURT: Go ahead.

17 MR. STUMBO: Thank you, Judge.

18 And Mr. Daniel told you in opening -- he said: "A
19 bullet doesn't have eyes." Right? And that's kind of
20 this -- the -- the same idea that we're talking about
21 here.

22 When you shoot a gun and you're an adult human being
23 that knows what a gun is capable of doing -- and this is
24 a grown man here. We're not talking about a 5-year-old
25 who picks up a gun and shoots it and doesn't know the

1 power of the gun or what it can do. It's a grown man
2 shooting this gun. He knows what a gun can produce.

3 Then, the malice that you have -- I mean, to say
4 that he didn't know the kids were in the car -- Mr. Geoly
5 may say that to you -- folks, is ludicrous, based on what
6 you heard from Indigo. I mean, he's shooting the gun in
7 the air and she wouldn't admit to me that -- that -- that
8 they were crying today. But she said it at one point,
9 and you heard that -- it's part of the evidence in this
10 case -- that he did know they were the car?

11 Folks, ludicrous. No set of circumstances would
12 lead -- lead you reasonably to that conclusion.

13 Let's talk about attempted murder. This is a --
14 similar, but a little bit different. An attempt to kill
15 another person, so an attempted homicide, with malice
16 aforethought -- again, all the same concepts apply,
17 either express or implied. And this is the difference.

18 The -- our courts have said now that there is a
19 specific intent to kill in attempted murder that you
20 don't have in -- in murder. Murder is a general-intent
21 crime. It could be general or specific. This is a
22 specific intent to kill.

23 Now, the judge is also going to charge you -- and I
24 might put some slides up here on this, because it's a lot
25 of words the judge is going to read about assault and

1 battery of a high and aggravated nature as a lesser-
2 included offense of attempted murder or assault and
3 battery first-degree or an assault and battery second-
4 degree. Now, folks, what I will tell you is all of those
5 assault crimes are lesser-included offenses of an
6 attempted murder.

7 And generally, under the law they are charged in
8 cases like this. The reason is, there's different
9 degrees of injury that you can consider. But one thing I
10 want you to listen for, when the judge charges it, is
11 this: He says if there's an -- he'll tell you that in an
12 assault and battery high and aggravated nature, what we
13 call an ABHAN sometimes, is the -- the acronym for that
14 -- is that if it is -- there -- the means of the injury
15 is likely or could produce significant injury or death,
16 okay, or great bodily injury, is what the law says --
17 then -- then, that's typically an ABHAN.

18 So what -- if you find that he was fired wildly and
19 not firing at Indigo but was just acting in a extreme
20 indifference or a total disregard for human life, as we
21 talked about in that implied malice, then it would be an
22 -- an assault and battery, high and aggravated nature,
23 would be your verdict, instead of attempted murder.

24 But to keep it simple, folks, this is an attempted
25 murder of Indigo Penny -- or Indigo Davis. I'm sorry. I

1 -- I keep saying that because she had not changed her
2 name at the time of this crime. And I've been looking at
3 incident reports that continuously say Indigo Penny.

4 This is an attempted murder, folks. It is a
5 domestic incident that escalated to an attempted murder
6 of his wife and ended up in the murder of his child --
7 his stepchild. But if you find that he wasn't -- you
8 know, that there's not enough facts to show that he was
9 specifically intending -- I know Indigo sat on this
10 stand, folks, and said: "I don't think he was intending
11 to kill me. I think he was trying to shoot the tire."

12 Okay. Well, I mean, I -- folks, I -- let -- let's
13 talk about Indigo for just a moment. I'm not here to
14 beat up on Indigo. I'm not -- I'm not doing that. But I
15 will tell you that I think it's very clear that -- that
16 at this time, she's emotionally conflicted.

17 And it took a while sometimes for her to finally
18 admit to stuff that happened that night when we were
19 having this exchange the other day. And, of course, Mr.
20 Geoly's asking her what -- "Well, what do you think he
21 was trying to do?"

22 Well, this -- this story of he's trying to shoot out
23 the tire is pretty convenient at this point. But, folks,
24 she's fleeing. She has no idea what his intent is at
25 that point. She was furiously trying to get her kids in

1 the car and get away from him.

2 Why do you think she was doing that at three in the
3 morning? Because that night she was terrified of him, of
4 what he was capable of doing. Terrified.

5 But now there is a -- there has been a shift with
6 her, okay? I think that's pretty obvious, seeing her on
7 the stand. And I believe that emotional conflict, y'all,
8 has caused an extreme disconnect here between what
9 happened that night and the way she views it now. And I
10 think that's -- that's -- that's very clear.

11 But at the end of the day, folks, all of the facts
12 that were gathered that night in interviews and -- and
13 information that was gathered and all of this that law
14 enforcement did, the physical evidence, folks, it -- it
15 shows circumstances that lead to a specific intent to
16 kill. We believe that that applies in this case.

17 If you don't believe that he specifically intended
18 to kill her, I think there is still a very strong case
19 for assault and battery, high and aggravated nature.
20 Because there again, you fall back to this idea of -- of
21 this indifference to -- to the lives of human beings,
22 which would apply in an ABHAN, where it doesn't apply
23 here in an attempted murder.

24 The third indictment, y'all, is -- is very
25 straightforward. It's possession of a weapon during the

1 commission of a violent crime. If you finally that he
2 possessed a weapon, such as a gun or a knife, during the
3 commission of a crime in 16-1-60, which the judge will
4 tell you what those crimes are that -- murder, attempted
5 murder, and ABHAN, are all -- they're all violent crimes
6 under our law. And possession of a -- of a weapon during
7 the commission of those crimes would lead you to a guilty
8 verdict on that particular indictment.

9 Folks, I -- Sheriff Foster -- and I just want you to
10 -- to -- to think about this for just a moment. Defense
11 attorney asked not only him, but just about every law
12 enforcement witness: "What -- what is it that you -- you
13 know about what his intent was before this thing
14 happened?"

15 And the answer was the same, really, for all of
16 them. And I wasn't trying to be a -- you know, smart-
17 alecky when I asked them: "Have you ever been on the
18 scene of a crime before it happened or when it happened?"

19 And the -- the honest truth for law enforcement is
20 -- is no. They have to come -- and Sheriff Foster, I
21 think, put it perfectly. He said: "We have to come pick
22 up the pieces afterwards."

23 And, folks, I'm going to just briefly go through
24 some of this evidence. But these are the pieces that
25 they picked up to try to, you know, make their case. And

1 I think it -- it's pretty obvious that they did their
2 job. They secured those crime scenes.

3 They found these weapons after they went and got a
4 search warrant, like they're legally required to do.
5 They -- they followed all of the legal requirements that
6 they were supposed to -- to do and found the -- the
7 weapons involved with this crime. They found the shell
8 casings. And where they found them, we'll talk a little
9 bit about -- more about that a second. They processed
10 the car, and we'll look more -- more at that.

11 But, folks, essentially, this case is about anger
12 and an intent to kill because he wasn't happy with what
13 -- what happened that night. He got home. He expected
14 the door to be unlocked. He busts the window out, folks,
15 of his own house, he's so angry.

16 But the facts that we have here -- and you heard the
17 SLED agent testify and Lt. Dickert how they processed
18 this car that you have six bullet defects in this car.
19 And Defect F is pretty obviously the one that took Iven's
20 life, folks. But you have another one up here that was
21 -- that was a -- a -- not through-and-through shot, but a
22 defect and a defect on the hood where it was -- both of
23 those places where a bullet basically ricocheted.

24 Now, they were only able to recover two of the -- of
25 these projectiles in the yard. The other ones could be

1 anywhere. This one that went off the hood, if it skips
2 off a hood and keeps going that way at a high rate of
3 speed, it could've ended up a long way away from the
4 scene.

5 But there was one that -- that obviously lost
6 velocity after it hit the car. Looks like it hit Vinnie
7 and Wallace's house and just landed on the -- the
8 pavement. But they find these bullets in the car as well
9 -- or these fragments. And there's one that we believe
10 probably hits Indigo through the Defect E and bounces --
11 I mean, it -- once it loses velocity, it can hit anywhere
12 in the car and land. And it ended up landing in the
13 backseat with the kids and the other one there where the
14 center console was.

15 But law enforcement, folks, collected every piece of
16 evidence. And as Sheriff Foster said, they did pick up
17 the pieces of this case. And they did it methodically,
18 and they did it by the book.

19 And they gave you every tool you need that we've put
20 into evidence here. Now, do we put -- like the SLED
21 agent told you, she took over 500 pictures. We tried not
22 to show you 500, because there's a lot of them that are
23 extras and duplicates.

24 But we broke it down to the ones that we believed
25 were -- were necessary and critical. And the evidence

1 that we believe was critical in this case is right here
2 on this table. And it's evidence you'll have back in the
3 jury room when you deliberate in this case.

4 The bottom line, folks, is when is Xzavier Davis
5 comes out the front door of that house with this 9-
6 millimeter in his hand, this one -- and you'll have it
7 back in the jury room. It's -- we got it zip-tied to the
8 box and got the lock on it, like we're supposed to do to
9 keep it safe. When he comes out with this pistol in his
10 hand, there's malice in his heart. He shoots once,
11 twice, three times, four times, five times, six times,
12 seven times, eight times -- not an accidental shot, eight
13 shell casings right there together, which means he shot
14 them -- (gestured). How quickly does it take to empty a
15 gun of eight bullets? Not long.

16 And Indigo had backed up and was starting to drive.
17 What were they seeing at that point? There again, we
18 talked about his anger as he comes out at 3 a.m. Eight
19 times, knowing that there were four human beings inside.

20 And then he says this later too. You -- you don't
21 think there was not anger? This was right after the
22 shots were fired. "I ain't no mother-effing chap."

23 Wallace talked about it. Vinnie talked about it.
24 "Don't play with me." He was amped up because he was
25 angry. There was malice there.

1 But this is -- I want you to -- to take a look at
2 this. This is the scene that they came upon. And this
3 is taken from the driveway, kind of towards the -- the
4 back side of the driveway, looking back at the front
5 steps.

6 Indigo is parked in the front there, kind of where
7 that mud is. And I want you to imagine her backing the
8 car up to a position when she can drive straight out of
9 the driveway. The last thing likely that Iven Penny
10 [sic] ever saw in his life was looking from this angle
11 back towards that door as his mother's starting to
12 accelerate.

13 And she says she even -- she even told y'all what he
14 said. The last thing she heard him say was: "Don't
15 worry, Mama. It'll be okay." Even at that point, he was
16 trying to comfort his mama, even though in this horrific
17 situation.

18 Folks, you heard Mr. Geoly talk about fatherly love?
19 Fatherly love? The last thing this young man saw, the
20 last thing that -- thought that probably went through his
21 head -- and in God's mercy, it probably only lasted a
22 couple of seconds -- was, Why is he shooting at us? Why
23 is the man that's supposed to be his protector, the man
24 that's supposed to be the one that loves him and gives
25 him that fatherly love, why is he shooting at us?

1 And then the lights go out. This bullet, traveling
2 faster than the speed of sound, like Dr. Rose told you,
3 goes through that young man's head. That's the last
4 thing he ever saw.

5 And, folks, that's not Indigo Penny's fault. She
6 locked the doors? That -- that justified this, this
7 level of anger?

8 What you're going to hear is it's -- it's not --
9 it's not his fault. He was just trying to stop them,
10 just trying to shoot out the tires. Are you kidding me?
11 This?

12 Seven years and seven days that -- that young man,
13 before he left this earth, seven good years. Gallman
14 Elementary School; almost finished his first grade year
15 when this horrific, horrific event happens.

16 Another Latin term that we've heard -- I believe
17 defense attorney used it in his opening -- was *verus*
18 *dictum* [sic], which is what the word verdict comes from.
19 And those words mean to speak the truth in Latin. And so
20 that's where we get verdict. So verdict literally means
21 speak truth -- or -- or speak -- to speak truth.

22 And I would submit to you, ladies and gentlemen,
23 that there is only one verdict this case. And it's three
24 separate verdict forms. And there's only one verdict
25 that will speak truth in this case. There's only one

1 verdict that will speak justice in this case for that
2 young man. And that's a verdict of guilty.

3 Thank you for the time and attention. I lay that
4 decision in your very capable hands. Thank you.

5 THE COURT: Mr. Geoly?

6 MR. GEOLY: Please the Court, Judge. I ---

7 THE COURT: Yes.

8 MR. GEOLY: --- I want to see the presentation. Beg
9 the Court's indulgence just one moment, Judge.

10 (Off the record briefly.)

11 CLOSING ARGUMENT BY MR. GEOLY

12 MR. GEOLY: Ladies and gentlemen of the jury, I want
13 to thank you for being here. You've paid attention. And
14 -- and I've seen that. And that's difficult to do
15 sometimes when you're here as long as we've been.

16 It seems like three weeks ago we were striking the
17 jury. But especially for the tediousness of -- of what
18 they had to present, and -- and I understand that. And
19 -- and y'all did an amazing job of staying awake and
20 watching them do it.

21 You know, at the beginning I -- I told you, the old
22 man told me once when he I had first started doing this
23 that the two most important thing you would do is serve
24 your country during a period of war or serve as a juror.
25 And part of that was -- and he explained to me; I didn't

1 believe it then. But you have to come and sometimes
2 listen to stuff like this. And then you have to do not
3 what you think is right, but you have to follow the law.

4 And -- and the sheriff's department, I -- I warned
5 y'all about them before I got here. They're good. This
6 Newberry County Sheriff's Department, they're as good a
7 law enforcement as you're going to find when they're --
8 they're doing law enforcement work.

9 This isn't that. I didn't put up much of a fight.
10 Y'all take all this. I -- I told you with this case was
11 about, and the solicitor was here and he heard it too.
12 This is about *mens rea*. And he's right. The judge isn't
13 going to talk to you about *mens rea*.

14 But the judge is going to talk to you about criminal
15 intent. And if you'll remember, I said that's a Latin
16 word, *mens rea*. But what it's talking about is your
17 criminal intent and whether or not you have an evil
18 mindset. And they knew that what -- that's what this
19 case was about.

20 And you take all of this, every picture; go look at
21 them; look at the guns. What they haven't done is shown
22 you one bit of malice aforethought. And they're banking
23 on the fact that they can go "dead 7-year-old," "dead
24 7-year-old." It is a tragedy. And it is a tragedy
25 beyond belief that there is a dead child.

1 But they, to prove he committed murder, have to show
2 malice aforethought. It means he has to have the malice
3 before it happens. Now, the judge will -- will probably
4 tell you, it's -- it's not premeditation.

5 And I told you at the beginning. It's been watered
6 down to. It's not a day; it's not a year; it's not a
7 month. It can literally be almost instantaneously
8 before.

9 But it has to happen. If there's no malice
10 aforethought, the bottom line is, it's not murder. And
11 that has to happen. Even though it can happen in an
12 instant, it, as a fact, has to happen. And it has to
13 happen beyond a reasonable doubt. It's not okay that,
14 well, maybe there was malice aforethought.

15 As much as this is about Iven -- let me back up.
16 There's no certainty like a mother's love. None. You
17 might get in a fight with your spouse. He might not be a
18 spouse next time. She -- she might not be a spouse a
19 year from now. But your child, there's no certainty like
20 a mother's love.

21 And if this were about Iven today, she'd be sitting
22 right there, where she has been all week, where they
23 moved her to, to sit. Because at first, she was sitting
24 over here. But they moved her.

25 Now, she'd still be here if this was about Iven.

1 But this, because he's an American citizen, just like
2 every one of you, he's entitled to a jury of his peers.
3 And as much as this whole situation is about Iven, this
4 is Xzavier Davis's day, where he's cloaked in
5 righteousness.

6 The judge is going to tell you, he's presumed
7 innocent. This is an innocent man. All this stuff
8 they've shown you, they have to prove the elements of a
9 crime beyond a reasonable doubt. He showed you his
10 little chart. I apologize. I don't have it click up
11 there and show you. They -- they got more resources than
12 I do.

13 And they should've proven to you beyond a reasonable
14 doubt -- whatever they had to do to come in here and
15 prove it, that should have been done. Sheriff's
16 department did their job; you got plenty of stuff. Not
17 one thing's been done to show you malice aforethought,
18 not one.

19 The -- they told you from the stand, one of those
20 SLED agents, she's not from that department. She went on
21 to tell you, she can't even tell you those are all
22 defects; that those are all -- excuse me -- shots. She
23 doesn't know that all the things they say are defects.
24 And she admitted right here that I can't tell you with
25 certainty that that's a bullet marking.

1 But you're supposed to take what he says and take
2 these little markings that SLED won't even say beyond a
3 reasonable doubt is a bullet, and you're supposed to then
4 infer? Because that's what they're going to want you to
5 do. Remember, we don't have malice, so let's infer it.

6 Well, I want you to pay close attention to what the
7 judge tells you. Because the judge is going to tell you,
8 criminal intent, you may infer for malice. Now, the
9 law's a funny thing. We use very particular words like
10 "may," which means you can do something. So I would
11 argue that even an inference can be raised, it's a
12 rebuttable inference. And it's something that you have
13 to do.

14 Remember, I told you at the beginning -- and if
15 anything I say is different than what the judge says,
16 judge is right. Judge is right about the law. But you
17 decide what the facts are. And they have to prove malice
18 aforethought: Before it happened, there was an evil
19 mindset. And they can't do it.

20 So they want you to do it. They want you to infer
21 it. We'll take implied malice, so -- and so now you can
22 infer it was some malice.

23 Because the bottom line is, it's not my witness.
24 They keep talking about my story and the story that
25 Xzavier Davis is going to tell you. It's not my story.

1 It's his witness's story.

2 Y'all heard the mama, after she affirmed that she
3 would tell the truth. Her husband affirmed too, after
4 she did. And -- and I -- I understand that. But, you
5 know, use your common sense.

6 That's one great thing about juries. At some point
7 -- that's your thing as an American citizen. At some
8 point it's not a judge to decide, and it's not Newberry
9 County Sheriff's Office deciding. And it's not the
10 solicitor to decide. It's you good people, 12 people --
11 they're a cross-section of the community -- so that you
12 can rely on each other's common experiences and bring all
13 that common sense together and -- and -- and talk about
14 things. Y'all have seen what's happened here.

15 I submit to you, that mama doesn't think -- I think
16 that mama thinks the same thing the daddy thinks. And
17 that was risky. But I asked him same question.

18 And did you feel the truthfulness in him? When he
19 looked and said: "Nah, he didn't mean to kill him. He
20 loved that boy."

21 And if that's not what was said, it was something
22 like that. I think that's what it was. "Nah, he didn't
23 mean to kill him. He loved that boy."

24 That's what Iven's grandfather, no blood relation to
25 Xzay, that's what he had to say. Then the child's mother

1 -- no certainty like a mother's love -- she sat there and
2 told you told you -- state's witness, not my witness --
3 state's witness tells you, not just what her dad says,
4 but goes beyond it and tells you, not only was he not
5 trying to kill me, which he easily could have -- she said
6 not only did he not do that, he certainly didn't mean to
7 hurt Iven. Told you he was a great dad; loved Iven; just
8 thrown Iven a birthday party; took him for a haircut that
9 day.

10 Let me say this: Judge is also going to charge you
11 about -- we have certain rules to this. And it -- it's
12 -- you know, it -- the sad part is, it's certainly not a
13 game. This is more serious than anything. But there's
14 rules to it. Like, you have to follow the rule to apply
15 the law -- the -- the -- the judge gives you. You have
16 to apply that to the facts of this case.

17 But I want you to remember, when you hear the word
18 "may," it means you may do something; doesn't mean you
19 have to do. And you, the jury, have the ability to
20 determine what the facts are in this case.

21 And I think it's been pretty obvious. They've done
22 nothing to show malice aforethought or that he was trying
23 to kill somebody. If anything, their own witnesses that
24 they put up have told you: "He wasn't trying to kill me;
25 he was shooting at the tire."

1 Now, they keep telling you: "Oh, you'll be able to
2 see. And if there's such a total disregard for human
3 life" -- that's what the judge is going to talk to you
4 about.

5 You can infer malice if there's a total disregard
6 for human life. May do it if there's a total disregard.
7 The fact that she sees him, he's not shooting like this,
8 like the solicitor would have you believe. He's shooting
9 like this.

10 Now, how in the world four shell casings are inside
11 the house, I'd like to understand that myself. I mean,
12 she says he starts shooting as he's coming down the
13 steps. The -- there's no sense that's really made of
14 this bullet on the hood unless he's -- "Where you going?
15 Don't go nowhere" -- and shoots at the hood right there
16 point-blank at the hood.

17 After that, she's backing up. And you see, as the
18 car is backing up, all of those shots are halfway up the
19 tire or below. Total disregard for human life, total
20 disregard is the guy that he's talking about that goes
21 into the movie theater and just starts shooting.

22 Or every window is busted out, because he's -- he's
23 shooting at the ground. She says it; she knows it. Not
24 my witness, solicitor witness tells you, she's [sic]
25 shooting at the tires. Because that's what she sees,

1 because she sees him pointing down.

2 The little boy -- I mean, we don't know. And guess
3 what? It's not our fault to know. Judge is going to
4 tell you my client doesn't have one obligation to prove
5 anything. They have the entire burden of proof of
6 proving him guilty beyond a reasonable doubt. And
7 they've got to prove each and every element of the crime
8 beyond a reasonable doubt, including that there was
9 malice aforethought; that he intended to kill somebody;
10 not that the somebody died as a result of an accident,
11 but he intended to kill somebody.

12 Now, I'm a brush on this. And, y'all, I apologize
13 for bouncing around a little bit. We also have an
14 attempted murder charge. Attempted murder is a very
15 specific-intent crime, meaning you have to be trying to
16 kill somebody. It can't even be this implied malice that
17 they're talking about, I don't believe. You have to
18 specifically intend to kill somebody.

19 Then, they're going to talk to you about transferred
20 intent. And you've already heard him say, they're trying
21 to say he was trying to kill Indigo but he really killed
22 Iven.

23 Where's the evidence he was trying to kill Indigo?
24 There isn't any. That he was trying to shoot at the
25 tires and missed and hit Indigo in the ankle? There's

1 some evidence of that. I don't think there's any
2 evidence that she had great bodily injury. She's talking
3 to police that night, the next day, a week later.

4 Remember how much she talked to the solicitor's
5 victim-witness advocate? One time that she didn't
6 remember that's with the solicitor. So one time they
7 talked to her in 2 1/2 years or 2 years and 4 months,
8 whatever we're at. Over two years, he talked to her one
9 time.

10 But she let this jury know he wasn't trying to kill
11 her; had perfect opportunity to kill her if that's what
12 he was trying to do. That's not what he was trying to
13 do.

14 Remember what she was she said? Y'all, if there's
15 anybody that knows what's going on in this neighborhood,
16 she told you told about -- it's Vinnie. Did you see how
17 close 633 and 631 are? They did a good job of showing us
18 a hundred times how closely -- her window stays open.

19 She told you. She knows what happens for three
20 streets. And when this happened that night, you heard
21 every police officer say: "I don't know. I don't know.
22 I don't know."

23 Because they don't go out to their house. If there
24 was trouble, Vinnie would be calling. But when this
25 happened: "Wake up. Wake up, Wallace. Wake up. Go

1 check on them. Somebody done shot somebody."

2 She's not saying Xzay shot Indigo. She's not saying
3 Indigo shot Xzay. Because they don't have a history of
4 problems like this. There's been nothing to indicate
5 that, never a raised hand. She said he didn't hit her.

6 You heard testimony about Iven. He's got no marks
7 on him. He's a healthy -- very healthy young -- doesn't
8 get struck. That's not what goes on this house.

9 This is a terrible, terrible accident and tragedy.
10 But at the end of the day, he didn't mean to do it. And
11 in this state, however much murder has changed, it hasn't
12 changed that you have to intend to kill somebody or being
13 so reckless with a total disregard for human life -- I
14 submit to you, there's no way that's a total disregard
15 for human life. Because when he's pointing down, that's
16 because he has a regard for human life.

17 And what he's trying to do is not kill anybody. He
18 wants to talk to her. She wouldn't let him in his house,
19 and he wants to talk about it.

20 And what'd she tell you? "I'm not talking about it.
21 I wanted to get out" -- she even said he wasn't, you
22 know, he -- she said he was mad. But he wasn't even
23 really loud. But he wanted her to stop and stay and
24 talk. She said that's what he'll do: Sometimes he just,
25 you know, go get a room or -- or get a motel room because

1 that way she can't leave so they can talk it out. He
2 just wanted to win an argument for once.

3 But she never -- there's nothing that's come from
4 this witness stand, which is where the judge is going to
5 tell you all the evidence come from, that says he was
6 wanting to kill her. It's just not there. She certainly
7 didn't testify. Beyond that, she told you: "I want my
8 husband to come home."

9 This is a tragedy that is beyond -- that boy was
10 precious. But these other three children, they're
11 precious too. And they're living without a daddy right
12 now that didn't mean to kill their brother.

13 This woman's brokenhearted. She's right. And --
14 but if this were about Iven -- I say this -- she'd be
15 here. But she knows this about Xzay. And guess what?
16 She's not over there. But she's already told you her
17 testimony.

18 There -- the -- there was nothing for me to put up.
19 They made my case for me with their witnesses. I'm not
20 asking you to believe what Xzay's family has to say or --
21 or what Xzay's saying for himself. I'm asking you to
22 listen to what the mother of Iven said, the person that
23 was out there that saw that.

24 The solicitor's office didn't see this. None -- the
25 point I'm making when I asked the sheriff's department,

1 "Do you know what's going on? Do you know if there was
2 malice aforethought?" because they don't. They weren't
3 out there.

4 But there was somebody out there that came and
5 testified for you. And she told you what his intent was.
6 You don't have to guess. You don't have to imply. She
7 told you point-blank what happened and what she believed.

8 Now we're supposed to disregard that, their own
9 witness? We're going and try make her out the liar? And
10 I submit to you this: The solicitor went to the extreme
11 measure of trying to discredit his own witness and say
12 they were crying as she was trying to get them in the
13 car. And -- and then, I -- you maybe heard me question
14 him about "in an instant?"

15 You know, these children were crying when they went
16 out the back door and he shot a gun in the air. He
17 didn't intend to kill anybody. He shot a gun in the air.
18 The kids were crying. They have to go from the back door
19 -- you've seen the pictures -- around the side and in the
20 car.

21 And at that point she says they're not crying. He
22 tells her that's a lie. Well, no. She thought about it
23 again. "No. They -- I -- they weren't crying when I got
24 them in the car."

25 Well, he's acting like, "Well, you said they were

1 crying in the backyard, so now you're a liar." Y'all,
2 this is this witness. This is who you have to count on.

3 This is a woman who loves her child. That, you can
4 bank on. I don't have any question about that, and I
5 hope you don't either.

6 And you know what? For -- for that fact, I'm sure
7 Vinnie loves her and loved Iven. That's why she's taking
8 the position she is. But I ask you to judge the
9 credibility. Do you think Wallace Hunter is going to say
10 what he says -- I assure you, it probably hasn't been
11 easy for Wallace Hunter the last couple days.

12 But he told you the truth. There's no way he meant
13 to kill him because he loved him. These are the people
14 that they're bringing as witnesses who are telling you
15 about my client and whether or not he had that
16 mischievous, evil heart. And they're telling you he
17 didn't.

18 But now they expect you to say: "Oh, 7-year-old,
19 7-year-old, 7-year-old is dead, so you need to convict
20 him. You can just presume malice aforethought, even
21 though it's a -- a -- a major element of this crime. We
22 just want to count that as it should've happened because
23 this is terrible."

24 This is terrible. But it'd be terrible, too, to
25 convict him of something he's not guilty of. And he's

1 not guilty of murder because he had no malice
2 aforethought.

3 Now, jumping to attempted murder, he has to have the
4 intent to kill Indigo for it to be attempted murder. If
5 he doesn't have the intent to kill Indigo, it's not
6 murder -- or not attempted murder. Excuse me.

7 It also, then, is not assault and battery, high and
8 aggravated nature, if he does not have the intent to hit
9 her. You have -- the evidence is not from what I'm
10 saying now, not from what the solicitor's saying now, but
11 from this bench. And you have no evidence in the record
12 that he intended to hit her in the ankle with that.

13 It doesn't even rise to the level of assault and
14 battery-second. I submit to you, the judge is going to
15 give you a verdict form that says attempted murder;
16 assault and battery, high and aggravated nature. Then,
17 it's going to go down to assault and battery, first-
18 degree; or assault and battery, second-degree; or not
19 guilty.

20 And that's what it -- what -- what it is. Because
21 you still have to have the criminal intent to assault
22 someone. He never meant to hit Indigo. You can't have
23 transferred intent either.

24 So this is what I want you to consider: Transfer
25 intent, that he was trying to kill Indigo? I mean, that

1 -- that one, I don't even know that I need to give the
2 time to address it. But he certainly wasn't trying to
3 kill Indigo. He wants to finish an argument with her.
4 What does killing her do for him? It doesn't help.

5 It's a tragedy, a nightmare, bad or worse than this
6 one is. And this is terrible. But he did not mean to do
7 it. And this is one of things when you come to court,
8 your intentions do matter. It's part of the crime.

9 They have to prove it beyond a reasonable doubt.
10 And it's not anybody's fault that they didn't. But for
11 two days, they've given you a bunch of pictures and guns
12 and -- that have nothing to do with did he intend to kill
13 his son, which he didn't.

14 And everybody they've put up, with the exception of
15 Grandma, has told you: "No way; he loved him." His wife
16 told you: "No way." He gets home late from a fish fry
17 at his dad's with his people; probably had something to
18 drink, I think they said.

19 But the officer told you: "He -- I don't recall him
20 being intoxicated." I -- the officer said: "I don't
21 recall him being under the influence." So he wasn't that
22 drunk.

23 He's mad; wouldn't let him in his house. Should he
24 have picked up a gun? No, never. But that's not what
25 he's charged with. He's charged with murder.

1 Did he do things wrong that night? Did he do things
2 that violate the law that night? No question. But
3 that's not what he's charged with. He's charged with
4 murder.

5 And for you, us, solicitor's office to tell that
6 lady, Indigo, that her husband murdered her son, I -- I
7 don't believe it. I don't think it's true. I don't
8 think she's conflicted. She knows it's not true. She
9 told you.

10 Y'all in courts you have standards of proof. In
11 criminal court, it's the high standard: beyond a
12 reasonable doubt. If you'll think about -- a lot of
13 courtrooms have Lady Justice. If you'll think of Lady
14 Justice holding the scales of justice up, and they're
15 equal.

16 Well, in some courts, you have to prove things by
17 the preponderance of the evidence, meaning it's more
18 likely than not. Other courts, you have to have things
19 proved by clear and convincing evidence, which that's --
20 you're convinced by it. That's not this.

21 This is beyond-a-reasonable-doubt evidence. That's
22 why they use the words -- when he showed you his little
23 can't think of a word -- on the screen that -- that, you
24 know, the -- the differences, it's firmly convinced.
25 Because you -- it's something more than convinced.

1 Because clear and convincing evidence isn't enough to
2 convict.

3 They have to prove each and every bit of the
4 elements of the crime beyond a reasonable doubt. It's
5 the highest standard we have under the law. It's not
6 enough that you are convinced. You have to be something
7 more than convinced. So we say "firmly convinced." You
8 have to be firmly convinced that not only did this young
9 man die, which obviously happened, but that this man did
10 it and caused it with malice aforethought.

11 Forget *mens rea*; you're not going to hear that word
12 again. Criminal intent: Was the criminal intent to kill
13 her, and did he have it ahead of time? Because it still
14 has to exist ahead of time. And it has to exist with
15 malice beyond a reasonable doubt.

16 Y'all, we're not there. Did he do something wrong?
17 Was it wrong to pick up a gun? No question. Was it
18 wrong to fire it up in the air? No question. Those
19 aren't murder. And they don't prove malice.

20 Beyond a reasonable doubt -- that's why it's good
21 that we have this jury and not a solicitor or the
22 sheriff's department to decide who's guilty. I -- as
23 much as a tragedy that this is, I don't want to equate
24 it. But what kind of tragedy for these two children grow
25 up without their daddy, who didn't mean to kill their

1 brother, who Mama says -- I hadn't had the opportunity to
2 -- I -- I -- there's no way. Use your common sense.

3 They haven't had the opportunity to mourn as a
4 family, to celebrate Ivory as a family, this newborn
5 child. This family has been wrecked by this. And I
6 realize that it's as the result of my client's actions.
7 There's no question that, y'all.

8 Don't -- don't question that -- that he wasn't
9 wrong. I get it. But he's not guilty of murder. And
10 his mother told you he wasn't. And grandfather told you
11 he wasn't.

12 And nobody told you he was, except the solicitor.
13 And he's not giving -- he's not giving -- he's not giving
14 testimony. Nothing he said is evidence. None of the
15 evidence indicates this was malice aforethought.

16 Remember, when the judge tells you about criminal
17 intent, he's going to tell you, you may infer malice.
18 But it's got to be a total disregard for human life. Did
19 he totally disregard human life? He made mistakes, no
20 question. He's a bad shot, no question.

21 But you heard from the biggest victim of all of
22 this, what she believed. And she was an eyewitness. Who
23 are we to place ourselves over her?

24 I -- I thank you for listening. I thank y'all for
25 paying attention. I know it's been long. And I beg you

1 to listen to the judge's charge, but then follow your
2 hearts and the law as to what this young man did that
3 night.

4 He didn't mean to kill anybody. His wife knows
5 that. His -- his father-in-law knows that, the boy's
6 grandfather. And I hope that by now, you know that and
7 will go and -- and speak the truth with a verdict of not
8 guilty on all these charges. Thank you for your time.

9 CHARGE OF THE COURT

10 THE COURT: All right. Ladies and gentlemen, all of
11 the testimony and other evidence in this case has been
12 presented to you; the attorneys have made their closing
13 arguments. And now is the time of the trial when I
14 charge you with the law to be applied in this case.

15 The indictments in this case allege three different
16 offenses against the defendant. The charges are murder,
17 attempted murder, and possession of a weapon during
18 commission of a violent crime. I remind you that the
19 fact that the -- the defendant was arrested, charged, and
20 indicted in this case is not evidence in this case, and
21 cannot be considered by you as evidence of guilt in this
22 case. Nor does the defendant's arrest, charge, and
23 indictment create any presumption or inference of guilt.

24 These documents are simply the formal written
25 instruments which contain the charges made against the

1 defendant. They are the formal documents by which this
2 case is brought into this Court. Also, each indictment
3 charges a separate and distinct offense. You must decide
4 each indictment separately on the evidence and the law
5 applicable to it, uninfluenced by your decision as to any
6 other indictment.

7 The defendant may be convicted or acquitted on any
8 or all of the offenses charged. You'll be asked to write
9 a separate verdict of guilty or not guilty for each
10 indictment.

11 The defendant pleads not guilty to all of these
12 indictments. That plea puts the burden on the state to
13 prove the defendant guilty. A person charged with
14 committing a criminal offense in South Carolina is never
15 required to prove his innocence. I charge you that an
16 important rule of law is that the defendant in a criminal
17 trial, no matter what the seriousness of the charge may
18 be, will always be presumed to be innocent of the crime
19 for which the indictment was issued, unless guilty has
20 been proven by evidence satisfying you of that guilt
21 beyond a reasonable doubt.

22 This presumption of innocence does not end when you
23 begin your deliberations. But it accompanies the
24 defendant throughout the trial until you reach a verdict
25 of guilt based on evidence satisfying you of that guilt

1 beyond a reasonable doubt. The presumption of innocence
2 is like a robe of righteousness, placed about the
3 shoulders of the defendant, which remains with the
4 defendant until it has been stripped from the defendant
5 by evidence satisfying you of the defendant's guilt
6 beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It is not just a legal phrase. The presumption
9 of evidence is a substantial right to which every
10 defendant is entitled unless you, the jury, are satisfied
11 from the evidence of the defendant's guilt beyond a
12 reasonable doubt.

13 Now, what is a reasonable doubt in the law? A
14 reasonable doubt is the kind of doubt that would cause a
15 reasonable person to hesitate to act. Proof beyond a
16 reasonable doubt is proof that leaves you firmly
17 convinced of the defendant's guilt.

18 We know very few things in this world with absolute
19 certainty. And in criminal cases, the law does not
20 require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence, you are
22 firmly convinced that the defendant is guilty of the
23 crime charged, you must find the defendant guilty. On
24 the other hand, if you think a real possibility exists
25 that the defendant is not guilty, you must give the

1 defendant the benefit of that doubt and find him not
2 guilty.

3 I remind you that during this trial, you and I have
4 certain duties to perform. As the trial judge, my
5 responsibility is to preside over the trial of this case.
6 I also have the duty to rule on the admissibility of the
7 evidence offered during this trial.

8 You're to consider only the competent evidence
9 before you. If any testimony was ordered stricken from
10 the record in this case during this trial, you must
11 disregard that testimony. You are to consider only the
12 testimony which has been presented from the witness
13 stand, any exhibits which have been made a part of the
14 record in this case, and any stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge, I am
17 the sole judge of the law of this case. Your duty as
18 jurors is to accept and apply the law as I now state it
19 to you.

20 If you have any idea as to what the law is or what
21 the law ought to be and your idea is different from what
22 I now tell you the law is, you must disregard your idea
23 of what the law is or ought to be because you are sworn
24 to accept and apply the law exactly as I state it to you.

25 In every case tried in this Court before a jury, the

1 jury is the sole and exclusive judge of the facts in a
2 case. A trial judge cannot intimate, state, comment on,
3 or make any statement to a trial jury about the facts in
4 a case. Since you, the jury, are the sole judge of the
5 facts in this case, do not infer from what I have said
6 during the progress of this trial, in ruling upon the
7 admissibility of evidence or otherwise, or anything that
8 I say now during the course of this instruction to you
9 that I have any opinion about the facts in this case.
10 The law the law does not allow me to have an opinion
11 about the facts in this case. This is a matter solely
12 for you, the jury, to determine.

13 As jurors your duty is to determine the effect,
14 value, weight, and truth of the evidence presented during
15 this trial. Necessarily, you must determine the
16 credibility of witnesses who have testified in this case.
17 Credibility simply means believability. Your duty as
18 jurors is to analyze and to evaluate the evidence and
19 determine which evidence convinces you of its truth.

20 In determining the believability of witnesses who
21 have testified in this case, you may believe one witness
22 over several witnesses or several witnesses over one
23 witness. You may believe a part of the testimony of a
24 witness and reject the remaining part of the testimony of
25 that same witness. You may believe the testimony of a

1 witness in its entirety or reject the testimony of a
2 witness in its entirety.

3 You may consider whether any witness has exhibited
4 to you any interest, bias, prejudice, or other motive in
5 this case. You may also consider the appearance and
6 manner of a witness while on the witness stand.

7 Now, the rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call
10 expert witnesses. A witness who, by education and
11 experience, has become expert in some art, science,
12 profession, or calling may state an opinion as to
13 relevant and material matter in which the witness claims
14 to be an expert and may also state the reasons for the
15 opinion.

16 You should consider any expert opinion received in
17 evidence in this case and, like any other evidence, give
18 it the weight you think it deserves. If you decide that
19 the opinion of an expert witness is not based on
20 sufficient education and experience, or if you conclude
21 that the reason given in support of the opinion are not
22 sound, or that the opinion is outweighed by other
23 evidence, you may disregard the opinion entirely. An
24 expert witness's testimony is to be given no greater
25 weight than that of other witnesses simply because the

1 witness is an expert. Further, you are not required to
2 accept an expert's opinion even though it is not
3 contradicted.

4 Now, I instruct you and emphasize that the fact the
5 defendant did not testify in this case is not a factor to
6 be considered by you in any way in your deliberations and
7 in your consideration of the question of the guilt or
8 innocence of the defendant. The defendant's decision not
9 to testify must not be considered by you in any matter
10 whatsoever.

11 A defendant has the constitutional right to remain
12 silent. And the assertion of this right must not be
13 considered by you in your deliberations. I repeat, under
14 your oath, you are to draw no conclusion whatsoever from
15 the fact that the defendant in this case did not testify.
16 The fact that this defendant did not testify should not
17 even be discussed in the jury room.

18 The burden of proof, as I have stated to you, is on
19 the state. The defendant is not required to prove his
20 innocence. The burden of proof remains on the state to
21 prove guilt beyond a reasonable doubt.

22 Now, in order to establish criminal liability,
23 criminal intent is required. For example, the mental
24 state required to be proven by the state for a particular
25 crime might be purpose, intent, knowledge, recklessness,

1 or criminal negligence. Criminal intent must be proven
2 by the state beyond a reasonable doubt. Criminal intent
3 is always a matter that must be determined by the jury
4 from the circumstances surrounding the situation.

5 Intent cannot be proved to a mathematical certainty.
6 Medical science cannot dissect a person's brain and
7 determine what the person had in mind. So the law says
8 that criminal intent may be proved from the circumstances
9 shown to have existed.

10 In other words, the state must show that the
11 circumstances in this case indicate beyond a reasonable
12 doubt the defendant had criminal intent. Intent does not
13 have to be established by direct and positive evidence.
14 Intent may be established like any other fact, by taking
15 into consideration the acts of the parties and all of the
16 facts and circumstances of the case.

17 Criminal intent is a mental state, a conscious
18 wrongdoing. You must determine what the defendant
19 intended to do, based on the circumstances shown to have
20 existed. Criminal intent can arise from action or a
21 failure to act. It may arise from negligence,
22 recklessness, or an indifference to duty or to
23 consequences that is considered by law to be the
24 equivalent of criminal intent.

25 Now, the defendant is charged with murder. To

1 convict the defendant of murder, the state must prove
2 beyond a reasonable doubt that the defendant killed
3 another person with malice aforethought. Malice is
4 hatred, ill will, or hostility towards another person.
5 It is the intentional doing of a wrongful act without
6 just cause or excuse and with an intent to inflict an
7 injury or under circumstances that the law will infer an
8 evil intent.

9 Malice aforethought does not require that malice
10 exists for any particular time before the act is
11 committed. But malice must exist in the mind of the
12 defendant just before and at the time of the act the --
13 or at the time the act is committed. Therefore, a
14 combination of the previous evil intent and the act
15 itself is required.

16 Malice aforethought may be express or inferred.
17 These terms, express and inferred, do not mean different
18 kinds of malice, but merely the manner in which malice
19 may be shown to exist, either by direct evidence or by
20 inference from the facts and circumstances which are
21 proved.

22 Express malice is shown when a person speaks words
23 which express hatred or ill will for another or when the
24 person prepared beforehand to do the act which was later
25 accomplished. For example, lying in wait for a person or

1 any other acts of preparation going to show that the deed
2 was within the defendant's mind would be express malice.

3 Malice may be inferred from conduct showing a total
4 disregard for human life. If facts are proved beyond a
5 reasonable doubt sufficient to raise an inference of
6 malice to your satisfaction, this inference is simply an
7 evidentiary fact to be considered by you, along with the
8 other evidence in the case. You may give it the weight
9 you decide it should receive.

10 Now, if the defendant, with malice aforethought,
11 attempts to kill a person, but by mistake kills a
12 different person, the defendant still has the intent to
13 kill. The intent to kill is merely transferred from the
14 original person the defendant attempted to kill to the
15 actual person killed. The defendant is guilty of murder
16 just as if the defendant killed the person he intended to
17 kill.

18 The defendant is also charged with attempted murder.
19 To convict the defendant of this crime, the state must
20 prove that the defendant attempted to kill another person
21 with malice aforethought. Now, unlike the crime of
22 murder, attempted murder requires a specific intent to
23 kill, not a general intent. A specific intent to kill is
24 an element of attempted murder.

25 Intent means the intending the attempted result, not

1 accidentally or involuntarily causing the result. Also,
2 unlike murder, the intent required to prove attempted
3 murder cannot be transferred from one person to another.
4 The state must prove beyond a reasonable doubt that the
5 defendant intended to kill a specific person with malice
6 aforethought, but failed in that attempt.

7 In other words, to convict the defendant in this
8 case of attempted murder, the state must prove beyond a
9 reasonable doubt that the defendant intended to kill
10 Indigo Davis with malice aforethought, but failed in that
11 attempt. As I previously instructed you, intent may be
12 shown by acts and conduct of the defendant and other
13 circumstances from which you may naturally and reasonably
14 find intent.

15 Evidence of the character of the act, the character
16 of the instrument used, the manner in which it was used,
17 the purpose to be accomplished, and the resulting wounds
18 or injuries may be considered in determining the intent
19 with which the act was committed. Intent may also be
20 demonstrated by proving that the defendant voluntarily
21 and willfully commits an act, the natural tendency of
22 which is to take another's life.

23 If you find that the state has failed to prove
24 beyond a reasonable doubt that the defendant committed
25 attempted murder, you may consider whether the state has

1 proved beyond a reasonable doubt that the defendant
2 committed assault and battery of a high and aggravated
3 nature. Included within the offense of attempted murder
4 is the lesser offense of assault and battery of a high
5 and aggravated nature.

6 To convict the defendant of assault and battery of a
7 high and aggravated nature, the state must first prove
8 beyond a reasonable doubt that the defendant unlawfully
9 injured another person. The state must also prove that
10 the defendant's act either caused great bodily injury to
11 another person or the defendant's act is accomplished by
12 means likely to produce death or great bodily injury.

13 Great bodily injury means bodily injury which causes
14 a substantial risk of death or which causes serious,
15 permanent disfigurement or protracted loss or impairment
16 of the function of a body -- bodily member or organ. An
17 assault occurs when a person unlawfully attempts to offer
18 to commit a violent injury upon another person and had
19 the present ability to complete the attempted injury. An
20 assault is the intentional creation of a reasonable fear
21 of immediate bodily harm.

22 Assault does not require that the attempted injury
23 or harm actually take place. For example, if I walk up
24 to you and, when we are within arm's reach, I draw back
25 to hit you, that is an assault.

1 A battery is the unlawful touching of another person
2 by a person who commits -- or by a person who has
3 committed the assault. An unlawful touching can be
4 caused by a part of the accused's body or by any object
5 the accused puts in motion. A battery is the completion
6 of the assault by using or applying force to another
7 person, however slight, in a rude, angry, or resentful
8 manner without legal justification for doing so. Using
9 my earlier example, if I carry through the assault by
10 hitting you, then that is a battery.

11 If you find that the state has failed to prove
12 beyond a reasonable doubt that the defendant committed
13 attempted murder and assault and battery of a high and
14 aggravated nature, you may consider whether the state has
15 proved beyond a reasonable doubt that the defendant
16 committed assault and battery in the first degree.
17 Included within the offense of attempted murder and
18 assault and battery of a high and aggravated nature, is
19 the lesser offense of assault and battery in the first
20 degree.

21 To convict the defendant of assault and battery in
22 the first degree, the state must prove beyond a
23 reasonable doubt that the defendant unlawfully injured
24 another person. The state must also prove that the
25 defendant's act offered or attempted to injure another

1 person with the present ability to do so and the action
2 is accomplished by means likely to produce death or great
3 bodily harm.

4 If you find that the state has failed to prove
5 beyond a reasonable doubt that the defendant committed
6 attempted murder, assault and battery of a high and
7 aggravated nature, and assault and battery of the first
8 degree, you may consider whether the state has proved
9 beyond a reasonable doubt that the defendant committed
10 assault and battery in the second degree. To convict the
11 defendant of assault and battery in the second degree,
12 the state must prove beyond a reasonable doubt that the
13 defendant unlawfully injured another person or offered or
14 attempted to injure another person with the present
15 ability to do so and moderate bodily injury to another
16 person resulted or moderate bodily injury to another
17 person could have resulted.

18 Moderate bodily injury means physical injury that
19 involves prolonged loss of consciousness or that causes
20 temporary or moderate disfigurement or temporary loss of
21 the function of a bodily member or organ or injury that
22 requires medical treatment when the treatment requires
23 the use of regional or general anesthesia or injury that
24 results in a fracture or dislocation. Moderate bodily
25 injury does not include one-time treatment and subsequent

1 observation of scratches, cuts, abrasions, bruises,
2 burns, splinters, or any other minor injuries that do not
3 ordinarily require extensive medical care.

4 The defendant is also charged with possession of a
5 weapon during the commission of a violent crime. To
6 convict the defendant of this crime, the state must prove
7 beyond a reasonable doubt that the defendant was in
8 possession of a firearm or visibly displayed what
9 appeared to be a firearm during the commission of a
10 violent crime. A firearm means any machine gun,
11 automatic rifle, revolver, pistol, or any weapon which
12 will, is designed to, or may be readily converted to
13 expel a projectile.

14 In order to find the defendant guilty of possession
15 of a weapon during the commission of a violent crime, you
16 must first find the defendant guilty of either committing
17 a violent crime or attempting to commit a violent crime.
18 Murder, attempted murder, and assault and battery of a
19 high and aggravated nature are violent crimes. Assault
20 and battery in the first degree and assault and battery
21 in the second degree are not violent crimes. The state
22 must prove beyond a reasonable doubt that the weapon
23 furthered, advanced, or helped in the commission of the
24 crime.

25 Now, as the jury you must find one of several

1 different verdicts for each indictment in this case. No
2 significance is to be given to the order in which I state
3 these possible verdicts to you. I simply must state one
4 first, one second, and so forth.

5 As to the indictment for murder, you may find the
6 defendant guilty or not guilty.

7 As to the indictment for attempted murder, you may
8 find the defendant guilty of attempted murder, guilty of
9 assault and battery of a high and aggravated nature,
10 guilty of assault and battery in the first degree, guilty
11 of assault and battery and the second degree, or not
12 guilty.

13 As to the indictment for possession of a weapon
14 during the commission of a violent crime, you may find
15 the defendant guilty or not guilty. However, you may not
16 find the defendant guilty of possession of a weapon
17 during the commission of a violent crime unless you also
18 find the defendant guilty of murder, attempted murder, or
19 assault and battery of a high and aggravated nature. If
20 you find the defendant not guilty of murder, attempted
21 murder, and assault and battery of a high and aggravated
22 nature, or if you find the defendant guilty of only
23 assault and battery in the first degree or second degree,
24 you must find the defendant not guilty of possession of a
25 weapon during the commission of a violent crime.

1 Now, ladies and gentlemen, your verdict for each
2 indictment must be unanimous. And as I previously
3 instructed you, you must decide each indictment
4 separately on the evidence and the law applicable to it,
5 uninfluenced by your decision as to the other
6 indictments.

7 Mr. Hill, as the foreperson of this jury, when the
8 jury agrees on a verdict for a -- an indictment, you will
9 fill -- check the appropriate verdict and then sign your
10 name as the foreperson for that -- for that -- for this
11 jury. When the jury has reached a verdict on each
12 indictment and you have completed the verdict forms, you
13 can then knock on the door and tell the bailiff that
14 you've reached a verdict and we'll bring you back into
15 the courtroom at that time.

16 Now, I'm going to excuse you to the jury room, but
17 please do not begin your deliberations at this time. I
18 need to check with the attorneys to see if they have any
19 additional charges that they deem appropriate or if they
20 have any challenges to the charges that I've -- as I've
21 given them to you.

22 If they do and I deem them appropriate, I'll bring
23 you back in and make whatever corrections or additional
24 charges are needed. If there are none, then the verdict
25 forms and the exhibits will be brought back to you in the

1 -- in the jury room and the bailiff will instruct you to
2 begin your deliberations. But please do not begin your
3 deliberations until the bailiff instructs you to do so.

4 All right. I'm going to excuse you to the jury
5 room, but do not begin your deliberations until the
6 bailiff tells you. Thank you very much.

7 (Whereupon, the jury exited the courtroom at 3:05
8 p.m.)

9 (Off the record briefly.)

10 THE COURT: All right. Any exceptions to the jury
11 charge by the state?

12 MR. STUMBO: None from the state, Your Honor. So I
13 -- I thought I heard you charge great bodily injury. Mr.
14 Daniel said he didn't think he heard it, but I thought
15 you just read it straight out of the statute.

16 THE COURT: I did.

17 MR. STUMBO: Right. I -- I thought you did.

18 THE COURT: Yeah, I did.

19 MR. STUMBO: No exception from the state, Your
20 Honor.

21 THE COURT: All right. Any exceptions from the
22 defense?

23 MR. GEOLY: None from the defense, Your Honor.

24 THE COURT: All right. Let's make sure that we've
25 got all of the exhibits.

1 Let me give you these verdict forms to put with the
2 exhibits.

3 CLERK OF COURT: Yes, sir.

4 THE COURT: And if we got all the exhibits, the
5 verdict forms, we can go ahead and take those. We got
6 somebody that'll take them to the jury room and tell them
7 to begin?

8 CLERK OF COURT: I'll do that.

9 THE COURT: You'll do that?

10 CLERK OF COURT: Yes, sir.

11 (The Court went off the record at 3:06 p.m.)

12 (Whereupon, the jury began deliberating at 3:09
13 p.m.)

14 (The Court went on the record at 3:27 p.m.)

15 (Whereupon, Court's Exhibit 2 was marked for
16 identification.)

17 THE COURT: All right. We've gotten a request from
18 the jury. It said (as read): "May we please get a copy
19 of the definition of murder, attempted murder, etc.?"

20 So I'm thinking just bringing them in; saying, "I'll
21 give you a copy of the entire charge" ---

22 MR. STUMBO: Judge, I ---

23 THE COURT: --- "you can" ---

24 MR. STUMBO: --- don't have a problem if you want to
25 send the charge in its entirety back to them, if you ---

1 THE COURT: That's what I was thinking, and ---

2 MR. GEOLY: I -- I -- I would ask Your Honor just to
3 respond to that question, since they haven't asked for
4 the charge, if you would just tell them what they're
5 asking.

6 THE COURT: Well, they're -- they're not -- they're
7 asking for the -- they're saying -- they're asking for a
8 portion of the charge.

9 MR. GEOLY: Yes, sir.

10 THE COURT: They're saying they want a copy of the
11 definition of murder, attempted murder, etc.

12 MR. GEOLY: Of the -- and -- and -- do we not just
13 want to give them a definition of murder, attempted
14 murder, A&B-first -- I mean, assault and battery high and
15 aggravated nature, and assault and battery-first and -
16 second?

17 MR. STUMBO: Judge, I think it's more simple, quite
18 honestly. Because there's a lot of judges that do send
19 back a written copy. I know our judges here in this
20 circuit typically do: Judge Addy, Judge Hocker ---

21 THE COURT: Yeah.

22 MR. STUMBO: That's why it's -- it's pretty common
23 practice for them to send it back. So I -- we don't have
24 a problem with that.

25 MR. GEOLY: I -- I just ---

1 MR. STUMBO: I think ---

2 MR. GEOLY: --- want to ---

3 MR. STUMBO: --- that simplifies things, Judge,
4 rather than ---

5 THE COURT: Yeah.

6 MR. STUMBO: --- reading it again.

7 THE COURT: And I've always operated under the --
8 the assumption that I need to instruct them that you have
9 to -- I mean, it's -- they're asking for definition.
10 They're not really asking for a copy of the charge. I
11 guess my question is -- is: Do I send back the entire
12 charge or do I just send back those portions of the
13 charge that deal with murder, attempted murder, assault
14 and battery of a high and aggravated nature, first- and
15 second-degree ---

16 MR. GEOLY: Judge, I'll -- I'll back up ---

17 THE COURT: --- and possession of ---

18 MR. GEOLY: --- and let you ---

19 THE COURT: --- a weapon ---

20 MR. GEOLY: --- send -- I -- I'll back up and let
21 you send the whole charge if he's fine with it. I mean,
22 I ---

23 THE COURT: Is that agreeable with you?

24 MR. STUMBO: It is, Judge. Because I think it puts
25 in context ---

1 THE COURT: Okay.

2 MR. STUMBO: --- everything you read them. I think

3 ---

4 THE COURT: All right.

5 MR. STUMBO: --- that's fine.

6 THE COURT: Well, I'm going to bring them in and I'm
7 going to tell them we're going to give them the charge.
8 But I do have to tell them that they have to -- or do you
9 want me to just sent it back there to them?

10 MR. STUMBO: I think you can just send it back,
11 Judge. I -- that's ---

12 MR. GEOLY: I'm fine ---

13 MR. STUMBO: --- that's ---

14 MR. GEOLY: --- with that.

15 MR. STUMBO: --- that's ---

16 THE COURT: Okay.

17 MR. STUMBO: --- perfectly fine with me.

18 THE COURT: All right. I'm going to -- let's go
19 ahead and mark my charges as Court's Exhibit 3.

20 (Off the record briefly.)

21 (Whereupon, Court's Exhibit 3 was marked for
22 identification.)

23 THE COURT: And is all right if the -- the clerk
24 just -- I'm going to have her take back their question
25 and the charge and then just tell them to make sure that

1 they bring this back ---

2 CLERK OF COURT: Yes, sir.

3 THE COURT: --- the -- not to throw that away, but
4 that they bring it back when they come back in with their
5 verdict. Is that agreeable?

6 MR. STUMBO: Yes, sir.

7 MR. GEOLY: Yes, sir.

8 THE COURT: All right. Anything from the state
9 before we recess?

10 MR. STUMBO: No, sir.

11 THE COURT: Anything from the defense?

12 MR. GEOLY: No, sir, Your Honor.

13 THE COURT: All right. We'll stay ---

14 MR. GEOLY: Judge?

15 THE COURT: --- in recess yeah.

16 MR. GEOLY: It may be just -- I'm here. Obviously,
17 we have a pretty strong force from the -- the police
18 force. I would ask, just so that in case there's another
19 question 30 seconds, we don't have to keep going back and
20 forth. Can he just stay here with us?

21 THE COURT: Well, I don't mind doing whatever law --
22 they're over security, and they're the ones that's in
23 charge of it. So however they ---

24 MR. GEOLY: I certainly ---

25 THE COURT: ---- want to ---

1 MR. GEOLY: --- would defer ---

2 THE COURT: --- handle it, I'll let ---

3 MR. GEOLY: --- to whatever ---

4 THE COURT: --- you handle it ---

5 MR. GEOLY: --- Mr. Dennis ---

6 THE COURT: --- the way ---

7 MR. GEOLY: --- says.

8 THE COURT: --- you want to.

9 MR. GEOLY: I mean, I -- I -- if they want to keep
10 going back and forth, but I just -- we're all here and
11 he's not going to do anything wrong out here. But -- but
12 I'll -- I'll defer to whatever y'all -- or the ---

13 THE DEPUTY: We'll have folks here in the courtroom,
14 Judge. But if we have to make any type of movement, then
15 we'll move him to a holding cell.

16 THE COURT: All right.

17 MR. GEOLY: Thank you both. Thank you.

18 THE COURT: Sounds good. Thank you.

19 (The Court went off the record at 3:31 p.m.)

20 (The Court went on the record at 4:49 p.m.)

21 THE COURT: Okay. We've got another question from
22 the jury. It says (as read): "Does total disregard for
23 human life supersede the intent to inflict injury?"

24 Now, I sense that they're probably trying to decide
25 between two charges. My proposed response -- I'll get

1 y'all's input. My proposed response would be: "You
2 cannot consider the guilt or innocence of the lesser-
3 included charge until you first find the defendant not
4 guilty of the greater charge."

5 MR. STUMBO: I ---

6 THE COURT: So in ---

7 MR. STUMBO: --- I think ---

8 THE COURT: --- other words ---

9 MR. STUMBO: --- that's an accurate statement of the
10 law, Judge.

11 THE COURT: So in other words, if they're trying to
12 decide: Well, if -- if a total disregard for human life
13 in this crime and intent to inflict injury in this crime,
14 it does seem to be a conflict there. Which -- which
15 crime do we convict him of?

16 Well, you don't convict him of the lesser-included
17 offense until you find him not guilty of the greater
18 offense, is my understanding.

19 MR. GEOLY: But, Judge, I -- I would hate to
20 instruct them as to how to conduct their -- their
21 deliberations. I mean ---

22 THE COURT: Well, I'm not telling them how to
23 conduct their deliberations. I'm just telling them that
24 you -- they are not to consider a lesser-included
25 offense, because that's the charge.

1 If you find the defendant not guilty of attempted
2 murder, then you must decide whether or not the defendant
3 is guilty of assault and battery of a high and aggravated
4 nature. If you find the defendant not guilty of assault
5 and battery of a high and aggravated nature, then you
6 decide whether or not the defendant is guilty of assault
7 and battery in the first degree. If you find the
8 defendant not guilty of assault and battery in the first
9 degree, then you decide.

10 MR. GEOLY: And -- and, Judge, I'm not trying to ---

11 THE COURT: Yeah.

12 MR. GEOLY: --- certainly, to -- to -- to take odds
13 with you or disagree. And I think that's an absolute
14 reasonable way to do it.

15 But if they walk back there and the -- the foreman
16 decided, "Let's take a straw-poll vote on assault and
17 battery second-degree," and -- and they vote and it's,
18 say, 9 to 3 the first vote, then I don't know that it's
19 improper to continue to consider that before considering
20 the first one. I would hate to put, you know, our
21 decision on them that you've got to consider this first
22 and tell them that.

23 I would ask you to -- to maybe just tell them that
24 you're the deciders of the fact and you have all the law,
25 you know, the ---

1 THE COURT: No. I mean, the fact of the matter is,
2 is if it's 9 to 3, then they haven't reached a verdict.
3 They have ---

4 MR. GEOLY: Oh, sure.

5 THE COURT: --- to unanimously agree to guilt:
6 guilty or not guilty.

7 MR. GEOLY: Yes, sir, I understand.

8 THE COURT: Now, if all 12 of them agree on guilty,
9 say, of an indicted charge, then they don't even consider
10 a lesser-included offense.

11 MR. GEOLY: But what if ---

12 THE COURT: If all of them ---

13 MR. GEOLY: What if, on first vote, instead of my 9
14 to 3, it's 12 to 0?

15 THE COURT: Okay. If they unanimously vote not
16 guilty, then they consider the lesser-included offense
17 under that.

18 MR. GEOLY: Okay.

19 THE COURT: They don't even consider any
20 lesser-included offense. They don't consider any charge
21 less than the one indicted until they find unanimously
22 that the defendant is not guilty of the indicted charge.

23 MR. GEOLY: Well, I -- I think that flies in the
24 face of the law, Judge, that says if you have a question
25 between one or the other, the defendant is entitled for

1 you to resolve that question in his favor. That flies in
2 the face you have ---

3 THE COURT: What law said ---

4 THE COURT: --- to find him not guilty first before
5 moving to the next. But I think the law is, isn't it,
6 that -- that if you have a choice between two and there's
7 a question, is he guilty of this or is he guilty of the
8 lesser, and there's a question there, it has to be
9 resolved in the defendant's favor, as I understand.

10 THE COURT: No, I don't think so.

11 MR. GEOLY: Okay. I -- I ---

12 THE COURT: I think that if you've been indicted on
13 -- for a crime, then they don't even consider a lesser-
14 included offense unless and until they reach a verdict of
15 not guilty on the crime that the defendant's been
16 indicted for.

17 MR. GEOLY: And I -- and I apologize, Judge. I
18 didn't ---

19 THE COURT: Yeah.

20 MR. GEOLY: --- realize that was the law.

21 THE COURT: I mean, that's my understanding of ---

22 MR. STUMBO: Yeah.

23 THE COURT: --- the law. I've never really had a
24 question. But I know the jury charges say: If you find
25 the defendant not guilty of this offense, then you may

1 consider whether or not they're guilty of this lesser
2 offense.

3 MR. STUMBO: Judge, the other thing that I would --
4 I -- the -- the only thing that I could say, just reading
5 between the lines -- and I don't know. It's hard, you
6 know, to look at this.

7 But they could be looking at -- at the two ways that
8 you can prove malice, because express malice, it -- it's
9 sometimes an -- is an intent to commit an injury or -- or
10 inflict a death or an injury. The other way for malice
11 to be proved is -- is implied through a total disregard
12 for human life. And both are in your charge.

13 It sounds like to me they may be asking if -- if one
14 is more important than the other. And I -- you know, I
15 don't know that they can draw any inference for the fact
16 -- from the fact that you talked about express malice
17 first and then implied malice. You know, they can decide
18 what weight to give both. That's what it sounds like
19 maybe ---

20 THE COURT: So what ---

21 MR. STUMBO: --- they're asking there.

22 THE COURT: --- should I tell them?

23 MR. STUMBO: That -- that they can give the weight
24 -- that -- that those are just two -- express malice and
25 implied malice, it sounds like what they're asking here,

1 are two different ways that malice can be proven under
2 the law. They can give the weight to either one that
3 they believe is appropriate; that Your Honor is not
4 saying it's -- express malice is more important than
5 implied malice.

6 So I -- maybe ---

7 THE COURT: But they're not even ---

8 MR. STUMBO: --- that's -- that's what they're
9 asking. I'm just -- maybe just a -- a different spin on
10 that. But I ---

11 THE COURT: Okay.

12 MR. STUMBO: --- I -- I just would hate if we -- you
13 -- you ---

14 MR. GEOLY: Judge, will you ---

15 THE COURT: I think ---

16 MR. GEOLY: --- ask the question again? Will --
17 will you repeat the -- I'm sorry.

18 THE COURT: (As read): "Does total disregard for
19 human life supersede the intent to inflict injury?"

20 MR. GEOLY: I think the answer to that is no.

21 MR. STUMBO: Well, I think the answer to that,
22 Judge, is --- from the ---

23 MR. GEOLY: I mean, I ---

24 MR. STUMBO: --- Court is ---

25 MR. GEOLY: --- think we're ---

1 MR. STUMBO: --- is the Court ---

2 MR. GEOLY: --- trying to guess at what they're
3 asking instead of answering their question, which,
4 clearly, Your Honor, the -- the answer to that is no.

5 MR. STUMBO: Yeah. But I think they can -- they
6 could -- they could ---

7 MR. GEOLY: I mean, I don't ---

8 MR. STUMBO: --- take an ---

9 MR. GEOLY: --- think we should guess ---

10 MR. STUMBO: What ---

11 MR. GEOLY: --- what they're asking. I think we
12 should answer the question.

13 THE COURT: Well, how about I'll just send them back
14 another question, saying: "Are you trying to decide
15 between the guilt or innocence in two different charges?"

16 How about that? And then, if they come back and say
17 yes, then we know you can't even consider the lesser-
18 included until you find him guilty of the ---

19 MR. GEOLY: I -- I -- I would hate to take the
20 position that we're going to send back a question to a
21 question, Judge, when they've asked a question that the
22 answer is no to. I mean, I think, under the law ---

23 THE COURT: Okay.

24 MR. GEOLY: --- the answer to that is no.

25 THE COURT: All right. Well, what I'm going to is

1 I'm going to bring them in. And I'm going to say: "It
2 -- it's really irrelevant for the purposes of your
3 deliberation because you must first consider" ---

4 MR. GEOLY: Okay.

5 THE COURT: --- "the indicted charge."

6 MR. GEOLY: Yes, sir.

7 THE COURT: And then, if you unanimously find him
8 not guilty of that, then you consider the lesser-included
9 charge. I mean, it -- to me, because if they're talking
10 -- if they trying to argue over the jury charge for
11 intent on one single charge, then, there again, it's --
12 you're just talking about the different way you prove ---

13 MR. STUMBO: Different ways to ---

14 THE COURT: --- malice.

15 MR. STUMBO: --- prove malice, it sounds like, is
16 what they're ---

17 THE COURT: Yeah.

18 MR. STUMBO: --- asking. And that could apply to
19 either attempted murder or murder -- the attempted murder
20 and the lessers or just the murder. Both -- you know,
21 malice is a part of both of those. It sounds like to me
22 that -- that ---

23 THE COURT: Well, I think I'm going to bring them in
24 and ---

25 MR. STUMBO: Yeah.

1 THE COURT: --- and I'll say that: If you're trying
2 to decide between express or implied malice -- or not
3 implied ---

4 MR. STUMBO: Inferred.

5 THE COURT: --- inferred malice, then you're just
6 talking about ---

7 MR. STUMBO: Two different ---

8 THE COURT: --- two different ---

9 MR. STUMBO: --- ways to ---

10 THE COURT: --- ways that ---

11 MR. STUMBO: --- show malice.

12 THE COURT: --- the -- the state ---

13 MR. STUMBO: Yeah.

14 THE COURT: --- attempted to prove their case. If
15 you're trying to decide between the elements of one crime
16 and the elements of another crime, then you don't even
17 consider the lesser charge unless and until you reach a
18 unanimous verdict of not guilty on

19 MR. STUMBO: I think that covers your bases on both,
20 Judge, based on their question.

21 MR. GEOLY: With -- with ---

22 THE COURT: Well ---

23 MR. GEOLY: --- all due respect, Judge, I -- I don't
24 think it's responsive to the question. And -- and I
25 would object.

1 THE COURT: Okay.

2 MR. GEOLY: Thank you.

3 THE COURT: All right. You've noted your objection.
4 And that's how I'm going to handle it.

5 Anything from the state before we bring the jury in?

6 MR. STUMBO: Nothing, Judge.

7 THE COURT: Anything from the defense?

8 MR. GEOLY: No, sir.

9 THE COURT: All right. Let's go ahead and bring the
10 jury.

11 And if I could get you to mark this as Court's
12 Exhibit -- whatever it is.

13 THE COURT REPORTER: Yes, Your Honor. This will be
14 Court's 4.

15 THE COURT: Four? All right.

16 MR. GEOLY: Four?

17 THE COURT: Yeah, Court's Exhibit 4.

18 MR. GEOLY: Yes, sir. Thank you, Judge.

19 (Whereupon, Court's Exhibit 4 was marked for
20 identification.)

21 (The Court went off the record at 4:59 p.m.)

22 (The Court went on the record at 5:03 p.m.)

23 THE COURT: You know, the more I'm thinking about
24 this, more I'm -- they're not addressing malice. They're
25 addressing intent, total disregard for human life versus

1 intent to inflict injury.

2 MR. STUMBO: Right. Just ---

3 THE COURT: So I ---

4 MR. STUMBO: --- sounds like, when they say
5 "supersedes," Judge, it's almost like they're saying is
6 one more important than the other. Does one ---

7 THE COURT: Exactly.

8 MR. STUMBO: --- supersede the other?

9 THE COURT: And I think that's why they are trying
10 -- I think I'm just going to ask them: Are you trying to
11 decide between two different crimes for purpose ---

12 MR. GEOLY: But, Judge ---

13 THE COURT: --- do you ask the question for the
14 purpose of trying to decide guilt or innocence on two
15 different charges?

16 MR. GEOLY: But -- but if -- if I might, Judge, with
17 all due respect, why do we care? I mean, if the question
18 is ---

19 THE COURT: Because what they're saying is: If his
20 actions means that he -- and -- and just to throw this
21 out there as a ---

22 MR. GEOLY: Right, right.

23 THE COURT: --- let's say his actions mean he is
24 guilty of attempted murder.

25 MR. GEOLY: Yes, sir.

1 THE COURT: Well, by definition, he's also -- it --
2 it also means that he's guilty of -- of assault and
3 battery in the first degree, because that's a lesser-
4 included offense. Now, does one supersede the other?
5 Does the fact that he ---

6 MR. GEOLY: And I -- I think ---

7 THE COURT: --- had a total disregard for human life
8 supersede the fact that he intended to inflict injury?

9 MR. GEOLY: And I could be wrong, but I think the
10 answer to that is no. So why will you just answer -- why
11 wouldn't you just answer what they're asking, if they're
12 not asking us for anything else but that question.

13 THE COURT: Because the fact of the matter is, is it
14 -- it almost leads you to believe -- or it -- I think, if
15 I just said no, then they're, like, "Well, we can pick to
16 convict him of whatever we want to convict him of without
17 first finding him not guilty of the charge he's been
18 indicted for."

19 MR. GEOLY: I see your point. I just don't know
20 that we can presume that that's what they're doing. But
21 I understand, Judge. I -- and I ---

22 THE COURT: Well, and that's why I was going to ask
23 them: Are you trying to determine the guilt or innocence
24 of the defendant as to two separate charges? Is that the
25 reason for your question? Or on two different crimes ---

1 MR. GEOLY: Well, and -- and ---

2 THE COURT: --- rather than ---

3 MR. GEOLY: --- let me maybe throw a hypothetical
4 back at you, Judge. What if there's one holdout that
5 they're trying to satisfy with an answer and -- and they
6 just want the answer, and now we're going to throw them
7 into a whole nother turmoil, almost stepping into their
8 province to, "Wait; you're doing it wrong."

9 THE COURT: No. If they've got one holdout, then
10 they don't have a verdict on the greater charge.

11 MR. GEOLY: Yes, sir.

12 THE COURT: Because they haven't reached a unanimous
13 verdict yet.

14 MR. GEOLY: Yes, sir.

15 THE COURT: They've got to reach a unanimous
16 verdict.

17 MR. GEOLY: Thank you, Judge.

18 MR. STUMBO: Right. And ---

19 THE COURT: So ---

20 MR. STUMBO: --- the -- the only reason why I threw
21 the other in there, Judge, is I -- I'm just looking at
22 your malice charge. You know, the general, big-picture
23 definition malice includes doing a wrongful act without
24 just cause or excuse and with an intent to inflict an
25 injury, it -- that -- the phrase they use.

1 And then, later on in the charge, it says (as read):
2 "Malice may also be inferred from a conduct showing total
3 disregard for human life," which they use.

4 So it's almost as if they're ---

5 THE COURT: Well, then ---

6 MR. STUMBO: --- they're trying to ---

7 THE COURT: --- yeah, you're right.

8 MR. STUMBO: --- they -- they're trying to ask: Is
9 one of these forms of malice superseding the other one or
10 vice versa?

11 THE COURT: Okay.

12 MR. STUMBO: And I -- I think the answer to that is
13 pretty easy: that that's -- that's not the case; that
14 they're both just different ---

15 THE COURT: Different ways ---

16 MR. STUMBO: --- ways to ---

17 THE COURT: --- of proving malice.

18 MR. STUMBO: --- prevent malice. And ---

19 THE COURT: Yeah.

20 MR. STUMBO: --- you can consider either one for
21 whatever weight you choose to give it.

22 THE COURT: Okay.

23 MR. STUMBO: And I think, at that point, you're not
24 stepping on their province. You're saying: Either --
25 either one is the law ---

1 THE COURT: Okay.

2 MR. STUMBO: --- and you can determine the weight of
3 either -- either method of malice. I think that's what
4 they're getting after ---

5 THE COURT: Okay.

6 MR. STUMBO: --- honestly.

7 THE COURT: All right.

8 MR. STUMBO: Because malice -- it -- it -- your
9 malice charge applies to both murder and attempted
10 murder.

11 THE COURT: Yeah.

12 MR. STUMBO: So ---

13 THE COURT: Are they ready?

14 (The Court went off the record at 5:07 p.m.)

15 (The Court went on the record at 5:09 p.m.)

16 (Whereupon, the jury entered the courtroom at 5:09
17 p.m.)

18 THE COURT: All right. Ladies and gentlemen,
19 welcome back. I've received your question: "Does total
20 disregard for human life supersede the intent to inflict
21 injury?"

22 If your question is to distinguish between express
23 malice and inferred malice, then, one does not supersede
24 the other. Because express malice and inferred malice
25 only deal with the way in which the state proves malice:

1 whether it is express or whether it is inferred through
2 other actions.

3 If your question is because you're trying to decide
4 the defendant's guilt or innocence on two separate
5 crimes, then you do not even consider the lesser crime
6 until you unanimously find the defendant not guilty of
7 the greater crime. I don't know if that answers your
8 question or not.

9 JURY FOREPERSON: (Gestured.)

10 THE COURT: Yes, sir.

11 JURY FOREPERSON: I think we're trying to figure
12 with intent and ---

13 JUROR: Disregard.

14 JURY FOREPERSON: --- disregard for human life, I
15 guess. Are those on par with each other, in terms of
16 being able to -- I -- I guess the verbiage is really what
17 we're ---

18 THE COURT: Well ---

19 JURY FOREPERSON: --- getting a little confused ---

20 THE COURT: --- intent ---

21 JURY FOREPERSON: --- about.

22 THE COURT: --- intent deals with the defendant's
23 state of mind. What did the defendant intend to do?
24 Disregard for human life deals with the defendant's
25 actions or the results of those actions. Was it with a

1 disregard for human life?

2 JURY FOREPERSON: Does that sort of answer your
3 questions?

4 THE COURT: I mean ---

5 JUROR: Your Honor, I -- I don't know if this is
6 appropriate. I -- you -- you know, I'm a practicing
7 attorney, also and a -- a civil litigator, so I'm a
8 little out of my depth in -- in criminal law. But in
9 reading over your instructions, I read that malice
10 aforethought requires the showing of an intent to do
11 harm. And then, further on down, it says or it can be
12 inferred by reckless disregard for human life.

13 THE COURT: Yeah. That deals with the way the state
14 proves malice.

15 JUROR: Okay.

16 THE COURT: There is no distinction whether they
17 prove it by a disregard for human life or whether they
18 prove it by the intent to inflict injury.

19 JUROR: So it could ---

20 THE COURT: That just ---

21 JUROR: --- be one or ---

22 THE COURT: --- deals with ---

23 JUROR: --- the other. It -- it doesn't have to be
24 -- because I had made a distinction -- and I think some
25 other people did too -- between a specific intent to do

1 harm -- to, for instance, the people in that vehicle --
2 and a total disregard for human life; that they are --
3 they're not the same thing. And -- and if a -- there
4 were -- was a requirement to show an intent to do harm to
5 the people -- any of the people in the car, even if was
6 an act of total disregard for human life, you would have
7 to show that specific intent to harm the people in the
8 car. But that apparently ---

9 THE COURT: Specific ---

10 JUROR: --- is not ---

11 THE COURT: Excuse me for interrupting you.

12 Specific ---

13 JUROR: Sure.

14 THE COURT: --- intent only applies to the charge of
15 attempted murder.

16 JUROR: Uh-huh.

17 THE COURT: Okay?

18 JUROR: (Nodded head up and down.)

19 THE COURT: So there is a requirement. As I said,
20 before you can find the defendant guilty of attempted
21 murder in this case, you have to show the he specifically
22 intended to murder Indigo Davis ---

23 JUROR: Thank you ---

24 THE COURT: --- whereas murder and the lesser-
25 included charges of attempted murder just require a

1 general intent. All right?

2 JUROR: I -- I think so. Again, under murder, we
3 don't need to show a specific intent if we have the
4 implied inference that ---

5 THE COURT: For murder, you do not have to show
6 specific intent. No. All right?

7 All right. I'm going excuse you to the jury room
8 and let you continue your deliberations.

9 Oh, wait a minute. Before we go, does the court
10 reporter -- I need -- we've got the foreperson's. Your
11 name, the ---

12 JUROR: Rudy Barnes, or Rudolph Barnes.

13 THE COURT: Okay. All right. I just need it for
14 the court reporter so she could put into the record who
15 was asking the question.

16 (Off the record briefly.)

17 THE COURT: All right. Yeah, you can go ahead and
18 go. Thank you.

19 (Whereupon, the jury exited the courtroom at 5:15
20 p.m.)

21 THE COURT: All right. Anything from the state?

22 MR. STUMBO: Judge, I think that adequately
23 instructed them on the law of South Carolina at the --
24 what you replied to them, which was the only one of these
25 that they're considering that requires specific intent is

1 attempted murder. The rest of them, it can be specific
2 or general intent.

3 THE COURT: Right.

4 MR. STUMBO: And I think that's what you said. I
5 think that accurately states the current law of the
6 State, Judge.

7 THE COURT: All right. Anything the defense wants
8 put on the record?

9 MR. GEOLY: Judge, just that I think they actually
10 had kind of a confused question that wasn't what you --
11 the solicitor was thinking or what Your Honor was
12 thinking. And I feel like we've kind of stepped on their
13 province. I'd just renew my, you know, earlier
14 objection.

15 I understand your position. I'm not trying to beat
16 a dead horse, but I just want to be noted for the record.

17 I -- I do think it's worth noting, too, Judge, both
18 Rudy Barnes, when he started addressing Your Honor, and
19 Your Honor, in replying back to him, said a disregard for
20 human life, when actually, the instruction -- and I think
21 the law -- is a total disregard for human life. So both
22 of you left out the word "total," when I think that's
23 actually appropriate. So I hate, you know, to think he'd
24 be going back to the room and look, if there's a
25 disregard for human life.

1 I think, actually, the rule is, it's a total
2 disregard for human life. So I'd just note that for the
3 record, Your Honor.

4 MR. STUMBO: Well ---

5 THE COURT: All right.

6 MR. STUMBO: -- I would say they're probably picking
7 apart the -- the words of the charge.

8 MR. GEOLY: I -- I hate ---

9 MR. STUMBO: And total ---

10 MR. GEOLY: --- to try to figure ---

11 MR. STUMBO: --- is clearly ---

12 MR. GEOLY: --- that out.

13 MR. STUMBO: -- in there so ---

14 THE COURT: All right. Anything -- we'll stand in
15 recess until we get a verdict.

16 MR. GEOLY: Yes, sir, Judge. Thank you.

17 THE COURT: Thank you.

18 (The Court went off the record at 5:17 p.m.)

19 (The Court went on the record at 5:24 p.m.)

20 THE COURT: All right. I understand that the jury
21 has reached a verdict. Anything from the state before we
22 bring the jury in?

23 MR. STUMBO: Nothing from the state, Your Honor.

24 THE COURT: Anything from the defense?

25 MR. GEOLY: Nothing from the defense, Your Honor.

1 THE COURT: All right. Let's go ahead and bring the
2 jury in.

3 (Off the record briefly.)

4 (Whereupon, the jury entered the courtroom at 5:26
5 p.m.)

6 THE COURT: All right. Ladies and gentlemen,
7 welcome back. Mr. Hill, I understand the jury has
8 reached your verdict; is that correct?

9 JURY FOREPERSON: We have, Your Honor.

10 THE COURT: Have you completed and signed all of the
11 verdict forms?

12 JURY FOREPERSON: We have.

13 THE COURT: All right. If you would please hand
14 them to the bailiff.

15 JURY FOREPERSON: (Complied.)

16 VERDICT OF THE JURY

17 THE COURT: All right. Regarding Indictment 2019-
18 GS-36-00359, in the *State of South Carolina v. Xzavier*
19 *Sharif Davis* -- excuse me; I apologize. (As read): Case
20 of the *State of South Carolina v. Xzavier Sharif Davis*,
21 regarding Indictment 2019-GS-36-00356, on the charge of
22 murder: We, the jury, find the defendant guilty of
23 murder. Regarding Indictment 2019-GS-36-00359, on the
24 charge of attempted murder, we, the jury, find the
25 defendant guilty of assault and battery of a high and

1 aggravated nature. On the -- on Indictment 2019-GS-
2 36-00357, on the charge of possession of a weapon during
3 the commission of a violent crime, we, the jury, find the
4 defendant guilty of possession of a weapon during the
5 commission of a violent crime.

6 Ladies and gentlemen, if these are your verdicts,
7 please signify by raising your right hand.

8 (Whereupon, all jurors raised their right hands.)

9 THE COURT: All right. Let the record reflect that
10 all jurors raised their right hand.

11 Any polling of the jury by the state?

12 MR. STUMBO: None from the state, Your Honor.

13 THE COURT: Any polling of the jury by the defense?

14 MR. GEOLY: No, sir, Your Honor.

15 THE COURT: All right.

16 All right. Ladies and gentlemen, that will conclude
17 your duties as jurors in this case, and I want to thank
18 you for your service. That will also conclude your duty
19 as jurors for this week. We don't have any other trials.

20 And I want to thank you for your service. I know
21 that performing jury duty is not anything fun; it's not
22 what anybody wants to do. But it is a vital part of our
23 judicial system. And you've done it very consciously,
24 and I want to thank you for that.

25 You've got a one-year disqualification from serving

1 on jury duty. You've got a three-year exemption -- I
2 hope you don't exercise your exception because we need
3 good jurors. And I want to thank for your service.

4 You're free to go for the remainder the day, and I
5 hope everybody has a good evening. Thank you very much.

6 (Whereupon, the jury exited the courtroom at 5:29
7 p.m.)

8 (Off the record briefly.)

9 THE COURT: All right. Any posttrial motions at
10 this time?

11 MR. GEOLY: Please the Court, Judge, I would renew
12 my previous motions, Your Honor, and move for you to
13 vacate this verdict and set a new trial.

14 THE COURT: All right. Your motion is noted. I'm
15 going to deny it.

16 MR. GEOLY: Yes, Judge.

17 THE COURT: All right. Anything else?

18 MR. GEOLY: (No verbal response.)

19 THE COURT: All right. Are we ready to go ahead
20 with sentencing?

21 MR. STUMBO: Yes -- yes, sir, we are. We're ready
22 to proceed. I think we have the -- the sentencing sheets
23 that are appropriate ---

24 THE COURT: You have the sentencing sheets? All
25 right.

1 MR. STUMBO: Yes, sir.

2 THE COURT: Let me see.

3 MR. STUMBO: Sheriff, you want to come over here?

4 (The Court went off the record at 5:30 p.m.)

5 (The Court went on the record at 5:34 p.m.)

6 MR. STUMBO: Judge, I think we're ready to proceed
7 with sentencing.

8 THE COURT: I mean ---

9 MR. STUMBO: If I may ---

10 THE COURT: --- I need the sentence sheets.

11 MR. STUMBO: All right.

12 THE COURT: Oh, you've got them.

13 MR. STUMBO: Yes, sir. If I may approach?

14 THE COURT: All right.

15 MR. STUMBO: I don't know. Do we need to wait on
16 the clerk? I'm not sure.

17 (Off the record briefly.)

18 THE COURT: All right. What I generally do, I'll
19 certainly listen to defense counsel, Mr. Geoly, the
20 defendant, or anybody that wants to speak on his behalf.
21 And then I'll listen from the state, victim or victims
22 and then -- if they wish. And then I'll ask for his
23 prior record, and then I'll impose the sentence. Okay?

24 MR. STUMBO: Yes, sir.

25 THE COURT: All right. Mr. Geoly, anything in

1 mitigation on any of these charges?

2 MR. GEOLY: Your Honor, my client is 28 years old
3 now. He was 26 years old at the time that this occurred.
4 As you may or may not realize, Your Honor, he was working
5 full-time -- actually, mostly overtime -- at Georgia-
6 Pacific; had a great job; was the primary wage-earner for
7 his family; took care of both his stepson, Iven, who was
8 like a son to him, and -- and his wife. And they -- as
9 you know, they have property there that's actually in her
10 dad's name. But he paid the down payment; he made the
11 payments. He totally supported his family.

12 He has been away from his family for the majority of
13 the last two years, Judge. He's been out on bond,
14 actually, about the last 3 1/2 weeks. They're were no
15 incidents while he was out on bond.

16 He had no real incident prior to this happening. I
17 think he may have a paid fine for possession of marijuana
18 on his record. That's, I think, the only thing that I'm
19 aware of that -- that has ever been on his record. He
20 took responsibility for that.

21 Judge, I -- I know there's a tendency, not
22 necessarily to punish, but to not give a -- a individual
23 that takes a trial credit for taking responsibility for
24 their actions. I remember when I was cutting my teeth,
25 you know, 25 years ago. Judge Cottingham was before us,

1 and Judge Rushing was the other judge here a lot. But I
2 can remember Judge Cottingham pulling some attorneys in
3 the and saying: "Listen, Supreme Court says -- the
4 Constitution says I can't hold it against him for -- for
5 taking a trial. But if he takes the stand and he lies
6 and they find him guilty, well, then, that's a different
7 story. And I -- I can punish him for that."

8 I -- I'd like to point out that here, he didn't
9 belabor anything with anybody. He -- he, you know,
10 didn't try to change the game or act like he didn't do
11 this; they could've been somebody else shooting. That
12 certainly wasn't our position.

13 And -- and certainly, you know, maybe I erred. But
14 I felt like we were in a good position, after the state's
15 case, that they had maybe not carried their burden. So
16 we talked, and he -- he decided not to offer any
17 evidence.

18 But he certainly didn't misrepresent anything to
19 this Court. He did take his constitutionally -- right to
20 a jury trial. And -- and that's what he did. He didn't
21 misrepresent anything in this Court. He didn't try to
22 hide the ball or say he had done something that he didn't
23 do or didn't remember something that he didn't remember.

24 He has no, you know, real record, Judge, certainly
25 no general-sessions criminal history and, prior to this,

1 was working hard to care for this family. We -- we would
2 ask you to, you know, temper justice with mercy and
3 impose the minimum sentence.

4 Your Honor, the jury has ruled. I mean, clearly,
5 they -- they thought that he committed this heinous act.
6 But I would point out that -- that, you know, the true
7 victim of this, other than society and Iven, are Indigo,
8 who -- who does love her husband, who doesn't think he
9 was trying to kill her, and -- and would like him to come
10 home at some point. So we would ask that you do temper
11 justice with mercy -- mercy and consider giving him the
12 minimum, which obviously as Your Honor knows, is a -- is
13 a time that is -- is beyond what he's already lived. I
14 mean, he -- at 30 years, he's going to be serving two
15 more years than he's been on this planet.

16 And as you know, Your Honor, that's day-for-day.
17 That's not one of these 85 percent crimes. I mean, you
18 have to give him at least 30 years, and he'll do at least
19 30, not any kind of 85 percent or anything like that.

20 So we would ask that you consider running these
21 concurrent and just giving him the -- the minimum, which,
22 again, is -- is over the life that he's lived at this
23 point. And certainly, the victims, I don't think, would
24 -- would be dissatisfied with that. And his -- I hope,
25 at this point, his lack of a criminal record will count

1 for something, Your Honor.

2 THE COURT: All right.

3 MR. GEOLY: All right.

4 THE COURT: Mr. Davis, anything you want to say?

5 (Off the record briefly.)

6 THE DEFENDANT: Hey, Your Honor, I just ask that you
7 give justified time on the charge and make -- make -- you
8 know, so I can be able to get back home to my family.

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

10 THE DEFENDANT: All right. Thank you.

11 THE COURT: All right. Anything else from the
12 defense?

13 MR. GEOLY: No, sir, Your Honor. Obviously, I would
14 ask for that. That -- I think it -- Your -- Your Honor,
15 you know, would give that as a -- just a natural course
16 of action. He's served about two years and maybe three
17 months, and I'd just ask you to give the credit for the
18 time served that he's entitled to.

19 THE COURT: All right.

20 MR. GEOLY: Thank you, Judge.

21 THE COURT: Any victims wish to speak or anything
22 from the state?

23 MR. STUMBO: Judge, and as heartbroken as I am about
24 this -- and I think you could see, when Indigo was on the
25 stand the other day -- what Mr. Geoly said is the

1 defendant never took the stand and -- and lied. He
2 exercised his constitutional right to not testify. And
3 that's his right, Judge.

4 But the influence that he now has or seems to have
5 over Indigo has made it extraordinarily difficult for us
6 and the sheriff's office to move forward on this case.
7 Mr. Daniel and Mr. Bentley, they went out there to the
8 house a couple weeks ago. She was very hostile; on the
9 state, the same thing.

10 So it doesn't surprise me that she's not here,
11 speaking on behalf of her son today. I think her parents
12 are very hurt by this whole thing, and they have stayed
13 away today.

14 And, Judge, who we have left standing for this child
15 is my office, myself; we're fighting for this child and
16 justice -- and the sheriff, who's behind me. I thought
17 him testifying in this case was very appropriate because
18 of not only his involvement, being, really other than
19 uniform deputies, the first one on scene, but someone who
20 was very, very involved and concerned about what had
21 happened to Iven in this case.

22 And it breaks my heart that there's no family
23 members sitting here on their behalf. I see Mr. Logan
24 there, who -- who's been very vocal on social media about
25 -- about standing for this -- this child. And he's here,

1 but -- but no family members, Judge. And I think that
2 speaks volumes about the emotional conflict that this
3 defendant has put in Indigo's life.

4 We had two jail letters, Judge, that if he had taken
5 the stand, I would've put into evidence in
6 cross-examination. He sent two letters from the jail to
7 Indigo, Judge, and said that, "I can't believe you did
8 what you did at the hospital." Essentially, it's her
9 fault.

10 And, Judge, that -- that to me -- and I -- it -- I
11 think he was wise not to take the stand because I
12 would've confronted him with those letters he sent from
13 the jail, basically making it look like Indigo is the one
14 who caused this event, which is just unbelievable to me,
15 Judge. It shows a lack of remorse.

16 I -- I -- I've been waiting because he really can't
17 -- I know Mr. Geoly has advised him to this point: "You
18 can't really say anything about remorse if it's a trial."
19 I get that.

20 But I didn't hear any remorse even today, Judge, not
21 one ounce; not when he was arrested by the sheriff's
22 department; not when he was served with the murder
23 warrants; and not today. He's still looking at me like
24 he wants to hurt me, like it's my fault or the sheriff's
25 office. And, Judge, to me -- that to me says volumes

1 about who this -- this defendant is.

2 His record is fairly minimal: malicious injury to
3 property in 2010; public disorderly, 2013; alcohol
4 violation, in '14; and a driving under suspension, '15.
5 So we don't have any substantial criminal record. But I
6 -- I just cannot get over the lack of remorse in this
7 case, Judge, for what he did to this child. It -- it's
8 -- it's just staggering to me.

9 Judge, the sheriff's department brought me this
10 today. And I think it is for sentencing. Obviously, I'd
11 never show it to a jury. But the attorney general and
12 SLED do these renderings of children that go missing or,
13 you know, they're kidnapped for purposes of trying to
14 find them later. And obviously, that's not the purpose
15 of this.

16 But they did, based on his picture, the -- the SLED
17 and attorney general's office artists that do these
18 things, show this picture of what Iven would be at age
19 18. And that's what this is about, Judge. I heard Mr.
20 Geoly say several times that if this was about Iven, that
21 Indigo would be here, in his closing. Judge, there's no
22 question, this is about Iven. And quite honestly, I
23 think the jury reached the right decision on finding a
24 guilt -- a -- a guilty verdict on the ABHAN.

25 But that one to me, because Indigo has been so

1 difficult for us, quite frankly, Judge, I think this is
2 about this little boy here, who should be now in the
3 third grade or going into the fourth grade. The COVID
4 took us a while to get this case to trial.

5 Judge, I -- I said enough today. I've said enough
6 in -- in my closing. You -- Your Honor heard that. I
7 would like for the sheriff to have an opportunity to
8 address Your Honor ---

9 THE COURT: No. I mean ---

10 MR. STUMBO: --- I think, as the elected sheriff.

11 THE COURT: --- just the state or the victims'
12 family.

13 MR. STUMBO: Yes, sir.

14 THE COURT: So I can't -- I can't hear from law
15 enforcement or any ---

16 MR. STUMBO: That's fine. And I -- I will tell you,
17 just, Judge, we are on the same team on this. And quite
18 honestly, Judge, I've never been one to ask a court to
19 give a particular sentence. That's -- that's, I believe,
20 out of my lane, so to speak.

21 Judge, I believe that you were elected to the
22 position you're in. You've been in it for many years.
23 And I trust Your Honor's judgment. I believe you've made
24 fair rulings throughout this case to both sides. You've
25 instructed the law. And I trust you to -- to render a

1 sentence in this case, Judge.

2 Based on the horrific nature of the crime and what
3 has been lost and the lack of remorse from this man,
4 sentence him appropriately, Judge.

5 THE COURT: All right.

6 MR. STUMBO: That's all from the state.

7 THE COURT: Any other prior criminal record that you
8 haven't already referenced?

9 MR. STUMBO: That is -- that is all, Judge.

10 THE COURT: All right.

11 MR. STUMBO: Judge, just -- just one final thing --
12 and I don't know if I articulated this very well. But
13 obviously, the range is 30 to life. When there's remorse
14 and responsibility taken, I think you go towards the
15 lower end of that range. When there's not, I think it --
16 it moves up. And, Judge, I -- I'll leave it at that and
17 leave it in your discretion, Judge.

18 THE COURT: All right.

19 (Off the record briefly.)

20 SENTENCE OF THE COURT

21 THE COURT: All right. Mr. Davis, you have been
22 found guilty by a jury trial on the charges of murder,
23 assault and battery of a high and aggravated nature and
24 possession of a weapon during the commission of a violent
25 crime. On the charge of murder, the sentence of the

1 Court is that you be confined to the State Department of
2 Corrections for 35 years. On the charge of assault and
3 battery of a high and aggravated nature, the sentence of
4 the Court is that you be confined to the State Department
5 of Corrections for 20 years. On the charge of possession
6 of a weapon during the commission of a violent crime, the
7 sentence of the Court is that you be confined to the
8 State Department of Corrections for 5 years. All
9 sentences will run concurrently. You'll be given credit
10 for any time served thus far.

11 That's all.

12 MR. GEOLY: Thank you, Judge.

13 THE COURT: All right. Thank you.

14 (Whereupon, the proceeding was concluded at 5:52 p.m.)

15 --- END OF TRANSCRIPT OF RECORD ---
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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

STATE

VS.

XZAVIER SHARIF DAVIS, JR.

AKA: XZAVIER SHARIF DAVIS, JR.

Race: Black Sex: M Age: 28

DOB: [REDACTED]/1993 SS#: [REDACTED]-0978

Address: [REDACTED]

City, State, Zip: Newberry, SC 29108

DL# [REDACTED] SID# SC01935602

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David M. Stumbo 72105

David M. Stumbo, Solicitor SC Bar # Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 35 days/months/years Time Served ☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

8/26/2021

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS36-00356

A/W#: 2019A3610100161

Date of Offense: 04/20/2019

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

*30 yrs to Life
Without Parole*

☒ CONVICTED OF or ☐ PLEADS

STATE VS. XZAVIER SHARIF DAVIS, JR.INDICTMENT/CASE#: 2019GS36-00356☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$ _____
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____ Beginning	
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL		\$ <u>128.75</u>

 Clerk of Court/Deputy Clerk: Beverly J. Bruchner
 Court Reporter: Maryann Rivers

 Presiding Judge: Maryann Rivers
 Judge Code: 2148
 Sentence Date: Aug 26, 2021

Ryan Dickert

WITNESSES

Newberry County Sheriff's Department

WARRANT NUMBER

2019A3610100161

TRUE BILL

Wade Dickert

Foreman of the Grand Jury

Date: *6/21/19*

VERDICT

Guilty

Pat H Hill 8/26/21

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

June Term, 2019

Indictment # 2019-GS-36-00356

THE STATE

vs.

XZAVIER SHARIF DAVIS

INDICTMENT FOR

Murder

SC Code: § 16-03-0010

CDR: 0116

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

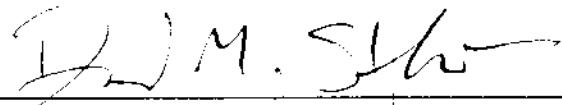
INDICTMENT FOR

**Murder
§16-03-0010**

At a Court of General Sessions, convened on the 21st day of June, 2019, the Grand Jurors of Newberry County present upon their oath:

That Xzavier Sharif Davis, on or about April 20, 2019, in Newberry County, ^{did} willfully, feloniously, and with malice aforethought kill one Iven James Caldwell by means of shooting and that Iven James Caldwell did die as a proximate result thereof on or about April 22, 2019 in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



David M. Stumbo
Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

STATE

VS.

XZAVIER SHARIF DAVIS, JR.

AKA: XZAVIER SHARIF DAVIS, JR.

Race: Black Sex: M Age: 28

DOB: 1993 SS#: -0978

Address: 633 Cherry Lane

City, State, Zip: Newberry, SC 29108

DL#* SC01935602 SID# SC01935602

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS36-00357

A/W#: 2019A3610100156

Date of Offense: 04/20/2019

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

5 yrs

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David M. Stumbo 72105

David M. Stumbo, Solicitor SC Bar # Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

8/26/2021

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Beverly J. Behnen
Nayana Davis

Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

Margaret Culbert
2148
Aug 26, 2021

Ryan Dickert

WITNESSES

Newberry County Sheriff's Department

WARRANT NUMBER

2019A3610100156

TRUE BILL

Wade Danks

Foreman of the Grand Jury

Date: 6/21/19

VERDICT

GUILTY

Dan Hines 8/26/21

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

June Term, 2019

Indictment # 2019-GS-36-00357

THE STATE

vs.

XZAVIER SHARIF DAVIS

INDICTMENT FOR

Possession Of A Weapon During The Commission Of A

Violent Crime

SC Code: § 16-23-0490

CDR: 0549

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

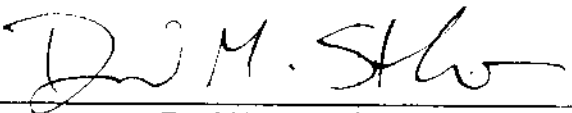
INDICTMENT FOR

**Possession Of A Weapon During The Commission
Of A Violent Crime
§16-23-0490**

At a Court of General Sessions, convened on the 21st day of June, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Xzavier Sharif Davis, did on or about April 20, 2019, in Newberry County, South Carolina, while committing the violent crime(s) of murder, attempted murder(s) and/or any lesser included violent crime(s) defined in Section 16-1-60, possess a firearm. All in violation of 16-23-0490, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



David M. Stumbo
Solicitor

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY) INDICTMENT # 2019-GS-36-00357

The State of South Carolina)

vs.)

Xzavier Sharif Davis,)

Defendant.)

VERDICT RE:
POSSESSION OF A WEAPON
DURING THE COMMISSION
OF A VIOLENT CRIME

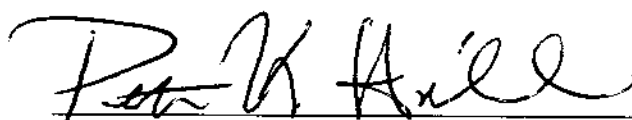
(Check one)



We, the jury, find the defendant **guilty** of Possession of a Weapon
During the Commission of a Violent Crime.



We, the jury, find the defendant **not guilty** of Possession of a Weapon
During the Commission of a Violent Crime.



Peter K. Hill, Foreperson

August 26, 2021
Newberry, South Carolina

General Sessions Tracking Sheet
Indictment # 0000GS36

Name: Davis, Xzavier Sharif

Warrant/Ticket #: 2019A3610100156

AKA:

Date of Arrest: 04/20/2019

Addr: 50 Powell Court
Newberry, SC 29108

Date of Offense: 04/20/2019

Date Rcv by Clerk 04/23/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

SSN# 250-91-0978

Counts: Code: 0549/Weapons / Poss. weapon during
violent crime, if not also sentenced to life
without parole or death

Sex: M Race: B

DOB: [REDACTED] 1993

DL# SC/ [REDACTED]

Indictment # 0000GS36

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 8-26-2021

- Disposition ☒ 1. Guilty plea
☐ 2. Trial -- guilty
☐ 3. Trial -- not guilty
☐ 4. Dism/Not Pros/Pros Ended
☐ 5. Judicial Commitment
☐ 6. Judicial Dismissal
☐ 7. Remanded
☐ 8. Dismissed at Prelim
☐ 8. No Bill
☐ 9. Failure to Appear
☐ 10. Other

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: _____

Solicitor: Payton Davis

Counts: _____ Code: _____

Sentence: _____

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

STATE

VS.

XZAVIER SHARIF DAVIS, JR.

AKA: XZAVIER SHARIF DAVIS, JR.

Race: Black Sex: M Age: 28

DOB: 1993 SS#:

Address:

City, State, Zip: Newberry, SC 29108

DL#* SID# SC01935602

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS36-00359

A/W#: 2019A3610100159

Date of Offense: 04/20/2019

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

0-20 yrs

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Assault & Battery of a High & Aggravated Nature

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David M. Stumbo 72105

David M. Stumbo, Solicitor SC Bar # Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 20 days/months/years Time Served

☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

8/26/2021

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Beverly J. Brannen
Maryann News

Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

Margaret Culbert
2148
Aug. 26, 2021

Ryan Dickert

WITNESSES

Newberry County Sheriff's Department

WARRANT NUMBER

2019A3610100159

TRUE BILL

Wade Danton

Foreman of the Grand Jury

Date: 6/21/19

VERDICT

GUILTY AS TO ABHARU

Perth Hill 8/26/21

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

June Term, 2019

Indictment # **2019-GS-36-00359**

THE STATE

vs.

XZAVIER SHARIF DAVIS

INDICTMENT FOR

Attempted Murder

SC Code: § 16-03-0029

CDR: 3410

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

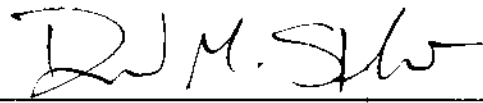
INDICTMENT FOR

**Attempted Murder
§16-03-0029**

At a Court of General Sessions, convened on the 21st day of June, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Xzavier Sharif Davis, did on or about April 20, 2019, in Newberry County, South Carolina, did unlawfully, with malice aforethought, either express or implied, and with the intent to kill, attempted to kill Indigo Caldero Penny. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



David M. Stumbo
Solicitor

COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT
INDICTMENT # 2019-GS-36-00359

VERDICT
RE: ATTEMPTED MURDER

General Sessions Tracking Sheet
Indictment # 0000GS36

Name: Davis, Xzavier Sharif

AKA:

Addr: [REDACTED]
Newberry, SC 29108

SSN# [REDACTED]-0978

Sex: M Race: B

DOB: [REDACTED]/1993

DL# [REDACTED]

Warrant/Ticket #: 2019A3610100159

Date of Arrest: 04/20/2019

Date of Offense: 04/20/2019

Date Rcv by Clerk 04/23/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 3410/Assault / Attempted Murder

Indictment # 0000GS36

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 8-26-2021

- Disposition ☒ 1. Guilty plea
☐ 2. Trial -- guilty
☐ 3. Trial -- not guilty
☐ 4. Dism/Not Pros/Pros Ended
☐ 5. Judicial Commitment
☐ 6. Judicial Dismissal
☐ 7. Remanded
☐ 8. Dismissed at Prelim
☐ 8. No Bill
☐ 9. Failure to Appear
☐ 10. Other

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Defense Atty: _____

Counts: _____ Code: _____

Sentence: _____

Court Reporter: _____

Solicitor: Taylor Daniel

RECEIVED

SEP 07 2021

SC Court of Appeals

I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a
Copy of the original on file in this office.
SEP 03 2021
Elizabeth P. Folk
Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2019-GS-36-000356
2019-GS-36-000357
2019-GS-36-000359

The State,

Respondent,

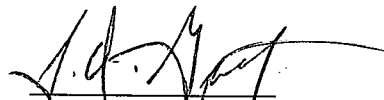
v.

Xzavier Sharif Davis,

Appellant.

NOTICE OF APPEAL

Xzavier Sharif Davis appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Benjamin H. Culbertson on August 26, 2021.



Stephen Drew Geoly
222 Phoenix Street
Greenwood, South Carolina 29646
(864) 223-3352
Attorney for Appellant

September 3, 2021

Other Counsel of Record:
David M. Stumbo
Solicitor
Post Office Box 516
Greenwood, South Carolina 29649
(864) 942-8800
Attorney for Respondent

FILED
NEWBERRY COUNTY
2021 SEP . 3 PM 2:46
ELIZABETH P. FOLK
CLERK OF COURT

RECEIVED

Oct 20 2021

SC Court of Appeals



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1345

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 20, 2021

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The State v. Xzavier Sharif Davis - Appellate Case No. 2021-000982

Dear Ms. Kitchings:

Our office has been notified by former trial counsel Stephen D. Geoly that the family of Xzavier Davis has retained private counsel, Rauch Wise, to handle his appeal. It is also our understanding from Mr. Geoly that Rauch Wise will be making the request to order the transcript from the court reporter since he has been retained to handle the appeal.

Consequently, given the information above, we are closing our file in this case. If you need additional information, or have any questions or concerns, please contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/ab

cc: Stephen D. Geoly, Esquire
C. Rauch Wise, Esquire
Xzavier Sharif Davis, # 385846

RECEIVED

Jan 13 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000982
Trial Court Case No. 2019GS3600356, 600357, 600359

The State Respondent,

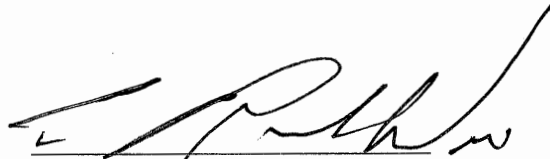
v.

Xzavier Sharif Davis Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 10th, 2023



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant

