

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE DEMARCUS GRIER,

APPELLANT.

APPELLATE CASE NO. 2021-000444

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

DEFENDANT’S EXHIBIT NO. 1 (VIDEO OF DEFT. INTERVIEW)

JACLYNN MCKAY - DIRECT

1 fulfill the request of ownership DNA, essentially trying to
2 figure out who possibly wore the gloves, and those swabs
3 were forwarded to the DNA analyst for further analysis.

4 Q Thank you. Did you prepare a report of your findings
5 and what you did?

6 A Yes, I did.

7 Q The bailiff is going to show you what has been marked
8 as State's Exhibit 133. I'd ask you to take a look at that.
9 Is that a copy of your report?

10 A Yes, it is.

11 Q And that's a complete copy and an accurate copy of the
12 report you prepared in this case after you did your work for
13 SLED; is that right?

14 A That's correct.

15 THE COURT: Your Honor, I would move State's Exhibit
16 133 into evidence.

17 MR. FRICK: No objection.

18 THE COURT: All right. Introduced.

19 (The report was received as State's 133.)

20 MS. COLLINS: No further questions for this witness,
21 please answer any questions of the defense.

22 CROSS EXAMINATION

23 BY MR. FRICK:

24 Q Agent McKay, on the left glove you tested three spots,
25 correct?

JACLYNN MCKAY - CROSS

1 A That's correct.

2 Q And you didn't randomly pick three spots, these were
3 spots that you as a serologist believed could have been
4 blood, correct?

5 A That's correct.

6 Q And all three spots came back negative, correct?

7 A That's correct.

8 Q Okay. You did not test the right glove.

9 A That's correct.

10 Q You did not see anything you suspected as blood?

11 A That's correct.

12 MR. FRICK: Thank you. That's all of the questions I
13 have.

14 MS. COLLINS: Nothing further.

15 THE COURT: All right. Thank you, ma'am, you can step
16 down, you're going to be free to leave. Call your next
17 witness.

18 MS. COLLINS: The next witness, Your Honor, is Donna
19 Money from SLED.

20 The witness, DONNA MONEY, was first duly sworn and
21 Testified as follows:

22 DIRECT EXAMINATION

23 BY MS. COLLINS:

24 Q Good morning. Would you please state your name?

25 A My name is Donna Money.

DONNA MONEY - DIRECT

1 Q And what is your occupation?

2 A I'm a DNA analyst in the DNA case work department of
3 the South Carolina Law Enforcement Division.

4 Q How long have you worked with SLED?

5 A Approximately eight and a half years.

6 Q And all of that time, has that been with the DNA
7 department there at SLED?

8 A Yes.

9 Q And can you tell us about your education and training
10 to work there in SLED, and -- what is your actual title?

11 A May I start with my education?

12 Q Yes. But I just want -- I didn't finish my question,
13 that's something I forgot to ask you what your title is.
14 What do you actually do there at SLED?

15 A I'm a DNA analyst.

16 Q Yes. Please start with your education to do that work.
17 Thank you.

18 A I have a Bachelors Degree in Forensic Science from the
19 Pennsylvania State University. Upon starting my employment
20 at SLED I underwent a year and a half long training program
21 under a qualified analyst. This training program included
22 but was not limited to training samples, competency and
23 practice samples, report writing, exams, oral exams, mock
24 courtroom testimonies and supervised casework.

25 Q Have you ever been qualified as an expert witness to

DONNA MONEY - DIRECT

1 testify in a court of law?

2 A Yes.

3 Q In what field?

4 A Forensic DNA analysis.

5 Q How many times?

6 A Approximately 35.

7 MS. COLLINS: Your Honor, at this time we offer the
8 witness as an expert witness in the field of forensic DNA
9 analysis.

10 MR. FRICK: No objection.

11 THE COURT: All right. So qualified.

12 Q Ms. Money, did you examine evidence in the case
13 currently before the Court?

14 A Yes.

15 Q You examined evidence for the Lancaster County
16 Sheriff's Department; is that right?

17 A Yes.

18 Q What was the SLED lab number assigned to that analysis?

19 A The SLED lab number was L14-08100.

20 Q And was the subject identified in that case?

21 A There was a subject listed.

22 Q Who is that?

23 A The name provided was Jermaine Grier.

24 Q Was there a victim listed?

25 A Yes.

DONNA MONEY - DIRECT

1 Q And who was that?

2 A The name provided was Roger Lowery.

3 Q What items were submitted to you through your analysis?

4 A May I consult my report?

5 Q Please. Do you have a copy of it there to refresh your
6 memory?

7 A Yes. There were two sets of swabs submitted from
8 gloves as evidence, and a known standard, a set of buccal
9 swabs from Jermaine Grier.

10 Q And did you receive the items, the two sets of swabs
11 from the jobs from Jaclynn McKay of SLED?

12 A Yes. She was the individual that processed the gloves
13 and passed the swab sets off to our evidence control
14 department.

15 Q You prepared a report dated March 15th of 2017; is that
16 correct?

17 A Yes.

18 Q And in the report you noted that you analyzed, as
19 stated, the buccal swabs of Jermaine Grier. Are those like
20 basically swabs, like long stemmed Q-tips but the swabs are
21 taken from the interior of the cheek of someone so that DNA
22 can be collected?

23 A Yes. A buccal swab is a cotton swab that can be rubbed
24 on the inside of a person's cheek to collect the skin cells
25 in there.

DONNA MONEY - DIRECT

1 Q Why is it called a buccal? It's b-u-c-c-a-l; is that
2 right?

3 A It's just a term that was coined.

4 Q For the interior cheek?

5 A Yes.

6 Q And the swabs of the interior are both gloves you also
7 examined?

8 A Yes.

9 Q And what, if any, conclusion did you make from your
10 analysis?

11 A May I read from my report?

12 Q Yes.

13 A The DNA profile developed from SLED item 5.1, which
14 were swabs from the interior of the glove, is a mixture of
15 at least three individuals. Due to the inability to
16 calculate a statistic no further interpretation will be
17 offered.

18 Q So at that time in March of 2017, March 15th of 2017,
19 the date of that report, other than identifying that there
20 was a mixture of at least three individuals on those gloves
21 you weren't able to go any further in terms of identifying
22 whether or not they were a match to Mr. Grier; is that
23 right?

24 A That's correct.

25 Q Did you at that time return any remaining evidence to

DONNA MONEY - DIRECT

1 the agency, the sheriff's department? That was noted at the
2 end of your report.

3 A Yes. Any remaining evidence and/or packaging would
4 have been returned to the requesting agency.

5 Q All right.

6 (Break in proceedings.)

7 Q The bailiff is handing you a document that's been
8 marked as State's Exhibit Number 134 for identification at
9 this time. I ask you, do you recognize that document?

10 A Yes.

11 Q Is that a complete and accurate copy of your report
12 that you prepared in March of 2017 as you just testified to?

13 A Yes.

14 MS. COLLINS: I move State's 134 into evidence.

15 MR. FRICK: No objection.

16 THE COURT: All right. Without objection.

17 (The report was received as State's 134.)

18 Q Did you receive a request from my office to do further
19 analysis on that mixture, from the solicitor's office here
20 in the Sixth Judicial Circuit in Lancaster County?

21 A Yes. There was a conversation between myself and your
22 office regarding reevaluating the profiles with new
23 technology we have brought online.

24 Q Tell me about the new technology.

25 A It a computer software program call STRmix. It is a

DONNA MONEY - DIRECT

1 program that we are able to use as an assistance program
2 when it comes to interpreting single source and mixture
3 profiles developed for from various items of evidence.

4 Q So this is a new technology that assists particularly
5 when you have a mixture of DNA profiles?

6 A Yes.

7 Q And because in 2017 -- well, let me back up. In 2017
8 when you completed your report that we just submitted into
9 evidence, did y'all have that technology at that time?

10 A Not at that time. STRmix was brought online in the
11 fall of 2018.

12 Q All right. Now, are you trained in the use of STRmix
13 as well?

14 A Yes.

15 Q All right. And pursuant to the request of our agency
16 for you to do further analysis utilizing that new technology
17 through STRmix, did you do so?

18 A Yes.

19 Q And what, if anything, were you able to determine?
20 Well, first of all let me back up and say, what samples did
21 you consider in that? What samples had been submitted to
22 you?

23 A The two items of evidence previously submitted, SLED
24 item 5.1, swabs from interior glove, and SLED item 8.1,
25 swabs of interior glove, were being considered for

DONNA MONEY - DIRECT

1 reevaluation.

2 Q So you had still the swabs from the gloves. Did you
3 still have the profile that -- the DNA profile that had been
4 developed previously by your department by you regarding --
5 from the buccal swab of the defendant, Jermaine Grier?

6 A Yes. The DNA profiles developed from both items were
7 the profiles that were going to be reevaluated. There was
8 no additional analysis performed in the lab.

9 Q Now, were additional samples -- buccal swab samples
10 submitted to you for the STRmix analysis?

11 A Yes.

12 Q Were those what are called exclusionary samples?

13 A They were listed as elimination standards.

14 Q Elimination, thank you. What is an elimination
15 standard?

16 A An elimination standard, or an elimination individual,
17 is typically one that is expected to be present on an item.
18 For instance, the owner of a car, you would expect them to
19 be on their steering wheel. So if a mixture profile was
20 developed it is helpful to have a known standard from that
21 person to compare to see if there's anything other than them
22 present.

23 Q And so in this case who do you receive elimination
24 standards from?

25 A I received a dried blood standard from James Hood. I

DONNA MONEY - DIRECT

1 received buccal swabs from Angela Hood, and I received
2 buccal swabs from LH [REDACTED]

3 Q And were you able to develop DNA profiles from all
4 three of those, being the dried blood standard from James
5 Hood, the buccal swab of Angela Hood, and the buccal swab of
6 LH [REDACTED]

7 A Yes.

8 Q And both Angela Hood and LH [REDACTED] were
9 elimination samples; is that right?

10 A Yes. They were listed as elimination.

11 Q Now, the dried blood standard that was submitted, did
12 y'all -- was it submitted to your agency in the form of a
13 dried blood standard from the victim, James Hood, or was it
14 as a tube of blood that had not been dried?

15 A The known standard was originally submitted as liquid
16 blood, and then a portion of it was placed on a piece of
17 absorbent paper to create a dried blood standard.

18 Q Thank you. And we've already offered the SLED chain of
19 custody into evidence, the certified chain of custody
20 showing the submission of that blood from the victim, James
21 Hood. Let me ask you, were you able to utilize the STRmix
22 technology to come up with a new conclusion in terms of your
23 comparison or DNA analysis?

24 A The DNA profiles developed from the evidence were
25 reevaluated using the STRmix software in this case.

DONNA MONEY - DIRECT

1 Q They were reevaluated?

2 A Yes.

3 Q And what was your conclusion?

4 A May I read from my supplemental report?

5 Q Please.

6 A The DNA profile developed from items 5.1 and 8.1 were
7 mixtures, it was at least four individuals. Due to the
8 potential relatedness of the contributors no conclusions
9 will be offered regarding James Hood, Jermaine Grier, Angela
10 Hood and LH [REDACTED] as possible contributors to the
11 mixtures.

12 Q Are you aware as part of your training on STRmix
13 technology how many counties in South Carolina the new
14 STRmix technology has been accepted in?

15 A There have been 13 counties in this state where
16 testimony has been provided related to STRmix.

17 Q So you said that you were not able to, due to the
18 relationship between the parties who contributed the
19 samples, provide any further analysis; is that right?

20 A It was due to the potential relatedness up to the
21 individuals. It was determined that James Hood, Angela Hood
22 and LH [REDACTED] were related to one another and that
23 impacts mixture interpretation.

24 Q And because they're related to each other they have
25 genetic similarities?

DONNA MONEY - DIRECT

1 A Yes.

2 Q And because of those genetic similarities on their DNA
3 profile you wouldn't be able to separate them out even with
4 the new improved STRmix technology; is that right?

5 A It makes it more difficult since individuals are
6 related so closely, an I believe mother, father and child,
7 that the amount of sharing that is going on, it is difficult
8 to determine who actually may be providing the DNA on the
9 evidence.

10 Q You prepared a report noting that conclusion; is that
11 right?

12 A Yes.

13 Q The bailiff is handing you -- is going to hand you
14 what's been marked as State's Exhibit 135. And I would ask
15 you, is that -- do you recognize that?

16 A Yes.

17 Q And is that a complete and accurate copy of the report
18 that you prepared in December of 2019 as to your conclusions
19 in this case --

20 A Yes.

21 Q -- that you just testified to?

22 A Yes.

23 MS. COLLINS: I would move to submit 135 into evidence.

24 MR. FRICK: No objection.

25 THE COURT: All right. Without objection.

DONNA MONEY - CROSS

1 (The report was received as State's 135.)

2 Q There is no further analysis that you could have done
3 to try to break apart that mixture with the technology we
4 have available at this time; is that right?

5 A That's correct.

6 MS. COLLINS: Thank you so much for your effort, please
7 answer any questions that the defense has.

8 CROSS EXAMINATION

9 BY MR. FRICK:

10 Q Agent Money, just briefly. You tested these same
11 gloves two times, correct?

12 A No. The laboratory analysis was only performed once
13 and reported in 2017. STRmix does not require additional
14 laboratory analysis, it's just submitting the DNA profiles
15 into a computer software program.

16 Q So it's an extra test of what you had already tested.

17 A It's not a test, it's a computer software program.
18 It's being subjected to algorithms and statistical analysis
19 that way.

20 Q Got you. But it essentially supposed to determine
21 whether there is a "match," right?

22 A It's determining if an individual contributed to a
23 mixture or not.

24 Q Which you would consider a match, correct?

25 A When it comes to mixtures it's inconclusions or

DONNA MONEY - CROSS

1 exclusions, not matches.

2 Q Got you. Thank you. All right. And in your first
3 report you were unable to reach a conclusion, correct?

4 A That's correct.

5 Q But you did conclude that there were three people in
6 this mixture, correct?

7 A At least three.

8 Q Thank you. And then when you had the STRmix, your
9 other computer software, you are now able to determine that
10 there are four people in this mix.

11 A At least four.

12 Q At least four. But unable to draw a conclusion as to
13 whom definitively it was.

14 A That's correct.

15 MR. FRICK: Thank you. That's all of the questions I
16 have.

17 THE COURT: Any redirect?

18 MS. COLLINS: Nothing further. We would ask this
19 witness to be excused.

20 THE COURT: All right. Thank you, ma'am, you can be
21 excused, you're free to leave. All right.

22 MS. COLLINS: We have one more brief witness from SLED
23 if we can reach them.

24 The witness, JENNIFER NATES, was first duly sworn and
25 Testified as follows:

JENNIFER NATES - DIRECT

1 DIRECT EXAMINATION

2 BY MS. COLLINS:

3 Q Good morning.

4 A Good morning.

5 Q Would you please state your name?

6 A Jennifer Nates.

7 Q What is your occupation?

8 A I'm a forensic scientist at the South Carolina Law
9 Enforcement Division in the trace evidence section.

10 Q And how long have you worked for SLED?

11 A Twenty-three years this year.

12 Q Are you a supervisor in the trace evidence section?

13 A I am the lieutenant for the department, which basically
14 just means I have to supervise the daily activities in
15 addition to working somewhat of a reduced case load.

16 Q Are you familiar with a forensic scientist by the name
17 of Ila Simmons?

18 A I am.

19 Q Is she now retired from SLED?

20 A She is.

21 Q Did you work with Ila?

22 A I worked with her and I also supervised her before she
23 left.

24 Q So you supervised her during the time period that she
25 worked on the case involving SLED lab L1407311?

JENNIFER NATES - DIRECT

1 A I did.

2 Q And as her supervisor under SLED protocol, do you
3 review her work?

4 A I don't necessarily review all of her work, but as a
5 department all of our cases are 100 percent technically
6 reviewed by another qualified analyst. So I review
7 everyone's -- a portion of everyone's work.

8 Q Right. Are you familiar with the conclusions of Ila
9 Simmons in this case?

10 A For the L147311?

11 Q Yes.

12 A Yes, ma'am.

13 Q Are you familiar that a gunshot residue kit from the
14 victim, James Hood, was analyzed?

15 A That is what was analyzed in this case, yes.

16 Q And are you familiar with her conclusion that there
17 were particles characteristic of gunshot powder residue?

18 A Yes. I did review her data in her report.

19 Q Thank you. And can you tell me, why would gunshot
20 residue particles be on the hands of the deceased victim in
21 this case?

22 A Yes. Gunshot residue is a definition that encompasses
23 any and all residue that would produce when a firearm is
24 discharged. Our lab specifically analyzes for what is
25 called primer gunshot residue, we abbreviate to PGSR. This

JENNIFER NATES - DIRECT

1 is specific residue to the primer composition to the
2 cartridge that is fired through a firearm. In this case we
3 analyze for three elements; antimony, barium and lead.
4 These three elements in conjunction in a single particle are
5 unique to gunshot residue, so our lab analyzes for that
6 specific portion of gunshot residue. In this case we did
7 find it on the victim. Now, when a gun is discharged, as
8 you all know, if you're on the receiving end of a gun the
9 bullet is coming in your direction, so the majority of the
10 residue that is coming out of that weapon will be propelled
11 forward. So if you receive a gunshot wound the majority of
12 the time we will find gunshot residue on your hands because
13 you sustained a gunshot wound. So we do expect to find it
14 on the majority of victims who are shot because they've
15 received a gunshot wound and all of that residue was
16 propelled toward them.

17 Q Is it possible even if the gunshot wound is received to
18 the back of the victim for there still to be particles found
19 on his hands?

20 A It is. Gunshot residue is fragile and transfers
21 easily. If you were shot the cloud can encompass you.
22 There are so many factors that affect that: Distance, type
23 of weapon, your position when you were shot. So we do
24 expect to find it even if you are shot in the back.

25 Q Thank you. Now, are you familiar with the fact that

JENNIFER NATES - DIRECT

1 another gunshot residue kit was submitted to SLED that
2 purported to have gunshot residue samples or swabbings
3 collected by Dale Johnson from the city police department?

4 A I would have to check my form to see who collected it.

5 Q That's fine.

6 A We did receive a kit from a Jermaine Demarcus Grier.

7 Q Is that G-r-i-e-r?

8 A G-r-i-e-r. And it appeared to be collected from
9 Sergeant Dale Johnson.

10 Q And we've been -- and I believe in respect to Mr. Grier
11 that it is pronounced Grier.

12 A I apologize.

13 Q No problem. Did SLED analyze that kit that was
14 submitted to y'all?

15 A We did not. We opened the kit to do the inventory,
16 which is the first step of our analysis, but the
17 documentation within the kit showed that the kit had been
18 collected beyond six hours. Six hours is the timeframe
19 cutoff for us to analyze a gunshot residue kit when it is
20 collected on a living person.

21 Q And why is that?

22 A Gunshot residue, as I mentioned earlier, is very
23 fragile. So once it's deposited on your hands or on another
24 object it is -- it automatically starts to be removed by
25 anything you do. If you shake someone's hand, put your

JENNIFER NATES - DIRECT

1 hands in your pocket, take a drink of something, touch
2 paperwork, sit down on the couch, put your hands on the
3 couch, get dressed, anything you do will remove that gunshot
4 residue. And testing within our own laboratory and with
5 other labs has shown that there's no expectation to find
6 gunshot residue on a living person's hands beyond six hours
7 after the incident.

8 Q All right. Now, can other intervening acts also impact
9 whether or not gunshot residue is found on the hands or not?

10 A Just in general?

11 Q Well, let me give you an example. If someone is said
12 to have shot a firearm, and then six hours later you said in
13 this case as reflected by the paperwork the kit was
14 performed on the hands of the living person that allegedly
15 shot that gun, if between there the person is alleged to
16 have shot another gun, or the same gun a second time, would
17 the fact -- would that fact impact whether or not you could
18 expect to find gunshot residue?

19 A The paperwork that I had led to show me that it was
20 collected at a certain time in the collection for that
21 incident. If a gun was fired after that first shot then the
22 timeframe should have been moved to encompass that.

23 Q But had you found gunshot residue you would not have
24 been able to tell whether it was from the first incident or
25 the second; is that right?

JENNIFER NATES - DIRECT

1 A If the first incident was way before I could probably
2 rule it out, but if the person had fired a weapon obviously
3 they had a weapon on their person. So if you fire a weapon
4 and you still have that weapon on you, you can continuously
5 contaminate your hands. So it would have been very
6 difficult to determine which discharge or transfer it was
7 from.

8 Q Can even picking up a firearm that's been fired result
9 in you having a gunshot residue on your hands?

10 A Yes. If you pick up a fired firearm you will get
11 gunshot residue on your hands.

12 Q And if you fire a gun and then you engage in some type
13 of hand to hand struggle with someone, as you mentioned
14 gunshot residue particles are fragile, is it possible or
15 even likely that that would also eliminate the gunshot
16 residue from your hands?

17 A Anything that comes in contact with your hands can
18 eliminate it, so yes, that is possible.

19 Q And if you undergo a medical procedure such as surgery
20 where the skin has to be sterilized, could that also remove
21 gunshot particles residue from your hands?

22 A Yes, it could.

23 MS. COLLINS: Thank you. Nothing further.

24 MR. FRICK: Briefly Your Honor.

25 CROSS EXAMINATION

JENNIFER NATES - CROSS/REDIRECT

1 BY MR. FRICK:

2 Q Agent Nates, is it possible to get gunshot residue off
3 other surfaces besides hands?

4 A It is.

5 Q Is it possible to get gunshot residue off of clothing
6 if it has not been washed?

7 A If clothing has not been washed and the clothing has
8 not -- does not have a bullet hole in it, yes, we can look
9 for gunshot residue on that clothing.

10 Q Can you tell whether or not any clothing was submitted
11 to be tested in this case?

12 A In this case I do not think we received any.

13 Q Okay. So no clothing.

14 A I'm checking.

15 Q It's not noted in your report there.

16 A No. It's not in my report so Ila did not receive any
17 to report on.

18 MR. FRICK: Thank you. That's all of the questions I
19 have.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. COLLINS:

23 Q If someone is alleged to have fired a firearm twice
24 within an hour and gunshot residue was found on clothing,
25 could you tell whether or not the gunshot residue was

1 deposited on the clothing from the first incident or the
2 second incident, or both?

3 A I could not differentiate between that. And also when
4 we analyze clothing, if I wear this jacket and I shoot a gun
5 at 8:00 on Tuesday night, I take the jacket off, I hang it
6 up, the next morning I put it back on and I go out to my car
7 and I get arrested for whatever reason and they take GSR, it
8 probably will still be there because I have not washed it,
9 it has not touched anything. So we are not able to
10 differentiate when GSR is deposited on an inanimate object.
11 Hands are the only one we're able to give somewhat of a
12 timeframe, which is the six hour timeframe.

13 MS. COLLINS: Thank you. Nothing further.

14 THE COURT: All right. Thank you, ma'am, you can step
15 down.

16 MS. COLLINS: We ask that she be excused.

17 THE COURT: You are free to leave. Let me see the
18 lawyers up here for scheduling purposes real quick.

19 (Break in proceedings.)

20 THE COURT: All right, good. We figured it out. We're
21 going to take a lunch at this time, ladies and gentlemen.
22 Don't talk about the case, I want you back in your jury room
23 at five 'til 2:00 or so. We're going to -- the plan is to
24 start right at 2:00 p.m. and get things rolling. Okay? So
25 we'll see you then.

1 (A lunch break was taken.)

2 THE COURT: Let's bring the jury down. Mr. Grier is
3 here. Good. Have y'all had a chance to look at the
4 proposed charges if it goes that far?

5 MS. BOULWARE: Yes, sir.

6 THE COURT: Any objection from the defense?

7 MS. BOULWARE: Yes, sir.

8 THE COURT: We'll deal with that at the time that we
9 have a break.

10 (The jury returned to the courtroom.)

11 THE COURT: All right. Thank you. Ladies and
12 gentlemen, everybody is present, I hope you had a good
13 lunch. Madam Solicitor, you may call your next witness.

14 MS. COLLINS: Thank you, Your Honor. At this time the
15 State rests its case in chief.

16 THE COURT: Okay. The State has rested. All right.
17 So ladies and gentlemen, what's going to happen now --
18 what's going to happen now is I need to speak with the
19 lawyers unfortunately out of your presence. Again, this is
20 dealing with law stuff. Remember, y'all are the judges of
21 the facts, I'm the judge of the law, so I'm going to talk to
22 them, but rather than make y'all go all the way back down to
23 your jury room I'm going to have y'all here in two different
24 jury rooms -- I can't imagine it being more than ten
25 minutes. Okay? Then we'll get you back here for the

1 resumption of any other testimony. Okay? Thank you very
2 much.

3 (The jury left the courtroom.)

4 MS. COLLINS: Can I put on the record as to Number 66?
5 I have a note here we did not use.

6 THE COURT: Okay. 66 then is not used. All right.
7 Ms. Boulware?

8 MS. BOULWARE: Your Honor, at this time I would like to
9 move for a directed verdict. In the light most favorable to
10 the State on the murder, we have no direct eye witnesses to
11 the murder. Jermaine -- it was testified by one witness
12 that Jermaine was in the room, and so that clearly right
13 there is not any -- no one can say he shot him. For the
14 attempted murder, I believe we don't have specific intent.
15 He did shoot or grazed Shareika McIlwain, but he was
16 shooting all around the room --

17 THE COURT: Is specific intent required for attempted
18 murder? You can certainly argue that, but do you think it
19 is?

20 MS. BOULWARE: I believe it is.

21 MR. FRICK: We've got a case.

22 MS. BOULWARE: I believe there was a case of Faust or
23 something that said that for attempted murder --

24 THE COURT: How long ago was that case? Because I was
25 looking at a 2019 case, State vs. Williams, where it was

1 mentioned but the supreme court didn't actually --

2 MR. FRICK: Well, that was about transferred intent.

3 THE COURT: Right. That was a transferred intent case.

4 MR. FRICK: But in King, which you have right there,
5 which is cited in Williams where they said the supreme court
6 did say it is a specific intent. There was confusion
7 between ABWIK, which you know how that was, and murder was a
8 lesser included -- ABWIK was a lesser included of murder but
9 it was a general intent. But then when we codified
10 attempted murder, the legislature, the supreme court said
11 that what they wanted --

12 THE COURT: 16-3-29.

13 MR. FRICK: -- the supreme court said that what they
14 wanted was specific intent, and that's what they ruled in --

15 THE COURT: And the reason -- well, the transferred
16 intent case was from June 2012, State v. Williams. But
17 you're right, an objection was not made to the charge on
18 attempted murder, which is why it was not preserved for
19 review.

20 MR. FRICK: And then the court of appeals looked at
21 Williams and vacated that part regarding the specific
22 whether you could transfer intent. I can kind of speed you
23 up on the King case. If you look at page seven, it's middle
24 of the page just above where B is --

25 THE COURT: All right.

1 MR. FRICK: -- and that's where it states about how
2 specific intent is required. And I apologize for jumping in
3 Ms. Boulware's argument, but it was my issue --

4 THE COURT: Well, I jumped into it. She was actually
5 arguing the directed verdict on the issue of attempted
6 murder and I led us down this path dealing with proposed
7 charges, but we'll deal with that in a moment, so sorry to
8 interrupt. Go ahead, Ms. Boulware.

9 MS. BOULWARE: That's okay, Judge. But my argument is
10 there is no specific intent on the attempted murder, because
11 even though he did graze Shareika's neck he -- by evidence
12 by another bullet in the wall -- well, there's a couple of
13 casings on the floor. Anyway, he shot at least three times
14 according to Joy Duncan's testimony, and not all of those
15 hit anybody in particular except for the one that grazed
16 Shareika's neck. On the burglary my argument there is -- I
17 don't believe he intended to enter Roger Lowery's house at
18 all. I think he was chasing Shareika but he did not intend
19 to actually go into Roger Lowery's house, and that's what I
20 would ask you to find a directed verdict on those charges,
21 and the weapons charge that's under the murder.

22 THE COURT: Okay. Madam Solicitor, any reply?

23 MS. COLLINS: Your Honor, I'm flabbergasted. That is
24 not the testimony of Joy Duncan as I remember it. I think
25 she said that it was one shot and then she said it might

1 have been two, she certainly didn't say it was three. There
2 was no testimony whatsoever from any of the witnesses that
3 there were multiple shell casings found in that home. The
4 testimony by Jeff Steele is that there was one shell casing
5 seen in the den and that there was one projectile buried in
6 the wall. So first of all, there's no testimony that the
7 defendant was shooting multiple times. Even if there were I
8 think the argument that he's shooting multiple times in
9 close proximity to someone would show even more of an intent
10 to certainly kill them. Your Honor, he shot at Shareika
11 McIlwain dead on, it is a miracle that she is not dead.
12 That bullet grazed her neck and ended up in the wall behind
13 her. You heard the doctor testimony of Dr. Ross when she
14 testified that bullets go in a straight line. And again, I
15 would submit that certainly you can consider. Now, I agree,
16 I do think that the law requires a specific intent to kill,
17 it is not limited to intent to kill Ms. McIlwain. I
18 certainly think that Ms. Duncan testified that she didn't
19 know he intended to kill her or he intended to kill Ms.
20 McIlwain, because she said they were standing pretty much
21 side by side. So for that I am going to ask for a charge on
22 transferred intent as it goes to the attempted murder
23 charge. I think if you shoot a firearm, a loaded firearm
24 that goes off and shoots someone on the side of their neck,
25 I submit to you that that should go to the jury on the issue

1 of attempted murder, that should be intent to kill. That is
2 not where you happen to shoot them in the kneecap. I would
3 ask you to deny the directed verdict as to the attempted
4 murder. And I'm ready to make an argument as to the murder
5 but I don't know if you want to hear more about --

6 THE COURT: No. I'm going to deny the directed verdict
7 motion on attempted murder. I mean, I think there's ample
8 evidence in the record which would support a reasonable jury
9 concluding guilt beyond a reasonable doubt on that charge.
10 I mean, the any evidence standard -- I mean, there's plenty
11 of evidence in the record where the jury could consider the
12 charge of attempted murder so that motion is denied. As to
13 murder?

14 MS. COLLINS: Your Honor, as to murder, Angela Hood
15 testified -- the widow of the deceased, testified that she
16 left the defendant alone -- well, she said with the victim
17 with the children there, the children were in and out. That
18 then when she heard there had been a shot she called her
19 home line and the defendant answered, he was still there and
20 that he said everything was fine, nothing was wrong. And
21 then the sons testified -- well, the testimony from Dr.
22 Maddox that she relied upon in formulating her opinion so it
23 is evidence, as well as the testimony through Daniel Ratliff
24 who under the excited utterance, and the testimony of Javy
25 Crosby who was one of the witnesses that came in with the

1 two sons, that they come in, the defendant is still there
2 and the dead body is there, and that the defendant said,
3 "Help me clean this up." He asked was the police here and
4 says, "Help me clean this up." And then they went in,
5 thought that the dad was alone on the floor and had fallen
6 and out of the wheelchair, then they saw that the defendant
7 had a gun, was pointing it at them and said "Do not call
8 911, you're next." They tussled with the defendant and that
9 they ran and then he ran. Within 30 minutes eye witnesses
10 see him at the McIlwain residence and he shoots Ms.
11 McIlwain, again, the bullet grazes her neck. And
12 ultimately, the forensic scientist at SLED match not only
13 the bullet retrieved from the dead body of James Hood to
14 that firearm that's found there at the driveway of McIlwain,
15 they also match the shell casing in the floor of Shareika --
16 the single shell casing in the floor at Shareika McIlwain's
17 house to that same firearm, and the defendant has a shell
18 casing in his pocket that also matches that firearm. And
19 that is entirely consistent with him telling those boys,
20 "Help me clean up the scene." Because the testimony of the
21 officers that went to the scene of the city said there were
22 no shell casings in that residence, so --

23 THE COURT: I agree with you. The motion for a
24 directed verdict, again, applying the any evidence standard
25 in the light most favorable to the State, there is plenty of

1 evidence for which the jury could find guilt for the charge
2 of murder, so your motion is respectfully denied on that.
3 As to burglary?

4 MS. COLLINS: Your Honor, as to the burglary I think
5 the testimony of Roger Lowery is clear that the defendant
6 was assaulting Ms. McIlwain on his porch. He told him to
7 stop, he did not. Mr. Lowery then went onto the porch, and
8 that ultimately Roger Lowery and the defendant engaged in a
9 struggle themselves because Mrs. Lowery was able to get
10 Mrs. McIlwain into the house into the kitchen. And Roger
11 said at that point that the defendant said something about
12 killing him, being Mr. Lowery. Mr. Lowery steps into the
13 house and that the defendant crosses his threshold and comes
14 into his house after indicating he was going to kill him.
15 So I submit to you that it's clear, he not only entered the
16 house as required by the burglary statute, abundant
17 testimony that it's during the nighttime, but also that he
18 did so with intent to continue to assault obviously at the
19 level that he threatened to kill him.

20 THE COURT: Right. I agree with you on that as well,
21 motion for directed verdict is denied on that as well. All
22 right. Of course --

23 MS. COLLINS: And the firearms charge, of course, would
24 go with the violent crime that's going forward.

25 THE COURT: Murder is a violent crime so the possession

1 of a weapon charge remains as well. All right. What else?
2 I'm going to talk to him here in a second, but before I talk
3 to him, let's talk try to clean up -- now that I've denied
4 the directed verdicts and it's going to be going to the
5 jury, let's talk about the charges, which I gave all of
6 y'all a copy of before lunch. I'll clean up the language on
7 the attempted murder understanding the case law that just
8 came up. I'll simply just delete that one sentence and just
9 say a specific intent to kill is an element of attempted
10 murder period, leave it at that. Are you okay with that?
11 And then, of course, I'm going to talk about intent. Go
12 ahead.

13 MS. COLLINS: Will you add a transferred intent?

14 THE COURT: I'm looking at it right now.

15 MR. FRICK: Have you got the Williams case from 2019?

16 THE COURT: Yes, sir, I've got it right here.

17 MR. FRICK: Admittedly they don't rule on it. They
18 basically say that they messed up at the trial level, they
19 should have objected to it, didn't object to it, called it
20 general intent, during the whole trial it was general
21 intent, and then the court of appeals ruled on it as general
22 intent. So they just -- they don't do the question, but it
23 is my summation from it that their intent in this is for
24 transferred intent not to apply to specific intent. They
25 say it's well settled it was the general intent, but if it's

1 specific it's got to be specific to that one person. So I
2 think that's what they're telling us in this, although
3 admittedly they do not rule that way, they just leave the
4 question to be decided another day.

5 THE COURT: The charge I have in my charge book that
6 all circuit judges have for transferred intent is as
7 follows: "If the defendant with malice aforethought
8 attempts to kill another person but by mistake injures or
9 kills a different person, the defendant still has the intent
10 to kill. The intent to kill is merely transferred from the
11 original person the defendant attempted to kill to the
12 actual person killed or injured." So in this case I don't
13 know if that would apply. I'm going to come back to you,
14 Madam Solicitor, because, you know, the State's theory is
15 that he intended to kill and shot at Shareika and actually
16 hit her, grazed her neck. So I know Joy, I think was her
17 name, testified, "It had to be for her even though we were
18 standing just a foot apart or so."

19 MS. COLLINS: You know what, Judge? I don't want this
20 coming back on appeal. I think the fact that he then chased
21 Shareika out of the house instead of chasing Joy back to the
22 bedroom shows that he was intending to go after Shareika and
23 therefore I'm not requesting for a transferred intent. I
24 think we're good.

25 THE COURT: I'm not going to -- y'all are both

1 protected on the record in that, I don't think I am going to
2 charge transferred intent. Okay. Now, I have -- if you
3 notice in my murder charge going -- well, anything else on
4 the attempted murder charge?

5 MR. FRICK: Judge, just in regard to both of them, I
6 just can't remember whether you had inferred malice with the
7 use of a firearm.

8 THE COURT: Oh, no, I took that out. I've got that,
9 that's State versus Burdette, July of 2019, I'm on top of
10 it.

11 MS. COLLINS: My understanding is I can argue it --

12 THE COURT: You can argue it, both of you.

13 MS. COLLINS: -- but it won't be charged.

14 THE COURT: You can argue it but I'm not going to
15 charge it. The only inferred malice I'm going to charge is
16 that malice may be inferred from conduct showing a total
17 disregard for human life because that's still the law. All
18 right. I'm not going to say from use of a deadly weapon.
19 All right. So that's murder, that's attempted murder,
20 possession of a weapon during the commission of a violent
21 crime. First degree burglary, the only thing I wanted to
22 hear if y'all need to -- I have three applications to the
23 general charge of burglary first degree. The first one is
24 if he entered or while in the dwelling or when fleeing the
25 defendant or an accomplice caused physical injury to anyone

1 not participating in the crime, I think that's applicable.
2 Number three, which would be -- well, the second possible
3 applicable factor for the jury to consider is that when
4 entering or while in the dwelling or when fleeing the
5 defendant or an accomplice -- well, the defendant in this
6 case, used or threatened to use a dangerous object. My
7 understanding -- my memory is Mr. Lowery testified that they
8 were tussling over his gun.

9 MS. COLLINS: I think Mr. Lowery testified he didn't
10 see the gun.

11 THE COURT: No, over his gun. He testified that Mr.
12 Grier tried to get his gun --

13 MS. COLLINS: That's true.

14 THE COURT: -- that's why I was thinking about charging
15 that. Let me hear you on that, Ms. Boulware?

16 MS. BOULWARE: On the --

17 THE COURT: On the they were tussling over his gun.
18 That's my memory of his testimony.

19 MS. BOULWARE: Judge, I'll be honest with you, I didn't
20 really see where I could ask for a lesser charge on
21 burglary, but if you want to add one there.

22 THE COURT: Yeah, I didn't either. And then the
23 nighttime, obviously, I think they established.

24 MS. BOULWARE: Yeah. I mean, really I can argue on
25 that is intent, which I did, so --

1 THE COURT: Okay. Voluntary intoxication. I asked
2 that in voir dire. I think that's a straight forward charge
3 out of the charge book. Have you looked at my guilty but
4 mentally ill charge?

5 MS. BOULWARE: I have. And, Judge, I would request
6 that we add the not guilty by reason of insanity to the
7 verdict form, and I've got the statute here, I'll pass it
8 up. 17-24-30 on the form of the verdict, which says, "In a
9 prosecution for a crime when the affirmative defense of
10 insanity -- when the affirmative defense of insanity is
11 raised sufficiently by the defendant, or when sufficient
12 evidence of a mental disease or defect of the defendant is
13 admitted into evidence, the trier of the fact shall find
14 under the applicable law and the verdict must state so
15 whether the defendant is those four choices." I'll pass
16 this up to you. There's also a case, State v. Senter, which
17 is a supreme court case from 2011, that basically says that
18 when a defendant offers evidence of insanity the State can
19 present evidence to the jury that he's sane, but the
20 evidence can be through lay testimony. And the weight of
21 the evidence, and I'm saying the weight for experts or lay
22 testimony, is to be decided by the jury, which is why I
23 would respectfully ask that the NGRI choice be added to the
24 verdict form.

25 THE COURT: Well, the only testimony I recall was when

1 the first victim, I think it's the sister or whatever -- let
2 me look at the witness list -- where she testified she said,
3 "That's not my brother." I remember her saying that.
4 What's her name? Angela Hood. Other than that, the only
5 evidence in the record that I'm aware of is where your
6 witness, his witness, Mr. Grier's witness, the expert, Dr.
7 Maddox, said that he knew right from wrong, both legal and
8 moral right from wrong at the time of the incident alleged
9 to have happen. So I don't know how that would support the
10 Court charging an NGRI? I'm going to come back to you.

11 MS. COLLINS: I would like a copy of the case that was
12 cited by Ms. Boulware.

13 THE COURT: I'm familiar with that case as well.

14 MS. COLLINS: Your Honor, I'm going to ask that the
15 bailiff hand up to you two cases that the State wants to
16 respond to. The statute says, and I believe the case law
17 says if there is sufficient evidence presented that it
18 should go on the verdict form and should be charged.
19 Sufficient evidence. And I would submit that State v.
20 Lewis, which is being handed up to you, clearly says that
21 lay testimony in and of itself is not sufficient, or at
22 least was not in that case. And I would submit that Lewis
23 is very similar to the case currently before the Court.
24 Lewis, in that case the Court noted that a defendant may
25 rely on lay testimony to establish insanity, but it did not

1 that in this case that the mere fact that -- oh, the
2 appellate contended his testimony and testimony of
3 witnesses. I'm sorry, give me one moment, Judge. I think
4 I'm referring to the other one first. Yes, I'm sorry. Let
5 me come back to Lewis. Lewis is also a case I want to
6 argue, but if you'll look at State v. Gardner, and in that
7 case the Court determined that although the defense
8 contended that lay testimony there would support a charge of
9 not guilty by reason of insanity, the Court said, "We were
10 unable to discover any evidence in case that can reasonably
11 be said to rebut the presumption of sanity." They noted
12 that the law of this State is that the defendant is presumed
13 to be sane and that the defense would have to rebut that
14 with some showing. They noted, "Although there is a showing
15 of low mentality and some emotional instability, there is no
16 evidence whatsoever that the appellate was unable to
17 distinguish between right and wrong or to recognize the
18 nature and equal of the act committed. His testimony that
19 he doesn't remember assaulting or killing his wife standing
20 alone is insufficient to establish insanity, otherwise any
21 defendant could always raise the issue of insanity by
22 simulating loss of memory. His appearance and actions
23 immediately after the homicide as described by one of the
24 officers are insufficient to justify a plea of insanity."
25 In this case Angela Hood said on the phone the defendant

1 sounded normal like -- and he said everything is fine,
2 nothing to worry about. The defendant tries to cover up
3 what, he asked the boys -- he instructs the boys they better
4 help him clean up. And then after he struggles with them
5 over his gun they flee and then he flees. He had asked them
6 if the police had arrived yet. Then he goes to Shareika
7 McIlwain's. And again, as I noted earlier, ultimately when
8 he's apprehended the shell casing -- and there were no shell
9 casings found, the SLED expert -- at the city scene. The
10 SLED expert testified this firearm does eject a casing, and
11 we know that because when he fired at Shareika McIlwain on
12 West Brooklyn Avenue it ejected a casing, but in this case
13 there was no casing found at Carolina Court. The body --
14 the bullet from the dead body matches the gun, but there's
15 no shell casing at that scene. Guess what? In his pocket
16 he's got one shell casing that matches it. He told the boys
17 to help him clean up. I submit he started cleaning up, he
18 picked up that shell casing. He knew what he was doing, his
19 actions show that, that he fully appreciated the gravity of
20 his act. The Court further goes on to note, "The fact that
21 he may have killed his wife in a fit of passion does not
22 show an insane mind. It must be remembered, we have never
23 accepted in this state the doctrine of uncontrollable
24 impulse." It says, "We cannot sanction the doctrine that
25 one who prior to the time or subsequent to the time of

1 committing the act shows no symptoms of insanity -- can
2 raise the question of insanity as a justification of the
3 crime by showing that he was not in a normal state of mind,
4 was angry, looked wild and acted different than he did
5 ordinarily for the brief period of time necessary to the
6 consummation of the act. Such doctrine would render
7 virtually all homicides justifiable, for there are but few
8 instances where one slays another while his mind is in
9 normal condition. And therefore the Court held there was no
10 error in the case before the Court that day, Gardner, that
11 would justify the submission to the jury of the question of
12 insanity." In this case all you have is a reference by Dr.
13 Maddox that from the police report that the boys -- the sons
14 had said at one time that he was acting crazy or he wasn't
15 right, but no one specifically says, "Tell me what you mean
16 by that. Let's talk about that. Was he, I don't know,
17 trying to hold an egg on them and acting like he was the
18 chicken? What exactly was he doing?" Rather than just
19 saying this comment, "Oh, he was crazy or he wasn't acting
20 like his right self." And these were the boys. They hadn't
21 seen the uncle for eight years, he had been in the
22 Department of Corrections. Angela Hood testified that her
23 brother that, of course, she'd known for her whole life, she
24 said that the only concern she had was that one comment he
25 made when the washing machine went to the spin cycle, but

1 that immediately after that comment he then started watching
2 TV until the point she wasn't concerned about leaving him
3 there. And again, we also should note that they didn't have
4 a firearm in their house. It's not like he just happened to
5 stumble upon a firearm, he obviously brought the firearm to
6 the scene. So I would submit to you that there is no
7 sufficient evidence simply from a random comment, as I asked
8 Dr. Maddox. Someone can say someone is crazy just by the
9 reference that maybe they like cats, they got ten cats in
10 their house, but do they rise to that level of being able to
11 get a charge of not guilty by reason of insanity with just a
12 blanket comment like that? I submit to you know no, and I
13 submit to you that this case clearly says that. I do want
14 to refer very briefly also to Lewis, which I handed up. In
15 that case appellant also argued the trial judge failed to
16 instruct the jury on insanity, and he contended that his own
17 testimony and that of lay witnesses support an instruction
18 on insanity. The Court disagreed and said he was not
19 entitled in that case to insanity being charged to the jury,
20 and obviously if it's not charged it shouldn't be in the
21 verdict form. "The Court noted that in South Carolina in
22 every case the defendant is presumed to be sane. South
23 Carolina has adopted the M'Naghten test to determine
24 insanity, and notes in terms of being able to have the
25 capacity to distinguish moral or legal right from moral or

1 legal wrong, or to recognize the particular act charged as
2 morally or legally wrong. It does note a defendant may rely
3 on lay testimony, and that the jury could even disregard
4 expert testimony. But it went on to say that in this case
5 the lay testimony presented was not sufficient to get the
6 charge of not guilty of reason of insanity, even though the
7 defendant contended his own testimony and the testimony of
8 his lay witnesses established that he could not distinguish
9 legal right from legal wrong. He relied on the
10 characterization of his mental condition that he was "out of
11 his mind" at the time of the offense and other witnesses'
12 descriptions of his mental health state. They found that
13 saying and even the appellant's own testimony that he was
14 "out of his mind" does not indicate that he could not
15 differentiate between right and wrong or recognize his
16 conduct as wrong." The Court again cites Gardner, which I
17 just share with the Court. "We know there are few instances
18 where one slays another while his mind is in normal
19 condition." And it says, "Further, appellant's own
20 testimony suggests he's sane in that the actions that he
21 took afterwards to evade law enforcement." I would submit,
22 Your Honor, that he certainly took actions in this case to
23 evade capture and then continues to pursue a course of
24 conduct that, according to Dr. Maddox, he couldn't control
25 his conduct, but her own testimony is clear. And she

1 considered -- it's not like they have presented additional
2 lay testimony. The only lay testimony they're referring to
3 was in the records that Dr. Maddox has available apart from
4 doctor -- I will concede Dr. Maddox wasn't here when Angela
5 Hood testified, but her testimony was only again that one
6 instance of him saying something about somebody is going to
7 hurt him or something when the washing machine went into
8 spin cycle, but then after that he was fine. He watched TV
9 and she was fine to leave him. She got him on the phone
10 later and he sounded fine. So I would submit that any
11 references they were saying as to lay testimony that were
12 available for Dr. Maddox and yet she didn't come down for
13 NGRI as her opinion, I would submit they should not get a
14 charge of not guilty by reason of insanity. Thank you.

15 THE COURT: Brief reply.

16 MS. BOULWARE: Judge, first of all, the State couldn't
17 produce the witnesses that actually say they saw him
18 cleaning something up. Javy Crosby said that he didn't say
19 anything, he didn't hear Jermaine say anything, or that they
20 saw him cleaning something up or that he said "Clean it up,"
21 those witnesses were not here. And I understand Dr. Maddox
22 refers to them and Dr. Frierson uses that in his report as
23 well, but they're not here to say that so that evidence
24 actually isn't on the record, other than the expert has
25 testified that they depended on an incident report. Also,

1 there is more than one instance of that. You've got the
2 washing machine comment. You've got Angela Hood's testimony
3 about that's not her brother. You've got the fact that he
4 was wearing clothes that almost done us would wear in June;
5 long johns and jeans. And just that -- the hole -- there's
6 not motive for any of this. He just randomly goes over to
7 Shareika's house and sits and asks for a cigarette and then
8 he starts shooting. Nobody knows what happened with James
9 Hood because when he got there -- or when Javy and Tavarus
10 and LH [REDACTED] got there it had already happened. So I also
11 don't think that Dr. Ross actually suggested or anybody that
12 I've crossed up there said that they thought the body had
13 been moved, and if he was cleaning up and doing all of that
14 you would think the body would be moved around and the blood
15 wouldn't be exactly where it pooled and all of that stuff.
16 So I'm just asking that we keep it in there. I think we've
17 got plenty of examples of something that might rise to not
18 guilty by reason of insanity. And again, we don't have
19 those two witnesses here, so it's not -- it's not evidence.
20 We --

21 THE COURT: Hang on. Those two witnesses' statements
22 were relied on by not only the State's expert in rebuttal
23 that I guess we're fixin' to hear from, but also the
24 defense's expert in formulating whatever opinions they made,
25 correct?

1 MS. BOULWARE: Yes, sir. But --

2 THE COURT: I understand they weren't here to directly
3 testify, I understand that, and that goes to the credibility
4 of the evidence you can argue to the jury.

5 MS. BOULWARE: The jury can weigh that.

6 THE COURT: Well, I understand that. But on deciding
7 to -- all right. Got you. Yes, ma'am?

8 MS. COLLINS: Well, what's good for the goose is good
9 for the gander. If she's saying therefore the boys weren't
10 here to testify and therefore their testimony shouldn't --
11 their statement shouldn't be considered, they're the ones
12 that also said that they thought he was crazy and he wasn't
13 acting right. So either you rule it out or you don't rule
14 it out. Your Honor, here is the thing, when Angela Hood
15 testified she pointed at the defendant, he was laughing and
16 she talked about her dead husband and she said, "That's not
17 my brother. That's not my brother." She wasn't talking
18 about how he appeared on June 10th, 2014, the date at issue
19 in this case, she was talking about how he was acting and
20 appearing while she talks about her dead paraplegic husband
21 who died at the hands of the defendant. And, Your Honor, as
22 to whether or not he had started cleaning up, clearly I
23 submit to you -- and, yeah, it's up to the jury to decide
24 how they feel and what they feel the evidence has shown, but
25 the fact that he has on gloves and he tells the boys, "Help

1 me clean this up," it doesn't mean he's already started, but
2 you'll note that the diaper in the picture has been
3 partially dragged down, not ripped off, dragged down. And I
4 would submit to you that there would have been an effort to
5 move the body some and that's what pulled the diaper down
6 and that's what you can clearly see in the picture. I would
7 submit to you, we don't have to show that he had started and
8 was halfway through cleaning it up. The testimony is that
9 they came in, he was wearing gloves, he was in there and he
10 said, "Y'all help me clean this up." So again, I believe
11 that they should not get a charge of not guilty by reason of
12 insanity nor a verdict option.

13 THE COURT: Anything else?

14 MS. BOULWARE: Well, Judge, we're also making this
15 decision before I'm able to cross Dr. Frierson. We could
16 put that off until after we --

17 THE COURT: Sure, I'll just let you re-up. Any ruling
18 I make on this now -- I already thought about that -- I was
19 just doing it while we had time in here to make a good
20 record for whatever happens. Okay? So any ruling I make
21 now, of course, isn't a final ruling until the very end
22 anyway, except for maybe the direct verdict stuff, so I
23 understand that.

24 MS. BOULWARE: Yes, sir.

25 THE COURT: I'll let you come back up and let's see

1 what Dr. Frierson has to say. But at this point in time I
2 agree with the State, I'm not going to charge -- at this
3 point in time I haven't heard enough evidence of insanity as
4 a defense. Certainly there's plenty of evidence in the
5 record that he could be found guilty but mentally ill,
6 that's how this whole dialogue started, I was asking is
7 there any objection to my guilty but mentally ill charge.
8 At this point in time I don't intend to charge NGRI, nor
9 allow it to be a choice on the verdict form.

10 MS. BOULWARE: Judge, one thing I did mean to do is
11 renew objections as far as the leading objection we had and
12 the motion -- the severance motion --

13 THE COURT: Yes.

14 MS. BOULWARE: -- that the joinder got granted and I
15 would just like to renew that objection.

16 THE COURT: Motions are noted, objections noted, my
17 ruling is the same. I've denied the motion for severance as
18 well as I exercised my discretion as the trial judge to keep
19 this trial moving and allowing some leading questions.

20 MS. BOULWARE: Thank you, Judge.

21 THE COURT: All right. Let's finish looking at this.
22 So that's my preliminary ruling on that. Any other issue
23 that y'all saw in the charge?

24 MS. BOULWARE: Judge, I am so sorry, I did neglect to
25 ask you about including the lesser includeds to murder -- or

1 to --

2 THE COURT: Voluntary manslaughter?

3 MS. BOULWARE: Attempted murder, I'm sorry, not murder.
4 Attempted murder with the ABHAN and A and B first.

5 THE COURT: No, I'm not going to do that. You're
6 protected in the record on that. He allegedly fired a
7 deadly weapon at a lady grazing her in her neck, there's no
8 evidence of any lesser offense here.

9 MS. COLLINS: Judge, we wanted to address the murder
10 charge.

11 THE COURT: Yeah.

12 MS. COLLINS: While -- you know, it's hard to say
13 because, again, there were only two people there, and the
14 defendant contends he has no memory and has given no
15 statement about what actually happened and we have a dead
16 body. We have a body of a man that's paraplegic in
17 wheelchair that's been shot one time in the back, and again
18 as stated, the diaper is partially dragged off, but we don't
19 know what happened there. We don't know what happened other
20 than that he was shot, and I contend the circumstances show
21 the callus disregard for life that would bring malice, to
22 prove the element of malice. But I'm a fan of the jury
23 having some alternatives if they struggle with that, and I
24 am not opposed to a lesser included charge, particularly
25 of voluntary manslaughter. I don't think there's any

1 evidence of involuntary certainly because the SLED analyst
2 testified that it would take a conscious effort -- a
3 significant effort, I think she said, to apply six pounds of
4 pressure to pull that trigger, that it wasn't a hair
5 trigger, it wouldn't just go off. But as to whether or not
6 there was some type of argument that resulted in the
7 defendant being angry that therefore led him to pull that
8 trigger, yes, there's no evidence of that. But I'm
9 concerned to whatever extent the jury thinks that there
10 could be some circumstantial evidence that they could
11 consider, and I would rather them have the option than not,
12 just because I'm scared otherwise they might hang and I do
13 not want this trial --

14 THE COURT: I understand, I thought about that. Ms.
15 Boulware, what you want?

16 MS. BOULWARE: Judge, I would object to that. I
17 thought about it. There was a case that sort of sounded
18 good for it, but then I read the case. But, however, if the
19 State is willing to offer it we'll take it because we like
20 options too, so --

21 THE COURT: Well, that's what she just said, she's
22 asking for voluntary manslaughter. And so the defense
23 agrees that I should charge voluntary manslaughter and give
24 an option for it on the verdict form.

25 MS. BOULWARE: Yes, sir.

1 THE COURT: Okay.

2 MS. COLLINS: And, in fact, one of those two cases,
3 Lewis or Gardner, they have that exact same issue and they
4 didn't charge voluntary manslaughter and it was reversed on
5 that issue.

6 THE COURT: All right. Better safe than sorry, I'll
7 give you an option. Both sides agree to a voluntary
8 manslaughter charge, I'll charge it and I'll include it as a
9 lesser offense of murder. All right. Mr. Grier, let me
10 talk to you. Can you hear me okay? Can you hear me?
11 Thumbs up? Is that yes. Okay. He's doing some hand
12 gestures let the record reflect. Mr. Grier, at this time
13 I'm going to make sure you understand your 5th Amendment
14 Right, okay? You have the right to testify if you want to
15 but nobody has to make you testify. That's your own
16 decision whether or not you get to testify because no person
17 is required to testify against themselves in a criminal
18 case. Do you understand that? All right. He's not
19 answering. And Mr. Frick and Ms. Boulware, have you been
20 over his right to testify with him as his attorneys?

21 MR. FRICK: Your Honor, when we visited him while he
22 was at Broad River Road at Gilliam being treated there we
23 did discuss that. I will tell you as an officer of the
24 Court he indicated at that time he probably would want to
25 testify. I can tell you I have had no conversation with him

1 today. Conversations this week have become limited as the
2 week has gone on. We had a conversation with him at the
3 detention center here in Lancaster on Friday, I think we
4 addressed it but there was no conclusion made at that time.
5 But as you see we're having a difficult time communicating
6 with him, and as I said, this week conversations I've had
7 have been, I would say, not very clear.

8 THE COURT: Well, would you call him as a witness to
9 testify? What's your gut, Mr. Frick?

10 MR. FRICK: If it's my call as the lawyer I would say
11 no.

12 THE COURT: Right. Ms. Boulware, do you agree with
13 that from a strategy standpoint?

14 MS. BOULWARE: I do agree.

15 THE COURT: If he were to testify, Ms. Collins or Ms.
16 Bonine, what's his record that the State would try to
17 impeach his credibility on?

18 MS. COLLINS: I sent an email to the defense team about
19 that, I believe. Let me see if I can put my hands on it.
20 The defendant's prior record is as follows: In 2002 he was
21 convicted of accessory after the fact of a felony, that
22 felony was grand larceny, that, however, was in 2002. A
23 petty larceny conviction in '03. Breaking and entering a
24 home in '04, that was in North Carolina. In 2004 he was
25 convicted of burglary. 2007 he was convicted of grand

1 larceny in the \$1,000 to \$5,000 range. Now, I understand
2 the case law to be -- I'm sorry, let me continue, I'll
3 address that. 2007 convicted of burg third degree, again
4 it's a first offense, they allowed him to plead down from
5 burglary first degree. In 2016 he was convicted of having
6 contraband in a county detention center, specifically for
7 hiding a shank among his clothing, and that, of course, is
8 within the ten years, and he's currently serving that
9 sentence. So we contend that that should be certainly
10 something we can use. It has already been referenced by Dr.
11 Maddox. He also was convicted of concealing weapons, two
12 more convictions of that in 2019, October of 2019, and we
13 would intend to use that as well for that same reason. The
14 rules are he can't have them, he conceals them and he does
15 have them, so we would submit that shows dishonesty.

16 THE COURT: Okay. Thank you. Ms. Boulware, have you
17 been over all of that with Mr. Grier?

18 MS. BOULWARE: Judge, I think we did address that, that
19 we would talk about some of the stuff that has happened to
20 him and that he's in prison for. This is a rather unusual
21 case where I would normally never tell a jury and anyone
22 else that my client has been to prison and this, that and
23 the other, he clearly has because that's the, you know,
24 place where he did get medicated for mental illness so it's
25 part of our defense actually. So, I mean, normally I would

1 probably -- you know, the solicitor did give written notice
2 of these, timely written notice, and normally I would argue
3 to keep at least the petty larceny out, it's old, the grand
4 larceny, too. But, I mean, I really I don't think from a
5 strategic point of view for our defense it really will make
6 a difference.

7 THE COURT: Okay. All right. I just wanted to make
8 sure that that was in the record. So Mr. Grier, when I ask
9 you if you want to testify, I want you to understand, if you
10 do testify, certainly you can if you want to, but those
11 offenses that the State was just talking about, and probably
12 the older ones as well as you heard your lawyer just say,
13 could be -- you could be asked questions about it to try to
14 make you look bad in front of the jury. Do you understand
15 that? All right. No response. His lawyers understand. So
16 if you decide to testify, you have to do so in making that
17 decision, I just wanted to make sure you understood your
18 right not to testify, because I will instruct the jury if
19 you do not testify that they are not able to bring that up
20 in the jury room, that there is no prejudice to you
21 whatsoever for your failure to testify and they cannot use
22 that against you. Do you understand that? All right.
23 Seems to shake his head. I will take that as a yes. Any
24 other questions for your client that you want me to ask,
25 Mr. Frick or Ms. Boulware?

1 MS. BOULWARE: I don't think so.

2 MR. FRICK: No, sir.

3 THE COURT: All right. Thank you very much. We have
4 gone over his right to testify. And Mr. Grier, do you want
5 to take the witness stand and tell them what you did or not
6 did?

7 THE DEFENDANT: I didn't do. I speak my mind if you
8 don't mind, you know what I'm saying?

9 THE COURT: Do you want to testify?

10 THE DEFENDANT: Testify?

11 THE COURT: Yeah.

12 THE DEFENDANT: No, I ain't want to testify. I just
13 want to speak my mind based on the situation that occurred
14 that happened, you know what I mean?

15 THE COURT: Yes, sir. Well, the only way you can do
16 that is by coming up here and taking the witness stand in
17 front of the jury. Do you want to do that?

18 THE DEFENDANT: Yes, Your Honor, you know what I'm
19 saying, if you don't mind, to speak my mind. You know what
20 I mean?

21 MS. COLLINS: And, Your Honor, he needs to understand
22 that he will also be put to cross examination by the State,
23 he can't just state his peace of mind.

24 THE COURT: Right. Yeah. If you get up there to
25 testify the State is going to be able to ask you questions

1 also and try to make you look bad in front of the jury. Do
2 you understand that?

3 THE DEFENDANT: Basically I don't know what you're
4 getting at, but certain things, certain situations I can
5 speak on, and speak on and speak on, but not speak on --
6 certain speak on and then I can speak on--speak on, you know
7 what I'm saying? But I can just clear certain things,
8 though, Your Honor, do you know what I'm saying? I just
9 want to speak on it, you know what I'm saying?

10 THE COURT: Yeah. I'm going to give you that
11 opportunity, but you can't just get up there and say what
12 you want to say without being questioned. I mean, the
13 lawyers for the State is going to get to question you about
14 stuff.

15 THE DEFENDANT: I understand what you're getting at,
16 but I just want to speak my mind on certain situations, you
17 know what I'm saying? Situation be like a certain case.
18 Like cases ain't really cases but how you want to put it,
19 you see what I'm saying? I can put it this way right here
20 and I can put it that right way, right. But that state that
21 I'm at one situation at one time, you know what I'm saying?
22 But how can you speak time at this time but this time at
23 this time. One time they say 9:30, you know what I'm
24 saying, and another time they're saying 9:30. That's too
25 many 9:30's, you know what I'm saying? They've got 9:30 on

1 9:30, you know what I'm saying? That's two 9:30's at
2 basically one time, you see what I'm saying? But how can
3 you be in a situation and another situation? How can it
4 occur and be at two places at one time, you know what I'm
5 saying? It is impossible to be at two places at one time,
6 and then they ain't -- you've got to have witnesses, the
7 witness have got to state that I've been here, you know what
8 I'm saying? If you ain't got no witnesses to state that
9 I've been here then you ain't got no witness at all, you
10 know what I'm saying? Then you've got the person saying
11 that I get inside this home, you know what I'm saying?
12 Home. How can you be in a home? I ain't never been in that
13 home.

14 THE COURT: All right. Good. Do you want --

15 THE DEFENDANT: How can you just --

16 THE COURT: Be quiet. Do you want to tell the jury
17 that or not is what I'm asking you?

18 THE DEFENDANT: Basically what I'm saying I can speak
19 on it, you know what I'm saying?

20 THE COURT: All right. I'm going to let y'all make the
21 decision, Ms. Boulware and Mr. Frick. Do you want your
22 client to testify?

23 MR. FRICK: I'm afraid under prevailing case law we
24 cannot make that call, Your Honor.

25 THE COURT: I understand that. If he wants to testify

1 I'm going to allow him to testify but he's going to be cross
2 examined by the State. I'm going to need two officers up
3 here with him when does based upon his actions in Court.
4 All right. That's the order of the Court. All right.
5 Anything else before we bring the jury back in here?

6 MS. COLLINS: I just want to put on the record if the
7 defendant testifies on direct exam and then when I question
8 him he refuses to answer, I'm going to make a motion for his
9 entire direct testimony to be stricken.

10 THE COURT: I understand. And you'll probably win that
11 argument.

12 MS. COLLINS: Thank you.

13 THE COURT: All right. Bring the jury.

14 (The jury returned to the courtroom.)

15 THE COURT: All right. Thank you, ladies and
16 gentlemen, thank you for your patience. All right. The
17 State has rested.

18 MS. BOULWARE: Judge, may we approach briefly?

19 THE COURT: Yes.

20 (A bench conference was held.)

21 THE COURT: All right. Ms. Boulware, you can call your
22 first witness.

23 MS. BOULWARE: Defense calls Jermaine Grier.

24 THE COURT: Excuse me, your second witness.

25 The witness, JERMAINE GRIER, was first duly sworn and

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1 Testified as follows:

2 THE COURT: Just speak up really loud, okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Grier, you want to have a seat where
5 your lawyers were sitting? Have a seat up here so you can
6 use that microphone. All right. And ladies and gentlemen
7 of the jury, y'all can turn your seats and you can hear from
8 him. All right. Ms. Boulware, your witness. You can have
9 a seat, you don't have to stand.

10 DIRECT EXAMINATION

11 BY MS. BOULWARE:

12 Q Jermaine, state your full name for the record.

13 A You know what I'm saying? My name is Jermaine --
14 Jermaine -- Jermaine -- they're saying Marcus, whatever my
15 name. I don't know the exact name they're saying. They're
16 saying my name is Jermaine, you know what I'm saying? They
17 say my name Jermaine, you know what I'm saying? But my name
18 really ain't Jermaine. That's what they state my name is,
19 you know what I'm saying? My name is Jermaine -- Jermaine
20 Grier.

21 Q Okay. You got it right there, that was good.

22 A Right.

23 Q You've heard in this courtroom this week what the State
24 is saying they think you did, you've heard all of that and
25 you've been sitting right back there the whole time, haven't

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1 you?

2 A Yes, ma'am, I heard. I did -- I ain't --

3 Q Why would you tell the jury -- Jermaine --

4 A -- you know what I'm saying? They're trying to say
5 I've been here, been there. That's why they're trying to
6 say split personality, that I've got a split personality,
7 you know what I'm saying? How you going to say I'm here but
8 I ain't there, you know what I'm saying? But I can't be
9 here and be there at the same time. One place they say I
10 was at 2130 and this place they said I'm at 2130. I'm not
11 at both places at the same time, you see what I'm saying? I
12 can't be at both places at the same -- then you've got a
13 woman named Angela Hood state that she don't even know me.
14 How can it be my -- I don't know her. She ain't -- I don't
15 know that lady period. I ain't never been at their house, I
16 ain't ever been there period. They state I was at this
17 residence and I never been at this residence at all. They
18 said I've been at this residence at 2130 and I never been at
19 this residence. They say [REDACTED] Caroline Court. I've never
20 been at [REDACTED] Caroline Court, you see what I'm saying? How
21 can I be at [REDACTED] Caroline Court at 2130 and then I've got
22 attempted murder, you know what I'm saying? I got attempted
23 murder, they state it was at another location, how can I
24 have been there at 21:30? I cannot be at two place at one
25 time, you see what I'm saying? That's really impossible. I

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1 never seen or know of anything that occurred in this world
2 that exists if nothing in this world exists that you can be
3 at two places at one time. If there is then I don't know
4 of, you see what I'm saying? How can I be at both places at
5 one time? That don't even seem possible, do you see what
6 I'm saying? And not only that, I never been there, you see
7 what I'm saying? I never been in there -- I can't remember
8 being at neither one of the residence, you see what I'm
9 saying? But then you've got, okay, Angela Hood saying that
10 I've been there at her residence at [REDACTED] I never been at
11 Angela Hoods' residence. She didn't say I had been there.
12 She said she don't know me, you see what I'm saying? How is
13 she going to say I was there and she don't even know me? I
14 don't know her and she don't know me, so I never been at her
15 residence. They've never seen me at her residence. Then
16 you've got a call, they say Javy Crosby. I don't know Javy
17 Crosby, do you see what I'm saying? I never seen Javy
18 Crosby, he don't know me either. I've never seen Javy
19 Crosby. I don't know Javy Crosby. I don't know his name,
20 you see what I'm saying? The only way I know his name is
21 because I read it on the record. I read on the record that
22 his name was Javy Crosby. I don't know a person named Javy
23 Crosby. Not only that, Javy Crosby state that he know me
24 but he never seen me.

25 Q Jermaine, by the record you mean your discovery that

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1 you got --

2 A Yes, ma'am, my discovery.

3 Q -- that we mailed you at SCDC?

4 A Yes, ma'am.

5 Q You've been reading that.

6 A Yes, ma'am.

7 Q And you disagree with what's in that?

8 A I don't disagree what's in there, I disagree with
9 certain things in there, yes, ma'am.

10 Q Okay. Go ahead and tell what else you didn't do.

11 A Okay. They're saying I was at Javy Crosby -- they're
12 saying at ■■■ -- they state that I was at ■■■ Caroline
13 Court. I have never been at ■■■ Caroline Court. Not only
14 that, they've got some person name Javy Crosby that took the
15 stand, he never seen me, you see what I'm saying? He don't
16 know how I look. How can he state that -- he don't even
17 know my name at all. He state that my name -- well, he
18 didn't state that my name was there, he state that he seen a
19 person, you know what I'm saying, named uncle, he seen
20 Jermaine -- he didn't say my name, he don't know my name.
21 He said that Boji not -- he's saying that Boji seen me,
22 Boji's uncle. I don't have no nephew named Boji at all, you
23 see what I'm saying? I don't know even know Boji. Who is
24 Boji? You know what I'm saying? So this got to be Angela
25 Hood's son, or it has got to be James Hood's son.

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1 Regardless of whose son it is I don't have no nephew named
2 Boji or I don't have no sister named Angela Hood, so that is
3 not my family at all. I don't know them people, they're not
4 my family, I never seen them people before. You feel me? I
5 don't know who they is.

6 THE COURT: I've got you. Let's move on to something
7 else because you've said that several times and I understand
8 that. Go ahead, now, listen to your lawyer, she's going to
9 ask you another question. Okay? Go ahead.

10 THE DEFENDANT: Yes, sir. Yes, ma'am?

11 Q Jermaine, you're saying you were never at [REDACTED] Caroline
12 Court?

13 A I was never at [REDACTED] Caroline Court.

14 Q Okay. Next question. Are you telling you were never
15 at [REDACTED] or [REDACTED] West Brooklyn?

16 A Been there, don't even want to speak on it.

17 Q You don't want to talk about that.

18 A I don't want to speak on it. Been there, don't want to
19 speak on it. Straight forward man, that shit supposed to
20 erased shit, that's all I can say. That shits dead. On
21 this side right here that shit is dead, stupid as hell.
22 Been some dumb shit. But I don't want to speak on that
23 shit. But this shit right here, they saying I was at this
24 dude name -- what his name is? What they saying his name
25 is? Lowery? Somebody named Lowery? What proof do we have

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1 that I enter his residence? I want to see proof that I
2 entered inside his residence, you see what I'm saying? That
3 mean I stepped foot in my residence. I never been inside
4 his residence before, you feel me? I don't even recall
5 being inside his residence. But they're saying they seen me
6 laying on the porch, that's what they said in discovery. I
7 was not inside on his porch at all. I ain't never been on
8 his porch. I never stayed on his porch. I never laid on
9 his porch, you see what I'm saying? So this means that
10 they've got proof that I've been on his porch, but I don't
11 have no proof that I've been on his porch, you feel me?
12 What proof they've got that I've been on his porch, you see
13 what I'm saying? They got a person that look like me but
14 it's not me, you're feeling me? What proof they have that
15 it's me? They've got somebody that look like me but it's
16 not me, you feel me? That ain't me at all. Then you've got
17 this person, Shareika or whatever her name is, Shareika
18 McIlwain. I don't know a Shareika McIlwain, never seen her
19 before. Never heard of a Shereika McIlwain, I don't know a
20 Shereika McIlwain. But they can speak and tell Shereika
21 McIlwain to state do she know my name. She wrote a
22 statement saying that a person did it named Jamie. Jamie
23 was the one who shot at her. I don't know Jamie, you feel
24 me? But my name is Jermaine. Now she -- you know what I'm
25 saying? I would like to cross examine her. But she's

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1 stating that Jamie is the person who shot at her on her
2 statement so she contradicted herself. One minute she's
3 stating that I shot her, that a Jermaine shot her, but on
4 her statement she's saying that a Jamie shot her, you see
5 what I'm saying? So that mean she's contradicting herself.
6 She's lying, you feel me? You've got to have what you call
7 facts. When you've got facts that's when you know the
8 truth, you feel me? The truth, facts, all of that is the
9 same, you're feeling me? That means you state one one time,
10 you state one one time. But on the signature she signed,
11 you feel me, signed and said that Jamie was the one who shot
12 her. They've got here in -- it's at the bottom of the
13 statement they say everything that's within this statement
14 is true and facts. Everything here in this statement is
15 true and facts that you wrote, anything inside this
16 statement. Anything that's here inside this statement is
17 true and fact.

18 THE COURT: Got you. All right. She's going to ask
19 you another question. Next question.

20 Q Jermaine, what's the one thing, give me the one thing
21 that you want this jury to know about you.

22 A Okay. What you mean? Nothing. I don't want to speak
23 on the shit, but it's logic. And then how you make me feel
24 and shit, I don't know anything about this shit. The shit
25 is erased. It is how -- you the put the shit. I ain't --

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1 Q You did good.

2 MS. COLLINS: No further questions.

3 A On this side over here you've got Shareika stating that
4 she seen me. Well, what proof she has been shot, you feel
5 me? She said it grazed her neck.

6 Q Jermaine --

7 THE COURT: No further questions, Ms. Boulware?

8 MS. BOULWARE: No, sir. You need to answer any
9 questions that the solicitor has.

10 THE COURT: Madam Solicitor, do you have any questions?

11 MS. COLLINS: I do.

12 THE COURT: Okay.

13 CROSS EXAMINATION

14 BY MS. COLLINS:

15 Q Mr. Grier, when they asked you just now if you swear to
16 tell the truth, the whole truth and nothing but the truth
17 you answered "basically;" isn't that right?

18 A To tell the truth, the whole truth and nothing but the
19 truth?

20 Q Right.

21 A Not basically, I mean the facts that you told the
22 truth. The truth and nothing but the truth, that mean
23 you've got to sign on, yeah, to tell the truth, the whole
24 truth and nothing but the truth.

25 Q But your answer when they asked you to be sworn into

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1 that you said basically. Is that what you said?

2 A No. I said basically -- I might have stated basically,
3 I apologize for stating basically. I wanted to say facts, I
4 wanted to say yes, ma'am, I'll tell the whole truth and
5 nothing but the truth.

6 Q All right. When you started testifying you said, "My
7 name ain't Jermaine Grier," right?

8 A No, not that I know. I don't have no -- I never -- I
9 don't recall my name being Jermaine Grier, that's not what
10 I've been called. I can't -- my mom used to call me
11 Jermaine, you see what I'm saying? Sometimes she'll call me
12 Marcus, sometimes she would call my Chris, sometimes she
13 call me Tom. She be calling me all the time. Some times
14 she be like, "Come here, little boy. Come here. Stay out
15 of trouble." Or she might said, "Fred, come here Fred" or,
16 "Come here, Charles." She used to call me all type of
17 names, you see what I'm saying? But I don't know the exact
18 name that be because I never had no verification because I
19 can't remember when I have been born if I can remember when
20 I was born, you see what I'm saying. If I can remember when
21 I was born and knew what the first name they called me, then
22 I would know who I am, but I don't know the first name that
23 they called, you see what I'm saying? So I don't know. But
24 the whole concept I'm telling the truth, you feel me? I
25 don't know my name.

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1 Q Have you looked at your birth certificate?

2 A I looked at my birth certificate, yes, ma'am. I looked
3 at my birth certificate before but I was too young to
4 realize what my name really was, you feel me? Because I
5 couldn't really read and I couldn't really comprehend so she
6 was calling me all type of names. I had a birth certificate
7 in my hand before.

8 Q Okay. And when you were older you got a state ID that
9 had the name Jermaine Grier on it, didn't you?

10 A No. I got a ID -- they gave me a ID when I got
11 incarcerated, yes, ma'am. They gave me a ID and it said
12 Jermaine. If I'm not mistaken it said Jermaine Grier on it,
13 but I don't know if that's me or not though, you feel me?
14 But they gave me a ID with a picture on it that said
15 Jermaine Demarcus Grier, so I fastened it on my -- so that's
16 the name I went by and went along with because they called
17 me that and it was on my ID.

18 Q You've read through your discovery?

19 A Yes, ma'am, I scanned through my discovery. I read
20 through my discovery and then I went over it with a lady
21 named Ms. Boulware, really don't know her like that but her
22 name was Ms. Boulware and she was some type of lawyer and
23 she was, you know what I'm saying, bring some things to me
24 and to my attention and I read up on it. You feel me?

25 Q And you remember where the ambulance team said they

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1 found your state ID and they made sure it was returned to
2 you?

3 A I don't recall anything about no ambulance. I don't
4 recall an ambulance giving me a state ID. They sent an
5 ambulance, but on my (inaudible) they say 2000 -- if I'm not
6 mistaken it say 2000 and 17. It was supposed to be 2000 --
7 see, they contradict they self, you feel me? They wrote a
8 statement -- they wrote a thing that say what date it was,
9 let me say. 2009. No -- yeah, 2009. Then they got a piece
10 of paper that said 2009 that they took the ID from me in the
11 ambulance, you feel me? But I don't recall being in no
12 ambulance, but they saying I've been inside an ambulance.
13 They took my ID in 2009, you see what I'm saying?

14 Q You sat here when we put pictures up on the wall and
15 you saw the pictures that showed you laying there and the
16 ambulance treating you on the porch of Mr. Lowery. You saw
17 that, didn't you?

18 A I seen stuff laying on the porch of Mr. Lowery. I
19 didn't see no pictures. I don't recall a Lowery, I didn't
20 see the Lowery. That don't look like me. It does not look
21 like and reassemble me, but it's not me.

22 Q Well, let's look at the picture of you lying on the
23 front of Mr. Lowery. First I'm going to show you State's
24 Exhibit Number 50. Do you see that picture of you? You're
25 lying inside the ambulance there.

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1 A Yes, ma'am. They state that's me but I don't think
2 that's me. It look likes me but it's not me, you feel me?
3 I can't really tell. But the whole concept it's not me, no,
4 ma'am.

5 Q Okay. And so this guy, too? He looks like you but
6 he's not you? Number 48. That's where you're lying on the
7 porch of Mr. Lowery.

8 A But if you look at that picture really closely, I can't
9 state who it really is because his face feels covered, you
10 feel me? I don't know who that is.

11 Q But that person is wearing the same clothing as the
12 person in the ambulance and you can see his face there.
13 That's you, isn't it?

14 A But if you could observe him real closely you can't
15 state it's me, but unless they've got some type of DNA or
16 some type of facts that it's me then you can't state it's me
17 because it's no fact within there, you feel me? They don't
18 have no DNA.

19 Q The reality is you don't want to think of that as being
20 you, because that person who was you left the body of your
21 brother-in-law, James Hood, on the his floor wearing a
22 diaper after you shot him in the back. And I'm showing you
23 picture 42. Isn't that right?

24 A My brother-in-law?

25 Q Yeah, Angela's husband, James.

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1 A I don't know him. How is it my brother-in-law?

2 Q You never met him?

3 A No. Angela Hood state she's not my brother at all so
4 how can it be my brother-in-law?

5 Q Well, let's talk about -- do you remember going in the
6 other room and listening to them play that interview with
7 you and Scott Grant and Phillip Hall where they asked you
8 about do you know anybody in Caroline Court, do you know
9 James Hood, and you said he's my brother?

10 A No. James Hood is not my brother. How can he be my
11 brother and -- regardless of how you state it. He state my
12 brother-in-law. And if you look at the paper he's stating
13 he's my brother-in-law but he's not my brother-in-law.
14 Angela Hood state that she's not my brother at all. So the
15 whole concept -- he's no kin to me period, he's no kin to me
16 at all because James Hood state he my brother. How you know
17 he's my brother-in-law? Where you my brother-in-law?

18 Q Because your sister, Angela Hood, testified that she
19 married him and lived with him until you killed him.

20 A But didn't Angela Hood state that she's not my sister,
21 not my brother at all?

22 Q Angela Hood testified that you are her brother, but
23 then she pointed towards you and said, "But that's not
24 brother," because of how you were acting in court that day.

25 A Regardless, she didn't see me that day. We don't have

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1 no type of bloodline. We're not kin at all.

2 Q Because that sure would be hard for your sister to
3 admit that her baby brother, her little brother that grew up
4 with her ended up leaving her husband on the floor of his
5 home like that. Wouldn't that be hard?

6 A Yes, ma'am. Can you tell me what DNA is?

7 Q Wouldn't that be hard for you to admit --

8 A If you don't mind, please tell me -- what is DNA if you
9 don't mind?

10 Q I'm asking the questions here.

11 THE COURT: No. You just answer questions, sir. Okay?

12 Q Now, you said you don't want to talk about [REDACTED] and [REDACTED]
13 West Brooklyn, right?

14 A Seventy-five -- we're speaking [REDACTED] right now if you
15 don't mind.

16 Q No.

17 A We can talk about [REDACTED]

18 Q Oh, I can come back and talk about [REDACTED] But right now
19 I want to ask you, when you talked to Ms. Boulware, your
20 attorney, you talked about being -- that you were never at
21 [REDACTED] Caroline Court. But then when she asked you about [REDACTED]
22 and [REDACTED] you were like, "Oh, I don't want to talk about
23 that." Wasn't that your whole answer?

24 A But the whole concept -- Angela Hood, then she says I'm
25 not her brother, that means we're related, we no kin --

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1 Q Answer my question.

2 A -- we're not related, we don't have the same bloodline.

3 Q Were you at [REDACTED] West Brooklyn Avenue at Shereika
4 McIlwain's house?

5 A [REDACTED] West Brooklyn?

6 Q Yes.

7 A Was I at [REDACTED] West Brooklyn? No, ma'am, I wasn't there.
8 No.

9 Q So you weren't there. So all of the people that came
10 to court and testified you were there, they were mistaken.

11 A No, ma'am, but I wasn't there. I was never at [REDACTED] no,
12 ma'am.

13 Q But you've got a cousin named Shareika McIlwain.

14 A No, ma'am. I don't know who Shareika McIlwain is.

15 Q But she came in and testified that you were her cousin.

16 A Yeah, she came in and testified. But the whole
17 concept -- then she said she got shot on the side of her
18 neck, she got grazed. What proof they got that -- what is
19 DNA if you don't mind? Can you tell me what DNA is?

20 Q No, sir, I'm not answering your questions --

21 A What is blood is.

22 Q -- but you're going to answer mine.

23 A Yes, ma'am.

24 Q You had a gun on you on June 10th of 2014.

25 A No, ma'am, I didn't have no gun. I don't know what a

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1 gun is. I don't know how a gun look.

2 Q Well, you had bullets in your pocket that matched the
3 gun that was found right by Shareika's house. You had
4 bullets in your pocket.

5 A I had bullet in my pocket? No. If you look at the
6 porch, if you look at the porch it will -- that I didn't
7 have no bullets on me. The gun -- the bullets on the
8 porch -- on the carport -- it's on the porch but the gun is
9 on me. So if I've got a gun on me -- say I've got a gun on
10 me, you feel me? They state -- but what proof -- they
11 didn't find no gun on me at all. That's the whole concept.
12 They didn't find no gun on me at all.

13 Q You almost slipped up there, didn't you, and talked
14 about having a gun on you, didn't you?

15 A Yes, ma'am. That's certain things that can be erased,
16 but certain things -- I'm asking you, can you just tell me
17 where the gun at though?

18 Q This can't be erased, right? We can't dig up James
19 Hood and bring him back to life. That can't be erased,
20 right?

21 A No, ma'am, that cannot be erased.

22 Q That cannot be erased.

23 A I did not do that, though. I did not shoot him. I
24 don't know this man, I wasn't there.

25 Q Well, let's talk about West Brooklyn.

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- 1 A But can you show me that I was there, though?
- 2 Q The witnesses came in and they testified that you were
- 3 there. There's pictures showing that you were there. Mr.
- 4 Lowery shot you and you were there and the ambulance took
- 5 you from there to the helicopter and flew you to Columbia to
- 6 save your life.
- 7 A Well, where is the bullet hole?
- 8 Q Well, let's see. Lift up your shirt, let's see that
- 9 scar. I see it right there.
- 10 A You see a scar? That's a scar but where the bullet?
- 11 You can say you got a bullet on me.
- 12 Q I see a scar right there to the right of your belly
- 13 button right there.
- 14 A I don't see no bullet.
- 15 Q And I think it will match this picture.
- 16 A If you don't mind, can I observe the bullet? You said
- 17 I've been shot so where is the bullet?
- 18 Q The bullet was either retrieved by the doctor or not, I
- 19 don't know. Because guess what? Mr. Lowery isn't being
- 20 charged with putting a bullet in you so we didn't have to
- 21 bring that bullet.
- 22 A So the concept I haven't been shot.
- 23 Q But your life was saved.
- 24 A But where is the bullet though?
- 25 Q I'm not talking about your bullet. You want to see the

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1 bullet where you killed your brother, James Hood? Do you
2 want to see that bullet?

3 A No. We can go through -- show me the bullet. Where is
4 the bullet, though? I want to show you that --

5 Q The bottom line is there's pictures of you lying on the
6 porch of [REDACTED] West Brooklyn and you're saying, "I wasn't
7 there." Is that what you're saying?

8 A No. I didn't even get shot.

9 Q You're saying, "I didn't have a gun." But, gee, in
10 your pockets, as found by Jeff Steele, there was a shell
11 casing that matched that gun. There was an unfired bullet
12 that matched that gun.

13 A Yes, ma'am.

14 Q So if you didn't have that gun, what did you have the
15 ammunition for?

16 A Yes, ma'am. But listen, if you --

17 Q No, answer my question. If you didn't have the gun,
18 why did you have that ammunition for it?

19 A Yes, ma'am. But --

20 Q You can't answer that, can you?

21 A Can you tell me how --

22 Q Can you answer that?

23 A No. I can answer it, yes, ma'am.

24 Q Well answer it.

25 A Regardless how you put it, ma'am, I'm going to speak

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1 how I feel, you feel me? This how I feel. Regardless of
2 how you see it it's your opinion. Regardless, it's your --
3 not opinion -- not your reflection, it's how you want to
4 look at it, you see what I'm saying? It's on you. I don't
5 have no power.

6 Q It's not -- it's the opinion of these 12 people,
7 that's --

8 A Yes, ma'am. But that's basically -- I'm going to go
9 ahead and state what I'm going to state to them. They said
10 I was at [REDACTED] Caroline Court, that's on the murder charge. I
11 was not at [REDACTED] Caroline Court. Nobody never seen me there
12 period. I never been there, nobody ever seen me there.

13 Q Angela Hood saw you there.

14 A No. Angela Hood said she don't know me. If y'all
15 would listen carefully she stated that she do not know -- I
16 don't have no brother named Jermaine Grier. She don't have
17 a brother named Jermaine Grier. They state that Jermaine
18 Grier is the one that -- no, Javy Crosby is the one who
19 state that Boji's uncle shot -- he seen Boji's uncle and
20 Jermaine tussling inside of a hallway, they was tussling
21 over to the side of the hallway over a gun, do you see what
22 I'm saying? Both of us tussling over the hallway of a gun.

23 Q We heard -- Jermaine, we heard Javy Crosby.

24 A Right.

25 Q We heard him have the courage to come in here and say

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1 that he saw you with the gun and that he saw you tussling
2 with your nephew for the gun.

3 A But he didn't say he seen me, no, ma'am.

4 Q Yes he did.

5 A He said his uncle.

6 Q He said he saw Boji's uncle.

7 A He said he saw Boji's uncle.

8 Q Yes, he did.

9 A Okay. I don't have no nephew.

10 Q Well, you were in prison for eight years right before
11 this happened, right?

12 A Yes, ma'am.

13 Q And Tavarus was a young boy growing up for eight years
14 without his uncle, right?

15 A Yes, ma'am.

16 Q And LH [REDACTED] was a young boy for eight years growing
17 up without his uncle, right?

18 A I understand what you're saying, but -- or I think I
19 do.

20 Q And then you finally got out in June of 2014 --

21 A Yes, ma'am.

22 Q -- about a week before this happened.

23 A Yes, ma'am.

24 Q So yeah, you may not have known them that in those
25 eight years you missed of your nephews' lives, that their

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1 friends had given them nicknames, you may not have known
2 that, but you knew that as somebody that just got out of the
3 Department of Corrections you weren't supposed to have a
4 firearm, right?

5 A But you're saying that Boji is a nickname or something?

6 Q That was the testimony earlier. So let me ask you, the
7 testimony earlier was that Tavarus Harris' nickname was --

8 A No. He don't know Tavarus, he's talking about a Boji.
9 He said that's his nickname, but how he know -- that my
10 point -- if you -- listen, if you get going through the law,
11 you know what I'm saying, going through the -- let me see
12 let me observe real quick. Let me do the math real quick.
13 I cannot speak to this and say this -- doing the math, if
14 I'm not mistaken, you now what I'm saying, doing things
15 correctly, you feel me, doing it the correct way, doing it
16 the correct way. By me going through the -- scanning
17 through the law going through anything the law on my 6th
18 Amendment. I've got a 6th Amendment, you feel me? Now, the
19 6th Amendment, you've got a right to cross your witnesses.
20 Any witnesses you've got a right to cross examine, you feel
21 me? I've got a right to cross examine either witnesses,
22 that's my 6th Amendment. I have a right to cross any
23 witnesses. Okay. Now, LH -- I mean, Javy Crosby was
24 the one who took the stand. Okay. Now, Javy Crosby was the
25 one who state that Jermaine Grier -- well, he didn't state

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1 Jermaine, he didn't state my name at all. He don't know me
2 period.

3 Q Mr. Grier, I'm going to stop you here. What you're
4 doing here is you're just making a closing argument. You've
5 got two lawyers over there and one of them is going to do
6 that for you.

7 A Yes, ma'am, I understand.

8 Q Let me ask you this, you said, "There's no way I could
9 be at [REDACTED] Caroline Court and over at West Brooklyn both at
10 21:30," because that's at 9:30. That was your argument,
11 right?

12 A Right. Yes, ma'am.

13 Q So your argument is that that's just wrong because you
14 couldn't be at both places, right?

15 A Right.

16 Q But you did hear the testimony of Jeff Steele that
17 those are only .2 to .3 miles apart, right?

18 A Yes, ma'am.

19 Q And I assure you that your brother-in-law was not
20 looking down at his watch as you were shooting him in the
21 back. You understand those are estimates of time, right?

22 A Yes, ma'am.

23 Q And I assure you that your nephews when you were
24 threatening them with the gun and they ran, they weren't
25 looking down at their watch to say it's exactly 9:30; isn't

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1 that right?

2 A Yes, ma'am. Can I check -- if you have got the motion
3 of discovery -- if you --

4 Q You're supposed to testify from your memory. I'm
5 asking you from your memory.

6 A That's logic, too. All of that is logic.

7 Q And your only argument is, "I couldn't have been both
8 places if the State is required to prove that they were
9 exactly at the same time." That's your argument, right?

10 A I can understand those are arguments.

11 Q Is that your argument?

12 A I hear what you're saying, but regardless --

13 Q Is that your argument? Yes or no.

14 A I don't want to argue, no, ma'am.

15 Q Well, is that what you said? You said, "I can't be at
16 both places."

17 A Yes, ma'am. Are you saying you --

18 MS. COLLINS: Nothing further.

19 THE COURT: All right. Thank you. All right. Thank
20 you. Ms. Boulware, are you ready to call your next witness?

21 MS. BOULWARE: Defense rests, Your Honor.

22 THE COURT: All right. The defense rests. All right.
23 Ladies and gentlemen of the jury, if you'll just reassemble
24 your chairs. The defense has rested. You'll recall, ladies
25 and gentlemen, we did take a witness out of order first

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1 thing Monday, it was actually the defense's first witness
2 was Dr. Maddox and they'll tell you about that when they do
3 summation and everything. But the defense is resting.
4 Anything in reply from the State?

5 MS. COLLINS: Yes, Your Honor. In response to the
6 State -- to the defense witnesses, the State does call Dr.
7 Richard Frierson.

8 The witness, RICHARD FRIERSON, was first duly sworn
9 And testified as follows:

10 DIRECT EXAMINATION

11 BY MS. COLLINS:

12 Q Good afternoon. Would you please state your name for
13 the record?

14 A My name is Richard Lesene Frierson.

15 Q And what is your occupation?

16 A I'm a Professor of Psychiatry and a Forensic
17 Psychiatrist at the University of South Carolina School of
18 Medicine in Columbia.

19 Q Will you tell the jury about your education that you
20 achieved to become a psychiatrist?

21 A Yes. I graduated high school in Sumter, South Carolina
22 in 1980. I have a Bachelor's Degree in actually Music from
23 the University of South Carolina, which I received in 1984.
24 I received my medical doctorate, or M.D., from the
25 University of South Carolina School of Medicine in 1988. I

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1 completed four years of residency training in general
2 psychiatry at William S. Hall Psychiatric Institute in 1992.
3 And then I completed one more year of a fellowship in
4 forensic psychiatry in 1993.

5 Q And are you board certified in forensic psychiatry?

6 A I am.

7 Q Currently?

8 A Yes.

9 Q And you, of course, are also licensed to practice
10 medicine in South Carolina, correct?

11 A Yes.

12 Q Tell us, Doctor, about your experience in the field of
13 psychiatry, forensic psychiatry.

14 A Well, I've been practicing forensic psychiatry since
15 1993 full-time. I have done thousands of evaluations that
16 are court ordered from courts throughout the State of South
17 Carolina with a contract that we have with the Department of
18 Mental Health. The Department of Mental Health is in charge
19 of doing those evaluations and I have a contract that I
20 assist with doing them. I also treat prisoners at the
21 Department of Corrections a half day a week, do some other
22 things as a forensic psychiatrist like disability
23 evaluations. I might do fitness or duty evaluations of
24 doctors referred by the medical board of nurses. So I do a
25 lot of different things. But I've been doing it for too

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1 long.

2 Q I know the feeling. Have you been qualified in a court
3 of law to be an expert witness?

4 A Yes.

5 Q And is that in the field of forensic psychiatry?

6 A Yes, ma'am.

7 Q How many times?

8 A Several hundred. Probably testified in court over 300
9 times in my career.

10 Q Thank you.

11 MS. COLLINS: At this time I would offer Dr. Richard
12 Frierson as an expert witness in the field of forensic
13 psychiatry.

14 MS. BOULWARE: No objection.

15 THE COURT: All right. Without objection so qualified.
16 Ladies and gentlemen, you'll remember what an expert witness
17 can do, they can offer opinions. Okay?

18 Q Dr. Frierson, pursuant to an order of this Court, did
19 you have an occasion to meet with the defendant, Jermaine
20 Grier, to evaluate him?

21 A Yes.

22 Q Did that order require that you evaluate him for
23 competency or for something else?

24 A No. That order asked me to perform an evaluation of
25 his criminal responsibility and his capacity to conform his

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1 conduct.

2 Q All right. Now, prior to your evaluating him, had he
3 been evaluated for competency, and if so, were you aware of
4 that finding?

5 A He was not evaluated for competency prior to my seeing
6 him.

7 Q All right.

8 A That came later apparently.

9 Q And you are aware of that subsequent evaluation that he
10 was determined competent to proceed with this proceeding by
11 Dr. Matthew Gaskins?

12 A Yes.

13 Q Now, when you evaluated him, when was that?

14 A Did you say when or where?

15 Q When you evaluated the defendant.

16 A I saw him on two occasions, the first on January 15th
17 of 2015, and then I saw him again on March 16th of 2015.

18 Q All right. So on January 15th of 2015, you met with
19 him in person?

20 A Yes.

21 Q And that was not by -- virtually by computer, that was
22 in person?

23 A That was in person in Columbia.

24 Q Is that the preferred practice, if possible, to meet
25 with somebody in person to evaluate them?

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1 A Yes.

2 Q And when you met with him in January of 2015, what sort
3 of evaluations did you perform?

4 A Well, before I met with him I had reviewed all of the
5 police reports, witness statements. I had reviewed
6 records -- medical records from the Department of
7 Corrections when he was in prison. I reviewed other medical
8 records that we had available from the detention center.

9 And then I met with him on January 15th. And during that
10 evaluation it became very clear to me that he was not giving
11 good effort. He really wasn't cooperative. He didn't know
12 why he was brought to see me. He didn't know any of the --
13 he could read none of the words on a basic information form,
14 these are very simple words. He didn't know what grade he
15 last completed, or the last grade he completed. He said he
16 didn't know how old he was. He said he didn't know his date
17 of birth. He didn't know the date or the day of the week.
18 He said he didn't know how to spell his name. And these are
19 sorts of very simple questions that 99.9 percent of people
20 can answer. To say you don't know what your last name is,
21 you know, is rather fantastical as a presentation, so I have
22 concerns about him faking the cognitive deficits, so at that
23 point I suspended the evaluation. I called his attorney,
24 because historically we call the attorney and say, "Look,
25 this is what's going on. Can you talk to your client and

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1 try to get him to give us good effort and cooperate?" In
2 the meantime I ordered a special testing -- psychological
3 testing. We have instruments, psychological tests that look
4 at determining whether someone is purposefully giving wrong
5 answers or not giving good effort. And that testing was
6 done before I saw him again and it indicated that he was
7 indeed faking cognitive problems. It's a very simple test
8 that --

9 THE COURT: All right. Let me stop you there, Doctor.
10 Ladies and gentlemen of the jury, I'm going to have you step
11 back to your jury room, we'll --

12 THE DEFENDANT: That's it, you already know about it.
13 Damn.

14 THE COURT: All right. We're not going to -- don't
15 talk about the case, you haven't heard everything yet.

16 THE DEFENDANT: (Inaudible) got to be hollering at
17 something, you know what I'm saying?

18 (The jury left the courtroom.)

19 THE DEFENDANT: This is an odd (inaudible) want to know
20 how you feel type something, you know what I'm saying?
21 Opposite, man. Hollering that shit, man. You don't know
22 what I'm getting at, man.

23 THE COURT: All right. Mr. Grier, I warned you earlier
24 that if you didn't stop causing outbursts in the courtroom I
25 was going to have you removed from the courtroom, now am I

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1 going to have to do that or are you going to act right?

2 THE DEFENDANT: Yes, Your Honor, I understand what
3 you're saying.

4 THE COURT: You know, I understand, you know -- do you
5 need to take break real quick and get some water in you or
6 something?

7 THE DEFENDANT: Basically I'm all right, just
8 maintaining right now, Your Honor.

9 THE COURT: Well, I don't want to remove you from the
10 courtroom, I want to make sure you stay in here so you can
11 see what's going on but I can't have you causing anymore
12 outbursts is what I'm saying. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Let's take a brief recess so the lawyers
15 can refresh themselves and you can get something to drink or
16 something and maybe relax a little bit and then we can get
17 through Dr. Frierson's testimony. Okay? All right?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Let's take a brief recess. Thank you.

20 (A recess was taken.)

21 THE COURT: All right. Anything else before we bring
22 the jury back in?

23 MS. COLLINS: No. Your Honor.

24 THE COURT: Mr. Grier, here is what we're going to do,
25 we only have one witness left, I want to get through this

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1 trial and get into closing arguments. Okay? So I'm going
2 to have you leave this courtroom. I'm making that decision
3 because we're at the end of this trial and I don't want to
4 risk a mistrial and I don't want you delaying these
5 proceedings any further. Law enforcement, y'all escort Mr.
6 Grier out. Your lawyers will finish out their able
7 representation of you and I'll instruct the jury about that.

8 (The defendant left the courtroom.)

9 THE COURT: All right. Anything else on that for the
10 record?

11 MS. COLLINS: No, Your Honor. No, sir.

12 THE COURT: Ms. Boulware?

13 MS. BOULWARE: No, sir.

14 THE COURT: I just -- we've got -- it's been a long
15 week and I appreciate y'all's effort, and y'all, Mr. Frick
16 and Ms. Boulware, have the patience of Job. Okay? If there
17 was --

18 MR. FRICK: Can I get a copy of that?

19 THE COURT: Yeah. You can get a copy of that and I'll
20 make that available to you. I thank you for y'all's able
21 representation of your client, that's a very difficult thing
22 to do, and likewise it's very difficult and emotional for
23 the State and its lawyers to prosecute this case, especially
24 when it is what it is. So thank y'all for trudging through
25 as we go through forward, but hopefully we can finish this

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1 up and get everything done. The jury is ready. The jury
2 foreman has advised me that the jury would all like to keep
3 going forward with everything today, they don't want to have
4 to wait until tomorrow. So what we'll do is when we finish
5 the testimony and evidence phase, I'm going to take a
6 recess, y'all can get your thoughts together, we'll move
7 straight into closing arguments. How does the defense want
8 to do closing arguments? Do you want the State to open and
9 then y'all come in the middle and the State get back up
10 again or do y'all just want to do it the old fashioned way?

11 MS. BOULWARE: The first one, the new way.

12 THE COURT: The new way? So the defense is requesting
13 that the State open on the facts and then close on rebuttal
14 and whatever. Okay.

15 MS. BOULWARE: Yeah.

16 THE COURT: Sound good, Ms. Collins?

17 MS. COLLINS: Yes, sir.

18 THE COURT: And I'll give y'all 15, 20 minutes or so to
19 get your thoughts together and move forward and strike while
20 the iron is hot. Sounds great. Bring the jury in.

21 (The jury returned to the courtroom.)

22 THE COURT: All right. Everybody is present. Thank
23 you, ladies and gentlemen, for your patience and your
24 understanding. Ladies and gentlemen, I just want to make
25 sure you understand that even though the defendant may not

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1 be actually physically present in the courtroom right now, a
2 defendant can be tried even if he's not attending the trial,
3 and the fact that he's not here and is not present may not
4 be considered against him in any way whatsoever. Okay?
5 Because remember, a defendant, someone charged with a crime,
6 is presumed innocent until proven guilty. The defendant
7 doesn't have to prove anything. The State has to prove a
8 person guilty beyond a reasonable doubt. And I'll tell you
9 more about that in my closing instructions to you. Okay?
10 But we're going to resume testimony of this witness at this
11 time. Madam Solicitor?

12 MS. COLLINS: Thank you.

13 BY MS. COLLINS:

14 Q Dr. Frierson, I'm trying to remember where you were
15 into your testimony. I believe that you testified that at
16 the January 2015 evaluation when you met with the defendant
17 after you -- and, of course, prior to that you had reviewed
18 all of the records that you indicated you had available to
19 you at that time, and that you concluded that he was
20 malingering; is that right?

21 A Well, no. I had suspicions that he was malingering,
22 that's what I thought in January. Then I sent him for site
23 testing, which confirmed that his performance was -- he was
24 purposefully giving wrong answers.

25 Q And is another more of a layman's term for malingering,

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1 is that the same as faking or exaggerating symptoms?

2 A Yes. Faking for some sort of secondary gain to avoid
3 criminal prosecution, to get disability. There are lots of
4 reasons people do it. But yes, it's making up symptoms that
5 aren't genuine.

6 Q And so you were explaining about the tests that were
7 conducted so that you could, in fact, determine if he was,
8 in fact, malingering. You had suspected it and you required
9 that these -- or requested that these tests be done and they
10 were done; is that right?

11 A Yes.

12 Q And did you have the opportunity to review the results
13 of those tests?

14 A I did. The results indicated that he was faking
15 cognitive deficits, and what I mean by that is it's like
16 memory problems. They give very easy tests. These tests --
17 they show you 50 pictures. There's a card with one picture
18 and they show you 50 cards. Okay? Let's say one has a
19 hairdryer on it, the next one has a bicycle. So they show
20 you these different pictures, and then they have 50 more
21 cards that have two pictures on it, one of which you saw
22 before in the first 50, one of which you haven't. Okay? So
23 we ask you which one have you seen before. So let's say I
24 bring out, this has a hairdryer and a hairbrush, which one
25 have you seen before? And this one has a bicycle and a

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1 tricycle, which one did you see before? So you've got a
2 50/50 chance on each one, all right, to get it right even if
3 you have no memory. If you didn't even look at the first
4 set of cards it's a forced choice, it's either this or that,
5 which one did you see before? So you've got a 50/50 chance.
6 His scores were below chance, and the only way to do that
7 statistically from the mathematics point of view proves that
8 he's purposefully choosing the wrong answer, there's just no
9 other explanation for that. And you give three trials of
10 the same test and everybody should get better, because with
11 repetition we remember things better, his performance got
12 worse with repeated attempts. So the conclusion is that
13 he's faking memory problems.

14 Q All right. So Dr. Frierson, after you received the
15 results of those tests, did you meet again with him in March
16 of --

17 A Yes. I met with him and I had his attorney present.
18 Because, you know, I like to sort of -- I don't want to be
19 the bad guy necessary, I just want to say to the defendant,
20 "Look, this is what the test showed," and sort of give them
21 a chance to come clean if you will, to say, "Look, I don't
22 want to have to come to court and say this, you know. I
23 want you to give your best effort," and have his attorney,
24 who at that time was a different attorney, I believe it was
25 Mr. Grier. The defendant and the attorney had a similar

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1 name I believe, Mark Grier. And so he talked to him and we
2 proceeded to do an interview again. And he was somewhat
3 better in his effort, but still, there were times where what
4 he was saying did not appear to be genuine.

5 Q And did you feel at the conclusion of the March 2015
6 meeting with the defendant that you were able to go ahead
7 and express an opinion as to his criminal responsibility?

8 A Yes. In forensic psychiatry when we do forensics -- a
9 criminal responsibility or insanity evaluation we like to
10 talk to the person about "Tell us what happened. What was
11 going through your mind? What were you thinking?" That's
12 the first step in doing that. Mr. Grier said he didn't
13 remember anything about the crime, didn't know where he was,
14 had no memory of ever being there whatsoever. So we have to
15 assume if these things occurred what was his mental state,
16 and if he could not tell us what his mental state was then
17 we have look at evidence that might show what his -- or at
18 least might show did he know right from wrong. And there
19 was evidence from witnesses, things that he said from his
20 behaviors around the time of the offense. You know, fleeing
21 the scene of the alleged murder when it was discovered by
22 other people what had happened would indicate that he's
23 trying to avoid being there when the police got there.
24 Things like disposing of evidence, trying to clean up
25 evidence, denying that he did anything wrong, denying that

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1 he harmed a Mr. Hood. All of those things are consistent
2 with knowledge of wrongfulness. And he did not report a
3 delusion about Mr. Hood, a fixed thoughts belief about Mr.
4 Hood. Now, I have to look at the evidence and what people
5 said and say, you know, is there physical evidence. That
6 matches that. Like there was a report that he wore yellow
7 gloves when he was trying to clean up evidence. They did
8 find a pair of yellow gloves, I think, near a bicycle away
9 from the scene after he had left that particular scene.

10 Q Did he continue during the March evaluation to express
11 his lack of memory of having been there or what happened?

12 A Yes.

13 Q Did you find in his records any medical basis for him
14 not having a memory regarding the incident?

15 A Not a medical basis, no. He tested positive for
16 cannabis, marijuana, when he was at the hospital right after
17 this. And his mother had reported to me that she was told,
18 which is hearsay, that he had been using cocaine. There is
19 some tie on a lot of drugs that could impair their ability
20 to remember what happened. But other than that I didn't
21 find a medical explanation for any --

22 Q Had he -- through your review of the records, did you
23 find where at anytime before you ultimately evaluated him
24 the last time or met with him on March of 2015, did you find
25 anywhere in the records that he had ever been committed to a

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1 mental institution?

2 A No.

3 Q Did you find anywhere on record where he had ever been
4 diagnosed with any form of mental illness prior to your
5 meeting with him in March of 2015?

6 A Yes, when he was in prison.

7 Q All right. Tell me about that.

8 A Okay. He had been incarcerated, my recollection is,
9 three times before this event. We -- he was first -- the
10 records that we had were from his last incarceration. He
11 went to prison in March of 2004 and he received no mental
12 health treatment until 2007 when he made a suicide threat
13 after he was placed in lock-up. So he did something, got in
14 trouble, got placed in lock-up, and then was placed there
15 and pretended to put a noose around his neck, and he also
16 reportedly took an overdose. So these events were seen by
17 the Department of Corrections and their records is attention
18 seeking because he wanted to be transferred to a different
19 facility. His initial diagnosis in the Department of
20 Corrections was attention deficit hyperactivity disorder, or
21 ADHD like kids have that have problems with attention in
22 school. And what's called antisocial personality disorder,
23 which is a longstanding person of actions and behavior that
24 shows disrespect for the law, that is manipulative, that has
25 been present for a long, long time with a lack of remorse,

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1 irritability and aggressiveness, aggressive -- repeated
2 physical fights and assaults, all those sorts of things go
3 along to be diagnosed with antisocial personality disorder.
4 And they tried lots of different medicines to try to help
5 him control his anger. At one point they make a note of a
6 diagnosis of possible intermittent explosive disorder. They
7 placed him on an antiseizure medicine called Tegretol that
8 is sometimes used off label to try to help people control
9 their anger. It didn't seem to work very well in their
10 notes, though. But as far as a major mental illness or
11 mental illness that would rise to the level of impairing
12 knowledge of wrongfulness, no, he was not diagnosed with one
13 of those in the Department of Corrections.

14 Q So the reference to a possible intermittent explosive
15 disorder was not a conclusion that he had intermittent
16 explosive disorder.

17 A Well, the doctor put intermittent explosive disorder,
18 but I had a problem with that. Because when you diagnose
19 intermittent explosive disorder, you have to go by what's
20 called a diagnostic and statistical manual of mental
21 disorders, we call it DSM, or DSM 5. And if you look at the
22 criteria for intermittent explosive disorder, one of them
23 says the recurrent aggressive outbursts are not better
24 explained by another mental disorder, and they give a list,
25 and in that list is antisocial personality disorder. So if

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1 he has antisocial personality disorder and that's an
2 explanation for why he gets in all of these fights and
3 violent outbursts, and that's the reason this should not be
4 a diagnosis.

5 Q That intermittent explosive disorder should not be a
6 diagnosis?

7 A Correct. And that's why I didn't assign that
8 diagnosis.

9 Q Yes, sir. So even though he had been placed on -- is
10 it Tegretol? Am I saying that correct?

11 A Yes.

12 Q Even though he'd been placed on there, that there was
13 no evidence in any of his records that he had ever actually
14 had seizures; is that right?

15 A Correct, not that I'm aware.

16 Q Okay. Did you find any evidence in any of his records
17 that he'd ever had brain trauma or damage to his head
18 resulting in trauma to the brain?

19 A No.

20 Q He has sometimes referred to himself as a diabetic. Do
21 you find anything in his records to indicate that he was, in
22 fact, a diabetic?

23 A No.

24 Q You considered the medical records for the defendant
25 from the Lancaster County Detention Center; is that right?

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1 A Yes.

2 Q You also considered the medical records from the
3 defendant from Palmetto Health Richland from June 10th of
4 2014, through June 14th of 2014, correct?

5 A Right. Because that's right after the alleged
6 offenses, that's an important piece of information.

7 Q And was there any indication in those records that the
8 doctors there felt that he was psychotic at anytime that
9 they were treating him?

10 A No.

11 Q The records from the Lancaster County Detention Center
12 that you reviewed, those were also after he was released
13 from the hospital up until the time that you examined him;
14 is that right?

15 A Yes.

16 Q And although you were aware that he had some instances
17 within the detention center such as throwing urine on
18 guards, you did not feel that that rose to the level of
19 being psychotic; is that right?

20 A No. He has a history of bad behavior when incarcerated
21 and does not like authority and consequently acts out.

22 Q You also spoke to the defendant's mother, I believe,
23 Carol David, and obtained a social history from her; is that
24 right?

25 A Carol David. I got a social history from his mother,

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1 and I believe I spoke with his (inaudible) as well briefly.

2 Q Now, you did not and were not instructed to evaluate
3 the defendant as to competency, but the purpose of your
4 evaluation, as ordered by the Court, was to determine
5 criminal responsibility; is that correct?

6 A Yes.

7 Q And does that involve two prongs if you reach the first
8 prong? Or just tell me what that involves.

9 A Okay. There are two mental illness verdicts in South
10 Carolina; not guilty by reason of insanity and guilty but
11 mentally ill. In order to find someone not guilty by reason
12 of insanity the jury has to determine that this person, due
13 to mental disease or defects or mental illness, lacked the
14 ability to distinguish moral or legal right from moral or
15 legal wrong, or to recognize the particular acts charged as
16 morally or legally wrong. So it's a question if as to
17 whether if Mr. Grier committed these acts, was he capable of
18 distinguishing moral or legal right from moral or legal
19 wrong. If the defendant is not then they're eligible. If
20 the jury finds the defendant is not able to distinguish
21 right from wrong, then he can be found not guilty by reason
22 of insanity if that's the jury's verdict. If someone does
23 know right from wrong but they have impairment, they have --
24 they lack sufficient capacity to conform their behavior then
25 they're eligible for a verdict of guilty but mentally ill.

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1 So if you knew right from wrong but you couldn't control
2 yourself because of some underlying mental illness, then you
3 can be found guilty but mentally ill.

4 Q And when you evaluated the defendant, what did you
5 conclude in your expert opinion to a reasonable degree of
6 scientific certainty?

7 A It was my opinion that Mr. Grier had the ability to
8 distinguish moral and legal right from moral and legal
9 wrong, and could recognize the acts that were charged as
10 morally and legally wrong. And that it was also my opinion
11 that he was not suffering from a mental illness which would
12 have impaired his ability to conform his conduct to the
13 requirements of the law.

14 Q Have you had an opportunity to review the report from
15 Dr. Maddox, the defense expert that was hired in the last
16 month or so by the defense?

17 A I reviewed Dr. Schwartz-Watts' report, and I read a
18 transcript of her testimony in this court earlier this week,
19 it was provided to me yesterday.

20 Q And she is now married and now called Dr. Maddox but I
21 want to make sure that's the same person.

22 A Oh, I'm sorry. Yes, Dr. Donna Maddox.

23 Q But she was Dr. Schwartz-Watts for many years, correct?

24 A I knew her initially as Dr. Schwartz and then
25 Schwartz-Watts. I have known her for many, many years.

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1 Q Y'all have worked together, in fact, at the Department
2 of Mental Health?

3 A Yes.

4 Q Were y'all in medical school together, too?

5 A She was a year behind me.

6 Q And you're aware that you and Dr. Maddox actually agree
7 as to the defendant having the ability to distinguish moral
8 or legal right from moral legal wrong and having the ability
9 -- or having the ability to realize that the act charged was
10 or was not morally legally wrong; is that right?

11 A Right. She agreed with my opinion.

12 Q She agreed with your opinion. And the opinion then as
13 you stated earlier, being that the defendant does have the
14 ability to distinguish moral legal right from moral legal
15 wrong would rule out a verdict not guilty by reason of
16 insanity; is that right?

17 A If that's what the jury finds, correct.

18 Q If the jury finds he had the ability to distinguish
19 moral legal right from moral legal wrong; is that right?

20 A Yes.

21 Q But on the second issue as to whether or not Mr. Grier
22 suffers from a mental illness that causes him to lack the
23 capacity to conform his behavior to the requirements of the
24 law, as to that issue you and Dr. Maddox disagree; is that
25 correct?

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1 A I believe so, yes.

2 Q Because, as you just testified, it is your opinion that
3 he does not suffer from any mental illness such that would
4 have caused him to lack the capacity to conform his behavior
5 to the requirements of law; is that right?

6 A That's correct. With antisocial personality people do
7 engage in physical fights, aggression, but they choose to.
8 It's not something they cannot control.

9 Q But even if ultimately it was determined, as Dr. Maddox
10 determined, that the defendant has a mental illness, which
11 caused him at the time to lack the capacity to conform his
12 behavior to the requirements of the law, that should result
13 in a verdict of guilty but mentally ill; is that right?

14 A That's the statute, yes.

15 Q But it's your opinion that the defendant was
16 malingering and you don't even reach that issue, is that
17 right? That you -- well, let me rephrase that. Do you have
18 to consider the issue first of insanity as to whether or not
19 they can discern the difference between moral or legal right
20 from wrong before you consider the second issue as to
21 whether or not a mental illness impairs their ability to
22 confirm their conduct to the requirements of the law?

23 A Yes.

24 Q So as to the first issue -- and I'm just wanting to
25 make sure I understand so thank you for your patience -- as

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1 to the first issue you said, no, he understands the
2 difference between moral legal right and moral legal wrong,
3 right?

4 A Right. His behavior indicates that, yes.

5 Q Okay. And you felt also that he could -- he had no
6 mental illness that would prevent him from conforming his
7 conduct to the requirements of the law, which in the first
8 prong you said he does understand; is that right?

9 A That's correct, or at least that's my opinion.

10 Q I understand. And that opinion is based upon the
11 practice of medicine in forensic psychiatry for how many
12 years?

13 A Yes.

14 Q How many years? How many years?

15 A 1993 until the present, so I think it's approaching --
16 it is approaching 30 years, so that's probably 28.

17 MS. COLLINS: Thank you, Doctor. Thank you for being
18 here today.

19 THE COURT: All right. Ms. Boulware, your witness.

20 MS. BOULWARE: Thank you judge.

21 CROSS EXAMINATION

22 BY MS. BOULWARE:

23 Q Good afternoon, Dr. Frierson.

24 A Good afternoon.

25 Q So as you stated to the solicitor you are familiar with

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1 Dr. Maddox, you've known her a long time.

2 A Yes, we have been friends. We don't see each other
3 much anymore because she's living in a different part of the
4 state, but --

5 Q I've got you. And you and she, I'm sure, disagreed
6 sometimes.

7 A Right. Psychiatrists can disagree.

8 Q Absolutely.

9 A Supreme Court Justices can disagree, too, but --

10 Q Absolutely. Exactly right. During Dr. Maddox's
11 testimony on Monday solicitor questioned her as to board
12 certification, and she just doesn't happen to have that at
13 this moment, or I believe has applied for it. Do you need
14 that to render the opinion that you rendered and that she
15 has rendered.

16 A Oh, you mean can you render an opinion without board
17 certification?

18 Q Yes. That doesn't make her opinion invalid.

19 A No.

20 Q Okay. That's all I need to know on that. And you
21 saw -- it looks like from your report you actually met
22 March 16th of 2015 with Mr. Grier for an hour and 30
23 minutes.

24 A Yes, ma'am.

25 Q And you felt that was sufficient time to ascertain --

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1 A That was sufficient time given the other evidence
2 that -- well, I had seen him for 15 minutes previously on
3 January, and then I had all of the information from Dr.
4 Stader, who was the psychologist who tested him. And so,
5 you know, if someone can remember what happened at the time
6 of the offense you'll spend much more time with them going
7 through the details of what happened. If they just say, "I
8 don't remember anything," well, you know, you can't beat a
9 dead horse to get information about what he was thinking or
10 what was on his mind if he just says he doesn't remember
11 anything.

12 Q Yeah, exactly. And that's another thing I wanted to
13 ask you about. You noted in your report that he had no
14 recollection and you testified to that just a little while
15 ago.

16 A That's what he said, yes. I would be somewhat
17 suspicious of that report given the fact that he was
18 malingering on tests of measuring his memory performance.

19 Q I understand. So you talked with his mother and that
20 was -- I believe that was probably Janie Makey is her name?

21 A I'm sorry, it has been six years since I did this.
22 So -- his mother was, yes, Janie Makey or Makey, is that how
23 you say it? M-a-k-e-y.

24 Q Makey, yeah. I believe that is how it is pronounced.
25 It looks like you attempted to contact Angela Hood, his

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1 sister, and I think you attempted to contact Shareika
2 McIlwain and Tavarus Harris and just did not get any
3 response from them.

4 A Correct, because he couldn't remember anything about
5 what happened. I wanted to talk to other people who were
6 there, you know. And so I had a form here where I see all
7 of their names and multiple phones numbers. Tavarus Harris,
8 Shareika McIlwain, I believe is how you say that, and Angela
9 Hood, and I called these numbers multiple, multiple times.
10 Either they -- one of them had a really fast busy signal and
11 I think that means it was not in working order, I'm not a
12 phone expert, but anyway, I was never able to get anyone. I
13 made multiple attempts, and after some point you just say,
14 "Well, I tried as best I could."

15 Q Right. And, in fact, as we learned through this trial
16 Angela Hood, Shereika McIlwain and Tavarus Harris were
17 actually with him that day.

18 A Well, yeah, that's why I wanted to talk to them.

19 Q Exactly. But you didn't get to talk to them.

20 A No.

21 Q So you didn't really have a full picture of what his
22 behavior was that day, what he was kind of --

23 A I had what was in the police reports.

24 Q Right. Right.

25 A And what people said about him.

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1 Q I got you, that's exactly what I needed to know. So
2 you also mentioned he was prescribed Tegretol at one time,
3 and I was a little unclear as to whether he was supposed to
4 be taking that when he was released from prison. It looks
5 like there's another medication, Prolixin, is that how you
6 say that?

7 A Yes. He was not supposed to be taking Prolixin when he
8 was released from corrections, but he was on Tegretol. He
9 actually went to the mental health center and told them that
10 but he never got to see a psychiatrist.

11 Q Right. And it looks like you had noted he had also
12 been placed on a low dose of Desipramine.

13 A That's an antidepressant, yeah.

14 Q Are there any interactions with Tegretol and
15 Desipramine that you know of?

16 A Not at the doses that he was prescribed. His
17 Desipramine -- I don't know why he was given Desipramine at
18 such a low dose. I mean, it's a dose that's not even going
19 to be effective to treat depression.

20 Q Okay. Do you happen to recall what the dosage was?

21 A I think it was 25 milligrams is my recollection.

22 Q What's the normal dose around?

23 A To treat depression you want it up to about 100 or 150.

24 Q Do you recall his dosage of Tegretol?

25 A No. I mean, I've seen two separate -- one time I saw

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1 600 twice a day, and one time I saw 400 three times a day.

2 Both of those would be equivalent to 1200 milligrams.

3 Q Right. 1200 is the maximum, I believe.

4 A Somewhere along that, yes.

5 Q Okay. How long does Tegretol generally -- or how long
6 does it take for Tegretol to get out of someone's system if
7 they just stopped taking it?

8 A Completely?

9 Q Well, as the person starts to --

10 A Probably a few days. But, you know, I'm not expert in
11 pharmacokinetics, so --

12 Q I understand.

13 A And it depends and it varies on person to person. It
14 depends on their liver, enzymes, how efficiently the liver
15 is working. So it depends on their liver enzymes and how
16 particularly their liver is working.

17 Q But you guestimate, I guess, a few days probably.

18 A Yeah.

19 Q And it seems he reported to you, or maybe his mother
20 did, I'm not sure, on your report at the bottom of page five
21 you noted that he's never obtained a driver's license, never
22 been married, no history of significant relationships and no
23 children, has never been in a relationship, and that he had
24 never worked and that he "provides for myself with food off
25 the land." Is that like a normal 29 year old at the age he

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1 was at the time?

2 A This is how he was presenting himself, but no. Well,
3 he's been incarcerated so much of his adult life, so I think
4 having a longterm relationship for him has not been possible
5 for that sheer fact that he has been incarcerated. I mean,
6 he had a job for one month that his mother got him and he
7 quit after a month. So, you know, once again, failure to
8 maintain employment and meet your normal adult role
9 responsibilities is one of the characteristics of antisocial
10 personality disorder.

11 Q Okay. And in your report on page six, the second
12 paragraph where under your mental status exam you notate
13 that you found no evidence of clinically significant long or
14 short term memory impairment.

15 A Right.

16 Q Okay. No evidence of that. But could you say for
17 certain that that was not the case?

18 A I could say for certain that he was purposely
19 presenting himself as not being able to remember things and
20 make new memories, and that was simply not the case because
21 he was purposely choosing wrong answers. In order to choose
22 purposely -- in order to choose the wrong answer on purpose
23 you have to know what the right answer is. You have a 50/50
24 chance.

25 Q Okay. He did report, though, in that same paragraph,

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1 or you notated he reported that he sees things but would not
2 describe what he sees.

3 A Yes.

4 Q And again, you did not have the opportunity to speak
5 with his sister or family members who were there on that day
6 that the incident happened.

7 A No.

8 Q Okay. And in the third paragraph of the results of the
9 psychological evaluation, last sentence, other than
10 malingered memory impairment there was no evidence of
11 malingering or other symptoms. I just want to talk about
12 malingering for a couple of minutes. I think the solicitor
13 had you expound on it a little bit but I just had a couple
14 of questions about it. Malingering people are actually,
15 even though they may be malingering at points in time, they
16 can still be mentally ill as well.

17 A Malingering and mental illness are not mutually
18 exclusive. So, yes, you can be mentally ill, and at times
19 you can exaggerate your symptoms for secondary gain.

20 Q So he might have just been malingering that day, which
21 was March of 2015.

22 A No. Because he continued it on -- he did it on March,
23 he did it when the testing was done, and then he did it
24 again -- he did it in January and March and when the testing
25 was done in between those two --

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1 Q Okay. The times you saw him he did, but that doesn't
2 mean that is always the case.

3 A Well, I have other evidence of malingering in a lot of
4 other situations.

5 Q Uh-huh.

6 A He malingered on his competency to stand trial
7 evaluation. He malingered in the Department of Corrections
8 in order to get moved. He admitted at times to "I'm not
9 suicidal, I just said that because I didn't want to be here
10 and I wanted to get transferred somewhere else."

11 Q Okay. Dr. Gaskins did a competency evaluation Monday.
12 Not malingering was his opinion, he's competent is what he's
13 saying, and Dr. Maddox stated he wasn't malingering at the
14 time she evaluated him. So difference of opinion.

15 A Well, we have objective tests that we administered that
16 cannot be argued with, we didn't just rely on clinical
17 impression. Dr. Gaskins gave him the Inventory of Legal
18 Knowledge, which is a test where you ask 61 questions about
19 the court system. The defendant is the person on trial,
20 true or false. The judge decides the sentence, true or
21 false. And when they give an answer you say correct or
22 incorrect. And his performance on that would indicate that
23 he was purposely choosing the wrong answer. And he would
24 have done just as well if he didn't even listen to the
25 questions, if he just said randomly said true or false.

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1 Q And you mentioned that often times -- or one of the
2 gains from malingering for folks may be to avoid
3 prosecution, stay out of legal trouble or to put off their
4 legal troubles maybe. But Mr. Grier seems to have always
5 been in legal trouble, so, I mean, it looks like he's not
6 doing it for any kind of gain it doesn't appear.

7 A Let's just say I don't think he does it well.

8 Q There's some folks at SCDC that agree with you about if
9 he's malingering he's doing a good job is what --

10 A I could say he's doing a poor job.

11 Q Difference of opinion.

12 MS. BOULWARE: Beg the Court's indulgence one moment.

13 THE COURT: Okay.

14 (Break in proceedings.)

15 Q Okay. On the last paragraph on page six on your
16 report, you noted that he has failed to conform to social
17 norms with respect to lawful behavior. Is that failed --
18 it's failed, not refused.

19 A I'm sorry?

20 Q It's failed but not refused. You didn't use the word
21 refused, you said failed.

22 A I think he has made choices not to conform to lawful
23 behavior, but I think it's a choice.

24 Q That was my next question. Thank you very much. Could
25 you give us -- give the Court an example of what you

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1 consider would be an example of someone experiencing
2 psychosis, just a specific thing? I know there's many
3 different things that they could probably exhibit, but just
4 one thing that you know of.

5 A Well, people with psychotic symptoms experience
6 hallucinations. They may hear people talking to them, it
7 sounds like someone is in the room, or they may see things
8 that other people don't see. These tend to be persistent
9 symptoms. Or they're thinking becomes very disorganized so
10 that when they speak to you it's hard to make sense out of
11 what they're saying.

12 MS. BOULWARE: Okay. Beg the Court's indulgence.

13 THE COURT: Okay.

14 (Break in proceedings.)

15 Q Just one more quick question, or a couple of quick
16 questions. Going back to Tegretol, that is a drug that is
17 actually prescribed to treat mental illness.

18 A Off label, yes. What I mean by that, it's not a FDA
19 approved treatment of illness. Well, it's approved to treat
20 bipolar disorder, it's a mood stabilizer, but it's also used
21 off label when people have difficulty, or they have repeated
22 angry outbursts and violent behavior to try to help them.

23 Q Okay. But you don't believe he has the intermittent
24 explosive disorder.

25 A No.

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1 Q Even though he's been on Tegretol for several years.

2 A Correct. It can be used with antisocial personality
3 disorder, too.

4 Q Okay. And what about malingering?

5 A I don't think his angry outbursts are malingered, they
6 happen.

7 Q Or they're mutually exclusive -- or not mutually
8 exclusive like you mentioned, mental illness, malingering.

9 A Correct.

10 MS. BOULWARE: Okay. I think that's all of the
11 questions I have, Dr. Frierson.

12 THE COURT: Thank you. Any redirect?

13 MS. COLLINS: I do have a few, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. COLLINS:

16 Q Dr. Frierson, Ms. Boulware asked you, in terms of his
17 medicine, are you aware when someone is released from the
18 Department of Corrections and they are on their own mental
19 health medicine, are they provided with enough of their
20 medicine for a few days or a week or so, or a month? Do you
21 know?

22 A It is usually a few days until they have an appointment
23 at the mental health center.

24 Q Okay. All right. And if someone is on Tegretol and
25 they use alcohol, could that have an adverse interaction?

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1 A Yes.

2 Q And if someone is on Tegretol and they use marijuana,
3 would that have an adverse interaction?

4 A Well, alcohol is metabolized by the liquor as is
5 Tegretol, so alcohol more so. Basically alcohol and an
6 illicit substance could disinhibit someone's behavior. So
7 if you're an aggressive person, some people -- the mean
8 drunks of the world, they don't become violent until they
9 start drinking, so alcohol could be disinhibiting and make
10 people more violent.

11 Q When you spoke with his mother, did she share with you
12 her concern that he used cocaine sometimes?

13 A Yes.

14 Q Would using cocaine have an adverse interaction with
15 Tegretol?

16 A I don't know about specific interactions, but using
17 cocaine can make people more irritable and aggressive,
18 especially when they're coming down.

19 Q How long does cocaine show up in your system such
20 that -- my question is for the hospital records when he was
21 treated there.

22 A I mean, cocaine is relatively quick in and out, so, you
23 know, 24 to 48 hours, after that you're probably not going
24 to pick it up.

25 Q And you reviewed the hospital records there when he was

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1 treated in Columbia, they did not screen for whether or not
2 he was on Tegretol at that time; is that correct?

3 A They actually placed him on Tegretol because they knew
4 he had been on that. He was able to provide them with that
5 information.

6 Q But when he was admitted, did they screen to see if
7 that was in his system at the time?

8 A No.

9 Q They just screened for illegal substances; is that
10 correct?

11 A Correct.

12 MS. COLLINS: No further questions.

13 THE COURT: All right. Thanks, Doctor, you can step
14 down, you are free to leave. Does the State have any other
15 witnesses in reply?

16 MS. COLLINS: No, Your Honor.

17 THE COURT: The State rests in reply.

18 MS. COLLINS: The State rests in reply.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, I promised the lawyers before we do closing arguments
21 we would have a brief recess, so let's do that. Y'all go
22 refresh yourselves as well and then the lawyers will be able
23 to make their closing arguments to you and you hopefully
24 will get the case. Okay? Thank you. Don't talk about it
25 yet, you haven't heard everything.

1 (The jury left the courtroom.)

2 THE COURT: Ms. Boulware? Go ahead.

3 MS. BOULWARE: Judge, I would just ask to renew the
4 motion to sever, objection to the joinder, the leading
5 questions objection we had, and all other objections we have
6 on the record.

7 THE COURT: All your motions are noted, all objections
8 are noted as well, and my ruling still remains the same.
9 You are protected in the record.

10 MS. BOULWARE: Thank you, Judge.

11 (Break in proceedings.)

12 THE COURT: As to the NGRI issue, Ms. Boulware, I'll be
13 glad to hear from you briefly.

14 MS. BOULWARE: Judge, I questioned Dr. Frierson of any
15 evidence of what an example of psychosis would be, which he
16 stated would be a hallucination, and Angela Hood did testify
17 that he was what I would consider hallucinating.

18 THE COURT: Yeah, right.

19 MS. BOULWARE: And he also stated that NGRI was a
20 question for the jury.

21 THE COURT: Yeah, I understood that. All right. Madam
22 Solicitor, any response to that?

23 MS. BONINE: Judge, I believe that the question of
24 psychosis, or whether he was psychotic at the time is
25 something addressed -- that we addressed earlier in our

1 general arguments about NGRI and GBMI, and we would ask that
2 after listening to Dr. Frierson's testimony we would
3 continue our analysis earlier and not include the NGRI.

4 THE COURT: Yeah. And I've read the case law and I
5 understand, you know, the case law interpretation of lay
6 witnesses can raise the level of maybe the fact finder being
7 able to consider somebody being legally insane to have a
8 verdict of not guilty by reason of insanity. However, in
9 this case the two expert witnesses testified, one for the
10 defense and one for the State, both agreed that he is -- did
11 not meet the definition of insane as knowing -- not knowing
12 legal right from legal wrong or moral right from moral
13 wrong, as well as all the circumstances which have been
14 shown to have existed, and considering the weight of the
15 evidence in that one case that the State cited about
16 determining the sufficiency of the evidence. I just don't
17 think there's anything there where NGRI is supported by
18 being sent to the jury, so therefore I'm going to
19 respectfully deny the defense's request that I charge the
20 jury and allow them an opportunity for not guilty by reason
21 of insanity. The choices on the verdict form are going to
22 be not guilty, guilty, guilty but mentally ill, or -- yeah,
23 not guilty, guilty, guilty but mentally ill of murder,
24 guilty of voluntary manslaughter, guilty but mentally ill of
25 voluntary manslaughter, and then each indictment thereafter.

1 All right. That's the order of the Court, you're protected
2 in the record.

3 MS. BOULWARE: Thank you, Judge.

4 MS. BONINE: Thank you, Judge.

5 (Break in proceedings.)

6 (The jury returned to the courtroom.)

7 THE COURT: Ladies and gentlemen, we have turned the
8 chairs that way on purpose because the lawyers can't move
9 around and they're going to be addressing y'all from where
10 they are and we want you to pay attention to them, so thank
11 you. All right. All members of the jury are present.
12 Ladies and gentlemen, it's been a long week. We've got a
13 lot accomplished this week and I want to thank you and
14 appreciate, number one, your patience, number one, everybody
15 listen and paying attention. And right now I'm asking that
16 you continue to do that and paying particular attention to
17 what the lawyers say to you as they make their closing
18 arguments. At the conclusion of their closing arguments
19 that's when I will instruct you on the law of South Carolina
20 as it pertains to the issues which have arisen in this case,
21 but right now please give the lawyers your undivided
22 attention. Thank you. Madam Solicitor.

23 MS. COLLINS: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, ma'am.

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1 MS. COLLINS: May I stand?

2 THE COURT: Yes, ma'am.

3 MS. COLLINS: No one in this room takes joy for being
4 here today. There's no question that if we had a magic box
5 that we could push a button and just turn back time and
6 bring back James Hood to see his children grow up and to
7 live life with his widow. Or to have it so that Shareika
8 McIlwain doesn't relive that night that she suffered, the
9 trauma, the mental trauma she had to suffer from that night
10 where her cousin not only shot her, but pursued her across
11 the yard ripping her shirt off, tearing her hair out,
12 fighting her as she begged for a stranger to open the door,
13 which thank goodness they did. Or even Mr. Lowery, who
14 thank goodness was home. Who thank goodness had his own
15 firearm. Who stood and rose to the occasion not only to
16 protect his own family but to protect Ms. McIlwain. I want
17 to talk to you for a minute about courage. Sometimes
18 courage takes the form of a young soldier stepping onto a
19 battlefield knowing that he might not step off that evening.
20 And sometimes courage takes the form of a cancer patient
21 choosing yet again to go forward and embrace life with joy
22 and take medicine that could be so toxic and poisonous by
23 the very way it works, and that tries to hard to take the
24 joy out of life. That takes courage. And I submit to you
25 it certainly took courage for Mr. Lowery to defend Ms.

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1 McIlwain's life the night of June 10th, 2014. But you know
2 what else takes courage? Coming into this courtroom and
3 getting up on that witness stand and telling the jury what
4 happened, and Ms. McIlwain had the courage to do that, and
5 Mr. Lowery had the courage to do that, and two of Ms.
6 McIlwain's friends who were there with her that night had
7 the courage to do that. And God bless Javy Crosby, because
8 he had the courage to do that, too, to come in and say what
9 happened and what he saw. And James Hood couldn't come into
10 this courtroom and tell you what happened that night. There
11 were two people there when James Hood's life ended; himself
12 and the defendant, Jermaine Grier. But you know, even
13 though the defendant took his life, took the life of Mr.
14 Hood, he couldn't take away all of the evidence and run away
15 with it. He grabbed the gun, even though Tavarus had
16 wrestled with him for it and pulled it out of his hand. But
17 then the boys had ran, and the defendant ran, and within 30
18 minutes of leaving ■■■ Caroline Court he's at Shereika
19 McIlwain's house using that gun. He took the gun. He took
20 the shell casings. Remember, this is a firearm that's been
21 analyzed. SLED expert says it ejects the casing, and we
22 know it does because eye witnesses saw him shoot it there at
23 the home of Shareika McIlwain. And he shot once, they found
24 one bullet lodged in the wall, found one shell casing on the
25 floor. He took the shell casing from ■■■ Caroline Court.

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1 He told the boys, "Help me clean up." He was cleaning up
2 first. The thing he did was pick up that shell casing and
3 put it in his pocket. And we know that because when Roger
4 Lowery stopped him with a bullet to his abdomen and when EMS
5 came to save his life and they cut his pants off and law
6 enforcement collected those pants, they found shell casings
7 in his pocket. And the SLED scientist said the shell casing
8 matched the gun that was found. The gun that the eye
9 witnesses saw Jermaine Grier use. The gun that was located
10 within just yards from where the defendant was located on
11 the porch of Mr. Lowery. And he can deny all he wants that
12 that's him, we see it in the pictures and eye witnesses'
13 testimony testified to it. Shareika McIlwain testified to
14 it. She knows him, he was there, he shot her. He shot her
15 dead on point blank, and somehow by the Grace of God it
16 grazed the her neck instead of going into her neck, and she
17 lived to tell that. You see, the defendant could take the
18 shell casing from the home and he could take the gun, and he
19 did, he took them and he ran, but what he couldn't take was
20 the bullet. And he wondered where the bullet was when he
21 was answering the questions. "Where is the bullet? Where
22 is the bullet in me? Well, I don't know, because the person
23 that shot you isn't charged with anything because he was
24 defending his home and his family and Ms. McIlwain." But I
25 tell you what, the bullet that was ultimately in the abdomen

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1 of Mr. Hood that started to his left back behind his -- or
2 underneath his left scapula and the doctor said went at an
3 angle down into his abdomen, you see, Mr. Grier couldn't
4 grab that and run out the door and hide from law
5 enforcement, because he would have had to take it out of the
6 body of Mr. Hood and he didn't have time for that. He took
7 that shell casing and he took the gun, and he was going to
8 clean up and he had the gloves on. And, no, they didn't
9 find blood, because we never said he got time to clean up.
10 I submit he tried to. Because when you look in that picture
11 you'll see the adult diaper on Mr. Hood has been dragged
12 down. Not torn off, dragged down. He fell forward. He was
13 shot in the back as he sits in the wheelchair. The doctor
14 said the trajectory was such -- remember, I even pointed to
15 Ms. Bonine that it was going down as if the gun was above
16 it. Well, these men were about the same height. The only
17 way that Mr. Grier would have been above it was if Mr. Hood
18 was sitting in the wheelchair at the time and shot him from
19 behind. That made sense with the GSR cloud, that the cloud
20 would go around and go on the gunshot residue, it would be
21 on the hands if the victim falls forward. And he's lying
22 there. Now, would the fall forward result in the diaper
23 sliding down? No, I don't think so. What would result is
24 if he bent down and started to try to drag him, that would
25 pull the diaper down. And the boys came in, the young men,

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1 the sons and Javy Crosby, their friend, came in and he had
2 on cleaning gloves and he's like, "Help me clean this up."
3 And he threatened them if they called 911 that he would
4 shoot them, that it was their turn. And that's when Tavarus
5 struggled with the man that he calls his uncle, the man that
6 had just gotten out of prison for eight years, struggled
7 with him for the gun that he was pointing at him and his
8 brother. Now, let's think about this for a minute. I know
9 that the defense was trying to insinuate with their
10 questions of the various witnesses that "Oh, let's talk
11 about these gloves and there wasn't actually any blood," and
12 et cetera, et cetera, "and which pair of gloves was it?"
13 Don't know which pair of gloves. Angela Hood said she had a
14 pack of those gloves, she used some of them to clean her
15 husband. Because, again, obviously if someone is in a
16 diaper they're going to have bodily fluid and defecation
17 that has to be cleaned up, and that she used some to clean
18 her husband, and she says she had some that would clean the
19 bathroom. And that the others in the home, her daughter and
20 the boys, their DNA would be on those. But we don't know
21 which ones he grabbed, there's no indication of that. All
22 we know is that the boys came in and he was wearing gloves,
23 so we don't know which pair of gloves he had. But be that
24 as it may, the SLED scientist I noted didn't say she
25 couldn't discern anything further, she just said there was a

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1 mixture. So let's think about this. Did LH and
2 Tavarus take those gloves to McIlwain's house at West
3 Brooklyn? No. They ran to the neighbors to call 911. Did
4 Angela Hood take those gloves to Shareika McIlwain's house?
5 No. She was at the grocery store. How did those gloves end
6 up there? They ended up there because the only other person
7 affiliated with those gloves, Jermaine Grier, ended up at
8 Shareika McIlwain's driveway, which corroborates what the
9 boys said and corroborates that he was trying to begin to
10 clean up. But he didn't get to because the boys had the
11 courage to confront him and then the smart, smart survival
12 instinct to run. Thank goodness. Thank goodness. And the
13 defendant ran, too, and you can consider flight as evidence
14 of guilt. And here's the thing, since they raise a mental
15 defense, it clearly shows knowledge of wrongdoing. Just
16 asking the boys, "Are the police here?" And, "Don't you
17 call 911," clearly shows as their own expert testified, not
18 just the State's expert but the defense expert, even coming
19 onto this case a month ago rather than seven years ago,
20 looking at all of the records her expert opinion to a
21 reasonable degree of medical or scientific certainty is that
22 he's guilty but mentally ill. Not that he is not guilty by
23 reason of insanity. And by that she stated he's criminally
24 responsible because he knew the difference between right and
25 wrong. She simply made the opinion, expressed the opinion

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1 that his mental illness impacts his ability to conform his
2 behavior to the requirements of the law. Now, on that part
3 Dr. Frierson didn't agree with her. He says he's
4 malingering. I didn't see any indication as to he would not
5 because of mental illness be able to control his behavior to
6 conform to the law. But they both agreed that he knew the
7 difference between right and wrong. So the evidence -- and
8 you can consider -- for murder we have to show malice
9 aforethought, that the defendant had malice. And His Honor
10 will instruct you that you can consider the circumstances in
11 determining whether or not malice existed. And I submit to
12 you that malice can be inferred from conduct that shows a
13 total disregard for human life, and you can consider the
14 circumstances. Now, remember the SLED expert, she didn't
15 say that this was a gun that sadly had a hair trigger, that
16 just some type -- some slight, slight or light force caused
17 it to suddenly go off. She said it took a significant
18 pressure, a force of six pounds and I submit enough to
19 consciously have to pull that trigger. And I ask you not
20 simply what kind of man would shoot a paraplegic in the back
21 as he's sitting there in his home wearing a diaper, but to
22 do that when he's wearing a diaper, and there's no
23 indication at all that he had a weapon. No weapon was
24 found. And yes, he could move his hands around, he couldn't
25 move his legs. The doctor says his muscles had clearly

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1 atrophied in the legs from lack of use since he'd had a
2 stroke. But here is the thing about a diaper, there's no
3 way he could have thought that Mr. Hood had a weapon because
4 you could see he didn't, he had a diaper. I'll just submit
5 and ask you to consider those circumstances in terms of the
6 use of a firearm, a gun by the defendant to end the life of
7 James Hood. Certainly a challenging life at that stage in
8 terms of being confined to a wheelchair, but Mr. Grier had
9 no right to know that. That wasn't his call to make. That
10 was against the law. That was murder. And the attempt to
11 clean shows that he knows that. Let's talk about when the
12 defendant ran to the home, or actually stole the bicycle
13 according to what was determined, and got to the home of
14 Shareika McIlwain unannounced, uninvited. They weren't
15 expecting him that night, and they said that he came on in
16 the house. She said he put his foot in the door when one of
17 them tried to close it and came on in, and that she noticed
18 he had a gun on him and that concerned her. That concerned
19 her. And so again, being smart and having that survival
20 skill, she texted her friends that were there in the room,
21 because she could silently communicate with them that way,
22 and she asked Joy Duncan, "Have you got your phone? And Joy
23 didn't have a phone, she was making hamburger patties. Said
24 she later saw the text where Shareika was saying, "Let's
25 go." And Shareika decided to leave her own home with her

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1 friends and get them to go with her and get out of there,
2 that's how concerned she was about it. Because remember
3 what she said? She noticed him fumbling with a gun, she
4 noticed him counting the bullets, and that he was looking
5 around at the people. Remember he had asked them their
6 names? And she said it looked like he was counting the
7 people, too. I submit to you that malice in his heart was
8 still there, and when his cousin got up to leave and he came
9 up behind her, was like "Yo, cuz." She's like, "What?"
10 He's like, "Yo, cuz." She's like, "What?" And she turns
11 and he fires at her point blank, and it hits her neck,
12 grazes her neck. Thank God it didn't enter anywhere else in
13 her neck or body or jugular vein where she could have bled
14 out, and the shell casing ejected on the floor and Shareika
15 turned and ran. And guess what? The defendant didn't sit
16 down and watch TV. The defendant didn't go after Joy
17 Duncan. The defendant pursued Shareika McIlwain. She ran
18 across the road to her neighbor's house, Roger Lowery, and
19 on the way she said he ripped off her shirt, you saw a
20 picture in the yard, law enforcement found it. He makes it
21 up to the porch, he starts struggling with her and fighting
22 with her, and Roger Lowery comes to the door, and he sees
23 that and he tells Mr. Grier to stop. Well, Mr. Grier
24 doesn't stop. And Roger Lowery says that he doesn't want to
25 but that he will shoot him if he had to, and Jermaine Grier

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1 said to Roger Lowery, "I'll kill you." Roger Lowery got the
2 door open, and Mrs. Lowery was able to grab Shareika and get
3 her back to the kitchen, and Roger Lowery then got punched
4 by Mr. Grier and they started struggling. And Mr. Lowery
5 testified that he felt like Jermaine Grier was trying to get
6 his gun and they're struggling, and that then ultimately
7 he's retreated back into his own home, and that Mr. Grier
8 crosses that threshold and comes in his kitchen, too. And
9 it's at that point that Mr. Lowery, who has shown the
10 restraint of Job and tried not to have to have it come to
11 this, shoots Mr. Grier with his one shot in the abdomen, and
12 Mr. Grier then falls backward out of the home onto the
13 porch. But Mr. Lowery's testimony is clear as to what
14 happened, and that Mr. Grier did cross that threshold. And
15 that -- you don't have forensic evidence to show that
16 because you have circumstantial evidence, you also have
17 direct evidence, and direct evidence is eye witness
18 testimony, and that's what Mr. Lowery saw and that's what he
19 testified to. As much as Mr. Grier would love to say now,
20 "I wasn't even there. I was never at Caroline Court. I was
21 never at West Brooklyn Avenue," we know that he was because
22 we see the pictures, and we know that he was because EMS
23 treated him. We know that he was because he was shot by
24 Mr. Lowery and had to be flown to Columbia where his life
25 was saved. I'm sure that's a really hard thing to have to

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1 admit to yourself. I'm sure that's a really hard thing to
2 have to acknowledge. But you know, it's real interesting
3 that someone that consistently says, "I don't remember. I
4 don't remember" -- even when Scott Grant, the Chief of
5 Police was talking to him very kindly, and talking to him,
6 you know, "I just don't remember. I don't have any people
7 over in Caroline Court." And he had to press him and press
8 him and finally he was like, "Oh, yeah, I have a sister,
9 Angela." And even then he asked him about James Hood.
10 Well, he knew he had James Hood then. On the video y'all
11 saw, didn't deny that he had James Hood as a brother-in-law
12 then, didn't deny it to Scott Grant, although he's denying
13 it now. But for someone who says he has trouble remembering
14 and no memory, he sure remembered a lot about testimony from
15 things when he was in here, not that he didn't spin it for
16 his own purpose. But he sure remembered in terms of certain
17 things that were said such as he's saying Angela Hood saying
18 not her brother. Of course, he put it in his context, not
19 the context of him laughing while she talked about her dead
20 husband and him being shot at the hands of Mr. Grier. He
21 sure recalled a lot of details from his discovery for
22 someone who has no memory, to the point that he's
23 challenging the issue of, "Well, some say 9:30 at Caroline
24 and some say 9:30 at West Brooklyn, how could I be at the
25 same place at 9:30? Therefore I didn't do it." Right,

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1 let's go home. That must be what he considers his
2 get-out-of-jail-free card. The fact is the law doesn't hold
3 us to that standard where we have to prove the exact minute,
4 the exact second of when something happens, because I surely
5 don't think there were people fighting for their lives to
6 stop and make a note of the exact time. My job would sure
7 be a whole lot easier if we had to prove that, because there
8 probably wouldn't be a single case we could establish.
9 Because when people are fighting for their lives they're
10 fighting for their lives, they're struggling and sometimes
11 they succeed and sometimes unfortunately they don't. I
12 submit to you that Mr. Grier remembers what he wants to
13 remember. I submit to you that Dr. Frierson is exactly
14 right, that the defendant is malingering. I'm not saying
15 that the defendant has had an easy life. I'm sure it has
16 been a very difficult time to be incarcerated, but it's
17 clear from even what his own expert said in terms of him
18 saying he was diabetic, she said only on occasions that his
19 mother had gestational diabetes when she was pregnant.
20 That's not the same as diabetic when he's an adult. And
21 that he said, "Oh, I had brain trauma from an incident in
22 prison." And Dr. Maddox said, "No. There was no indication
23 of that record whatsoever. I reviewed all of the prison
24 records." You know, what was interesting that Dr. Maddox
25 said was that stressors, that she felt that his behavioral

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1 reactions were out of proportion to whatever the stressor
2 was. And when I asked her, "Well, if he had no memory that
3 he could share with you about the incident so that he could
4 say what the stressor was, whether, you know, his
5 brother-in-law called him a jerk, or whether his
6 brother-in-law did something that he felt like he was being
7 poisoned or something, if he couldn't determine what the
8 stressor was, how could she say whether or not the conduct
9 was out of proportion? And the first time I asked it -- and
10 I tend to repeat myself because I'm older and I like to beat
11 the drum and make sure I've said what I need to say -- but
12 first time I asked it she said, "That's a good point.
13 That's a good point." But by the second time she had come
14 up with some answer, and I don't remember what that was.
15 But, you know, the other thing Dr. Maddox, their own expert,
16 said was it is clear that he knew the difference between
17 right and wrong, and it is clear that some of his actions
18 are premeditated. And the reason she knew that was because
19 she said for example when he was throwing urine on guards in
20 jail shortly after this happened when he was in the jail,
21 that takes preplanning, because he wasn't just urinating on
22 someone as he relieved himself, he was throwing it from a
23 cup. He had peed into a cup and she said that took
24 preplanning. And I said, "How about the charge where he had
25 the shank, the sharpened metal instrument that was against

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1 the rules of the detention center and he had it hidden in
2 his clothing and he was convicted in court for that?" I
3 said, "Would that also take premeditation?" She said,
4 "Absolutely. That's another example of that." And I asked
5 her, "And how about bringing a gun to a home where we know
6 from testimony there was no other gun there, bringing a gun
7 to the home? Does that indicate premeditation?" And she
8 said, "Yes, it does." So in terms of the malice and the
9 attempted murder of Shareika McIlwain, I submit to you you
10 can consider his intent to kill, that he shot her dead on,
11 close enough that he certainly could have killed her and he
12 did not. And then he continued to pursue her and he
13 continued to assault her, even after she also ran inside the
14 Lowery home and he fought Roger Lowery to get into that
15 home. And he remember what Roger Lowery said, even after he
16 shot him, that he ran off for an instant and then he came
17 back to the porch and he collapsed, but that it seemed hike
18 he was still reaching for that door. Now, the defense might
19 say, "Why would he come back? Why would he come back? Why
20 wouldn't he just hide in the woods?" Why did he? Except
21 maybe he realized he was shot and that he heard the
22 ambulance and he knew that he needed help, he needed
23 attention. I don't know. I can't pretend to get inside the
24 mind of Mr. Grier. But these psychiatrists both say he knew
25 the difference between right and wrong. I submit to you at

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1 best the defense has shown he is guilty but mentally ill.
2 Dr. Frierson doesn't even find that. He finds he could
3 conform his conduct to compliance of the law and that he
4 knew the difference between them, and therefore if you find
5 the State has proven its case and you believe doctor -- you
6 feel that Dr. Frierson's opinion is of weight to you and you
7 believe as he has testified, then you would find the
8 defendant guilty. And the Judge will instruct you on all of
9 this when it is his turn, which will be shortly. So we talk
10 about the attempt to clean, the attempt to use the gloves to
11 clean, and the challenge in terms of, well, did he have on
12 gloves. But again, why would the gloves even be down there
13 at McIlwain's house? Again, he was found within a short
14 distance of the gloves and the gun, the gun that was tested
15 by SLED. And I don't know if gets kind of boring and we
16 have to cross the T's and dot the I's in terms of saying,
17 "Did you touch this? Did you turn it in?" That's called
18 chain of custody. In the law we have to do that, because
19 otherwise it could be that someone would say, "How do you
20 know you didn't test a bullet from some other case from
21 Spartanburg? How do you know that?" And that's why you
22 have to go through all of that. But the bottom line, and
23 you heard the testimony of the forensic scientist, Michele
24 Eichenmiller, the first person from SLED that testified, is
25 that she test fired that gun, it was in working order. It

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1 took significant pressure to engage the trigger. It wasn't
2 something that would just go off accidentally, and that it did
3 work, and that she fired it. And she took those test fired
4 samples and she compared those casings to the casings that
5 were found in the defendant's pocket and from the floor of
6 Shareika McIlwain's kitchen, and she compared the bullets to
7 the bullet that was recovered from the autopsy. She
8 couldn't compare it to the one in the wall, because here is
9 the thing, when it hit wood it damaged it. She could see
10 some comparisons in terms of certain etches and striations,
11 but she couldn't do a complete comparison because the bullet
12 had been damaged. But here is the thing, when you shoot a
13 bullet into a body and in this case it doesn't hit bone,
14 remember the testimony? It went through the lung, went
15 through the heart, part of the diaphragm and into the
16 abdomen. It didn't hit bone, didn't get damaged so she
17 could compare it. What did they do at SLED? They shoot it
18 into the tank of water so it's not getting damaged, and she
19 was able to compare it and she was able to say the bullet
20 from the body of James Hood matches that gun, it matches
21 that shell casing when he shot Shareika McIlwain that
22 matches the shell casing in his pocket. And if he didn't
23 have a gun, why did he have ammunition in his pocket?
24 Ammunition that matched that very gun and the other
25 ammunition that was found? There was an unfired bullet, or

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1 a cartridge as they call it, found on the steps there where
2 the pants had been removed. Another unfired cartridge that
3 was found in the pocket of the defendant, and we had to ask
4 questions about all of that, because he was never there
5 according to him, never there. Well, according to Shareika
6 McIlwain he was there. According to Roger Lowery he was
7 there. I'm sure they would much rather he would have never
8 been there that night, but he was, and he took actions that
9 were in violation of our law and it's time for him to be
10 held accountable. You know what I found interesting when he
11 was talking to the police? You know, he went with that
12 about I don't know anything. I don't know nothing about
13 nothing basically. But when they said -- picked up the
14 warrant and Lieutenant Hall said, "You've been charged with
15 murder." He didn't say, "Who? Of who? Who's dead? Who is
16 it?" Wouldn't that be your first response? He didn't ask
17 that because he knew. Now, when they finally said, "Of
18 James Hood." Then he was like, "James Hood?" But when they
19 first said, "You've been charged with the murder," he didn't
20 say, "Of who? The president? Some kid down the street?
21 Who? My sister? Who? Who are you saying I killed? Tell
22 me, Lieutenant Hall." Didn't ask. He is charged with
23 burglary first degree, and it's first degree. I submit to
24 you the evidence has shown that he went in in the nighttime.
25 When you enter the dwelling of someone without consent with

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1 the intent to commit the crime therein and you do it at
2 night, His Honor will instruct you that the law is one of
3 the elements of first degree is that it happens at the
4 nighttime. The South Carolina Legislature has kindly passed
5 that law so that we can be in our homes at night and feel
6 safe. Unfortunately the law itself wasn't enough to protect
7 Mr. Lowery that night without having to use his firearm.
8 But it is time for Mr. Grier to be held accountable. I
9 submit to you the evidence has shown that the defendant is
10 guilty of burglary in the first degree, entering that home
11 after Mr. Lowery to continue that assault, and that he's
12 guilty of assault -- of attempted murder, attempting to
13 murder Shareika McIlwain by shooting her down in the face
14 where it grazed her neck, and that he is guilty of murder.
15 Angela Hood testified he was the only one that she left
16 there in the home other than the kids running in and out.
17 She testified as soon as she heard that there had been a
18 shot she called and he was still there, and he sounded fine
19 and he said everything was fine. But she said he said kind
20 a weird remark when the washing machine hit that rough spin
21 cycle, but then she said he seemed fine, was watching TV.
22 She didn't have any concerns. And here is the thing, she
23 didn't notice a gun. What does that mean? Because there
24 wasn't a gun in that home. He sure felt partial to that gun
25 because he took it with him when ran from there to Shareika

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1 McIlwain's house. I submit to you that meant when he
2 brought that gun in that home that he had hidden it on him.
3 He was the only adult she left in the home with him and she
4 felt comfortable with that. She knew her brother. She said
5 in the days leading up to this that he was acting like her
6 brother, she didn't say anything that caused her concern.
7 There was some testimony that one of the boys who had not
8 seen him for eight years in their short life, one boy was 14
9 when this happened, so eight years. One minute he was six
10 the last time he saw his uncle, said something like, "He was
11 crazy," or, "He wasn't acting right." And again, as I asked
12 Dr. Maddox if somebody didn't do a followup question and
13 say, "What do you mean by that? Do you mean that he's, you
14 know, simply got," like I used the example somebody is a
15 crazy cat lady as they call it. She loves cats and she's
16 got six cats in her house, some people might consider that
17 crazy, some people might not, but they might say, "She's
18 crazy." But does it rise to that legal standard? Dr.
19 Maddox didn't find that it did. The defense own expert
20 didn't say that he was not guilty by reason of insanity, nor
21 did Dr. Frierson. I'm almost through. I really appreciate
22 your attention. Again, I know it has been a long week and
23 today has been a very long day. Talking about GSR and
24 gunshot residue, and I remember how the expert said it's
25 very fragile, and that when you have a timeframe of six

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1 hours and intervening events, that it can be removed from
2 the hands. So their protocol doesn't allow them to test it,
3 because at that point what does it show? Had gunshot
4 residue been found on the defendant after he'd been treated
5 at the hospital, could have argued, "Well, you know, it came
6 from just when he picked up the gun, or it came from when he
7 struggled with Mr. Lowery over his gun." We don't know if
8 Mr. Lowery's gun had been fired earlier in the day when he
9 was shooting at squirrels, or raccoons, I think it was
10 raccoons. And then maybe he even shooting the raccoons that
11 day, "That's when my client struggled with it, that's when
12 he got GSR on his hands." Because look at all -- not only
13 had six hours passed, but the incident with James Hood and
14 then he shot the gun at Shareika McIlwain, that eye
15 witnesses say he did, and then he ran and he had the gun in
16 his hand, and they might say that. And again, I don't know
17 because they're about to argue next. Did he throw it down
18 as he ran over there? Or when he left the porch those few
19 minutes, then did he take it and throw it? I don't know. I
20 just know that that gun that when test fired matched those
21 shell casings and the bullet in the dead body of Mr. Hood,
22 that gun was found within yards of where Jermaine Grier was
23 that night. When we started the case Ms. Bonine told you in
24 her opening statement sometimes it's just a matter of
25 connecting the dots. And again, as horrible and as graphic

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1 as all of these incidents, this nightmarish time in
2 Lancaster, South Carolina, that the dots have been
3 connected. The gun has been connected to Jermaine Grier and
4 been connected to the bullet in the dead body, it's been
5 connected to the shell casing in his pocket, it's been
6 connected to the shell casings in the floor of Shareika
7 McIlwain's home. I respectfully ask that you find the
8 defendant guilty of murder, guilty of possession of a
9 firearm during the commission of a violent crime, guilty of
10 attempted murder and guilty of burglary in the first degree.
11 And if you feel, as Dr. Maddox felt, that he was guilty but
12 mentally ill, Dr. Frierson didn't feel like that, but if you
13 feel like that's the case, then I ask that you find him
14 guilty but mentally ill. But I ask that you don't find him
15 not guilty, he needs to be held accountable. It's that
16 simple. Thank you.

17 THE COURT: Thank you, Madam Solicitor. Ladies and
18 gentlemen, do y'all want to stand and stretch your legs a
19 little bit before we hear from Ms. Boulware? Let's take a
20 quick break, ladies and gentlemen of the jury.

21 (The jury left the courtroom.)

22 (The jury returned to the courtroom.)

23 THE COURT: All right. Thank you, ladies and
24 gentlemen. Ms. Boulware?

25 MS. BOULWARE: Thank you, Judge. I want to start out

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1 with I appreciate y'all hanging in there. Like the
2 solicitor says, it has been a really long day and I'm going
3 to try not to be terribly long for you, but I do want to get
4 into a few things here. I told you at the outset of this,
5 Jermaine Grier has been in the system, he's been treated for
6 mental illness while he is in -- has been in SCDC, almost
7 the entire time he's ever been in SCDC, which I tell you
8 right now is many years. This case is about mental illness.
9 We've got both the solicitor's office and our office, we've
10 got hundreds of pages of medical records for Jermaine Grier
11 that would fill up that banker box right there. And if he's
12 not mentally ill, somebody has been treating him for
13 something for the last several years. So what you're going
14 to have is a few options here. You're going to have, as the
15 solicitor mentioned, guilty but mentally ill, there's not
16 guilty and there's guilty. Guilty but mentally ill is not
17 knowing right from wrong, that's not what that is. What
18 that is is your mental illness prevents you from conforming
19 your conduct to the laws of society. Mr. Grier could barely
20 conform himself in this courtroom this week, I'm sure you
21 all noted that. Let's talk about that day, the day all of
22 this happened, or that evening rather. Javy Crosby
23 testified he walked in with his two friends, which were Mr.
24 Grier's nephews, and they found Mr. Grier with James Hood.
25 Now, what they didn't do was see Mr. Grier actually shoot

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1 James Hood, they didn't see this. Two of the witnesses that
2 were there that day weren't here to testify to what they saw
3 or didn't see. But what that gets to is what the Judge is
4 going to explain to you, something called reasonable doubt.
5 What reasonable doubt is, is there any other reasonable
6 explanation besides what the State is saying happened. The
7 State is saying that was a cold blooded murder. I'm telling
8 you we don't know that. We don't know what happened. Dr.
9 Maddox testified he has intermittent explosive disorder.
10 That could have been a last minute decision for him. He
11 might have not done it at all. He had a gun later in the
12 day -- or he never actually had the gun, he had some bullet
13 in his pocket. Nobody actually saw him kill Mr. Hood.
14 Nobody knows if that's what he did why he did that. So
15 think about that when you're listening to the Judge's charge
16 on reasonable doubt. Then Jermaine goes back through the
17 woods and field, not quite sure how he got over there but he
18 didn't go by the road I don't think, and he arrives at
19 Shareika McIlwain's house. For some reason he leaves this
20 scene and goes to a house of a cousin who he hasn't seen in
21 years, hadn't seen her in years, she testified sixth or
22 seventh grade. Maybe he had a reason to do that, maybe he
23 didn't, we don't know, but it sounds illogical. He gets to
24 Shareika's house, asks for a cigarette. They don't know why
25 he's there, they're a little nervous that he's there, aware

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1 he just got out of prison. She never had any issues with
2 him before. She didn't ask him to leave the house. She was
3 thinking -- well she testified, "I better go." So as she
4 started to do this she testifies Jermaine shoots the gun.
5 She sees a light. Shoots at her. Joy Duncan testified she
6 was right there, could have been hit just as well as
7 Shareika was. There's testimony that there was more than
8 one shot. Random shooting. I don't know if he was counting
9 bullets -- there's testimony he was counting bullets. We
10 don't know if he was counting those bullets. Was he just
11 playing with them? We don't know what he was doing. So as
12 a result of that, his shooting, wherever he was trying to
13 shoot or for whatever reason he decided to do it, like I
14 said, this is all an illogical scenario, grazed her neck and
15 became unreasonably angry, and as she testified, chases her
16 across the street to Mr. Lowery's house. Now, the solicitor
17 is right, Mr. Lowery ends up shooting him and he comes back.
18 She might not think that's an interesting question but I do.
19 Why would somebody do that? Okay. You hear an ambulance,
20 you think you're going to run down the street and get help?
21 "Oh, I just, you know, shot this person or shot at them and
22 chased them across the street, I'm going to get away so I
23 can't get caught, but oh let me go back over there."
24 Illogical too. Why we're talking about that, let's talk
25 about what he was wearing. It's June 10th. We all live in

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1 South Carolina, we know how hot it is on June 10th
2 generally. He has on -- by the way, Captain Hall testified
3 it was hot that day. He has on thermal underwear, what we
4 know as long johns. We probably rarely get those out in
5 South Carolina let alone in June to wear them, and he has
6 blue jeans other over them. You can pull those blue jeans
7 out of the box if you'd like, I couldn't quite tell if
8 they're here to here or whatever, but blue jean fabric
9 covering thermal underwear is hot. Again, illogical. Why
10 would somebody dress like that? Now, let's talk about those
11 guns -- the gun and the gloves that the solicitor brought
12 up. They're found across the street and off -- I think the
13 guns on the west side of Ms. McIlwain's driveway. It's not
14 thrown in the bushes, it's not hid under something, it just
15 appeared to be dropped. The gloves laid there for two days,
16 they're just right there, they're out in the open, they're
17 by the bike under the car. Somebody who is thinking with a
18 logical mind is first of all not going to come back to the
19 scene; second of all, not going to sling the gloves down in
20 front of the house and just drop the gun. Why drop the gun?
21 Nobody knows. It was confusing at Mr. Lowery's house. You
22 know, folks didn't know did he still have a gun? When did
23 he have a gun? When did he drop the gun? Nobody knows.
24 But the fact is he dropped that gun somewhere where it could
25 be found easily. It got a picture taken of it that night,

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1 as did the gloves. Mr. Lowery had never met Jermaine. No
2 prior information about Jermaine. I'm going to submit to
3 you that Jermaine did not make a conscious intentional
4 decision to go into Mr. Lowery's house that night, it was in
5 the chase of Shareika McIlwain. I'm also going to submit, I
6 don't think he knew what he was doing. At this point
7 there's so many illogical things happening who knows what
8 he's thinking, but I do not think he intended to enter his
9 house, which is what is an element of burglary. Now, as I
10 mentioned, Ms. McIlwain had a bad day for sure, a really bad
11 day, and she's lucky, very lucky. And she was scared of him
12 that day, but we have no motive in that either. Just like
13 we don't know why he may have shot Mr. James Hood, nobody
14 knows why he shows up at Ms. McIlwain's house, asked for a
15 cigarette, counts, plays, whatever with some bullets and
16 then just decides to start shooting. It's not like he went
17 on this crime spree with an intent to commit a certain kind
18 of crime for a certain kind of reason. Robbery? No. He's
19 not out raping folks, he's just randomly going places. Ms.
20 Joy Duncan said a couple of interesting things. When I
21 questioned her about her interview from I believe it was
22 either that night or the next day, not clear on the day but
23 it was very close in time seven years ago, I asked her if
24 she recalled saying nothing led up to it? "Yeah, I recall
25 saying that. Did you recall saying it came out of nowhere?

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1 Yeah, I recall saying that. Do you recall saying he shot
2 Shareika for no reason? Yes, I do." Did she recall saying
3 it could have been anybody and that she could have been
4 shot, too? That's how close she was. Now, just to kind of
5 go back over to Caroline Court. Let's talk about Ms. Angela
6 Hood, who clearly mourned her husband, mourned the -- loves
7 her brother as well, because as she said, "That ain't my
8 brother." She didn't appear to have a whole lot of
9 animosity that Jermaine did or may have done that. She
10 appeared to be very concerned about his mental health and
11 very sad that she's lost the brother she grew up with. She
12 also said Jermaine would help out with Mr. Hood. They had a
13 tight bond is what Ms. Hood said. But that day he did some
14 weird things. He gets a little obsessed with the washing
15 machine on spin cycle and says "They better leave me alone,"
16 while staring at the washing machine. Who is he talking to?
17 What's he talking to? And then he's okay after that.
18 Again, not logical. She thought he might have been joking.
19 He was the clown of the family when he grew up so she let
20 that go. What she did know is that he was on medication
21 while he was at SCDC. She also mentioned she thought it
22 wore off, which is exactly why I asked Dr. Frierson how long
23 does it take for Tegretol, the medication that was keeping
24 him straight at SCDC, or as straight as it can, how long
25 does it take for that to wear off. Because when he went to

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1 Catawba Mental Health things were not followed through, he
2 did not get a refill on that or even get it prescribed I
3 don't believe. He didn't see a psychiatrist. So it wears
4 off in a few days. He's home for I believe the number is
5 eight days. It sounds like plenty of time for that
6 medication to wear off and for Jermaine to just start
7 devolving. Sounds like that's exactly what he did. Let's
8 talk about the experts, Dr. Maddox and Dr. Frierson. They
9 are old friends. They know each other, they've been working
10 together. They both do this all of the time, lots in court.
11 Pretty -- both pretty well known for this. Dr. Maddox
12 believes he has intermittent explosive disorder. She
13 believes he could not conform his conduct that day because
14 of his mental illness. Again, conforming conduct, not the
15 same as knowing right from wrong, it's not as high a
16 standard. Dr. Frierson at the time concluded, and today
17 based on what he had -- the information he had at hand did
18 conclude, "Okay. Yeah, I disagree with that." As he stated
19 they're professionals, they disagree all of the time. We're
20 a bunch of lawyers, we love to argue with each other. But
21 what Dr. Frierson also didn't have is any information from
22 anybody who was around him that day. He talked to his
23 mother who gave him some family history, and based on the
24 family history she gave him, well, yeah, he'd never been to
25 mental health treatment, he's never been in a facility, he

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1 didn't seem to have a history. But I believe if he would
2 have gotten Ms. Hood on the phone and even was able to talk
3 to Ms. McIlwain or his brother -- I mean, excuse me, his
4 nephew, Tavarus, who is one of the folks there that day but
5 was not here to tell you about what he saw, he would
6 have heard that -- you know, Dr. Frierson would have had a
7 little more information to go on. I asked Dr. Frierson,
8 "Give me an example of psychosis. Hallucinations." Well,
9 he saw something in the washing machine and heard something
10 in the washing machine that he had no reason to -- or
11 nothing to gain from that, no reason to do that. His sister
12 thinks he's clowning around. It turns out he probably
13 wasn't because of the events later on that evening.
14 Something was happening in his head that wasn't good. Dr.
15 Frierson talked to him an hour and a half, Dr. Maddox an
16 hour. Sounds like they both believed that was plenty of
17 time to figure out what was going on. They came to
18 different opinions, but that's what sometimes happens. You
19 all get to take all of the testimony you hear from everyone,
20 including experts, and you can give everybody the same
21 weight, you can give experts more weight, lay people less
22 weight, the opposite is true, too. Experts -- you can say,
23 "You know, I think they didn't have all of the information.
24 You know, I believe the eye witnesses of people who saw
25 Jermaine that day may have a little more to go with that."

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1 Not that they diagnose anything on that, but you all have
2 heard all of that. You also heard Dr. Frierson mention --
3 or once I asked them malingering and mentally ill are not
4 mutually exclusive. Jermaine has a history of malingering,
5 it's documented in his SCDC records. That's what Dr.
6 Frierson believes he was doing every time he saw him, which
7 was, I believe, two or three. But as he mentioned, one
8 doesn't cancel out the other. Just because you are
9 malingering does not mean there's not something wrong there,
10 still mentally, still can be that is. And I've talked with
11 you about the weight of opinions, we just talked about that.
12 And the solicitor talks about his memory on those -- on the
13 details of his case. I sent Mr. Grier that information he
14 had with him all during the trial. He's been obsessively
15 looking at that for months and months and probably a couple
16 of years now, a year or two. I am quite sure he has
17 remembered every detail in there, and he's had legitimate
18 questions about it, which is what he's supposed to do. I
19 also urge you -- you can have the opportunity, if you would
20 like, to watch the video again, the video of when he was
21 served his murder warrants. Okay. So he goes, "Murder."
22 Yeah, he did. He's also straight out of the hospital, just
23 been shot, likely on pain medication, I don't know that for
24 sure, we can infer that, and actually just trying to figure
25 out what they're even talking about. He's not connecting

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1 that they're asking him why -- or if he knows James Hood or
2 Caroline Court to a murder warrant that's getting ready to
3 be served on him so he says, "Murder?" Confused. That
4 indicates nothing that anyone would say, oh, well he must
5 remember it because he's not -- no. He's confused. I just
6 urge you to take a look at that again if you have any
7 questions about that, about him feigning not remembering
8 that. But all in all we all appreciate your time. That was
9 very important -- this is all very important to Mr. Grier.
10 This is an old case and it needs to be settled. And again,
11 I appreciate your time. I would ask you to go back and
12 carefully consider whether the -- Mr. Grier even committed
13 murder, or whether he shot him at all. Could have been in
14 anger, could not have been at all. And also consider the
15 intent he had at Ms. McIlwain's house. Was he shooting
16 just randomly? Because it sure did sound like he was. I
17 would ask you to do the best you can with that. And I
18 appreciate your time again and thank you all for your
19 service, and so does Mr. Grier.

20 THE COURT: Thank you. Thank you, Ms. Boulware. Brief
21 rebuttal?

22 MS. COLLINS: Yes, Your Honor. As to the new -- as to
23 certain points brought up by the defense. As to why he ran
24 to the McIlwain place, why did he end up there afterwards.
25 I would submit that he went there, once he got there and

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1 realized where he was, I would submit at first he was just
2 fleeing, that he went into her home to hide, but that when
3 he saw her looking at his gun that he realized, just like he
4 had threatened the boys, that if you call 911 I'll shoot
5 you. He sees her doing something on her phone, she was
6 texting the others going, "I'm worried, I'm leaving," and
7 that's when she got up and started walking toward the door
8 that he shot her, just like he had threatened the boys that
9 he will do if they called 911. So that's why I submit --
10 and again, I don't know because I can't crawl inside his
11 head, but it does make sense that he would have gone in
12 there to hide, but then when he thought she was doing
13 something with his phone -- with her phone that he then
14 would have shot her. He had threatened to kill them if they
15 did that, call the police, and then he attempted to kill
16 her. As to why he was wearing what he was wearing. Again,
17 he'd been in the Department of Corrections for eight years,
18 we don't know if those were the only clothes he owned. We
19 don't know if maybe he liked wearing those long johns
20 because he could hide his gun within it in the back to where
21 they wouldn't slide down. We don't know if he wore his
22 pants with them synched at his waist or lower down on his
23 hips, we don't know. Maybe he just wore them for modesty
24 for that purpose because he did wear his pants low and he
25 wanted something to cover his bottom so he wouldn't be rude.

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1 And as to why did he drop the gun, why would he have done
2 that. It wasn't hidden as Ms. Boulware was saying. I
3 submit to you he was chasing after Shareika McIlwain and I
4 submit that he suddenly realized he hadn't put those other
5 bullets back in that gun. Remember when law enforcement
6 found it? The clip was empty, there were no live bullets in
7 the gun. Maybe he didn't have time to put them back in.
8 She suddenly got up and that's when he put the live bullets
9 back in his pocket. I submit that when he was chasing her
10 and realized it didn't have anymore bullets in it, yeah, he
11 had bullets in his pocket, yeah, he could have stopped and
12 put them in. But she was going, he had to stop her. He had
13 to stop her, too, before she got help just as he had
14 threatened the boys that he would do. Thank you.

15 THE COURT: Thank you, Madam Solicitor. All right.
16 Ladies and gentlemen of the jury, it's now that time --
17 you've heard from the testimony and the evidence during the
18 trial, it's now time to hear from me as I instruct you on
19 the law. I anticipate my instructions will take anywhere
20 from 15 to 20 minutes depending on how fast I can read them,
21 but it's very important that you listen to what I tell you
22 and understand what I tell you, for that reason would
23 anybody like to take a quick break before I give you the law
24 or are y'all ready to move on through? All right. Good,
25 let's move on through. Y'all listen carefully to me and I'm

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1 going to instruct you on the law, which pertains to the
2 issues which have arisen in this case. Mr. Foreman, members
3 of the jury, you've heard the testimony and the evidence,
4 you've heard both the arguments of the State and the defense
5 and now you'll hear the law that applies in this case. You
6 are the finders of the facts in this case. I, as the trial
7 judge, do not have the right to express my opinion as to
8 what I have of the facts because that's a matter solely for
9 you, the jury, to determine. You determine the effect,
10 value, weight and credibility of the evidence presented
11 during this trial. As the trial judge it has been my
12 responsibility to preside over the trial and to rule upon
13 any objections and admissibility of evidence offered during
14 this trial. I have the additional duty to charge you the
15 law as I'm now doing, and as the presiding judge I am the
16 sole judge of the law in this case. It is your duty as
17 jurors to accept as correct and to apply the law as I now
18 state it to you and use that to reach your verdict. Now,
19 the fact that I may instruct you on various subjects in this
20 case must not be taken by you as indicating what you think
21 my opinion is, because what my opinion is of the facts
22 doesn't matter, it's your opinion that matters as to what
23 the facts are. Okay? Finally I charge you that you should
24 not be concerned with what you think the law ought to be,
25 but rather what I charge you the law is. Now, you're the

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1 judges, the sole judges of the credibility, also known as
2 the believability of the witnesses who have testified, and
3 of the evidence which has been presented during this trial.
4 And in passing upon credibility you can take into
5 consideration many things such as the demeanor or the manner
6 in which a witness testified. Whether or not a witness had
7 a reason to be biased or prejudiced. Whether or not a
8 witness' testimony was contradicted on the one hand or
9 supported and corroborated on the other hand. All of these
10 things you'll consider bearing in mind you should give the
11 defendant the benefit of any reasonable doubt. Now, there
12 are two types of evidence which are presented during a
13 trial: Direct evidence and what we call circumstantial
14 evidence. I'm going to give you some law school definitions
15 and then use an explanation for you so you can understand.
16 Direct evidence directly proves the existence of a fact and
17 does not require further deduction. For example, eye
18 witness testimony, that can be considered as direct
19 evidence. Circumstantial evidence is a proof of a chain of
20 facts and circumstances which indicate the existence of a
21 fact. All right. Now, what does that mean? Well, just
22 imagine if you will in the winter before you go to bed,
23 before you go in for the evening you look outside and you
24 see brown grass on your front lawn. You go to bed, wake up
25 the next morning and you see snow all over your lawn with

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1 footprints in it. Well, first of all, you can infer that it
2 snowed while you were sleeping; secondly, you can infer that
3 somebody has been walking on your lawn. See, these are
4 things that you can infer, even though you didn't see it
5 snow and even though you didn't see somebody walk on your
6 lawn. Okay? That's a good example of what circumstantial
7 evidence is, and crimes may be proved by circumstantial
8 evidence. The law makes no distinction between the weight
9 or value to be given to either direct or circumstantial
10 evidence. However, to the extent the State relies on
11 circumstantial evidence, all of the circumstances must be
12 consistent with each other, and when taken together point
13 conclusively to the guilt of the accused beyond a reasonable
14 doubt. Now, if these circumstances merely portray the
15 defendant's behavior as suspicious the proof has failed.
16 The State has the burden of proving the defendant guilty
17 beyond a reasonable doubt. That burden rests with the State
18 regardless of whether the State relies on direct evidence,
19 circumstantial evidence, or some combination of the two.
20 Now, as an expert witness. You've heard from several expert
21 witnesses during the trial, and you'll recall that I told
22 you an expert witness' testimony is to be given the weight
23 and credibility you believe it deserves. An expert can
24 testify in the form of an opinion. Just because that expert
25 gives an opinion does not mean you have to accept that

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1 opinion. You will take it into consideration with all of
2 the other weight of the evidence as you deem relevant. Now,
3 the defendant has pled not guilty to the charges in these
4 indictments, and that plea has placed the burden on the
5 State, of course, to prove the defendant guilty. A person
6 charged with committing a criminal offense is never required
7 to prove innocence. I charge you that it is an important
8 rule of law, ladies and gentlemen, that the defendant in a
9 criminal trial, no matter what the seriousness of the
10 charges may be, is always presumed innocent -- is always
11 presumed innocent and is presumed to be not guilty of the
12 crimes for which the indictments were issued unless guilt
13 has been proven by evidence satisfying you, the trial jury,
14 of that guilt beyond a reasonable doubt. Now, this
15 presumption of innocence doesn't end when you start your
16 deliberations, but it accompanies the defendant throughout
17 the trial until you've reached a verdict. Now, the
18 presumption of innocence, if you can imagine, is like a
19 robe, just like I'm wearing a black robe. Just imagine a
20 robe of righteousness placed about the shoulders around the
21 defendant, which remains with him until it has been stripped
22 away from him by evidence satisfying you of his guilt beyond
23 a reasonable doubt. This presumption of innocence is not
24 just a mere legal theory, it's not just a legal phrase, it's
25 a substantial right to which every defendant is entitled

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1 unless you, the jury, are satisfied from the evidence of the
2 defendant's guilt beyond a reasonable doubt. Now, I've said
3 the word reasonable doubt a lot, so what does that mean?
4 What's the definition of reasonable doubt in the law? A
5 reasonable doubt is a doubt which makes an honest, sincere,
6 conscientious juror in search of the truth to hesitate to
7 act. Now, proof beyond a reasonable doubt must therefore be
8 proof of such a convincing character that a reasonable
9 person would not hesitate to rely and act upon it in the
10 most important of his or her own affairs. Now, proof beyond
11 a reasonable doubt can also be described as proof that
12 leaves you firmly convinced of the defendant's guilt. Now,
13 there are very few things we know in this world with
14 absolute certainty, and in criminal cases the law does not
15 require proof that overcomes every possible doubt. So if
16 based on your consideration of the evidence you were firmly
17 convinced that the defendant is guilty, then you must find
18 him guilty. If on the other hand you think there's a real
19 possibility that he's not guilty you must give him the
20 benefit of that doubt and find him not guilty. Let's talk
21 about intent, criminal intent. In order to establish
22 criminal liability criminal intent is required. For
23 example, the mental state required to be proven by the State
24 for a particular crime might be purpose, intent, knowledge,
25 recklessness or criminal negligence. Criminal intent must

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1 be proven by the State beyond a reasonable doubt. Criminal
2 intent is always a matter that must be determined by you,
3 the jury, from the circumstances surrounding the situation.
4 There's no way you can prove intent to a mathematical
5 certainty. Medical science cannot dissect a person's brain
6 and try to determine what the person had in mind. Okay? So
7 the law says that criminal intent may be inferred from the
8 circumstances which have been shown to have existed. That's
9 how you make a determination of whether or not the element
10 requiring intent was met or present. Now, it's not
11 evidence -- it's not necessary to establish intent by direct
12 or positive evidence, but intent may be established by
13 inference in the same way as any other fact. Criminal
14 intent is a mental state, a conscience wrongdoing. It's up
15 to you to determine what the defendant intended to do based
16 upon the circumstantial evidence which has been shown to
17 have existed. Now, let's talk about guilty but mentally
18 ill. A defendant is guilty but mentally ill if at the time
19 of the crime the defendant was able to distinguish a moral
20 or legal right from wrong, or to recognize his act as being
21 morally or illegally wrong, but because of a mental disease
22 or defect the defendant did not have the sufficient ability
23 to follow the law. If you have no reasonable doubt that the
24 defendant committed the crimes and you find that the
25 defendant had the mental capacity distinguish -- to

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1 distinguish moral or legal right from wrong, or recognize
2 the crimes as morally or legally wrong, but that it is more
3 likely than not because of his mental disease or defect the
4 defendant cannot follow the law, then you would find the
5 defendant guilty but mentally ill. Now, another possible
6 verdict in this case is guilty. You may only find the
7 defendant guilty if the State has proven to your
8 satisfaction beyond a reasonable doubt that the defendant
9 committed the crime, the defendant was able to distinguish
10 moral and legal right from wrong, and to recognize the crime
11 as morally and legally wrong, and that the defendant was
12 able to follow the law. Let's talk about murder. What is
13 murder? In South Carolina -- the defendant is charged with
14 murder. The State must prove beyond a reasonable doubt that
15 the defendant killed another person with malice
16 aforethought. What's malice? Well, malice is hatred, ill
17 will or hostility towards another person. Malice is the
18 intentional doing of a wrongful act without just cause or
19 excuse and with an intent to inflict an injury or under
20 circumstances that the law will infer an evil intent. Now,
21 malice aforethought does not require that malice exists for
22 any particular time before the act is committed, but malice
23 must exist in the mind of the defendant just before and at
24 the time the act is committed. Therefore there has to be or
25 must be a combination of the previous evil intent and the

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1 act. Now, malice aforethought can be expressed or inferred.
2 Now, these terms, express and inferred, don't mean different
3 kinds of malice, but they just -- they show you -- or they
4 just simply show the manner in which the malice may have
5 been shown, that's either by direct evidence or by inference
6 from the circumstantial evidence which has been proved to
7 your satisfaction. Express malice, for example, is shown
8 when a person speaks words which express hatred or ill will
9 for another, or when the person who's been charged prepare
10 beforehand to do the act which was later accomplished. For
11 example, lying in wait for a person or other acts of
12 preparation going to show that the deed was within the
13 defendant's mind, that would be expressed malice. Malice
14 can also be inferred from conduct showing a total disregard
15 for human life. Now, if you find that the State has failed
16 to prove beyond a reasonable doubt that the defendant
17 committed murder you may then consider whether the State has
18 proved beyond a reasonable doubt that the defendant
19 committed voluntary manslaughter. Now, to prove the crime
20 of voluntary manslaughter the State must prove beyond a
21 reasonable doubt that the defendant took the life of another
22 in the sudden heat of passion based upon sufficient legal
23 provocation. Now, both heat of passion and sufficient legal
24 provocation must be present at the time of the killing to
25 constitute the crime of voluntary manslaughter. Now, sudden

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1 heat of passion may for a time affect a person's
2 self-control and temporarily disturb a person's reason. The
3 sudden heat of passion must be the type that would make an
4 ordinary person unable to coolly reflect on his actions, and
5 would produce an uncontrollable impulse to do violence.
6 Sufficient legal provocation must be the type that would
7 make a person of ordinary reason and caution become enraged
8 and to lose control temporarily. The provocation needed for
9 voluntary manslaughter must come from some act of or related
10 to the victim. Now, words alone, however vulgar and
11 insulting, are not enough to be legal provocation. Where
12 death is caused by the use of a deadly weapon the words must
13 be accompanied by some overt threatening act which could
14 have produced the heat of passion. The exercise of a legal
15 right, no matter how offensive it is to another, is never
16 enough for sufficient legal provocation for voluntary
17 manslaughter. If the heat of passion had cooled or there
18 was enough time between the provocation, if any, and the
19 killing for the passion for a reasonable person to cool, the
20 killing would not be voluntary manslaughter. So when
21 deciding whether or not a reasonable person would have had
22 enough time to cool off, you need to consider all of the
23 circumstances surrounding the killing. You can consider the
24 nature of the provocation, if any. You can consider the
25 defendant's mental and physical state, and any of the

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1 circumstances and relationships between the parties. Now,
2 let's talk about attempted murder. The defendant is charged
3 with attempted murder. In order to prove this crime the
4 State must prove the defendant attempted to kill another
5 person with malice aforethought, either express or implied,
6 or inferred. I've already given you the standards and
7 definition of what malice is. Okay? So if facts are proved
8 beyond a reasonable doubt sufficient to raise an inference
9 of malice to your satisfaction, ladies and gentlemen, this
10 inference will simply be an evidentiary fact to be
11 considered by you, along with all of the other evidence in
12 the case and you may give it the weight you decide it should
13 receive. A specific intent to kill is an element of
14 attempted murder. Intent means intending the result which
15 actually occurs, not accidentally or involuntary. I've
16 already described to you what the -- what intent -- criminal
17 intent is. Let's talk about possession of a weapon during
18 the commission of a violent crime. The defendant is charged
19 with possession of a weapon during the commission of a
20 violent crime. The State must prove beyond a reasonable
21 doubt that the defendant was in possession of a firearm
22 during the commission of a violent crime. A firearm means
23 any revolver or pistol or a weapon which is -- which will or
24 is designed to or may be readily converted to expel a
25 projectile. In order to find the defendant guilty of

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1 possession of a weapon during the commission of a violent
2 crime, you must first find the defendant guilty of either
3 committing a violent crime or attempting to commit a violent
4 crime. And the State must prove beyond a reasonable doubt
5 that the weapon further advanced or helped in the commission
6 of that crime. Now, let's talk about first degree burglary.
7 The defendant is charged with first degree burglary. The
8 State must prove beyond a reasonable doubt that the
9 defendant entered a dwelling without consent. A dwelling is
10 defined as any building or portion of a building in which a
11 person ordinarily sleeps. In order to prove the defendant
12 entered the dwelling the State does not have to show that
13 the defendant's entire body entered the dwelling, the
14 smallest entry is sufficient. It may be any part of the
15 body such as a hand or foot, or even an instrument. In
16 addition, the State does not have to prove that force was
17 used to gain entry. If a person enters the building by
18 using deception, artifice, trick or misrepresentation to try
19 to -- to get consent to enter, this is an entry without
20 consent. Next -- so that's entry. Next, the State must
21 prove beyond a reasonable doubt that the defendant intended
22 to commit a crime at the time of the entry. The mere entry
23 into a dwelling without consent is not necessarily burglary.
24 However, if there is an intent to commit a crime inside if
25 it is formed after the entry it is not burglary. On the

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1 other hand, if the defendant intended to commit a crime at
2 the time of the entry it is burglary, even if the defendant
3 abandoned that intent after entry. It does not matter that
4 the intended crime was not completed. Intent, again, can be
5 shown by acts and conduct of the defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent, such as when entering while in the dwelling or
8 when fleeing the defendant caused physical injury to anyone
9 not participating in the crime. Or whether or not you
10 believe sufficient evidence has been introduced that when
11 entering, while in the dwelling or when fleeing the
12 defendant used or threatened to use a dangerous object. Or
13 if you find sufficient evidence has been entered by the
14 State that the defendant entered or remained in the dwelling
15 in the nighttime. And nighttime is defined as the period
16 between sunset and sunrise during which there is not enough
17 daylight to recognize a person's face except by artificial
18 light or moonlight. Almost done, y'all are doing great.
19 Voluntary intoxication. Insanity caused by the use of drugs
20 or alcohol may be a defense if the insanity is permanent and
21 destroys the defendant's ability to know right from wrong,
22 however, when voluntary intoxication does not produce
23 permanent insanity it is not a defense to a crime. A person
24 who voluntarily becomes intoxicated is just as responsible
25 for the acts committed while intoxicated as when the person

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1 is not intoxicated. Now, the indictments in this case
2 allege four different offenses against the defendant, and
3 each indictment contains a separate and distinct offense,
4 except I've given you, the jury, the option of a lesser
5 offense of voluntary manslaughter under the murder
6 indictment, and I will go over that in a moment, Mr.
7 Foreman. Okay? But each indictment charges a separate and
8 distinct offense. You must decide each indictment
9 separately on the evidence and the law applicable to it
10 uninfluenced by your decision as to any other indictment.
11 The defendant may be convicted or acquitted on any or all of
12 the offenses charged and you'll be asked to mark a separate
13 verdict for each indictment. Again, I'm going to go over
14 that here momentarily. Now, ladies and gentlemen, let me
15 say something to you about your deliberations. The word
16 deliberation is defined as a careful consideration weighing
17 up with a view to a decision. See, the genius of our jury
18 system is that it allows 12 good people, both men and women,
19 from differing backgrounds, life experiences and
20 perspectives to consider the evidence, talk about it and
21 ultimately reach a verdict. Now, the task of a juror is
22 called deliberations for a reason; you, the jurors, are to
23 consider the evidence in this case carefully and
24 deliberately. Discuss it in a calm, thorough and courteous
25 manner. Remember, you're not partisans or advocates for one

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1 side over the other, you're the judges of the facts. Your
2 sole duty is to sort through the information that you've
3 received in the trial, your memory of the testimony, all of
4 these documents and evidence and pictures, and you will find
5 your verdict from the evidence presented in this courtroom.
6 The supreme law of our land, the United States Constitution,
7 affords everyone a day in court and a fair trial, so this
8 case is very important to both sides because it is their
9 day. I charge you, ladies and gentlemen, to listen
10 carefully to the views of your fellow jurors, consider their
11 viewpoints, courteously discuss the evidence. Remember,
12 you're doing something deliberately. You're not in a big
13 hurry. I know what time it is, okay? You're not in a big
14 hurry. You are tasked with a duty of utmost importance.
15 Your verdict cannot be based on sympathy, passion,
16 prejudice, emotion or any other consideration not in
17 evidence in this case. In conclusion, then, I'm going to
18 have you to go down to jury room, you have been selected by
19 both the State and the defense to be fair and impartial. It
20 is your duty, then, and your deliberations to determine your
21 verdict in this case giving the defendant the benefit of
22 every reasonable doubt on these charges from the facts which
23 you determine to be credible, you take and apply the law,
24 which I've just given to you, and that's how you reach your
25 verdict. I've told you the standards you have to apply to

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1 the charges and the indictments, you've heard the evidence
2 and now you've heard the law. Whatever your verdict is as
3 to each indictment, Mr. Foreman, you will mark one blank on
4 each number. Okay? I'm going to go over this with you real
5 quick. It's called verdict form. The first charge is
6 murder. As to the charge of murder, they list the
7 indictment number -- remember, the indictment doesn't mean
8 anything, it's just the way the case comes into court -- you
9 either mark not guilty, or you mark guilty, or you mark
10 guilty but mentally, or you mark guilty of the lesser
11 offense of voluntary manslaughter, or you mark guilty but
12 mentally ill of the lesser offense of voluntary
13 manslaughter. You mark one. Okay? The second charge is
14 possession of a weapon during the commission of a violent
15 crime, you mark one. Your choices are either not guilty,
16 guilty, or guilty but mentally ill. The same thing as to
17 attempted murder, same thing as to burglary first degree,
18 and then you'll sign it and date it. Here is the thing,
19 Mr. Foreman, you can't mark on this verdict form until all
20 12 of you agree as to what the verdict is. Okay? When
21 all -- it has to be a unanimous verdict, that means all 12
22 of you must agree. When you've reached a unanimous verdict,
23 that's when you can fill it out, sign it and date it, and at
24 that time that's when you'll knock on the door and let the
25 bailiff know that y'all have reached a verdict and we'll

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1 bring you back out here to receive your verdict. Okay? So
2 ladies and gentlemen, at this time I'm going to send you
3 back to your jury room. I don't want you to start talking
4 about everything until you get all of the evidence and the
5 verdict form and then you can start deliberating, and you'll
6 keep deliberating until you've reached a verdict. Okay?
7 Thank you very much. Head on back there at this time,
8 everybody except for my alternate. Thank you.

9 (The jury left the courtroom and the alternate
10 Remained.)

11 THE COURT: Any objections to the charge from the
12 State?

13 MS. COLLINS: No, Your Honor.

14 THE COURT: Any exceptions from the defense?

15 MS. BOULWARE: No.

16 THE COURT: All right. Thank you. Any objection to me
17 allowing the alternate to leave?

18 MS. COLLINS: No.

19 MS. BOULWARE: No.

20 (The alternate juror was dismissed.)

21 THE COURT: There's a lot of stickers on this evidence
22 which have just ID on them because y'all marked themselves,
23 it doesn't have actual evidence. So I'm fine with just
24 saying they are all in evidence, it is what it is, because
25 if not he's going to go back and manually write something

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1 different.

2 MS. COLLINS: I think we'll just strike through ID, and
3 I'll be glad to help.

4 THE COURT: Okay. That's fine.

5 (The jury began deliberations.)

6 THE COURT: I had the bailiff knock on the door to ask
7 the foreman if they want to keep going this evening, because
8 they've been in there for about an hour and a half or so.
9 And the foreman indicated they still had a lot of work to
10 do, which is fine, and so I told them I am going to go ahead
11 and release them for the evening. I told them don't talk
12 about the case, come back tomorrow morning at 9:00 a.m.
13 because we're coming in here anyway. We'll see y'all in the
14 morning at 9:00 a.m. Thank you very much.

15 (Court recessed for the evening and resumed at
16 9:00 a.m. on Friday, April 16, 2021.)

17 THE COURT: All right. Soon after I got here this
18 morning the bailiff told me that the jury foreman wanted to
19 speak with me. The jury had already been in there and had
20 already started deliberating, and he said that they wanted
21 me -- he asked me -- I reminded him, "Look, you've got a
22 legal pad and a pen, write out anything so we can make a
23 record." He said, "Okay. I'll do that in the future." And
24 I said that is fine. Then he said they wanted me to define
25 mental illness. I said, "I didn't charge that but I can

JURY CHARGE

1 charge you on guilty but mentally ill again." He said,
2 "Yeah, that's what I meant." I said, "I will bring y'all
3 out here shortly and have that done." Then I reminded him
4 of the legal pad and writing so we can keep a proper record
5 of it. So I will bring them out now and recharge them on
6 that so they can resume deliberations. Okay?

7 (The jury returned to the courtroom.)

8 THE COURT: All right. Thank you, ladies and
9 gentlemen. All of the jury is here. Mr. Foreman, you
10 advised me that the jury wished to be instructed again on
11 guilty but mentally ill. Again, I want you to listen very
12 carefully to how it is defined in the law, because that's
13 what you have to go by in your deliberations. Okay? A
14 defendant is guilty but mentally ill if at the time of the
15 crime the defendant was able to distinguish moral right or
16 legal right from wrong, or to recognize his act as being
17 morally or legally wrong, but because of a mental disease or
18 defect the defendant did not have the sufficient ability to
19 follow the law. Now, if you have no reasonable doubt that
20 the defendant committed the crimes and if you find that the
21 defendant had the mental capacity to distinguish moral or
22 legal right from moral or legal wrong, or if you find that
23 the defendant had the -- as described the defendant had the
24 ability to recognize the crimes or morally are legally wrong
25 but that it is more likely than not because of a mental

JURY CHARGE

1 disease or defect the defendant could not follow the law,
2 you would find the defendant guilty but mentally ill.
3 Another possible verdict in the case is guilty. You may
4 only find the defendant guilty if the State has proved to
5 you beyond a reasonable doubt that the defendant committed
6 the crime, the defendant was able to distinguish moral and
7 legal right from wrong and recognized the crimes as morally
8 and legally wrong, and the defendant was able to follow the
9 law. So the key difference between guilty and guilty but
10 mentally ill is the defendant's ability to follow the law
11 because of some mental disease or mental illness. Okay?
12 That's the difference between the two. You may return to
13 your deliberations. Thank you very much.

14 (The jury left the courtroom.)

15 THE COURT: All right. Anything else for the purposes
16 of the record?

17 MS. COLLINS: No, Your Honor.

18 MS. BOULWARE: No, sir.

19 THE COURT: All right. Thank you.

20 (The jury resumed deliberations.)

21 THE COURT: All right. We have a verdict. All right.
22 Are y'all ready for the jury?

23 MS. COLLINS: The State is ready.

24 THE COURT: All right. Bring them in.

25 (The jury returned to the courtroom.)

SENTENCING HEARING

1 THE COURT: All right. All members of the jury are
2 present. Mr. Foreman, it's my understanding that the jury
3 has reached a verdict.

4 THE JUROR: Yes, sir.

5 THE COURT: And is the verdict unanimous?

6 THE JUROR: Yes, sir.

7 THE COURT: If you'll hand it to my bailiff. Madam
8 Clerk, you may publish the verdict.

9 THE CLERK: State of South Carolina versus Jermaine
10 Grier. As to the charge of murder, indictment number
11 2014-GS-29-1090, guilty. As to the charge of possession of
12 a weapon during the commission of a violent crime,
13 indictment number 2014-GS-29-1094, guilty. As to the charge
14 of attempted murder, indictment number 2014-GS-29-1095,
15 guilty. As to the charge of burglary first degree,
16 indictment number 2014-GS-29-1096, guilty. Ladies and
17 gentlemen of the jury, if this is your verdict so say you
18 all by the raising of your right hand.

19 (All jurors raised their right hand.)

20 THE CLERK: Your Honor, let the record reflect all
21 jurors have raised their right hand.

22 THE COURT: They have. All right.

23 (The jury was dismissed.)

24 (The defendant was brought back into the courtroom.)

25 THE COURT: Mr. Grier, I want to let you know what

SENTENCING HEARING

1 happened in your case. The jury has found you guilty of
2 murder; guilty of possession of a weapon during the
3 commission of a violent crime; guilty of attempted murder;
4 and guilty of burglary first degree. I'm going to hear from
5 the solicitor at this time if she wants to say anything on
6 behalf of the State in regards to sentencing, but I'm going
7 to hear from your lawyers in regard to sentencing as well.
8 Ms. Collins?

9 MS. COLLINS: Thank you, Your Honor. Your Honor, the
10 defendant's prior record, which is always offered at this
11 time for consideration by the Court, in 2002 he was
12 convicted of accessory after the fact of grand larceny. In
13 2003 he was convicted of petty larceny. In 2004 he was
14 convicted of burglary in the third degree first offense. In
15 2007 he was convicted or pled guilty to grand larceny more
16 than 1,000, less than 5,000. He was convicted by jury trial
17 in May of 2016 for possession of contraband while in a
18 county detention center, he received an eight year sentence
19 for that. In 2019 he pled guilty to remaining charges while
20 of which he was here at the detention center; five counts of
21 throwing bodily fluids, two counts of contraband, having a
22 weapon in the detention center, and one count of exposing
23 his private parts in a lewd and lascivious manner. Your
24 Honor, you heard the facts of the case, you heard the
25 circumstances particularly in terms of the victim, James

SENTENCING HEARING

1 Hood. I can't imagine a more vulnerable victim in the later
2 stages of his life, and I just think it's a shame, although
3 he was disabled physically, that he wasn't able to continue
4 to be a fatherly influence to his children, his sons, who
5 then had to grow up without him. They have taken a hard
6 path for themselves down the road. Angela Hood, the sister
7 of the defendant, prior to trial had expressed to me that
8 she did feel like her brother needed to be punished. She
9 didn't particularly feel like he needed to be in prison for
10 his lifetime, but she did feel like he needed to be
11 punished. She's not here today. I texted her and told her
12 that the jury was deliberating and sentencing, if we got a
13 guilty verdict what would happen, and that if she wanted to
14 come to come and she's not here. But I share that because
15 she did tell that to me. Your Honor, for the defendant to
16 then continue on his course of conduct and threaten the
17 children when they came in and saw their father on the
18 floor, although he's not charged with that, but just for
19 your consideration to sentence. And then to leave stealing
20 a bicycle. And then to go to the home of Shareika McIlwain
21 where he not only shot her in the neck, but then chased her,
22 ripped her shirt off, continued assaulting her on the porch
23 of Mr. Lowery. We're so appreciative of Mr. Lowery's
24 efforts and his willingness to step out and help her, and I
25 know that she is as well. As a member of this community we

SENTENCING HEARING

1 are all grateful to him, and also to Ms. McIlwain for her
2 courage in coming forward and testifying to that. I know it
3 was hard for her emotionally since they are related as well.
4 She has moved past this and is a mother to some wonderful
5 children, and I just hope she's able to put this trauma
6 behind her. But, Your Honor, I am asking for life in
7 prison. If for some reason you do not give life in prison,
8 I ask that the sentences run consecutive in recognition that
9 at any point the course of conduct could have stopped that
10 day but it kept continuing and continuing with one victim
11 after the other. I trust in your wisdom in issuing the
12 sentence that you feel is appropriate. Thank you.

13 THE COURT: Thank you, Ms. Collins. Ms. Boulware, on
14 behalf of your client?

15 MS. BOULWARE: Thank you, Judge. Well, as you know, I
16 still believe that Mr. Grier does have a severe mental
17 illness. He is currently housed at Gilliam Psychiatric Ward
18 in SCDC, which is where he'll be returning to. I would just
19 ask that you consider his sister's wishes that he not be
20 confined for the rest of his life. Hopefully he will
21 continue to get the help he needs while he is in SCDC at
22 this time. Jermaine, when he is properly medicated and not
23 overwhelmed with whatever is going on around him, is really
24 a congenial, easy, nice to talk to young man. You would be
25 surprised to see him when he's calm and content with what is

SENTENCING HEARING

1 around him. I think he just gets triggered by everything
2 coming down on him at once, which is why I believe he --
3 most of us manage to maintain stress like that, but Mr.
4 Grier seems to be incapable of doing that. I would just ask
5 that you consider that. Consider, again, his sister's
6 wishes that she -- that's still her brother. As she said,
7 she misses her brother, and hopefully they can have a
8 relationship together one day when he's out of prison. And
9 so I would just ask you to consider that when you're making
10 your sentence. Thank you.

11 THE COURT: Anything, Mr. Frick?

12 MR. FRICK: Your Honor, just briefly I just want to
13 note that the defense does have some motions we need to put
14 on the record after sentencing. But I do want to echo what
15 Ms. Boulware said. I think it was indicated that Mr. Grier
16 only has about a seventh or eighth grade education. I
17 believe he has had undiagnosed mental health issues his
18 entire life. He is prescribed Tegretol, which is a drug
19 that is prescribed for mental health issues. It is not
20 Advil, it's a strong medication and doctors have continually
21 given him that. Judge, we just ask for whatever mercy you
22 can show at this time. I would like to add that his sister
23 did say after court was over, she turned and looked at her
24 brother and said, "I'm here for you." So he does have some
25 support still out there, and just whatever mercy you can

SENTENCING HEARING

1 show. Thank you.

2 THE COURT: Thank you. All right. Mr. Grier, as to
3 indictment 14-GS-29-1090, having been convicted of the crime
4 of murder, the sentence of the Court is 40 years in the
5 South Carolina Department of Corrections. As to indictment
6 14-GS-29-1094, having been convicted of possession of a
7 weapon during the commission of a violent crime, the
8 sentence of the Court is five years in the South Carolina
9 Department of Corrections to run consecutive to indictment
10 1090. As to indictment 14-GS-29-1095, having been convicted
11 of attempted murder, the sentence of the Court is the max,
12 30 years in the South Carolina Department of Corrections,
13 that will be consecutive. As to indictment 14-GS-29-1096,
14 having been convicted of burglary in the first degree, the
15 sentence of the Court is 25 years in the South Carolina
16 Department of Corrections to be run consecutively as well.
17 All things running consecutively you've been sentenced to
18 100 years. Good luck to you, Mr. Grier. God have mercy on
19 your soul. That concludes the trial of this case. Prior to
20 a formal conclusion, Mr. Frick, any motions for the record?

21 MR. FRICK: Your Honor, at this time the defense would
22 renew all objections that we have pretrial and during the
23 trial, and I'm sure that the Court will continue to deny
24 those but I would renew all of those at this time. Defense
25 would also request a new trial based on those objections,

SENTENCING HEARING

1 most particularly the severance motion that we requested at
2 the beginning of trial and all other motions that we had
3 regarding the case.

4 THE COURT: Yes, sir. You're protected in the record.
5 Those motions and objections are denied and continue to be
6 sustained and/or overruled, but you're protected in the
7 record.

8 MR. FRICK: Thank you, Your Honor.

9 THE COURT: That concludes the trial of this case.

10 (End of trial proceedings.)

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COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should **not** be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used **exactly** as published, **without alterations or additions** to the terms of the form order.
2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:

- ☐ [Completed DMH/DDSN Outpatient Information Appointment S](#)
- ☐ Copy of the indictments(s)
- ☐ Copy of the arresting agency's incident report
- ☐ Copy of the warrant(s)
- ☐ Law enforcement investigative reports
- ☐ The defendant or juvenile's statements to law enforcement, written or electronically recorded
- ☐ Witness statements to law enforcement
- ☐ Autopsy reports
- ☐ Defendant's school psychological records
- ☐ Defendant's Rule 5(f) notice of insanity records
- ☐ Copy of the Juvenile Petition
- ☐ Special education records, including psychological evaluations and IEPs
- ☐ School records, including disciplinary and attendance records
- ☐ Mental health records, including inpatient and outpatient evaluation and/or treatment

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 2018 JUL 10 PM 2:08
 CLERK OF COURT
 LANCASTER, SC

3. Only **one** Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

2018 JUL 10 PM 2:08
CLERK OF COURT
LANCASTER, SC

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): 2014-GS-29-1090, 1091, 1092,
1093, 1094, 1095, & 1096

A/Warrant No.(s): _____

The State of South Carolina,

Plaintiff,

v.

Jermaine Demarcus Grier,

Defendant.

**ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO
STATE V. BLAIR**

EVALUATION BY:
(Select Only One)

☒ Department of Mental Health(Mental Illness)

OR

☐ Department of Disabilities and Special Needs
(Intellectual Disability or Related Disability)

This matter is before me for an order requiring defendant Jermaine Demarcus Grier, charged with Murder, Pointing and Presenting a Firearm (two counts), Unlawful Carrying of a Pistol, Possession of a Weapon During the Commission of a Violent Crime, Attempted Murder, and Burglary, First Degree, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: Defendant is currently in the South Carolina Department of Corrections and is hospitalized at Gilliam Psychiatric Hospital, Defendant is unable to communicate with his attorney and does not appear to understand the nature of the charges pending against him.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having

a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in

connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the

agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined,

defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

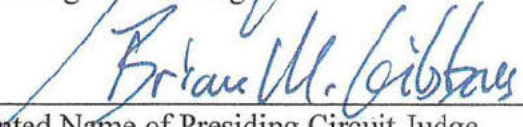
Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.

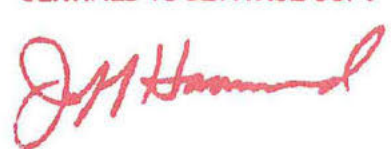


Presiding Circuit Judge



Printed Name of Presiding Circuit Judge

CERTIFIED TO BE A TRUE COPY



**JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, SC**

_____, South Carolina

Dated: _____

Randy E. Newman, Jr.

Prosecutor
PO Box 607

Address
Lancaster, SC 29721

City, State, Zip
(803) 416-9367

Telephone

M. Kay Boulware

Defense Counsel
PO Box 132

Address
Chester, SC 29706

City, State, Zip
(803) 385-3232

Telephone

randy.newman@scsolicitor6.org

Email

kayboulware@truvista.net

Email

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
 2. Copy of the indictment(s) (if issued)
 3. Copy of the arresting agency's incident report
 4. Copy of the warrant(s)
 5. Law enforcement investigative reports
 6. Defendant's statements to law enforcement, written or electronically recorded
 7. Witness statements to law enforcement
 8. Defendant's school psychological records (if available)
 9. Autopsy reports (if applicable)
-



COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

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 - ☒ Autopsy reports
 - ☐ Defendant's school psychological records
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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
LANCASTER, SC)

IN THE COURT OF GENERAL SESSIONS
Indictment No.(s):2014-GS-29-1090, 1091, 1092,
1093, 1094, 1095, & 1096

The State of South Carolina,

Plaintiff,

v.

Jermaine Demarcus Grier,

Defendant.

A/Warrant No.(s): _____

**ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO
STATE V. BLAIR**

EVALUATION BY:
(Select Only One)

☐ Department of Mental Health (Mental Illness)

OR

☒ Department of Disabilities and Special Needs
(Intellectual Disability or Related Disability)

This matter is before me for an order requiring defendant Jermaine Demarcus Grier, charged with Murder, Pointing and Presenting a Firearm (two counts), Unlawful Carrying of a Pistol, Possession of a Weapon During the Commission of a Violent Crime, Attempted Murder, and Burglary, First Degree, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: Defendant is unable to communicate effectively with his attorneys and does not appear to understand the nature of the charges pending against him. Per a court ordered independent examination by Dr. David R. Price, Ph.D. dated February 12, 2015, Mr. Grier is "intellectually disabled" with a "Full Scale IQ of 52, which is at the .1 percentile."

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an

appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of

defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written

request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the

event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

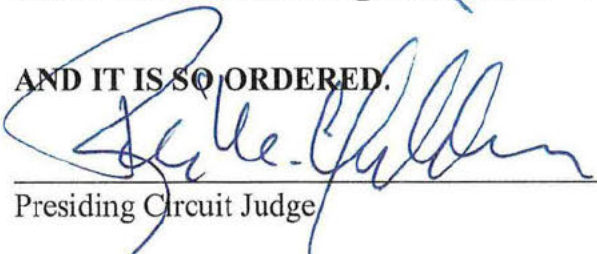
Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.



Presiding Circuit Judge

Brian M. Gibbons

Printed Name of Presiding Circuit Judge

Winnsboro, South Carolina

Dated: October 1, 2018

Lisa G. Collins

Prosecutor

PO Box 607

Address

Lancaster, SC 29721

City, State, Zip

(803) 416-9367

M. Kay Boulware

Defense Counsel

PO Box 132

Address

Chester, SC 29706

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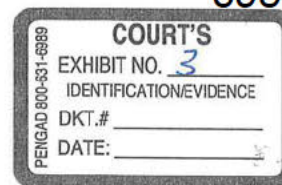
CERTIFIED TO BE A TRUE COPY



**JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, SC**

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Everard Rutledge, PhD, Vice Chair
Beverly Cardwell
Louise Haynes
Bob Hlott, MEd
J. Buxton Terry
Sharon L. Wilson

STATE DIRECTOR

John H. Magill

Lisa Collins
Assistant Solicitor
PO Box 607
Lancaster, SC 29721

August 10, 2018

Division of Inpatient Services
Forensic Evaluation and Outpatient Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-5600

Re: The State of South Carolina vs. Grier, Jermaine
DMH #: 1030-2697
Lancaster County, Court of General Sessions

Dear Assistant Solicitor Collins:

In accordance with the court order issued by the Honorable Brian Gibbons, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 8 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

8/10/18
Date

Kelly Gothard, Ph.D.
Clinical Director
Forensic Outpatient Services
Department of Mental Health

cc: Kay Boulware, Attorney at Law, PO Box 132, Chester, SC 29706

KG/tl

MISSION STATEMENT

To support the recovery of people with mental illnesses.



**CAPACITY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)**

DATE OF EVALUATION: August 3, 2018

DEFENDANT: Jermaine Demarcus Grier

DATE OF BIRTH: [REDACTED] 1985

PRESIDING EXAMINER: Matthew E. Gaskins, MD
Forensic Psychiatrist

SECOND EXAMINER: Elizabeth Whetstone, LISW-CP
Social Worker

DIAGNOSES: Antisocial Personality Disorder
Malingering

OPINION REGARDING CAPACITY TO STAND TRIAL

It is opined that Mr. Grier has the capacity to stand trial.

IDENTIFYING INFORMATION

Mr. Grier is a 33-year-old African American male who was seen at Forensic Evaluation Service pursuant to a court order from the Lancaster County Court of General Sessions. This court order requests an evaluation of the defendant's competency to stand trial pursuant to *State v. Blair*, 275 S.E. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). The defendant is currently charged with Murder, two counts of Pointing and Presenting, Unlawful Carrying of a Pistol, Possession of a Weapon during the Commission of a Violent Crime, Attempted Murder, and Burglary First Degree. According to the court order, it was issued for the following reasons: "Defendant is currently in the South Carolina Department of Corrections and is unable to communicate with his attorney and does not appear to understand the nature of the charges pending against him."

STATEMENT OF NON-CONFIDENTIALITY

Prior to participating in the evaluation, the defendant was warned regarding the limitations of confidentiality. The defendant was informed that the evaluation was court ordered and was not for the purpose of providing treatment. The defendant was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not paid by a defense attorney or the solicitor. The defendant was informed that after the evaluation a report would be submitted to the defense attorney, the solicitor, and the judge in this case. The defendant was also informed that the evaluators could be called to court to testify at a hearing related to capacity to stand trial. Mr. Grier expressed understanding

of this information and agreed to participate in the evaluation.

SOURCES OF INFORMATION

1. Lancaster County Court of General Sessions court order for this evaluation received by the SCDMH Forensic Evaluation Service on July 19, 2018.
2. Criminal Responsibility and Capacity to Conform (CR/CTC) Evaluation report completed by Richard L. Frierson, MD, and submitted May 7, 2015.
3. Psychological Consultation report completed by Sandra Stader, PhD, dated March 25, 2015.
4. Arrest warrant requests for Murder, Pointing and Presenting a Firearm (two), and Possession of Firearm during the Commission of a Violent Crime.
5. Incident report and accompanying documents for case number 2014-08434.
6. Arrest warrant 2014A2910100672 for Attempted Murder.
7. Arrest warrant 2014A2910100673 for Burglary First Degree.
8. Incident report and accompanying documents for case number 14-21028.
9. Voluntary statement of Shareika McIlwain dated June 10, 2014.
10. Criminal history provided by National Crime Information Center (NCIC).
11. Autopsy report for James Hood.
12. SCDMH Forensic Evaluation Service social work assessment.
13. One-hour forensic psychiatric interview conducted at Forensic Evaluation Service on August 3, 2018.

REVIEW OF AVAILABLE RECORDS

CR/CTC EVALUATION 2015

Mr. Grier was evaluated by Richard L. Frierson, MD, on January 15 and March 16, 2015, to assess his criminal responsibility and capacity to conform his behavior to the requirements of the law on or about June 10, 2014, for his current charges. This evaluation was done by consent of both parties. Dr. Frierson writes:

Because he was uncooperative and he appeared to be trying to feign symptoms of mental illness during our initial interview, he was referred for psychological evaluation. According to that report, he appears to have been malingering or faking certain memory problems. Results from psychological testing indicate feigning on a memory function. In addition, his responses during the clinical interview suggested implacability in his severe memory deficits. Other than malingered memory impairment, there was no evidence of malingering of other symptoms.

In the section regarding diagnostic impression Dr. Frierson writes:

It is unclear to what extent Mr. Grier has abused substances. If what he reported to the psychologist was true, he would likely meet Diagnostic Criteria for Alcohol, Cannabis, and Cocaine Dependence because his

pattern of use he described to her would indicate significant physiological tolerance to the effects of these substances. However, he denied such excessive use to these examiners. We note that he was at least using cannabis around the time of the offenses as indicated by the positive Urine Drug Screen. We are going to assign a diagnosis of Cannabis Abuse to reflect that he was using cannabis during the context of the alleged illegal activity.

Mr. Grier clearly has a history of pervasive pattern of disregard to violation for the rights of others which began prior to age 15 as reflected by the Department of Juvenile Justice records. He has failed to conform to social norms with respect to lawful behavior. He has engaged in repeating lying in the Department of Corrections. He has demonstrated irritability and aggressiveness and has never maintained adult role responsibilities by not sustaining consistent work behavior. These findings would indicate that he meets the diagnostic criteria for Antisocial Personality Disorder.

PSYCHOLOGICAL CONSULTATION 2015

On March 24, 2015, Mr. Grier was evaluated by Sandra Stader, PhD. The purpose of this evaluation was "to assist in clinical assessment and possible feigning of cognitive deficits and psychiatric symptoms." Dr. Stader writes:

Results from psychological testing indicate Mr. Grier exhibited feigning on a cognitive measure of memory functioning. His low level of performance on this test is highly unlikely even among clinical populations with severe memory impairment. He did not have any elevations on a measure of self-reported clinical symptoms.

Dr. Stader writes in the clinical impressions section of her report:

Mr. Grier is a 29-year-old African-American male who was referred for a psychological evaluation to assist with the assessment and possible feigning of cognitive deficits and psychiatric symptoms. Based on available data, the defendant appears to meet the criteria for malingering. First, he has an external incentive to feign symptoms due to serious pending legal charges. Second, results of psychological testing indicate feigning on a measure of memory functioning. In addition, some of his response during the clinical interview suggested implausibly severe memory deficits. A diagnosis of malingering does not mean the defendant is free of mental health issues, but it does make it more difficult to determine the presence of any actual problems. However, Mr. Grier's primary difficulties appear associated with a chronic history of substance dependence as well as engagement in illegal and antisocial behaviors since childhood.

SCDC

According to SCDC records, Mr. Grier is currently serving an eight-year sentence for Smuggling/Possession of Contraband into a Prison. The records state that Mr. Grier's primary diagnosis is Antisocial Personality Disorder with frequent notations of suspected malingering of psychiatric symptoms.

In the most recent psychiatrist note available for review dated April 26, 2018, Jason L. Gandy, MD, a forensic psychiatrist, writes:

[Inmate] seen at cell door. Room is disheveled and malodorous. [Inmate] standing calmly at door until notices this provider. Begins to move hands rhythmically and speak nonsense. However, speech pattern is notable for his stopping to await responses and utilizing less common words for common objects. His speech pattern and behavior have remained consistent since admission and are most consistent with feigning symptoms. This conclusion has been reached by multiple providers and staff.

The most recent mental health clinic note available for review dated May 21, 2018, states that Mr. Grier "reported he isn't doing well." It is noted that while he has been monitored at Gilliam Psychiatric Hospital, "he seemed to be doing fine."

The records also describe Mr. Grier's past substance use as a possible contributor to his reported symptoms. However, the overall consensus from multiple providers in the records appears to be that Mr. Grier is feigning symptoms based on observations noted when Mr. Grier is not directly interacting with mental health staff.

FORENSIC INTERVIEW**CLINICAL UPDATE**

Mr. Grier's presentation on August 3, 2018, was similar to his past forensic evaluations. It was readily apparent that he was feigning symptoms of mental illness and cognitive impairment. He essentially refused to answer most questions beyond making repetitive nonsensical statements including "two step," "sky type," "it'll go," and "two type." He was noted to pause after each statement and allow others to speak before responding again. This relative politeness in conversation is atypical in individuals with as severe a thought disorder as would present with such nonsensical answers. He was able to answer some questions with appropriate, but incorrect, answers. For example, when asked the date he responded, "Think it's like June or something" and "two something" (in response to the current year). He added unprompted, "Don't know numbers, two type." He then stated, "Don't even know the name of charge. Ain't been nowhere." He was asked if was currently incarcerated at Lee Correctional Facility and he said, "I don't know type places and then green mile, two type." The length and frequency of his nonsensical statements reduced as the interview progressed. This is noteworthy as individuals with thought

disorders typically become increasingly frustrated during interviews and have a deterioration in their ability to effectively communicate (i.e. they get worse, not better throughout the interview).

SOCIAL HISTORY

Janie Makey, Mr. Grier's mother, reported the following information during the social work assessment: Mr. Grier's mother had gestational diabetes which caused a two-day hospitalization for his mother and himself after birth. He had a normal childhood but was sent to the Department of Juvenile Justice (DJJ) at 13 years old for Truancy and Burglary. He has been "in and out" of DJJ and SCDC "all his life." By 15 years old he was stealing regularly including taking jewelry and money from his mother. He was suspended multiple times in school mostly for disrupting class. He "refused to follow rules." He worked for a month at a clothing plant after his mother got him a job. He left the job for unknown reasons. He was close to his mother, but he did not have a close relationship with his father. His father abused alcohol and died of cirrhosis. His father was also physically violent with his mother in front of Mr. Grier when he was a child. He has four half-siblings. He does not use alcohol or drugs around his mother but is known to use marijuana and cocaine. He may have been diagnosed with Schizophrenia in SCDC and has been heard saying that "people are out there" (internal quotation marks omitted) without context. After release from SCDC he was scheduled for mental health follow up, but he was arrested before he could make the appointment. His mother has not seen him since 2014 due to loss of visitation privileges.

According to the criminal history provided by NCIC Mr. Grier has previously been arrested for charges including Grand Larceny, Petty Larceny, Burglary Third Degree, Burglary First Degree, Breaking and Entering, and Larceny after Breaking and Entering.

MENTAL STATUS EXAMINATION

On August 3, 2018 Mr. Grier presented to the evaluation dressed in jumpsuit provided by SCDC. He was reasonably well groomed with appropriate hygiene. He made evasive eye contact. As described above, he had a normal cadence in speaking but would answer questions with irrelevant statements. His volume and rate of speech was also within normal limits. He was uncooperative with the evaluation and did not answer questions appropriately. He would not participate in a formal mental status examination. He described his mood as "true, true" and was observed to have a calm affect (observed expression of mood). He denied current suicidal or homicidal ideations. He denied current auditory or visual hallucinations and did not appear internally distracted. He did not describe delusional thoughts. Mr. Grier was asked simple addition and subtraction questions which he answered incorrectly (e.g. $5+3=30$; $10-4=30$ something). Mr. Grier was asked to answer questions regarding overlearned information that people with severe and profound mental illness, intellectual disability, and cognitive impairments are able to answer correctly. His response rate indicated that he was not putting forth a legitimate attempt to answer questions or he was intentionally answering incorrectly. For example,

he stated that the colors of the American flag are "like green" and that a dog has "two legs."

DIAGNOSTIC IMPRESSION

It is opined to a reasonable degree of medical certainty that Mr. Grier meets the diagnostic criteria for Antisocial Personality Disorder and Malingering. The diagnosis of Antisocial Personality Disorder is based on a persistent pattern of disregard for and violation of the rights of others starting before the age of 15. Specific antisocial personality traits evident based on the totality of information include a failure to conform to social norms with respect to lawful behaviors, deceitfulness, impulsivity, aggressiveness, reckless disregard for safety of self/others, consistent irresponsibility, and a lack of remorse. The diagnosis of *Malingering* is appropriate when there is evidence that an individual is feigning or exaggerating symptoms for external gain (e.g. financial motivations, avoidance of punishment). Based on all the available information, we concur with the previous assessments of forensic examiners and clinical providers that Mr. Grier is feigning or exaggerating symptoms which is presumed to be motivated by his desire to lessen potential punishments for his current charges.

As noted in the past evaluations and medical records, Mr. Grier may meet the diagnostic criteria for substance use disorders; however, his unwillingness to participate in the evaluation prevent proper assessment of these possible diagnoses. Diagnostic clarity regarding substance use is not opined to be necessary for the purposes of this evaluation.

CONCLUSION REGARDING CAPACITY TO STAND TRIAL

The S.C. Code Ann. §44-23-410 states a defendant lacks capacity to stand trial if that defendant "lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity."

Mr. Grier stated that he does not have an attorney. When asked about his current charges he responded that he is "unable to think" because "[his] mind is gone type like going split." The charges were read to him and he stated, "Nah, it's like p type and more emotable." He stated that he needs to "take medicine and it don't work that's why [he] need[s] some type medicine." He answered in a similar nonsensical manner to other questions to other competency related questions.

Because Mr. Grier was not cooperative with the evaluation and unwilling to attempt to answer questions appropriately, the Inventory of Legal Knowledge (ILK) was administered. The ILK is an instrument designed to distinguish a legitimate lack of legal understanding from feigned ignorance. It is a forced choice true/false questionnaire where the examinee is made to guess if he or she is unsure of the answer. Notably, Mr. Grier repeated the same nonsensical statements described above after most questions, but this was not consistent. Again, he was noted to stop when others were speaking and would eventually provide a true/false answer. Mr. Grier's performance was less than chance. Meaning a person simply guessing at answers at random without hearing the

question is statistically likely to do as well or better than he performed. This performance when viewed with his responses to the mental status examination and his history of malingering behavior suggest that Mr. Grier was not performing to the best of his ability or he was intentionally answering the questions incorrectly.

It is our opinion that Mr. Grier attempted to feign cognitive impairment as he has in the past. The intentional feigning of deficits in order to appear incompetent to stand trial is, in itself, evidence that Mr. Grier appreciates the seriousness of the charges against him. There is no evidence that suggest that he lacks the sufficient factual and rational understanding of his current charges nor the capacity to assist his defense attorney in the preparation of a defense if he so chooses. Therefore, it is our opinion that Mr. Grier has the capacity to stand trial pursuant to *State v. Blair*, 275 S.E. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976).



Matthew E. Gaskins, MD

Mary Poole
State Director
Rufus Britt
Interim Associate State Director
Operations
Susan Kreh Beck
Associate State Director
Policy
Lisa Weeks
Interim Associate State Director
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December 19, 2018

Kay Boulware
Assistant Public Defender
Sixth Judicial Circuit
PO Box 132
140 Main Street
Chester, SC 29706



RE: The State of South Carolina vs. Jermaine Demarcus Grier
Lancaster Court of General Sessions

Dear Ms. Boulware,

On November 07, 2018, we received an order for competency evaluation of your client Mr. Jermaine D. Grier. We requested supporting documents (school records) from the attorney and the SC Department of Mental Health (DMH). As of today we have not received the requested records. However, we did receive records from DMH. After reviewing the order and the supporting documents, including DJJ records and SCDDSN Consumer Data Support System, it has been determined your client does not have an intellectual disability (ID). Mr. Grier was referred to DDSN by DJJ to determine his eligibility in 2001. The DJJ Upstate Evaluation Center (UEC) report dated April 13, 2000 indicated his intellectual functioning was in the extremely low range (FSIQ=58). According to the DDSN/DJJ Subclass inclusion form Completed by Steve von Hollen dated June 5, 2001, Mr. Grier needed to be reevaluated by DDSN. The scores reported in the UEC's report were possibly an underestimate of Mr. Grier's true intellectual ability due to his "appear[ing] to have responded poorly to testing that day." The defendant was subsequently evaluated by DDSN on June 05, 2001. The results indicated his true intellectual functioning as measured by the Stanford-Binet IV was in the low average range (FSIQ=82). When confronted about his prior test scores at the time, "[Mr. Grier] stated 'he just gave answers and wrote whatever down' when he was tested at the Upstate Evaluation Center."

Mr. Grier does not meet the criteria for a diagnosis of Intellectual Disability, which requires concurrent deficits in intellectual and adaptive functioning, present during the developmental period. Again Mr. Grier's psychological testing results indicates his intellectual functioning is outside of the ID range. Therefore, DDSN determined Mr. Grier was not eligible for DDSN services on 7/05/2001.

RECEIVED
DATE: 1-3-2019
BY: [Signature]

DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

DISTRICT II

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

According to S. C. Code Ann. §44-23-410, the Department of Disabilities and Special Needs only examines a person if the person is suspected of having intellectual disability or having a related disability. "If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not intellectual disability or a related disability, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person does 'not have intellectual disability or a related disability' and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health."

Given that Mr. Grier does not have intellectual disability or related disability, S.C. Code Ann. § 44-23-410 prohibits DDSN from rendering an opinion on Mr. Grier's competency. Thus we have no choice but to defer the opinion on competency to the one made by DMH on August 3, 2018.

It is important to note that DMH has evaluated Mr. Grier several times over the last few years. Neither of the DMH examiners, both of whom I work with regularly, suspected the presence of ID and requested a joint evaluation. If they suspected Mr. Grier had intellectual disability they would have requested a joint evaluation as they have done many times in the past. After reviewing the file information, the DMH psychiatrist were correct in their decision to complete the evaluation without DDSN.

Respectfully Submitted,



Alicia V. Hall, Ph.D.
Chief Examiner/Supervisor
Office of Clinical Services
Operations Division

cc: Lisa Collins, Assistant Solicitor, PO Box 607, Lancaster, SC 29721
Tana G. Vanderbilt, Esq., General Counsel, SCDDSN
DDSN File

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

s/David Alexander

Appellate Defender

RECEIVED

Apr 08 2022

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of April, 2022.