

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 27 2023

S.C. SUPREME COURT

Certiorari to SC Court of Appeals

Appeal from Dorchester County
Hon. Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2023-001160
Lower Case No. 2016-GS-18-01267

The State Respondent,

vs

Keunte D. Cobbs, ... Petitioner.

APPENDIX
VOLUME I

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

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JUL 07 2021

SC Court of Appeals

**Appeal from Dorchester County
Hon. Diane Schafer Goodstein, Circuit Court Judge**

Appellate Case No. 2020-000095

The State Respondent,

vs

Keunte D. Cobbs Appellant.

**RECORD ON APPEAL
VOLUME I**

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State of South Carolina	)	Court of General Sessions
	)	First Judicial Circuit
County of Dorchester	)	Case No. 2016-GS-18-01266
	)	Case No. 2016-GS-18-01267
	)	Case No. 2016-GS-18-01269
	)	
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Keunte D. Cobbs,	)	
	)	
Defendant.	)	
	)	

December 14, 2017
St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Glenn Justis, Esquire
Attorney for the Plaintiff

Ash Chisholm, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 DECEMBER 14, 2017

2 (WHEREUPON, the proceedings began at 12:22 p.m.)

3 MR. JUSTIS: The State calls Keunte Cobbs.

4 Your Honor, standing before you is Mr. Keunte Cobbs.

5 He's charged on Indictments 2016-GS-18-1266, 1267, and 1269.

6 It's possession of a weapon during the commission of a

7 violent crime, murder, and attempted murder. Oh, I'm sorry.

8 Sawed-off -- and also sawed-off -- possession of a sawed-off
9 shotgun.

10 Those are what he's facing and they all stem essentially
11 from one incident, Your Honor. And he's here today for a
12 speedy trial motion.

13 He was arrested back it looks like in June, June 27th --
14 28th of 2016, and he's been incarcerated since then. He
15 doesn't have a bond, I believe, on the murder charge. He
16 does have a bond, I think, of 50,000 surety and 15,000
17 surety, two other bonds on the other charges, but nothing on
18 the murder charge.

19 And I've been speaking with Mr. Chisholm about his case
20 and everything, and the State has no problem with setting a
21 January date for -- for -- for resolution of this case, if we
22 can. I believe -- going through the evidence, I don't
23 necessarily foresee any problems with, you know, being
24 prepared to either try this case, plea, resolve it in some
25 form or fashion in January. I would just ask for maybe the

1 second week of court in January, the week of the -- it's
2 really the 16th because I think the 15th is Martin Luther King
3 Day. So that week.

4 And if for some reason something comes up where we can't
5 be ready, whether there's a witness issue or something like
6 that, then the State would have no problem doing a bond
7 hearing at that point in time. I think being incarcerated as
8 long as he has, I think he'd be entitled to that, but we
9 really don't have a problem with just consenting to -- to a
10 speedy trial/bond that second week in January.

11 THE COURT: Mr. Chisholm, are you okay with that?

12 MR. CHISHOLM: Yes, Your Honor. I think we're on the
13 same page. We can either try it or, you know, I guess we can
14 take the bond issue as it comes if we don't try it, but that
15 would be for the second week, January 15th, you said?

16 MR. JUSTIS: Correct. So we'll either resolve the case
17 in some form or fashion. That's the -- by the first day of
18 that second week or we can have a bond hearing.

19 MR. CHISHOLM: Okay.

20 THE COURT: That's what we'll do then.

21 MR. CHISHOLM: Thank you, Your Honor.

22 MR. JUSTIS: Thank you, Your Honor.

23 THE DEFENDANT: Thank you.

24 (WHEREUPON, the proceedings ended at 12:25 p.m.)

25 --- END REQUESTED TRANSCRIPT ---

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 5, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Dorchester County, South Carolina, on
13 the 14th day of December, 2017.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16
17 Krystal J. Smith

18 Court Reporter
19

20 Florence, South Carolina

21 November 25, 2019
22
23
24
25

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
 County of Dorchester) 2016-GS-18-01267 and -01268

State of South Carolina,)
) Excerpt of
 Plaintiff,)
) Transcript of Record
 vs.)
)
 Keunte D. Cobbs,)
)
 Defendant.)

August 20 - 21, 2018

St. George, South Carolina

B e f o r e:

The Honorable Perry M. Buckner III, Judge

A p p e a r a n c e s:

Donald N. Sorenson, Esquire
 Michael E. Spears, Esquire
 Attorneys for the Plaintiff

Ashley Chisholm, Esquire
 John M. Loy, Esquire
 Attorneys for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

1 (On the record at 4:26 p.m.)

2 THE COURT: All right. Ladies and gentlemen, if you
3 give me your attention, we're now going to select a jury
4 in the first case for trial.

5 Solicitor, call your first case.

6 MR. SPEARS: Thank you, Your Honor. May it please
7 the Court. Judge, this is, in the matter of Keunte Cobbs.
8 He is present under indictment Nos. 2016-GS-18-1267,
9 charging him with murder; and 2016-GS-18-1268, charging
10 him with attempted murder.

11 We are present and ready to go to trial, Your Honor.

12 THE COURT: Very well.

13 MR. SPEARS: May I approach?

14 THE COURT: Hand it to the Clerk for me, please.
15 She'll hand it to me.

16 (Mr. Spears complies.)

17 THE COURT: Thank you.

18 THE COURT: Ladies and gentlemen, the State has
19 called for trial the *State of South Carolina vs. Keunte*
20 *Cobbs*. Mr. Cobbs is charged by these two pieces of paper,
21 which I hold in my hand, which we call "indictments." The
22 indictments are not evidence of any of the allegations
23 contained therein. The indictments are simply the formal
24 written instruments by which the case is brought into this
25 court.

1 Keunte D. Cobbs, with the offense of murder. It is
2 alleged in that indictment that this occurred in -- hold
3 on one minute.

4 Counsel, approach.

5 (Bench Conference.)

6 THE COURT: This indictment alleges, ladies and
7 gentlemen, that in Dorchester County, on or about June the
8 5, 2016, with malice aforethought, the Defendant, Keunte
9 D. Cobbs, did kill one Brandon Mack -- M-a-c-k -- by means
10 of shooting the victim, and that the victim did die as
11 proximate result thereof; and that this offense was in
12 violation of the laws of the State of South Carolina.
13 That is the allegation in the indictment.

14 In indictment 2016-GS-18-1268 -- it is an indictment
15 for attempted murder, charging the Defendant, Keunte
16 Cobbs, with that offense. It alleges that the Defendant,
17 Keunte Cobbs, did, in Dorchester County, on or about June
18 the 5, 2016, with the intent to kill, attempt to kill one
19 Bradford Spells -- S-p-e-l-l-s -- with malice aforethought
20 by shooting the victim twice; this offense, attempted
21 murder, being in violation of the laws of the State of
22 South Carolina.

23 I tell you about those indictments, which are only
24 allegations at this point, in order to ask you this: Has
25 any member of my jury panel heard about, read about, or

1 atrition, so please understand that.

2 We want you comfortable 'cause we want you -- all you
3 have to do, ladies and gentlemen, is listen. Listen
4 carefully to the evidence that's going to be presented
5 during the trial of this case. Don't let your thoughts
6 wander. Give strict attention to the evidence. And I'm
7 going to talk to you about what constitutes evidence when
8 you come back in the morning.

9 So we'll provide lunch for you. I hope everybody has
10 a pleasant evening. Drive carefully. You're now excused
11 for the day. Be in your jury room by 9:15.

12 (The jury exits at 5:54 p.m.)

13 THE COURT: All right. I have from Counsel in this
14 case the following motions: A motion to suppress the
15 identification of the Defendant, signed by Mr. Ash; dated
16 August 20, 2018; based on an out-of-court identification
17 procedure being unduly suggestive and asks for a *Neil vs.*
18 *Biggers* hearing.

19 There's also a motion to exclude reference to other
20 wrongful acts under *State vs. Lyle*.

21 There is a motion to sequester witnesses.

22 And there's a motion for dismissal under the speedy
23 trial requirement. There's also, in my file folder, an
24 order from Judge Murphy, dated December 14, 2017, granting
25 the Defendant's motion for speedy trial.

1 There is also an order from Judge Murphy, dated
2 January 19, 2018, in which bond was set for the Defendant;
3 and that he be placed on GPS monitoring, no contact
4 victims or contact of victim's family, and not allowed to
5 go within one mile radius of the victim's residence.

6 And I believe -- and there was a motion, which I
7 think I've already ruled on, to allow access to juror
8 criminal history reports, which I understand have been
9 provided to you for the striking of the jury 'cause I
10 granted that motion; that correct, Mr. Chisholm?

11 MR. CHISHOLM: It is, Your Honor. I had a chance to
12 look at it; and just so the record reflects, I turned it
13 back over to the Solicitor's Office. It wasn't shared
14 with anyone per our conversation earlier.

15 THE COURT: So you've returned the summaries to the
16 Solicitor now?

17 MR. CHISHOLM: I have, Your Honor.

18 THE COURT: Very good. All right. Then I assume
19 that motion is moot then. You agree?

20 MR. CHISHOLM: Yes, sir.

21 THE COURT: All right. Then let's take up the
22 identification first. It's my understanding that y'all
23 have an issue concerning an out-of-court identification.

24 MR. LOY: Your Honor, moments ago, before we went
25 back on the record, the Solicitor suggested, as far as

1 courtroom, outside the presence of the jury.

2 She certainly demonstrated no lack of hesitancy in
3 her certainty as to whether or not the person in the
4 courtroom was also the person that she was told to be
5 "Keith." She has described, on cross-examination, the
6 length of time, both at the club and at the apartment,
7 over two nights, that she was able to see it and Counsel
8 was able to cross-examine as to lighting.

9 I find that the out-of-court identification is not
10 unduly suggestive, and I will admit it into evidence in
11 the trial of this case.

12 I will, however, charge the jury my identification
13 charge, which includes that the burden is on the State of
14 South Carolina to prove identification and that proof, of
15 course, is beyond a reasonable doubt, and it extends to
16 every element of the crime charged. And this specifically
17 includes the burden of proving beyond a reasonable doubt
18 the identity of the Defendant as the person who committed
19 the crime.

20 And if, after examining the testimony, the jury has,
21 and I will so charge them, a reasonable doubt as to the
22 accuracy of the identification, I will charge the jury
23 that they must find the Defendant not guilty as part of my
24 identification charge.

25 All right. Let's now move to your speedy trial.

1 motion, Mr. Chisholm. Happy to hear from you.

2 MR. CHISHOLM: Thank you, Your Honor. May it please
3 the Court?

4 THE COURT: Yes, sir.

5 MR. CHISHOLM: And Your Honor, if I could, I -- I
6 have emailed to you, as well as the Solicitor, a copy of
7 my motion for dismissal; but if I could make a copy for
8 Court's exhibit?

9 THE COURT: All right. Hold on a second. If it -- I
10 assume what I've got in my notebook is your motion for
11 dismissal, which is dated August 20, 2018. Is that what
12 you're referring to?

13 MR. CHISHOLM: That's it, sir.

14 THE COURT: I already have copy.

15 MR. CHISHOLM: Okay.

16 THE COURT: Do you want to make an exhibit for the
17 record?

18 MR. CHISHOLM: Yes, sir.

19 (Marked Court's Exhibit No. 1, motion document, for
20 Biggers hearing.)

21 MR. CHISHOLM: Your Honor, I'm not exactly sure how
22 you'd like me to proceed with this in that in the motion
23 that I've provided, it lists a rough time line and a rough
24 basis for my argument. I'm assuming the -- the State ---

25 THE COURT: I'm assuming we can agree on the date of

1 the arrest and the date of indictment. Can we not,
2 Solicitor?

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: What are they?

5 MR. SPEARS: Your Honor, the date of arrest is June
6 27, 2016, and he was indicted on these charges in
7 September of 2016.

8 THE COURT: You agree with that, Counsel?

9 MR. CHISHOLM: Yes, sir.

10 THE COURT: All right. Go ahead.

11 MR. CHISHOLM: And the rough basis for my motion is
12 in what you've already received. I'm not sure if you want
13 go -- me to go ahead and argue it in full, or some of the
14 things that I'll be arguing would be in response to the
15 reasons the State ---

16 THE COURT: Let me hear it in full.

17 MR. CHISHOLM: Okay.

18 THE COURT: Tell me why you think you're entitled to
19 dismissal, which you asked for, pursuant ---

20 MR. CHISHOLM: Yes, sir.

21 THE COURT: --- to the Doctrine of Speedy Trial,
22 which comes from the Sixth Amendment right, Federal
23 constitution Sixth Amendment.

24 MR. CHISHOLM: Yes, sir.

25 THE COURT: Although we have, I think it's Article

1 1, maybe Section 14 of the State constitution, which is
2 similar to the Federal constitution.

3 MR. CHISHOLM: Yes, sir. Well, I believe that
4 dismissal ---

5 THE COURT: When did you first exercise the
6 Defendant's right to raise the issue of a speedy trial,
7 Counsel?

8 MR. CHISHOLM: The motion was heard and granted
9 December 14, 2017.

10 THE COURT: Was that the first time you raised it?

11 MR. CHISHOLM: That was the first time I raised it.

12 THE COURT: So December 14 of 2017?

13 MR. CHISHOLM: Yes, sir. I was only appointed in
14 this case in June of 2017.

15 THE COURT: All right. So you got appointed in
16 June, and you raised it for the first time in December of
17 2017.

18 MR. CHISHOLM: That's correct, Your Honor.

19 THE COURT: And at that point your motion was
20 granted by Judge Murphy?

21 MR. CHISHOLM: Yes, sir.

22 THE COURT: And trial was set for January; is that
23 correct?

24 MR. CHISHOLM: That's correct, Your Honor.

25 THE COURT: And at that point, you were dealing with

1 a different solicitor in the Solicitor's Office than you
2 were these people that are here today?

3 MR. CHISHOLM: That's correct, Your Honor.

4 THE COURT: And although trial was set for January,
5 the person who was handling this case, as I understand it,
6 left the Solicitor's Office in January of 2018; is that
7 correct?

8 MR. CHISHOLM: I don't remember the exact date he
9 left, but ---

10 THE COURT: I was told that by the Solicitor, in
11 your presence, in my chambers earlier today.

12 MR. CHISHOLM: Yes, sir.

13 THE COURT: Do you dispute that date?

14 MR. CHISHOLM: I -- I don't recall what date it was.

15 THE COURT: You just don't know.

16 MR. CHISHOLM: It was roughly that time. I -- I
17 tell you that. Yes, sir.

18 THE COURT: Roughly about that time. All right.
19 And then the case was assigned to Mr. Spears upon the
20 previous Solicitor leaving the office; is that correct?

21 MR. CHISHOLM: That's correct.

22 THE COURT: However, Judge Murphy signed another
23 order setting bond on your client in January of '17, in
24 the amount of \$400,000 with some conditions of bond; is
25 that correct?

1 MR. CHISHOLM: That's correct, Your Honor. Now,
2 what I can't tell you is that January 19, I can't recall
3 if Solicitor Justis was still handling the case on that
4 date or if that was Mr. Spears.

5 THE COURT: It doesn't say in her order, so I can't
6 tell you from her order. Did you appear at that hearing,
7 Mr. Spears?

8 MR. SPEARS: Your Honor, that was Mr. Justis.

9 THE COURT: He tells me that was Mr. Justis.

10 MR. CHISHOLM: Yes, sir.

11 THE COURT: So he was still here on --

12 MR. CHISHOLM: The date it was to be tried.

13 THE COURT: -- January 19th.

14 MR. CHISHOLM: Yes, sir.

15 THE COURT: And left sometime after that.

16 MR. CHISHOLM: Yes, sir.

17 THE COURT: All right. And Mr. Spears got the file.

18 MR. CHISHOLM: Yes, sir.

19 THE COURT: All right. Anything else?

20 MR. CHISHOLM: Oh: Yes, Your Honor. While I'm
21 thinking about it, I believe the copy I passed up for a
22 Court's exhibit did not contain the orders that you've
23 referenced from Judge Murphy. If I could add that to --

24 THE COURT: Absolutely.

25 MR. CHISHOLM: -- the Court's exhibit.

1 THE COURT: I assume there's no objection to that.
2 They're public record. You don't have to make them an
3 exhibit. They're already in the Clerk's file.

4 MR. CHISHOLM: That's true.

5 THE COURT: Happy to do so for purposes of this
6 hearing.

7 MR. CHISHOLM: Okay, Your Honor.

8 THE COURT: There are two of them. There's the
9 order of -- the second one is the January 19th order, and
10 the first one was December ---

11 MR. SORENSON: Fourteenth.

12 THE COURT: --- 14, 2017, and January the 19, 2018.

13 MR. CHISHOLM: Yes, sir. And I guess if I could
14 start by going through the time line which we've covered
15 most of it already.

16 June 27 of 2016, was the date of arrest. June 28,
17 2016, Defendant was charged -- was served with a warrant
18 for the possession of a sawed-off shotgun charge that the
19 State is not going forward on today, but I've included
20 that in my previous speedy trial motions.

21 I was appointed June 12 of 2017. The first speedy
22 trial motion was heard December 14, 2017; and basically,
23 the Solicitor said the case would be tried in January or
24 they were going to reassess bond.

25 January 19, 2018 Solicitor Justis, who was the

1 original Solicitor on the case, was not prepared to try
2 the case; and Judge Murphy set a \$400,000 bond, as you
3 mentioned, that, obviously, the Defendant has not been
4 able to make.

5 Subsequent to that, June 28 of 2018, we requested a
6 personal recognizance bond and renewed our speedy trial
7 request.

8 THE COURT: In front of who?

9 MR. CHISHOLM: Judge Murphy. And it was denied,
10 Your Honor.

11 THE COURT: It was denied?

12 MR. CHISHOLM: Yes, sir. And basically, we
13 requested the P.R. bond -- I thought I had the code
14 written down, I apologize -- for the -- basically, the
15 same code section that was referenced in the *Hunsberger*
16 case.

17 But to start, Your Honor, obviously you have to look
18 at whether there's a trigger for a speedy trial analysis,
19 whether there's been presumptive prejudice, whether it's
20 an unreasonable delay. In *Langford*, I believe the Court
21 held that a 23-month delay was presumptively prejudicial,
22 and that was, I guess, a 2012 case. And in this case it
23 would be, I believe, just over 25 months since the date of
24 arrest to today; 784 days, I guess it is.

25 So our position would be that this kind of delay

1 should trigger the speedy trial analysis.

2 Moving from there, we'd look at the *Barker* factors
3 that have been outlined from *Wingo vs. Barker*. To analyze
4 a speedy trial claim, first you would look at the length
5 of delay and again, here that's 784 days.

6 Second, the reason for delay. The Defendant in this
7 case has, at no point, requested a continuance or done
8 anything along those lines that would delay the case on
9 his end. He has, since my representation started,
10 maintained he is ready for trial as soon as possible.

11 I think it's worth pointing out that many of the
12 factors that were argued in the *Hunsberger* case aren't
13 present in this case. In that case, they were talking
14 about how it was a complex case. This one isn't, and Your
15 Honor will see, I mean, as far as a murder case goes, it --
16 --

17 THE COURT: Well, actually, that was the dispute in
18 the *Hunsberger* case as to whether it was or was not
19 complex between the descent ---

20 MR. CHISHOLM: Sure.

21 THE COURT: --- and majority opinion, Counsel. So I
22 don't know that that was actually -- that -- it was
23 decided, but it was a three -- I think it was a three/two
24 decision, wasn't it?

25 MR. CHISHOLM: I believe it was, Your Honor. But --

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THE COURT: Hold on a minute, and I'll tell you. I got it right here.

(Brief pause.)

THE COURT: Yes. Justice Toal desented and -- and joined by Justice Kittredge.

MR. CHISHOLM: Okay. And --

THE COURT: And it was three/two.

MR. CHISHOLM: Our position would be this is not a complex case. I don't know if the State's going to argue that or not. I mean, obviously, as in *Hunsberger*, it's a very serious case. I mean, it's a serious charge, but it's not a complex set of evidence. This isn't like a -- the trial that's going on with Manafort right now where you've got complicated tax schemes to wade through. It's just not that kinda case.

In *Hunsberger*, I believe the State originally claimed that they had multi-jurisdictional issues, as the Defendant was being tried in Georgia, being brought back to South Carolina, and that that was part of the reason for delay. In *Hunsberger* they were talking about the death penalty being an option and whether they were going to go forward with that.

These -- these issues aren't present in this case. There's been no discussion about the death penalty, there

1 is no multi-jurisdictional issue. And the Defendant in
2 *Hunsberger* actually challenged extradition, and the Court
3 kinda pointed that out and said that, you know, arguably,
4 he prolonged the delay in the case by doing so.

5 In *Hunsberger*, as I told you before -- I do have the
6 code section -- the Defendant made a motion for P.R. bond
7 pursuant to *SC Code 17-23-90*, and that motion was granted
8 in that case. And then, subsequent to the hold in
9 Georgia, I believe, the Defendant was given, I believe, a
10 personal recognizance bond. In this case, I made the
11 exact same motion and it was denied.

12 And here's where I'm kinda having to anticipate what
13 arguments they may make, Your Honor. To the extent the
14 State may rely on missing witnesses -- you just heard from
15 Ms. Sweed, she has been brought here from Texas -- I would
16 ask the Court to inquire from the State, if that is their
17 position that's one of the reasons for delay, to the
18 efforts that were made to secure this witness, when they
19 made the efforts.

20 I think it would be a different position if they got
21 a witness that goes off the grid two months after arrest,
22 and every month they're following up, doing this, trying
23 to get this witness in place, versus if they're trying to
24 find this witness 20 months into the case. So I guess we
25 can hear from them on that.

1 Likewise, to the extent the State may rely on
2 awaiting forensic services, results, blood analysis,
3 ballistic's analysis, things we do have in this case, a
4 lot of it wasn't sent off; but what was, I think the State
5 can tell you some of it, the ballistic's evidence, was
6 sent off in January of this year which would be right
7 around or maybe even after the time that the case was
8 supposed to be tried. After the speedy trial motion had
9 already been made is when some of this evidence was sent
10 of to SLED for testing.

11 So our position would be finding witnesses wouldn't
12 be a reason in this case, the ballistics and the SLED
13 analysis wouldn't be a reason in this case.

14 As for the change of counsel, you know, I told you
15 I don't have an exact date that it changed hands; but you
16 know, again, I can tell you, it happened around the 18-
17 month period of his incarceration. And the State,
18 ultimately, is held responsible for these kind of things.
19 I mean, 18 months would be -- our position would be, 18
20 months is more than enough time to get this case ready for
21 trial and it hadn't been done at that point.

22 And as Your Honor's mentioned, I mean, with *Langford*
23 and everything else, I mean, the State, they control the
24 docket. They decide when to prepare the case, they decide
25 when to try the case, when ---

1 THE COURT: They haven't ---

2 MR. CHISHOLM: --- to look for witnesses.

3 THE COURT: --- controlled the docket since
4 *Langford*, Solicitor. That statute was held
5 unconstitutional in *Langford*.

6 MR. CHISHOLM: Yeah.

7 THE COURT: So -- and --

8 MR. CHISHOLM: Yes, sir.

9 THE COURT: --- and *Langford* was in what year, 2000
10 ---

11 MR. CHISHOLM: Twelve.

12 THE COURT: --- 12.

13 MR. CHISHOLM: Yes, sir. I don't know. I haven't
14 seen a lot of difference between the docket before then
15 and after.

16 THE COURT: I'll agree with you that we do not have
17 a statewide general sessions procedure yet in place in
18 South Carolina implementing the *Langford* decision;
19 however, it is clear from the *Langford* decision that the
20 statute which gave the Solicitor exclusive control over
21 calling the docket in general sessions court was held to
22 be unconstitutional as a violation of the separation of
23 powers.

24 MR. CHISHOLM: Yes, sir. Which, you know, I don't
25 know where that leaves us as far as, you know, calling

1 cases; but I can tell you I don't get the option to call
2 the case. I mean, that much I can tell you. So --

3 THE COURT: But you certainly have the option of
4 raising the speedy trial issue, which you did in December
5 of 2017.

6 MR. CHISHOLM: Correct, Your Honor. So our position
7 would be the reason for delay in this case would be
8 entirely on the State.

9 THE COURT: That's up to them.

10 MR. CHISHOLM: Yes, sir.

11 THE COURT: Tell me why you think you're prejudiced
12 by the delay.

13 MR. CHISHOLM: Okay. Your Honor, if I could get --
14 I'm almost to that right now. Third factor is assertion
15 of speedy trial rights, which we just went through. It's
16 been asserted, I re-requested it.

17 After that, the fourth and final factor would be
18 prejudice to the Defendant, and at this point, if I could
19 call Mr. Cobbs to the stand to get into that.

20 THE COURT: Certainly. Come around and be sworn.

21 (The Defendant complies.)

22 THE CLERK: If you'll spell your name for the
23 record.

24 THE WITNESS: K-e-u-n-t-e D-o-n-t-r-e-l-l; middle
25 name, Dontrell; last name, Cobbs, C-o-b-b-s.

DIRECT EXAMINATION BY MR. CHISHOLM - KEUNTE COBBS 138

1 KEUNTE DONTRELL COBBS, having
2 been first duly sworn, testifies as follows:

3 THE COURT: Direct examination, Solicitor [sic.]

4 MR. CHISHOLM: Thank you, Your Honor.

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MR. CHISHOLM:

8 Q Mr. Cobbs, how long have you been incarcerated
9 awaiting trial?

10 A Monday -- this coming Monday, 27th, will be two
11 years, two months exactly.

12 Q Okay. And I'd like to ask you some questions about
13 the effects of -- that you've had in your life awaiting
14 this trial.

15 A Okay.

16 Q Has this period of incarceration caused you any kind
17 of anxiety?

18 A A great deal.

19 Q A great deal?

20 A Yes, sir.

21 Q Has it had any effect on your employment?

22 A Yes, sir. I ---

23 Q Can you describe that?

24 A Well, you know, I kinda like lost everything
25 throughout the last two years. I no longer have my -- my

DIRECT EXAMINATION BY MR. CHISHOLM, - KEUNTE COBBS 139
1 house. My job's gone pretty much. Time out of my kids
2 life, you know.

3 Q So you've lost your job, you've lost your home --

4 THE COURT: Counsel, don't testify for him. Now,
5 ask questions.

6 MR. CHISHOLM: Okay.

7 THE COURT: Direct examination.

8 MR. CHISHOLM: Okay, Your Honor.

9 A Yes. I lost my job, I lost my house, I lost my
10 cars, I lost my -- my life.

11 Q I understand. Has it had any effect on the
12 immediate members of your family as well?

13 A Yes. My daughter contemplated suicide and she's
14 going through extreme depression where they got her on
15 this thing called "Prozac." And my son thinks I abandoned
16 him or whatever. He -- his grandparents and his mom, they
17 told him that I'm off working. So you know, he don't
18 think that I'm incarcerated or whatever. She doesn't want
19 him to know that I'm in. So they -- I sent them a card
20 and let them know I love them and I would never abandon
21 them or nothing, and hopefully I'll be home soon after all
22 this is put behind me. So ...

23 Q Okay.

24 A Yeah. But it's been rough.

25 Q Is there anything else, any other effects you'd like

CROSS-EXAMINATION BY MR. SPEARS - KEUNTE COBBS 140

1 to relay to the Court at this point?

2 A You know, it's kinda hard to explain, but I been
3 staying strong. So by the grace of God, I'll be alright.

4 Q All right. Thank you, Mr. Cobbs.

5 THE COURT: Cross-examination?

6 MR. SORENSON: Very briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. SORENSON:

9 Q Mr. Cobbs, you were arrested on June 28, 2016; Is
10 that correct?

11 A I think the correct date is June 27, 2016.

12 Q Give -- give or take a day, I mean, that's ---

13 A Yes, sir.

14 Q --- right? Where were you working back then?

15 A I'm a club promoter.

16 Q Okay. When did you leave ---

17 A And I mean ---

18 Q You're a club promoter. You work for yourself?

19 A Upon my -- upon my incarceration, I worked at
20 particular clubs around the area, and what I'd do is I
21 would promote either the club or somebody would want to
22 throw a birthday party; and then I would help them with
23 the effects of that.

24 Q When did you lose that job, when you were arrested?

25 A Primarily being back here.

CROSS-EXAMINATION BY MR. SPEARS - KEUNTE COBBS 141

1 Q Uh-huh.

2 A You know, I would -- I had no -- no other source of
3 income. I have friends of mine who have their own
4 companies and -- Kenny's Painting Service and Imperial
5 Floors and R.W. Cobble.

6 Q Okay.

7 A They hardwood floors, and I worked for them from
8 time to time on call. So ...

9 Q Okay. But you -- you testified on direct
10 examination that you -- that you -- one of the things that
11 you've suffered is losing your job; is that correct?

12 A Yes.

13 Q And that -- what were you referring to when you
14 testified to that?

15 A I was -- the club promotion.

16 Q Okay. When did you ---

17 A Yes, sir.

18 Q --- when did you lose that, when you were
19 incarcerated back in June of 2016?

20 A Basically, yeah.

21 Q Okay. And you said you lost your house. Where were
22 you living back then?

23 A 117 Barbara Drive.

24 Q Okay. And that was your home?

25 A Yes, sir, it was.

CROSS-EXAMINATION BY MR. SPEARS - KEUNTE COBBS 142

1 Q Okay. I mean, like, you owned that home or ---

2 A No, no, no.

3 Q --- rented it?

4 A No, no, sir. I was renting.

5 Q Okay.

6 A I'm sorry.

7 Q So I assume you lost that house as far as the rental
8 on that back in June of 2016?

9 A Yes. Through the Spence Company. I don't know if
10 it was June, but they gave me -- it should be documented
11 in the Dorchester County's Office that I -- I got an
12 eviction notice sometime thereafter.

13 Q Okay. So shortly ---

14 A June 27th.

15 Q --- shortly after you were arrested in June of 2016
16 ---

17 A Yes, sir.

18 Q --- correct? Okay. And then you said you lost your
19 cars also. What cars were those that you were referring
20 to?

21 A I had a Lincoln Town Car.

22 Q Okay. And that Lincoln, was that a vehicle that you
23 were making payments on? --

24 A No, I owned it.

25 Q You owned it?

CROSS-EXAMINATION BY MR. SPEARS - KEUNTE COBBS 143

1 A Yes.

2 Q Okay, so how did you lose that?

3 A Well, it got total loss and then I could've got it
4 back from the insurance company, which I reported stolen.

5 It got -- it got stolen and then I reported it stolen.

6 Then I coulda got it back from the insurance company, but

7 -- with \$500, and I wasn't able to get that so... But --

8 Q So there's just one car that we're talking about?

9 A Yes, sir.

10 Q Okay. And when did that occur that it was stolen?

11 A April of 2016.

12 Q So it's prior to this incident. Prior to -- to your
13 arrest.

14 A Yes, sir. It's here in Dorchester County as well.
15 I have all of it documented.

16 Q Okay.. I'm just a little confused. I mean, you
17 testified that as a result of your incarceration you lost
18 your car.

19 A Yeah.

20 Q But it had been stolen three months prior or two
21 months prior?

22 A The -- the -- the guy who has my car told me -- I
23 spoke with him. He told me he coulda gave me my car back
24 from the insurance company. All I had to do was pay \$500.
25 There was nothing wrong with the car really.

CROSS-EXAMINATION BY MR. SPEARS - KEUNTE COBBS 144

1 Q Okay. But all -- your inability to get that car
2 back though, yet again, that all would've occurred back in
3 June, at the latest June/July of 2016 because you were
4 arrested?

5 A Yeah. I got -- got arrested. Exactly. I mean, I
6 had no source of income after arrest, basically ---

7 Q Gotcha.

8 A --- to pay for anything.

9 Q Okay. And you talked about your daughter's
10 situation, and I'm sorry about that, that she'd suffered
11 from some depression and contemplated suicide?

12 A Yes.

13 Q Was that back when you were arrested back in 2016?

14 A No, sir. That wasn't. That's -- this all was --
15 came to me, probably -- maybe nine or ten months after my
16 incarceration.

17 Q So -- so early part of 2017?

18 A Yeah. Yes, sir. I'm sorry.

19 Q Okay. No, no. That's fine.

20 MR. SORENSON: Beg The Court's indulgence..

21 (Brief pause.)

22 MR. SORENSON: That's all I have on this issue, Your
23 Honor.

24 THE COURT: Very well. Redirect?

25 MR. CHISHOLM: No, Your Honor.

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE PETERS 145

1 THE COURT: You may step down.

2 (The witness complies.)

3 THE COURT: Take a seat, Counsel. Let me hear from
4 the State.

5 MR. CHISHOLM: Your Honor, I was going to call
6 another witness.

7 THE COURT: You have another witness?

8 MR. CHISHOLM: Yes, sir.

9 THE COURT: All right. Who is it?

10 MR. CHISHOLM: Detective Dwayne Peters.

11 THE COURT: Call your witness.

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand and state your name for
14 the record.

15 THE WITNESS: Dwayne Robert Peters.

16 THE CLERK: If you'll spell your last name for the
17 record.

18 THE WITNESS: P-e-t-e-r-s.

19 DWAYNE ROBERT PETERS, after
20 having first been duly sworn testifies as follows:

21 THE COURT: State your full name, spell your last
22 name for the court reporter.

23 THE WITNESS: Dwayne Robert Peters, P-e-t-e-r-s.

24 THE COURT: Your witness, Counsel. Direct
25 examination.

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETERS\$46

1 MR. CHISHOLM: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. CHISHOLM:

4 Q Detective Peters, can you please outline for the
5 Court your involvement with this case?

6 A Basically, sometime -- and I don't know the exact
7 month honestly -- of 2018, we were getting ready to -- Mr.
8 Spears approached our office about assisting in an
9 investigation since Detective Elmore was no longer with
10 the Sheriff's Office. And I just basically took it over
11 for him.

12 Q As the lead detective you say?

13 A Correct.

14 Q Okay. And as the lead detective, I'm assuming you
15 had all -- access to all the records that were available --
16 --

17 A Yes, sir.

18 Q --- prior to you taking it over?

19 A Yes, sir.

20 MR. CHISHOLM: And I'll try to condense this as much
21 as possible, Your Honor.

22 Q Were you aware of any cell phones being seized in
23 this case?

24 A Yes, I was.

25 Q How many cell phones were ---

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETERS\$47

1 A There was three.

2 Q --- seized total? Three total?

3 A Yes.

4 Q Where were they seized from?

5 A Those were seized, according to the search warrant
6 returned, from a hotel in the City of North Charleston. I
7 don't have my notes, so I can't tell you the exact hotel.

8 Q Well, could you just lay out kinda what they were
9 seized in conjunction with?

10 A It was at the time of the arrest of Mr. Cobbs.

11 Q Okay. So phones were taken at his arrest.

12 A Correct.

13 Q Are you aware of another phone being found in this
14 case from the IHOP?

15 A Yes.

16 Q Okay. And were you able to determine whose phone
17 that was?

18 A That was Mr. Spells'.

19 Q And that phone was seized, correct?

20 A It was taken into evidence the day of the incident.

21 Q Was that phone ever forensically examined?

22 A Yes, it was.

23 Q Can you tell me why you would do that in this case?

24 A We actually wanted to see whose phone it -- I wanted
25 to see whose phone it was and what information was on it.

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETERS\$48

1 Q Did you want to see whether Mr. Spells had been
2 communicating with Mr. Cobbs?

3 A I didn't know exactly whose phone it was, and so the
4 main purpose is to find out whose phone it was and to see
5 if there was actually any evidentiary value of it.

6 Q Upon determining whose phone it was, did you -- were
7 you able to figure out, from the records, whether there
8 was communication between the two parties?

9 A Yes. There was none.

10 Q There was none? And that's one of the things you
11 were looking for after you figured out whose phone it was.

12 A Correct.

13 Q Okay. Now, this was Mr. Spells's phone -- I'm
14 sorry, didn't mean to confuse you -- correct?

15 A That was Mr. Spells', yes.

16 Q The other three phones that were seized -- I believe
17 you said during Mr. Cobb's arrest -- were those phones
18 ever forensically examined?

19 A No, they weren't.

20 Q Can you please tell the Court why they were not
21 examined?

22 A I don't know where they're at honestly. Detective
23 Elmore had them, and I don't know where they're at.

24 Q So Detective Elmore had the phones, and you don't
25 know where they're at?

CROSS-EXAMINATION BY MR. SORENSON - DWAYNE PETERS 149

1 A Correct.

2 Q Do you know when he lost the phones?

3 A No, I do not.

4 Q So you don't know if it's a month in versus last
5 month?

6 A Correct.

7 Q Okay. And you have no idea what's on the phones?

8 A Correct.

9 Q If you were able to examine them, would you be
10 looking for the same kind of information you looked for in
11 Mr. Spells' phone?

12 A Yes, sir.

13 Q And you were unable to do that because the phones
14 were lost; is that correct?

15 A Correct.

16 Q Thank you. I have no further questions.

17 THE COURT: Cross-examination?

18 MR. SORENSON: Just real briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SORENSON:

21 Q And -- and you testified, Detective Peters --
22 Lieutenant Peters, that the phones -- the chain of custody
23 indicated that -- that Detective Elmore was the -- the
24 last person to be in custody of those?

25 A Yes, sir. He's the one that actually filled out the

CROSS-EXAMINATION BY MR. SPEARS - DWAYNE ROBERT PETERS150

1 chain of custody on it.

2 Q You've been unable to locate them anywhere. Is ---

3 A Correct.

4 Q --- that correct? When did -- when did he leave the
5 Sheriff's Office?

6 A January -- it was at the end of the last of -- of
7 the last election --

8 Q So it'd be January --

9 A -- of coroner's --

10 Q If he started in January of 2017, after ---

11 A I think -- I -- I believe so.

12 Q --- after Mr. Brothers was elected coroner, is ---

13 A Yes, sir.

14 Q --- that correct, in 2000 -- all right. So he -- he
15 couldn't have just lost them within the last month; is
16 that correct?

17 A Correct.

18 Q I mean, that would've been pre-January of 2017.

19 A Correct. I think he actually put in his notice in
20 December.

21 Q Okay. So somewhere between June of 2016 and
22 December of 2016, those phones went missing.

23 A Yes, sir.

24 Q You've never had them in your possession?

25 A No, sir.

REDIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE PETERS 151

1 MR. SORENSON: That's all, Your Honor.

2 THE COURT: Redirect?

3 MR. CHISHOLM: Yes, sir, briefly.

4 RE-DIRECT EXAMINATION

5 BY MR. CHISHOLM:

6 Q When did you notice that the phones were missing?

7 A As -- when I -- when I pulled the case file to start
8 going over it.

9 Q When would that be roughly?

10 A I'm going to give you -- it was this year.

11 Q This year?

12 A I don't know if it was March -- this year.

13 Q So that's ---

14 A I don't know if it was March or April --

15 Q Okay.

16 A -- but it was this year.

17 THE COURT: Of this year?

18 A Yes, sir.

19 Q March or April of this year. Prior to that, no one
20 realized the phones were missing.

21 A Correct.

22 Q Thank you. I have no further questions.

23 THE COURT: Re-cross, limited to re-direct.

24 MR. SORENSON: No, sir.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you, sir.

2 ((The witness complies.))

3 MR. CHISHOLM: Your Honor --

4 THE COURT: That's it, Counsel, unless you got
5 another witness.

6 MR. CHISHOLM: I don't have ---

7 THE COURT: We'll hear from the State. I've heard
8 your argument.

9 MR. CHISHOLM: Well, I was going to get into
10 prejudice. It's one of the things you asked me.

11 THE COURT: Pardon?

12 MR. CHISHOLM: One of the things you asked me was
13 what kind of prejudice has Mr. Cobb suffered.

14 THE COURT: Yes, sir. And you've answered that
15 question.. Take a seat..

16 Let me hear from you, Solicitor.

17 MR. SPEARS: Your Honor, in looking over the
18 Defense's questions, I mean, basically in regards to the
19 *Baker* [sic] factors. There's the amount of the delay ---

20 THE COURT: I agreed with Mr. Chisholm in that I
21 believe that there is a basis upon which the Court should
22 look at the *Barker* factors. And obviously there is a
23 delay between the arrest here and the trial. So I think
24 it meets threshold requirements for a speedy trial claim,
25 and requires an analysis of the four *Barker* factors which

1 are: Length of delay, reason for the delay; the
2 Defendant's assertion of his speedy trial right, and
3 prejudice to the Defendant from the delay; all of which I
4 inquired of Mr. Chisholm about and allowed him to put up
5 testimony concerning what he thinks is the prejudice from
6 the delay. So let me hear from you, Solicitor.

7 MR. SPEARS: Your Honor, in regards to the first
8 Barker factor, the length of delay, the -- there's no
9 argument for how long it's taken. We have older cases on
10 our docket, but we can't argue with the amount of time.
11 However, the -- the reason for the delay, the second
12 Barker factor --

13 THE COURT: Well, let's first go back to the length
14 of delay.

15 MR. SPEARS: Uh-huh.

16 THE COURT: Mr. Chisholm argues it's 20 -- did you
17 tell me 23 or 25 months?

18 MR. CHISHOLM: Twenty-five. I believe it's 784
19 days, Your Honor.

20 THE COURT: Twenty-five months or 784 days. You
21 agree with that?

22 MR. SPEARS: I agree with that, Your Honor.

23 THE COURT: All right.

24 MR. SPEARS: Your Honor, initially, on the December
25 -- when the first speedy trial motion was done, the order

1 itself ---

2 THE COURT: First raised in December of 2017,
3 shortly after Mr. Chisholm became the attorney for the
4 Defendant.

5 MR. SPEARS: Yes, Your Honor.

6 THE COURT: So less than a year ago.

7 MR. SPEARS: And also before that, Your Honor, the
8 Defendant had spent an entire -- almost an entire year
9 incarcerated without taking counsel, without hiring
10 counsel or requesting a Public Defender. He had not
11 received counsel at that point and time.

12 And also into the reasons for delay, Mr. Elmore left
13 -- the lead investigator left during that year of 2017.
14 Following in that -- following the initial speedy trial
15 motion, there was also, at the beginning of January of
16 2018, the snow storm in Charleston that actually did close
17 down court for part of one of the weeks.

18 I know Mr. Justis was in charge of the case. I
19 cannot personally testify as to some of the delays ---

20 THE COURT: Mr. Chisholm argued to me that Mr.
21 Justis informed Judge Murphy that he was not prepared to
22 go forward with the case when she signed the order of
23 January 19th; is that correct, Mr. Spears?

24 MR. SPEARS: To my knowledge, Your Honor. I was not
25 there for that hearing, but ---

1 THE COURT: Mr. Sorenson, were you in the courtroom
2 when that occurred?

3 MR. SORENSON: I -- I would not have been, Your
4 Honor. I could -- I can -- looking back, I think that was
5 the end of our -- that -- the 19th, I looked on the
6 calendar, is a Friday. So I would imagine was the last
7 day of court or the last day of that two week term of
8 court. I also believe it was Mr. Justis's last day in our
9 office.

10 THE COURT: That was his last day as well?

11 MR. SORENSON: I -- I believe so 'cause he was
12 supposed to be leaving the -- the 31st, and when he ended
13 up leaving, I believe it was two weeks prior to that was
14 his last day.

15 THE COURT: And when did your ---

16 MR. SORENSON: It was a Friday.

17 THE COURT: --- detective leave that was your chief
18 detective?

19 MR. SPEARS: On this case? He left in -- January 3,
20 2017, Your Honor.

21 THE COURT: January of 2017?

22 MR. SPEARS: '17, Your Honor.

23 THE COURT: All right.

24 MR. SPEARS: Judge --

25 THE COURT: When was it reassigned to someone after

1 that?

2 MR. SPEARS: The -- this case in our office was
3 given to me the next week.

4 THE COURT: The week?

5 MR. SPEARS: January of -- the 23rd -- the week of
6 January 23rd, Your Honor.

7 THE COURT: All right. So you're telling me that
8 Mr. Justis left on the day that Judge Murphy set the bond,
9 according to what Mr. Sorenson's telling me ---

10 MR. SPEARS: Entirely that day, Your Honor.

11 THE COURT: --- which was a Friday in January, and
12 you were assigned the case the next week.

13 MR. SPEARS: Along with his entire docket. Yes.
14 That's correct, Your Honor.

15 THE COURT: Along with Mr. Justis's entire docket?

16 MR. SPEARS: Yes, Your Honor.

17 THE COURT: All right. Go ahead.

18 MR. SPEARS: Judge, following that and looking
19 through the case -- and Mr. Chisholm already broached on
20 the material witness aspect. There's not just the one
21 material witness. There is obviously Ms. Rachandra Sweed.
22 We had evidence of this person, we had the statement from
23 the investigator who was no longer in Dorchester County
24 Sheriff's Office, and we attempted to find her. I had my
25 investigator on it, her -- they had initially met her down

1 in Florida. She ended up being found in Texas --
2 incarcerated in Texas. This was work put in by our office
3 to do it. Furthermore, this was ---

4 THE COURT: You're referring to Ms. Williams now?

5 MR. SPEARS: No. Ms. Sweed, Your Honor.

6 THE COURT: Oh. Go ahead. 'Cause I was told she
7 came from Texas as well, but ...

8 MR. SPEARS: No -- no, Your Honor. Ms. Sweed, who
9 testified earlier at the other hearing, she was found in
10 Texas..

11 THE COURT: All right.

12 MR. SPEARS: This was a shooting in an IHOP
13 bathroom, Your Honor. There was multiple -- multiple
14 witnesses that not all of them gave information to police
15 officers. Time was spent trying to track down, by talking
16 with the people whose information we did have, who else
17 could be in that IHOP at that time. We were able to track
18 down a number of them, not all of them.

19 On top of that, Your Honor, even before I had this
20 case, the victim -- one of the victims who would've been
21 an eye witness to the entire crime, Mr. Bradford Spells --
22 who was in the bathroom when the crime happened -- we have
23 been unable to locate and speak with. He refused to speak
24 with the detectives initially, while he was in the
25 hospital. He had been avoiding our office in regards to

1 that. We have not been able to talk with him about the
2 case. He's a heavily material witness, and the attempts
3 we've made to try to get in touch with him are added with
4 the attempts in finding Ms. Sweed and the attempts of
5 getting the other witnesses together.

6 Following that, the SLED ballistics report, that
7 came back in regards to the shell casings found on the
8 scene and -- and in regards to the guns found on the
9 victims in this case, that didn't come back until March of
10 2018.

11 There -- there was still evidence out there. There
12 was still work to be done.

13 MR. CHISHOLM: Your Honor?

14 MR. SPEARS: There's a reason ---

15 THE COURT: Counsel, this is argument. Sit down.
16 This is not testimony. I'm not taking objections. I'll
17 listen to you. Just -- you don't interrupt him, just like
18 I didn't let him interrupt you. Proceed.

19 MR. SPEARS: Judge, the -- following that, the --
20 the preparation that was put together for this, the -- the
21 -- the looking for the cell phones, Mr. Peters has already
22 testified that when he got the case at Dorchester County
23 Sheriff's Office, realized that there were three cell
24 phones missing. That would actually take time. These are
25 -- the gathering of evidence would be a substantial part

1 of the reason for delay on this case.

2 When Mr. Justis initially didn't try the case, he
3 was provided with a bond, just like the December order
4 said. It was, "Try the case or he gets a bond." And he
5 was provided with a bond at that point, the next month
6 when he was unable to try the case.

7 The hearing -- this came back before the Court in --
8 I believe it was June, and the Defense requested a P.R.
9 bond due to a statute quoted in the dissent of *Hunsberger*.
10 The judge ---

11 THE COURT: Mr. Chisholm referenced a statute. Is
12 that that old statute you talkin' about? 17-3-90?

13 MR. CHISHOLM: It is, Your Honor. It's an old one.

14 THE COURT: Yeah. There's a -- and I need to --
15 there is a case on that. That statute was passed before
16 we had the unified court system, before the Chief Justice
17 set the terms of court. That's back when we had statutory
18 terms of court, and there is a -- I can't remember if it's
19 a -- it's a -- it's a -- I think it's a Supreme Court case
20 'cause we didn't have the Court of Appeals in the 70's
21 when it was decided, and -- which held that that statute
22 did not require a P.R. bond because it referred only to
23 statutory terms of court and not to the terms of court
24 assigned by the Chief Justice, just so you'll know.
25 That's the reason you don't see P.R. bonds now given on

1 that basis.

2 But I wondered if that was the statute you were
3 referring to. Go ahead.

4 MR. SPEARS: Judge, following that, at the hearing
5 that was done subsequent to him getting a bond, requesting
6 a P.R. bond, the State, who -- it was myself in charge of
7 the case at that point in time and I'd already expressed
8 to the Defense on this, I had spoken to Mr. Peters on
9 this, the plan was August. And it was expressed to the
10 Court, on the record during that hearing, we're looking to
11 try this trial in August. The -- we'll be ready for trial
12 in August; and following that, some more investigation
13 commenced.

14 I mean, we're -- we're here today even without the
15 victim who saw the -- the assault happen in the bathroom.
16 We're here today. We still haven't gotten the names of
17 every individual who was in that IHOP at the time. We --
18 we're here with the investigation that we could have done,
19 but the reason for the delay, Judge, is just heavy
20 investigation list.

21 This has been through two lead detectives and two
22 assistant solicitors. Those have changed hands at
23 separate times, and one of these changing of hands in the
24 Solicitor's Office was very sudden. There wasn't an
25 opportunity -- Mr. Justis went to hike the Appalachian

1 Trail. There wasn't an opportunity to speak with him
2 about what he had done on the case thus far.

3 THE COURT: Mr. Justis and our former governor?

4 MR. SPEARS: He actually completed the trail, Your
5 Honor.

6 So that would be the State's argument in regards to
7 the reason for the delay on this.

8 THE COURT: All right.

9 MR. SPEARS: Following that, the final factor, the
10 prejudice -- or I'm sorry, the Defendant's assertion of
11 his right to a speedy trial, Your Honor ---

12 THE COURT: It wasn't asserted until December of
13 2017.

14 MR. SPEARS: That's correct.

15 THE COURT: I'm aware of that, and I think y'all are
16 stipulating to that. That was the first -- he's
17 reasserted it subsequent to that, but that was the initial
18 assertion of the right.

19 MR. SPEARS: Yes, Your Honor. And Judge, fourth
20 factor, the prejudice to the Defendant. I mean, you --
21 you've heard testimony in regards to this: No house, jobs
22 gone, lost his car.

23 And then you heard on Mr. Sorenson's cross that all
24 of those occurred at the time of the arrest. He lost his
25 job when he was arrested. Couldn't make payments on his

1 house when he was arrested because it was a rental house.
2 This wasn't due to the delay on this case.

3 Furthermore, looking at the *Hunsberger* case, the
4 prejudice occurs (as read:) "... when the trial delay has
5 weakened the accusability to raise specific defenses."
6 We've only found more people who have been around this
7 case in the investigation. There's no one missing now --
8 or there's no one present -- or missing now that was
9 present before on this case. All this investigation has
10 produced more evidence, whether it's to the benefit of the
11 State or the Defense, it has allowed for further
12 examination into the facts on this.

13 They're not prejudiced like a 10-year delay where
14 people's memories aren't fresh enough anymore. This is a
15 two-year delay. It is one caused by changing of hands in
16 two different departments, by heavy investigation. The --
17 the charge itself might not be super complex. The
18 investigation requires a lot of moving parts and of
19 finding witnesses that have been detained in other states
20 or finding out their names of them and what they have to
21 say.

22 It takes time. The ballistics that was submitted to
23 SLED takes time to come back. Judge, we would argue that
24 the prejudice isn't there. It's produced more -- this
25 just produced more evidence, the delay has.

1 THE COURT: Anything else, Mr. Spears?

2 MR. SPEARS: Nothing, Your Honor.

3 THE COURT: All right. Mr. Chisholm, you've been
4 anxious now to interrupt him. Now's your time for reply.

5 MR. CHISHOLM: Thank you, Your Honor. And this kind
6 of goes back to what I was saying earlier. I was going to
7 ask if the Court could inquire as to dates of when all
8 this happened 'cause, I mean, our position would be it
9 certainly sounds like what happened in this case is there
10 was a rush to look for this evidence, to find these
11 witnesses, to track these people down as we approached
12 trial. The original investigator, if I got the date
13 right, left January of 2017; Detective Peters took over
14 March/April, I think you said, of this year?

15 THE COURT: And -- and the right to speedy trial
16 wasn't asserted in January of '17. It wasn't asserted
17 until December of '17, at the end of the year.

18 MR. CHISHOLM: That's correct.

19 THE COURT: I understand that that was the date the
20 detectives changed, but I actually think you're mixing up
21 two factors there, but I don't think there's any dispute
22 about the length of delay in this case. I think it's 25
23 months or 783 days.

24 MR. CHISHOLM: Yes, sir.

25 THE COURT: There is a great dispute about the

1 reason for the delay. I don't think there's any dispute
2 about your first assertion of your speedy trial right ---

3 MR. CHISHOLM: There's not.

4 THE COURT: --- which was December of 2017. So as
5 to the four factors, two of which are really not in
6 dispute --

7 MR. CHISHOLM: Correct.

8 THE COURT: -- one would be that the reason for the
9 delay, the other's prejudice to the Defendant. I've
10 listened to your testimony on that.

11 MR. CHISHOLM: Well, Your Honor, I was going to add
12 to that, actually. I -- I'm sure you can probably ---

13 THE COURT: Well, you don't get to testify, Mr.
14 Chisholm. You can argue if want to ---

15 MR. CHISHOLM: Well, I -- yes, sir.

16 THE COURT: --- but you don't testify in this case.

17 MR. CHISHOLM: And -- and I imagine you probably --
18 well, hopefully, if I did my job, you saw where I was
19 going with it when I was questioning Detective Peters ---

20 THE COURT: I know you want to testify, but ---

21 MR. CHISHOLM: Yes, sir.

22 THE COURT: --- but I'm not going to allow you do
23 that and be a lawyer.

24 MR. CHISHOLM: Yes, sir.

25 My position would be the actual prejudice has been

1 shown in this case by the delay in trial, that these three
2 cell phones, they wanted them for the same reason they
3 wanted the one that Mr. Spells had: To see what kind of
4 communications there were between the Defendant and
5 between the alleged victims in the case.

6 Our position would be that there was exculpatory
7 evidence on those phones in that they would not be able to
8 show this type of communication. They did not discover
9 that these phones were missing until a couple of months
10 ago, and if they had tried the case and prepared it for
11 trial at a reasonable time, they would've been able to
12 find the phones as opposed to two years later.

13 And I would -- my final thing I would add is, you
14 know, the State seemed to argue that actual prejudice is
15 required. I don't believe that's the case. I believe
16 actual or presumptive prejudice can support a speedy trial
17 claim, and with presumptive prejudice, aside from what Mr.
18 Cobbs testified to, I believe the courts have held that
19 just general anxiety in itself of being detained for this
20 long, oppressive detention, would be cause for presumptive
21 prejudice.

22 THE COURT: Thank you.

23 MR. CHISHOLM: Thank you.

24 THE COURT: I'm obviously not in a position yet to
25 have heard the evidence in this case. So on the fourth

1 factor of -- of the Barker factors, it is some concern to
2 me. I've listened to the Defendant testify to anxiety,
3 I've listened to him testify of loss of car, loss of
4 house, although, it was certainly amplified by the cross-
5 examination by the Solicitor as to when it occurred.

6 It appeared the car was taken before even the first
7 arrest. It appears that the house was a rental and that
8 he was in custody. So his arrest, not necessarily the
9 delay occasioned the loss of the rental property.

1 The reason for the delay -- the State has given me a
2 legitimate reason and that is collection of evidence,
3 whether it be ballistic evidence or locating witnesses.
4 We had a change of solicitors, we had a change of
5 detectives. Obviously, the Defendant didn't assert his
6 right to a speedy trial until December of '17. Since that
7 time, the Defendant's been given a bond. He was denied a
8 P.R. bond, but I think that was a correct ruling in light
9 of the case.

10 (To law clerk) I'll have -- I have a file on that in
11 my thing. I want you to get that case so I can give it to
12 Mr. Chisholm and the Solicitor on that. It's in my -- I
13 told y'all about that case, and I couldn't give you the
14 quote on it.

15 My concern is that I might have to revisit this
16 issue. Clearly, dismissal is one remedy that the Court
17 could grant the speedy trial, if I felt, once I hear the
18 evidence in this case. My view of it, from listening to a
19 pre-trial argument, at this point I don't feel I'm con --
20 been convinced that there's sufficient prejudice to the
21 Defendant from the delay in order to dismiss the charges
22 against the Defendant. However, I will be listening
23 carefully to the evidence presented during this trial.

24 Your motion for dismissal is respectfully denied.

25 All right. Counsel, I will -- don't -- I've ruled

1 on your sequestration motion, and I don't think there's
2 any dispute about any longer -- it was moot, your motion
3 concerning the information, which I granted, for you to
4 strike the jury. I think that's everything; is it not?

5 MR. CHISOLM: It is, Your Honor. I believe that's
6 everything.

7 THE COURT: And I've worked poor old Donna and the
8 Clerk until 7:30 at night since y'all wanted to hear all
9 your motions after the jury was dismissed, even though you
10 wanted to delay them 'til Wednesday.

11 Solicitor, I -- hopefully, you'll have the Defendant
12 that's involved in that motion. He's in custody, I
13 understand, so you'll have him here in the morning. I'm
14 going to try to be here between 9 and 9:15 to start that
15 hearing. I want y'all prepared to go at 9:30 in the
16 morning.

17 And I will, Mr. Chisholm, be listening very
18 carefully to your argument about whether or not there's
19 prejudice from the lack of a cell phone in this case,
20 which you claim that you want this Court to somehow find
21 is exculpatory of your client, when, frankly, there's been
22 no evidence to establish that for purposes of this
23 hearing.

24 All right. I will look forward to seeing everyone
25 in the morning. I want to thank you for your patience and

1 your time tonight. I realize that I worked you late and
2 y'all aren't used to that, and you even get the Solicitor
3 to agree to a different time schedule so you don't have to
4 work late. I promise I won't keep you late unless the
5 jury keeps us late for the rest of this week.

6 Thank you very much. Court's in recess until 9:15
7 in the morning.

8 One more thing. The Solicitor and Defense Counsel
9 wanted to put on the record, outside the presence of the
10 jury -- the jury's not here -- an amendment to the
11 indictment. Please do so at this time.

12 MR. SPEARS: Your Honor, in regards to the
13 indictment for murder against Mr. Cobbs, it has been
14 amended this most recent grand jury session, the date on -

15 -
16 THE COURT: It's just the indictment for murder; is
17 that correct?

18 MR. SPEARS: That is correct, Your Honor.

19 THE COURT: 2016 to 1267.

20 MR. SPEARS: Yes, Your Honor.

21 THE COURT: All right. Now I'm reading from the
22 copy I have. This amended indictment reads (as read):
23 "That in Dorchester County, on or about June 5, 2016, with
24 malice aforethought, the Defendant, Keunte D. Cobbs, did
25 kill one Brandon Mack by means of shooting the victim.

1 The victim did die as a proximate result thereof. This
2 offense being in violation of the common law of South
3 Carolina and Code Section 16-3-10." Is that the amended
4 indictment?

5 MR. SPEARS: That is correct, Your Honor.

6 THE COURT: Any objection to the amendment, Counsel?

7 MR. CHISHOLM: No, Your Honor.

8 THE COURT: No objection. All right. The amendment
9 is so ordered. That will be the -- that is the indictment
10 I published to the jury. I called Counsel to the bench
11 before I read any allegations of the indictment, and that
12 is the indictment that I published to the jury and that's
13 what we'll work off of for purposes of this case.

14 Thank you, very much. You're excused 'til 9:15 in
15 the morning.

16 MR. SPEARS: Thank you, Your Honor.

17 MR. CHISHOLM: Thank you.

18 (Off the record at 7:39 p.m.)

19 DAY 2

20 (On the record at 9:26 a.m.)

21 THE COURT: All right. Let the record reflect the
22 Defendant's present, as is counsel for the State and the
23 Defendant.

24 I received, when I arrived this morning, a letter
25 from Juror 138, who is Kimberley Murray, M-u-r-r-a-y. She

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
 COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

2016-GS-18-01268

State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Keunte D. Cobbs,)
)
 Defendant.)

August 22 - 23, 2018
 St. George, South Carolina

B E F O R E:

The Honorable Perry Buckner, Judge and a jury

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

Don Sorenson, Esquire
 Mike Spears, Esquire
 Attorney for the State

Ash Chisholm, Esquire
 John Loy, Esquire
 Attorney for the Defendant

Hilda M. Jordan, CVR-M
 Circuit Court Reporter

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1 Q In the bushes?

2 A Yes.

3 Q And this is the gun that you heard the testimony it was
4 reported stolen?

5 A Correct.

6 Q Did you ever followup to figure out if there was any
7 connection between the theft and this case, as far as the
8 identity of the person --

9 A That gun was stolen in 2014 according to the
10 Summerville Police Department.

11 Q Okay. So you never went out there and spoke to the
12 owner or anything like that?

13 A No.

14 Q All right. Now, I'd like to talk to you a little bit
15 about the cellphones in this case. You're aware that one
16 phone was found at the IHOP that night, correct?

17 A Yes, sir.

18 Q And were you able to determine whose phone that was?

19 A That was Mr. Spells'.

20 Q Bradford Spells' phone. And was there -- I don't know
21 the proper term. Was there a phone dump on it and was the
22 phone analyzed?

23 A We analyzed it, yes. We forensically examined the
24 cellphone.

25 Q And when you do that, what kind of information can you

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1 get?

2 A Phone logs, phone contacts. If it's a smart phone you
3 can get emails. You can get your website history, basically
4 any type of data that's on the phone. Sometimes we're able
5 to pull deleted data and all that, text messages, so forth.

6 Q Is that something that Detective Elmore had requested
7 or is that something you requested when you came on the
8 case?

9 A I requested that for that cellphone.

10 Q And it's my understanding and correct me if I'm wrong,
11 but you found no evidentiary value in that phone, nothing
12 linking Mr. Cobbs to the case; is that correct?

13 A Correct.

14 Q You had no record of him calling Mr. Spells, texting or
15 anything else?

16 A Correct.

17 Q There's no mention of him in the phone; is that
18 correct?

19 A Correct.

20 Q And I'm assuming that's one of the reasons you wanted
21 to look at the phone to see if these parties had been
22 communicating, correct?

23 A Correct.

24 Q And the Solicitor's already brought it up, but you
25 mentioned phone issues. Were you able to determine if Mr.

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1 the court reporter has all the exhibits?

2 MR. SORENSON: Yes, sir.

3 THE COURT: Does the State have any objections to
4 my bailiff taking the verdict form and the exhibits into the
5 jury and telling the jury they may now commence their
6 deliberations?

7 MR. SORENSON: No, Your Honor.

8 THE COURT: Is the Defendant satisfied that the
9 court reporter has all the exhibits?

10 MR. CHISHOLM: Yes, Your Honor.

11 THE COURT: Does the Defendant have any objections
12 to the bailiff taking the verdict form, which you previously
13 approved, and the exhibits into the jury room and telling
14 the jury they may now commence their deliberations?

15 MR. CHISHOLM: No objection.

16 THE COURT: Very well. Who's taking it?

17 OFFICER SMITH: We'll take it.

18 COURT REPORTER: Evidence and verdict form to the
19 jury at 12:34 p.m.

20 (Jury deliberating at 12:34 p.m.)

21 (Court in recess awaiting jury
22 verdict)

23 (Court in session for jury question
24 at 2:18 p.m.)

25 THE COURT: The bailiff is sending my law clerk --

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1 and 15 minutes at that point. It will be my intention to
2 give the jury an Allen Charge at 4:00. No one has any
3 objection to that and we're making the jury's note, that
4 they are not likely to reach a unanimous verdict a part of
5 the record as a Court's Exhibit without objection. Is that
6 correct from the State?

7 MR. SORENSON: Yes, sir.

8 THE COURT: Correct from the Defendant?

9 MR. CHISHOLM: Yes, sir.

10 COURT REPORTER: Judge, the correction. It would
11 be Court's Exhibit No. 3.

12 THE COURT: Excuse me. It's going to be Court's
13 Exhibit No. 3 and not Court's Exhibit No. 4.

14 (Court's Exhibit No. 3, jury note,
15 was marked)

16 MR. LOY: And Your Honor, I'd like to bring the
17 Defendant in and put that on the record.

18 THE COURT: You want put it on the record.

19 MR. LOY: Your Honor, I think he's entitled to be
20 here. He's on trial for murder.

21 THE COURT: Well, since you've raised it now, Mr.
22 Loy we're going to have to. Bring in the Defendant.

23 MR. LOY: Thank you, Your Honor.

24 (Defendant enters courtroom).

25 THE COURT: Let the record reflect that all the

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1 attorneys are present and now the Defendant is present at
2 the request of Mr. Loy.

3 I received a note at approximately 3:35 or 3:40, while
4 I was hearing a bond motion, from the jury. It states it
5 does not seem likely that we will reach a unanimous decision
6 on question one of the verdict form. I called the attorneys
7 to the bench at approximately 3:50 and advised them of the
8 note and brought the Defendant out so he would be aware of
9 the contents of the note. It's my intention if we don't
10 reach or have a verdict by 4:00, I'm going to bring the jury
11 back and give them an Allen Charge, which the lawyers tell
12 me they have no objection and I've making the juror's note
13 concerning their status Court's Exhibit No. 3 for this
14 trial.

15 Do you understand, Mr. Cobbs, everything I've said?

16 DEFENDANT COBBS: Yes, sir.

17 THE COURT: Very good. All right. Mr. Loy, your
18 client's now been informed of everything. We would have
19 told him anyway, but I want to make sure he knows verbatim.

20 (Court at ease)

21 THE COURT: All right. It's 4:00, no verdict.
22 Bring us the jury, please ma'am.

23 THE BAILIFF: Yes, sir.

24 (Jury in at 4:03 p.m.)

25 THE COURT: Mr. Foreman, I received your note.

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1 Ladies and gentlemen he stated in his note that you've been
2 unable to agree on a verdict in this case. As I instructed
3 you earlier, the verdict of the jury must be unanimous.
4 When a matter is in dispute, it isn't always easy for even
5 two people to agree. So when twelve people must agree, it
6 becomes even more difficult. In most cases, ladies and
7 gentlemen, absolute certainty cannot be reached nor can
8 absolute certainty be expected. However, you have a duty to
9 make every reasonable effort to reach a unanimous verdict.
10 In doing this, ladies and gentlemen, you should consult with
11 one another, express your own views and listen to the
12 opinions of your fellow jurors. Tell each other how you
13 feel and why you feel that way. Discuss your differences
14 with open minds. Although the verdict of the jury must be
15 unanimous, ladies and gentlemen, every one of you has the
16 right to your own opinion. The verdict you agree to must be
17 your own verdict. The result of your own convictions and
18 you should not give up firmly held beliefs merely to be in
19 agreement with your fellow jurors. The majority should
20 consider the minority's position. And the minority should
21 consider the majority position. You should carefully
22 consider and respect the opinions of each other and
23 reevaluate your position for reasonableness, for correctness
24 and impartiality. You must lay aside all outside matters
25 and reexamine the questions before you based on the law and

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1 the evidence in this case. If you do not agree on a verdict
2 in this case, I must declare a mistrial. In that case it
3 does not mean anybody wins. It just means that at some
4 future time I will try this case with some other jury,
5 sitting where each of you are now sitting. The same
6 participants will come and the same lawyers will ask
7 basically the same questions and get basically the same
8 answers and we will go through the whole process again. You
9 were selected in the same manner and from the same source as
10 any future jury will be selected. And there's no reason for
11 me to suppose that the case will ever be submitted to twelve
12 more intelligent or twelve more impartial or twelve more
13 conscientious or twelve more competent jurors than each of
14 you. Or that more or clearer evidence will be produced on
15 one side or the other in this case. I, therefore, ask you
16 to return to your deliberations at this time. Thank you
17 very much.

18 (Jury out at 4:12 p.m.)

19 THE COURT: An exceptions or additions to the
20 Court's comments to the jury?

21 From the State of South Carolina?

22 MR. SORENSON: No, sir.

23 THE COURT: From the Defendant?

24 MR. CHISHOLM: No, sir.

25 THE COURT: Very well.

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1 (Court in recess at 4:12 waiting
2 jury verdict)

3 (Court in session for jury question
4 at 5:05 p.m.)

5 THE COURT: Let the record reflect when I was
6 taking the last plea a few minutes ago, I called the lawyers
7 in chambers. I received another note from the jury. We are
8 still unable to come to a unanimous consent on question one
9 of the verdict form. I've read that to the lawyers and I
10 want to make that Court's Exhibit No. 4.

11 (Court's Exhibit No. 4, jury note,
12 was marked)

13 THE COURT: Any questions, Solicitor?

14 MR. SORENSON: No, sir.

15 THE COURT: Defense counsel?

16 MR. CHISHOLM: No, Your Honor.

17 THE COURT: I advised Defense counsel it was my
18 intention to bring the jury back out in light of the second
19 note. I will advise the jury in light of the code section
20 which I gave them, 14-7-1330, I will advise the jury first
21 of all, have you been able to reach a verdict on any of the
22 indictments? Yes or no. And I understand from your note
23 you've been unable to reach a verdict on question one or
24 unanimous consent on question one. I will ask them whether
25 or not they feel like that if they continue to deliberate,

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1 further deliberations would be beneficial. If they tell me
2 they cannot, then obviously our code section provides that
3 when a jury returns a second time without having agreed on a
4 verdict, the trial judge cannot send the jurors out again
5 without their consent unless the jurors ask for a further
6 explanation of law. And I'll no choice in this matter but
7 to declare a mistrial. Does that accurately state what
8 occurred in chambers?

9 Insofar as the State is concerned?

10 MR. SORENSON: Yes, sir.

11 THE COURT: Insofar as Defense counsel is
12 concerned?

13 MR. CHISHOLM: Yes, sir.

14 THE COURT: Bring us the jury, please?

15 THE BAILIFF: Yes, sir.

16 (Jury in at 5:06 p.m.)

17 THE COURT: Mr. Foreman, has the jury been able to
18 reach a verdict on any of the indictments submitted?

19 MR. FOREMAN: Yes, sir.

20 THE COURT: You have?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: So you have answered question two and
23 three, if necessary?

24 MR. FOREMAN: Yes, sir.

25 THE COURT: But you've been unable to reach a

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1 verdict as to question one?

2 MR. FOREMAN: Yes, sir.

3 THE COURT: All right. And I'm asking whether or
4 not, Mr. Foreman, you feel like continued deliberation would
5 result in a verdict on question one on the indictment?

6 MR. FOREMAN: I do not believe that.

7 THE COURT: You do not believe that?

8 MR. FOREMAN: I do not believe that.

9 THE COURT: All right. But you have been able to
10 -- and you've filled out the verdict form as to questions
11 two and three?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: Very well. Madam Clerk, would you get
14 the verdict form from the Foreman?

15 Did you bring it out with you?

16 THE FOREMAN: No, they told us not to bring
17 anything.

18 THE COURT: Okay. All right. Would you please go
19 get the exhibits and the verdict form and I'll let the jury
20 stay right here.

21 THE BAILIFF: You want the exhibits and the
22 verdict form?

23 THE COURT: The verdict form and the exhibits.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Mr. Foreman, and ladies and gentlemen

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1 of the jury, as to question one, since you've been unable to
2 reach a verdict as to question one, which is the indictment
3 for murder, because your Foreperson tells me he does not
4 think continued deliberations would be beneficial, I have no
5 choice now but to declare a mistrial as to that indictment.
6 And, as I told you exactly what would occur with a mistrial,
7 I will now publish your verdicts as to the remaining
8 questions.

9 Have you signed the verdict form yet?

10 THE FOREMAN: I have not signed it.

11 THE COURT: I'm going to ask you to do so since
12 you've reached a verdict.

13 THE BAILIFF: We need for him to come and get it
14 because they had it all over the place.

15 THE COURT: All right. Ladies and gentlemen,
16 would you all please retire to the jury room so we can get
17 all the exhibits and verdict form and the Foreman can sign.

18 (Jury out at 5:07 p.m.)

19 (Jury in at 5:10 p.m.)

20 THE COURT: Is that all the exhibits?

21 THE BAILIFF: Uh-huh. (Affirmative response)

22 THE COURT: Defendant please rise with counsel.

23 I have declared a mistrial on indictment 2016- -- I've
24 declared a mistrial on indictment 2016-GS-18-1267. The jury
25 has not filled out any verdict on the verdict form on that.

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1 So a mistrial has been declared.

2 Question two on the indictment. We, the jury, by
3 unanimous consent find the Defendant, Keunte D. Cobbs, in
4 indictment number 2016-GS-18-1268 not guilty of attempted
5 murder of Bradford Spells.

6 Question three. We, the jury, by unanimous consent
7 find the Defendant, Keunte D. Cobbs, guilty of assault and
8 battery of a high and aggravated nature of Bradford Spells.

9 Ladies and gentlemen of the jury, if that be your
10 verdict as published by the Court, would you please indicate
11 by raising your right hand?

12 (All jurors raised their right
13 hand)

14 THE COURT: Let the record reflect, Hilda, twelve
15 hands were raised.

16 Anything from the Defendant before I dismiss this jury?

17 MR. CHISHOLM: No, Your Honor.

18 THE COURT: Ladies and gentlemen, on behalf of
19 Dorchester County and -- please be seated.

20 On behalf of Dorchester County and this Court, I want
21 to thank you for your service. This concludes your service
22 for the week. You will be receiving that exorbitant check
23 that I told you about, twenty-five dollars per day. I
24 especially want to thank Ms. Murray because she gave up
25 working this week to serve on a jury and I very much

State v Cobbs

8/23/18

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1 And I just wanted to say I apologize once again. Thank you
2 and God bless you and the jurors.

3 THE COURT: Let me say this, Mr. Cobbs. I can
4 well understand why the jury struggled. You're charged with
5 murder. Apparently they also, because they listened to my
6 charge on the law, they felt like that the State had not
7 proven attempted murder and found you guilty of the lesser
8 included offense, assault and battery of a high and
9 aggravated nature. I also have to take into -- and I
10 certainly understand that verdict because there was clear
11 evidence here Mr. Cobbs. Ms. Sweed testified that you told
12 her you committed the shooting. So it was not just, as I
13 pointed out to the lawyers during the trial, a
14 circumstantial case because her credibility was also at
15 issue here in the trial of this case and she was subject to
16 cross-examination. I have to consider your prior record
17 when I fashion a sentence. I also have to consider the fact
18 that there were a number of people who had absolutely
19 nothing to do with this incident, who could have been
20 injured by the events that the jury has found you guilty of
21 in the International House of Pancakes on Dorchester Road
22 back in 2016. All of those factors have to be considered.
23 I understand that you have children, but I also have to
24 understand that the jury has spoken as to your guilt on
25 assault and battery of a high and aggravated nature.

State v Cobbs

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1 On indictment 2016-GS-18-1268, the State versus Keunte
2 D. Cobbs, the sentence of the Court is Defendant is
3 committed to the state department of corrections for a term
4 of eighteen years. The Defendant is being given credit for
5 time served pursuant to South Carolina Code Section 24-13-
6 40. That is to be calculated and applied by the department
7 of corrections. Good luck to you, sir.

8 MR. CHISHOLM: Thank you, Your Honor.

9 THE COURT: Now, Mr. Foreman, and ladies and
10 gentlemen of the jury, the Defendant has been in custody for
11 over two years. He will be given credit by the department
12 of corrections for that on my sentence. All right. He is
13 going to serve a sentence of eighteen years. It is a
14 violent offense, which means he's going to serve at least
15 eight-five percent of my sentence with credit for the time
16 served. All right. It is also -- you heard me ask his
17 lawyer if he'd been advised it is a serious offense. That
18 means that if he's to be convicted in the future of either a
19 serious or most serious offense, he could, if so convicted
20 in the future and his lawyer advised him of that. Mr.
21 Chisholm acknowledged that, he could face the possibility of
22 punishment of life imprisonment without any possibility of
23 any parole if he were so convicted. Obviously, sentencing
24 is the Court's province, not yours. I have to take into
25 consideration his prior record and I have to take into

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
2016-GS-18-1267

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) January 6, 2020 - Vol 1 of 4

Keunte Cobbs

)

) St. George, South Carolina

B E F O R E:

The Honorable Diane Goodstein, Judge

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

Mike Spears, Esquire
William Baker Allen, Esquire
Attorneys for the State

Ash Chisholm, Esquire
John Loy, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

Jury Strike Sheet
State v. Keunte Cobbs

2016-GS-18-1267

January 6-9, 2020

Jury No.	Name	Race	Gender	Jury No.
169	Mary Walter-Metzner	W	F	1
84	Daniel Howard	W	M	Def. Strike
102	Jessica Maclin	B	F	2
183	Christopher Young	W	M	3
160	Kirk Taylor	W	M	Def. Strike
170	Arthur Washington	B	M	4
156	Jessica Sterrett	W	F	5
167	Jacqueline Villinger	W	F	Def. Strike
62	Coy Garriott	W	M	Plt. Strike
128	Isiah Phillip	B	M	Plt. Strike
24	Cynthia Bull	W	F	6
61	Mary Garner	W	F	Def. Strike
101	Deyling Machado	H	M	7
105	Van Keuren Marshal	W	M	Def. Strike
58	Carnice French	B	F	8
139	Audrey Salters	B	F	Plt. Strike
125	Brian Peagler	W	M	Def. Strike
109	Louann Mayeres	W	F	9

1	32	Rhoda Casper	B	F	10
2	75	Doria Havrilack	W	F	Def. Strike
3	96	Thomas Laughlin	W	M	11
4	173	Summer Washington	W	F	Def. Strike
5	56	Mark Forsyth	W	M	12
6	45	Phillip Davis	W	M	Alt. No. 1
7	108	Jerry Mast	W	M	Alt. No. 2
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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Portion of Transcript	26	56
S-2	Testimony of Det. Peters	34	56
D-1	Motion for Dismissal	6	7
D-2	Bond Order	6	7
D-3	Speedy Trial Order	6	7

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Mr. Spears 11

Detective Dwayne Peters

Mr. Spears 25

Mr. Chisholm 29

1 MR. SPEARS: May it please the Court,
2 Your Honor.

3 THE COURT: Yes.

4 MR. SPEARS: Your Honor, we are moving
5 forward with the trial in the case of Keunte Cobbs under
6 true bill indictment 2016-GS-18-1267, charging him with
7 murder and 1269, charging him with possession of
8 a firearm during the commission of a violent crime.

9 This is a pre-trial matter, Your Honor.
10 I believe the defense has a number of motions that need
11 to be visited before we pick a jury.

12 THE COURT: All right. Yes, sir.

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

15 THE COURT: Yes.

16 MR. CHISHOLM: We have a motion to dismiss
17 pursuant to Hunsberger. If I could, I have marked as
18 a court's exhibit. I have got a copy of my motion ---

19 THE COURT: Thank you.

20 MR. CHISHOLM: --- to dismiss. And I'm also
21 passing up a copy of a bond order and a speedy trial
22 order that are going to be referenced in my motion
23 as well. If I could have those marked, please.

24 (Defendant's Exhibit Nos. 1 through 3 were marked for
25 identification.)

DIRECT EXAMINATION - MR. CHISHOLM

1 (Defendant's Exhibit Nos. 1 through 3 were admitted
2 into evidence.)

3 (Pause.)

4 THE COURT: All right. I am listening to
5 you.

6 MR. CHISHOLM: Thank you, Your Honor.
7 Defense would call Keunte Cobbs to the stand.

8 MR. KEUNTE COBBS was called as a witness,
9 being duly sworn, was examined and testified as follows:

10 THE COURT: Your witness.

11 MR. CHISHOLM: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. CHISHOLM:

14 Q. Good afternoon, Mr. Cobbs.

15 A. Hey.

16 Q. I'm just going to ask you a few questions about
17 your case, the delay in your case, etc. Could you
18 please explain to the Court any issues -- well, first
19 off, let me ask you this. How long have you been
20 incarcerated?

21 A. A little over three and a half years,
22 almost four, coming up on four years in June.

23 Q. Would that be June of 2016?

24 A. June 2016 -- June 27, 2016.

25 Q. And you are currently housed at -- well,

DIRECT EXAMINATION - MR. CHISHOLM

1 obviously, not today, but at SCDC; is that correct?

2 A. Yes, sir.

3 Q. Since the time of your arrest, have you ever been
4 out on bond, or have you steadily been incarcerated the
5 entire time?

6 A. Been incarcerated the entire time.

7 Q. Okay. And could you please explain to the Court
8 what, if any, issues you've had with the delay in this
9 case on a personal level, how it has affected you,
10 if it has?

11 A. It's hard to say where to begin from because
12 I know a lot of you guys haven't ever been incarcerated.
13 But it takes away so much of your life. Being --
14 I mean, just being a citizen, every day going to work,
15 you know, taking care of your kids, paying your bills
16 and stuff like that. All of that is over with, you
17 know.

18 This actually started, for me, in 2014, you know,
19 with the other case, and then ten months later this.
20 So, you know, just time out of your kid's life and then
21 from your work and stuff like that.

22 Q. I might be able to rephrase my question. Since
23 your arrest in 2016, have your personal circumstances
24 changed as to employment, your residence, things along
25 those lines?

~~DIRECT EXAMINATION - MR. CHISHOLM~~

1 A. Of course. As you know, I got the eviction
2 notice for my house. And then my job, you know, that's
3 over with. I lost a couple of vehicles. And the basic
4 thing is just time away from your kids and not being
5 able to take care of them. They're innocent.

6 Q. And that's had an affect on you?

7 A. Yes, sir, it has. And also if I could add, my
8 daughter went through a tremendous amount of depression
9 over this. And, at the time, it was kind of bad because
10 you're getting bullied in school, and then her dad not
11 being there.

12 And my son is just like -- he's lost, thinking
13 I'm at work, but I'm actually in jail. You know they
14 didn't want to tell him that I was here. So, you know,
15 they just kept saying he's working, and he's trying to
16 make sure he comes home or whatever. You know, just
17 kind of putting it off. That stuff that's the affect
18 that I had.

19 As far as what I've lost just, you know,
20 the basic stuff that you have as a regular citizen,
21 just living everyday life, going to work, coming home,
22 the house and cars and stuff like that, you know.

23 Q. And at the time of your arrest, are you aware
24 of any cell phones that were seized?

25 A. Yes, sir, I am.

DIRECT EXAMINATION - MR. CHISHOLM

1 Q. And are you aware if these cell phones that the
2 State has basically implied they were your cell phones?

3 A. Yes, I believe so. I told them it was mine.
4 They told me they were taking it for evidence
5 or whatever, and I told them okay.

6 Q. You are aware of the contents of the cell phones,
7 then?

8 A. Yes, sir.

9 Q. And is it your understanding these cell phones
10 were subsequently lost?

11 A. From what the State presented the last time
12 at trial, yes, sir. They were misplaced or something,
13 and I don't know.

14 Q. Do you feel like that affected your ability
15 to present a defense, and if so how?

16 A. Greatly because that would exclude me from --
17 which the prosecution said that I had contact with
18 the alleged victims. And also some of the -- well,
19 all of their witnesses, it would exclude me from knowing
20 any of them, which was my defense, you know. And the
21 prosecution saying that I may have had contact with
22 these guys, and all this other stuff that I don't know
23 nothing about.

24 It would have showed that I didn't know their
25 witnesses, nor did I have contact with the alleged

CROSS-EXAMINATION - MR. SPEARS

1 victims. So it might have excluded them from filing
2 charges against me or anything like that.

3 Q. I understand. Just so I'm clear, you're saying
4 that the contents of the phone would have shown you
5 didn't have contact with the alleged victims, or anyone
6 else in the case?

7 A. Yes, sir, correct.

8 Q. Okay.

9 MR. CHISHOLM: If I could have a moment,
10 Your Honor.

11 THE COURT: Yes.

12 MR. CHISHOLM: Thank you, Mr. Cobb.
13 Please answer any questions Mr. Spears may have for you.

14 THE WITNESS: Okay.

15 THE COURT: Cross-examination.

16 MR. SPEARS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SPEARS:

19 Q. Mr. Cobbs, you mentioned getting evicted as
20 a result of your arrest, and that happened close to
21 the time of your arrest; isn't that correct?

22 A. Yes, sir, it did.

23 Q. Was that -- that was a rental house, wasn't it?

24 A. Yes.

25 Q. So -- well, it was just a month's rent or so,

CROSS-EXAMINATION - MR. SPEARS

1 and the unable to -- and then no longer able to stay
2 at the property, right, or something in that area?

3 A. Well, what they do is they give you a time frame,
4 and so they send you a letter. I actually received that
5 letter while at -- after I got incarcerated a couple of
6 days, maybe a week later.

7 Q. About a week after you got incarcerated?

8 A. Yes, sir.

9 Q. Okay. And you said you lost your job as a result
10 of this, right?

11 A. Yes, sir -- well, actually, I had a couple of
12 jobs, but, yes, my first job.

13 Q. And that was pretty immediate after your
14 incarceration, correct?

15 A. My main job, yes. My other two jobs that I work
16 on the side, they're owned by a family member and
17 friends. So, you know, they tried to keep it open ---

18 Q. I understand.

19 A. --- for me to come back.

20 Q. I'm just saying if you don't show up to a job for
21 a while, then it's likely you're going to lose the job,
22 correct?

23 A. Yes, sir, that's correct.

24 Q. And it doesn't usually take all that much time
25 before the boss starts getting angry, right?

~~CROSS-EXAMINATION - MR. SPEARS~~

1 A. Right.

2 Q. All right. Now your vehicles, about how soon
3 after your incarceration -- you lost your vehicles not
4 too long after your incarceration also; is that correct?

5 A. Yes, sir.

6 Q. That was about within a month's range?

7 A. Yes, sir.

8 Q. Okay. And you stated here that you believe those
9 phones would have excluded you from witnesses, correct,
10 from witnesses knowing you, correct?

11 A. From your witnesses knowing me, yes.

12 Q. From any witnesses knowing you?

13 A. Yes.

14 Q. And in doing so, do you have something in your
15 phone that says I don't know this person?

16 A. No. What it shown was you had one of your
17 witnesses say that we text and call each other. And it
18 would have shown that in none of those phones those
19 texts were from me.

20 Q. Now -- and you had three phones, correct?

21 A. Yes, sir.

22 Q. All right. And, you know, generally if you've
23 got three phones, there's a potential for more; isn't
24 that right?

25 A. You say what now?

CROSS-EXAMINATION - MR. SPEARS

1 Q. If you have three phones -- say an individual has
2 three phones, I mean, were these, like, payment plans,
3 or are these, you know, just regular phones you can pick
4 up at the Wal-Mart and pay like \$5 or something like
5 that for them?

6 A. No. I had an iPhone, and I had another phone,
7 and actually the third phone wasn't even mine.
8 But I gave them permission to check all the phones.
9 I gave them the phone.

10 Q. You gave it to them, or were they taken from you
11 when you were arrested?

12 A. Well, I guess, they took it -- well, kind of,
13 sort of. I think I told them to take it because they
14 don't usually take your phone. Well, being arrested,
15 I don't think I ever got my phones taken. But then
16 again, I've never been arrested for these kind of
17 charges before. So, I would assume that they would take
18 the phone, but I don't know. I told them to take it,
19 and I also gave them permission to search my room and my
20 vehicle to try to help them, to try to clear my name.

21 Q. Just briefly one more question. Is it your
22 testimony today that these phones -- you're saying
23 you didn't have contact with the victims in this case;
24 is that correct?

25 A. Right. Correct.

1 MR. SPEARS: Court's indulgence, Your Honor.

2 THE COURT: All right.

3 MR. SPEARS: No more questions, Your Honor.

4 THE COURT: Redirect.

5 MR. CHISHOLM: No, Your Honor.

6 THE COURT: Yes, sir.

7 MR. CHISHOLM: Thank you, Your Honor.

8 Mr. Cobb is my only witness. So, I can go straight
9 to argument.

10 THE COURT: All right.

11 MR. CHISHOLM: The timeline is kind of
12 convoluted. It's spelled out to some degree in the
13 motion that I handed up. But, essentially, on June
14 27th of 2016, the Defendant was arrested, charged with
15 I believe murder, attempted murder, and possession of
16 a weapon during the commission of a violent crime.

17 The following day, June 28th of 2016, he was
18 served an additional outstanding warrant for possession
19 of a sawed-off shotgun. I was appointed the following
20 June, June 12, 2017. In December, December 14th of
21 2017 ---

22 THE COURT: Hold on. Let me write that
23 down.

24 MR. CHISHOLM: Sorry.

25 THE COURT: All right. So he was originally

1 -- he was arrested June 27th of '16?

2 MR. CHISHOLM: Yes, ma'am.

3 THE COURT: And served the additional
4 warrant on June the 28th.

5 MR. CHISHOLM: Yes, ma'am.

6 THE COURT: All right. And then you were
7 appointed?

8 MR. CHISHOLM: June 12, 2017.

9 THE COURT: Had there been an application
10 made prior to June of '17?

11 MR. CHISHOLM: That I'm not sure of,
12 Your Honor.

13 THE COURT: Okay. All right. Was there --
14 were you substituted as counsel?

15 MR. CHISHOLM: No, ma'am.

16 THE COURT: Okay. All right. Go ahead.

17 MR. CHISHOLM: December 14th of 2017, we
18 made a speedy trial motion that was heard and granted.
19 That's one of the orders that I passed up to Your Honor.

20 THE COURT: Yeah. That was Judge Murphy's
21 order.

22 MR. CHISHOLM: Correct, Your Honor.

23 THE COURT: Yes.

24 MR. CHISHOLM: And then January 19, 2018,
25 the case was not tried, which was what was contemplated

1 in the previous hearing. And bond was set at \$400,000
2 surety, which obviously is one Mr. Cobb, as you heard,
3 he's been incarcerated the entire time, he wasn't able
4 to make.

5 On June 28th of 2018, we requested a PR bond
6 and renewed our speedy trial request, which was denied.
7 And then ultimately August 20th of 2018, the case was
8 called to trial. And I believe it concluded, if I'm
9 not mistaken, on August 24th of 2018.

10 Mr. Cobbs was -- the jury could not reach
11 a decision as to the murder charge. The possession
12 of a weapon during the commission of a violent crime
13 charge, and the sawed-off shotgun charges were not
14 called to trial.

15 As to the attempted murder, which was
16 the other case we did have the trial on, the jury found
17 him guilty of the lesser included of assault and battery
18 of a high and aggravated nature. He received an 18-year
19 sentence. So after court that week that's where he's
20 been since up until I had him brought here.

21 THE COURT: Tell me -- the sawed-off shotgun
22 charge and the possession of a weapon during the
23 commission of a violent crime, those were the two
24 charges that were not tried?

25 MR. CHISHOLM: Correct, Your Honor.

1 THE COURT: I understand.

2 MR. CHISHOLM: Correct. So, basically,
3 I believe we would have to start by looking to see
4 if there's presumptive prejudice, if there's a trigger
5 for the analysis. And, basically, the Court has to make
6 that determination based on the delay, whether it's
7 presumptively prejudicial. And what we have here,
8 I believe I have my days' right, the days between
9 Mr. Cobbs' initial arrest on the 27th, and the first
10 trial date was 784 days, which is nearly 26 months.

11 In State v. Langford, the Supreme Court
12 held that a 23-month delay is presumptively prejudicial.
13 Our position is that the delay in this case should
14 trigger a speedy trial analysis. And, you know, I'm not
15 sure how the Court would weigh this, but it's been
16 an additional, I guess, roughly 16 months by my math,
17 504 days, I believe, since the jury failed to reach
18 a verdict on that murder charge, and I think that should
19 be considered as well.

20 And again as to the possession of a weapon
21 charge, that was a companion charge with the murder
22 and attempted murder. It was never tried, so it's been
23 pending for, I believe, it's 1,287 days, about 42
24 months. And the possession of a sawed-off shotgun
25 charge is a separate matter from before, an outstanding

1 warrant. He's been in on that for 12 hundred --

2 I'm sorry. I'll back up.

3 He's been in on the possession of a weapon
4 during the commission of a violent crime charge for
5 1,288 days without trial. He's been in on the
6 possession of a sawed-off shotgun charge for 1,287 days
7 without trial, 42 months roughly. And I think if you
8 look at the delay, as to those two charges particularly,
9 you know, that's roughly double the amount that Langford
10 found, would be presumptively prejudicial.

11 If Your Honor is to find there is
12 presumptive prejudice, we would look at factors from
13 Wingo v. Barker and look at the length of the delay
14 here. I just went through it, 784 days before the
15 first, 1,288 days total.

16 As for the reason in the delay, the
17 Defendant has never requested a continuance. We have
18 never asked for more time. He's been pretty much ready
19 to go since I first met with him. And if you look at
20 a lot of the factors that were played in Hunsberger,
21 they aren't in play here. This isn't a particularly
22 complex or complicated case. It's a murder charge.
23 It's serious, but it's pretty straightforward.

24 I believe in Hunsberger you had
25 multi-jurisdictional issues, the State contemplating

1 whether they're seeking the death penalty, a lot of
2 complicated issues kind of off to the side that were
3 never in play here. I think in Hunsberger, the
4 Defendant challenged extradition because the Defendant
5 I believe in that case was being held in Georgia,
6 challenged the extradition, which arguably would,
7 you know, delay his own case.

8 So a lot of the stuff that they were looking
9 at in that case doesn't apply here. From Hunsberger,
10 I saw it in that case, I made the same motion that was
11 made in that case for a PR bond pursuant to SC Code
12 17-23-90. I think the motion was granted in that case.
13 In this case, I made the same motion. It was
14 ultimately denied.

15 So to the extent that the State would,
16 you know, when they explain delays they would rely on
17 missing witnesses. I think what we would have to look
18 for is, you know, which witnesses were missing, when did
19 they know they were missing, when did they start looking
20 for them, and, you know, figure out a timeline for when
21 that happened.

22 As to the sawed-off shotgun charge, I'm not
23 aware of any missing witnesses in that case whatsoever.
24 And to the extent that the State relies on some of this
25 evidence that was tested in this case -- the ballistics,

1 DNA, blood, that kind of stuff, it could be tested
2 to the extent the State may rely on that as saying,
3 you know, we had these delays that were out of our
4 hands. You know, I would ask the Court to consider
5 when they sought to have these things tested.

6 I can tell you one document I had on hand
7 is a SLED laboratory forensics services request where
8 projectiles were sent off for testing, and that was done
9 -- the submission date I have is January 10, 2018,
10 which would be roughly a year and a half after the date
11 of arrest, and, you know, seven months prior to trial.

12 There was, and the State will go into this
13 in more detail, hopefully they have a better idea of the
14 dates than I do. This was originally Mr. Justis' case.
15 Glenn Justis was the solicitor on this case. When we
16 had the initial speedy trial motion that was granted,
17 it was his case at that point. He said he would try
18 the case, and that's when the judge ultimately -- when
19 he said he wasn't prepared, that's when bond was set.

20 After that hearing, that's when he left
21 the office, and that would have been some time in early
22 2017, and Mr. Spears took the case over. And, you know,
23 in discussing with Mr. Cobbs, you know, I told him this
24 is something the Court will consider. But I also told
25 him that any delay in a case like this ultimately falls

1 on the State.

2 I understand some things are unforeseen.
3 There's only so much you can do, but at the end of
4 the day we've got somebody that was sitting, you know,
5 from June of 2016 until August of 2018 without trial.
6 And you can't put all that on the changing hands in
7 2018.

8 And I think it's worth also pointing
9 out that at this time we've got kind of a different
10 situation at this point. But at that point, the State
11 had control of the docket. They picked which cases were
12 going to be called to trial, when they were and when
13 they weren't and all that. We have a different animal
14 now, as Your Honor is aware. But for the bulk of this
15 up until the last few months, this was firmly within
16 their control of when this case would be called to
17 trial.

18 So our position would be that the delays
19 are unreasonable, and they rest entirely with the State
20 because we never requested a continuance, or did
21 anything to try to prolong it on our end.

22 The third factor I believe would be whether
23 or not he asserted his right to a speedy trial and when
24 he did. Again, as I passed up in the documents he's
25 done it multiple times.

1 The fourth and final factor would be
2 prejudice to the Defendant, which I believe the
3 Hunsberger case noted that actual or presumptive
4 prejudice can support a speedy trial claim. And
5 I believe they said that just being incarcerated could
6 show presumptive prejudice, and that you can actually
7 get actual prejudice out of a delay, you know, with
8 a lengthy incarceration because the memories of the
9 witnesses I think is what they sought, details get
10 fuzzy, things like that can affect the case.

11 Unique to this case would be the testimony.
12 You've heard from Mr. Cobbs about three cell phones
13 that were seized upon his arrest that subsequently went
14 missing. And his testimony is that he's aware of,
15 at least two of the phones, what the contents would be,
16 that they would be exculpatory in nature in that if
17 the State alleges that this is an ambush, he set up
18 the victims in this case to come meet with him, that
19 the cell phones would show the opposite.

20 The State would be able to probably give
21 you a better date of when they realized this stuff
22 was missing. But our position would be if the State
23 had been prepared, and if they had moved in a timely
24 fashion, these phones probably would still be in
25 evidence which we could use in our defense, and we've

1 lost that because of the delay.

2 THE COURT: Let me ask you this question.

3 MR. CHISHOLM: Sure.

4 THE COURT: How about the record by the
5 carrier? What, if any, affect did the disappearance
6 of the phones themselves have, if any, on the cell phone
7 records?

8 MR. CHISHOLM: I could tell you that the
9 State did not seek those records in the beginning.

10 THE COURT: Okay.

11 MR. CHISHOLM: And by the time I was made
12 aware that the phones were missing in early 2018,
13 my experience has been that cell phone carriers don't
14 keep information for a year and a half. They're usually
15 out pretty quickly.

16 THE COURT: Okay.

17 MR. CHISHOLM: So that's why I did not
18 subpoena them myself.

19 THE COURT: Okay. All right.

20 MR. CHISHOLM: But I guess in summation,
21 I mean, obviously, we feel prejudice has been shown,
22 and we think the analysis would be warranted.

23 THE COURT: All right. Thank you.

24 Yes, sir, Mr. Spears.

25 MR. SPEARS: Thank you, Your Honor.

~~DIRECT EXAMINATION - MR. SPEARS~~

1 The Sate is going to call Dwayne Peters.

2 THE COURT: All right.

3 MR. DWAYNE PETERS was called as a witness,
4 being duly sworn, was examined and testified as follows:

5 THE COURT: Your witness.

6 MR. SPEARS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SPEARS:

9 Q. Detective Peters, can you tell the Court when
10 you became involved in this case?

11 A. Early 2018.

12 Q. And who was the detective before that?

13 A. At that time, it was Detective Keith Elmore.

14 Q. Okay. Is Detective Elmore still with the
15 detective's unit?

16 A. No, he's not.

17 Q. All right. When did he leave the detective's
18 unit?

19 A. I believe he left late 2017, whenever Coroner
20 Brouthers was elected. He left the sheriff's office.
21 And since then he has returned to a uniformed patrol
22 deputy position.

23 Q. All right. Now as Mr. Chisholm said, there was
24 a prior solicitor on this case, correct?

25 A. That is correct.

DIRECT EXAMINATION - MR. SPEARS

1 MR. SPEARS: Court's indulgence, Your Honor.

2 THE COURT: All right.

3 MR. SPEARS: May I have this marked as
4 State's 1?

5 THE COURT: You may.

6 (State's Exhibit No. 1 was marked for identification.)

7 MR. SPEARS: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MR. SPEARS:

11 Q. Detective Peters, did you testify previously
12 at a hearing in regards to this case?

13 A. I did.

14 Q. All right. And can you tell me what State's
15 1 is?

16 A. It appears to be the directed examination and
17 the cross-examination of my testimony.

18 Q. Now if you look through that, would that be able
19 to refresh your memory on what date that Detective
20 Elmore left the sheriff's office?

21 A. I believe so.

22 Q. Take your time.

23 (Pause.)

24 BY MR. SPEARS:

25 A. It says January 2017.

DIRECT EXAMINATION - MR. SPEARS

1 Q. All right. Thank you. Now after Mr. Justis
2 left the solicitor's office, can you just inform
3 the Court of some of the steps you took in regards
4 to continuing the investigation of this case?

5 A. Once I actually ended up taking over the case,
6 I realized that the cell phones were missing. I have
7 no idea where it went. Detective Elmore never ---

8 THE COURT: And when are we talking about?

9 THE WITNESS: I took this case over, Judge,
10 in the beginning of 2017, 2018. Actually ---

11 THE COURT: Beginning of 20 ---

12 THE WITNESS: After Detective Elmore left.

13 THE COURT: Okay.

14 THE WITNESS: Assistant Solicitor Spears
15 had taken over and contacted us. And that's when
16 we pulled it out and realized that we have some stuff
17 to do.

18 THE COURT: Okay.

19 BY MR. SPEARS:

20 A. So, at that time, we realized that the cell
21 phones were not there. There was a cell phone that
22 ended up belonging to Mr. Bradford Spells that was
23 recovered at the incident location. Obtained a search
24 warrant to download that forensically. We did that.
25 We executed a search warrant on a residence that was

~~DIRECT EXAMINATION - MR. SPEARS~~

1 described by one of the witnesses. We tried to conduct
2 interviews.

3 After the trial, we sent up an unknown person
4 that was with Mr. Cobbs to the state law enforcement
5 division for facial recognition, which turned out we
6 could not identify him. And we also met with various
7 other law enforcement agencies to try to find out who
8 that person was.

9 THE COURT: Who what person was?

10 THE WITNESS: There's an unknown person
11 that was with Mr. Cobbs at the time of the incident.

12 BY MR. SPEARS:

13 A. And I also believe I sent up rounds for
14 ballistics once we realized that they weren't sent up.

15 Q. And, Detective, you said that you spent more time
16 trying to identify that individual after the trial,
17 correct?

18 A. Correct.

19 Q. All right. Just a couple more things. This is
20 -- where did this incident occur?

21 A. The International House of Pancakes on Dorchester
22 Road.

23 Q. And what time did it occur?

24 A. It was early morning hours. Excuse me. I don't
25 have my notes in front of me for the exact time.

CROSS-EXAMINATION - MR. CHISHOLM

1 Q. And in the review of the case, can you tell us
2 approximately how many people were in the IHOP at that
3 time?

4 A. 10, 20, 30. Honestly, without looking at the
5 video again, I don't know.

6 Q. Right.

7 MR. SPEARS: Court's indulgence, Your Honor.

8 THE COURT: All right. Cross-examination.

9 MR. CHISHOLM: Thank you, Your Honor.

10 MR. SPEARS: Court's indulgence, Your Honor.

11 THE COURT: Oh, you said Court's indulgence.

12 I'm sorry. I thought you said you were done.

13 I'm sorry, Mr. Spears. Hold on, Mr. Chisholm.

14 MR. SPEARS: Please answer any questions
15 the defense might have for you.

16 THE COURT: Okay. Now.

17 CROSS-EXAMINATION

18 BY MR. CHISHOLM:

19 Q. Good afternoon.

20 A. How are you doing today, sir?

21 Q. Pretty good. I just want to make sure I've got
22 some of these dates lined up. I can't remember if it
23 was a question, or if you're aware of when Mr. Justis
24 left or when Detective Elmore left. But I believe you
25 said one of them was early 2017. Do you recall which

CROSS-EXAMINATION - MR. CHISHOLM

1 year?

2 A. According to the testimony that was conducted
3 by Assistant Solicitor Sorenson where Mr. Spears --
4 Mr. Brouthers was elected, I believe, in 2016. I mean,
5 if he started in January 2017 after ---

6 Q. Let's put it this way. Do you have any
7 independent recollection of when Detective Elmore left?

8 A. Whenever Coroner Brouthers was elected,
9 whatever year that was.

10 Q. Okay. And when did you come on the case?

11 A. When I was contacted by Assistant Solicitor
12 Spears when he took that case over.

13 Q. And that would be early 2018; is that correct?

14 A. That sounds right, correct.

15 Q. Okay. And that's when ballistics and some
16 of these other things started getting sent out for
17 analysis?

18 A. Correct.

19 Q. Okay. Up until then none of that had been done?

20 A. That is correct.

21 Q. Thank you.

22 MR. CHISHOLM: I have no further questions.

23 MR. SPEARS: No more questions for this
24 witness, Your Honor.

25 THE COURT: Okay.

1 MR. SPEARS: Judge, in regards to the
2 defense's motion for dismissal, just a few points
3 of clarification.

4 THE COURT: Okay.

5 MR. SPEARS: Again, going back over the
6 timeline of the case.

7 THE COURT: Let's start with the sawed-off
8 shotgun.

9 MR. SPEARS: The sawed-off shotgun,
10 Your Honor, is actually not going forward for trial
11 this week. So, I don't believe that would have any
12 account in regards to the Hunsberger motion on the
13 murder charge.

14 THE COURT: Okay.

15 MR. SPEARS: But the initial arrest for
16 murder was June 27th of 2017, along with possession
17 of a weapon during the commission of a violent crime.
18 I believe the sawed-off shotgun charge came a couple
19 of days later.

20 Subsequent to that, in January of '17,
21 according to Detective Peters, that's when Keith Elmore
22 left the sheriff's office. Mr. Chisholm was not
23 retained until June 14th of 2017, a full year after the
24 arrest, as Your Honor previously heard. And that would
25 be about six months after Detective Peters had also left

1 the sheriff's office.

2 THE COURT: Peters?

3 MR. SPEARS: Detective Elmore, Your Honor.

4 THE COURT: Okay. Now -- all right,
5 hold on. So the alleged -- let me just start over.
6 The alleged violation of the sawed-off shotgun was when?

7 MR. SPEARS: Your Honor, that was -- the
8 violation was set for June 6, 2016.

9 THE COURT: June 6, 2016.

10 MR. SPEARS: Yes, ma'am.

11 THE COURT: Okay. All right. And he's
12 arrested for that three weeks later.

13 MR. SPEARS: Yeah, about three weeks later.
14 Yes, Your Honor.

15 THE COURT: Okay. Or served with a warrant
16 three weeks later. And then allegedly then the matters
17 at the house of pancake happened?

18 MR. SPEARS: Your Honor, those happened
19 on June 5th, the morning of June 5th.

20 THE COURT: All right. June 5th, okay.
21 2016. Okay.

22 MR. SPEARS: Yes, Your Honor. And, Judge,
23 in regards to the speedy trial hearing that ---

24 THE COURT: Let me get the dates.

25 MR. SPEARS: I'm sorry, Your Honor.

1 THE COURT: All right. Then, I gather
2 the case is assigned to Elmore, Detective Elmore?

3 MR. SPEARS: Correct, Your Honor.

4 THE COURT: All right. And then Elmore
5 leaves at some point, and I gather in early '18?

6 MR. SPEARS: Your Honor, Detective Peters'
7 prior testimony was Detective Elmore left in January
8 of 2017.

9 THE COURT: Okay. And then he gets the case
10 when you took it over. When did you take it over?

11 MR. SPEARS: Your Honor, I took that case
12 over in January of 2018.

13 THE COURT: Okay. And so that's when he
14 says he got involved.

15 MR. SPEARS: That's when I reached out to
16 the sheriff's office in regards to the case on matters,
17 and Detective Peters was the one that took the case
18 over.

19 THE COURT: To your knowledge, what happened
20 with regards to the case between June of '16 and January
21 of '18?

22 MR. SPEARS: I do not have firsthand
23 knowledge of that, Your Honor. I do not know who
24 Solicitor Justis would have spoken with in regards
25 to the case or anything as to that.

1 THE COURT: Okay. So when you took the case
2 over it was about 18 months old?

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: All right. And then at that
5 point, I believe that Detective Peters says he
6 discovered there were things that needed to be done
7 and also discovered that the cell phones were missing.

8 MR. SPEARS: That is correct, Your Honor.

9 THE COURT: All right. Okay.

10 MR. SPEARS: Your Honor, following that,
11 as Mr. Chisholm stated, the initial motion for a speedy
12 trial was submitted on December 13th of 2017, all right.
13 And that's when Mr. Justis still had the case. At that
14 hearing, Judge Murphy granted, stating that if he's not
15 tried by January of 2018, then he will receive a bond.
16 That's what her order states.

17 He was not tried in January. He did receive
18 a \$400,000 surety bond, and I took over the case the
19 next week. The subsequent speedy motion -- trial motion
20 to that was June 6, 2018. I was present for that.
21 It was argued in front of Judge Murphy on June 18, 2018.
22 And, Your Honor, would you like me to have this marked?
23 I have a transcript from that hearing.

24 THE COURT: All right.

25 (State's Exhibit No. 2 was marked for identification.)

1 MR. SPEARS: And, Your Honor, most of the
2 hearing was something similar to what you've been
3 hearing today. But in Judge Murphy's decision,
4 she states that I do recall him coming for a motion,
5 in which the Court did set the trial date for the week
6 of January 16th. In that order, it says a motion for
7 a speedy trial.

8 The Court does get a lot of form orders,
9 and it was the Court's intent to certainly set the case
10 for trial pursuant to Langford and not pursuant to
11 Hunsberger in any way. That dismissal should not --
12 that dismissal should that case not be tried. I believe
13 she was stating, Your Honor, that she was not ordering
14 a dismissal if it was not tried at that point in time.
15 It was simply in regards to a bond.

16 After that hearing, this case was tried
17 for murder and attempted murder on August 20th of 2018.
18 As you know, he was sentenced to assault and battery
19 high and aggravated nature for 18 years at that point
20 in time. And the murder charge miss tried.

21 We're here today roughly about 16 months
22 later to attempt to try this case again. And going
23 through the issues, the first argument I would have
24 would be in regards to length of delay, Your Honor.
25 Langford and Hunsberger and other case law in South

1 Carolina aren't very clear when it comes to an actual
2 in-state mistrial.

3 I understand in the Hunsberger case, he was
4 tried in Georgia, and has failed to be tried in South
5 Carolina up to nine years after that.

6 THE COURT: Right.

7 MR. SPEARS: There's some out-of-state case
8 law in the absence of in-state case law in regards to
9 this, one being Icgoren v. State, that's I-C-G-O-R-E-N
10 versus State. This is a Maryland case, stated, "in
11 construing a party's right to a speedy trial under
12 the Sixth Amendment of the Federal Constitution,
13 we generally, absent extraordinary circumstances not
14 present here, only concerned with the period between
15 the receipt of appellate mandate, if the prior
16 conviction is reversed, and the subsequent retrial,
17 or the period between the declaration of a mistrial
18 and the commencement of the retrial."

19 There's another case that states something
20 similar, that is State v. Kula out of Nebraska in 1998,
21 stating, "concluding a speedy trial analysis conducted
22 in regard for a retrial following an appellant grant
23 of new trial should only involve an examination of the
24 period between the appellate decision and the retrial,
25 unless the error necessitating the grant of new trial

1 was the clear result of misconduct purposely designed
2 to delay the proceedings and deny the Defendant his
3 right to a speedy trial."

4 Your Honor, I would argue, one, that second
5 case, as stated here, there's clearly no issue in
6 attempting to delay the prior trial, to delay it.
7 We tried it; we got a conviction. There was no malice
8 by the State or prosecutorial misconduct in attempting
9 to lose a case in order to grant more time.

10 But the first case I believe holds here
11 in that he had his day in court after those 25 months
12 of delay. We took those charges to trial. We had a
13 Hunsberger argument there. We went forward, and we got
14 a conviction. There has been delay between that time
15 period and now, 16 months. But I believe that's the
16 delay that the Court needs to focus on here. I don't
17 believe it automatically brings forth the Barker
18 factors.

19 Now if the Court is incline to disagree
20 with me, I'm happy to go through the Barker factors
21 also because I believe the State's case holds water
22 there also.

23 In regards to length of delay, you've heard
24 my argument there, Your Honor. But reasons for delay,
25 a deliberate attempt to delay trial as means to hamper

1 the defense weighs heavily against the State. There
2 is no indication that the State is intentionally trying
3 to delay this trial for whatever reason.

4 The confusion of a new investigator mixed
5 with a new prosecutor, the initial ones leaving at
6 separate times, the -- Your Honor heard Detective Peters
7 that this was an IHOP that was filled with 10 to 30
8 people. It's hard to say. There's a lot of moving
9 parts. There are witnesses that need to be tracked
10 down, there's ballistics data.

11 The last time this case was tried there were
12 90 exhibits. It is not a simple straightforward case.
13 And there is nothing on the record or anything showing
14 that the State intentionally tried to find a delay to
15 prejudice the Defendant.

16 Now negligence or overcrowded dockets weigh
17 less heavily towards the State, and that's absolutely
18 understandable, Your Honor. While Langford is an old
19 case, the Court-run docket didn't take hold in
20 Dorchester until recently.

21 I'm going to focus mostly on this year.
22 And because this is public record, I can testify to it,
23 Your Honor. I was told on record by Your Honor in March
24 to try four separate cases over the next four months,
25 one of them being twice in the same month. And then

1 there was another case tried after that by me, along
2 with two other cases tried that I was not a part of.

3 The State isn't resting on its laurels and
4 hoping that something doesn't come together on this
5 case. I can't challenge a judicial order in regards to
6 trying a case. There's simply an issue of the amount of
7 time available to bring this case forward. Him already
8 sitting in SCDC for 18 years, I believe shows that there
9 are older cases on our docket at that point in time.
10 One of the cases I was ordered to try was a 2013 case
11 that was tried in 2019.

12 Now, I briefly touched on Item 3,
13 Your Honor, in my arguments for everything else.
14 In regards to the new -- an investigator leaving,
15 a prosecutor leaving, we don't really know what
16 conversations they had about this case. Detective
17 Peters has already told you in regards to the amount
18 of work that he had to put in once we both got together
19 on this case to start doing it. It was not something
20 that we could get in my hands and then try the next
21 month. There was a delay there. At that point in time,
22 the work had to be done.

23 I understand in Hunsberger a knock against
24 the State was the State presenting nothing in regards
25 to attempting to find witnesses. There's simply --

1 Hunsberger stated that they were using that more as
2 a reason to get Hunsberger to testify in another trial.
3 That's not the issue here, Your Honor. The court
4 records can show there's multiple out-of-state witness
5 motions that have been done in order to bring witnesses
6 in for this trial.

7 THE COURT: I think in the first trial some
8 of our pre-trial contacts, I think we had a witness out
9 of Florida, another witness out of Texas.

10 MR. SPEARS: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. SPEARS: I will argue a little bit
13 against Mr. Chisholm on this when he stated that this
14 case isn't nearly as complex as the Hunsberger one.
15 In the Hunsberger case, the Court actually said it
16 really wasn't all that complex. It was easy to go
17 forward with and fairly, you know -- I don't believe
18 that's an issue here.

19 I'm not arguing complexity of the case.
20 I'm simply arguing the amount of time it takes to find
21 witnesses and get all of the evidence together and bring
22 it in. Complexity in regards to extradition and all
23 that, that's not really an issue. It's simply of going
24 through the motions. It's more of a delay than
25 complexity would be the State's argument there.

1 Now, I have no real argument against the
2 defense's assertion of a speedy trial for the initial
3 trial. He had asserted on December 13th of 2017.
4 And on June 6th of 2016, he made the initial Hunsberger
5 motion, the December 2017 motion ordered under Langford.
6 But we have also received no speedy trial motions from
7 the date of the prior trial back in August of 2018.

8 Now prejudice to the Defendant from the
9 delay, there's a number of matters here. He testified
10 that he lost his car, his house, his job. All of those
11 occurred within a short amount of time after his initial
12 arrest. Those were not caused by the delay in the case,
13 which is the issue we're facing in Hunsberger.

14 Following that, Detective Elmore left
15 in 2017, Judge. That was before he had even -- the
16 Defendant had even retained counsel on this case.
17 The issue with the cell phones wasn't brought forward
18 until well after that. Everyone here would like the
19 cell phones. The State would too. We've actively
20 searched for them. That wasn't caused by delay.

21 If he had retained counsel sooner that could
22 potentially have subpoenaed for them, it could have been
23 handled that way. Subpoenaed Verizon for the data,
24 or whatever carrier there might be. Or if, you know,
25 it was found, a good defense attorney could have found

1 that missing part of the chain of custody, if they're
2 able to review the case early on.

3 But that delay -- the missing cell phones
4 are not an issue about the State's delay. It's
5 unfortunate that they're gone. But the length of time
6 between the arrest and the initial trial and today
7 is not prejudiced by those cell phones being missing.
8 That is just simply an unfortunate circumstance that
9 could have happened.

10 THE COURT: Let me ask you this question.
11 Did the State, understanding that you would need to --
12 you would have to make a motion to the Court, which
13 obviously would probably be in the nature of a search
14 warrant. But did the State attempt to ascertain if the
15 records -- I get that the phones aren't there, but are
16 the records ascertained?

17 MR. SPEARS: Your Honor, for the same reason
18 that Mr. Chisholm testified to, the State did not
19 because when it was discovered by us we did -- it was
20 lost at that point in time.

21 THE COURT: What was lost?

22 MR. SPEARS: I'm sorry. It was too far
23 from the time that they were taken. It's the State's
24 understanding, much like Mr. Chisholm said, that
25 carriers only hold data for up to about 90 days,

1 generally.

2 THE COURT: Okay.

3 MR. SPEARS: Which would mean in, say,
4 a Hunsberger argument, the case would have then needed
5 to have been -- the Defendant would need to retain
6 counsel, start going through everything, the case would
7 be tried within 90 days for an advanced murder trial.

8 Judge, when it comes to prejudice on this,
9 State v. Hunsberger does tell us that actual prejudice,
10 while not absolutely necessary, presumptive prejudice
11 generally doesn't carry the full speedy trial right like
12 actual prejudice does. And in getting to presumptive
13 prejudice, the direct quote from the case is, "when the
14 Government persistently fails to try an accused and the
15 delay is excessive, the accused need not show actual
16 prejudice."

17 Judge, we have tried him. It's not like
18 Hunsberger. We've tried him in this state, in this
19 jurisdiction, in this courtroom right here. The State
20 has not actively failed to try him in any regard.
21 We've literally done just that.

22 And while it did lead to a mistrial, I don't
23 believe presumptive prejudice really needs to come in
24 at that point in time because the State has not shown
25 excessive, persistent delay. There were two speedy

1 trial motions and then a trial occurred, and no
2 subsequent speedy trial motions. No more orders to have
3 it put on the docket.

4 Your Honor, in regards to every step of
5 the way, the State believes that this does not warrant
6 the standard of dismissal that Hunsberger requires.
7 Hunsberger was an egregious case that took 12 years
8 total, and the State seemed to be resting on their
9 laurels in accordance to the Court on just wanting more
10 out of it like testimony for another case, or anything
11 like that.

12 Here, he has been tried, and we're here to
13 try him again. And I understand docket time does weigh
14 against the State. The State cannot actually try a case
15 when ordered to try another one. And I don't think the
16 State should be biased in that regard also.

17 THE COURT: And your position is that
18 circumstance began at what point?

19 MR. SPEARS: Your Honor, the official time
20 when the judicial docket took over -- I believe it's
21 September of 2019.

22 THE COURT: Okay.

23 MR. SPEARS: And as I have stated earlier
24 on public record, I was also ordered to try other cases
25 during a lot -- a fair amount of this year.

1 THE COURT: Okay.

2 MR. SPEARS: If Your Honor is unwilling
3 to find that the delay should be counted from the time
4 of the last trial, where he actually got his right to
5 a trial declared, I don't believe that would change the
6 State's argument. I believe that, while there were some
7 unfortunate incidences at the beginning of this
8 investigation, once the State was able to get everything
9 together, Detective Peters and I, we went forth. And
10 there's a substantial amount of work done to go forward.

11 There were no signs of delay in order
12 to prejudice the defense. There were some factors
13 in the case that, while not overly complicated, require
14 a fair amount of work in order to investigate and find
15 individuals, have ballistics tested. There is a third
16 party on this case, an accomplice, with the Defendant
17 in that IHOP that Detective Peters also spent time
18 trying to find.

19 THE COURT: Let me ask you this question.
20 Why after -- he testified that the attempt to find the
21 accomplice was after the trial of number one as opposed
22 to prior to trial number one. Why was that?

23 MR. SPEARS: Your Honor, there were initial
24 attempts in the first investigation.

25 THE COURT: Okay.

1 MR. SPEARS: This was a continuance on that.

2 THE COURT: Okay.

3 MR. SPEARS: It was -- at the risk of
4 testifying before the Court, it was attempt at facial
5 recognition through SLED.

6 THE COURT: Okay.

7 MR. SPEARS: It was just not an avenue
8 of that investigation that had been tried prior to
9 the first trial.

10 THE COURT: Okay. So what you're
11 referencing is there had been attempts to find that
12 individual earlier, unsuccessful, therefore, posttrial
13 number one why not try facial recognition through SLED
14 and then that was attempted?

15 MR. SPEARS: That is correct, Your Honor.

16 THE COURT: Okay. And that took some time.

17 MR. SPEARS: Yes, Your Honor.

18 THE COURT: So what you're telling me
19 is that the preparation -- the attempt to continue
20 to find witnesses continued even after trial one?

21 MR. SPEARS: Correct, Your Honor.

22 THE COURT: Into trial two.

23 MR. SPEARS: Uh-huh.

24 THE COURT: All right. Got it.

25 MR. SPEARS: Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Spears.

2 Yes, sir, Mr. Chisholm.

3 MR. CHISHOLM: Thank you, Your Honor.

4 Obviously, I would disagree with Mr. Spears when
5 it comes to the length that you should need. You know,
6 in looking at the length of the delay, I think it should
7 be from the date of the arrest.

8 In particular, I mean, this is a case, yeah,
9 we had a trial on it. But, I mean, it's basically being
10 heard as new as far as that issue goes. I mean, you're
11 still looking at whether the delay from the initial
12 arrest to the first trial and then subsequent to that
13 is an unreasonable delay.

14 So, I don't think it should start at,
15 you know, from the date of the conviction onward, which
16 I believe is what he's suggesting. I think I've laid
17 out pretty much the dates that are relevant as far
18 as how long he's been in before in the first trial,
19 how long he's been in since.

20 I hope that the possession of a weapon
21 during the commission of a violent crime charge and
22 the possession of the sawed-off shotgun charge would
23 be easier decisions for Your Honor simply because they
24 both have been pending for over 1,200 days without
25 a trial. A possession of a weapon during the commission

1 of a violent crime charge, they could have tacked that
2 on to the last trial easily. They elected not to do it.

3 So, I don't think there's any way -- any
4 reason to reward them by having that just pending
5 indefinitely. The same with possession of a sawed-off
6 shotgun charge. They could have tried that any time
7 in the last, I guess, nearly four years, and they have
8 elected not to do that. So, I think we should look
9 at those as 1,200-day delays.

10 And when you look at the reasons for the
11 delay, I mean, basically, what you've got is the initial
12 investigation in early 2016. And then from then,
13 until January of 2018, roughly 18 months later, I mean,
14 nothing. After the speedy trial motion, after
15 Mr. Spears gets on the case, that's all great.
16 And I understand we're not looking at delays caused
17 specifically by Mr. Spears, but I mean, he's part of the
18 State, and the delay is held against the State in its
19 entirety.

20 So you need to look, you know, obviously,
21 what they did in that first 18 months, which is
22 essentially nothing. They say that we had a change
23 in investigators, you know. That slowed us down.
24 They went, according to testimony, from January 2017 --
25 I think is when they said Detective Elmore left.

1 I believe they said January 2018 is when Detective
2 Peters got on there.

3 So, I mean, you can't say a reason for
4 the delay is because we had a change of investigators.
5 It sounds like he went a year, I guess, if my math
6 is right, without investigating at all.

7 And again, I understand changing solicitors
8 slow things down. But if that happened three months in,
9 yeah, that's one thing. But, I mean, you go 18 months
10 without doing any of this. And then he gets the case
11 and is like -- you know, I'm glad he started looking at
12 it, and they sent stuff up, obviously, better late than
13 never. But, I mean, you're still 18 months in before
14 they even do any of this stuff that should have been
15 done from the very beginning.

16 As for the cell phones, I don't have to tell
17 you, I mean, I don't know if Mr. Spears has the same
18 position on his end, but, I mean, I have no reason to
19 believe that these cell phones were lost until I learned
20 when they did. I mean, we're talking years later.
21 I would never suspect a year and a half later ---

22 THE COURT: And for you it was six months
23 later or a year later?

24 MR. CHISHOLM: It would have been from
25 June of 2017 to -- I guess I probably learned in January

1 of 2018. So, yeah, six months, even after I got on the
2 case is the first time it popped up on my radar.

3 THE COURT: Sure.

4 MR. CHISHOLM: So, I mean, I think the
5 length is established. I'm not going to go into that
6 in any more detail. And the prejudice you heard from
7 Mr. Cobbs, and, obviously, the prejudice anybody would
8 have being incarcerated for nearly four years. He's
9 asserted his right multiple times. I mean, we've got
10 orders that reflect that.

11 I just think that the reason that's been
12 given for the delay is inadequate. I mean, the State
13 basically rested for 18 months, and said, well, it looks
14 like we're going to have to really try this case, and
15 then they started doing it, which I think is improper.
16 I think it prejudices Mr. Cobbs.

17 THE COURT: All right. This is going to be
18 the order of the Court. With regards to the possession
19 of a weapon during the commission of a violent crime,
20 which is not up for trial, as well as the sawed-off
21 shotgun, which is not up for trial, I'm going to reserve
22 those. I may want to hear additional argument for
23 those.

24 I understand that you have raised --
25 ad nauseam it is raised at this point. I'm going

1 to reserve the determination to that until later.
2 It's really -- that's in a different posture than these
3 two are. So don't forget. Let me hear about those
4 sometime in the next -- this week or next week.

5 I just need you to renew those for me
6 because I do see those as in a different posture than
7 I do see the murder and attempted murder, of course,
8 there was not a conviction for attempted murder.
9 It was assault and battery of a high and aggravated
10 nature. But I do see that as a different circumstance
11 because the case was tried after 25 months.

12 And while there was presumptive prejudice,
13 obviously, the case was not dismissed. The case was
14 presented to the Court. The Court made its
15 determination. The case went forward for trial.
16 Those decisions are what those decisions are.

17 I don't know -- I don't believe under the
18 Hunsberger case that the Court now is to disregard that
19 time. I think the Court is not to disregard that time.
20 However, it is the reality that those matters were dealt
21 with, and the Court made its determinations, and there
22 was a trial. It is important to note that there was
23 at no time a request for a continuance on behalf of
24 the defense.

25 It is also important to note that there

1 was no attorney for the Defendant until June of 2017.
2 And, quite frankly, that was probably at that point
3 in time when matters began to occur in the case.

4 I don't have any real clarity about the
5 prejudice from the phones and the loss of the phones,
6 which is of concern. I understand that both from the
7 State as well as from the defense, there is concern
8 that the phones were lost. I understand that. It's
9 Mr. Chisholm's position that after a year the data would
10 have been gone.

11 And for that period, the Defendant did
12 not have counsel to make those requests. I don't know
13 if it's reasonable to expect Mr. Chisholm to be assigned
14 the case and then immediately to request the phone
15 records. I think that's unrealistic. And that's
16 what would have had to have occurred if, in fact,
17 Mr. Chisholm is correct that those records would have
18 existed for a year and then would have been gone.

19 With regards to Mr. Spears, Mr. Spears
20 is concerned that those records would have been gone
21 after 90 days, which means they would have been gone
22 at the time that Mr. Chisholm began representing the
23 Defendant. And the reality is I don't know the answer.
24 I don't know whether or not the data is or is not
25 available at this point.

1 It is very difficult to assess the level
2 of prejudice. If there is prejudice, I think that it,
3 quite frankly, has to weigh equally against the State
4 as well as the Defendant because the Defendant did not
5 have counsel, or make a request for an analysis of the
6 phones, or make a request of the Court to preserve the
7 phones or the records, or to obtain the records.
8 So, I think that issue really weighs against both sides,
9 although, I think probably more heavily against the
10 State than the defense.

11 With regards to the period of time since
12 trial number one, the delay that has occurred has
13 occurred, and I would make the finding has occurred
14 primarily for two reasons. Number one, because of
15 an attempt by law enforcement to utilize the services
16 of SLED for facial recognition of a believed to be
17 accomplice.

18 And, secondly, the delay has been because
19 of the docket itself. By that, what I mean is once
20 there is a trial, given the nature of this docket
21 in Dorchester County, there are so many older cases,
22 there is so much need to proceed with additionally
23 older cases, the mistrial would have -- in order for
24 there to be a second trial on the murder case, quite
25 frankly, it would have had to have just taken some time.

1 Mr. Spears has talked about the fact that
2 he was ordered to try other cases, and that also was
3 an element. And, therefore, while the 16 months does
4 weigh against the State, there are explanations for
5 that period of time.

6 And with regards to the prejudice to the
7 Defendant, it must be acknowledged that he is an
8 individual that certainly is entitled to have the cloud
9 of a charge of murder resolved without question.
10 However, he was found guilty of assault and battery
11 of a high and aggravated nature and was serving that
12 sentence.

13 So, I do not believe that the level of
14 prejudice would be as great as if there was a mistrial
15 with regards to both charges. Although, I am absolutely
16 mindful that being found guilty of assault and battery
17 of a high and aggravated nature, while that is a very
18 serious matter, it is a most serious matter to be
19 standing accused of murder without question. And he's
20 certainly entitled to have that cloud removed.

21 I do not believe, and I do believe it needs
22 to be -- the record also needs to reflect this, and
23 counsel neither one of you mentioned it. But certainly
24 some period of time, I don't take it to be a particular
25 great period of time, but there was a period of time for

1 which there was an offer, which was extended, and there
2 needed to be some amount of time for that to be
3 considered.

4 I don't believe that was a great period of
5 time. I think that Mr. Cobbs has been quite clear about
6 his position with regards to the matter. So, I don't
7 believe that the delay, which would have been generated
8 by an offer and a period of time for him to consider
9 that was particularly great.

10 I do not believe, however, that this case
11 was not tried to somehow extract a plea from Mr. Cobbs.
12 I don't see any indication of that. I think the clear
13 reality is the State's docket in Dorchester County,
14 which is -- we could use more public defenders, we could
15 use more solicitors, and we could use more judges.
16 And I don't know that I knew that as well before
17 I assumed the responsibilities of trying to resolve
18 the cases as I have. And I have become way too familiar
19 with it.

20 You know, we have been putting -- I think
21 I started with 20. I'm now up to putting about 60 to 65
22 cases on a docket to try to move cases along. So while
23 I have had tremendous cooperation from the public
24 defender and the solicitor, we've got a serious backlog
25 in Dorchester County.

1 And so I do not believe that the delay
2 of the 16 months for Mr. Cobbs has been in any way
3 to extract a plea from him. I do believe that it
4 is a direct result of the condition of the docket in
5 Dorchester County. And that, obviously, weighs against
6 the State, but not as great as certainly some other
7 factors.

8 In short, I am not ruling on the possession
9 of a weapon during the commission of a violent crime.
10 I am not ruling on the shotgun -- the possession of
11 a sawed-off shotgun at this moment. I will do that
12 prior to the two-week term being ended. But weighing
13 all these matters, I'm going to respectfully deny the
14 motion, note your exception.

15 (State's Exhibit Nos. 1 and 2 were admitted into
16 evidence.)

17 (Recess taken.)

18 (Back on the record.)

19 THE COURT: Please be seated. So, I need
20 a copy of the indictment.

21 MR. SPEARS: Yes, Your Honor.

22 THE COURT: And I need your witness list,
23 and any voir dire -- have you seen the additional --
24 have you seen the requested voir dire from the defense?

25 MR. SPEARS: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. SPEARS: I've been informed about it,
3 but yeah.

4 THE COURT: Do you have any comments?

5 MR. SPEARS: No comments, Your Honor.

6 THE COURT: Okay. And do you have some?

7 MR. SPEARS: I'm sorry?

8 THE COURT: Do you have some voir dire?

9 MR. SPEARS: I do not, Your Honor.

10 THE COURT: Very well. Got it. All right.

11 Yes.

12 MR. CHISHOLM: Your Honor, that leaves me
13 with two pre-trial matters that I could probably wrap
14 up in about a minute.

15 THE COURT: Go.

16 MR. CHISHOLM: Okay. The first would
17 be sequestration, which I don't image the State
18 is opposed to.

19 THE COURT: Cool. Got it.

20 MR. CHISHOLM: The other is a motion to
21 exclude any prior bad acts, wrongs, etc. And in
22 speaking with the solicitor, I think he doesn't intend
23 to get into any of that.

24 MR. SPEARS: Unless the door gets opened
25 by testimony by the Defendant.

1 THE COURT: Okay.

2 MR. SPEARS: No objection.

3 MR. CHISHOLM: That should be it.

4 THE COURT: Done and done. Wonderful.

5 All right. And then we'll be bringing the jury up.

6 (Pause.)

7 THE COURT: All right. Good afternoon,
8 ladies and gentlemen.

9 THE JURORS: Good afternoon.

10 THE COURT: I am Diane Goodstein. And I am
11 one of the two resident judges from the first judicial
12 circuit. And I am so happy to report to you that you
13 live in the first judicial circuit, which is Dorchester
14 County, Orangeburg County and Calhoun County.

15 And we have another resident circuit judge
16 who is a resident of Orangeburg County, and that is
17 Judge Dickson. And then we are so lucky to have an
18 at-large judge who also resides in the first circuit,
19 and that would be Judge Murphy. So, I guess y'all could
20 say we have plenty of judges.

21 So, I am so happy to report to you that
22 you have responded to your, I would like to call it
23 an invitation. Some other folks treat it as a summons,
24 but whether you want to call it an invitation or
25 a summons, I am so grateful to you being here this

1 afternoon, and let me tell you why.

2 In the United States, we are a citizen-based
3 judicial system. And the reality is if you're not here,
4 there would be no reason for any of us to be here
5 because based upon our system of justice, we call on
6 citizens to come into court and help fellow citizens
7 resolve disputes.

8 We know that since this is a term of general
9 sessions or criminal court, that one side of the
10 equation will be the state of South Carolina, and the
11 other side of the equation will be citizens. And the
12 State is alleging that those individuals, those folks,
13 have violated one or more of the criminal laws of the
14 state of South Carolina. And we call on citizens to
15 come into court to help make the determination whether
16 the State has met its burden of proof, and that's what
17 we're going to be about, the resolution of matters this
18 week.

19 So, I am so grateful to you for being here.
20 I will thank you I hope many times because you ought
21 to be thanked many times for being here.

22 Now, ladies and gentlemen, we are going
23 to have the jury qualification in just a moment.

24 I'm going to begin that process. But before we do that,
25 I want to take just a moment because most folks have not

1 had the opportunity to serve on a jury before.

2 And when you come into the courthouse
3 and you go down to the jury assembly room, and you have
4 the pleasure of meeting people like Ms. Graham and the
5 terrific members of her staff, and you come up here,
6 and you have all these people who are looking at you.
7 It's nice to know who's actually looking at you and why.

8 So, I am going to take just a moment to
9 explain to you some of the folks who are here, and may
10 have a chance to do that a little bit more with folks
11 who are selected to serve on juries this week. But I do
12 want to begin with Ms. Graham.

13 You know, Ms. Graham is one of the -- not
14 only is she a terrific clerk of court, but she is iconic
15 in our state because we were one of the very first
16 states in the country to have what's called a case
17 management system that was based upon the internet.
18 And it was actually developed when Justice Toal was
19 our chief justice. And she actually received nationwide
20 awards for it.

21 And it was not uncommon for us here in South
22 Carolina to receive phone calls from New York, Florida,
23 California, places that you would think would have
24 developed an internet-based case management system.
25 But they would call us because the one that we were able

1 to develop was pretty extraordinary.

2 And what I'm very proud of, and I know she
3 is as well, is that when our chief justice was looking
4 as she was designing -- working to design the system,
5 one of the things to be mindful of was that one size
6 does not fit all. And she needed to have the
7 participation of a pretty forward-looking, pretty
8 dynamic clerk of court. And so it's the clerks that
9 manage the case management system, someone from a more
10 rural area that would be willing to partner with the
11 engineers and all of the tech people.

12 And when she went looking, and she called up
13 Cheryl, and I think when she gulped twice, and remarked
14 that she still did her checkbook by hand, she was on
15 board, and did a phenomenal job. She spent the next
16 year in this very intense process of helping them
17 develop the system and implementing it. It was actually
18 implemented here in Dorchester County.

19 And at the conclusion of the year, they
20 couldn't get the tech people to leave. They were like,
21 we'll just stay in Dorchester County with Ms. Graham,
22 and we'll just work out in Dorchester County. And the
23 chief justice put a quash on that pretty quick.

24 The other story that is really neat out
25 of all of this is that Ms. Graham's understanding

1 of all the technology was such that she realized that
2 our server was so large that it could manage everything
3 that needed to be managed in the case management system,
4 but could also serve other departments in the county.
5 And that has afforded us the ability to do, like,
6 fun stuff like pay taxes online and stuff like that.

7 So she is my number one geeky friend,
8 and she just does a tremendous job. It's a pleasure
9 to know her and work with her. Her folks in her office
10 are, to a person, extraordinary. And I'm going to turn
11 it over to her. As well as her, our security and our
12 bailiffs are second to none.

13 THE CLERK: Thank you, Judge. Good
14 afternoon again. Downstairs you met Theresa in my
15 office and Jodie. This is Tonda. She's a chief deputy
16 clerk that works general sessions court. In the back,
17 Mr. Marvin as court security and Mr. Smitty. I think
18 he entertained us downstairs a little bit, song and
19 dance, and Major Moultrie there.

20 Over here is our bailiffs. You've met some.
21 Miss Susie, who's waiving, Miss Irene is in the middle,
22 and Miss Amanda is right there. Thank you.

23 THE COURT: Thank you so much. You know,
24 it's normally customary whenever court is in session
25 that there is security. And it's the bailiff's

1 responsibility to keep all of us where we're supposed
2 to be and when we're supposed to be there. So those
3 of you who have the opportunity to serve on a jury
4 this week will come into contact a lot with our court
5 and security folks, particularly our bailiffs.

6 There are a couple of other folks that
7 I want to introduce to you. To my left is our court
8 reporter. This is a court of record. And what that
9 means is that all matters that come before the Court,
10 our court reporter takes that down, and our newly blonde
11 Eve is with us. And she does a superb job.

12 She recently comes to South Carolina from
13 -- I'm going to mess this up, Eve -- Pennsylvania.
14 She's decided she had enough snow. She wanted to try
15 out the heat, and I think she likes the heat better.
16 And so she is actually -- she's not typing. There are
17 pieces of words that are on her stenograph machine,
18 and she's actually recording both electronically,
19 as well as with her stenograph machine all that is being
20 said in all matters that come before the Court.

21 For those of you that have a chance to serve
22 on the jury, you know, you'll watch her have an
23 opportunity to work, and it's fascinating. She has to
24 be able to see and hear all that happens, all exhibits
25 which are admitted into court. She takes possession of

1 those exhibits until they go back to the jury for the
2 jury's deliberation. She marks them; she keeps up with
3 them. Right before we took a little short lunch break,
4 she was looking -- she's, like, all right you've got
5 a couple of these up there I need. And so she's
6 responsible for keeping the exhibits.

7 And once the trials are concluded, it is
8 the court reporter -- it's Eve's responsibility to then
9 file those exhibits with the clerk of court, who then
10 keeps them forever. I always giggle because Ms. Graham
11 has a door from the 70s. And when we moved from the old
12 courthouse to the new courthouse, I was just so curious,
13 are you taking the door with you? She said, yeah.
14 Like why wouldn't she take the door with her. It's an
15 exhibit back in the 70s. So it's fascinating to watch
16 her work. We cannot have court if we do not have a
17 court reporter present. They are absolutely an integral
18 part of our system.

19 And to my right is Mr. Gil Gatch. He is my
20 lawyer. He is a brand new, shiny, wet behind the ears
21 lawyer. And he just graduated from Georgetown Law
22 School back in May, and is spending this year as my law
23 clerk. It's a marvelous opportunity for law clerks
24 because they get to watch what they've been studying.
25 They get to watch trials and lawyers, and they learn

1 so much.

2 It's great for the judges because they just
3 graduated from law school, so they, like, know
4 everything. So really it's just -- it's a grand year
5 for them and also for the judiciary to have the benefit
6 of their very large pack full of stuff brain. So it's
7 a great experience for them.

8 The attorneys and other matters, or other
9 folks that are present, they have matters pending before
10 the Court, as their cases are called. I so look forward
11 to introducing you to those folks, and I will do that
12 as their cases are called.

13 Now, ladies and gentlemen, now that you know
14 who's sort of in your world, in your space, I'm going
15 to shift on you a little bit, and give you an overview
16 of jury qualification, and then we're going to get right
17 to it.

18 Jury qualification is done in stages.
19 In just a few moments, Ms. Graham is going to call
20 the roll. I know that occurred downstairs to some
21 extent because they know who is now present and not
22 present. You've been checked in. And in a few moments,
23 she will be calling your name. You'll stand, and you
24 will give us a little bit of information. That's the
25 first part, and I'm going to go into that a little bit

1 more in a moment.

2 The second part of jury qualification
3 is there are certain statutorily-mandated questions
4 that I must ask of you, and I'll go through that part
5 of the process. And then we're going to take just
6 a little bit of a comfort break because you're going
7 to be ready for a comfort break then. We're going
8 to come back from our comfort break, and then I'm going
9 to introduce you to some folks.

10 Our first case for trial is going to be
11 called. I'm going to read to you some of the
12 allegations. Again, introduce you to some folks, ask
13 you just a few more questions, and then we're actually
14 going to select our jury for our first case for trial.
15 And then those of you who are not selected for our first
16 jury, for our first case for trial, then I will give you
17 some instructions about how we'll stay in contact with
18 each other over the balance of the week. That gives you
19 an overview about how we're going to be proceeding.

20 Now we're about to jump into the jury
21 qualification process. And as we do that, or before
22 we do that, it really is necessary that I administer
23 an oath to you. So if you would please with me,
24 stand and raise your right hand.

25 (Whereupon, the jury panel was duly sworn.)

1 THE COURT: If there's anyone who has failed
2 to take the oath, if you would please stand at this
3 time. And I find no one standing.

4 Now, I want to share with you that we
5 receive our names for jurors from three sources;
6 from the voter registration roll in Dorchester County,
7 and from the South Carolina Department of Public Safety.
8 I grew up knowing it as the highway department.
9 Now, it's the South Carolina Department of Public Safety
10 in the form of driver's licenses and identification
11 cards.

12 Ladies and gentlemen, if you do not have at
13 least one of those indicia of identification; a driver's
14 license, identification card, or a registered voter
15 in Dorchester County, I do not know how we were so lucky
16 to have you be with us this afternoon. Maybe you just
17 followed everybody in off 78 to see what's going on
18 at the courthouse, which is wonderful.

19 However, if you do not have at least one
20 of those indicia of identification, you don't have
21 to have it with you, but if you don't have one of those
22 in your world, I'm going to ask you to please stand
23 at this time. I find no one standing.

24 Now, ladies and gentlemen, when you
25 were downstairs, and you were checked in, your name,

1 obviously, now it's known because you're here, and you
2 have a juror number. And folks from Dorchester County,
3 obviously, are very bright, and you're going to notice
4 that there's going to be skips in the numbers, juror
5 number one, juror number four, juror number five.
6 And y'all are going to figure out what happened to juror
7 number two and three. I'm going to tell you.

8 What occurs, as you now know, is that you
9 received a juror summons about 30 days ago,
10 approximately. And most of the time what has happened
11 when we do not have folks show up is that they moved
12 from Dorchester County. And sometimes folks are aware
13 that there are certain exemptions which exists,
14 and they'll call the clerk's office and make those
15 communications.

16 And so that is normally and typically why
17 you'll hear those skips in the numbers. But I do want
18 you to know what's going to happen when we finish here
19 today. These folks through the clerk's office will go
20 back downstairs because they do account for all the
21 jurors on the list. And for the folks that they did not
22 know where they are, they'll find them, and they will
23 call them and make an inquiry. Where were you?

24 Most often what happens is that people
25 have left the county, and their mail just hasn't,

1 for whatever reason, maybe the forwarding contact
2 expired, maybe they didn't do a forwarding address.
3 But that is most often what has occurred. Sometimes
4 there's that person who forgot. Well, Ms. Graham
5 will get with me, and we'll get an appointed time later
6 in the week for those people to come on down, and let's
7 have a conversation about where you were.

8 And normally and typically, if it's clear
9 that a person forgot, we'll just -- we'll reschedule
10 them, and let them have an opportunity to come back,
11 maybe back next week. But we'll work through those
12 issues.

13 And for those folks that aren't willing
14 to come perhaps, or we need to send folks out, we offer
15 those folks a nice chauffeur-driven ride down to the
16 courthouse. What is important is that you do know that
17 we do account for all of our jurors. And I believe
18 that's appropriate because we so need jurors. We so
19 need our citizens, and jury service is so important.

20 So, I just want you to know that as you
21 hear those skips, those are for folks who are not here.
22 But if they are not already accountable for, they
23 certainly will be by the end of the week.

24 Now in just a moment, Ms. Graham is going
25 to call the roll. It's always so exciting to be the

1 first person. But as your name is called, I'm going
2 to ask you to please stand. And I think the term that
3 is used is in a clear and audible voice, because we
4 really want to hear. We really want to know a little
5 bit about you. If you would just tell us how you are
6 employed. If you are self-employed, just a word or two
7 about how you're self-employed. If you're retired,
8 just a word or two about how you are self -- the
9 position from which you are retired.

10 And then with regards to your spouse,
11 the same information. How is your spouse employed,
12 just a word or two. And if your spouse is retired,
13 just a word or two regarding the position from which
14 your spouse is retired. I will give you an example.
15 I am a self-employed dog groomer, I am a retired dog
16 groomer, my spouse is a self-employed dog groomer,
17 my spouse is a retired dog groomer. See, just a word
18 or two, and we will be so grateful for that information.

19 And again, once that part of the -- that
20 stage of the qualification process is over, then I will
21 be asking you some statutorily-mandated questions,
22 and then we'll proceed from there. All right.
23 Without further adieu, Ms. Graham.

24 THE CLERK: Thank you, Judge.

25 THE COURT: Yes.

1 THE CLERK: As I call your name, please
2 stand and give me the information from the board.
3 Juror No. 5, Christopher Ashe.

4 THE JUROR: Yes, ma'am. I am employed by
5 Herbert [ph.] Electric Company. I'm a senior craftsman,
6 building light fixtures. My spouse is employed at
7 Belmont [ph.] College. She is in financial aid.

8 THE CLERK: Thank you. Juror No. 8,
9 Eric Baliko.

10 THE JUROR: I'm self-employed. My job is
11 in sales. My wife is employed by the United States
12 Department of Defense, and her job is in finance.

13 THE CLERK: Thank you. Juror No. 10,
14 Johnathan Bass.

15 THE JUROR: Retired from the Medical
16 University of South Carolina, Institute of Psychiatry,
17 transportation. My wife works for the federal
18 government. She works in disability.

19 THE CLERK: Thank you. Juror No. 12,
20 Brian Beals.

21 THE JUROR: I'm retired Air Force.
22 And I also quit my job in Charleston last year.
23 I have no spouse.

24 THE CLERK: Juror No. 15, Bradley Berry.

25 THE JUROR: I'm employed by the state port

1 authority. I'm a container handler. My wife owns her
2 own company. She cleans vacation homes.

3 THE CLERK: Thank you. Juror No. 24,
4 Cynthia Bull.

5 THE JUROR: I'm a retired accountant.
6 My husband is retired also from marketing.

7 THE CLERK: Jury No. 31, Robyn Carter.

8 THE JUROR: I'm employed by Volvo.
9 I'm a team member, and I have no spouse.

10 THE CLERK: Juror No. 32, Rhoda Casper.

11 THE JUROR: I'm employed by the South
12 Carolina Department of Employment and Workforce, and my
13 job is a veteran workforce consultant, and I have no
14 spouse.

15 THE CLERK: Thank you. Juror No. 33,
16 David Chambers.

17 THE JUROR: I'm employed by Averitt [ph.]
18 Express. My job is a truck driver, and I have no
19 spouse.

20 THE CLERK: Juror No. 35, Jerry Chapman.

21 THE JUROR: I'm employed by the VA Medical
22 Center in Charleston. My job is the chief of
23 environmental management. My spouse is employed by
24 the Department of Defense, and she's a secretary.

25 THE CLERK: Thank you. Juror No. 42,

1 Clayborne Culp.

2 THE JUROR: I'm employed by Sweetwater 123
3 in Summerville. My job is line cook, and I have no
4 spouse.

5 THE CLERK: Juror No. 43, Sylvester Daniels.

6 THE JUROR: My name is Sylvester Daniels.
7 I'm disabled, retired from Charleston Naval Shipyard,
8 and my wife, unknown. Haven't seen her in about 15
9 years.

10 THE CLERK: Thank you. Juror No. 44,
11 Hayli Danz.

12 THE JUROR: I'm a stay-at-home mom.
13 My spouse is a plant maintenance leader at Target.

14 THE CLERK: Juror No. 45, Phillip Davis.

15 THE JUROR: I work for Horizon Scientific
16 as a brazer [ph.], and I have no spouse.

17 THE CLERK: Juror No. 51, Archie Evans, Jr.

18 THE JUROR: Yes. I work for the Department
19 of Defense as a contracting officer rep, and I'm also
20 retired Air Force. My wife is also a Department of
21 Defense employee, admin assistant. She's also retired.

22 THE CLERK: Thank you. Juror No. 56,
23 Mark Forsyth.

24 THE JUROR: I work for Ahern [ph.]
25 Equipment. I'm a sales representative, and I do not

1 have a spouse.

2 THE CLERK: Thank you. Juror No. 58,
3 Carnice French.

4 THE JUROR: I'm employed by the Medical
5 University of South Carolina. I'm a registered nurse,
6 and no spouse.

7 THE CLERK: Juror No. 61, Mary Garner.

8 THE JUROR: I'm employed by Dr. Jason Hehr,
9 oral surgery. I'm an office manager. My spouse
10 is employed by the Department of Defense Air Force
11 Services.

12 THE CLERK: Juror No. 62, Coy Garriott.

13 THE JUROR: I work for Frank's Car Wash.
14 I'm a car wash manager. I have no spouse.

15 THE CLERK: Juror No. 67, Stacey Govan.

16 THE JUROR: I'm employed at Coastal Center.
17 I'm a manager, and I have no spouse.

18 THE CLERK: Juror No. 71, Wendell Green.

19 THE JUROR: I'm a self-employed mechanic.

20 THE COURT: And are you married?

21 THE JUROR: Ma'am?

22 THE COURT: Are you married?

23 THE JUROR: Oh, single. Single.

24 THE CLERK: Juror No. 69, Antwan Green.

25 THE JUROR: I'm employed by International --

1 Association. I'm a refrigeration mechanic. My spouse
2 does not work.

3 THE COURT: Outside of the home.

4 THE CLERK: Juror No. 72, Stephanie
5 Hamilton-Lipsey.

6 THE JUROR: I'm employed by the Sheriff Al
7 Cannon Detention Center. I'm a probation coordinator.
8 My husband works for the Sheriff Al Cannon Detention
9 Center. He is a detention sergeant.

10 THE CLERK: Juror No. 75, Doria Havericlick
11 [sic.].

12 THE JUROR: Havrilack. I'm employed
13 in heating and air. I'm an administrative assistant,
14 and I have no spouse.

15 THE CLERK: Thank you. Juror No. 77,
16 Patricia Healy.

17 THE JUROR: I'm a retired stay-at-home mom.
18 My husband is retired from Boeing Commercial.

19 THE CLERK: Juror No. 84, Daniel Howard.

20 THE JUROR: I'm employed by the Department
21 of Defense. My job is a systems engineer. My spouse
22 is employed by Dorchester District II Schools. She is
23 a teacher.

24 THE CLERK: Juror No. 88, Mary Jones.

25 THE JUROR: I'm a homemaker, and I take care

1 of my disabled mother. I have no spouse.

2 THE CLERK: Juror No. 95, Anita Larkin.

3 THE JUROR: I'm employed in patient care --
4 rehabilitation. I have no spouse.

5 THE CLERK: Juror No. 96, Thomas Laughlin,
6 Jr.

7 THE JUROR: I'm employed by the Department
8 of Defense as a systems engineer. My wife works for
9 New Hampshire University as an online English professor.

10 THE CLERK: Juror No. 97, Casey Leach.

11 THE JUROR: I'm employed by Boeing. I'm an
12 aviation mechanic. My spouse is employed in Charleston,
13 and she's a manager.

14 THE CLERK: Juror No. 98, Ryan Lewis.

15 THE JUROR: I'm employed by Delta --
16 I'm a district manager. My wife works for Delta
17 Airlines as a flight attendant.

18 THE CLERK: Juror 101, Dayling Machado.

19 THE JUROR: I'm employed by Burgers
20 and Barley, and I have no spouse.

21 THE CLERK: Juror 102, Jessica Maclin.

22 THE JUROR: I'm employed by Kindercare
23 Learning Center. My job is a resource teacher,
24 and I have no spouse.

25 THE CLERK: Juror 103, Sherlene Maloy.

1 THE JUROR: I'm a homemaker and a caretaker.
2 My husband works for ---

3 THE CLERK: Juror 105, Van Marshall.

4 THE JUROR: I'm a self-employed artist and
5 sculptor. My spouse works for Life Cycle Engineering.
6 She's a marketing director.

7 THE CLERK: Juror 108, Jerry Mast.

8 THE JUROR: I'm employed by Dial America
9 Marketing. I'm a sales manager, and I have no spouse.

10 THE CLERK: Juror 109, Louann Mayeres.

11 THE JUROR: Yes, ma'am. I am currently
12 out of work to have serious surgery that I need.
13 And my husband is self-employed. He repairs computers
14 as well as musical equipment.

15 THE CLERK: Juror 110, Marques McFadden.

16 THE JUROR: I am employed as a technician.
17 I have no spouse.

18 THE CLERK: Juror 118, Penny Moore.

19 THE JUROR: I am self-employed with
20 a housecleaning business. I have no spouse.

21 THE CLERK: Juror 122, Deborah Neal.

22 THE JUROR: I'm a retired high school
23 teacher, and my husband is a retired high school
24 teacher.

25 THE CLERK: Juror 125, Brian Peagler.

1 THE JUROR: I'm a contractor.

2 I'm self-employed, and I have no spouse.

3 THE CLERK: Juror 126, Mark Pearl.

4 THE JUROR: I'm employed as a security
5 analyst for the Department of Defense. I have no
6 spouse.

7 THE CLERK: Juror 128, Isiah Phillip.

8 THE JUROR: I'm not currently employed right
9 now. I'm going to school, and I do not have a spouse.

10 THE CLERK: Juror 129, Jeffrey Pike.

11 THE JUROR: I'm employed by Roper Saint
12 Francis as a physician's assistant, and my wife is
13 a retired teacher.

14 THE CLERK: Juror 139, Audrey Salters.

15 THE JUROR: I work for -- I'm a machine
16 operator, and I'm not -- I don't have a spouse.

17 THE CLERK: Juror 149, Makayla Simmons.

18 THE JUROR: I'm a full-time college student,
19 self-employed artist, and I have no spouse.

20 THE CLERK: Juror 156, Jessica Sterrett.

21 THE JUROR: I'm employed by Petco.
22 I'm a dog groomer, and I have no spouse.

23 THE CLERK: You got a dog groomer.

24 THE COURT: We finally got one.

25 THE CLERK: Juror 158, Emma Sutton.

1 THE JUROR: I'm employed at Icehouse,
2 a restaurant in downtown Summerville. I work as head
3 expeditor and back of house manager, and I'm happily
4 unmarried.

5 THE CLERK: Juror 159, Mark Sweeney.

6 THE JUROR: I work in the Federal Law
7 Enforcement Training Center. I'm assistant director
8 of the training center.

9 THE CLERK: Spouse?

10 THE JUROR: I'm sorry?

11 THE CLERK: Do you have a spouse?

12 THE JUROR: I can't hear.

13 THE CLERK: Are you married?

14 THE JUROR: Oh, I'm sorry. My spouse is
15 a homemaker. Sorry about that. I forgot about her.

16 THE CLERK: We won't tell her. Juror 160,
17 Kirk Taylor.

18 THE JUROR: I'm a self-employed author.
19 I also work seasonally for H&R Block as a tax
20 professional. My wife is a retired rehab counselor.

21 THE CLERK: Juror 163, Tress Tipton.

22 THE JUROR: I'm employed by IMR [ph.] USA,
23 and my job is business logistics coordinator. My spouse
24 is employed by Roper Saint Francis, and he is a
25 certified surgical first assistant.

1 THE CLERK: Juror 167, Jacquelyn Villinger.

2 THE JUROR: I'm a retired schoolteacher.

3 My husband is retired civil service, US Army,
4 and he was an environmental manager.

5 THE CLERK: Juror 169, Mary K.

6 Walter-Metzner.

7 THE JUROR: I'm currently unemployed,
8 and my background is in human resources. My husband
9 works for the United States Post Office in facility
10 maintenance.

11 THE CLERK: Juror 170, Arthur Washington,
12 III.

13 THE JUROR: I'm employed by Boeing. My job
14 is a senior manufacturing analyst. My wife works at
15 Heritage [ph.] Federal Credit Union.

16 THE CLERK: Juror 173, Summer Washington.

17 THE JUROR: I'm employed by Renegade.
18 I have no spouse.

19 THE CLERK: Juror 178, Gladys Williams.

20 THE JUROR: I'm a stay-at-home grandmother.
21 No spouse.

22 THE CLERK: Juror No. 180, Stanley
23 Woculevicz.

24 THE JUROR: I'm employed by Storey Farms.
25 I'm a farmhand, and I have no spouse.

1 THE CLERK: And Juror No. 183, Christopher
2 Young.

3 THE JUROR: I'm employed in a restaurant
4 and bar. My job is general manager. My spouse is
5 employed by Stella Nova. She's a hairstylist.

6 THE CLERK: Any name I did not call?
7 Thank you and thank you, Judge.

8 THE COURT: Thank you. All right. In just
9 a few moments, I am going to be asking you
10 statutorily-mandated questions. What that means is
11 I have to ask you these questions because they determine
12 your general eligibility to serve as a juror.

13 Some of these questions are not personal;
14 some of them a little more personal. It is very, very
15 important that I have accurate information commensurate
16 with the oath that you have taken. I am also mindful
17 that some people just understandably so would prefer
18 not to stand and disclose certain information in the
19 presence of your fellow jurors who you just met this
20 afternoon downstairs. And I'm mindful of that.

21 So this is how we are going to proceed.
22 I'm going to ask the question, and I'm going to say
23 if anyone needs to respond, please stand. If you
24 are comfortable standing and disclosing the information
25 in the presence of your fellow jurors, that is great.

1 Stand and disclose the information in the presence
2 of your fellow jurors.

3 However, if you are not comfortable standing
4 and disclosing the information in that fashion, I need
5 you to make a note because at the end of this part
6 of the process, you will have an opportunity to come
7 forward, disclose that information a little more
8 privately with, of course, our court reporter and
9 our clerk.

10 What would not be okay would be that
11 you needed to respond to one of the questions, you would
12 be embarrassed to stand and disclose the information
13 in the presence of your fellow jurors, so you just don't
14 do it. That would be a violation of your oath. I know
15 I won't have to worry about that.

16 So if I ask a question, and you want to come
17 forward and disclose that information, just make a note
18 and come forward when I ask you to do so. I will go
19 over it again and say, okay, now is the time to come
20 forward. So hopefully there will be no question in your
21 mind when that time has come.

22 So these are the questions which determine
23 your general eligibility to serve. Is any member of
24 our jury panel not a citizen of the United States?
25 If you're not a citizen of the United States, please

1 stand. I find no one standing.

2 Do we have any members of our jury panel who
3 is not now a citizen and resident of Dorchester County?
4 If you're not now a citizen and resident of Dorchester
5 County, please stand. I find no one standing.

6 Do we have any members of our jury panel
7 who is someone who is unable, not able, to read, write,
8 speak or understand the English language? If you cannot
9 read, write, speak or understand the English language,
10 please stand. And I know -- I can look at your faces,
11 and there are several of you out there thinking, if you
12 don't understand the English language, how are you
13 supposed to know that's what you're being asked.
14 I don't know. So help me out.

15 If you think you're sitting next to someone,
16 maybe they're communicating in Klingon. Let me know,
17 help me out. But that's why I tell jurors that these
18 are statutorily-mandated questions because I truly
19 don't know the answer to that question that I have
20 now pondered for 20 years. Now, ladies and gentlemen --
21 and I find no one standing.

22 Ladies and gentlemen, do we have any
23 member of our jury panel who has less than, less than,
24 a sixth-grade education or its equivalent? Sixth-grade
25 education or its equivalent. As a definition of

1 equivalent, I would offer to you I think that if you are
2 working, paying your bills and doing all those things
3 that we must do every day, I think you have more than
4 a sixth-grade or equivalent. But you as a juror are
5 in a better position to make that determination.

6 So the question is, is there any member
7 of our jury panel who has less than a sixth-grade
8 education or its equivalent? You can stand and disclose
9 that information, or certainly come up at the end.
10 And I find no one standing.

11 Now, ladies and gentlemen, do we have
12 any members of our jury panel who would be unable,
13 not able, by reason of a mental or physical infirmity,
14 mental or physical problem or challenge or issue,
15 and as a result you believe that you would be unable,
16 not able, to render efficient jury service? You can
17 stand and disclose that information, or certainly come
18 up at the end. I find no one standing.

19 Do we have any members of our jury panel
20 who have been convicted, and that would either be
21 by a guilty plea or by a trial, of a crime punishable
22 by imprisonment for more than a year in prison, and your
23 civil rights have not been restored by pardon or
24 amnesty?

25 Let me share with you that punishable

1 by imprisonment means that you could have received
2 punishment for more than a year in prison as the
3 applicable penalty. However, you may have received
4 a probationary sentence or a fine. What is relevant
5 here is that you could have received, you were exposed
6 to more than a year in prison, and your civil rights
7 have not been restored by pardon or amnesty. Now you
8 can stand and disclose that information, or come up
9 at the end. I find no one standing.

10 Do we have any member of our jury panel
11 who is a clerk or a deputy clerk of court, constable,
12 sheriff, or other commissioned law enforcement officer,
13 county commissioner, magistrate county officer, or any
14 person employed within the wall of any courthouse?
15 If so, please stand. And I find no one standing.

16 Next, the answer to this must be no, but
17 I will ask it in an abundance of precaution. Is there
18 any member of our jury panel who has previously served
19 on jury duty in a court of record, common pleas or
20 general sessions, during the calendar year 2020? If so,
21 please stand. It can't be because this is the first
22 term of the year.

23 And do we have any member of our jury panel
24 who has served as a member of the Dorchester County
25 grand jury in the last, say, five years? If so, please

1 stand. I find no one standing.

2 Now we move to juror exemption. And the
3 exemption does not mean that you are not qualified to
4 serve. It means that you have the right to say, thank
5 you, but I choose not to serve. Our first exemption
6 is a great example of what I'm talking about. Our first
7 exemption is this. People who are 65 years old or older
8 are entitled by state law to an exemption for your jury
9 service.

10 Now people who are 65 years old or older
11 represent a pool of tremendous talent for jury service
12 because of your life experiences. We want you to serve;
13 we urge you to serve. But under state law you are
14 entitled to an exemption. That is a great example
15 of what I'm talking about with regards to exemptions.

16 So, now I ask, do we have any members of our
17 jury panel who is 65 years old or older, and you wish
18 to be exempted from your jury service? If so, please
19 stand at this time. And I find no one standing.

20 Now, ladies and gentlemen, our next
21 exemption concerns those of you who may have served
22 previously on jury service. You will recall a moment
23 ago, I was asking about 2020, in which there could be
24 no one. However, prior jury service also gives rise
25 to an exemption because no juror is required to serve

1 more often than once every three calendar years in
2 a court of record.

3 So, I ask, do we have any members of our
4 jury panel who served as a juror member during the
5 calendar year 2019 or 2018 in a court of record.
6 Now that's not magistrate's court or municipal court,
7 but common pleas or general sessions, and you wish
8 to be exempted from your service? If so, please stand
9 at this time. And your number?

10 THE JUROR: 71, Wendell Green. I was
11 selected for jury I think last year, or the year before
12 last.

13 THE COURT: Okay. We will check it, and we
14 have that ability. We will do that immediately.
15 Sometimes time flies when you're having fun. You know,
16 it happens -- I thought it was a year ago when somebody
17 said, it's like ten.

18 THE JUROR: I don't remember the date.

19 THE COURT: We'll figure it out.

20 THE JUROR: But I think it was within the
21 last five years.

22 THE COURT: Terrific. We will check on it.
23 Thank you so much. Yes, sir, your number?

24 THE JUROR: 33. I served in February
25 of '18, in Dorchester County.

1 THE COURT: Okay. In this courtroom?

2 THE JUROR: Yes, ma'am.

3 THE COURT: We will check it. February '18.
4 You sound pretty precise. We'll check to be sure.
5 Thank you so much. And, gentlemen, I gather if we
6 find that you did serve, you want to leave? Okay.
7 Very well. We will check. And we will -- if you see
8 Ms. Graham do like that to you, that means you're good.
9 Thank you for that. All right.

10 Now, ladies and gentlemen, do we have any
11 members of our jury panel who served as a member of the
12 grand jury anywhere in the last five years, and you wish
13 to be exempted from your jury service? And let me just
14 tell you that jury service on a grand jury is one
15 of those things if you did it, you know it. There's
16 no question in your mind. I find no one standing.
17 So, I presume there's no one who did who wishes to be
18 exempted.

19 Our next exemption deals with those of you
20 who have small children. Please listen very carefully
21 because this particular exemption has several parts.
22 Each and every part must apply to you for you to be
23 exempted on this basis.

24 You may be exempted from your jury service
25 if you have a small child or children under seven years

1 old, six years old and younger, and you have the legal
2 custody of that child or children, and you are the
3 principal caregiver of that child or children, and you
4 simply have no safe and appropriate place for that child
5 or children to be while you perform your jury duty.
6 If this exemption applies to you, and you need to
7 exercise this exemption, please stand at this time.
8 And your juror number?

9 THE JUROR: Number 44.

10 THE COURT: All right, yes.

11 THE JUROR: My six-year old has Type
12 I diabetes, so I'm on call all the time.

13 THE COURT: I understand. Now, I just offer
14 this, that if you are selected to serve on the jury,
15 we certainly -- you can be in contact immediately.
16 However, having said that, I don't know where your
17 little one is in school, and you potentially are
18 as much as an hour away.

19 THE JUROR: Yeah.

20 THE COURT: I don't know that that's
21 appropriate.

22 THE JUROR: Right. Yeah, there's nobody
23 else.

24 THE COURT: No problem. No problem
25 whatsoever. Thank you for being here. Here's the bad

1 news. Blink your eye and that child is going to be 30.
2 Thank you for being here today. All right. Yes, ma'am,
3 your number?

4 THE JUROR: 178.

5 THE COURT: Yes. And you're a stay-at-home
6 grand mama.

7 THE JUROR: Yes, ma'am.

8 THE COURT: All right. You have custody
9 of the little ones?

10 THE JUROR: Yes, ma'am.

11 THE COURT: And how old?

12 THE JUROR: Five, 11 and 13.

13 THE COURT: And you are in charge,
14 and there's no one to leave the little ones with,
15 correct?

16 THE JUROR: Correct.

17 THE COURT: Well, you already know you blink
18 your eye and they're grown, right. Thank you for being
19 here today. Our next exemption deals with those of you
20 who may be attending school, or working in some capacity
21 with a school. If this exemption applies to you,
22 and you need to exercise this exemption, we'll be happy
23 to transfer your service to another term of court,
24 at which time your juror responsibilities and your
25 school responsibilities will not conflict.

1 This exemption applies to full-time
2 students, schoolteachers, school principals,
3 school crossing guards, or anyone else who is employed
4 in any school-related function. If this exemption
5 applies to you, and you need to exercise this exemption,
6 please stand at this time. And you are a full-time
7 student? You're an artist also.

8 THE JUROR: Yes, ma'am.

9 THE COURT: And your juror number?

10 THE JUROR: Juror 149.

11 THE COURT: 149. Where are you in school?

12 THE JUROR: South Carolina State University.

13 THE COURT: Wonderful. Straight A's?

14 THE JUROR: Yes, ma'am.

15 THE COURT: Did school go back in session
16 today?

17 THE JUROR: No, ma'am, not this week.

18 But I need to continue getting ready to go back.

19 THE COURT: I gotcha. And when will that
20 be?

21 THE JUROR: When I move back in.

22 THE COURT: And when do classes start?

23 THE JUROR: Oh, on Tuesday.

24 THE COURT: Tomorrow?

25 THE JUROR: No, next Tuesday.

1 THE COURT: I need to talk to you. I might
2 be able to hold on to you, but we'll chat. We'll chat.
3 Yes, sir. I know you are also a student. Your number?

4 THE JUROR: 101.

5 THE COURT: 101. And you're in school?

6 THE JUROR: Yes.

7 THE COURT: Wonderful.

8 THE JUROR: I just don't know if we're going
9 past Monday because it's move-in day for me.

10 THE COURT: Next Monday?

11 THE JUROR: Yeah.

12 THE COURT: You will be fine.

13 THE JUROR: I'm good?

14 THE COURT: You're good.

15 THE JUROR: Awesome.

16 THE COURT: Thank you. Yes, you'll be fine.
17 I should have mentioned that this is a one-week term of
18 court for everyone's purposes. All right. Now, anyone
19 else? School? All right. Very well.

20 Now, we do have a juror that this is close,
21 but I don't think will apply, but we'll see. Do we have
22 any member of our jury panel who is employed as a guard
23 with the department of corrections penitentiary.
24 I thought it was close but not quite there. Very well.
25 If so, I'm going to ask you to stand because state law

1 says you're going to be exempted. I find no one
2 standing.

3 Now do we have any members of our jury panel
4 who is the primary caregiver for someone who is 65 years
5 old or older, or for someone who is severely disabled,
6 and you are the principal caregiver, and you simply do
7 not have anyone with whom you're comfortable being with
8 your person, who is either severely disabled or 65 years
9 old or older, and you simply do not have anyone that
10 you're comfortable with them, and you don't want them
11 left unattended? Yes, ma'am, your number?

12 THE JUROR: 88.

13 THE COURT: And it's your mom?

14 THE JUROR: Yes, ma'am. She has had
15 a stroke and a heart attack in the last year.
16 And I have my 14-year-old son with her right now.

17 THE COURT: Well, you know what, you are --
18 she's lucky to have you. I'm going to excuse you on
19 that basis.

20 THE JUROR: Thank you very much.

21 THE COURT: Thanks for being here today.
22 Now, this is kind of my favorite one. It says a lot
23 about my sense of humor. Do we have any members of
24 our jury panel who performs services for a business,
25 commercial or agricultural enterprise -- everybody's

1 listening -- and whose services are so essential to
2 the enterprise -- well, same people are listening.
3 Here's the kicker, that the enterprise must close,
4 not should close, but must close if you are required
5 to perform your jury duty? If this exemption applies
6 to you, and you need to exercise this exemption,
7 please stand at this time. And I find no one standing.

8 Now, ladies and gentlemen, it may be that
9 you are qualified, and no exemption applies to you.
10 However, jury service this particular week would
11 constitute an extreme hardship upon you for a particular
12 reason. I cannot excuse a qualified juror from jury
13 service. But under extreme and compelling
14 circumstances, I can transfer a juror from this term
15 of court to another term of court, at which time the
16 extreme and compelling circumstances will not exist.

17 Let me give you some examples. If you have
18 a doctor's appointment this week, I'm going to transfer
19 your service. I don't want anybody missing their
20 doctor's appointment. You may have a loved one who
21 has a doctor's appointment or some sort of treatment,
22 and they are counting on you to be with them. I don't
23 want anyone's loved ones not having you there.
24 I'm going to transfer your service.

25 It may be that at your place of employment

1 that there's inventory one time a year, and you're in
2 charge of it, and today is the day. I will certainly
3 transfer your service for something that extraordinary,
4 that unusual at work.

5 It may be that the tickets to Tahiti are
6 on the fridge at home, and you're supposed to leave
7 Wednesday afternoon. Well, let me tell you, not only
8 am I going to transfer your service, but you better take
9 a big old suitcase because we're all going with you.

10 So it doesn't have to be anything weighty.
11 It may be something that is joyous. It may be a holiday
12 or something like that, that you need to be transferred
13 for that reason as well. The only thing that I am truly
14 going to ask you to know and keep in mind is that
15 I cannot transfer you for general inconvenience.
16 The reason is if I could transfer you for general
17 inconvenience, I would be transferring all of you
18 forever because this is generally inconvenient.
19 So if you need to seek a transfer, I'm going to ask
20 you to come forward in just a second.

21 Now, ladies and gentlemen, in just a moment,
22 I am going to ask those of you that need to come forward
23 to seek a transfer, or for those of you who didn't
24 respond to those more personal questions that I asked
25 earlier that wanted to approach and respond a little

1 more privately. The time has almost come for you to be
2 able to come forward and share that information with me.

3 Now before we do that, I'm going to very
4 quickly go over the qualifications for your jury
5 service. You must be a citizen of the United States.
6 You must be a citizen and resident of Dorchester County.
7 You must be able to read and write and speak and
8 understand the English language. You must have a
9 sixth-grade education or its equivalent. You must be
10 able to physically and mentally render efficient jury
11 service. You must not have been convicted of a crime
12 punishable by imprisonment for more than a year, unless,
13 of course, your civil rights have been restored by
14 pardon or amnesty. You must not be employed as a clerk
15 or deputy clerk of court, constable, sheriff, or other
16 commissioned law enforcement officer. You must not have
17 served on a jury in a court of record during the
18 calendar year 2020, which is not possible. And I do
19 believe that concludes just a repeat of those
20 qualifications.

21 Now if you have any questions about the
22 qualifications, as they may apply to you and your
23 circumstance, if you have a question or a concern about
24 any of the exemptions as they may apply to you and your
25 particular circumstance, if you need to come forward now

1 to disclose that more personal information that you did
2 not want to disclose in the presence of your fellow
3 jurors, or if you need to seek a transfer to another
4 term of court for extreme and compelling circumstances,
5 I'm going to ask you to come forward now at this time.

6 All right. Mr. Green. Where's Mr. Wendell
7 Green? Mr. Green, it was back in 2014 -- oh, we can't
8 find you. We went back to 2014, but you might need some
9 additional info. So it's good that you're coming
10 forward. You're good. Just hang tight. Stay with me.

11 THE CLERK: Juror No. 10 up first.

12 THE COURT: This is Juror No. 10?

13 THE JUROR: Yes, ma'am.

14 THE COURT: Hi.

15 THE JUROR: Good afternoon.

16 THE COURT: Good afternoon. Yes, sir.

17 THE JUROR: Wednesday at eight o'clock,
18 I've got to be at the VA hospital. Thursday at nine
19 o'clock, I've got to be at medical. Friday at ten
20 o'clock, I've got to be at medical again. My mother
21 is going to the doctor; my wife is having an MRI.
22 So, I would like to be transferred, if that's all right,
23 ma'am.

24 THE COURT: I think that's okay. You got
25 it.

1 THE JUROR: Thank you, ma'am.

2 THE COURT: You go pick the week.

3 THE JUROR: Yes, ma'am.

4 THE COURT: And I hope everybody is just
5 peachy in health.

6 THE CLERK: Juror No. 72.

7 THE COURT: Yes, ma'am.

8 THE JUROR: I have a work conference.
9 We leave on Thursday. I have all my documentation.

10 THE COURT: Oh, bless your heart. Okay,
11 great. Yeah, where are you going?

12 THE JUROR: San Diego.

13 THE COURT: All right. Pick your week.
14 I will transfer you.

15 THE JUROR: Thank you.

16 THE CLERK: Juror No. 67.

17 THE COURT: Hello. Yes, ma'am.

18 THE JUROR: I need a transfer because I have
19 to take my mother to have some heart tests done in the
20 morning at 11.

21 THE COURT: Not a problem. You pick the
22 week. I will transfer you.

23 THE JUROR: Thank you.

24 THE CLERK: Juror No. 71.

25 THE COURT: Mr. Green.

1 THE JUROR: You said it was in 2014.

2 THE COURT: It was checked back to 2014.

3 THE JUROR: I thought it was.

4 THE COURT: And we couldn't find you.

5 I thought that was odd. But was it in Dorchester
6 County?

7 THE JUROR: Yeah, I was called to come
8 to court for jury duty. What happened was they called
9 me and told me that there was a plea.

10 THE COURT: Oh, okay, and not to come;
11 is that right?

12 THE JUROR: Right. It was a couple of years
13 ago.

14 THE COURT: A few years ago. They went back
15 to 2014, couldn't find you.

16 THE CLERK: Here?

17 THE JUROR: No, they called me and told
18 me that they didn't need me because there was a plea.

19 THE COURT: Court was canceled.

20 THE CLERK: So you never actually came in?

21 THE JUROR: No.

22 THE CLERK: It doesn't count unless you
23 appear, unless you're present.

24 THE COURT: Unless you show up.

25 THE JUROR: No. I never came because they

1 said they pleaded on the case.

2 THE COURT: And ended up canceling the jury.
3 Okay. I get to keep you.

4 THE JUROR: I have court on the 9th.

5 THE COURT: Okay. Let's me ask you this
6 question. First of all, is this you?

7 THE JUROR: Yes, ma'am.

8 THE COURT: It is? Okay. This is on your
9 record, a long time ago I bet. Look how far back that
10 is. Do you remember that?

11 THE JUROR: What's this for?

12 THE COURT: It's an arrest.

13 THE JUROR: What happened is I know there's
14 a charge on me.

15 THE COURT: A misdemeanor down in
16 Charleston. And this is the name, and it's resisting
17 arrest.

18 THE JUROR: I guess it is me.

19 THE COURT: Well, now -- suspended to six
20 months or a \$400 fine and 18 months probation. Do you
21 remember anything like that a long time ago?

22 THE JUROR: Yeah, but it was so long ago.

23 THE COURT: So long ago. But do you think
24 that's you?

25 THE JUROR: Oh, that's me.

1 THE COURT: Oh, that's you. Well, now let
2 me tell you. I'm going to let you go on this basis,
3 but let me just tell you ---

4 THE JUROR: What I'm wondering is it a guy
5 with the same name as me.

6 THE COURT: Well, that's why I ask people
7 because that happens a lot, that happens a whole lot.
8 But this one, I can let you go on that basis. But it's
9 been so long you might want to get that expunged.

10 THE JUROR: Okay. So, I don't have to come?

11 THE COURT: I'm going to tell you happily
12 goodbye.

13 THE JUROR: Thank you so much, ma'am.

14 THE COURT: You take care.

15 THE JUROR: God bless you.

16 THE COURT: Thank you for being here today.

17 THE JUROR: Maybe I'll see you another time.

18 THE COURT: I hope so. Bye now. Yes, sir,
19 your number?

20 THE CLERK: Juror No. 62.

21 THE COURT: Yes, sir.

22 THE JUROR: I have a pending charge as of
23 right now. My preliminary date is the tenth of this
24 week.

25 THE COURT: Gotcha, gotcha. And it's in

1 Dorchester County?

2 THE JUROR: Berkeley County.

3 THE COURT: In Berkeley County?

4 THE JUROR: Yes, ma'am.

5 THE COURT: Oh, okay. And do you have
6 a record?

7 THE JUROR: No, ma'am.

8 THE COURT: Just this one pending thing?

9 THE JUROR: Yes, ma'am.

10 THE COURT: Gotcha.

11 THE JUROR: I was arrested in November.

12 THE COURT: Gotcha. All right. Well,
13 you do not have a record.

14 THE JUROR: No, ma'am.

15 THE COURT: And people in America are
16 innocent until proven guilty.

17 THE JUROR: Yes, ma'am.

18 THE COURT: So you are certainly eligible.
19 You have your preliminary hearing on the tenth, so we've
20 got a couple of days.

21 THE JUROR: Yes, ma'am.

22 THE COURT: If you are selected to serve on
23 this jury, then I will get it continued for you, okay.

24 THE JUROR: Yes, ma'am.

25 THE COURT: All right. Thank you.

1 THE JUROR: Thank you.

2 THE COURT: All right. Just remind me
3 though.

4 THE JUROR: Yes, ma'am.

5 THE COURT: All right. Thank you.

6 THE CLERK: Juror No. 103.

7 THE COURT: Hi.

8 THE JUROR: Hi. How are you? This trial,
9 does it just go for a week?

10 THE COURT: Yes, ma'am.

11 THE JUROR: Okay, good because I got
12 a caretaker. I just wanted to make sure.

13 THE COURT: Okay. You are good. Thank you.

14 THE CLERK: Juror No. 31.

15 THE COURT: Hi.

16 THE JUROR: How are you?

17 THE COURT: Well. How are you?

18 THE JUROR: I am well. I need to try
19 to transfer because of my mom. I am her caregiver
20 in the evening. And my son, I'm getting him in the
21 next 30 minutes. I don't have anyone else to get him.

22 THE COURT: And how old is your son?

23 THE JUROR: He is eight.

24 THE COURT: Okay. And you take care of your
25 mom?

1 THE JUROR: Yes, in the evening.

2 She's depressed, so she doesn't take care of herself.

3 THE COURT: I understand.

4 THE JUROR: Disabled. She gets disability.

5 THE COURT: Gotcha. Where are you going
6 to go to get the little one?

7 THE JUROR: Beech Hill Elementary.

8 THE COURT: You can't make it in 30 minutes.

9 Oh my goodness. Is he in an after school program?

10 THE JUROR: He is.

11 THE COURT: They'll be there until six.

12 But you're right, you've got to get out of here quick.

13 THE JUROR: Gotta get out of here in 30
14 minutes.

15 THE COURT: Yeah, you do. So you need
16 to transfer so you can make arrangements to really
17 get somebody to pick him up. I will do that because
18 you tell me your mom is depressed and shouldn't be
19 by herself.

20 THE JUROR: In the evening. In the daytime,
21 we have someone there.

22 THE COURT: You do?

23 THE JUROR: But I'm responsible when they
24 leave.

25 THE COURT: Okay. I am with you. That we

1 could actually work with. What time do they leave?

2 THE JUROR: At three.

3 THE COURT: Okay. No, that's a little bit
4 different. You are going to need to make some
5 arrangement. I'm going to let you transfer this time,
6 and you'll pick the week, so you'll know in advance
7 and be ready to stay the whole week.

8 THE JUROR: Okay.

9 THE COURT: Fair enough?

10 THE JUROR: Yes.

11 THE COURT: Thank you so much. You pick
12 the week.

13 THE CLERK: Juror No. 180.

14 THE JUROR: How are you doing?

15 THE COURT: Hi. Yes.

16 THE JUROR: My car broke down this morning.
17 I've been at the dealership. Two days in a row it broke
18 down. I'm in the process of trying to buy a car.
19 I couldn't finish the paperwork. And it's going to
20 be here at seven o'clock by tonight. I have to be in
21 at Savannah Highway. They're probably going to have
22 it tomorrow.

23 THE COURT: Gotcha.

24 THE JUROR: So, I'm stuck.

25 THE COURT: Now, let me tell you this.

1 If you're selected to serve ---

2 THE JUROR: Right.

3 THE COURT: --- then I can provide you
4 transportation.

5 THE JUROR: Okay.

6 THE COURT: Not a problem at all. That's
7 my problem, not yours. If you're selected to serve,
8 we'll get you out here. Cool.

9 THE JUROR: I'm cool with that.

10 THE COURT: Thank you so much. Hang tight.
11 All right.

12 THE CLERK: Juror No. 170.

13 THE COURT: Yes, sir.

14 THE JUROR: Internal job interview on
15 Wednesday at one o'clock.

16 THE COURT: Well, will you try to get it
17 postponed?

18 THE JUROR: Yeah, I can.

19 THE COURT: Okay, cool. You did it.

20 THE JUROR: We good?

21 THE COURT: Yeah.

22 THE JUROR: All right.

23 THE CLERK: Juror No. 122.

24 THE COURT: Hi. Yes, ma'am.

25 THE JUROR: I can't sit for long periods

1 of time, about 30 minutes. I've had neck surgery.

2 THE COURT: That's not a problem.

3 THE JUROR: If I can get up every 20 to 30
4 minutes.

5 THE COURT: Absolutely.

6 THE JUROR: Okay. That's fine.

7 THE COURT: We will make that happen.

8 If you want to take more comfort breaks, if you need
9 more breaks, let me know.

10 THE JUROR: That's fine.

11 THE COURT: I'll be right there with you.

12 THE JUROR: Okay. Thank you.

13 THE CLERK: Juror No. 149.

14 THE COURT: Hi. Yes.

15 THE JUROR: I'm a full-time college student,
16 and I go back to school this week, and I have to
17 continue packing and make sure to try to have everything
18 for the weekend.

19 THE COURT: I gotcha.

20 THE JUROR: I also need transportation.

21 THE COURT: I've got your transportation.
22 I can't because of the pack -- you'll just have to do
23 that in the evening, but I do need you during the day.
24 All right. Thank you. If you're selected, let me know,
25 and we'll get you transportation.

1 THE CLERK: Juror No. 69.

2 THE COURT: Yes, sir.

3 THE JUROR: How are you?

4 THE COURT: Well.

5 THE JUROR: It's about religious beliefs.
6 And my belief, I can't judge.

7 THE COURT: What's your religion?

8 THE JUROR: I don't actually -- I don't
9 believe in the Bible. I don't believe in Jesus.
10 I, don't believe in none of that.

11 THE COURT: Okay. Well, you ought to be
12 good.

13 THE JUROR: I mean, I feel if -- I can't
14 judge. I can't say -- so, I'm just letting you know.

15 THE COURT: Well, I'll tell you what.

16 THE JUROR: I didn't hear you say religious
17 beliefs, that's why I came here.

18 THE COURT: That's right. Well, let me
19 share this with you. The burden of a juror is to
20 determine -- every crime has certain elements.

21 THE JUROR: I understand.

22 THE COURT: And it is the role of a juror
23 to make a determination whether the State has met its
24 burden of proof with regards to each element of the
25 offense.

1 THE JUROR: I understand. But is it
2 diplomatic? I mean, is it majority wins?

3 THE COURT: No, it's not majority. It is --
4 it has to be a unanimous verdict, yes.

5 THE JUROR: That's going to be -- I'm not
6 going to agree.

7 THE COURT: You're not going to agree with
8 what?

9 THE JUROR: Whatever the situation may be,
10 or whatever the trial may be.

11 THE COURT: How do you know that?

12 THE JUROR: That's me. That's what
13 I believe in. First, you ask me to take an oath.

14 THE COURT: Yes.

15 THE JUROR: Actually, but under God,
16 I can't say that under God. I believe I'm God.
17 I mean, I can't ---

18 THE COURT: Okay.

19 THE JUROR: You know what I'm saying.
20 So, I can't. I don't want to come up here and lie.

21 THE COURT: No, no. I appreciate your
22 candor very much. So -- okay. So you don't believe
23 that you could make a determination whether -- based
24 on the evidence presented, you couldn't make a
25 determination if the State met its burden of proof?

1 THE JUROR: That's still me agreeing on
2 something.

3 THE COURT: No, it's not you agreeing.
4 It's you making an analysis. Your own analysis
5 about ---

6 THE JUROR: I understand what you're saying.

7 THE COURT: --- whether the State has met
8 its burden of proof.

9 THE JUROR: Whatever the situation is,
10 if he's guilty or innocent, you want me to say he's
11 innocent or guilty.

12 THE COURT: No. Nope. The determination
13 of the jury is whether or not the State has met its
14 burden of proof with regards to each and every element
15 of the offense.

16 THE JUROR: And I would have to agree with
17 that.

18 THE COURT: You make an analysis. And your
19 verdict is based upon whether or not you believe, based
20 on your analysis, of the evidence presented, do you
21 believe that the State has or has not met its burden
22 of proof.

23 THE JUROR: It still means believe in the
24 same thing. I don't believe I can -- it ain't my place
25 to judge somebody. It ain't my place to say he's

1 guilty.

2 THE COURT: Okay. All right. Stay with me
3 at this point.

4 THE JUROR: Yeah. I just wanted to let you
5 know.

6 THE COURT: All right. Yeah, absolutely.
7 Thank you.

8 THE CLERK: Juror No. 158.

9 THE JUROR: I work at Icehouse Restaurant.
10 And I'm a backhouse manager, and DHEC is coming on
11 Wednesday. So, I was wondering -- I have to be there
12 for that.

13 THE COURT: And what are your normal hours
14 that you work?

15 THE JUROR: Usually, I pull -- I go from
16 9:30 in the morning, usually to six at night. And then
17 I take a little break, and I go back, and then I'll
18 finish at 11:30.

19 THE COURT: Nice. So, yeah. And this
20 is a difficult week because if DHEC is there, you need
21 to be there when they're there.

22 THE JUROR: I'm the only backhouse manager.

23 THE COURT: Gotcha. So it falls within your
24 purview. You get to make sure that DHEC is ---

25 THE JUROR: Yeah. Well, at least for the

1 kitchen aspect.

2 THE COURT: I understand. And so it falls
3 under your area of responsibility.

4 THE JUROR: Yes, ma'am.

5 THE COURT: I can transfer your service
6 because what I would tell you is that I don't want you
7 working at night while you're serving on a jury during
8 the day. So pick a week, and I will transfer you.

9 THE JUROR: Thank you. I appreciate that.

10 THE COURT: You bet. Ladies and gentlemen,
11 it is getting very -- the time is waning. Normally,
12 we take a break. Does anybody need a comfort break,
13 a quick comfort break? Okay, I've got a couple of
14 people. Is five minutes enough? A comfort break.
15 We'll try to keep it to five minutes so we can keep
16 going and get, you know, this process completed.
17 I do need to finish this evening now. Thank you.
18 Five minutes.

19 (Recess taken.)

20 (Back on the record.)

21 THE CLERK: Juror No. 8.

22 THE COURT: This is so fascinating.

23 And you're Mr. Baliko?

24 THE JUROR: Yes, ma'am.

25 THE COURT: I'm going to show you this

1 information, but this is fascinating. Look at this
2 with me. It really is quite bizarre. Look at this
3 with me. All right. Now, I guess, what I'm looking
4 for is the date of birth here. Here you are.

5 THE JUROR: Yes, ma'am.

6 THE COURT: Okay. And is that familiar?

7 THE JUROR: Yes.

8 THE COURT: Check this out. This is
9 fascinating. Don't keel over. This happens a lot,
10 all the time, okay. So it says you were charged with
11 larceny -- grand larceny. So what happened?

12 THE JUROR: I was in the hotel business.
13 I was working for a hotel company. We had purchased
14 some TVs at Sam's Club, and we had some of them that
15 didn't work. So they were returned and exchanged.

16 THE COURT: Yeah.

17 THE JUROR: And being one of the managers
18 in the hotel, that was part of my job.

19 THE COURT: Oh, gosh.

20 THE JUROR: So apparently what happened
21 was a couple of the TVs ended up in the wrong box
22 when it was returned or exchanged.

23 THE COURT: Okay.

24 THE JUROR: So they put out a felony
25 larceny on me. And I was in a different -- living

1 in a different state, and it all blew up from there.
2 So this isn't news to me, you know. I remember when
3 it happened.

4 THE COURT: That's amazing. Tell me so what
5 ended up happening?

6 THE JUROR: I was arrested in West Virginia.
7 And as soon as I -- they booked me. As soon as I was
8 booked, they were like get him out of there. He doesn't
9 belong in there. And, I guess, Sam's Club, they just
10 called up the sheriff's department in Maryland and told
11 them to drop the charges immediately. So, I mean,
12 that was pretty much the end of it. I mean, I went
13 before -- they brought me in for extradition in West
14 Virginia, and they dismissed it.

15 THE COURT: At that point ---

16 THE JUROR: What do they call it -- they
17 waived extradition, so they could get everything sorted
18 out and everything like that. But everything -- you
19 know, the whole thing was dropped.

20 THE COURT: That's amazing. And that
21 makes sense because I'm not seeing any evidence
22 of a conviction.

23 THE JUROR: No. There was never a trial,
24 you know, or anything.

25 THE COURT: I gotcha. Let me tell you what

1 happened. I actually had this happen with a client
2 of mine. The NCIC holds on to things longer than
3 others.

4 THE JUROR: Sure. Well, I'm a foster parent
5 too, so I've had to go through this.

6 THE COURT: So guess what. You need to get
7 it expunged one more time.

8 THE JUROR: Right. All right.

9 THE COURT: Stay with us.

10 THE JUROR: All right.

11 THE COURT: But I thought that was
12 fascinating.

13 THE CLERK: Juror No. 118.

14 THE COURT: Hi. How are you?

15 THE JUROR: I'm good. How are you?

16 THE COURT: I'm fine. So this popped up.

17 I've got to ask you whether or not this information
18 is for you. Is this your date of birth?

19 THE JUROR: Yes, ma'am.

20 THE COURT: Okay. And is that your social?

21 THE JUROR: Yes.

22 THE COURT: And what's popping up is this.

23 It is for probation for three years, probably to give
24 you time to pay it back or whatever.

25 THE JUROR: Yes, ma'am.

1 THE COURT: And the question is was
2 it punishable by a penalty of over a year? You know,
3 it's not uncommon that something is not punishable
4 by more than a year. But for probation to go along,
5 you have to pay the money back. Do you know what
6 I'm saying?

7 THE JUROR: Right, right.

8 THE COURT: That's why I'm asking. But the
9 question is, do you know if at the time it was
10 punishable by more than a year?

11 THE JUROR: No.

12 THE COURT: You don't remember?

13 THE JUROR: I don't think it was though.

14 THE COURT: Okay. Gotcha. Well -- so let
15 me check on that. Let me just check on that. Great.
16 What I'm going to do is we've got somebody that can
17 check. And I'll let you know if it was more than a year
18 or less than a year. Let me see if I can still hold on
19 to you.

20 THE JUROR: All right. Okay. Thank you.
21 I will sit back down.

22 (Pause.)

23 THE COURT: Now, ladies and gentlemen,
24 in just a moment, I'm going to call on the solicitor,
25 and ask the solicitor to call our first case for trial.

1 And I wanted to share with you that unlike 49 other
2 states in America, the prosecuting -- the state's
3 attorneys are called district attorneys or state's
4 attorney. We in South Carolina call our prosecutors
5 solicitors. So we're a little bit different.

6 And so I'm going to call on the solicitor's
7 office, and I'm going to ask them to please call our
8 first case for trial. Yes, sir, Mr. Spears.

9 MR. SPEARS: Thank you, Your Honor.
10 This case is State v. Keunte Cobbs, 2016-GS-18-1267,
11 charging him with the offense of murder. He has pled
12 not guilty to this charge, and we're proceeding with
13 trial.

14 THE COURT: Thank you, Mr. Spears.
15 Now, ladies and gentlemen, I'm going to tell you
16 what has occurred. And then I want to explain to
17 you what an indictment is and what it isn't.

18 Ladies and gentlemen, what has just happened
19 is that Mr. Spears, Solicitor Spears, has just called
20 the first case for trial. And he has called my
21 attention to an indictment. And I want to tell you
22 what an indictment is, and what it is not.

23 First of all, it's a piece of paper.
24 It is a notice document. It is a document that notified
25 a citizen that the State alleges that that citizen has

1 violated one or more of the criminal laws of the state
2 of South Carolina.

3 I would tell you -- I would reiterate what
4 Mr. Spears just told you. And that is that the
5 Defendant, Mr. Cobbs, has pled not guilty to the
6 allegations of the indictment. And that places the
7 burden of proof on the State to prove each and every
8 element of the offense beyond a reasonable doubt.

9 Now, ladies and gentlemen, in just a moment,
10 I'm going to be reading to you some of the allegations
11 of the indictment. And I want to tell you why I would
12 do such a thing. I'm trying to find out whether or not
13 any of you know, or think you may know, or have you
14 heard, or think you may have heard, to include today,
15 anything about these allegations.

16 So that's the reason that I'm going to
17 be reading to you some of the allegations of the
18 indictment. And again, I remind you that to these
19 allegations, the Defendant, Mr. Cobbs, has pled not
20 guilty. Once I have done that, then I'm going to have
21 an opportunity to introduce you to some folks, and then
22 I have a few questions to ask of you. And then we're
23 going to select our jury for our first case for trial.

24 Now, ladies and gentlemen, indictment
25 2016-GS-18-1267 alleges, in part, that in Dorchester

1 County, on or about June the 5th, 2016, with malice
2 aforethought, the Defendant, Keunte D. Cobbs, did kill
3 one Brannon Mack by means of shooting the victim.

4 The victim did die as a proximate result
5 thereof. This offense being in violation of the common
6 law in Section 16-310 of the South Carolina Code of Laws
7 as amended.

8 Ladies and gentlemen, again to these
9 allegations, Mr. Cobbs has pled not guilty. And I ask,
10 do any of you know, or think you may know, have you
11 heard, or think you may have heard anything about these
12 allegations? If so, please stand at this time. And
13 I find no one standing.

14 Now, ladies and gentlemen, please allow
15 me to introduce you to Mr. Michael Spears. He is going
16 to introduce you to the folks in his office and anyone
17 that will be assisting him at counsel's table.

18 MR. SPEARS: Thank you, Your Honor.

19 THE COURT: Yes, sir, Mr. Spears.

20 MR. SPEARS: Good evening, everybody.

21 My name is Michael Spears. I'm an assistant solicitor
22 in the Dorchester County Solicitor's Office in the first
23 circuit. With me is William Baker Allen, my second
24 chair today and co-counsel.

25 David Pasco is our elected solicitor.

1 Don Soreson is our deputy solicitor. Along with other
2 assistant solicitors in this office are Kelly LaPlante,
3 Jim Adams, George Smythe, Nick Young, Megan Chinnis.
4 Also in our juvenile assistant solicitor area, there
5 is Vergil Deas and Jillian Frederick.

6 THE COURT: Thank you. Ladies and
7 gentlemen, are any of you related by blood or marriage
8 or acquainted with, and let me use the definition of
9 acquainted with. I'm trying to find out if you had any
10 connection with these folks that I'm going to be asking
11 you about. So, I intend a very general definition
12 of acquainted with.

13 For example, maybe you went to school with
14 someone whose name you'll hear. Well, maybe you haven't
15 seen them in 20 years, but you know you went to school
16 with them. Believe it or not that relationship, as old
17 as it is, would be incorporated, or would be encompass
18 within my definition of acquainted with.

19 It may be that you work in the same location
20 with someone whose name you'll hear. Maybe you've
21 waived at each other across the parking lot. That
22 relationship, as limited as it is, would be encompass
23 within my definition, my very broad and general
24 definition, of acquainted with. So, I ask that you
25 please keep that in mind, that definition in mind,

1 as we go through these questions.

2 So again, are you related by blood
3 or marriage or acquainted with any of the folks, the
4 assistant solicitors, deputy solicitor or any solicitor
5 that Mr. Spears just mentioned, or anyone employed by
6 the first circuit solicitor's office? If so, please
7 stand at this time. I find no one standing.

8 Now, ladies and gentlemen, if you would
9 allow me please to introduce you to Mr. Keunte Cobbs.
10 Mr. Cobbs, if you could stand and face our jury panel.
11 And this is Mr. Cobbs, and he's in the brown shirt.
12 Thank you, Mr. Cobbs, and you may be seated.

13 Ladies and gentlemen, are you related by
14 blood or marriage or acquainted with Mr. Keunte Cobbs?
15 If so, please stand at this time. I find no one
16 standing.

17 Ladies and gentlemen, also now please allow
18 me to introduce you to Mr. Ashley Chisholm. This is
19 Mr. Chisholm, and this is Mr. John Loy. They represent
20 Mr. Cobbs. And Mr. Chisholm will give you the names
21 of the attorneys in his office.

22 MR. CHISHOLM: Thank you, Your Honor.
23 The chief public defender in our circuit is Mark
24 Leiendecker. Other attorneys are Pierce Wehman,
25 Michelle Hubrich, Tom Squires, Mary Lematty, Mitch

1 Farley. The juvenile public defenders are Gina McAlhany
2 and Al Biggs.

3 THE COURT: Thank you, Mr. Chisholm.
4 Ladies and gentlemen, are you related by blood or
5 marriage or acquainted with, or have you or any member
6 of your immediate family, to your knowledge, ever been
7 represented by Mr. Chisholm or Mr. Loy, or any of the
8 lawyers in their office, or are you acquainted with any
9 of the other employees in their office? If so, please
10 stand at this time. Yes. And what is -- I'm going
11 to ask you to approach for me just real quick.

12 THE CLERK: Juror No. 43, Judge.

13 THE COURT: All right. Yes.

14 THE JUROR: Mr. Pierce [sic.] represented
15 me in a case that I had with the court.

16 THE COURT: Okay.

17 THE JUROR: But I did not go to court.

18 THE COURT: Gotcha. And as a result of that
19 experience, would that have an affect on your ability
20 to be completely fair and impartial both to the State
21 as well as to Mr. Cobbs?

22 THE JUROR: No, ma'am.

23 THE COURT: Can you set that experience
24 aside and make up your mind based on what you hear
25 in court while court is in session?

1 THE JUROR: Yes, ma'am.

2 THE COURT: Thank you. Stay with us.

3 Thank you, sir. Can y'all hear me if I stay here?

4 I just think that will be faster than running back
5 and forth. All right.

6 Now, ladies and gentlemen, I am going to
7 be reading to you a witness list. The lawyers are kind
8 enough to give me the names of potential witnesses,
9 so that I can ask jurors if they know, or are related
10 to anyone. And if you happen to be in the courtroom,
11 I'm going to ask you to please stand because it is a lot
12 easier to put a face with a name than simply the name.

13 My questions as to each one of these folks
14 is, are you related by blood or marriage or acquainted
15 with any of the following individuals? And please know
16 if you hear a name, and you're not sure, I can repeat
17 these names. That is absolutely not a problem.
18 But my question to each and every one of these is,
19 are you related by blood or marriage or acquainted
20 with any of the following individuals?

21 We'll start with Dwayne Peters.

22 And, Mr. Peters, thank you, sir. Yes, ma'am, give me
23 your juror number.

24 THE JUROR: So, I'm 71.

25 THE COURT: Now here's what I'm going to do.

1 I'm going to ask you questions. I don't want any
2 explanation. I want just -- I'm going to try to keep
3 the answers one or two words, okay. First of all,
4 do you visit in each other's homes?

5 THE JUROR: No, ma'am.

6 THE COURT: No. Would you describe your
7 relationship as one that is personal or professional?

8 THE JUROR: Professional.

9 THE COURT: And as a result of that
10 relationship, might that, could that interfere with your
11 ability to be completely fair and impartial both to the
12 State as well as to Mr. Cobbs? That must be yes or no.

13 THE JUROR: No.

14 THE COURT: Can you set that relationship
15 completely aside and make up your mind based upon what
16 you hear in court while court is in session?

17 THE JUROR: Yes, ma'am.

18 THE COURT: The relationship as you have
19 described it, is it a -- you described as one that is
20 professional. Does it exist now, or did it in the past?

21 THE JUROR: In the past.

22 THE COURT: In the past. Thank you so much.
23 Please stay with us. Thomas Gathings, Hadley Harkins,
24 Alexandria Pulliam, Mikell Nelson, Adam Sutton, Mohamad
25 Alabsa, Dr. Lee Tormos, Nate Green, Justin Jenkins,

1 Louis Colon, Julie Creel, Brian Mosier, Chad Smith,
2 Steven Shaw, Brandon Berg, William Mandeville, Keith
3 Elmore, Bradford Spells, Michelle Cobbs, Adam Smith,
4 Rashandra Sweed, Frank Thompson, Michael McKey --
5 all right. Yes, sir, who do you know?

6 THE JUROR: Frank Thompson.

7 THE COURT: And your number?

8 THE JUROR: 69.

9 THE COURT: Very well. And would you
10 describe your relationship as one that is personal
11 or professional?

12 THE JUROR: Personal.

13 THE COURT: All right. Do you visit in each
14 other's homes?

15 THE JUROR: No.

16 THE COURT: Would your relationship have
17 an impact on your ability to be fair and impartial
18 to the State as well as to Mr. Cobbs?

19 THE JUROR: No.

20 THE COURT: And can you set that
21 relationship aside and make up your mind based
22 on what you hear in court while court is in session?

23 THE JUROR: Yes.

24 THE COURT: Thank you, sir.

25 MR. LOY: Your Honor, whose name was

1 he responding to?

2 THE COURT: Frank Thompson. Yes, your
3 number, sir?

4 THE JUROR: 170.

5 THE COURT: Who do you know?

6 THE JUROR: I think Michelle Cobbs.

7 THE COURT: All right, Michelle Cobbs.

8 And would you describe your relationship as one that
9 is professional or personal?

10 THE JUROR: Personal.

11 THE COURT: And would it be a friendship
12 or acquaintanceship?

13 THE JUROR: Acquaintanceship.

14 THE COURT: Do you visit in each other's
15 homes?

16 THE JUROR: No.

17 THE COURT: And might that, could that
18 relationship interfere with your ability to be
19 completely fair and impartial to the State as well
20 as Mr. Cobbs?

21 THE JUROR: No.

22 THE COURT: And can you set that
23 relationship aside and make up your mind based upon
24 what you hear in court while court is in session,
25 being completely unaffected by that relationship?

1 THE JUROR: Yes.

2 THE COURT: Thank you. Please stay with us.
3 Anyone else? Now, ladies and gentlemen, is any member
4 of our jury panel related by blood or marriage, or a
5 close personal friend of a member of any law enforcement
6 agency? And let me tell you about this close personal
7 friend. This close personal friend is so close to you
8 that you really can't distinguish between this close
9 personal friend and a family member.

10 Most of the time, you like this close
11 personal friend better than you like your brother
12 or your sister. That's how close this friend is.
13 So -- thank you so much. We have two standing, three.

14 Now my question to you -- first of all,
15 I'm going to ask your juror number, and then I will
16 take it from there. Yes, ma'am, your juror number?

17 THE JUROR: 163.

18 THE COURT: All right. And is this related
19 by blood or marriage or a close personal friend?

20 THE JUROR: Former marriage.

21 THE COURT: Former marriage. What law
22 enforcement agency?

23 THE JUROR: San Diego PD. San Diego Police
24 Department.

25 THE COURT: San Diego. All right.

1 As a result of that relationship, might that,
2 could that interfere with your ability to be completely
3 fair and impartial to the State as well as to Mr. Cobbs?

4 THE JUROR: No.

5 THE COURT: Can you set that relationship
6 aside and make up your mind based upon what you hear
7 in court while court is in session?

8 THE JUROR: Yes.

9 THE COURT: Thank you. Please stay with us.
10 Your number?

11 THE JUROR: Your Honor, 159.

12 THE COURT: All right. And the
13 relationship; blood, marriage, close personal friend?

14 THE JUROR: Close personal friend,
15 several federal agencies in the area.

16 THE COURT: Gotcha. And might those
17 relationships, either individually or put them all
18 together, could they, might they interfere with your
19 ability to be completely fair and impartial to the State
20 as well as to Mr. Cobbs? Yes or no?

21 THE JUROR: I don't believe so, Your Honor.

22 THE COURT: Can you set those friendships,
23 those relationships, aside and make up your mind based
24 upon what you hear in court while court is in session?

25 THE JUROR: Yes, Your Honor.

1 THE COURT: Thank you. Please stay with us.
2 And your number -- yes, sir, and you are?

3 THE JUROR: 69.

4 THE COURT: 69, yes, sir. And family
5 member, close personal friend?

6 THE JUROR: Family member.

7 THE COURT: Family member. What law
8 enforcement agency?

9 THE JUROR: Dorchester County.

10 THE COURT: Dorchester County currently?

11 THE JUROR: Yes.

12 THE COURT: All right. And you, obviously,
13 probably visited in each other's homes?

14 THE JUROR: Yes.

15 THE COURT: And how close a family member?

16 THE JUROR: I was at his mom's funeral last
17 week.

18 THE COURT: Okay. Cousin?

19 THE JUROR: Yes.

20 THE COURT: All right. As a result of that
21 relationship, do you believe that relationship might or
22 could interfere with your ability to be completely fair
23 and impartial both to the State as well as to Mr. Cobbs?
24 Gotta be yes or no.

25 THE JUROR: No.

1 THE COURT: And can you set that
2 relationship aside and make up your mind based upon
3 what you hear in court while court is in session?

4 THE JUROR: No -- I don't know.

5 THE COURT: All right. I am -- you're
6 the gentleman I had a conversation with?

7 THE JUROR: Yeah.

8 THE COURT: Have a seat. Just stay with me.
9 Tell me who's in law enforcement?

10 THE JUROR: A family member.

11 THE COURT: Family member, all right.
12 What law enforcement agency?

13 THE JUROR: Dorchester County.

14 THE COURT: Dorchester County, currently?

15 THE JUROR: Yes, ma'am.

16 THE COURT: All right. And brother, sister,
17 cousin?

18 THE JUROR: My nephew.

19 THE COURT: Nephew. And might that or could
20 that interfere with your ability to be completely fair
21 and impartial both to the State as well as to Mr. Cobbs?

22 THE JUROR: It would not interfere.

23 THE COURT: All right. Can you set that
24 relationship aside and make up your mind based upon what
25 you hear in court while court is in session?

1 THE JUROR: Yes, ma'am.

2 THE COURT: And your juror number again is?

3 THE JUROR: 126.

4 THE COURT: Thank you. Is any member of
5 our jury panel employed by, related by blood or marriage
6 to, or a friend, or a close personal friend of someone
7 employed by the attorney general, the solicitor or any
8 prosecuting attorney's office, or anyone who does work
9 with, or has worked with in the past any of the above?
10 Would y'all like me to do that again? Got it.

11 THE JUROR: Just for clarification,
12 Your Honor.

13 THE COURT: Sure.

14 THE JUROR: 159. Is that only on the state
15 and county level?

16 THE COURT: Nope.

17 THE JUROR: Many of my students come from
18 the United States probation or parole court system.

19 THE COURT: Very well. And would that
20 employment reality have an impact on your ability to
21 be completely fair and impartial to the State as well
22 as to Mr. Cobbs?

23 THE JUROR: Again, I will say I don't
24 believe so.

25 THE COURT: All right. And do you believe

1 you can set those, really your employment at the end
2 of the day, what you do in your employment, can you set
3 that aside to the extent that you can make up your mind
4 based solely on what you hear in court while court
5 is in session?

6 THE JUROR: Yes, Your Honor.

7 THE COURT: Very well. Thank you.
8 Stay with us. Yes, your number?

9 THE JUROR: 96.

10 THE COURT: Yes.

11 THE JUROR: Josh Porter.

12 THE COURT: I understand. He is employed --
13 all right. Very well. And do you visit in each other's
14 homes?

15 THE JUROR: No.

16 THE COURT: And as a result of your -- is it
17 acquaintanceship or friendship?

18 THE JUROR: Acquaintanceship.

19 THE COURT: Acquaintanceship. Do you
20 believe that relationship might or could interfere
21 with your ability to be completely fair and impartial
22 both to the State as well as to Mr. Cobbs?

23 THE JUROR: No, ma'am.

24 THE COURT: Can you set that relationship
25 aside and make up your mind based upon what you hear

1 in court while court is in session?

2 THE JUROR: Yes, ma'am.

3 THE COURT: Thank you. And your number
4 again?

5 THE JUROR: 96.

6 THE COURT: Thank you. Have you ever been
7 employed by a civilian or military law enforcement
8 agency? If so, please stand. Your number?

9 THE JUROR: 35.

10 THE COURT: Thank you. You can sit down.
11 Yes, sir.

12 THE JUROR: 159.

13 THE COURT: Thank you. You can sit down.
14 Yes, sir, your number?

15 THE JUROR: Yes, Your Honor. I was employed
16 by the department of corrections as a coordinator.

17 THE COURT: Okay. Gotcha. Your number?

18 THE JUROR: 51.

19 THE COURT: Ladies and gentlemen, have you
20 read or heard anything about this case today or before
21 today? If so -- other than what I read to you. If your
22 answer is yes, please stand. Very well. I find no one
23 standing. Ladies and gentlemen, have you formed an
24 opinion about this case? If so, please stand. I find
25 no one standing.

1 I am going to ask the next two questions
2 together. Please don't respond until I've asked both
3 of them, and then I'm going to have you approach.
4 Have you or any member of your immediate family, or that
5 close personal friend, ever been the victim of murder
6 or attempted murder? That's the first question.

7 The second question, is any member of our
8 jury panel, a member of your immediate family, or close
9 personal friend a member of MADD, which is Mothers
10 Against Drunk Driving, SADD, Students Against Drunk
11 Driving, CAVE, or any other similar type organization
12 which has as a goal the promotion of law enforcements
13 and the like? If you need to respond to either of those
14 questions, I'm going to ask you to please stand and come
15 forward.

16 THE CLERK: Juror No. 77.

17 THE COURT: Hi. I just need enough volume.
18 for my court reporter to hear.

19 THE JUROR: My ex-husband's grandmother
20 was murdered in her home.

21 THE COURT: Okay. How long ago?

22 THE JUROR: It was about 25 years ago now
23 at this point.

24 THE COURT: Would that, could that
25 experience interfere with your ability to be completely

1 fair and impartial to the State as well as to Mr. Cobbs?

2 THE JUROR: No, I don't think so.

3 THE COURT: Can you set that experience
4 aside and make up your mind based upon what you hear
5 in court while court is in session?

6 THE JUROR: Yes, ma'am, I think so.

7 THE COURT: Please stay with us.

8 THE CLERK: Juror No. 125.

9 THE COURT: Hello. Just need enough volume
10 for my court reporter to hear.

11 THE JUROR: Yes, my sister was Debra Bazzle,
12 and she was murdered by Quadrik Willis.

13 THE COURT: All right. And do you believe
14 that experience might or could interfere with your
15 ability to be completely fair and impartial both to
16 the State as well as to Mr. Cobbs?

17 THE JUROR: No, ma'am.

18 THE COURT: And can you set that experience
19 aside and make up your mind based upon what you hear
20 in court while court is in session?

21 THE JUROR: Yes, ma'am.

22 THE COURT: Thank you.

23 THE CLERK: Juror No. 58.

24 THE COURT: Hi.

25 THE JUROR: Hi.

1 THE COURT: Yes, ma'am.

2 THE JUROR: My first cousin was murdered.

3 THE COURT: All right. How long ago?

4 THE JUROR: December 18.

5 THE COURT: As a result of that experience,
6 do you believe that experience might or could interfere
7 with your ability to be completely fair and impartial
8 to the State as well as to Mr. Cobbs?

9 THE JUROR: Yes, ma'am.

10 THE COURT: I'm going to ask you to sit
11 this one out.

12 THE JUROR: Okay.

13 THE COURT: And be so kind as to refrain
14 from discussing the matter.

15 THE JUROR: Maybe I misunderstood your
16 question. Ask me the question again.

17 THE COURT: Okay. Would that experience,
18 that being -- I understand your first cousin, correct?

19 THE JUROR: Yes.

20 THE COURT: Being murdered, would that
21 experience, could that experience interfere with your
22 ability to be completely fair and impartial to the State
23 as well as to Mr. Cobbs?

24 THE JUROR: It won't interfere.

25 THE COURT: It will not. And can you set

1 that experience completely aside and make up your mind
2 based solely on what you hear in court while court is
3 in session?

4 THE JUROR: Yes, ma'am.

5 THE COURT: Thank you. Please stay with us.
6 58 was your number, ma'am, right?

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 51.

9 THE COURT: Hi. Yes, sir.

10 THE JUROR: Answer to the first question,
11 my father was murdered when I was five.

12 THE COURT: Your father?

13 THE JUROR: My father was murdered.

14 THE COURT: When you were five years old.
15 And you are?

16 THE JUROR: 50.

17 THE COURT: All right, so 45 years ago.

18 And as a result of that experience, might that, could
19 that interfere with your ability to be completely fair
20 and impartial to the State as well as to Mr. Cobbs?

21 THE JUROR: No.

22 THE COURT: Can you set that experience
23 aside and make up your mind based solely on what you
24 hear in court while court is in session?

25 THE JUROR: Yes.

1 THE COURT: Thank you.

2 THE CLERK: Juror No. 169.

3 THE COURT: Hi.

4 THE JUROR: Hi. I have a brother-in-law
5 that was murdered in 1975 in Rochester, New York.

6 THE COURT: Okay. You had to have been
7 a small child.

8 THE JUROR: I was 16.

9 THE COURT: 16. All right. And as a result
10 of that experience, might that, could that interfere
11 with your ability to be completely fair and impartial
12 to the State as well as to Mr. Cobbs?

13 THE JUROR: No.

14 THE COURT: Can you set that aside and make
15 up your mind based on what you hear in court while court
16 is in session?

17 THE JUROR: Yes.

18 THE COURT: Thank you. Stay with us,
19 please.

20 THE CLERK: Juror No. 163.

21 THE COURT: Yes, ma'am.

22 THE JUROR: I was -- my neighbor died
23 of drunk driving. And since then, his family, who
24 we still, like, live on the same street with, and my
25 children's friends are a part of MADD, and they do the

1 driving -- and they do the walking thing every year.

2 THE COURT: Gotcha. And would that have
3 an affect on your ability to be completely fair and
4 impartial to the State as well as to Mr. Cobbs?

5 THE JUROR: No.

6 THE COURT: And can you set those activities
7 aside and make up your mind based upon what you hear
8 in court while court is in session?

9 THE JUROR: Yes.

10 THE COURT: Thank you. Stay with us,
11 please. Ladies and gentlemen, are you related by blood
12 or marriage or acquainted with Mr. Brannon Mack?
13 If so, please stand. Yes, ma'am. Come forward please,
14 ma'am.

15 THE CLERK: Juror No. 139.

16 THE COURT: I don't want the jury to hear
17 your response. I just need my court reporter to have
18 enough volume.

19 THE JUROR: You said Brandon Mack?

20 THE COURT: Brannon Mack.

21 THE JUROR: I don't know if his last name
22 is Mack or not. Where did this incident happen at?

23 THE COURT: Where did it happen?

24 THE JUROR: Yeah.

25 THE COURT: Yes, ma'am. As I understand it,

1 it happened at the IHOP.

2 THE JUROR: Oh, I don't know him.

3 THE COURT: Okay. Wrong person.

4 THE JUROR: All right, then. Thank you.

5 THE CLERK: Juror No. 170.

6 THE COURT: 170. Yes, sir.

7 THE JUROR: We went to church together,
8 that's all.

9 THE COURT: Okay. As a result of that,
10 I guess, relationship, do you think that could interfere
11 with your ability to be completely fair and impartial?

12 THE JUROR: No, not at all.

13 THE COURT: And can you set that aside and
14 make up your mind based on what you hear in court while
15 court is in session?

16 THE JUROR: Yes, I can.

17 THE COURT: Thank you, sir. Please stay
18 with us. All right. Now, ladies and gentlemen, this
19 will be my concluding question, and I actually mean it
20 to be just as general as it sounds. Do you know any
21 reason why you ought not, could not, should not be
22 a juror in this case?

23 If you are a juror in this case, you must
24 be ready, willing and able to listen to the evidence
25 and make up your mind based solely, based only, on what

1 you hear in court while court is in session, being
2 completely unaffected, not affected, by matters -- the
3 court cases use the term extraneous, matters outside
4 of the court.

5 If you have any concerns whatsoever about
6 your ability to do that for any reason, you must be able
7 to do that being completely fair and impartial to the
8 State and Mr. Cobbs. If there's any lingering reason
9 why you have concerns, I don't know, maybe when we took
10 that very short break, somebody was outside the
11 courthouse jumping up and down with the big check and
12 roses, and you're a little distracted because you think
13 Publisher's Clearing House is out there waiting on you.
14 Maybe you had the tickets to Tahiti in your pocket.

15 Really is there anything that you need
16 to share with me at this time that could, that might
17 interfere with your ability to be a juror in this case,
18 being ready, willing, and able to listen to the evidence
19 and make up your mind based solely on what you hear in
20 court while court is in session, being completely fair
21 and impartial to the State and Mr. Cobbs. If you have
22 any concerns whatsoever, I'm going to ask you to please
23 come forward at this time. Yes, come on forward.

24 And while this gentleman is coming forward,
25 we've reached this point in the qualification of the

1 jury, and I had a young man stand up and say to me,
2 Judge, do you mind if -- can I go be with my wife down
3 at Trident Hospital as she delivers our first child?
4 Now, no one is in labor, right? Okay. No one's loved
5 one is in labor? Good. Come on forward, sir.

6 THE CLERK: Juror No. 126.

7 THE COURT: Yes, sir.

8 THE JUROR: I don't know -- my wife just
9 passed away a few months ago.

10 THE COURT: Okay.

11 THE JUROR: And I'm dealing with emotions.

12 THE COURT: Yeah, I get it.

13 THE JUROR: And I don't know whether they
14 could play a part depending on what's in the case.

15 THE COURT: I understand. I absolutely
16 understand. Do you -- I hate to lose you as a juror.
17 Do you think it would be appropriate maybe to transfer
18 you a few months?

19 THE JUROR: Okay, yeah.

20 THE COURT: And then not lose you.

21 THE JUROR: Yeah.

22 THE COURT: Is that okay?

23 THE JUROR: Sure.

24 THE COURT: You pick the month; you pick
25 the week.

1 THE JUROR: Thank you.

2 THE COURT: Thank you for your candor.

3 Now, ladies and gentlemen, in just a moment this is
4 what's going to happen. And actually a million and one
5 years ago, I was a juror in the old courthouse. My name
6 got called out, and I came forward. And I just remember
7 not knowing what to do with my hands. I wish I could
8 have left them back there, but bring them with you.
9 It's okay.

10 If you brought a pocketbook, whatever,
11 umbrella, bring that with you, too. And you're going
12 to stand here. I'm going to stand here for the first
13 person. I'm going to stand with them because it's
14 always difficult to be the very first person. You're
15 going to stand here, and you're going to hear first
16 from one of the attorneys from the solicitor's office.
17 You're going to hear him say one of two things, either
18 present the juror or excuse the juror.

19 Now, if you hear present the juror,
20 just stand here. And then you're going to hear from
21 one of the attorneys for the defense. And you're going
22 to hear from them one of two things. You're going
23 to hear either seat the juror, where you'll have a seat,
24 or excuse the juror, which means you're just going to
25 take your seat back out into the audience.

1 Let me tell you something. There are
2 probably hundreds of considerations that go through
3 a lawyer's mind as they determine whether to select
4 a juror or strike a juror. Let me tell you one that
5 doesn't go through their minds. And I can assure you
6 this consideration does not, and that, of course, is to
7 cause you any discomfort or embarrassment whatsoever.

8 So if you are seated, or if you're excused,
9 please do not believe that there's anything like that
10 attached to it, any desire to cause you any discomfort
11 because I can assure you that is not a consideration.
12 Now -- so, I'm going to stand here while you call the
13 first person.

14 THE CLERK: Juror No. 169, Mary K.
15 Walter-Metzner. What sayeth the State?

16 MR. SPEARS: Please present the juror.

17 THE CLERK: The defense?

18 MR. CHISHOLM: Please seat the juror.

19 THE CLERK: Have a seat in the jury box.

20 Juror No. 84, Daniel Howard.

21 MR. LOY: Madam Clerk, what was the number?

22 THE CLERK: No. 84.

23 MR. LOY: Thank you.

24 THE CLERK: What sayeth the State?

25 MR. SPEARS: Please present the juror.

1 THE CLERK: The defense?

2 MR. CHISHOLM: Please excuse the juror.

3 THE CLERK: Have a seat back in the
4 audience. Juror 102, Jessica Maclin. Turn around.
5 Thank you. What sayeth the State?

6 MR. SPEARS: Please present the juror.

7 THE CLERK: The defense?

8 MR. CHISHOLM: Please seat the juror.

9 THE CLERK: Have a seat in the jury box.
10 Juror 183, Christopher Young. What sayeth the State?

11 MR. SPEARS: Please present the juror.

12 THE CLERK: The defense?

13 MR. CHISHOLM: Please seat the juror.

14 THE CLERK: Have a seat in the jury box.

15 Juror 160, Kirk Taylor. What sayeth the State?

16 MR. SPEARS: Please present the juror.

17 THE CLERK: The defense?

18 MR. CHISHOLM: Please excuse the juror.

19 THE CLERK: Have a seat back in the
20 audience. Juror 170, Arthur Washington. What sayeth
21 the State?

22 MR. SPEARS: Please present the juror.

23 THE CLERK: The defense?

24 MR. CHISHOLM: Please seat the juror.

25 THE CLERK: Have a seat in the jury box.

1 Juror 156, Jessica Sterrett. What sayeth the State?

2 MR. SPEARS: Please present the juror.

3 THE CLERK: The defense?

4 MR. CHISHOLM: Please seat the juror.

5 THE CLERK: Juror 167, Jacqueline Villinger.

6 What sayeth the State?

7 MR. SPEARS: Please present the juror.

8 THE CLERK: The defense?

9 MR. CHISHOLM: Please excuse the juror.

10 THE CLERK: Have a seat back in the
11 audience. Juror No. 62, Coy Garriott. What sayeth
12 the State?

13 MR. SPEARS: Please excuse the juror.

14 THE CLERK: Have a seat back in the
15 audience. Juror 128, Isiah Phillip. What sayeth
16 the State?

17 MR. SPEARS: Please excuse the juror.

18 THE CLERK: Have a seat back in the
19 audience. Juror No. 24, Cynthia Bull. What sayeth
20 the State?

21 MR. SPEARS: Please present the juror.

22 THE CLERK: The defense?

23 MR. CHISHOLM: Please seat the juror.

24 THE CLERK: Have a seat in the jury box.

25 Juror No. 61, Mary Garner. What sayeth the State?

1 MR. SPEARS: Please present the juror.

2 THE CLERK: The defense?

3 MR. CHISHOLM: Please excuse the juror.

4 THE CLERK: Have a seat back in the
5 audience. Juror 101, Deyling Machado. What sayeth
6 the State?

7 MR. SPEARS: Please present the juror.

8 THE CLERK: The defense?

9 MR. CHISHOLM: Please seat the juror.

10 THE CLERK: Have a seat in the jury box.
11 Juror No. 105, Van Marshall. What sayeth the State?

12 MR. SPEARS: Please present the juror.

13 THE CLERK: The defense?

14 MR. CHISHOLM: Excuse the juror.

15 THE CLERK: Have a seat back in the
16 audience. Juror No. 58, Carnice French. What sayeth
17 the State?

18 MR. SPEARS: Please present the juror.

19 THE CLERK: The defense?

20 MR. CHISHOLM: Please seat the juror.

21 THE CLERK: Have a seat in the jury box.
22 Juror No. 139, Audrey Salters. What sayeth the State?

23 MR. SPEARS: Please excuse the juror.

24 THE CLERK: Have a seat back in the
25 audience. Juror 125, Brian Peagler. What sayeth

1 the State?

2 MR. SPEARS: Please present the juror.

3 THE CLERK: The defense?

4 MR. CHISHOLM: Please excuse the juror.

5 THE CLERK: Juror 109, Louann Mayeres.

6 What sayeth the State?

7 MR. SPEARS: Please present the juror.

8 THE CLERK: The defense?

9 MR. CHISHOLM: Please seat the juror.

10 THE CLERK: Juror No. 32, Rhoda Casper.

11 What sayeth the State?

12 MR. SPEARS: Please present the juror.

13 THE CLERK: The defense?

14 MR. CHISHOLM: Please seat the juror.

15 THE CLERK: Juror No. 75, Doria Havrilack.

16 What sayeth the State?

17 MR. SPEARS: Please present the juror.

18 THE CLERK: The defense?

19 MR. CHISHOLM: Excuse the juror.

20 THE CLERK: Juror No. 96, Thomas Laughlin.

21 What sayeth the State?

22 MR. SPEARS: Please present the juror.

23 THE CLERK: The defense?

24 MR. CHISHOLM: Please seat the juror.

25 THE CLERK: Have a seat in the jury box.

1 Juror 173, Summer Washington. What sayeth the State?

2 MR. SPEARS: Please present the juror.

3 THE CLERK: The defense?

4 MR. CHISHOLM: Excuse the juror.

5 THE CLERK: Juror No. 56, Mark Forsyth.

6 What sayeth the State?

7 MR. SPEARS: Please present the juror.

8 THE CLERK: The defense?

9 MR. CHISHOLM: Please seat the juror.

10 THE CLERK: Juror No. 45, Phillip Davis.

11 What sayeth the State?

12 MR. SPEARS: Please present the juror.

13 THE CLERK: The defense?

14 MR. CHISHOLM: Seat the juror.

15 THE CLERK: Juror 108, Jerry Mast.

16 What sayeth the State?

17 MR. SPEARS: Please present the juror.

18 THE CLERK: The defense?

19 MR. CHISHOLM: Seat the juror.

20 THE CLERK: Thank you, Judge.

21 THE COURT: Thank you, ma'am. All right.

22 Are there any matters regarding the qualification or the
23 selection of the jury from the State?

24 MR. SPEARS: Nothing from the State,

25 Your Honor.

1 THE COURT: From the defense?

2 MR. CHISHOLM: No, Your Honor.

3 THE COURT: Very well. All right.

4 Now, ladies and gentlemen, those of you who are in
5 our audience are now known as our remaining jurors.
6 I'm going to ask you to please call the juror
7 information line after six o'clock tomorrow, tomorrow
8 evening. The juror information line number was given
9 to you on a card. If you don't know if you have that
10 card, or you're concerned you don't have it, Marvin
11 is in the back of the courtroom, and he's got a bunch
12 of them. Please take several because I do need you
13 to be able to call the juror information line after
14 six o'clock tomorrow evening.

15 Now please follow whatever the instruction
16 is on the recording. It will either be to please call
17 back at a particular time, or to return to the
18 courthouse at a particular time. I don't know which
19 it's going to be, but it will be one or the other.
20 So please follow that instruction.

21 Ladies and gentlemen, I know the hour
22 is late. I could thank you for the next 15 minutes.
23 Y'all would probably want me just to say thank you,
24 thank you so much, and tell you that I so look forward
25 to seeing you later in the week.

1 If you need anything for your employer
2 because you'll be dashing off to work tomorrow morning,
3 please feel free to get that from the clerk's office
4 that is directly below us. If you're a stair descender,
5 turn to the right. If you're an elevator rider, go to
6 the left, all the way down into the clerk's office.
7 They'll be happy to get that for you. Remember, call
8 the juror information line after six o'clock tomorrow
9 night. I can't wait to see you later in the week.
10 Thank you so much.

11 (Pause.)

12 THE COURT: Now again, be mindful that
13 the hour is late, and I do need to give you some
14 instruction. I'm going to go ahead and begin.
15 Can you all hear me?

16 There are several things that I need to
17 share with you. First thing is with regards to seating
18 assignments, and here they are. Juror No. 45 and Juror
19 No. 108, you're our alternates. Now if you like those
20 two seats, keep them. If you don't, swap those two
21 seats. But I need you to keep those two seats because
22 I need to keep up with you as our alternates, and those
23 are the alternates' seats. Got it? Wonderful.

24 Now, this seat front and center closest
25 to the door, will be the seat for the presiding juror.

1 Your presiding juror will have three additional tasks.
2 Somebody has to write the verdict at the conclusion
3 of the case after the deliberations are finished.
4 Somebody's got to write on behalf of the jury.
5 Somebody's got to have handwriting. And I'm going to
6 ask -- and so that's one of the tasks of the presiding
7 juror.

8 The second task of the presiding juror
9 is that the presiding juror is the jury spokesperson
10 in court. All that means is if the jury needs to
11 communicate with me for whatever reason, for example,
12 it's too hot, it's too cold, in which I can't do a whole
13 lot about, but it's nice to know. Gee whiz, could we
14 have more coffee, or we ran out of Cheetos, whatever.
15 The presiding juror would take that down in writing,
16 give that to one of our bailiffs, who in turn will give
17 that to me.

18 And, finally, during the deliberations
19 of the jury, and that will not come until I have
20 specifically told you to begin your deliberation.
21 And that will not come until the conclusion of the case.
22 I'm going to talk to you a little bit more about that.

23 The presiding juror just makes sure
24 everybody gets a chance to talk, does not in any way,
25 shape or form lead this jury. That person does not

1 guide this jury, does not have any more, does not have
2 any sway with the jury as the presiding juror.
3 Somebody's got to do a couple of things, and that's it.
4 So with that in mind, Mr. Juror 170, I'm going to ask
5 you to please serve as our presiding juror if you would
6 be so kind. So tomorrow if you'll just take that seat
7 and keep it.

8 With regards to all the other jurors,
9 if you get a seat you like, keep it. If you don't,
10 get here early and get another seat. So please keep
11 that in mind. We are going to provide pen and paper.
12 And so I'm -- what do you want to tell me?

13 THE BAILLIFF: The one at the end, she said
14 she can't half hear. So we do have the hearing ---

15 THE COURT: Absolutely, not going to be
16 a problem. What I'm going to ask you to do is just --
17 I'm going to give you an assigned seat right there.
18 And if that is not sufficient, you let me know.
19 Raise your hand if you can't hear because we do have
20 headphones. And then I know you'll be able to hear.
21 All right. Thank you.

22 We're going to have notepads for you and
23 writing implements tomorrow. I will give you some
24 instruction about note taking. But I want you to know
25 that you are going to have the ability to take notes

1 during the course of this trial.

2 Now let me ask this question. Does anybody
3 work at night? You work at night. Not tonight,
4 not during the course of the trial. Let me tell you
5 why it is impossible for you to work at night and pay
6 attention and be a juror during the day. It is
7 impossible. You can't do it. So, I'm going to instruct
8 you not to work at night.

9 And sometimes employers, you know, they
10 don't understand that. They're concerned about that.
11 So if you run into any concern on behalf of your
12 employer, if you'll get their name and number, I will
13 be happy to have a conversation with them. I don't want
14 anybody upset with my jurors. Be upset with me, that
15 does not bother me. But I need my jurors rested in the
16 evening, so you can pay attention.

17 These are very serious matters that must be
18 attended to, and my jurors have got to be able to stay
19 awake and stay alert. It's not fair to you. It's not
20 fair to these litigants for you to try to work at night
21 and stay awake during the day. It's just not going to
22 work.

23 So now you're going to hear me give you this
24 instruction each and every time we leave each other.
25 I am as serious about it as anything that you will hear

1 from me. When we leave each other, during your breaks
2 with your fellow jurors, do not discuss this matter,
3 and do not allow anyone to discuss it with you.
4 Let me tell you why.

5 Here's what we know from trying cases well
6 over 200 years in the United States, and we're a product
7 of English jurisprudence. And so it was true in
8 England, it is true here, it is true today. When we
9 begin to talk about something, we begin to form opinions
10 about it. We cannot help ourselves. It is the way we
11 are made. It is the way that our brains work.

12 Tomorrow, you will be sworn in as the jurors
13 in this case. As a juror, it is going to be absolutely
14 critical for you to carry out your duty, that you are
15 able to listen open mindedly to everything that is
16 presented to you, and that you make up your mind about
17 nothing until you have heard everything.

18 If you talk about this case prior to the
19 time that I instruct you to begin your deliberations,
20 and I will specifically tell you when that time has
21 come, then you will necessarily have begun to form
22 opinions about it. And your duty to be a juror at that
23 point will be compromised. I'm going to instruct you do
24 not discuss this case, do not allow anyone to discuss it
25 with you. You must receive all of the information from

1 which you will make up your mind here in court while
2 court is in session. It is critical to your duty
3 as a juror.

4 You're going to be going home this evening.
5 No doubt somebody is going to be curious about what you
6 have been up to today. I don't expect you to go home,
7 and someone says, well, how was your day? And you say,
8 oh, I can't tell you. Well, where have you been?
9 I can't tell you. What have you been doing? I can't
10 tell you. You don't -- you've got terrible problems.
11 I don't expect that.

12 It is certainly appropriate to say,
13 I reported for my jury service. I have been selected
14 to serve on a jury, the matter is a criminal matter as
15 opposed to a civil matter. But beyond that, you must
16 not discuss this matter, or allow anyone to discuss
17 it with you.

18 However, first of all, I don't want anybody
19 upset with you. Put it on me. Tell them I'm the one
20 that told you that. They'll be mad at me. I'm all
21 right with that. I would much rather have folks be
22 upset with me than you. I do need you to follow my
23 instruction.

24 I will share with you that when you have
25 been discharged from your service on this jury,

1 and there will be no question in your minds when that
2 time has come because we will specifically talk about
3 it, you will be at liberty to talk about the case,
4 if you wish.

5 However, until that time has come, you must
6 not discuss this matter with family, friends, coworkers
7 and your fellow jurors. And when the time to deliberate
8 has come, I will tell you, and you will deliberate with
9 your fellow jurors in your jury room, but not until that
10 time has come. So please keep that in mind.

11 Now, I don't know that there will be any
12 publicity or any news about this matter. I have no way
13 of knowing that. This is a public place. Folks are
14 certainly welcome to be here. Most of the time, you
15 know, they're taking pictures or filming, and I do know
16 because there are certain rules with which they must
17 comply. But that's -- if it's print media, I may or may
18 not know that they are here.

19 As a result, I'm going to instruct you do
20 not listen to, do not read anything about this matter.
21 And that is the radio, the television, the newspaper,
22 the internet. Everything's on the internet. Also
23 we are all subject to the internet, so we are subject
24 to copious amounts of information. All the information
25 you want to have is at your fingertips. Leave your

1 fingertips away from this matter.

2 Do not do any research -- don't even look up
3 a definition of a word because you must receive all of
4 the information from which you will make up your minds
5 here in court while court is in session. No Columbo,
6 those of you who are closer to my age.

7 I don't have a clue what's new in television
8 or whatever, on Netflix, or whatever the shows are
9 in today's parlance. But I will tell you no Columbo,
10 no investigation. Again, you must receive all of the
11 information from which you will make up your mind here
12 in court while court is in session. Please keep that
13 in mind.

14 Cell phones or other communication devices.
15 Please leave them somewhere other than the courthouse.
16 Do not bring them with you to the courthouse.
17 Having said that, I know we're all tethered to them.
18 If you forget and that little thing follows you in here
19 tomorrow, just give it to one of our bailiffs. They'll
20 take great care of it until the lunch break when you can
21 take it, perhaps to your car, or the evening, if that's
22 better for you.

23 You must not have a cell phone or other
24 communication device with you while you're serving
25 on the jury. Why? In Charleston several years ago,

1 trying a case, the jury was deliberating. The jury just
2 reached the moment where they needed to work together
3 and have a conversation. But one of the jurors said,
4 that's all right. I'm going to phone a friend.
5 The entire trial had to be scrapped because that was
6 information which was injected into the deliberation
7 that was not received in court while court was in
8 session.

9 About the time it traveled to Columbia,
10 to our chief justice, and as soon as there could be
11 an order -- an administrative order issued, we got
12 it back, and it said no longer could jurors have cell
13 phones or communication devices with them that had the
14 capacity to contact the internet or anyone else with
15 them while they're serving on a jury. And that's --
16 I mean, hopefully, this stuff has got a good basis
17 for it.

18 Now, ladies and gentlemen, we are going to
19 start in the morning at 9:30, at 9:30. Before you leave
20 today, you will go with our bailiffs. I think they will
21 want you to gather in the jury assembly room, and then
22 they will bring you up together to your jury room.
23 Have a bowl of Wheaties because they always have a
24 little something for you here in the morning, coffee,
25 and they always have a Danish or biscuit. They always

1 have something for you, so I just share that with you
2 as well.

3 And when you arrive in the morning this
4 is what will occur. You will be sworn in as the jury
5 in this case. I have certain preliminary remarks that
6 I'm going to make to you, really to give you an overview
7 of how we will be proceeding. I'm almost going to talk
8 to you about note taking and things like that.

9 And then, ladies and gentlemen, we are going to get
10 right into the trial of this case. And we are going
11 to work as diligently as we possibly can tomorrow.

12 So, ladies and gentlemen, I thank you so
13 much for your attention. I thank you for every single
14 tick of the clock. I'm going to conclude by asking you
15 also to be mindful that you're going to be coming and
16 going from the courthouse, as will witnesses, lawyers,
17 and others that are working with this case.

18 You know, lawyers by their very nature tend
19 to be gregarious folks. And they always want me to
20 mention to jurors if they pass you, and they don't even
21 say hello, they really aren't being rude. They know
22 that they are not to have any interaction with you
23 because you are a juror in this case.

24 As a matter of fact, should anyone try
25 to contact you, have a discussion with you, anything

1 whatsoever with regards to this case, I'm going to ask
2 you to please get their name, if not a description,
3 and report that to me immediately upon your return
4 to the courthouse because that is a matter of greatest
5 importance, and I will have to deal -- I don't have to.
6 I'll be happy to deal with that individual because that
7 would be highly inappropriate.

8 So if you happen to see someone associated
9 with the matter, and they don't even say hello, just
10 know, they're not being rude. They're following my
11 instructions. Have a wonderful evening. I can't wait
12 to see you in the morning at 9:30. Go with our
13 bailiffs.

14 (Pause.)

15 THE COURT: All right. We have handled
16 pre-trial matters, correct?

17 MR. SPEARS: Correct, Your Honor.

18 THE COURT: Yes?

19 MR. CHISHOLM: Yes, Your Honor.

20 THE COURT: I will see you all in the
21 morning a little bit before 9:30.

22 MR. SPEARS: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (End of Transcript of Record)

25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER

2016-GS-18-1267

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) January 7, 2020 - Vol 2 of 4

Keunte Cobbs

)

) St. George, South Carolina

B E F O R E:

The Honorable Diane Goodstein, Judge

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

Mike Spears, Esquire
William Baker Allen, Esquire
Attorneys for the State

Ash Chisholm, Esquire
John Loy, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

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1 (State's Exhibit Nos. 1 through 87 and 93 were marked
2 for identification.)

3 THE COURT: Thank you and please be seated.
4 Good morning. All right. Ready?

5 MR. SPEARS: Yes, Your Honor.

6 THE COURT: I think the jury is ready.

7 (Jury enters the courtroom at 10:12 a.m.)

8 THE COURT: Thank you and good morning.

9 THE JURORS: Good morning.

10 THE COURT: Did everybody get a little
11 something-something to eat this morning? Everybody good
12 to go, ready to go? Fabulous. Ladies and gentlemen,
13 at this time, I'm going to ask you to please stand
14 and raise your right hand and be sworn in as the jury
15 in this case.

16 (Whereupon, the jury panel was duly sworn.)

17 THE COURT: Ladies and gentlemen, you are
18 now the jury in this case. And I'm going to be making
19 some preliminary remarks to you. My preliminary remarks
20 are not intended to be a charge or instruction on the
21 law applicable to this case. I will instruct you
22 regarding the law applicable to this case at the
23 conclusion of the case before you retire to consider
24 your verdict.

25 My purpose in making these remarks to you

1 this morning, quite frankly, I wish, I want, it is my
2 intention to give you a structure to let you know how
3 we will be proceeding, to give you a framework so you'll
4 know, okay, well, this is where we are, and to explain
5 to you in advance some of the things that you may see
6 or hear and explain what's going on.

7 Now you have notepads. There is an ongoing
8 debate. There has been an ongoing debate from the
9 moment I became a judge nearly 22 years ago about note
10 taking. I want to talk to you about it because it will
11 let me instruct you about note taking.

12 And the debate is this. There's a real
13 concern about jurors taking notes. And the concern
14 is that a juror can miss something as it's coming from
15 the witness stand as they're taking a note. I think
16 that is real legitimate, it's a real concern. And
17 there's also a concern that during deliberations if one
18 juror has a note and another juror doesn't have a note,
19 there can be, there could be, an undue amount of
20 influence placed upon the note. That also makes sense.

21 The argument for note taking is that it
22 allows for a juror to be able to refresh his or her
23 recollection before deliberations. And there are those
24 people who are like me. Oftentimes, I will be listening
25 to arguments of attorneys, and I'll be making notes.

1 And I'll go back and look at my notes, and they don't
2 make any sense at all. But what it does is it helps
3 me to focus. It helps me to concentrate to take a word
4 or two. Makes a lot of sense to me, both of those
5 arguments.

6 So, ladies and gentlemen, I have provided
7 for you the ability to take notes. So, I'm going to
8 give you this instruction. Please do not allow the
9 taking of a note to let you miss something as it's
10 coming from the witness stand.

11 There is absolutely not one requirement at
12 all for you to take a note. If you're not a note taker,
13 if it doesn't help you, please put it down. Don't worry
14 about it. It's only there for you if it would be of
15 assistance. That's it. It's for you, if it's helpful.
16 But don't feel any compunction, any pressure whatsoever
17 to take a note. It's there to help you if it does.

18 But I am going to ask you to do this.
19 I am going to ask you to take that first page and flip
20 it over. And then -- well, actually, you did that so
21 well, flip it back. I want you to put your juror number
22 or your name, whichever is more pleasing to you, easier
23 for you. And that's going to identify your notepad as
24 your notepad because I do want you to be able to keep
25 your notepad.

1 Many, many years ago, I didn't do that,
2 and bless their hearts, the jurors every day, everybody
3 was getting somebody else's notepad, and it ended up
4 being absolutely of no assistance to anybody.

5 Let me just tell you when you leave the
6 courtroom, you're going to leave your notepads here in
7 the courtroom in the morning break and then at lunch,
8 and we will secure them. Let me also share with you
9 that when the trial is concluded, and your deliberations
10 are concluded, if you want to take your notes with you,
11 that's perfectly fine.

12 If you do not take your notes with you,
13 I want you to understand exactly what's going to happen
14 with them. It is my policy that when jurors are given
15 the opportunity to take notes, once the trial has ended,
16 our bailiffs bring your notepads to my chambers, to me,
17 and I destroy them. They don't slip away; they don't
18 go anywhere.

19 So if you carry them with you, that's
20 perfectly fine. If not, they come to my chambers,
21 and I get the paper cut tearing them up. So just so you
22 know that would be their destiny. And I share that with
23 you for what its worth.

24 Now, ladies and gentlemen, the Defendant
25 in this case, and if I say Defendant, I mean Mr. Cobbs,

1 Mr. Keunte Cobbs. So, I may use those terms. I may
2 use his name, Mr. Cobbs; I may say Defendant. But if
3 I do say the Defendant or Defendant, I mean Mr. Cobbs.
4 So please understand that.

5 Ladies and gentlemen, Mr. Cobbs is charged
6 by an indictment filed with this court with the crime
7 of murder. I will explain in greater detail what the
8 elements of murder are very briefly. It is the unlawful
9 killing of another with malice aforethought. I'm going
10 to talk to you when I give you the concluding
11 instruction what that means. I will give you
12 definitions, and I will go through that with you.

13 Ladies and gentlemen, I do want to share
14 with you that an indictment, as I've told you yesterday,
15 is simply the charge by which the case is brought into
16 court. And it is not in any sense evidence of any
17 of the allegations it contains. As I've told you
18 yesterday, and I repeat, Mr. Cobbs has pled not guilty
19 to this indictment. The State, therefore, has the
20 burden of proving each of the elements of this
21 indictment beyond a reasonable doubt. That is their
22 burden of proof. Beyond a reasonable doubt.

23 Ladies and gentlemen, it will be your
24 duty, it will be your duty, to decide whether the State
25 has met that burden. Now in order to determine whether

1 the State has met its burden, you will find and
2 determine the facts. You're the fact finders; you're
3 the sole fact finders. You're the only judge of the
4 facts.

5 Ladies and gentlemen, if at any time I make
6 what you believe to be a comment regarding the facts,
7 I'm going to ask you right now please disregard that
8 because I don't have an opinion regarding the facts.
9 The law doesn't allow me to have an opinion. I don't
10 have an opinion. That is a matter solely for you to
11 determine. You're are the sole, the only, the complete
12 and total determiner of the facts in this case. Our law
13 doesn't allow me to have an opinion regarding the facts.
14 That is a matter solely for you to determine.

15 You are to determine the facts from the
16 sworn testimony you hear and from other evidence which
17 will be introduced in court, or may be introduced in
18 court. It is up to you to determine what, if any,
19 inferences you feel can properly be drawn from the
20 evidence.

21 You know, ladies and gentlemen, it is
22 especially important that you perform your duty of
23 determining the facts diligently and conscientiously
24 because, you see, under our law ordinarily there is no
25 way to correct an erroneous determination of the facts

1 by a trial jury. The facts as determined by you will
2 be the facts for all time.

3 Now on the other hand, and with equal
4 emphasis, the same law that makes you the judges of the
5 facts, make me the judge of the law. The law as given
6 to you by the Court is the only law that you may
7 consider. You must accept and you must apply the law
8 exactly as I've stated to you.

9 If you came into court, and you had a
10 preconceived idea about what the law is or what it ought
11 to be it, and it should disagree with what I tell you
12 the law is, well, maybe you want to have a conversation
13 with your legislator at some point. But for our system
14 to work correctly, you must accept and apply the law as
15 I've stated to you. If I make an error, there's another
16 time and place for my error to be corrected. But you
17 must accept and apply the law as I've stated to you.

18 I cannot have a comment or an opinion
19 or comment on in any regard concerning the facts.
20 That is your purview, your duty, and you cannot disagree
21 with me about what the law is. That is how we share
22 those duties. You're the finders of the facts; I'm the
23 judge of the law.

24 Now, the way that your deliberations when
25 that time comes will work is you will make the findings

1 of fact based upon the evidence and other exhibits which
2 are admitted into evidence, and any inferences that you
3 believe ought to be drawn from the evidence. You will
4 make those findings of fact. You will take the law as
5 I give it to you, and you will apply it to those facts,
6 and that is how you will reach your verdict.

7 Now, ladies and gentlemen, until I advise
8 you to begin your deliberations, you must not discuss
9 this case with anyone, including your fellow jurors,
10 friends and family members, and anyone involved in
11 the case. Remember, we went over that yesterday.
12 And now you know why my children think I'm a nag.

13 It's very important that you not discuss
14 this matter with anyone; your family, your friends,
15 anyone involved in the case, or your fellow jurors.
16 This includes discussions face to face and those by
17 telephone, e-mail, text, blogs, or any other method
18 of communication. You may not use a computer, cellular
19 phone, or other electronic device with communication
20 capabilities at any time while in the courtroom
21 or during deliberations.

22 During your breaks for meals or overnights,
23 if necessary, you may use these devices. However, you
24 may not at any time use these devices to get or send
25 information about the case. This includes information

1 about a party, a witness, an attorney, a court officer,
2 news accounts about the case, research on any topics
3 raised, any topics you may think would be helpful in
4 deciding the case, or any testimony presented by any
5 witness.

6 Ladies and gentlemen, during the trial,
7 do not read, listen to or watch any news report about
8 the case. And this, of course, includes anything that
9 may be in the newspaper, television, radio or internet.
10 You must not consider anything that you may have read
11 or heard about the case outside of the courtroom,
12 whether before or during the trial.

13 After the case is submitted to you, you must
14 discuss it only in the jury room with your fellow
15 jurors. The attorneys and the parties in this case have
16 been advised they are not to talk to you at all. So if
17 you see anyone involved in the case, and they don't even
18 say hello, please remember they're not being unfriendly,
19 they're simply following my instructions.

20 Ladies and gentlemen, again, let's me
21 reassure you there will be no question in your mind
22 when it's the time to discuss the case, when the time
23 for your deliberations has come because I am going to
24 specifically tell you, now is the time to begin your
25 deliberations. It won't be a mystery. It will be clear

1 to you.

2 Ladies and gentlemen, as a juror, it really
3 becomes your duty to keep an open mind and not make up
4 your mind about anything until you have heard
5 everything, until you have heard all of the evidence
6 presented, the parties have made their closing
7 arguments, and I have instructed you regarding the law
8 applicable to this case.

9 Now, ladies and gentlemen, it is your solemn
10 responsibility to determine whether the State has met
11 its burden of proof and to so indicate by finding the
12 Defendant guilty or not guilty. Your verdict must be
13 based solely on the evidence as it is presented to you
14 in this trial, and on the law as I instruct you, perhaps
15 during, but certainly at the close of the trial.

16 Now, ladies and gentlemen, in just a moment
17 the solicitor will make what is called an opening
18 statement to you, in which he will explain to you what
19 he believes the issues are in this case. One of the
20 attorneys for the Defendant may also make an opening
21 statement, and I expect they will.

22 I want you to understand that what the
23 attorneys tell you during their opening statements
24 is not evidence in this case. It is important.
25 Please give them your undivided attention. But remember

1 the evidence comes from the sworn testimony as well
2 as from any exhibit, which are admitted into evidence.

3 Now, ladies and gentlemen, I do want to
4 talk to you a little bit about the rules of evidence.
5 What are the rules of evidence? Well, you have learned
6 over the course of yesterday and today that a trial
7 is a structured activity. And as in most structured
8 activities, such as business or sports, there are
9 certain rules both sides must adhere to.

10 The same is true in a trial. The rules to
11 which these attorneys will comply are called the rules
12 of evidence. And it is their duty to call a possible
13 violation of these rules to my attention. It is their
14 duty. And because it is their duty, you must not hold
15 an attorney's objection against his client, nor should
16 you conclude from my ruling on the objection that
17 I favor one side over the other because I do not.

18 Ruling on the admissibility of evidence,
19 those are matters of law. Once evidence is admitted,
20 whether you believe it, the weight you give to it,
21 and any inferences you may choose to draw from it,
22 are matters for you to determine. But the admissibility
23 of evidence, those are matters of law.

24 Now you will hear the attorneys do one
25 of a couple of things. You may hear them simply stand

1 and say, objection. They may state simply a word
2 or two, so that I will understand the basis for their
3 objection. You may hear them say something like
4 objection, hearsay. And what that means is I believe
5 that this bit of evidence is violating the hearsay rule.

6 I very well may know where they're coming
7 from and be able to rule on the admissibility. If I say
8 sustained, what that means is, is that I agree. I think
9 that bit of evidence cannot be received in that fashion.
10 I may say overruled, and that means I don't think there
11 is a violation, and you may proceed.

12 Now you may also hear me say counsel,
13 approach. And this is what you're going to hear.
14 You're going to the beach. Ocean. Did you hear the
15 ocean? Use your imagination. And, yes, that is white
16 noise that I am playing so you cannot hear me. Why
17 would I do that? Well, let me explain to you exactly
18 what is going on.

19 If I have the attorneys approach,
20 what is going on is that I just need to have a word
21 or two with them to help me rule on the objection,
22 or the admissibility of that bit of evidence. I don't
23 want you to hear me. Why? Because I would not want
24 anything that I might say over the course of ruling on
25 the admissibility of a bit of evidence to be considered

1 by you as being a comment on the facts. It just lets
2 me do my job. And so, yes, I am masking what is being
3 said. That is exactly -- but that is the why. It just
4 lets me do what I must do.

5 There may be occasions, and I could assure
6 you these will be kept to a minimum, when I will need
7 to ask you to step to the jury room for just a moment.
8 And, quite frankly, that's so I can have a little more
9 of a conversation to allow me to rule. But again,
10 I will keep those to a minimum, or that will certainly
11 be my intention to keep those to a minimum. But again,
12 it is to give me the ability to do what I must do.

13 Now, ladies and gentlemen, in determining
14 what the true facts are in this case, you must decide
15 whether or not the testimony of the witnesses is
16 believable. It will be my responsibility to rule as
17 a matter of law as to whether certain testimony is
18 admissible at all or not. But once it is admissible,
19 whether or not you believe it, are matters solely for
20 you determine.

21 And in deciding whether to believe
22 a witness, you have the right to consider the interest
23 of any witness, the bias of any witness, the prejudice
24 of any witness, the opportunity for the witness to have
25 seen the matters and things about which the witness may

1 testify, and you may consider the way the witness acts
2 on the witness stand. This list is certainly not
3 exhausted. It's just examples of things that you may
4 consider.

5 You have a right to consider anything that
6 is in the record that would help you evaluate the
7 testimony of the witnesses. That means it is your duty
8 to pay close attention to these witnesses, observe them,
9 listen to them, and pay close attention to the attorneys
10 and to the Court.

11 Please do not let your thoughts wander,
12 but give the strictest of attention to the testimony
13 in this case so that at the end of all the testimony,
14 and the arguments of counsel, and the charge on the law
15 by the Court, you will then be in a position to perform
16 your solemn duty in determining the facts in this case,
17 and to ascertain, to decide, to determine whether the
18 State has met its burden of proof.

19 Now, I want to go briefly over the procedure
20 that we are going to be following. I spoke to you
21 briefly about opening statements. You'll hear the
22 opening statements of the attorneys. And once the
23 opening statements have concluded, then you -- you will
24 then hear from the State.

25 The State will present its evidence.

1 Evidence may take many forms. It will be sworn
2 testimony. It could be documents. It could be
3 photographs and the like. It's really important
4 that you pay close attention to all of the evidence
5 that is presented by both sides.

6 Ladies and gentlemen, once you've heard from
7 the State, then the Defendant will have an opportunity
8 to present his defense. Ladies and gentlemen, I urge
9 you to keep in mind that it is the State, and the State
10 only, that has the burden of proof.

11 Once all the evidence has been presented,
12 then the attorneys will have an opportunity to make what
13 are called closing arguments to you, and those are true
14 arguments. By that, what I mean is that no doubt each
15 side will emphasize certain portions of the evidence
16 and try to convince you to agree with their version
17 of the facts.

18 Ladies and gentlemen, it is so important
19 that you give to these attorneys your undivided
20 attention. And as I said earlier, remember that what
21 they say -- while it is so important, what they say
22 is not evidence. The evidence comes from the sworn
23 witnesses and from exhibits admitted into evidence.

24 Now, ladies and gentlemen, I am nearing the
25 conclusion of my opening remarks to you. And at this

1 point, I'm going to ask for you to help me in this
2 regard. I have to tell you a story first quickly,
3 or it won't make any sense. When I was a little girl,
4 and we would go to services, I have two older brothers.
5 I was the one that always had to sit next to my mom.
6 I was the squirmer. They were good. I was the
7 squirmer.

8 Inevitably, at some point, my mother would
9 do this, but I thought she was sleeping. The squirming
10 was on. I would mess with my brothers. I would get
11 a little pencil and the little card and start coloring.
12 I would look around for things that I could mess with.
13 And inevitably the pinch came, which was merely a
14 precursor of things to come. I thought she was
15 sleeping.

16 I did not realize that she was concentrating
17 with her eyes closed. As a favor to me, since we just
18 met, and obviously, I can't tell the difference, please
19 concentrate with your eyes open, so I don't make the
20 same mistake that I made with my own mama. So as a
21 favor to me, please do not concentrate with your eyes
22 closed because I might mess up and think you are
23 sleeping. So as a favor to me, I would ask that.

24 Ladies and gentlemen, in order to protect
25 everyone's rights, it is necessary that I inquire

1 whether or not there are any exceptions or additions
2 from the State.

3 MR. SPEARS: None, Your Honor.

4 THE COURT: From the defense?

5 MR. CHISHOLM: No, Your Honor.

6 THE COURT: Ladies and gentlemen, at this
7 time, please draw close -- I have a question, and then
8 we're going to have opening statements. However, my
9 understanding is that someone was concerned that they
10 live in Cottageville and not in Dorchester County.
11 Anybody worried about that? No. Everybody is good?
12 Okay. Everybody lives in Dorchester County. No one
13 has decided that they have moved to Colleton overnight.
14 Wonderful.

15 Ladies and gentlemen, I am going to ask
16 that you please draw close as we listen to the opening
17 statements. However, Counsel let me ask you to approach
18 for just one second before we get to hear those.

19 (Off-the-record conversation held at sidebar.)

20 (Back on the record.)

21 MR. ALLEN: Good morning, Your Honor.

22 THE COURT: Yes.

23 MR. ALLEN: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. ALLEN: Good morning, everybody.

OPENING STATEMENTS - MR. ALLEN

1 THE JURORS: Good morning.

2 MR. ALLEN: The events of this case take
3 place in the early morning of June 5th, 2016. It's
4 about 2:15 in the morning. Two young men walk into
5 an IHOP restaurant located on Dorchester Road, down
6 in Summerville. The two men are named Bradford Spells
7 and Brannon Mack.

8 The two men walk into the front of the
9 restaurant. They walk straight back into the bathrooms,
10 and within moments of walking back into the bathrooms,
11 a volley of gunshots rings out, multiple gunshots.
12 Three men exit the bathroom, and the only three men
13 that exit the bathroom, Mr. Spells and Mr. Mack, both
14 of whom have been shot. And a third man wearing a red
15 shirt, bald head, runs out of the bathroom, leaps over
16 Mr. Spells, runs off into the night.

17 Folks, I submit to you that the evidence,
18 the testimony that we're going to present over the next
19 couple of days will prove to you that the man in the red
20 shirt, the man who fired the rounds inside of that
21 bathroom, sitting here in the courtroom today, is the
22 Defendant, Keunte Cobbs.

23 Now, Mr. Spells was shot in his abdomen,
24 through and through, we call it. He survived his
25 injuries. Mr. Mack was shot numerous times down the

1 left side of his body. He was transported to Trident
2 Hospital, and he ultimately died as a result of the
3 injuries he sustained that evening. As a consequence
4 of what happened that night, the Defendant stands before
5 you charged with murder.

6 Now, the judge has already explained to
7 you that murder is the killing of another with malice
8 aforethought, and the judge will explain a lot more
9 about the law towards the end of the case. But I just
10 want to introduce my ideas to you right now.

11 Malice aforethought is basically
12 premeditation, right. And what you have to know about
13 that is that there's no length of time that this has
14 to happen before the act forms in the person's mind.
15 It can happen the instant beforehand. And now malice
16 is just ill will, hatred towards another person.
17 We show malice as either expressed or inferred malice.

18 Expressed malice is kind of like what
19 it sounds. A person uses words that express hatred
20 or ill will towards another human, or a person prepares
21 for the act that's ultimately performed. That's
22 expressed malice.

23 Inferred malice allows you to infer malice
24 from the conduct of the actor if those actions display
25 a complete disregard for the value of human life.

OPENING STATEMENTS - MR. ALLEN

1 Now, it's our job, Mr. Spears and I, to
2 prove the Defendant's guilt to you beyond a reasonable
3 doubt. Judge Goodstein just explained that to you.
4 I want to explain to you a little bit about what that
5 means, this term reasonable doubt. Maybe you've heard
6 it before, maybe you've seen it on T.V., or maybe you've
7 served on a jury.

8 Reasonable doubt means just what it sounds
9 like. Reasonable doubt. It does not mean proof beyond
10 all doubt. It doesn't mean proof beyond any doubt.
11 There are very few things in this world we can be
12 absolutely certain about, 100 percent certain about,
13 right. And the law does not require absolute certainty.

14 What the law requires is that after you've
15 seen all of the evidence, and you've heard all of the
16 testimony, and after you have had a chance to deliberate
17 back in the jury room, if you are firmly convinced that
18 this Defendant is guilty, then you have a duty under
19 your oath as jurors to find him guilty.

20 So how are we going to do that? How are we
21 going to prove the case to you? Well, we're going to do
22 it, as we've mentioned, through testimony and evidence.
23 Now, I don't want to go through all of the details that
24 we're going to go through over the next couple of days
25 right now. But I just want to highlight a few things

OPENING STATEMENTS - MR. ALLEN

1 for you guys to pay special attention to.

2 First off, who is the man in the red shirt
3 shooting inside of an IHOP restaurant? There's security
4 camera footage, a number of camera angles throughout
5 the restaurant. So you'll see the movements of folks
6 within the restaurant, but it's not very clear. It's
7 not a very high-resolution camera, so it's difficult
8 to see people's faces.

9 Now you'll also see some cell phone footage
10 of another group of folks that were at the restaurant
11 that night. And that footage will show the face of the
12 Defendant as the man wearing the red shirt, baldheaded.
13 So, I submit to you, ladies and gentlemen, the evidence
14 will show that the man in red is the Defendant,
15 Mr. Cobbs.

16 Now the second thing I want y'all to pay
17 attention to is how many people were in that bathroom,
18 and who was in that bathroom. It's a busy restaurant,
19 two o'clock in the morning on a weekend night. There's
20 a lot of folks milling around. And you'll see the
21 footage. We'll play it through a few witnesses.
22 And, of course, you'll have it back in the jury room.
23 You can see it for yourself.

24 And if you carefully walk through the film,
25 what you'll see is that the only three people that could

OPENING STATEMENTS - MR. ALLEN

1 have been in that bathroom, the only people who left
2 that bathroom, was Mr. Mack, Mr. Spells, and the man
3 in the red shirt.

4 The last thing I want to talk a little
5 bit about, and I want you to pay special attention
6 to is what happened in that bathroom. Obviously,
7 it's a bathroom. We don't have security camera footage.
8 We can't show you what happened in that bathroom. But,
9 folks, y'all don't need to see a video of what happened
10 in the bathroom to figure out what happened, to know
11 what happened.

12 See, we have -- there's two kinds of
13 evidence in this case. There's what we call direct
14 evidence and circumstantial evidence. Direct evidence
15 would be imagine -- use your imagination with me, if you
16 will, that it was raining outside. And if I said, it's
17 raining outside after looking out that window, that's
18 what we call direct evidence. I am seeing directly
19 that it's raining.

20 On the other hand, imagine if there were
21 no windows in this room. I can't see outside. But when
22 I was coming into the courthouse today, paid attention
23 to the weather, and the weather said there's a 90
24 percent chance of rain around noon today. And when
25 I walked into the courthouse, it wasn't raining,

OPENING STATEMENTS - MR. ALLEN

1 but it was really overcast. It looked like rain.
2 Imagine if somebody walks from those back doors there,
3 and he's got a rain jacket, and he's dripping wet.

4 Well, that's what we call circumstantial
5 evidence. It's a series of facts that tend to prove
6 the existence of some other facts. The important thing
7 you've got to know about that is that in the eyes of the
8 law, there's no difference between the two. You can use
9 direct evidence; you can use circumstantial evidence.

10 So what you're going to see over the course
11 of the next couple of days is that Mr. Mack walks into
12 the bathroom in front of Mr. Spells. You'll see that
13 in the video. You will see that there's a lanyard,
14 a necklace key chain, that has keys on it, and those
15 keys belong to Mr. Mack. It opens the door to his car
16 -- his mom's car. Those keys are on the bathroom sink
17 to the right. And Mr. Mack is shot down the left side
18 of his body. I submit that evidence to tell you what
19 happened in that bathroom.

20 Now you'll also hear that Mr. Mack had
21 a gun, and that Mr. Spells, likely, also had a gun.
22 There was another gun found in the bushes that likely
23 belonged to Mr. Spells. And there was a gun found in
24 the ambulance that Mr. Mack rode in on the way to the
25 hospital. But you'll also hear that none of the bullets

OPENING STATEMENTS - MR. LOY

1 that were fired inside of that bathroom were fired from
2 those two guns.

3 So, ladies and gentlemen, ultimately, what
4 we're asking you to do here throughout this trial as you
5 listen to all this evidence, is really just to use your
6 common sense. You know, use the experiences that you've
7 had throughout your lives to evaluate all the things you
8 guys see.

9 And I'm very confident that if you do that,
10 after you've seen all the evidence, heard all the
11 testimony, you've deliberated back there, that you will
12 be firmly convinced that Mr. Cobbs is guilty of the
13 murder of Brannon Mack. Thank you, ladies and
14 gentlemen.

15 THE COURT: Thank you.

16 MR. LOY: Thank you, Your Honor.

17 THE COURT: Mr. Loy.

18 MR. LOY: Good morning.

19 THE JURORS: Good morning.

20 MR. LOY: There's a few things that get
21 talked about in court over and over, and it's kind
22 of important. So when the judge talks about presumption
23 of innocence, burden of proof, and reasonable doubt,
24 and the solicitor gets up and talks about it, I've got
25 to too because it's critical. It's the crux of what

OPENING STATEMENTS - MR. LOY

1 y'all are called to do here today.

2 So you've heard the term presumed innocent,
3 and everybody figures, yeah, that's fair. Presumed
4 innocent, haven't had a trial, presumed innocent,
5 wait to see what happens. When there's a presumption
6 of innocence, it puts the burden of proof on the State,
7 that is to prove the guilt of the Defendant beyond every
8 reasonable doubt..

9 The judge will tell you at the end of the
10 trial that a reasonable doubt is the kind of doubt that
11 would cause a person to hesitate to act. So if at the
12 close of your deliberations, close of testimony in this
13 case, you have that type of doubt about what happened
14 in the bathroom on that particular night, then the State
15 has failed, and it's your duty under your oath to return
16 a verdict of not guilty.

17 All right. Easy enough, right? Presumed
18 innocent, weigh the testimony, return a true verdict.
19 No. Wrong. It's simple enough. Those rules are
20 simple. But simple is not the same thing as easy.
21 And the reason I say that is because in most people's
22 day-to-day life, when they read the paper, when they
23 watch the news, when they hear about people being --
24 there's not a presumption of innocence. There's
25 a presumption of guilt.

OPENING STATEMENTS - MR. LOY

1 It's okay. Those people are not on a jury.
2 They have no personal interest; they don't investigate
3 the case; they don't sit on a trial. They want to
4 believe that the system gets it right. And what I mean
5 by that is very few people get up in the morning, make
6 coffee, sit down, open the paper, look up at their
7 spouse, roommate, whoever, and say, oh, they have
8 accused two guys of being the ones who robbed the bank.
9 What they say is they caught those guys who robbed
10 the bank, and it's natural. That's what people do.

11 So when I say it's simple to make the
12 presumption, it is. It's a simple rule, but it goes
13 against most people's general mindset. And that's okay
14 out in the world. Again, they don't have a dog in the
15 fight, so to speak. But for today, it's critically
16 important that you do just that. That is, take a
17 breath, turn the key, whatever it is to cleanse your
18 pallet, so to speak, and get back to the place where
19 you actually start at ground zero, and say they've
20 proved absolutely nothing.

21 He is presumed completely innocent,
22 not we'll wait and see. But, no, there's an innocent
23 man sitting at the table right now. We've heard nothing
24 against him. And we await to hear from the State
25 to prove him guilty beyond every reasonable doubt.

OPENING STATEMENTS - MR. LOY

1 So that's where we start. And again, a reasonable doubt
2 is the kind of doubt that would cause you to hesitate
3 to act.

4 Now, the State law enforcement, they're
5 the ones who made the arrest, prepared this charge.
6 The solicitor is the one who prepared an indictment,
7 signed off on it, and say he's going to try this case
8 for murder, and he's going to prove the Defendant guilty
9 of murder.

10 Murder is the unlawful killing of another
11 person without adequate legal provocation or excuse
12 and with malice aforethought. That's what he's going
13 to prove to you to win this case, and he cannot do it.
14 The solicitor -- everybody who works on this side of the
15 bar week in, day out, week in, week out would agree he's
16 a smart guy, he's a good lawyer. But he doesn't really
17 understand this case because this case is all about what
18 happened in this bathroom at IHOP back in June of 2016.

19 Now, I'll tell you a story. It's two
20 o'clock in the morning, a guy goes to IHOP, walks in,
21 orders some grapefruit juice, flirts with the waitress
22 a little bit. They know him; they like him. He talks
23 to some other people in there. He's got no issues with
24 anybody. He's not causing a problem, nobody's
25 complaining about him. He doesn't look malicious

OPENING STATEMENTS - MR. LOY

1 to anybody in there. He doesn't have a complaint.
2 Everything is nice. Eventually, he gets up, and he goes
3 to the bathroom.

4 Now, here's where the story gets
5 interesting. He goes to the bathroom, and as soon as
6 he gets in the bathroom, pretty much as soon as that
7 door closes, two other guys come through the front door.
8 They hadn't been in the restaurant. It's almost like
9 they were waiting. He goes to the bathroom. As soon
10 as he does, two guys come through the front door,
11 and they come through essentially shoulder to shoulder.
12 Then they head to that bathroom door. And they don't
13 stop at the hostess station, and they don't say table
14 for two, and they don't hail anybody or slow down.
15 They go straight to that bathroom door.

16 Now something about these guys. Both
17 of them, and as they say on T.V., are packing heat.
18 Both of them got guns. Soon as the man walks into
19 the bathroom, these two guys come through the door,
20 Wyatt Earp and Doc Holliday, shoulder to shoulder on
21 their way to the O.K. Corral, and they stride straight
22 for that bathroom door.

23 Not surprisingly there's a problem.
24 Now, you just stop right here. Stop the story right
25 here. You pretty much know what's going on, don't you?

OPENING STATEMENTS - MR. LOY

1 If I'm right, and if this is what the evidence shows you
2 happened, it's pretty clear, isn't it? You know what's
3 going on. Anyway, not surprisingly there's a problem.
4 Two guys are shot.

5 Now law enforcement is called. They do
6 the things that they do. They interview the witnesses.
7 They seize tapes; they seize evidence. They do that
8 sort of thing, and they rush to the hospital because
9 they want to talk to these guys. They may not make
10 it. This may be their only chance to get a statement,
11 to gather the evidence.

12 So they meet down at the hospital,
13 and they talk to the people that the State is going to
14 characterize as victims. Again, the victims are these
15 guys who showed up. There was no problem until they got
16 there, who showed up. I mean, who's predator, and who's
17 prey in that situation.

18 With everyone in that bathroom, there's
19 nowhere to go, back against the wall. There isn't but
20 one way in, and these two guys come in after him, like
21 I said, almost like they were waiting. So law
22 enforcement gets to the hospital. Sir, what happened?
23 I've got nothing to say. Well, can you tell us who did
24 this? No. We need help to solve this. Can we get you
25 to look at this photo lineup? No. They get -- and

OPENING STATEMENTS - MR. LOY

1 you'll hear this from law enforcement -- zero
2 cooperation from these two guys. Why? Let the State
3 explain to you during the course of their case and the
4 presentation of their evidence why neither one of these
5 guys wanted law enforcement to know what happened in
6 that bathroom.

7 Now, the reason I say the solicitor doesn't
8 understand this case is because he says, I think I wrote
9 it down, that you need to pay special attention to who
10 is the man in the red shirt, okay. Critical. And
11 I submit to you that part of the reason the State wants
12 to do that is to frame the question, okay.

13 If you frame the question, you get to steer
14 the argument a little bit. Let me clear up something
15 for you. That's him, all right. So if the State
16 decided to come in here and just prove over the course
17 of the morning five different ways that the Defendant is
18 the guy in the red shirt, they're killing a sledgehammer
19 with a gnat -- killing a gnat with a sledgehammer. You
20 get it. Regardless, it's unnecessary. It's just that's
21 what they got, so that's what they're going to give you.
22 That's not the question.

23 Then, they're going to argue with you.
24 This is a math problem. What you need to focus on
25 is how many people were in the restroom, watch the tape,

OPENING STATEMENTS - MR. LOY

1 no one else could have come, no one else could have
2 left. They're going to argue this, and they're going
3 to present evidence to support this and all. That's not
4 the question. There was three.

5 And then the question is going to be what
6 happened in the bathroom. So he tells you, and that
7 is part of the question. Part of the question is what
8 happened in the bathroom. They had at least -- two
9 people, you would think, would have a vested interest
10 to help them prove what happened in the bathroom,
11 if their theory of the case is right. And you will know
12 at the end of the trial that those two guys, neither one
13 had any interest in shining the light on what happened
14 in there for reasons y'all could probably figure out.

15 So the question really is going to be how
16 are they going to prove a murder. Homicide is killing
17 a person, but that's a different word for murder.
18 The judge talked about an illegal homicide is the first
19 element for a murder because not every homicide is
20 illegal. There are accidents, a person kills a person.
21 There's certainly acts of war; there's self-defense;
22 there's negligence. Somebody gets shot in a hunting
23 accident. I mean, there are various ways people get
24 killed that are not murder.

25 For a murder, the State is going to prove

1 that whatever happened in that bathroom, it happened
2 at Mr. Cobbs' hands, and he had malice in his heart.
3 Malice sometimes defined in the law as a wicked and
4 malignant heart, fatally bent upon mischief. So the
5 point is they don't get to just say this happened in the
6 bathroom, and he was the other guy in there. They've
7 got to prove what was in his heart, that is, malice
8 aforethought.

9 Now, if you act in self-defense, it's not
10 malice. If you have an accident, it's not malice.
11 If you act to protect other people, it's not malice.
12 I mean, whatever. No. Malice is wicked heart,
13 fatally bent upon mischief.

14 Now, if the evidence, the videotapes you
15 watch, bares out the way I have described, that is,
16 Mr. Cobbs is in the restaurant, Mr. Cobbs is minding
17 his business, Mr. Cobbs is, apparently, in a good mood,
18 joking with people, creating no problem, Mr. Cobbs goes
19 to the bathroom, two apparent assassins roll up on him.
20 Whose got malice in their heart that night? Keep these
21 things in mind during the course of the trial, please.
22 Thank you.

23 THE COURT: Thank you. All right. Ladies
24 and gentlemen, I understand that some of you are not
25 enjoying the beaming sunshine coming through the windows

1 in Dorchester County, and it's that window, isn't it?
2 Is it that one too, because normally it's this one.

3 THE JUROR: It's beating down on my neck.

4 THE COURT: I'm sorry. We can fix that.

5 All right. So does anybody need to take a quick comfort
6 break? You do need a comfort break. All right. Very
7 well. We'll take a comfort break. Remember, do not
8 discuss this matter, or allow anyone to discuss it with
9 you.

10 And here's what's really kind of funny.
11 If you leave your notepads in your seats, you're
12 probably going to want to come back to that seat with
13 your notepad. Here's what we're going to do. We will
14 take a comfort break, take what time you need, knock on
15 the door when y'all have completed your comfort break.
16 Very well. So if you will step to your jury room.
17 Do not discuss this matter, or allow anyone to discuss
18 it with you. And leave your notepads in your seat.

19 (Jury exits the courtroom at 11:07 a.m.)

20 THE COURT: Y'all can be at ease too,
21 and take a comfort break.

22 MR. SPEARS: Thank you, Your Honor.

23 (Recess taken.)

24 (Back on the record.)

25 THE COURT: Just before we bring the jury

DIRECT EXAMINATION - MR. SPEARS

1 back, have you all had a chance to just chat with the
2 alleged victim's family, and let them know about if they
3 need to come and go, it's okay.

4 MR. SPEARS: Yes, Your Honor.

5 THE COURT: Okay. Very well. Thank you.
6 Okay.

7 (Jury enters the courtroom at 11:19 a.m.)

8 THE COURT: All right. Yes, call your first
9 witness, please.

10 MR. SPEARS: Thank you, Your Honor.
11 State call Justin Jenkins.

12 MR. JUSTIN JENKINS was called as a witness,
13 being duly sworn, was examined and testified as follows:

14 THE COURT: Your witness.

15 MR. SPEARS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. SPEARS:

18 Q. Mr. Jenkins, what do you do for a living?

19 A. I own a trucking company.

20 Q. All right. And where were you employed back
21 in 2016?

22 A. Dorchester County Sheriff's Office.

23 Q. How long did you work there?

24 A. Just almost -- right at two years.

25 Q. And what was your position there?

DIRECT EXAMINATION - MR. SPEARS

1 A. I was a patrolman on Team 3 nightshift.

2 Q. All right. And can you tell us some of your
3 duties as a patrolman?

4 A. Answer any calls by dispatch that I was sent
5 to go to, investigate the initial actions of crimes
6 that I was dispatched to, provide just normal security
7 and law enforcement functions throughout the county.

8 Q. All right. So let's go back to June 5th of 2016.
9 Did you respond to an incident around 2:00 a.m. at that
10 time?

11 A. I did.

12 Q. All right. And where was that incident located?

13 A. That would be the IHOP on Dorchester Road,
14 near Dorchester and Ladson.

15 Q. And what county is that in?

16 A. Dorchester.

17 Q. What was the nature of the call that you
18 responded to?

19 A. The initial call that I was sent to was
20 a shooting.

21 Q. And can you just describe to the jury a little
22 bit the scene that you saw when you arrived?

23 A. I was the first one there. When I pulled in,
24 the initial scene was a lot of chaos, a lot of people
25 running out of the entrance of the building.

DIRECT EXAMINATION - MR. SPEARS

1 As I walked up to the front doors of the establishment,
2 I noticed there was two individuals laying, one on the
3 bench, one on the ground behind the bench, being tended
4 to by a couple of patrons of the business.

5 Q. And was there an active shooter at the scene?

6 A. No, there was not.

7 Q. Okay. And what did you do after you noticed
8 those individuals being tended to?

9 A. Once I noticed they were tended to, and there
10 was no further threat, at the time I tried to use as
11 much containment on the scene as I could until backup
12 officers arrived to assist. Once they arrived, we went
13 on further from there.

14 Q. And can you describe to the jury when you say
15 went on further?

16 A. Right. We -- at that point, one of the
17 individuals that was tending to one of the victims
18 stated they were, I believe, a nurse that was coming
19 to get lunch. So they are being taken care of.
20 EMS arrived shortly after the backup officers arrived.
21 So while they were tending to the victims, myself and
22 other deputies went into the establishment, went ahead
23 and walked through the entire building to make sure
24 there was no other victims, no other threats at the
25 time.

CROSS-EXAMINATION - MR. CHISHOLM

1 Q. Was there anyone else in the restaurant when you
2 walked through?

3 A. There was not.

4 Q. Okay. And what did you see when you walked
5 through the restaurant?

6 A. When we walked through the entire restaurant --
7 approached or turned out of the restaurant, we went into
8 the restroom. The front of the establishment is where
9 we noticed there was evidence of what we believe was
10 the initial spot for the crime. There was blood on some
11 of the bathroom floor. There was some money on the
12 counter, just evidence of that being the place of the
13 crime.

14 Q. And which bathroom was that?

15 A. Men's restroom.

16 Q. At any point in time when you were clearing
17 the restaurant, did anyone exit the bathroom?

18 A. No.

19 Q. Was anyone in the bathroom when you entered it?

20 A. No.

21 MR. SPEARS: Please answer any questions
22 the defense might have for you.

23 THE COURT: Cross-examination.

24 MR. CHISHOLM: Thank you, Your Honor.

25 May it please the Court.

REDIRECT EXAMINATION - MR. SPEARS

1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MR. CHISHOLM:

4 Q. Mr. Jenkins, you were the initial responding
5 officer; is that right?

6 A. Yes.

7 Q. In layman's terms, I guess you could say you're
8 the first guy on the scene from law enforcement?

9 A. Yes.

10 Q. As the first guy on the scene, did you attempt to
11 talk to either of the alleged victims that you observed
12 outside?

13 A. I did, just to try to get any information that
14 we could as far as who we might be looking for, if there
15 was still anybody in there, but there was no
16 cooperation.

17 Q. Okay. So you're trying to figure out what
18 happened here?

19 A. Right.

20 Q. And you're asking them, and they would not tell
21 you?

22 A. They couldn't really talk.

23 Q. Thank you.

24 MR. CHISHOLM: No further questions.

25 THE COURT: Very well. Any redirect?

DIRECT EXAMINATION - MR. SPEARS

1 MR. SPEARS: Very, very brief, Your Honor.

2 THE COURT: All right.

3 REDIRECT EXAMINATION

4 BY MR. SPEARS:

5 Q. Mr. Jenkins, can you just clarify when you said
6 they couldn't really talk?

7 A. All right. They've both just been shot.
8 They were in a lot of pain. They -- I think the
9 furthest thing from their mind was any question
10 I was asking.

11 Q. Thank you.

12 THE COURT: Yes, recross?

13 MR. CHISHOLM: None, Your Honor.

14 THE COURT: All right. Very well.

15 Call your next witness.

16 MR. SPEARS: Your Honor, State calls Thomas
17 Gathings.

18 MR. THOMAS GATHINGS was called as a witness,
19 being duly sworn, was examined and testified as follows:

20 THE COURT: Your witness.

21 MR. SPEARS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SPEARS:

24 Q. Where do you work, Mr. Gathings?

25 A. I'm director of operations for IHOP.

DIRECT EXAMINATION - MR. SPEARS

1 Q. And how long have you worked there?

2 A. I've been with IHOP four and a half years.

3 That franchise I was with them for over two years.

4 Q. What was your position at IHOP back in 2016?

5 A. I was an area director, and then I transitioned
6 to a director of operations.

7 Q. And when you say area director and director of
8 operations, was there a specific area that you covered?

9 A. Yeah. When I was relocated to South Carolina,
10 I had the North Myrtle Beach area. And then when
11 I became a director, I had all the way from Charleston
12 to Myrtle Beach.

13 Q. Can you just describe to us some of the duties
14 you had as a director of operations?

15 A. Everything, day to day, every guest, every meal,
16 every vendor. Anything that happened inside the
17 restaurant, I was in charge of it.

18 Q. And again with an area that wide, I mean,
19 I assume there's multiple restaurants?

20 A. Yes, there was nine.

21 Q. All right. Were you -- was the IHOP in
22 Dorchester County under your purview?

23 A. Yes.

24 Q. All right. And are there any other IHOPs
25 in Dorchester County -- how many IHOPs are there

DIRECT EXAMINATION - MR. SPEARS

1 in Dorchester County?

2 A. I think there's one on North Main in Summerville.
3 I don't know if that's Dorchester. That was a different
4 franchise. And I don't know exactly where the
5 Dorchester County -- one in North Charleston.

6 Q. I understand.

7 A. There's one downtown. But the closest one would
8 be the one on Main Street in Summerville.

9 Q. Gotcha. What about the one on Dorchester Road?

10 A. Dorchester Road, yes.

11 Q. All right. And how many times have you been
12 to the IHOP on Dorchester Road?

13 A. I would say anywhere from 40 to 70 times.

14 Q. And in those amount of times, have you been able
15 to familiarize yourself with the daily operations of
16 that IHOP?

17 A. Absolutely. I was there multiple hours at
18 a time, even remodeled the restaurant.

19 Q. Now, the IHOPs that were under your purview,
20 did they come equipped with security cameras?

21 A. Yes.

22 Q. All right. Is that a common practice?

23 A. Yes, it's required.

24 Q. Okay. And can you just explain a little bit to
25 us -- I know it's an easy question. But why they came

DIRECT EXAMINATION - MR. SPEARS

1 with security camera systems?

2 A. Well, the first thing is always for the
3 protection of the company, and then the protection
4 for the guests. You know, if somebody slipped and fell,
5 if somebody was stealing. And it was also for an
6 insurance issue because anybody could say, oh, I got
7 hurt at the restaurant, give me something. So it was
8 there mostly just for those instances for protection.

9 Q. And did these security systems keep recordings?

10 A. Yes.

11 Q. All right. And how were these recordings kept?

12 A. In the 2016 era, it was on a disc. Everything
13 was kind of loaded into the office, and they could pull
14 it off. We transitioned to now the Cloud. So we have
15 a third party that manages the Cloud. In 2016, it was
16 all on a DVR.

17 Q. Now if someone were to request footage from one
18 of these systems, would you be the individual to provide
19 that?

20 A. Yes.

21 Q. All right.

22 MR. SPEARS: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 BY MR. SPEARS:

DIRECT EXAMINATION - MR. SPEARS

1 Q. Now, Mr. Gathings, I'm showing you what's been
2 marked as State's Exhibit 76. Can you look at this
3 for me?

4 A. Okay.

5 Q. And do you recognize this?

6 A. Yes, it's a flash drive.

7 Q. All right. And what is on that flash drive?

8 A. That would be the security cameras of that day.

9 Q. And how -- did you have a chance to fully view
10 that flash drive?

11 A. Yes.

12 Q. And how do you know that that's the flash drive
13 that you viewed?

14 A. Because I signed it, and it's sealed.

15 Q. All right.

16 MR. SPEARS: Your Honor, at this point in
17 time, I would like to request State's 76 into evidence.

18 THE COURT: Any objection?

19 MR. CHISHOLM: No, Your Honor.

20 THE COURT: Very well.

21 (State's Exhibit No. 76 was admitted into evidence.)

22 MR. SPEARS: May I publish, Your Honor?

23 THE COURT: You may.

24 BY MR. SPEARS:

25 Q. And just briefly, sir, while that's loading for

DIRECT EXAMINATION - MR. SPEARS

1 us, did this security camera system show a single view
2 of an IHOP or multiple views?

3 A. Multiple views.

4 Q. Multiple views. And now on this flash drive
5 we're looking at here, can you just kind of guide
6 us through how to access the videos?

7 A. Yeah. You would double click where it says IHOP
8 through 242 with the date, and you would scroll down
9 to, I think, it's clear view 500. I'm looking for it.
10 I'm sorry.

11 Q. That's fine.

12 MR. SPEARS: May I approach up here,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. SPEARS:

16 A. Easy view log 500 I believe is where it is.

17 Q. All right.

18 MR. SPEARS: Court's indulgence, Your Honor.

19 THE COURT: All right.

20 BY MR. SPEARS:

21 Q. Now, Mr. Gathings, if we could go to multiple
22 view on here. Can you just guide us through one by one,
23 and I know it's stuck in the corner.

24 A. The top left corner is the front entrance where
25 you come into the restaurant. The one where the --

DIRECT EXAMINATION - MR. SPEARS

1 that would be the front entrance when you walk in.

2 Q. All right. And move over two No. 2.

3 A. That is going to be in the lobby, the cashier's
4 station where everybody would pay at the time.

5 Q. And it's kind of hard to see from here. Is that,
6 like, a direct downward angle?

7 A. Yes, it's overlooking the cash register.
8 Again, to protect theft, and to make sure the brand
9 is protected.

10 Q. All right. And let's move over to three?

11 A. Three is a picture of the lobby. As you see
12 the bench, that would be going into the dining room.

13 Q. And when you say bench, you're referring to over
14 here?

15 A. Yes, that bench right there. If you just kept
16 going to the left -- my left, you'll enter into an open
17 dining room.

18 Q. And over -- if you just look directly to the left
19 off of that side.

20 A. You would be in the previous screen, which was
21 that cashier's station.

22 Q. I understand. And what is directly down?

23 A. Directly down is a little hallway, maybe about
24 two feet long and about six feet wide and the bathrooms.

25 Q. All right. Move over to No. 4.

DIRECT EXAMINATION - MR. SPEARS

1 A. And that's just the dining room, that would be
2 from the back left corner looking towards the front
3 door.

4 Q. Okay. So if this is looking towards the front
5 door, then the front area would be that?

6 A. Yep. The front door is going to be at the top
7 of the screen.

8 Q. Okay. And let's look at No. 5.

9 A. That is a row of tables.

10 Q. What does it say at the top right here?

11 A. Left dining room.

12 Q. All right. We can go over to No. 6.

13 A. That would be, you know, part of the right dining
14 room. The front door would be where those two -- it
15 look likes they're walking.

16 Q. That way?

17 A. Yes.

18 Q. All right. And so the previous camera is showing
19 the full dining room?

20 A. Probably would be on the left-hand side.

21 Q. All right. Let's go back to multi-view.
22 And seven, eight -- let's go with seven, the glass door,
23 glass area dining room.

24 A. Okay. That's going to be in the very --
25 that's going to be in the back room of the restaurant.

DIRECT EXAMINATION - MR. SPEARS

1 You just came in No. 3, I believe, and just walked
2 straight for the length of the building, you'll run
3 into a room with the glass facing.

4 Q. And if we could go back to the multi-view,
5 please.

6 A. All right.

7 Q. I'm going to say 8, 9, 10, 11 -- 8 through 14,
8 really. Just a general idea of what those areas are.

9 A. That's all kitchen. And No. 10 is the manager's
10 office.

11 Q. Now looking at 15 and 16, listed as outside back
12 door and dumpster area, specifically 16, just give us
13 an idea of where we're looking in that.

14 A. Okay. That would be the -- that would be another
15 camera over No. 15. Fifteen is really focused on the
16 door, so we can see our vendors coming in and out,
17 employees going in and out. Sixteen is more in the
18 parking lot. If you look at the top left corner,
19 that is our dumpster area, so that's where employees
20 would take trash.

21 Q. And if you kept going to the left beyond the
22 dumpster area, what would that lead you towards?

23 A. There's a, I believe, like, a garage, kind of
24 a place -- a AAA place on the left.

25 Q. Okay. And I know we just went through all

DIRECT EXAMINATION - MR. SPEARS

1 of these. Again, I know we just went through all these.
2 But once we get it back on full screen, I'm just going
3 to ask you to give us another little idea when we have
4 all these screens together about what we're looking at,
5 and how these cameras kind of complement each other.
6 So before we play it right now, you already mentioned
7 that Item No. 1 there is the hostess stand.

8 A. Yes.

9 Q. Directly below that where would the hostess stand
10 be, if we're looking at the bottom left slide?

11 A. There's somebody that looks like they're in
12 a white shirt. To their left, would be the hostess,
13 maybe two feet, maybe.

14 Q. All right. And from the top right slide,
15 the front door area, when you go through those front
16 door, is it one door, a set of doors, or is it two?

17 A. It's -- counting the front doors, it would be
18 two.

19 Q. Okay.

20 A. You go through like a vestibule. You have to
21 open another set of doors.

22 Q. Understood. All right. Thank you. And for
23 clarification purposes, honestly, can you tell us what
24 date this camera footage is taken from?

25 A. June 5, 2016.

CROSS-EXAMINATION - MR. CHISHOLM

1 Q. And what time?

2 A. 2:14 a.m.

3 Q. And how are you able to tell that this came from
4 your IHOP, other than, you know, recognizing the area?

5 A. It's labelled with the IHOP specific number,
6 3242.

7 Q. All right.

8 (Security footage played for the jury.)

9 BY MR. SPEARS:

10 Q. Now this individual in the red shirt on the
11 bottom left slide, what direction did he come from?

12 A. Looks like the bathroom.

13 Q. All right.

14 MR. SPEARS: Court's indulgence.

15 THE COURT: All right. Please answer
16 any questions the defense might have for you.

17 THE COURT: Cross-examination.

18 MR. CHISHOLM: Thank you, Your Honor.

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. CHISHOLM:

22 Q. I'm sorry, is it Mr. Gathings or Gaythings?

23 A. Gathings.

24 Q. Okay. I just have a quick question for you.

25 All right, Mr. Gathings, the top left, which is front

CROSS-EXAMINATION - MR. CHISHOLM

1 register. I think the solicitor was asking you a few
2 questions about that. And it's kind of hard to
3 describe.

4 MR. CHISHOLM: May I approach, Your Honor?

5 THE COURT: Yeah, absolutely. Try this one.
6 This is not a laser pointer; it is a cat toy. Maybe it
7 will work better.

8 MR. CHISHOLM: That works great.

9 BY MR. CHISHOLM:

10 Q. Mr. Gathings, if you're looking at where
11 I'm pointing here. Behind -- just off screen would
12 be the bathroom area back here; is that correct?
13 There's a short hall that leads to the bathroom?

14 A. Yes.

15 Q. And you said it's probably about a -- that's just
16 off-screen. So there are some dead spots, so to speak,
17 as far as you can't follow someone from the front door
18 to the bathroom door, correct?

19 A. Correct.

20 Q. So if someone goes again right back here to the
21 bathroom area, you can't tell who's back there in that
22 short hall, you can't tell if they entered the bathroom,
23 or anything like that; is that correct?

24 A. Well, in the top left, there's a wall. So you
25 can't go to the bathroom that way. It would be in the

DIRECT EXAMINATION - MR. ALLEN

1 bottom left video.

2 Q. I'm sorry. I'm probably confusing you.

3 Just pretend this screen right here isn't up. If you
4 were just to go off frame right here, not under that
5 screen, but where you can't see, where the dead spot
6 is, the hall would be back here, right?

7 A. Yes.

8 Q. And that part isn't captured by video, correct?

9 A. No.

10 Q. Obviously, you don't have cameras in the
11 bathroom. But you don't have a camera that captures
12 that short, I think you said five-foot hallway that goes
13 there either?

14 A. There is no camera there.

15 Q. Thank you.

16 MR. CHISHOLM: May I have one moment,
17 Your Honor?

18 THE COURT: Yes.

19 MR. CHISHOLM: Thank you. I have no further
20 questions.

21 THE COURT: Redirect?

22 MR. SPEARS: None, Your Honor.

23 THE COURT: Very well. Is this witness free
24 to leave? Any objections?

25 MR. SPEARS: Yes, Your Honor.

DIRECT EXAMINATION - MR. ALLEN

1 MR. CHISHOLM: Yes, Your Honor.

2 THE COURT: All right. Very well.

3 Call your next witness, please.

4 MR. ALLEN: William Austin Mandeville.

5 MR. WILLIAM MANDEVILLE was called as
6 a witness, being duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. ALLEN:

10 Q. Good morning, Mr. Mandeville.

11 A. Good morning, sir.

12 Q. Just to clarify, do you go by Austin or William?

13 A. I go by Austin.

14 Q. Austin. Thank you. Tell us where you're
15 currently employed.

16 A. I am employed at Western Carolina University
17 as a professor in the emergency medical care program.

18 Q. Okay. So what exactly do you teach?

19 A. I teach paramedics, post-credentialing,
20 and getting a bachelor's degree.

21 Q. Okay. And take me back to 2016. Where were you
22 employed in 2016?

23 A. In 2016, I was employed by Dorchester County EMS.

24 Q. Okay. If you can remember back to the night of
25 June 5, 2016, do you recall responding to an incident

DIRECT EXAMINATION - MR. ALLEN

1 that evening?

2 A. I do, several.

3 Q. Do you specifically -- do you recall responding
4 to an evening at an IHOP restaurant?

5 A. Yes.

6 Q. Can you describe for the jury just generally what
7 the scene was when you got there?

8 A. Sure. That evening, responding to the IHOP,
9 we were dispatched out for a possible shooting. Me and
10 my partner -- my paramedic partner responded from our
11 station just a couple of minutes away. When we arrived
12 on scene, fairly chaotic, as they tend to be to.
13 Several law enforcement officers, several bystanders
14 were still around, and the patients -- what appeared
15 to be potential patients were outside.

16 Q. Right. So talk to me for a second about
17 the patients. How many patients were there?

18 A. There were two.

19 Q. And you said they were outside, but specifically
20 where?

21 A. If I recall correctly, they were right outside
22 the front door.

23 Q. Okay. Where they basically lying in the same
24 place?

25 A. They were. They were both -- if I recall

DIRECT EXAMINATION - MR. ALLEN

1 correctly, there's a bench just outside the doorway.
2 One was lying on the bench, and one was on the ground
3 just below the bench.

4 Q. Okay. Now you have two patients. How many
5 ambulances responded?

6 A. We responded and another unit -- another
7 transport unit, paramedics responded in. And I believe
8 the supervisor responded as well.

9 Q. Okay. And so when you arrive on a scene like
10 this where you have multiple patients, what do you do
11 first? How do you assess the scene?

12 A. So the first thing we do when you've got multiple
13 patients, especially, we were the first unit, the first
14 EMS unit to arrive. Our job is essentially to triage,
15 to identify the patients, to determine the number of
16 patients, the acuity of patients we have, what resources
17 we're going to need to treat the patients, and get them
18 where they need to be.

19 Q. And were you able to determine, say, it was one
20 patient maybe worse off than the other?

21 A. There were two patients. One appeared to be
22 a little less responsive, or more acute than the other.
23 However, access to the patient -- because the patients
24 were side by side, we had to kind of move patients as
25 we can get to them.

DIRECT EXAMINATION - MR. ALLEN

1 Q. Right. Sure.

2 A. And get them moved.

3 Q. Sure. So let's go ahead and get the patient that
4 you transported. Do you recall -- of the two gentlemen,
5 do you recall the name of the gentleman that you
6 transported?

7 A. Mack. I think it was Brannon Mack, if I remember
8 correctly.

9 Q. Okay. Thank you. And so what did you do --
10 so once you loaded him into the ambulance, what do you
11 generally do, say, on the way to the hospital?

12 A. So depending on the patient presentation,
13 we'll determine what we need to do. The patient that
14 we had transported in this particular case, during this
15 particular call, had multiple wounds, what appeared
16 to be puncture wounds or penetration-type wounds.

17 And so our goal is to stabilize the patient.
18 It may involve cardiac monitoring, administration of
19 oxygen, assisting with breathing, administration of IV
20 fluids, medications, any number of things depending on
21 the acuity of that particular patient that we may have
22 to do to try and sustain life until we get them to where
23 they need to be.

24 Q. So is it fair to say that your job is basically
25 to keep them alive until you get to the hospital?

DIRECT EXAMINATION - MR. ALLEN

1 A. That's correct.

2 Q. And were you -- basically from the moment you
3 arrived on scene until the moment that you got your
4 patient to a hospital -- back up. Which hospital did
5 you take him to?

6 A. We took our patient to Trident.

7 Q. Okay. So from the moment you got on scene until
8 the moment you got to Trident Hospital with a patient,
9 were you with him the whole time?

10 A. Not necessarily. I mean, I was in the proximity
11 the entire time, but I was not with him the entire time.
12 So as the senior paramedic on the scene, as the first
13 unit arriving in, we had to triage the patients and kind
14 of get them where they need to go. Assisted loading
15 in our patient into our ambulance with my paramedic
16 partner, kind of seeing over him while I help the other
17 crew get their patient loaded up, so we can get both
18 of us moved onto the hospital.

19 Q. Okay. So once you got to the hospital, your
20 ambulance pulls up to the hospital, what happens next?

21 A. Once we get to the hospital, my partner has to
22 take the patient inside. I actually remained in the
23 back of the ambulance. In caring for the patient,
24 one of the typical things that we need to do is we need
25 to expose the patient. And so we will remove clothing.

DIRECT EXAMINATION - MR. ALLEN

1 In order to assess and to treat, we need to be
2 able to see what we're trying to treat. As we're moving
3 the patient's belongings, when we cut them off, they're
4 going to fall to the side of the bed. In removing those
5 belongings away, there's a firearm that's found wedged
6 in between the stretcher and the stretcher mount in the
7 back of the truck.

8 Q. Did you actually see the firearm? I'm sorry.
9 I didn't mean to cut you off.

10 A. No, you're fine. Go ahead.

11 Q. I was going to ask you, as you're cutting the
12 clothes off of Mr. Mack, did you actually see the
13 firearm fall out of his clothes?

14 A. No.

15 Q. When did you first see it?

16 A. I didn't see it until we're moving the belongings
17 off of the stretcher mount so we can undo the stretcher
18 to unload the patient. And the firearm was there
19 underneath the clothing, kind of in between the
20 stretcher and the stretcher mount.

21 Q. I see. So you transported a shooting victim
22 to the hospital. You found a gun in the back of the
23 ambulance. What's the procedure when that happens?

24 A. Somebody has to stay with the firearm. You don't
25 want to leave an unattended firearm in the back of the

—DIRECT EXAMINATION - MR. ALLEN—

1 truck. I cannot take the firearm into the hospital ---

2 Q. Sure.

3 A. --- for safety reasons, obviously. The patient
4 was attended by another paramedic. I believe we had
5 a member from the fire department that drove us in.
6 He was able to assist with getting the patient to the
7 hospital. My job at that point shifted from patient
8 care, he was transferred to definitive care, to securing
9 that weapon to prevent any sort of issue occurring with
10 it because I didn't know where -- what potential issue
11 we may have had. So, I certainly wasn't going to leave
12 an unattended firearm in the back of the truck.

13 Q. Sure. Certainly, certainly. And so what did
14 you do to secure the firearm?

15 A. First, we needed to make sure the firearm was
16 unloaded. I tried to unlock the magazine from the base
17 of the firearm. It would not dislodge. So, I actually
18 -- to unload the firearm, I racked the firearm back to
19 get all the bullets out of it, at which point in time,
20 I can make sure the gun was unloaded. Then the clip
21 from the magazine will release. And then I placed
22 the rounds -- the ammunition rounds back in the clip
23 and locked it into what we call our narcotics cabinet,
24 which is under lock and key.

25 Q. Just a safe where you would keep any contraband

DIRECT EXAMINATION - MR. ALLEN

1 that you find?

2 A. Right. Well, it's where we keep the narcotics.
3 It's one place in the ambulance that I can actually
4 lock, that I have control over that lock. So, I kept
5 the magazine separate from the firearm and locked them
6 in there, so there wasn't an incidental discharge of
7 a firearm in the back of my truck.

8 Q. I see. I gotcha, I gotcha. So now ultimately
9 just turn the firearm over to law enforcement?

10 A. Yes. I waited on scene at Trident. We took
11 our truck out of service. We couldn't respond to calls.
12 I notified my supervisor, who I believe notified the
13 sheriff's department, and we waited there until the
14 sheriff's office came and took custody of the firearm.

15 Q. Okay. Mr. Mandeville, I'm going to show you
16 what's been marked as State's No. 78.

17 MR. ALLEN: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 BY MR. ALLEN:

21 Q. Is this the firearm that you recovered from the
22 ambulance that evening? And I'll also show you the
23 chain of custody sheet here, if that helps you.

24 A. Yes, sir, that's the one.

25 Q. Okay.

CROSS-EXAMINATION - MR. CHISHOLM

1 MR. ALLEN: Your Honor, at this time,
2 the State would ask to move State's 78 into evidence.

3 THE COURT: Any objection?

4 MR. CHISHOLM: None, Your Honor.

5 THE COURT: Very well.

6 (State's Exhibit Nos. 78A-C was admitted into evidence.)

7 BY MR. ALLEN:

8 Q. Now you indicated, Mr. Mandeville, that the gun
9 was loaded when you recovered it; is that correct?

10 A. There were bullets in the magazine.

11 Q. And, obviously, the magazine is here, No. 78B,
12 and the bullets are here at 78C. Did you recover ten
13 bullets from inside of that gun?

14 A. I don't recall the quantity, sorry.

15 Q. I'll tell you what, I'll let you count the number
16 of bullets that were recovered inside this gun.

17 A. Okay. Ten.

18 Q. Is it ten bullets?

19 A. Yes.

20 Q. Thank you.

21 MR. ALLEN: No further questions at this
22 time, Your Honor.

23 THE COURT: Cross-examination.

24 MR. CHISHOLM: Thank you, Your Honor.

25 May it please the Court.

CROSS-EXAMINATION - MR. CHISHOLM

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. CHISHOLM:

4 Q. Good afternoon, Mr. Mandeville.

5 A. How are you, sir?

6 Q. All right. And with EMS, you guys, you're not
7 acting as an extension of law enforcement, you're not
8 showing up trying to get people in trouble, so to speak,
9 or anything like that?

10 A. No, sir.

11 Q. Your job is primarily to show up, to render aid,
12 figure out what's going on, how to treat somebody?

13 A. That's correct.

14 Q. And I think the solicitor said, keep them alive
15 until they get to the hospital, simplified but.---

16 A. Yes, that's correct. We are trained very heavily
17 to -- judgment is not upon us. Everyone is a clinical
18 in what we do. Our job is to treat regardless of any
19 situation.

20 Q. Sure. And as part of that, obviously, when you
21 show up on a scene like this, I can imagine if you get
22 a patient, you're going to look for visible signs of
23 injury, figure out what the problem is, how to, you
24 know, stabilize them as you need to, and get them to
25 the hospital?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. That's correct.

2 Q. And as part of that, do you pretty routinely try
3 to speak to the patient to figure out what happened to
4 them so you can have better -- more information, not to
5 get them in trouble or anything else, but just to figure
6 out what's going on?

7 A. Absolutely.

8 Q. And I believe you told me previously in this case
9 you attempted to do that, but you were unable to get any
10 information from the patients?

11 A. That's correct. They were certainly -- depending
12 on the acuity of the patient determines the ability
13 of communication that we we're going to have, if you
14 understand what I'm saying.

15 Q. I do.

16 A. In this particular case, the acuity of the
17 patient, he was agitated, combative -- combative in
18 a medical sense, I think as we discussed the last time.
19 And so getting information about what happened was very,
20 very difficult, and was not really our top priority.
21 The injuries were visible. The effects of the injuries
22 were visible. We had things that we needed to do and
23 treat.

24 Q. I understand. But you never got information
25 about who shot him, the circumstances, the shooting,

1 anything like that?

2 A. No, sir.

3 Q. Okay. And I would like to ask you a few
4 questions about the gun that was found in the ambulance
5 they just put into evidence.

6 A. Sure.

7 Q. I'm guessing, and I think you said both patients
8 were kind of out, laying on the ground, I guess, when
9 you guys arrived?

10 A. That's correct.

11 Q. And you had multiple EMS personnel out there
12 trying to help?

13 A. That's correct.

14 Q. I'm assuming -- correct me if I'm wrong,
15 obviously. But nobody saw this gun that Mr. Mack had,
16 or somebody would have probably brought that to your
17 attention?

18 A. That's correct. That's absolutely correct.

19 Q. Okay. I mean, that would be a security,
20 safety issue and everything else, correct?

21 A. Correct.

22 Q. So the first time you see this gun is actually
23 in the ambulance; is that correct?

24 A. That's correct.

25 Q. And do you remember who all was in the ambulance?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. At the time that we found it, the only people
2 that were in the back of the truck were myself and my
3 paramedic partner.

4 Q. Okay. And I'm assuming you guys didn't bring
5 the gun into the ambulance, obviously?

6 A. No, no, absolutely not.

7 Q. Okay. And it wasn't laying where you found
8 it when you put him in there, correct?

9 A. Correct.

10 Q. Okay. And it was under, I think, you said
11 clothing and belongings?

12 A. Right. So when we disrobe someone, we generally
13 -- the clothing will oftentimes, because it's still
14 underneath the person, will fall and drape the side of
15 the stretcher. Sometimes it will fall off to the side.
16 In order to get the stretcher out, there's a mount that
17 sits on the left side that you have to activate a lever
18 to disengage the stretcher. You can't activate the
19 lever until you get everything off of it. So we need to
20 move the clothing away. And that was when the firearm
21 was noted, wedged in between the stretcher mount and the
22 stretcher.

23 Q. Okay. I'm guessing you would have no way
24 of knowing if the gun slid out of a pocket or anything
25 else to land there versus Mr. Mack putting it there?

1 You wouldn't know?

2 A. I would have no idea, no, sir.

3 Q. Okay. And I think you said for safety reasons,
4 you tried to determine if the weapon was loaded to
5 unload it; is that correct?

6 A. That's correct.

7 Q. And when you initially tried to do that, the
8 magazine -- I guess typically the procedure is you try
9 to drop the magazine out and then ---

10 A. Correct.

11 Q. And then clear a round, correct?

12 A. Correct. That's correct.

13 Q. You tried to drop the magazine out of the pistol,
14 and it would not come out?

15 A. Could not get the magazine to drop out.

16 Q. So what you did is you manually racked the slide
17 over and over to get the bullets?

18 A. Correct. Yes, sir.

19 Q. Do you have any idea if the issue with the
20 magazine -- if you can't testify to this, I understand.
21 Do you have any idea if the issue with the magazine
22 being stuck in there was related to a jam or anything
23 else?

24 A. I don't, and I can't testify to that. I'm not
25 a firearms expert.

REDIRECT EXAMINATION - MR. ALLEN

1 Q. Thank you.

2 MR. CHISHOLM: If I could have a moment,
3 Your Honor.

4 THE COURT: Yes.

5 MR. CHISHOLM: Thank you. I don't have any
6 further questions.

7 THE COURT: Redirect.

8 MR. ALLEN: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. ALLEN:

11 Q. Mr. Mandeville, you mentioned that Mr. Mack
12 was conscious in the back of the ---

13 A. He was awake, yes, sir.

14 Q. He was awake. Did he ask you for anything?

15 A. Based on rereading the narrative that was written
16 and my recollection of the call, he was asking for
17 oxygen, saying he can't breathe, continuously trying
18 to get up and out of the stretcher. That's common
19 in someone who is in various levels of shock and types
20 of shock. As I recall, that's the only thing I really
21 remember him saying.

22 Q. Okay. Thank you, sir.

23 MR. ALLEN: I have no further questions,
24 Your Honor.

25 THE COURT: Recross?

DIRECT EXAMINATION - MR. SPEARS

1 MR. CHISHOLM: No, Your Honor.

2 THE COURT: Is this witness free to leave,
3 and is there any objection?

4 MR. ALLEN: Yes, ma'am.

5 MR. CHISHOLM: None, Your Honor.

6 THE COURT: Thank you. You're free to go.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness, please.

9 MR. SPEARS: State calls Adam Sutton.

10 MR. ADAM SUTTON was called as a witness,
11 being duly sworn, was examined and testified as follows:

12 THE COURT: Your witness.

13 MR. SPEARS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. SPEARS:

16 Q. Mr. Sutton, where do you work?

17 A. I presently work at Citadel for the Department
18 of Public Safety.

19 Q. And where did you work back in 2016?

20 A. The Dorchester County Sheriff's Office.

21 Q. What was your rank there?

22 A. Sergeant.

23 Q. And about how long did you work there?

24 A. Thirteen years.

25 Q. Can you just describe to the jury and for us

DIRECT EXAMINATION - MR. SPEARS

1 an idea of what some of your duties as a sergeant
2 there were?

3 A. Some of the duties were to answer calls for
4 service, supervise the PFCs and the other corporals
5 that are on the shift.

6 Q. And let's go back to June 5th of 2016. Did you
7 respond to an IHOP on Dorchester Road on that day?

8 A. We did.

9 Q. Around what time did you initially respond?

10 A. Initially, we got called out there to shift
11 change around 0500 to relieve the outgoing, the
12 nightshift, on the perimeter. And once we did that,
13 it cleared up probably a half hour, 45 minutes later.
14 But we did get called back out there after daybreak
15 around seven in the morning, I believe.

16 Q. And why did you get called back out there?

17 A. The complainant, or the person who called our
18 dispatch, said there was a gun laying in the bushes
19 right in front of the IHOP.

20 MR. SPEARS: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. SPEARS:

24 Q. Mr. Sutton, I'm showing you what has been marked
25 as State's Exhibits 84 and 85. Do you recognize these?

DIRECT EXAMINATION - MR. SPEARS

1 A. Yeah, that's appears to be the IHOP that we
2 responded to. And that looks like the gun that we saw
3 laying in the bushes here.

4 Q. Are these a fair and accurate representation
5 of what you saw on June 5, 2016?

6 A. Yes, sir.

7 MR. SPEARS: Your Honor, I would request
8 84 and 85 into evidence.

9 THE COURT: Any objection?

10 MR. CHISHOLM: No objection.

11 THE COURT: 84 and 85 in evidence without
12 objection.

13 (State Exhibit Nos. 84 and 85 were admitted into
14 evidence.)

15 MR. SPEARS: Thank you, Your Honor.
16 May I publish?

17 THE COURT: You may.

18 BY MR. SPEARS:

19 Q. We're just going to do this briefly, Mr. Sutton,
20 just to give us all an idea of what you saw. This would
21 be State's 84. Can you show us where the handgun you
22 referenced was located on this?

23 A. (Indicating.)

24 Q. And you can mark on that screen too, if you want.

25 A. I believe it's probably in this general area

DIRECT EXAMINATION - MR. SPEARS

1 here.

2 Q. All right. And looking at State's 85, is that
3 the handgun you referenced?

4 A. Yes, sir.

5 Q. All right. Now, I'm showing you what's been
6 marked as States 77A, B, and C.

7 MR. SPEARS: If I may approach, Your Honor?

8 THE COURT: You may.

9 BY MR. SPEARS:

10 Q. If you can look in there without showing it
11 to the jury, and let me know if you recognize this.

12 A. Yes, sir.

13 Q. And is this the same handgun that you recovered
14 on that day?

15 A. Yes, sir, based on the serial number on the chain
16 of custody. And that is my signature on the chain of
17 custody, and it matches what I see here.

18 Q. Now are you aware if that handgun was loaded
19 at the time?

20 A. I didn't actually -- it was actually, I think,
21 Deputy McKey [ph.] who recovered the weapon. He didn't
22 convey to me that it was loaded at the time he got it.
23 But it was definitely unloaded when he gave it to me.

24 Q. I understand. Now State's 77B and C also in
25 there, can you just tell us what those are?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. It is a magazine for the same weapon, and also
2 rounds that are for the same type of weapon.

3 Q. Can you tell us how many rounds were in there?

4 A. Eight. There are eight in the package.

5 Q. Thank you, sir.

6 MR. SPEARS: Your Honor, at this time,
7 State would request State's 77A, B, and C into evidence.

8 THE COURT: Any objection?

9 MR. CHISHOLM: None, Your Honor.

10 THE COURT: Very well.

11 (State's Exhibit Nos. 77A, B, and C were admitted into
12 evidence.)

13 MR. SPEARS: May I publish, Your Honor?

14 THE COURT: You may.

15 MR. SPEARS: Mr. Sutton, please answer any
16 questions the defense might have for you, all right.

17 THE COURT: Cross-examination.

18 MR. CHISHOLM: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. CHISHOLM:

21 Q. Good afternoon, Mr. Sutton.

22 A. Good afternoon.

23 Q. I don't have a lot of questions for you.

24 The solicitor asked you a second ago about whether
25 the gun was loaded, and when it was found. I think

CROSS-EXAMINATION - MR. CHISHOLM

1 your testimony was when you received it from Deputy
2 McKey -- he's actually the one that pulled it from
3 the bushes area, I guess?

4 A. That's correct.

5 Q. And when he gave it to you, it was loaded?

6 A. No, it was unloaded when he gave it to me.

7 Q. It was unloaded?

8 A. Right.

9 Q. Okay. I gotcha. And he didn't tell you
10 specifically whether he unloaded it?

11 A. It's customary when you hand over a weapon
12 as part of the chain of custody that it is unloaded,
13 pop the magazine out, and anything that's in there
14 supposed to be out.

15 Q. You clear it before you hand it off?

16 A. You clear it before you hand it off.

17 Q. Right.

18 A. And he handed it to me.

19 Q. But he didn't indicate to you that he found the
20 gun with a bunch of loose bullets or anything like that?

21 A. No, sir. He just said, hey, here's the weapon.
22 I said, okay, give it to me. I'll take it to Deputy
23 Berg. I think he works in crime scene.

24 Q. I gotcha. And it may be quicker if I just show
25 you the picture, as apposed to figuring out this

DIRECT EXAMINATION - MR. ALLEN

1 prompter. This is the picture of the bushes I believe
2 that you said you found the gun in. Do you recall the
3 entrance to the restaurant? Would it be to the right
4 off of this picture here?

5 A. As I remember it, it is to the right, yes, sir.

6 Q. As you face the front door, these bushes would
7 be to the left?

8 A. That's correct.

9 Q. Okay. Thank you.

10 MR. CHISHOLM: I have no further questions.

11 THE COURT: Redirect.

12 MR. SPEARS: None, Your Honor.

13 THE COURT: Is this witness free to leave?

14 MR. SPEARS: May he be excused, Your Honor?

15 THE COURT: Any objection?

16 MR. CHISHOLM: No, Your Honor.

17 THE COURT: Call your next witness, please.

18 MR. ALLEN: Sergeant Brandon Berg.

19 MR. BRANDON BERG was called as a witness,
20 being duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ALLEN:

23 Q. Good morning, Sergeant Berg, or I guess,
24 good afternoon, Sergeant Berg.

25 A. Yes, sir.

—DIRECT EXAMINATION - MR. ALLEN—

1 Q. Can you tell us where you're currently employed?

2 A. I'm employed at the Dorchester County Sheriff's
3 Office.

4 Q. And how long have you been working there?

5 A. About ten years.

6 Q. So currently what are your responsibilities?

7 A. Currently, I'm the latent print examiner for
8 the county. I'm also assigned to crime scene.
9 I'm a supervisor in the unit.

10 Q. So as a member of crime scene and as a latent
11 print examiner, can you just give us an idea of what
12 sort of your day-to-day activities are?

13 A. Well, right now being in latent prints, I take
14 fingerprint cards the deputies turn in, processing
15 things, and I'll look at those and determine whether
16 they're of quality or not for comparison. If they are,
17 I'll enter them into AFIS. It's a database for the
18 State that can run fingerprints to see if I get a hit.

19 While I'm on crime scene, just respond out to
20 the scene, try to document, collect, preserve, identify
21 evidence, and bring it back to the office for further
22 analysis.

23 Q. All right. Well, let's talk a little bit more
24 about the fingerprint part of your job. I'll tell you
25 what, why don't you just tell us a little bit about your

DIRECT EXAMINATION - MR. ALLEN

1 training experience as a fingerprint -- in fingerprints
2 and fingerprint comparison.

3 A. Well, combined forensic training, I've had about
4 500 hours of training. In latent prints, it's about
5 184 of those hours. I've been tested through SLED
6 for AFIS operation. I received a certificate from
7 them. I've done over 4,000 comparisons in latent
8 prints, 300 identifications.

9 Q. And I believe you testified a moment ago
10 fingerprint analysis is the main part of your job
11 these days?

12 A. Yes.

13 MR. ALLEN: Your Honor, at this time,
14 the State would offer Sergeant Berg as an expert
15 in fingerprint analysis and comparison.

16 THE COURT: Any objection?

17 MR. CHISHOLM: No, Your Honor.

18 THE COURT: Very well. Let me just explain
19 to the jury. Ladies and gentlemen, normally under our
20 rules, a witness is not allowed to testify regarding
21 their opinions, or the reasons for those opinions.
22 There is an exception, and that is when, by virtue
23 of someone's experience or training, knowledge, perhaps
24 profession, they become an expert. And with regards
25 to that expertise, the witness is allowed to testify

DIRECT EXAMINATION - MR. ALLEN

1 regarding their opinions and the reasons for those
2 opinions, of course, within the context of that
3 expertise.

4 Ladies and gentlemen, I will give you some
5 additional instructions regarding expert testimony when
6 I give you the concluding instructions, as that would
7 be helpful. You may proceed.

8 MR. ALLEN: Thank you, Your Honor.

9 BY MR. ALLEN:

10 Q. We're going to talk about the fingerprints in
11 a while. First off, I want to talk about the evening
12 of June 5th. Do you recall responding to an incident
13 that occurred that date, June 5, 2016?

14 A. I do.

15 Q. And do you recall the address you responded to?

16 A. I don't remember the address. It was the IHOP
17 store on Dorchester Road.

18 Q. Sure. And why were you called out to that
19 location?

20 A. I received information that a shooting incident
21 occurred there.

22 Q. So if you could just describe what the scene
23 was like when you got there first.

24 A. Okay. When I got there, I could -- the
25 responding deputies were on scene. The scene was

DIRECT EXAMINATION - MR. ALLEN

1 secured with crime scene tape. Always the first thing
2 I'm going to do is do an overview, just look at the
3 scene, and see what I have. Everything was pretty well
4 in order. It's already secured. Everybody was out
5 of the building from what I remember -- the deputies,
6 again, they already had it secure.

7 So, I just began looking at the overall scene,
8 seeing what I have. Walking in, I could see some red
9 stains on the floor, some spots that appeared to be
10 consistent with blood leading through the foyer in
11 through an exit area of the restaurant, leading back to
12 the area where the men's bathroom was and into the men's
13 bathroom. There, I observed more red stains on the
14 floor, some on the walls, and several spent cartridge
15 casings and some bullet projectiles on the floor.

16 Q. So after you kind of done a -- I suppose you
17 described it as an initial walkthrough of the scene?

18 A. Yes, sir.

19 Q. What do you do next?

20 A. I would just begin by taking overall photographs
21 of the scene. I wouldn't mess with anything yet.
22 I just want to see what I have. Then, I come back,
23 get my camera, and collect overall photographs of the
24 scene as it was, as I found it, and as the next part
25 of my documentation.

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1 Q. Okay. And after you photographed the scene,
2 or at some point in your investigation, do you create
3 diagrams or charts showing the scene?

4 A. Yes, create the on-scene sketch.

5 Q. And did you do that in this circumstance?

6 A. Yes.

7 Q. Okay. And, lastly, after you photographed
8 the documented scene and diagramed it, do you then,
9 or do you at some point go about collecting evidence
10 from the scene?

11 A. Yes, that's correct. Once I've collected my
12 overall photographs, I'll go back through the scene.
13 While I'm collecting photographs, I'll kind of already
14 have in my mind what's going to be evidence and what
15 isn't. But still the whole time I'm looking for
16 evidence, and I'm trying to identify any piece that may
17 be there.

18 Once I have, once I feel like I've identified
19 everything that I can, I will go through and mark them
20 with one of those photo placards. You've probably seen
21 them on TV, those yellow plaques that give each piece
22 of evidence a number. So, I just photograph each one
23 of those pieces of evidence in relation to the scene
24 and close up.

25 And then if it calls for it, I will collect that

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1 piece of evidence, or say, if it's something I believe
2 may be blood, I'll swab it and go from there.

3 Q. And is that what you did in this instance?

4 A. Correct.

5 Q. Sure. Sergeant Berg, I'm going to show you
6 what's been marked as State's 1 through 50.

7 MR. ALLEN: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. ALLEN:

10 Q. If you could flip through these pictures,
11 and tell us if those are the photos you took from
12 the incident scene that evening?

13 A. Yes, these are the photographs I took that night.

14 Q. Thank you, Sergeant Berg.

15 MR. ALLEN: Your Honor, at this time,
16 I offer State's 1 through 50 into evidence.

17 THE COURT: Have you had a chance to review
18 them?

19 MR. CHISHOLM: I have, Your Honor. I have
20 no objection.

21 THE COURT: No objection. State's Exhibits
22 1 through 50 in evidence. They are photographs without
23 objection.

24 (State's Exhibit Nos. 1 through 50 were admitted into
25 evidence.)

DIRECT EXAMINATION - MR. ALLEN

1 MR. ALLEN: Thank you. May I publish these,
2 Your Honor?

3 THE COURT: Yes.

4 MR. ALLEN: Thank you.

5 BY MR. ALLEN:

6 Q. Actually before I do that, Sergeant Berg,
7 you created some diagrams?

8 A. I did.

9 Q. I'm going to show you now what's been marked
10 as State's 86 and State's 87.

11 MR. ALLEN: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. ALLEN:

14 Q. Can you just take a look at these. Let me know
15 if these are the diagrams that you created from the
16 screen that evening?

17 A. Yes, they are.

18 Q. Okay.

19 MR. ALLEN: Your Honor, at this time,
20 the State would offer State's 87 and 86 into evidence.

21 THE COURT: Any objection?

22 MR. CHISHOLM: No, Your Honor.

23 THE COURT: Very well. No objection.

24 (State's Exhibit Nos. 86 and 87 were admitted into
25 evidence.)

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1 MR. ALLEN: May I publish them?

2 THE COURT: You may.

3 MR. ALLEN: I believe we have an easel right
4 here.

5 THE COURT: Very well. Do you need the ---

6 MR. ALLEN: I think we got it.

7 THE COURT: Okay.

8 MR. ALLEN: If you'll just bear with me
9 a moment, Your Honor. Now the question is can everybody
10 see that?

11 THE COURT: And if you cannot, just raise
12 your hand and let me know. One of the things that
13 inevitably occurs is that when folks start talking
14 about it, somebody always walks in front and blocks it.
15 You know we should have done, like, something that could
16 hang from the ceiling. But make use of the pointer.
17 I think that would be helpful.

18 MR. ALLEN: Yes, ma'am.

19 THE COURT: I think there are two floating
20 around.

21 MR. ALLEN: I think I've got one here,
22 Your Honor, and one up here with me. Sergeant Berg,
23 I will give you this laser pointer here.

24 THE COURT: There you go.

25 MR. ALLEN: All right. Great.

1 BY MR. ALLEN:

2 Q. Now, Sergeant Berg, if you could just kind
3 of generally tell us what we're looking at here?

4 A. Okay. This is just a crude sketch of the scene
5 that night at IHOP, as I found it. This shows the
6 overall of the restaurant. This part in front here
7 is obviously the sidewalks and the shrubs, and part
8 of the parking area there.

9 Underneath that is the pieces of evidence
10 that I ended up collecting from the men's room,
11 which is shown here. Each one of those is a measurement
12 to the law. I had to do something, what's called
13 a triangulation, just so in case it ever had to be
14 reconstructed. I needed to find two fixed points to
15 measure a piece of evidence from. That's what these
16 measurements are down here.

17 Up here is the men's room. This is the area
18 I was alluding to earlier when I walked up. I could
19 see red stains on the floor, walked to the men's room.
20 And in this area is where I located more blood stains,
21 red stains, and spent cartridge casings and projectiles.
22 Q. Okay. And before we start walking through this
23 in a little more detail, let me ask you what we're
24 looking at here in this second diagram. This appears
25 to be an enlargement.

1 A. Exactly. It's an enlargement of the men's
2 bathroom.

3 Q. Okay. So this is -- is this essentially the same
4 thing as you have on the broader diagram, just bigger?

5 A. Correct.

6 Q. Okay. So at this time, I would like to sort
7 of walk through the photographs that we put in evidence
8 here to orient ourselves to the scene, if I may. Bear
9 with me just a moment. I'm trying to hopefully get this
10 projector to work. Tell you what I'm going to have to
11 do is move this diagram just a smidgen because it is
12 blocking the screen. Does that work for you there?

13 A. Yes, sir.

14 Q. Okay, thank you. Okay. So starting with State's
15 Exhibit No. 1 here -- the first one is always going
16 to be the tricky one. Can you tell us generally what
17 you're looking at here? And, Sergeant Berg, it may be
18 on your screen right there.

19 A. Oh, yes. This is the entryway of the IHOP,
20 right here facing the business, taking the photograph.

21 Q. So that's basically the front door; is that
22 correct?

23 A. Yes.

24 Q. State No. 2, where is this?

25 A. That's almost the same, in the same place right

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1 here, the front. I just moved the camera a little
2 bit this way to take another photograph of the front
3 of the building.

4 Q. So now just sort of a panoramic?

5 A. Yes.

6 Q. Yes. To continue that, showing you State's 3
7 here. Is this also a ---

8 A. Yes, that's another photograph continuing to get
9 all the way to the edge of the building.

10 Q. Now we're looking at State's 14 here. Let me
11 see if I can brighten this just a little bit for us.
12 Can you tell us where we're looking at here?

13 A. Yes. I moved over to this area about here.
14 This vehicle was located all the way to the edge of
15 the parking lot here. So, I'm taking a picture screen
16 this way.

17 Q. And just to clarify, you're pointing at the
18 bottom left-hand side of the parking lot; is that
19 correct?

20 A. Yes, correct.

21 Q. Okay. And on this photo, we see a number of
22 little yellow markers on the ground. What are those?

23 A. Those are the photo placards I was talking about
24 earlier to mark pieces of evidence there.

25 Q. Did the numbers on these placards correspond

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1 to your diagram in any way?

2 A. Yes, they do.

3 Q. Okay. So if you look at State's 15 here,
4 looks like a closer view of some of these placards.
5 So maybe you could orient us using the placards.

6 A. Yes. So we're looking at two, three, and four
7 here, which are right here on my diagram.

8 Q. Okay. And so what are these placards marking?

9 A. They're marking red stains on the sidewalk.

10 Q. And how far down the sidewalk could these red
11 marks be found?

12 A. All these photo placards mark a spot, so they go
13 all the way to the front here.

14 Q. Okay. And you say all the way to the front?

15 A. Of the business, ending here at 13.

16 Q. All right. And how far do they go to the left
17 side of the building?

18 A. There was none over here that I found.

19 Q. So, in other words, it's all across the front
20 side of the building; is that correct?

21 A. Correct.

22 Q. Okay. I'm showing you State's 16 here.

23 This is sort of a closer view of one of these markers.

24 Does this reflect what you called red dots a moment ago?

25 A. Red stains, yes, sir.

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1 Q. I will just move through some of these. This is
2 State's 17. Is this another view of some of those ---

3 A. Yes.

4 Q. --- stains? State's 20 here show one more marker
5 here. Where is this located on your diagram?

6 A. It is another initial stains on the sidewalk,
7 placard six. So it would be right here.

8 Q. Okay. Now we're going to look at State's 23.
9 And so where are we oriented in this photo?

10 A. Okay. I'm kind of standing over here. You can
11 see in the picture photo placard nine by the low column
12 there. That's photo placard nine right there. So, I'm
13 standing about here, and I'm taking the picture this
14 way.

15 Q. Okay. And is that the front entrance that you're
16 sort of taking a picture there? .

17 A. Yes.

18 Q. And what does that appear to be on the ground
19 on the front of that?

20 A. This would be a large red stain.

21 Q. State's 24 here. Where are we looking in this
22 one?

23 A. That's on the other side, the other column.
24 So, I'm looking on this side here. You can see photo
25 placard 10 right in front, which is right here, and 11

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1 a little bit further down to the right, and then 12
2 and 13 on the left. So that's where those are.

3 Q. Right in front of the front door; is that right?

4 A. Correct.

5 Q. So on the top right-hand corner of this
6 photograph here, we see some materials. In your
7 experience, what does that look like?

8 A. Appears to be what was left behind from EMS
9 treating a patient.

10 Q. So that appears to be -- does that appear to be
11 an area where EMS performed treatment on somebody?

12 A. Yes.

13 Q. Just show you State's No. 26 here, which appears
14 to be what, Sergeant Berg?

15 A. It's a little bit closer photograph of that
16 material you were talking about, photo placard 11,
17 which is right here.

18 Q. Right. And the -- just to kind of orient us
19 directionally, in the upper left there, what's that
20 we see?

21 A. There appears to be additional bloodstains --
22 red stains.

23 Q. I guess -- let me ask this. Does that appear
24 to be a column in the upper middle part of the picture?

25 A. Yes.

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1 Q. So in this picture is the front entrance to the
2 top left of the photo?

3 A. Yes, correct. So here is -- as you can see,
4 there's photo placard 11. There's 11. That's where
5 the column -- another one of the columns would be right
6 here, so the entrance is up to the left.

7 Q. Move towards the interior of the building now.
8 I'm going to show you State's 28. What are we looking
9 at here?

10 A. Those are the front entry doors of the business.

11 Q. Right.

12 A. Right here.

13 Q. Okay. Now in State's 29, there appears to be
14 two additional markers?

15 A. Yes.

16 Q. On the glass here, what are those markers
17 indicating?

18 A. I saw some red stains that were running down
19 the glass here, and I marked them up with tape.

20 MR. ALLEN: Beg the Court's indulgence.

21 THE COURT: All right.

22 (Pause.)

23 BY MR. ALLEN:

24 Q. All right. Sergeant Berg, next up is State's
25 No. 4 here. What are you looking at here?

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1 A. At the entry of the business, there were two sets
2 of doors, entry and exit doors, one here and one here.
3 That is the interior entry exit doors.

4 Q. Okay. And if we look at State's 6 here,
5 are we now inside ---

6 A. Yes.

7 Q. --- the building?

8 A. Yes, we're in the reception area here.

9 Q. All right. And this -- so positionally,
10 you're basically standing where in the room?

11 A. I would be standing about right here. You can
12 see the desk to the right in the picture. It's right
13 here on the diagram on the podium on the left there.

14 Q. Okay. And let's look at State's 35. Is this --
15 kind of looks like a podium.

16 A. That's the desk on this side right here, located
17 some additional stains, which I again marked off with
18 tape.

19 Q. Okay. All right. Here in State's 7,
20 this appears to be an entryway; is that correct?

21 A. Yes.

22 Q. And what's through that entryway there?

23 A. I'm standing about here when I took this
24 photograph. You can see the podium there. That
25 entryway leads -- it's right here. That leads into

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1 the bathroom areas.

2 Q. Just go through these to orient us a little more
3 here. This is State's 5. Where are we looking out from
4 here?

5 A. I'm standing close to the entryway to the
6 bathrooms there. And I'm turned around at this point,
7 facing back towards the entry exit doors. I took the
8 picture, and I'm standing here, and I'm photographing
9 this way.

10 Q. Right. So directly behind you is the entrance
11 to the bathroom; is that correct?

12 A. Correct.

13 Q. All right. This is State's No. 9, and where
14 are we here?

15 A. That's the entry doors to the male and female
16 bathrooms, so I'm standing about here taking the
17 photograph.

18 Q. Okay. And so now we've walked into the hallway
19 where the bathrooms are; is that correct?

20 A. Correct.

21 Q. And if you walk into that hall, is there anywhere
22 else you can go, other than the bathroom?

23 A. No, I don't believe so.

24 Q. All right. Sergeant Berg, focus on State's
25 37 now. We've got two markers on what appears to

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1 be a picture of a door. What do these markers indicate?

2 A. These are -- a picture of the men's bathroom
3 door. Those -- what looked like projectiles going
4 through the door, scale to photograph.

5 Q. Okay. And is the handle on the inside of the
6 restroom, or the outside of the restroom?

7 A. It's on the inside.

8 Q. So we're looking at the outside of the restroom?

9 A. Looking at the outside, yes.

10 Q. And you've testified these appear to be bullet
11 holes going through the door?

12 A. It appeared to be something -- something had gone
13 through the door, yes.

14 Q. Looking at State's 38. What are we looking at
15 in this picture?

16 A. That's the side door jam of the men's bathroom
17 door.

18 Q. And what's this marking on the door?

19 A. That appears to be where the projectile entered
20 that door, right underneath the handle there.

21 Q. Now judging by where this marking on the door
22 is located, does that give you any sense of what
23 position the door was in?

24 A. It's very likely the door had to be open for
25 this to happen.

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1 Q. All right. Look at State's 39.

2 A. That appears to be more damage.

3 Q. And does this appear to be another bullet hole?

4 A. Yes.

5 Q. Does this appear to be the same bullet hole that
6 you looked at a moment ago?

7 A. Yes.

8 Q. Okay. The last one of those I'll show you
9 is State's 40. We've got and -- well, another letter
10 that I can't see because of my eyes. Tell us what these
11 two markers are indicating.

12 A. Yes, sir. It is H and G. That's the interior
13 of the men's bathroom. I'm standing inside and shooting
14 a picture this way. That's the wall there where letter
15 H is and G is on the men's room door.

16 Q. Okay. So G marker here is on the inside of the
17 entrance to the men's room door, correct?

18 A. Yes.

19 Q. And H is on the right-hand side wall next to
20 the entrance door, correct?

21 A. Yes.

22 Q. All right. Sergeant Berg, now when you made
23 entry into the restroom, did you find any evidence
24 on the floor inside of the restroom?

25 A. Yes, sir. There were some red stains on the

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1 floor as well as cartridge casings and some projectiles
2 as well on the floor.

3 Q. Tell you what, now that we've moved inside of
4 the restroom at this point, I'm going to switch plaques
5 on you, if I can.

6 A. Yes, sir.

7 Q. And I believe you testified a short while ago
8 that this is just an enlargement of the restroom from
9 the prior diagram; is that correct?

10 A. Yes.

11 Q. Okay. So if you look at State's No. 42 here,
12 again what are we looking at?

13 A. This is a section of the men's bathroom floor.
14 We can see photo placards 23, 24 and 34 there on this
15 side of the bathroom floor.

16 Q. Right. And I see that you've put some coloring
17 on the chart here. Can you just tell us what the color
18 and circles represent?

19 A. I guess. Anything circled in blue would be
20 a cartridge casing. And anything circled in red would
21 be a projectile.

22 Q. Okay. So in the photograph we have here, we have
23 No. 24, for example. So what was No. 24?

24 A. 24 was -- according to this, it's a projectile.

25 Q. Right. And by contrast, Item 23 is what?

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1 A. 23 would be a spent cartridge casing.

2 Q. Right. So locationally, is this the front
3 of the bathroom, or the back of the bathroom?

4 A. On the front.

5 Q. The front of the bathroom?

6 A. Yes.

7 Q. Where the entrance door is?

8 A. Right behind the door, yes, sir.

9 Q. Run through these. This is State's 43, and this
10 is what?

11 A. This is an additional photograph of the men's
12 bathroom floor ---

13 Q. What's 25 ---

14 A. Sir?

15 Q. I'm sorry for speaking over you. And what is
16 Item 25?

17 A. 25 would be a projectile.

18 Q. Now look at State's 45. This one is a little
19 different. It's not a floor, so what is it?

20 A. That's the sink area. So if you're standing --
21 this is the area there where the photograph is recorded.
22 You come into the men's door, the sink is right here on
23 the right.

24 Q. And Item No. 28, looks like you have marked
25 with a placard in that photograph?

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1 A. Yes.

2 Q. And what is designated by Item 28?

3 A. It's a lanyard with a key on it and some money.

4 Q. All right. Sergeant Berg, since we've got the
5 photograph of this item of evidence up here, I'm going
6 to show you what's been marked as State's Item No. 56.

7 MR. ALLEN: I'm sorry. May I approach,
8 Your Honor?

9 THE COURT: You may.

10 MR. ALLEN: Thank you.

11 BY MR. ALLEN:

12 Q. Take a look at what's marked there.

13 A. Yes.

14 Q. And is this a lanyard that you recovered at the
15 scene?

16 A. It is.

17 Q. And is this, in fact, the lanyard depicted
18 in this photograph right here?

19 A. It is.

20 MR. ALLEN: Your Honor, at this time,
21 the State would request to move State's 56 into
22 evidence.

23 MR. CHISHOLM: No objection.

24 THE COURT: Very well.

25 (State's Exhibit No. 56 was admitted into evidence.)

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1 MR. ALLEN: May I publish to the jury,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. ALLEN:

5 Q. Now, Sergeant Berg, do you have instance to find
6 out what car this lanyard belongs to?

7 A. Yes.

8 Q. And how did you do that?

9 A. I was able to turn on the vehicle.

10 Q. And whose vehicle was it?

11 A. It's Mr. Mack's mother.

12 Q. Mr. Mack's mother. So did she come to someone's
13 office?

14 A. She came to the solicitor's office, and we met
15 there.

16 Q. And how did you drive the vehicle?

17 A. I walked up to the car, and put it in the door,
18 and it opened.

19 Q. And did it, in fact, unlock the door?

20 A. Yes.

21 Q. Okay. Thank you. So in addition to this
22 lanyard, did you also collect a number of shell casings
23 from that bathroom?

24 A. Yes, sir.

25 Q. Sergeant Berg, I'm going to show you what's been

DIRECT EXAMINATION - MR. ALLEN

1 marked as State's 57 through 63. Do you recognize
2 those?

3 A. Yes, I do.

4 Q. Are those shell casings that you recovered
5 at the scene?

6 A. Yes.

7 MR. ALLEN: Your Honor, at this time, State
8 would request to move Items 57 through 63 into evidence.

9 THE COURT: Any objection?

10 MR. CHISHOLM: No objection.

11 THE COURT: All right, without objection.

12 (State's Exhibit Nos. 57 through 63 were admitted into
13 evidence.)

14 BY MR. ALLEN:

15 Q. Now in addition to shell casings, did you also
16 recover a number of projectiles from inside the IHOP
17 bathroom?

18 A. I did.

19 Q. At this time, I'm going to show you what has
20 been marked as State's 64 through 67. Do you recognize
21 these?

22 A. Yes, I do.

23 Q. Are those the projectiles that you recovered
24 from inside the bathroom?

25 A. They are.

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1 Q. Okay.

2 MR. ALLEN: Your Honor, at this time,
3 State would offer State's 64 through 67 into evidence.

4 MR. CHISHOLM: Without objection.

5 THE COURT: Very well.

6 (State's Exhibit Nos. 64 through 67 were admitted into
7 evidence.)

8 BY MR. ALLEN:

9 Q. Sergeant Berg, did you also receive a projectile
10 and shell casing from an IHOP employee later on?

11 A. We had one brought into evidence.

12 Q. Okay. Sergeant Berg, I'm going to show
13 you what's been marked as State's 69 and 70.

14 A. Okay.

15 Q. Have you seen these two items before?

16 A. I have.

17 Q. Are these the shell casing and projectile that
18 were brought to the Dorchester County Sheriff's Office
19 by an employee of the IHOP?

20 A. Yes.

21 MR. ALLEN: Your Honor, at this time,
22 the State would request to move State's 69 and 70
23 into evidence.

24 MR. CHISHOLM: Your Honor, I would object
25 to foundation.

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1 THE COURT: All right.

2 MR. ALLEN: Well, Your Honor, we know that
3 these projectiles -- well, this projectile and bullet
4 were brought to the Dorchester County Sheriff's Office
5 by an employee of IHOP. They are what they purport
6 to be, projectiles from the employee of IHOP to the
7 Dorchester County Sheriff's Office. And that's exactly
8 what we're entering them as.

9 THE COURT: Let me see you, gentlemen.

10 (Off-the-record conversation held at sidebar.)

11 (Back on the record.)

12 THE COURT: So our record is completely
13 clear, could you give me those numbers again?

14 MR. ALLEN: Yes, ma'am. The last two items
15 of evidence were State's 70 and State's 69.

16 THE COURT: And they will remain ID at this
17 point.

18 MR. ALLEN: Yes, ma'am. Thank you,
19 Your Honor.

20 THE COURT: Yes.

21 BY MR. ALLEN:

22 Q. So just to be clear, Sergeant Berg, how many
23 cartridge casings did you discover -- did you recover
24 from inside the bathroom?

25 A. From inside the bathroom -- let me refer to my

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1 notes here.

2 Q. If it's helpful, Sergeant Berg, I'll show you
3 State's 57 through 63.

4 A. Okay. So you're talking about cartridge casings
5 inside the bathroom?

6 Q. Yes, sir.

7 A. Seven.

8 Q. Seven. And how many projectiles did you recover
9 from inside the bathroom?

10 A. Four.

11 Q. Four. Sergeant Berg, did you also recover some
12 projectiles from the Medical University of South
13 Carolina?

14 A. I did.

15 Q. Sergeant, I'm going to show you what's been
16 marked as State's Exhibit 68. Take a look at these.
17 And tell us are these the projectiles that you received
18 from the Medical University of South Carolina?

19 A. Yes, they are.

20 MR. ALLEN: Your Honor, at this time,
21 the State would offer State's 68 into evidence.

22 MR. CHISHOLM: No objection.

23 THE COURT: Very well.

24 (State's Exhibit No. 68 was admitted into evidence.)

25 BY MR. ALLEN:

1 Q. All right, Sergeant Berg. So let's talk for
2 a moment about fingerprints.

3 THE COURT: We've shifted into another area
4 of fingerprints?

5 MR. ALLEN: Yes, ma'am.

6 THE COURT: We're going to stop here for
7 lunch. It's about ten minutes to one. And, ladies
8 and gentlemen, we are going to take our lunch break now.
9 I'm going to ask you to be back -- I need a little bit
10 over an hour, so let's say 2:15. And I'm going to ask
11 you to leave your notepads in your seat. We will
12 certainly secure those over the lunch break.

13 I'm going to ask you to please be mindful.
14 Do not discuss this matter, or allow anyone to discuss
15 it with you. Be mindful about cell phones or other
16 communication devices, and I'm going to ask you this.
17 Who is from above the swamp? That's about normal.
18 And everybody else is from below the swamp; Summerville,
19 Ladson, correct? Yes? All right.

20 So you're not particular familiar with your
21 culinary opportunities in Saint George. So, I'm going
22 to be your dietary consultant today. Now here is --
23 here's the word; here's the news. Most, alas, all but
24 one, of your culinary opportunities lie along Highway
25 78. So when you exit the courthouse, take a right on

1 Highway 78. When you come to 15, which is Main Street,
2 Saint George, not to be missed, there is the bistro,
3 like, 24722 -- there are numbers -- bistro, and then
4 numbers. A new restaurant in Saint George. Take
5 a left, and you will see it on the right.

6 Now all of your other culinary options
7 lie along Highway 78, and they include Georgio's on
8 the left. I call it Georgio's of Beverly Hills, really
9 Georgio's of Saint George. Kentucky Fried Chicken,
10 Subway, McDonald's, Denny's at the truck stop, Skinners.
11 On the right, there is a Bi-Lo grocery store. I think
12 I've forgotten someone.

13 If you go under I-95 overpass, and you're
14 under I-95, you have only one remaining culinary
15 opportunity in Saint George, that would be the Taco Bell
16 at the gas station. Right as you go under the overpass,
17 you will see it on the left, there's a gas station with
18 a Taco Bell. That would be the end of your culinary
19 opportunities in Saint George. There are no more until
20 you reach Orangeburg. You do not have time to go to
21 Orangeburg, dine, and return.

22 So remember, your culinary opportunities
23 lie along Highway 78, with the exception of the bistro,
24 which is on Highway 15 on the left-hand side. You turn
25 to the left, and it's actually on the right-hand side,

1 but you will see it.

2 Ladies and gentlemen, please have a very
3 pleasant lunch. I look forward to seeing you at 2:15.
4 Leave your notepads in your seats. And remember, do not
5 discuss this matter, or allow anyone to discuss it with
6 you.

7 (Jury exits the courtroom at 12:56 p.m.)

8 THE COURT: All right. I just need to
9 remind you that you're on the stand. So over the lunch
10 break, please don't discuss your testimony with anyone.
11 Have a good break.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Good luck. We will see you at
14 2:15. Thank you so much. All right. Anything before
15 we take our lunch break?

16 MR. SPEARS: Nothing, Your Honor.

17 MR. CHISHOLM: No, Your Honor.

18 THE COURT: All right. See you all at 2:15.

19 (Recess taken.)

20 (Back on the record.)

21 THE COURT: All right. Ready?

22 MR. SPEARS: Ready.

23 THE COURT: Ready?

24 MR. CHISHOLM: Ready.

25 (Off-the-record conversation held at sidebar.)

1 (Back on the record.)

2 (Juror enters the courtroom at 2:26 p.m.)

3 THE COURT: Hi. Thank you so much for your
4 candor. I'm so grateful for you for that. But given
5 those circumstance, I'm going to excuse you from this
6 jury and ask you to call. But having -- even though
7 I'm going to excuse you, just given the fact that you
8 had some exposure, and in an abundance of caution,
9 I'm going to ask you to sit this one out. You've got
10 the juror information. Call back after six o'clock.
11 Thank you so much.

12 THE JUROR: No problem.

13 (Juror exits the courtroom at 2:28 p.m.)

14 THE COURT: Have you placed the juror
15 numbers of the two alternates in this cup?

16 THE CLERK: I have.

17 THE COURT: And there are two pieces
18 of paper. One has one number, one has the other
19 number, yes?

20 THE CLERK: I have a name.

21 THE COURT: Oh, you put their names, okay.
22 Do you all want to see them?

23 MR. SPEARS: No, Your Honor.

24 THE COURT: All right. And do you have
25 any objections to Becky drawing them?

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1 MR. SPEARS: None, Your Honor.

2 MR. CHISHOLM: No, ma'am.

3 THE COURT: All right. Go for it. And our
4 alternate is?

5 THE CLERK: Phillip Davis.

6 THE COURT: Philip Davis. All right,
7 I'll just let him know when he comes in. All right.
8 Let me have the jury.

9 (Jury enters the courtroom at 2:29 p.m.)

10 THE COURT: All right, ladies and gentlemen,
11 I so hope that you had a very pleasant lunch. And Juror
12 156, thank you so much for sharing that information.
13 Got it, not a problem. Thank you. That happens all
14 the time. I don't know if you remember, but when I was
15 introducing the names of the potential witnesses, that's
16 why I said, can you please stand if you're here because
17 it's easier to put a face with a name than just a name.
18 That's very difficult. So that happens all the time.
19 Not a problem. Thank you.

20 Now with regards to -- one of our jurors,
21 and certainly it is nothing negative, I don't want you
22 to -- sometimes people remember things, and it is
23 important always, and integrity is wonderful and needed.
24 But I have excused one of your number. Please don't
25 take anything negative as a result because there

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1 shouldn't be anything negative about it because there
2 isn't. But I have -- we put the names of our alternates
3 in a cup, and we selected Mr. Davis.

4 THE JUROR: Yes, ma'am.

5 THE COURT: Thank you. You're no longer
6 an alternate. All right. Very well. And, ladies
7 and gentlemen, at this time, we will continue with
8 the direct examination of this witness, Mr. Berg.
9 You may proceed.

10 MR. ALLEN: Thank you, Your Honor.

11 BY MR. ALLEN:

12 Q. Welcome back, Sergeant. I promised we would get
13 into the fingerprints. I have just a couple more things
14 that I wanted to touch on before we get into that,
15 if I may. See on the poster stand here, we've got the
16 enlarged view, which is State's 87. Yes, that's State's
17 87. I apologize. My eyes are failing me.

18 I want to ask you about this. Obviously,
19 went through a number of photographs. I promise I won't
20 go through them again. But can you tell us, looking
21 at this chart, where are all of the projectiles that
22 you located found?

23 A. All of them are here towards the front of the
24 bathroom here.

25 Q. Front to where the entrance of the bathroom is?

1 A. Correct.

2 Q. Were any projectiles found in the rear of the
3 bathroom?

4 A. No.

5 Q. And let me ask you, we saw some pictures of
6 bullet holes through the door and that sort of thing?

7 A. Yes.

8 Q. Can you tell us where all of the bullet holes
9 or impact marks, I suppose I would say, were found?

10 A. Yes. All of the impacts that I found were here
11 towards the entrance as well as the wall here and in
12 the door.

13 Q. And were any bullet impacts found in the rear
14 part of the bathroom, opposite the entrance?

15 A. Not that I located.

16 Q. Thank you. The only other thing I wanted to do
17 before we get to the fingerprints, I'm going to show you
18 what's been marked as State's 73. Can you tell me just
19 generally what this is?

20 A. This is our standard chain of custody for the
21 Dorchester County Sheriff's Office. It lists whatever
22 evidence we have, and makes sure it's the property
23 record of it.

24 Q. And is it associated with a particular case
25 number?

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1 A. Yes, this case number is 16005645.

2 Q. And does that match the case we are currently
3 discussing?

4 A. Yes.

5 Q. And can you tell me what are the two items
6 that were turned in on that chain of custody sheet?

7 A. We have one 9-mm Luger shell casing and a brass
8 projectile.

9 Q. Can you please tell the jury the name of the
10 person who turned it in?

11 A. It is Detective Keith Elmore.

12 Q. And is that the person who initially turned
13 it in?

14 A. No. The IHOP employee appears to be Mohamad,
15 I'm not sure if I'm saying his last name right,
16 Alabas [sic.]

17 Q. Can you please spell it for us?

18 A. A-L-A-B-S-A.

19 Q. That will suffice. Thank you very much,
20 Sergeant.

21 A. Okay.

22 Q. All right. So fingerprints. As the jury heard
23 earlier, a large portion of your job is processing
24 fingerprints; is that correct?

25 A. Yes.

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1 Q. You just go ahead and tell the jury, generally
2 speaking, how you go about processing a crime scene
3 for fingerprint evidence?

4 A. Generally speaking, on the scene, we're going
5 to use the standard -- dual contrast powder. It will
6 show both dark and light surfaces. Usually, we'll just
7 use your standard brush for fingerprinting, do a light
8 dusting over the surface, and see if a latent print will
9 develop from that.

10 Q. And so perhaps you could define what is a latent
11 print?

12 A. Latent means that it was hidden initially.
13 A latent print is a person's fingerprint. When a person
14 touches an object, there is a possibility there for them
15 to leave behind the reproduction of their fingerprints,
16 the raised ridges on your fingers.

17 There are ridges that assist you with grasping
18 objects, help you grip things. The residue that's found
19 on your hands usually always have it, whether it's
20 sweat, oil, or whatever the case may be. When you touch
21 that surface, again, there's a potential for you to
22 leave a reproduction of your fingerprint on that
23 surface.

24 Q. And so just to clarify, so when a person,
25 say, touches an object, what you're saying is that

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1 the residue and such on their hands leave behind some
2 of that residue; is that right?

3 A. Right. The residue on their hands essentially
4 transfer over to the object and leave a reproduction
5 of it.

6 Q. So this powder that you spoke of a moment ago,
7 does it stick to the residue? How does that work?

8 A. It adheres to the residue, yes.

9 Q. Okay. And do you -- how do you collect that
10 for later processing?

11 A. At that point, once I locate a fingerprint,
12 I would use tape used for fingerprinting. And I go
13 over that object, use a fingerprint card, which I would
14 notate on that card where I got the fingerprint.
15 And then I could lift the powder from the surface on
16 the tape, and then place it on the back of the card.

17 Q. So did you have a chance when you went to
18 the scene at the IHOP to search for any fingerprint
19 evidence?

20 A. I did.

21 Q. And did you collect any fingerprint evidence?

22 A. I did.

23 Q. I'll go ahead and do this. I'm going to show
24 you what's marked as State's Exhibits 53, 54, and 55.
25 Can you just tell us what those are?

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1 A. Yes. These are the latent cards that I collected
2 that night.

3 Q. Okay.

4 MR. ALLEN: Your Honor, at this time, I will
5 go ahead and offer State's 53, 54, and 55 into evidence.

6 THE COURT: Have you seen these?

7 MR. CHISHOLM: I have.

8 THE COURT: Any objection?

9 MR. CHISHOLM: No, ma'am.

10 THE COURT: Very well. They're admitted.

11 MR. ALLEN: Thank you, Your Honor.

12 (State's Exhibit Nos. 53 through 55 were admitted into
13 evidence.)

14 MR. ALLEN: May I publish to the jury?

15 THE COURT: You may.

16 BY MR. ALLEN:

17 Q. Let's do it this way, Sergeant Berg. I'm going
18 to go ahead and hand you all three of these cards.
19 And I kind of want to walk through each one, starting
20 with number -- starting with State's 53. Can you tell
21 us where that was collected?

22 A. This was from the exterior exit door.

23 So as ---

24 Q. I'm sorry. Let me change this diagram.

25 So looking now at State's 86. Can you point out where

DIRECT EXAMINATION - MR. ALLEN

1 that print was taken?

2 A. Yes, sir. The exterior exit door is right here.
3 We talked before, there's the two sets of doors, glass
4 doors.

5 Q. Okay. So this was collected from the outer side
6 of the glass door?

7 A. From the outer side, yes, sir.

8 Q. Okay. And were you able to match this set
9 of prints to any particular person.

10 A. I was not.

11 Q. Okay. Let's move on to State's 54. Can you tell
12 us where these prints were taken from?

13 A. Yes, sir. It was the right interior exit door.
14 So it would have been from the set on the inside, to the
15 right.

16 Q. Okay. And are you saying ---

17 A. I'm standing there inside the business, looking
18 out. So if I'm looking out, somewhere on my right side.

19 Q. And using these prints that you collected,
20 were you able to identify any individual associated
21 with those prints?

22 A. I was not.

23 Q. You're not?

24 A. No.

25 Q. Okay. Let's move to this last card here that's

1 marked as State's 55. Can you tell us where these
2 prints were lifted from?

3 A. Yes. This was also from the interior exit doors
4 on the inside.

5 Q. Okay. On the inside?

6 A. Yes.

7 Q. And were you able to match these prints to any
8 particular person?

9 A. I was able to identify some latent prints, yes.

10 Q. And based on those prints, can you identify
11 any particular person that they're associated with?

12 A. Yes, sir. Identified -- I made a source of
13 identification on four latent prints to Keunte Cobbs.

14 Q. Okay.

15 MR. CHISHOLM: May we approach, Your Honor?

16 THE COURT: Sure.

17 (Off-the-record conversation held at sidebar.)

18 (Back on the record.)

19 THE COURT: Yes.

20 MR. ALLEN: Okay. Thank you, Your Honor.

21 I apologize.

22 BY MR. ALLEN:

23 Q. Tell you what, let's move -- all right. Sergeant
24 Berg, I believe you testified earlier that you collected
25 some video evidence from the scene, or maybe -- perhaps,

DIRECT EXAMINATION - MR. ALLEN

1 I should ask again, then. Were you able to contact
2 any IHOP personnel when you went there?

3 A. Yes, I was.

4 Q. And did they show you, or give you any video
5 evidence from the scene?

6 A. They were able to basically walk me through,
7 obtain a video, which I did at that time.

8 Q. Did you have an opportunity to review any of that
9 video?

10 A. Yes, later I did.

11 Q. Sergeant, I'm going to show you what's marked
12 as State's Exhibit 81 here.

13 A. Yes.

14 Q. And does that appear to be a still shot taken
15 from the surveillance footage that you viewed that
16 evening?

17 A. Yes, it does.

18 Q. Now ---

19 MR. ALLEN: Your Honor, at this time,
20 State would move to enter State's 81 into evidence.

21 MR. CHISHOLM: Without objection.

22 THE COURT: Very well.

23 (State's Exhibit No. 81 was admitted into evidence.)

24 MR. ALLEN: May I publish?

25 THE COURT: You may.

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1 MR. ALLEN: So, members of the jury,
2 I'm going to put this on the overhead, if I can.
3 And hopefully I can adjust brightness to make it
4 a little more able to see for everybody. Okay.

5 BY MR. ALLEN:

6 Q. So looking at this still shot image from the
7 surveillance video here, what do we see in the upper
8 right-hand corner here?

9 A. Appears to be information from the video. It's
10 from IHOP, and what area it is showing, and the date and
11 time.

12 Q. Right. And the man that is appearing to open the
13 doors on the upper right-hand corner there, what portion
14 of the door does he appear to be walking through?

15 A. Appears to be the left door.

16 Q. The left door. And let me ask you again, the
17 third fingerprint card that you were able to identify
18 as belonging to Mr. Keunte Cobbs, is this the location
19 where those fingerprints were lifted from?

20 A. It was.

21 Q. Okay.

22 MR. ALLEN: Beg the Court's indulgence.

23 THE COURT: All right.

24 MR. ALLEN: Your Honor, I have no further
25 questions for this witness.

1 THE COURT: Cross-examination.

2 MR. CHISHOLM: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. CHISHOLM:

5 Q. Good afternoon.

6 A. Good afternoon, sir.

7 Q. It's Sergeant Berg, right?

8 A. Yes, sir.

9 Q. Okay. I think you testified earlier that you
10 mainly do the fingerprinting. Is that kind of your
11 forte at this point?

12 A. Yes, sir.

13 Q. In 2016, what's the terminology of your position
14 back then? Is it crime scene investigator?

15 A. Crime scene investigator, yes.

16 Q. Okay. And the bulk of your job is you go to
17 where a crime has been committed and look for evidence.
18 Is that a real simple way to say it?

19 A. Exactly, correct.

20 Q. Okay. And, obviously, I'm assuming you handle
21 cases from, you know, petty larcenies on up to murders,
22 correct?

23 A. Yes.

24 Q. And I'm imagining murder cases probably get
25 a closer eye than some of the lesser ones; is that

1 fair to say?

2 A. Yes, sir.

3 Q. And when you arrive on a scene, how is the scene
4 secured? I imagine you don't let customers walk through
5 the crime scene, or anything like that; is that right?

6 A. Yes, sir. When I got on scene, it was secured
7 by deputies, and I saw crime scene tape up.

8 Q. So as far as the general public, no one in,
9 no one out at that point, right?

10 A. It's supposed to be, no.

11 Q. And that's to preserve the evidence, make sure
12 nothing is introduced that wasn't there before and so
13 on, correct?

14 A. Yes, sir.

15 Q. And when you have a scene like this where,
16 you know, you got shell casings and blood, and you could
17 put together there's a shooting that happened, imagine
18 looking for shell casings, bullets, all that's pretty
19 important to you?

20 A. It is.

21 Q. And I imagine if there's, you know, a shirt on
22 the ground or something like that, that may be collected
23 for evidence, or at least you would look under it, that
24 kind of thing?

25 A. Yes, sir.

1 Q. And you check all the floors, all the corners,
2 and you go through the whole restaurant and do that?

3 A. I don't think -- I didn't go through the whole
4 restaurant in this case. It is important to be thorough
5 with all these cases, especially where I knew -- where
6 the crime occurred.

7 Q. So is it fair to say you focused your efforts,
8 I guess, in the restroom area initially?

9 A. Yes, sir.

10 Q. And then did you work your way back out to
11 the hostess stand, I think you pointed out blood?

12 A. Yes, sir.

13 Q. So you went through that central corridor
14 area looking for all the evidence you could find?

15 A. Yes, sir.

16 Q. Also on the outside, you pointed out some,
17 you know, the red stains on the cement as well?

18 A. Yes.

19 Q. Okay. And as a crime scene investigator,
20 do you have a pretty wide latitude as far as what
21 evidence you collect for testing?

22 A. Yes, I would say so.

23 Q. That's part of your training, is to know what
24 kind of things to look for that might be important in
25 a case?

1 A. Correct.

2 Q. So you don't have to ask permission, like, hey,
3 I found a shell casing. You don't have to go ask
4 Detective Peters or anyone, and say, hey, can I get
5 this? You can just kind of do that on your own, right?

6 A. Right.

7 Q. And that's the same for all types of evidence
8 that you collect?

9 A. Correct.

10 Q. Whether it be footprints, fingerprints,
11 whatever the case may be?

12 A. Yes, sir.

13 Q. And also have you had cases, or can you have
14 cases, where a detective, you know, comes in while
15 you're on the scene, and says, hey, can you also look
16 into this and this?

17 A. Yes, sir.

18 Q. Things that you didn't pick up on or just things
19 that you normally don't collect, but they say, hey,
20 it could be important in this case, can you kind of
21 do a special -- you know, can you collect that and have
22 it tested?

23 A. Absolutely.

24 Q. Okay. So at the end of the day, for evidence
25 collection, who does the ultimate responsibility

CROSS-EXAMINATION - MR. CHISHOLM

1 lie with? Does that lie with you, or with, I guess,
2 the detective of the criminal unit?

3 A. The collection itself is on me, totally.
4 Any testing afterward, that would be consulting
5 with the detective, the lead detective. It would
6 be their decision.

7 Q. So collection is on you?

8 A. Yes, sir.

9 Q. But once you get items of evidence, whether it's
10 blood, DNA, hair, you know, there's a million different
11 things out there.

12 A. Yes, sir.

13 Q. Once you collect that stuff, you can decide
14 on your own to send it off for testing, can you not?

15 A. I can, certain pieces of evidence, yes.

16 Q. And also the detectives with, you know,
17 the criminal division could also request that
18 things be sent off; is that right?

19 A. Yes. It's normal that we consult with each
20 other. I don't know if you want me to go a little
21 bit further.

22 Q. That's fine.

23 A. We would consult, say -- there's only specific
24 numbers, say, that SLED would only take, for cases.
25 Say a violent crime like this, will usually take five.

1 So, at that point, we would consult with the detective,
2 hey, we have all these swabs from these different areas,
3 which ones do you want to go, that kind of thing.

4 Q. And I'm glad you brought that up. So some
5 testing you do in-house; is that correct?

6 A. Just fingerprints. Nothing with DNA.

7 Q. But if you get bullets, blood, all these other
8 kind of things, where do you typically send those for
9 testing?

10 A. Those normally go to SLED for testing.

11 Q. And that's in Columbia?

12 A. Yes, sir.

13 Q. And what does SLED stand for?

14 A. The South Carolina Law Enforcement Division.

15 Q. Do they have a forensics division that handles
16 all these different types of testing?

17 A. Yes, sir. They have a whole lab for that kind
18 of thing.

19 Q. Okay. And when you collect evidence, like let's
20 say you find a bloody shoe or a bullet, or whatever
21 the case may be, and you collect it, can you describe --
22 I mean, I'm assuming you just don't put it in your
23 pocket?

24 A. Yes, sir.

25 Q. How does it get from you collecting it on the

CROSS-EXAMINATION - MR. CHISHOLM

1 scene to the -- you have an evidence room, correct?

2 A. Yes, sir.

3 Q. Can you explain that process and how it gets
4 into the evidence room?

5 A. Absolutely, yes, sir. Normally on scene,
6 once I've already documented, taking my pictures
7 and everything, I decide at that point I'm going
8 to collect it, anything, for example, like a casing,
9 we have certain envelopes that we put those in,
10 same as swabs, I'll put those in a envelope.

11 Generally, I'll have -- everything will be
12 separately packaged. I'll have those in bigger
13 packages, and I'll then transport back to the office.
14 And we do have a secure location where that evidence
15 is stored there once we get -- before it goes to SLED.

16 Q. And that's your procedure, correct?

17 A. Yes, sir.

18 Q. In your division, I guess?

19 A. Yes, sir.

20 Q. If you're not on the scene the entire time,
21 or if things are collected by deputies or whoever
22 responds to the scene, how are they supposed to get
23 evidence to you if you don't collect it yourself?

24 A. Yes, sir. They would then try to do the same
25 as best they can. But no matter what, the evidence

1 needs to go into their possession and not leave it
2 without being documented. And we do have an evidence
3 room for deputies to -- like I was talking about
4 earlier, say, a deputy collects a fingerprint card
5 on scene and turns it in for evidence -- then look
6 at it later.

7 Same thing any other case. They would collect
8 the evidence, they would need to store it, they would
9 need to complete the chain of custody, and then drop
10 it in our evidence locker downstairs that they have
11 access to.

12 Q. So whether it's you or deputies on the scene,
13 there needs to be, I guess, a chart showing here's who
14 touched this item of evidence, here's who it was handed
15 off to from the time it's collected up until it's
16 presented ultimately at trial; is that fair to say?

17 A. It's fair to say to a degree, yes, sir.
18 Once it's in crime scene, we don't sign -- let's say
19 I give this to somebody for them to take it out to SLED,
20 I wouldn't sign that item over to them on the chain,
21 but it stays within the unit until it goes to SLED.

22 Q. Sure. Like let's say a gun is found on a crime
23 scene, is that something -- would it be appropriate to,
24 like, put it in your trunk and turn it in a few days
25 later, or is that something that you should pretty much

1 turn in ASAP?

2 A. Right. It goes without saying, it should
3 be turned in right away.

4 Q. Okay. And you talked about the evidence room.
5 That's a secure facility, or a secure room area,
6 I guess, I should say?

7 A. Yes, sir.

8 Q. And can you explain why it's important it's
9 secure?

10 A. It's all the integrity of evidence. We can't
11 have anything tampering with that evidence or anybody.
12 All this stuff gets brought to trial. We need to make
13 sure that everything is accurate. It hasn't been messed
14 with, altered, changed, or anything like that until
15 it comes to trial.

16 Q. And even other officers, if they want to look
17 at evidence in the evidence room, they're not part
18 of the crime scene unit, like you are, do they have
19 to sign in and out when they go there?

20 A. They do.

21 Q. Okay. Do you usually accompany them?

22 A. Usually, when somebody comes back to the room,
23 now that we have it, they'll sign in, they'll wait in my
24 office, and then one of our evidence techs will go back
25 to the actual evidence room. So they're not even back

1 there anymore.

2 Q. Do you have cameras set up inside or outside
3 of the unit to show who's going in, what they're doing
4 in there, that kind of thing?

5 A. The only cameras are outside the hallway.
6 They're not in the unit specifically.

7 Q. Okay. So you should be able to notate who goes
8 in, who goes out?

9 A. Yes, sir, correct.

10 Q. Okay. And I touched on this a second ago, but at
11 the end of the day you can send stuff off for testing.
12 But, typically, you said you like to collaborate with
13 the detective that's the head of that particular case;
14 is that right?

15 A. Correct.

16 Q. And you mentioned earlier that sometimes SLED
17 will give you a limit. They'll say, we'll test five
18 pieces of evidence. Let's say you had a case where
19 you had 60 bullets. Would you be able to send five off
20 to be analyzed, get that back, and then send five more?

21 A. I should have been more clear with my answer.
22 Bullets don't really count for that. It's only DNA
23 that it's the five for. But we could send more bullets,
24 as far as from SLED. There is no limit as far as
25 anything like that goes. Their main thing is their

1 DNA department gets backed up, that's why they put
2 a limit on that.

3 Q. Like, let's say, blood. That might be a better
4 example. If you've got 20 items that you want tested,
5 you would be able to get them all tested, it's just
6 a matter of sending about five at a time; is that right?

7 A. It would be, yeah. And in some cases, you can
8 call them, and they'll take them all at once. It's
9 just, you know, what they want to do.

10 Q. And I imagine if you've got -- keep talking about
11 larcenies. But you've got a petty larceny, and they're
12 probably not going to be as accommodating if you tell
13 them I've got a murder case, right?

14 A. Yes, sir.

15 Q. They do put some emphasis or, you know, give you
16 some leeway with that I imagine?

17 A. Yes, sir.

18 Q. Okay. And in this case, you testified about the
19 red stains, I think, on the pavement in the bathroom,
20 all the assorted areas. I'm guessing -- I assume that
21 was blood evidence based on the incident, correct?

22 A. Yes, sir.

23 Q. And you -- showed you all the pictures, a bunch
24 of them, all the pictures you took. Did you actually
25 collect samples of the blood that you took pictures of?

1 A. I did.

2 Q. Why did you do that as opposed to just taking
3 a picture and leaving it at that?

4 A. Well, we don't want to leave anything there.
5 We only get one shot at the scene, and that's the bottom
6 line. I would definitely want to -- and especially in
7 a case like this, I would like to try to document.
8 Obviously, someone was shot. So, I would like to know
9 who that person is.

10 Q. And with blood evidence, you can test them,
11 I'm assuming, for blood type and that kind of stuff.
12 But you could also do DNA testing based off blood,
13 correct?

14 A. Yes, sir.

15 Q. Okay. And did you collect blood evidence in this
16 case, and if you could tell me how many samples did you
17 get?

18 A. Let me look through here, sir. But we do collect
19 blood evidence, swabs from red stains. I would have to
20 look through here and tell you exactly. This is roughly
21 10 to 15, but I can give you the exact number, if you
22 want.

23 Q. That's fine. That will suffice.

24 A. Okay.

25 Q. Can you tell me these items that you collected,

CROSS-EXAMINATION - MR. CHISHOLM

1 were they ever sent off for testing?

2 A. They were.

3 Q. They were. Did you get the results back?

4 A. I don't know why, but it was never tested.

5 But they were sent to SLED, the swabs.

6 Q. They were sent back in 2016, I guess?

7 A. I don't have the sheet where they returned here,
8 sir. But I do have the sheet where they were sent
9 there. And that's all I have. I don't know when
10 exactly they were sent back. Sometimes it can take
11 a while. I really don't know.

12 Q. Do you know if anyone followed up? I mean,
13 you or other detectives, to say, hey, we sent this off?

14 A. No, sir. I would imagine so. Usually, they send
15 us an e-mail and let us know what's going on. I don't
16 know. I don't know what happened with this. Why they
17 didn't test it or anything. I have no idea.

18 Q. Okay. And you're aware of -- I believe your
19 report references, I believe, it's a pair of jeans,
20 or some clothing that was allegedly on Mr. Cobbs in
21 this case. Was that taken into evidence; is that
22 correct?

23 A. Yes, sir, it was.

24 Q. And was it taken into evidence because you
25 thought it might have evidentiary value because there

1 could be blood from the case, you know, on his pants
2 or some kind of evidence that could be sought from
3 his pants?

4 A. Yes, it could be possible.

5 Q. Could you tell me if that was ever sent off?

6 A. No, sir, it wasn't.

7 Q. Okay. Was that a decision you made?

8 A. I never made a decision about that because we
9 never sent anything -- we didn't even get the initial
10 DNA tested. So there wouldn't have been a point to send
11 any more. I don't know why it wasn't tested. I don't
12 have that answer, but it would have been pointless
13 to send something else for testing if they didn't even
14 test the first stuff that we had.

15 Q. If you sent off a pair of pants, I mean, could
16 you look for blood splatter and, you know, those types
17 of things on it?

18 A. Well, they could, yes, sir.

19 Q. Okay. And sometimes -- you're familiar with
20 gunshot residue?

21 A. Yes, sir.

22 Q. Could they test it for that?

23 A. They won't test anything -- I know that the kits
24 that we do, they won't test it unless it's been within
25 six hours of the incident occurring, and this was way

CROSS-EXAMINATION - MR. CHISHOLM

1 longer than that.

2 Q. So even in a murder case, they won't see if they
3 could get gunshot residue?

4 A. Well, you would have to ask them, sir. But all
5 I can tell you is the only information I've ever gotten
6 from them was anything past six hours they won't test
7 it.

8 Q. Okay. So can you roughly explain what gunshot
9 residue is? I should have started there.

10 A. Yes, sir. Well, I don't know much more about
11 it than anybody else. But, obviously, when you fire
12 a weapon, there is powder inside that weapon, and it
13 makes a projectile come out. These weapons are
14 airtight. Those particles come out, and they can end
15 up on people's bodies or clothing.

16 Q. Okay. So it can provide evidence. Possibly,
17 if someone was shooting a gun, or at least in proximity
18 of a gun, is that fair to say, when it was fired?

19 A. Yes, sir.

20 Q. Okay. And that kind of testing, if it needs
21 to be done within six hours, I'm guessing it needs
22 to be done in-house, if not by you, by other deputies,
23 the detective on the case, that kind of thing; is that
24 correct?

25 A. Yes, sir. Yes, sir.

1 Q. Can you tell me if gunshot residue testing was
2 done on any of the evidence in the case, in particular
3 the alleged victims in the case? Can you tell me if
4 gunshot residue testing was done on either of them?

5 A. I don't believe that they were. In fact, I could
6 probably say no. I don't have any sheets that I see
7 that have guns -- GSR kits that were brought into
8 evidence, so it doesn't appear so.

9 Q. Okay.

10 A. Yes, sir.

11 Q. Okay. I would like to talk to you ---

12 MR. CHISHOLM: Judge, may I approach?

13 THE COURT: You may.

14 BY MR. CHISHOLM:

15 Q. Sergeant, you've got labeled and circled,
16 like, different areas where you've got cartridge casings
17 that were recovered and projectiles that were recovered;
18 is that correct?

19 A. Yes, sir.

20 Q. And cartridge casings in particular, when a gun
21 is fired, is it your understanding that if it's a
22 semiautomatic, as these are, the cartridge casing will
23 be ejected as the gun is fired; is that right?

24 A. Yes, sir.

25 Q. And it doesn't come out necessarily in a neat

1 linear line. It comes out with some force; is that
2 correct?

3 A. Correct.

4 Q. Would you agree with me that cartridge casings,
5 they're not like beanbags where if I throw one on the
6 floor right there, it's going to stick like a beanbag?

7 A. Correct.

8 Q. They ricochet off walls, off the floor, they can
9 go everywhere; is that right?

10 A. They do all kinds of things.

11 Q. If you kick one, it could shoot across the room;
12 is that right?

13 A. Yes, sir.

14 Q. So when you have a scene like this, you can try
15 to get some idea of what happened on a crime scene based
16 on cartridge location. But is it tougher if you're in a
17 small room like this to figure out positioning of a gun
18 or anything because of that, because of the ricochet
19 effects and everything else?

20 A. Yes. I mean, a lot of things could happen.
21 I mean, I'm by no means a shooting incident expert
22 or reconstructionist, but absolutely. A lot of things
23 can bounce off. That's just how it goes.

24 Q. Gotcha. And we've talked about bullets,
25 cartridge casings, projectiles. Can you explain kind

CROSS-EXAMINATION - MR. CHISHOLM

1 of the competents of a basic, I guess, bullet common
2 terms?

3 A. As best I can. You have the casing itself at the
4 bottom, which has the firing pin, and would strike the
5 item and make it go boom, so to speak. And you've got
6 your powder inside, and the bullets that's projectile.

7 Q. And the casings, which we've got some in evidence
8 here, you're familiar with what a bullet -- a cartridge
9 casing looks like?

10 A. Yes, sir.

11 Q. They're typically made out of brass or another
12 material; is that correct?

13 A. Yes, sir.

14 Q. And a lot of times it's a smooth, kind of
15 nonporous material; is that right?

16 A. Yes.

17 Q. Is that the type of material that you
18 can typically try to get a fingerprint off of?

19 A. Yes, sir.

20 Q. Did you or anyone else fingerprint these casings?

21 A. I did.

22 Q. Did you get anything off of them?

23 A. According to my lab report, I did notice some
24 ridge detail, and I did take some photographs. But none
25 were of value for compensation.

CROSS-EXAMINATION - MR. CHISHOLM

1 Q. So you couldn't link these casings that have been
2 fired to any particular person?

3 A. Correct.

4 Q. And also you can test for DNA, touch DNA,
5 on these materials as well, can you not?

6 A. Yes, sir, you can.

7 Q. And these items, I believe you testified,
8 they were sent to SLED ultimately; is that correct?

9 A. Yes, sir.

10 Q. And, obviously, I think we'll be hearing SLED
11 can do ballistics testing, and that kind of thing.
12 But they would also do the DNA testing; is that correct?

13 A. They could. I could swab them, but at the lab
14 I did not do that. It's just the chances of DNA
15 surviving a blast like that is virtually slim to none.
16 I didn't collect any DNA from the cases.

17 Q. Did anyone ask you to?

18 A. No.

19 Q. Okay. That's just kind of a call you made kind
20 of on the fly, I guess?

21 A. Yes, sir.

22 Q. Okay. And I would like to ask you about cell
23 phones in this case. I believe your report mentions
24 that a cell phone was found at the restaurant and taken
25 into evidence; is that correct?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Yes, sir.

2 Q. And were you able to identify who the phone
3 belonged to?

4 A. No.

5 Q. Are you aware of whether -- I guess, the
6 technical term isn't a phone dump. But are you aware
7 if an extraction was done on this phone to pull the
8 contents off for examination?

9 A. I don't know if it was or not. I did sign the
10 phone out to Lieutenant Peters, and he signed it out
11 to Sergeant Smith. He usually is the one who does that,
12 and then they sign it back to me. I can't say what
13 happened in between that.

14 Q. Gotcha. So you collect it?

15 A. Yes.

16 Q. But then they would do the actual testing
17 and give it back?

18 A. Yes.

19 Q. So you wouldn't be part of that process at all?

20 A. Correct.

21 Q. That makes sense. That's fair. Are you aware
22 of any cell phones being seized when Mr. Cobbs was
23 arrested?

24 A. Not that I'm aware, no.

25 Q. As far as you're aware, the only phone that

CROSS-EXAMINATION - MR. CHISHOLM

1 was ever turned into evidence is the one that I was
2 just asking you about that was found in the restaurant;
3 is that correct?

4 A. That's correct.

5 Q. And if it had been -- if other phones had been
6 turned into evidence, that would be noted, or should
7 be noted, correct?

8 A. Yes.

9 Q. Okay. Are you aware of phones going missing in
10 this case? Has Detective Peters or anyone else brought
11 that up to you?

12 A. No.

13 Q. You haven't heard that?

14 A. No, sir.

15 Q. Okay. Your report mentions you collected
16 DNA samples, I think, from items, or one of the tables
17 in this IHOP. I think there was a straw and, you know,
18 some things along those lines. Was that ever tested?

19 A. No, it was not.

20 Q. Okay. But it was collected; is that correct?

21 A. It was collected, yes.

22 Q. I'm guessing you collected it so you could try
23 to determine who was sitting in this particular area?

24 A. Yes.

25 Q. Was it your decision to not send it off, or would

1 that be from someone else?

2 A. Well -- yes, sir. We never got to that point,
3 again because our initial DNA was never tested.
4 So there was really no reason to send any more.
5 So nothing else was ever sent. The most important
6 items were sent off first, and those were never tested.
7 So, I wouldn't have sent something else that was less
8 important instead of trying to get the stuff that
9 I initially sent out there tested.

10 Q. Okay. Did you ever try to get fingerprints
11 or DNA from the bathroom stalls and the doors, anything
12 inside the bathroom where this all happened?

13 A. I never collected anything from those areas.

14 Q. Okay. Did you try to and you weren't able to
15 get any, or did you just not try to?

16 A. I believe I fingerprinted it. I didn't get
17 anything off of it. I can't remember for sure if
18 I processed those or not.

19 Q. Were you ever able to get any kind of forensic
20 evidence; blood, DNA, fingerprints, anything that puts
21 Mr. Cobbs inside this bathroom?

22 A. No.

23 Q. Thank you.

24 MR. CHISHOLM: If I could have one moment.

25 THE COURT: Okay.

REDIRECT EXAMINATION - MR. ALLEN

1 BY MR. CHISHOLM:

2 Q. Just for clarification, you were never asked
3 by anyone, I guess, on the solicitor or law enforcement
4 side, about looking for cell phones that were missing
5 in this case at any point?

6 A. Not that I remember.

7 Q. Imagine it would stick out?

8 A. I imagine it would, yes, sir.

9 MR. CHISHOLM: Thank you. I have no further
10 questions.

11 THE COURT: All right. Redirect.

12 MR. ALLEN: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. ALLEN:

15 Q. I think we touched on this. Mr. Chisholm may
16 have mentioned it as well. Ultimately, you did send
17 some -- did you send some bullets and shell casings
18 off to SLED?

19 A. I did.

20 Q. I'll just ask you which items you sent off to
21 SLED. Were all of the bullets that you found in the
22 bathroom sent to SLED -- the projectiles, I should say?

23 A. Yes.

24 Q. Okay. What about all of the shell casings that
25 you found?

REDIRECT EXAMINATION - MR. ALLEN

1 A. They were.

2 Q. Now we talked for a moment about this additional
3 item that was marked for identification. Did you send
4 that off to SLED as well?

5 A. Yes, sir.

6 Q. And that was a bullet -- a projectile and shell
7 casing as well, right?

8 A. Correct.

9 Q. All right. I think Mr. Chisholm spoke for
10 a moment about fingerprinting, getting prints off
11 of some of these bullets, and you mentioned that some
12 of them had ridge detail on them; is that correct?

13 A. A little bit, yes.

14 Q. Now whenever something has ridge detail,
15 does that always translate to a print?

16 A. No.

17 Q. Would you say that it frequently translates
18 to a print?

19 A. There's part of a print there, but an
20 identifiable print, no. That hardly ever occurs.
21 It's another one of those situations where that print,
22 it's still moisture from your hands that would need
23 to survive the heat and intensity of being on a bullet
24 and fired through a gun. So, typically, nothing like
25 that ever survives.

DIRECT EXAMINATION - MR. ALLEN

1 Q. All right. So in this case, you just determined
2 it would not have an evidentiary value?

3 A. Correct.

4 MR. ALLEN: Court's indulgence.

5 THE COURT: Okay.

6 MR. ALLEN: I have nothing further,
7 Your Honor.

8 THE COURT: Recross.

9 MR. CHISHOLM: No, ma'am.

10 THE COURT: Is this witness free to leave?

11 MR. ALLEN: Yes, ma'am.

12 MR. CHISHOLM: No objection.

13 THE COURT: All right. You're free to go.

14 Call your next witness.

15 MR. ALLEN: State calls Mohamad Alabsa.

16 MR. MOHAMAD ALABSA was called as a witness,
17 being duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ALLEN:

20 Q. Good afternoon, Mr. Alabsa. Can you please
21 just tell us where you work currently?

22 A. I'm actually back to IHOP.

23 Q. Okay. So what do you currently do with IHOP?

24 A. I'm a managing partner for the location.

25 Q. Okay. So for just one restaurant?

DIRECT EXAMINATION - MR. ALLEN

1 A. That's correct, at this time.

2 Q. Have you in the past held a different position
3 with the IHOP?

4 A. I have.

5 Q. And what position was that?

6 A. I was VP of operations.

7 Q. You said VP, as in vice president of operations?

8 A. That's correct.

9 Q. And did you hold this position in 2016?

10 A. I was.

11 Q. About how long were you in this position with
12 the restaurant?

13 A. I was in that position for a few years from
14 different locations. I moved to South Carolina,
15 North Carolina -- about a year and a half in this area.

16 Q. Okay. So about a year and a half in this area?

17 A. Yes, sir.

18 Q. Now back in 2016 when you were the vice president
19 of IHOP, is that -- excuse me -- vice president of
20 operations in the southeast, in the general area?

21 A. Actually, we had multiple locations in South
22 and North Carolina.

23 Q. Okay. So primarily in the southeast?

24 A. You can say -- it's a different franchise,
25 different territories.

DIRECT EXAMINATION - MR. ALLEN

1 Q. That's fair. How about we say North and South
2 Carolina.

3 A. That's fine.

4 Q. As vice president at that time, is it fair to
5 say that you know a lot about what was going on with
6 the various IHOP locations within your geographic
7 region?

8 A. That's correct.

9 Q. So speaking specifically of here in Dorchester
10 County -- let me ask you this. In 2016, how many IHOP
11 locations were here in Dorchester County?

12 A. There should be only one, the one on Dorchester
13 Road.

14 Q. In 2016. And was a -- you may not know this,
15 maybe past your time, but was a location subsequently
16 opened in downtown Summerville?

17 A. There's another location on Main Street
18 in Summerville. But that was not associated with
19 ours at that time.

20 Q. I understand. So the IHOP locations within
21 your, I guess, corporate control for lack of a better
22 term, the only one in Dorchester County would have been
23 the location on Dorchester Road; is that correct?

24 A. That's correct.

25 Q. Okay. Thank you. Now again, as the vice

DIRECT EXAMINATION - MR. ALLEN

1 president, you presumably -- would you have been very
2 familiar with any events that occur, or incidents that
3 occur at locations within your control?

4 A. Yes.

5 Q. And so are you aware of an incident that took
6 place in June 2016 in the one IHOP location within
7 Dorchester County?

8 A. Yes.

9 Q. Okay. Let me ask you this. Are you aware
10 of any other -- let me back up. Do you know what
11 kind of incident it was?

12 A. The one on Dorchester Road?

13 Q. Yes, sir, in 2016.

14 A. A shooting at that moment inside the restaurant.
15 And I got the call maybe in the middle of the night,
16 have to get to the location. When I got to the location
17 at the scene, of course, it was blocked off by police
18 due to incident inside the restaurant.

19 Q. I understand. So there was a shooting?

20 A. Yes, sir.

21 Q. Okay. Are you aware of any other shootings
22 in any IHOP locations within Dorchester County between
23 that incident in 2016, and we'll just say to the
24 present?

25 A. No.

DIRECT EXAMINATION - MR. ALLEN

1 Q. None, okay. Now some time back in 2016,
2 following this shooting, where were you principally
3 working out of?

4 A. My office in Florence..

5 Q. Florence. And at some point, you were made
6 aware that some item was recovered from the IHOP
7 location in Dorchester?

8 A. Not sure where it was recovered from, but it was
9 somehow at the office.

10 Q. Okay. But do you know that it was recovered
11 by an IHOP employee?

12 A. I could not tell you how and where. At the
13 office -- an item was needed to be delivered, and
14 I lived nearby area. I live in Moncks Corner --
15 go to James Island, Charleston ---

16 Q. And if I could just ask you to speak up a little
17 bit for the benefit of our court reporter here.

18 A. Sure.

19 Q. Now, ultimately, you received the item that
20 had been found or that needed to be transported from
21 the IHOP office, correct?

22 A. Main office, yes, sir.

23 Q. The main office is in Florence?

24 A. In Florence.

25 Q. Okay. And did you, in fact, transport an item

DIRECT EXAMINATION - MR. ALLEN

1 from the main office in Florence to Dorchester County?

2 A. I did.

3 Q. And I believe you said a moment ago that it was
4 because you lived nearby?

5 A. I'm sorry?

6 Q. And I believe you said a moment ago it was
7 because you lived nearby?

8 A. That's correct.

9 Q. That you were the one that took it, okay.
10 Mr. Alabsa, I'm going to show you what's been marked
11 here as State's 73. Can you just tell me what it says
12 at the top of that sheet?

13 A. Specific time, or read the whole thing?

14 Q. Well, if I may direct your attention just
15 starting at the very top and working your way down
16 the first line.

17 A. Okay. Dorchester County Sheriff's Office,
18 Case No. 16005645, Officer Elmore.

19 Q. Well, and here -- let me do this. Does your name
20 appear on that?

21 A. Yes, sir.

22 Q. And next to your name, if I may take a peek
23 at this, Mr. Alabsa.

24 A. Yes, sure.

25 Q. Now below your name, there's a box that contains

DIRECT EXAMINATION - MR. ALLEN

1 a list of items. Can you tell me what the names
2 of those items are?

3 A. One 9-mm shell and two brass -- I can't read this
4 handwriting.

5 Q. Sure. And just to clarify for the record,
6 did you say one 9-mm shell?

7 A. Shell, correct.

8 Q. Okay. Thank you. And below this, your name
9 is written again about halfway through the page.
10 And is that your signature that appears below your name?

11 A. That is correct.

12 Q. So is this the sheet that you brought with you,
13 or that you signed when you brought the items from the
14 IHOP location to the Dorchester County Sheriff's Office?

15 A. That's the sheet I signed. If I recall, Officer
16 Elmore, gave him the stuff, and kind of wrote down what
17 it is, and I signed what I turned in.

18 Q. Okay. So Officer Elmore takes the items out
19 of the bag to see what they were?

20 A. I did not inquire what was in the bag. I don't
21 know what was in the bag. So, I do not recall what
22 it was.

23 Q. Sure, sure.

24 MR. ALLEN: Your Honor, at this time,
25 State would again offer State's 70 and 69 into evidence.

1 MR. CHISHOLM: Objection. Foundation.

2 MR. ALLEN: I believe we determined where
3 it came from and who was in custody of it before it made
4 its way to the sheriff's office.

5 THE COURT: All right. Hold on. Ladies
6 and gentlemen, we're going to take our afternoon break.
7 There's a matter that I must take up outside of your
8 presence, and we're going to take our afternoon break.
9 We'll probably take about 20 minutes only because we've
10 got to deal with this, and then we need a little break.
11 If you'll please step to your jury room. Do not discuss
12 this matter. And do not allow anyone to discuss it with
13 you. And leave your notepads in your seat.

14 (Jury exits the courtroom at 3:22 p.m.)

15 THE COURT: All right. Mr. Allen,
16 I'm concerned that he doesn't -- he's not real clear
17 where the item came from. At one point, he kind of
18 gives it to you, and then he backs away. And then
19 you sort of bring him back along, and then he goes away,
20 and I am concerned about it.

21 I certainly -- I understand your
22 perspective. I do. Unfortunately, it just doesn't
23 seem -- I'm not hearing really any certainty about
24 where these items come from. So, I was going to give
25 you an opportunity outside of the presence of the jury

1 to -- I was going to see if you can ask him again.
2 And because I must also tell you I'm having difficulty
3 hearing him as well.

4 MR. ALLEN: Sure.

5 THE COURT: And I know he's got the
6 microphone, but I've got it up pretty high. So if you
7 want to inquire of him, but I'm pretty concerned about
8 it, to your point.

9 MR. ALLEN: Certainly, Your Honor.
10 And I think the State's position would be to -- I mean,
11 we know where it came from. There's only one IHOP in
12 Dorchester County. It was sent to the Dorchester County
13 Sheriff's Office. There's no other reason for it.
14 Now it also is the same type of bullet. You know,
15 subsequently SLED will testify that it matches
16 everything, you know.

17 So, I mean, we know where it came from.
18 We know what it is. We just don't have somebody that
19 can say it was found in the corner there. It came from
20 the IHOP in Dorchester. There's only one. There's only
21 one where there is a shooting that occurred. So my
22 process ---

23 THE COURT: My problem is, and I think
24 to your inquiry, at one point he says he just didn't
25 know. He didn't know where it came from.

1 MR. ALLEN: Well ---

2 THE COURT: And, unfortunately, he's going
3 all over the place. So, I mean, anything to add to
4 that, Mr. Chisholm?

5 MR. CHISHOLM: No, Your Honor. I think
6 you kind of pointed out what I was going to say.

7 THE COURT: Okay. Very well. At least
8 at this point, it's inadmissible, now something could
9 change. You're on the stand, so I need you not to
10 testify -- don't have a conversation with anyone
11 regarding your testimony.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: But you can take a little break.
14 That's not a problem.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And don't go far because we're
17 only going to take about 15 minutes and start back up.

18 THE WITNESS: All right.

19 THE COURT: Thank you, sir. Thank you, all.
20 Be at ease.

21 (Recess taken.)

22 (Back on the record.)

23 (Jury enters the courtroom at 3:42 p.m.)

24 THE COURT: All right. Ladies and
25 gentlemen, at this time, we will continue with

DIRECT EXAMINATION - BY MR. ALLEN

1 the State's case. Yes.

2 MR. ALLEN: Your Honor, actually, I have
3 no further questions for this witness.

4 THE COURT: All right. Cross-examination.

5 MR. CHISHOLM: I have no questions,
6 Your Honor.

7 THE COURT: Is this witness free to leave,
8 and is there any objection?

9 MR. ALLEN: Yes, ma'am.

10 MR. CHISHOLM: No objection.

11 THE COURT: Thank you. You're free to go.
12 Call your next witness, please.

13 MR. ALLEN: State call Alexandria Pulliam.

14 MS. ALEXANDRIA PULLIAM was called as a
15 witness, being duly sworn, was examined and testified
16 as follows:

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. ALLEN:

20 Q. Good afternoon, Ms. Pulliam.

21 A. Hi.

22 Q. Where do you live currently?

23 A. Anderson, South Carolina.

24 Q. Anderson, South Carolina. Have you ever lived
25 here in Dorchester County?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. No, sir.

2 Q. But have you ever visited Dorchester County?

3 A. Yes, sir.

4 Q. Do you recall visiting Dorchester County around
5 June 5, 2016?

6 A. Yes, sir.

7 Q. And do you recall where you went early that
8 morning, or late the prior night, depending on how
9 you want to think about it?

10 A. My mom's.

11 Q. Right. Did you ever go out to eat at some point
12 that night?

13 A. Yes.

14 Q. And do you recall going to any particular
15 restaurant?

16 A. IHOP.

17 Q. Thank you. Did you go by yourself, or did you
18 have some people with you?

19 A. I had some people with me.

20 Q. About how many people were in your party?

21 A. Four other people, five other people.

22 Q. And what were you all doing there? You're just
23 having a good time?

24 A. Yeah, we went out. We had dinner earlier,
25 and then went out for drinks. And needed a little bit

1 extra to get home.

2 Q. Sure, sure. Did somebody have a cell phone
3 at the table?

4 A. Yeah, my sister.

5 Q. And did anybody take some video of y'all while
6 you're sitting at the table?

7 A. Yes, my sister just had to record me and my
8 brother-in-law.

9 Q. Just a minute. Ms. Pulliam, I'm going to show
10 you what's been marked as State Exhibit No. 71. Can you
11 look at that. Feel free to take it out of the jacket.
12 Tell me if you've seen that disc before?

13 A. Yes, I saw it earlier.

14 Q. Right. So on the corner of that disc, is that
15 your signature?

16 A. Yes, sir.

17 Q. And the date below it?

18 A. 1-7-2020.

19 MR. ALLEN: Your Honor, at this time,
20 the State would move to admit State's 71 into evidence.

21 MR. CHISHOLM: No objection, Your Honor.

22 THE COURT: Very well.

23 (State's Exhibit No. 71 was admitted into evidence.)

24 BY MR. ALLEN:

25 Q. Ms. Pulliam, I'm also going to show you

DIRECT EXAMINATION - BY MR. ALLEN

1 a photograph. Do you recognize this picture marked
2 as State's No. 72.

3 A. Yes, sir.

4 Q. And is this a still image from that video?

5 A. Yes, sir.

6 MR. ALLEN: Your Honor, at this time,
7 the State would ask to move State's 72 into evidence.

8 MR. CHISHOLM: No objection, Your Honor.

9 THE COURT: Very well.

10 (State's Exhibit No. 72 was admitted into evidence.)

11 MR. ALLEN: May I publish?

12 THE COURT: You may.

13 BY MR. ALLEN:

14 Q. Now, Ms. Pulliam, there's a gentlemen in a red
15 shirt in the upper left-hand corner, there's a gentleman
16 in a red shirt behind you. The gentleman in the
17 left-hand corner with the bald head, do you recognize
18 that gentleman?

19 A. Yes.

20 Q. And is he sitting in the courtroom here today?

21 A. He is right over there.

22 Q. And can you point him out for us?

23 A. (Witness points to the Defendant.)

24 Q. Than you, ma'am.

25 MR. ALLEN: Your Honor, I have no further

DIRECT EXAMINATION - BY MR. SPEARS

1 questions for Ms. Pulliam.

2 THE COURT: Cross-examination.

3 MR. CHISHOLM: No questions, Your Honor.

4 THE COURT: Is this witness free to leave,
5 and is there any objection?

6 MR. ALLEN: Yes, ma'am.

7 MR. CHISHOLM: No objection.

8 THE COURT: Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: You're free to go. All right.
11 Call your next witness.

12 MR. SPEARS: Thank you, Your Honor.
13 State calls Chad Smith.

14 THE COURT: All right.

15 MR. CHAD SMITH was called as a witness,
16 being duly sworn, was examined and testified as follows:

17 THE COURT: Your witness.

18 MR. SPEARS: Thank you, Your Honor.

DIRECT EXAMINATION

19 BY MR. SPEARS:

20 Q. Agent Smith, where do you work?

21 A. I'm employed with the South Carolina Law
22 Enforcement Division, which is commonly known as SLED.
23 Specifically, I work at SLED's forensic services
24 laboratory in Columbia.
25

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And what's your title there?

2 A. I am a forensic scientist or examiner. I work
3 in the firearms department at the laboratory.

4 Q. And has your entire time at the law enforcement
5 -- state law enforcement division been in the firearms
6 department?

7 A. It has.

8 Q. And about how long is that?

9 A. Last November was 11 years.

10 Q. Can you take us through some of your educational
11 background and training, as required through your job?

12 A. Sure. I attended Clemson University where
13 I earned a bachelor's of science degree in biological
14 sciences. And then when I started my employment with
15 SLED, I began the training program to become a firearms
16 examiner. That training program lasts between three
17 to five years.

18 It involves extensive reading and studying.
19 There are multiple examinations and tests given during
20 that time. I also attended various classes and
21 seminars. Had the opportunity to tour various firearm
22 and tool manufacturing facilities.

23 Later in my training, I helped other examiners
24 prepare their casework. And at the end of the training,
25 I received a comprehensive multi-part examination, which

DIRECT EXAMINATION - BY MR. SPEARS

1 I successfully completed. And then I began to receive
2 my own casework.

3 Q. Now have you ever testified in court regarding
4 some of your findings at SLED?

5 A. Yes, sir, I have.

6 Q. About how many times?

7 A. Over 65 times.

8 Q. And have you been qualified as an expert in those
9 occasions?

10 A. I have.

11 Q. All right.

12 MR. SPEARS: Your Honor, at this time,
13 I would like to offer Agent Smith as an expert in
14 firearms identification -- examination, Your Honor.

15 THE COURT: I understand. Is there any
16 voir dire?

17 MR. CHISHOLM: No, ma'am.

18 THE COURT: Any objection?

19 MR. CHISHOLM: No, ma'am.

20 THE COURT: So qualified.

21 MR. SPEARS: Thank you, Your Honor.

22 BY MR. SPEARS:

23 Q. Now, Agent Smith, can you just give us an idea
24 of the different types of analyses that you can perform
25 on guns?

DIRECT EXAMINATION - BY MR. SPEARS

1 A. My main responsibilities include the examination
2 of firearms and ammunition components such as bullets
3 and cartridge cases. We also do serial number
4 restorations on firearms that have obliterated serial
5 numbers. And we do muzzle to target distance
6 determination for shotgun pellets. The majority of what
7 I do from day to day is try to determine if a specific
8 ammunition component was fired by a particular firearm.

9 Q. All right. And you mentioned cartridges and
10 bullets. Can you just give us an idea -- I understand
11 it's an easy question -- just an idea of what we're
12 talking about there?

13 A. Yeah. A lot of people refer to just a round
14 of ammunition as a bullet, but technically that's
15 incorrect. A unit of ammunition is called a cartridge,
16 and a cartridge is made up of several components.
17 So you have the cartridge case, which is actually
18 the container for all the other components.

19 So the gunpowder goes inside the cartridge case.
20 The bullet or projectile is at the top of the cartridge
21 case mouth. And then at the bottom of the cartridge
22 case is a component which is known as a primer. So the
23 primer is what's struck by the firing pin of a firearm.

24 That in turn causes basically a controlled
25 explosion, which ignites the gunpowder. And as the

1 gunpowder is ignited and explodes, basically, it creates
2 a volume of gas. And as the gas swells up, that's what
3 pushes the projectile or bullet out of the cartridge
4 case, and down the barrel of the gun.

5 Q. All right. Now what, Agent Smith, is the
6 difference between a semiautomatic and a revolver when
7 it comes to a handgun?

8 A. Those are the two main types of handguns that we
9 see. The semiautomatic pistol uses a magazine, in which
10 you put the cartridges in the magazine. The magazine is
11 inserted into the pistol, usually it's in the grip area.
12 And then every time a round is fired, the bullet goes
13 down the barrel.

14 The cartridge case, which is the leftover
15 container is extracted and ejected out of the firearm.
16 And then another round is loaded automatically into
17 the chamber, which is the rear part of the barrel that
18 holds the cartridge, and it's again ready for firing.
19 So that cycle continues every time you pull the trigger.

20 A revolver uses what's called a cylinder.
21 It has multiple chambers in that cylinder to hold the
22 cartridges. And so, basically, the revolver does just
23 that. Every time you pull the trigger, the cylinder
24 turns, and it's ready for firing the next cartridge.
25 So you actually have to manually extract those cartridge

DIRECT EXAMINATION - BY MR. SPEARS

1 cases out of the cylinder. Whereas, a semiautomatic
2 pistol, if it's working properly would eject those
3 cartridge cases out of the gun.

4 Q. Now, Agent Smith, did you receive two firearms
5 that were submitted to SLED from Dorchester County ---

6 A. I did.

7 Q. --- in this case? I'm going to show you what's
8 in state evidence as Evidence 77 and 78. Take your
9 time, and let us know if these are the firearms that
10 you received.

11 A. Ladies and gentlemen, if it hasn't been said
12 before, and just to put your minds at ease, these
13 firearms are safe to handle. It has a cable lock going
14 through the action, so it can't be fired. Yes, sir,
15 State's Exhibit 77 is one of the pistols. It's a Glock
16 9-mm pistol that I received for examination.

17 It also comes with a magazine. Again,
18 the cartridges are loaded into the magazine. And there
19 are also unfired cartridges, which are the ammunition,
20 that was also received with that gun. And again, this
21 firearm is safe to handle. State's Exhibit 78 is the
22 Smith and Wesson 40-caliber pistol that I received.
23 It also has a magazine, some unfired cartridges for
24 that gun.

25 Q. Now, Agent Smith, did you have the opportunity

DIRECT EXAMINATION - BY MR. SPEARS

1 to test and make sure that these firearms were in
2 working order?

3 A. Yes, sir. One of our examinations is to function
4 test guns that we receive. So, I would test fire these
5 guns with ammunition using the submitted magazine.
6 And how you test fire is we use a watertank in our
7 laboratory. It's a vertical watertank, and we shoot
8 into it. And the water slows the bullet down, and it
9 doesn't add or take away the markings that we would use
10 to try to identify back to a particular gun. And so
11 that would -- we have a cup down at the bottom that
12 we can retrieve the fired bullets. And then we have
13 a container in which the cartridge cases would go into
14 after being fired.

15 Q. All right. Now did you also receive several
16 other items of testing compared to these firearms?

17 A. Yes, sir, I did. I received some fired bullets
18 as well as fired cartridge cases.

19 Q. I'm now showing you what has been marked as
20 State's 57, 58, 59, 60, 61, 62, and 63. If you could
21 look at these for me. Are these casings that you
22 received?

23 A. Yes, sir. These are seven cartridge cases,
24 9-mm Luger caliber fired cartridge cases, that I
25 received for examination.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Were you able to compare these casings to each
2 other?

3 A. Yes, sir. One of the examinations we also do
4 when we get fired ammunition components, such as bullets
5 from cartridge cases, is to try to compare them to each
6 other to see if they were potentially by the same gun.

7 And how we're going to do that is we have a piece
8 of equipment, which is known as a comparison microscope.
9 So if you could imagine two microscopes that's connected
10 by an optical bridge system. And you can look into the
11 optical bridge so you can compare two samples
12 simultaneously under each stage of those microphones.

13 And we're looking for the microscopic marks
14 that are created during the firing process. And again,
15 the marks of the gun are imparted onto fired ammunition
16 components. And we could use those marks to try to
17 determine if they were fired by the same gun.

18 Q. And what were the results of your testing?

19 A. I was able to determine that these cartridge
20 cases, State's Exhibit -- bear with me here -- State's
21 Exhibits 61, 63. I'm sorry. I'm getting confused with
22 the previous stickers on here.

23 Q. Check the dates on the stickers.

24 A. State's Exhibits 59, 63, 61, 69 -- excuse me --
25 62, 60, 58, and 57, which is the seven cartridge cases.

DIRECT EXAMINATION - BY MR. SPEARS

1 I was able to determine that they were all fired by the
2 same firearm based on those matching characteristics.

3 Q. Now were you able to perform any testing
4 comparing those shell casings to the aforementioned
5 handguns?

6 A. Right. We can, again, test fire the guns and
7 look for characteristics. We can negate some -- fired
8 by different guns based on what's called class
9 characteristic. Caliber is a class characteristic,
10 or just some markings in general that may be particular
11 to a different group of guns that, you know, may not
12 be present on the fired evidence itself.

13 So we can negate things on class characteristics
14 as well as individual characteristics, which would be
15 the individual nature to a particular gun.

16 But I was able to determine that the two firearms
17 that were submitted, State's Exhibits 78 and 77, did not
18 fire these cartridge cases based on class
19 characteristics. Again, it could be caliber, or it
20 could be based on individual characteristics as well
21 as other class characteristics.

22 Q. So when you say -- how were you able to
23 determine, say, the 40-caliber handgun presented to you
24 didn't fire these casings?

25 A. The main one would be the caliber. You've got

DIRECT EXAMINATION - BY MR. SPEARS

1 40 Smith and Wesson versus the 9-mm cartridge cases.
2 Some guns could fire 9-mm if they were chambered for
3 40 Smith and Wesson. But you would notice this since
4 the 9-mm is such a smaller diameter cartridge case.
5 If it was fired in a larger diameter chamber, it would
6 swell up. And you would see signs of that, which these
7 cartridge cases did not.

8 Also, we could negate the gun on some other class
9 characteristics. It just didn't have the signs. And
10 I can compare the cartridge cases themselves, the test
11 fires to the submitted evidence, if I wanted to go
12 further and look at it. But, again, we can negate some
13 things on class characteristics without having to do
14 one-to-one comparison. And if we go further, we can
15 actually compare the test fires to the actual specimens
16 themselves.

17 Q. Now the 9-mm handgun that you compared to these
18 shell casings, how are you able to determine that these
19 casings were not fired by that gun?

20 A. Right. Those would be caliber correct with
21 the 9-mm Glock. But again characteristics, firing pin
22 impressions were different than what's a typical Glock,
23 again specific to that particular gun were different.
24 So, I could -- on class and individual characteristics
25 for both guns not firing those particular cartridge

1 cases.

2 Q. Now did you also receive some projectiles in this
3 case to review?

4 A. Yes, sir.

5 Q. All right. I am now showing you what has been
6 previously marked as State's Exhibits 64 through 68.

7 MR. SPEARS: If I may approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MR. SPEARS:

11 Q. Agent Smith, can you let us know if these are
12 the projectiles that you formed these procedures on?

13 A. Yes, sir. These are seven of the fired bullets
14 that I received for examination.

15 Q. And what sort of testing were you able to perform
16 on these projectiles?

17 A. The first step would be to try to determine what
18 caliber they could be. We can do that by looking at
19 some characteristics. We can weigh it to get an idea.
20 We can measure diameters, if we're able to measure them,
21 if not too damaged. And again, with just the overall
22 characteristics we can narrow it down to a particular
23 or a class of caliber.

24 And then I can go and look at markings on
25 the bullets created from the rifling of the gun.

DIRECT EXAMINATION - BY MR. SPEARS

1 When I mention rifling, rifling is something that
2 manufacturers put in their barrels to impart a spin
3 or rotation on the projectile as it travels down the
4 barrel.

5 What that does is, once it creates stability,
6 once the bullet leaves a rifle barrel, it's more stable,
7 more accurate. It's like a quarterback throwing a
8 football. It's a nice tight spiral, so you can get
9 distance and more accurate to the receiver.

10 The rifling is made up of what's known as lands
11 and groves. So rifling could either cut or impress in
12 a barrel. It leaves groves. And the leftover portions,
13 which is raised, is called the lands. So the lands
14 actually grip the bullet as it travels down the barrel
15 and imparts that spin.

16 So manufacturers specify how many lands and
17 groves they want in a barrel as well as the widths
18 of the lands and groves and also the twist. Some guns
19 are left-hand twists; some guns are right-hand twists.
20 But we can look at those class characteristics of
21 bullets, and again maybe negate certain guns.

22 And then if we have the class right projectiles,
23 we can go to the microscope and look for test specimens
24 versus the actually submitted bullets, look for
25 individual markings, see possibly they were fired by

1 the same gun.

2 Q. Now what were the results of the tests that you
3 were -- were you able to compare these to each other?

4 A. Yes, sir, I was able to compare them with each
5 other. And the results of those microscopic comparisons
6 were inconclusive. So, I couldn't tell how many guns
7 were represented here. The markings just weren't very
8 good individual markings, and some bullets were also
9 damaged. So that can obscure some of the individual
10 markings that we need.

11 So, I couldn't tell how many guns fired those
12 projectiles. It could have been one gun, or it could
13 have been more than one gun. But those projectiles
14 compared to the two firearms that were submitted, I can
15 negate both guns firing any of those projectiles based
16 on class characteristics.

17 The projectiles that I received had six lands
18 and grooves. They had right-hand twists, and they were
19 conventionally rifled. Conventional means the lands
20 and grooves that I mentioned earlier are more square
21 on the edge versus what's known as polygonal rifling,
22 which has a rounded profile.

23 The Glock barrel has the polygonal rifling.
24 But I can negate those from the Glock due to polygonal
25 versus conventional rifling. It has the same number

DIRECT EXAMINATION - BY MR. SPEARS

1 of lands and groves, it has six, same direction of
2 twist, which is right. But it's the polygonal versus
3 conventional, which I can negate the Glock.

4 And going back to the 40-caliber Smith and Wesson
5 pistol, I can negate it, one, on caliber as well as
6 difference in the rifling specifications. The Smith
7 and Wesson had five lands and groves, right-hand twist,
8 conventionally rifled. So you can't get a six land and
9 grove bullet fired out of a five land and grove pistol.

10 Q. And forgive me if you've already mentioned this,
11 but were you able to determine the -- come to a
12 conclusion on the caliber of these projectiles?

13 A. Yes. I was able to determine they're most
14 consistent with being 9-mm Luger caliber. So it would
15 have been the correct caliber to be fired out of the
16 Glock based on class characteristics ---

17 Q. And is that consistent with the aforementioned
18 shell casings?

19 A. Correct. Again, it's most consistent with 9-mm
20 Luger caliber bullets. We received 9-mm Luger caliber
21 cartridge cases. So they certainly could have come from
22 those cartridge cases.

23 Q. All right.

24 MR. SPEARS: Your Honor, may I approach?

25 THE COURT: You may.

DIRECT EXAMINATION - BY MR. SPEARS

1 (Off-the-record conversation held at sidebar.)

2 (Back on the record.)

3 THE COURT: Ladies and gentlemen, there is
4 a matter that I must take up outside of your presence.
5 Therefore, I'm going to ask you to please step to your
6 jury room. Do not discuss this matter, and do not allow
7 anyone to discuss it with you.

8 (Jury exits the courtroom at 4:10 p.m.)

9 THE COURT: All right. Yes, sir, you can
10 proceed.

11 MR. SPEARS: All right.

12 BY MR. SPEARS:

13 Q. Now, Agent Smith, I'm showing you what's been
14 marked for identification purposes as State's 69 and 70.
15 Now these two items I believe you previously testified
16 were sent up to SLED at a separate time than the
17 previous -- than the other shell casings. I'm sorry.
18 They were sent in together with the other shell casings
19 and projectile?

20 A. Correct.

21 Q. Were you able to perform similar tests on that
22 shell casing?

23 A. Right. I would have compared that cartridge
24 case with the other cartridge cases that were submitted.
25 I would have done the same exact examinations.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And what were your findings on that cartridge
2 casing -- forgive me. What was the ---

3 A. 70.

4 Q. On State's Exhibit's 70. What was your finding
5 on that cartridge casing?

6 A. I was able to determine that it was fired by
7 the other seven cartridge cases that were submitted.

8 Q. You said fired by the other seven -- the same
9 gun?

10 A. Correct. Fired by the same gun as the other
11 seven. They were all fired by the same gun.

12 Q. On State's 69, were you able to perform a similar
13 test on that as the other projectiles?

14 A. Correct. Again, I was able to determine that
15 it's most consistent with being a 9-mm Luger caliber.
16 But it was inconclusive with the other projectiles.
17 But I can negate it with being fired by either gun.

18 MR. SPEARS: Your Honor, at this time,
19 the State would request to enter State's 67 and 70
20 into evidence. Agent Smith has ---

21 THE WITNESS: It was 69.

22 MR. SPEARS: 69 and 70 into evidence.
23 Agent Smith has testified that it was fired from
24 this same round. Previous testimony has shown that
25 it was delivered to Dorchester County's Sheriff's

CROSS-EXAMINATION - BY MR. CHISHOLM

1 Office, put under the same case number, provided by
2 IHOP, the only IHOP in Dorchester County being the
3 one on Dorchester Road where the shooting happened,
4 and shown that no other shootings had occurred at an
5 IHOP in Dorchester County. I believe in the aggregate,
6 Your Honor, that is sufficient to form a foundation
7 and authenticate 69 and 70.

8 THE COURT: Well, let's talk about 69
9 because as I understand -- first of all, 69, as I
10 understand it, wasn't fired by the other two guns,
11 but cannot confirm that it was fired by the weapon
12 that -- the other ones.

13 MR. SPEARS: That's correct, Your Honor.

14 THE COURT: All right. So that's 69.
15 70 is different. As I understand it, the opinion
16 is that 70 was fired from the same gun as the others.

17 MR. SPEARS: That's correct, Your Honor.

18 THE COURT: Okay. Very well.

19 Cross-examination on that issue, Mr. Chisholm?

20 MR. CHISHOLM: Sure. Thank you.

21 THE COURT: And don't let me limit you to
22 69 or 70, okay.

23 MR. CHISHOLM: I understand, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. CHISHOLM:

CROSS-EXAMINATION - BY MR. CHISHOLM

1 Q. Just to make sure I'm clear, Item 69 is that
2 the projectile that's submitted?

3 A. Yes, sir.

4 Q. And I think your testimony is you can't say which
5 gun fired these projectiles, you can just eliminate the
6 two that were submitted for comparison; is that correct?

7 A. Correct. All of the projectiles were
8 inconclusive with each other. But I can say that they
9 were not fired by either gun that was submitted.

10 Q. And as to Item 70, can you say it's got similar,
11 I guess, markings, class characteristics, as the other
12 casings that were provided that you examined?

13 A. Right. The individual characteristics from Item
14 70 with the other cartridge cases were all the same.
15 So, I was able to determine that they were fired by the
16 same gun.

17 Q. And I know the answer to this. But imagine you
18 have no idea when Item 70 -- when these casings were
19 submitted, where they were found, when they were found
20 or anything else?

21 A. Correct. Other than what have been, you know,
22 listed on a submission document or possibly the
23 packaging itself, I have no idea, other than maybe what
24 the marker number is. But that would be -- only the
25 information that's provided to me would be, you know,

1 what I can go by.

2 Q. I understand. Is there a way to tell if they
3 were fired at the same time? Can you look at the shell
4 casings and determine when they were fired?

5 A. No, sir.

6 Q. So you can't time stamp it or anything else?

7 A. No, sir.

8 Q. You can't say if it was fired in completely
9 different locations?

10 A. Right. Yeah, I have no idea.

11 Q. If you fired the same gun right now, you'd end
12 up with the same markings, presumably?

13 A. Unless some kind of damage occurred to it.
14 Presumably, some markings would carry over. It depends
15 on what condition the gun is changed from time to time.

16 Q. Thank you.

17 (Pause.)

18 THE COURT: Have you finished your
19 questions?

20 MR. CHISHOLM: Yes, ma'am. I'm sorry.

21 THE COURT: That's okay. That's okay.

22 Do you have any other redirect?

23 MR. SPEARS: No, ma'am.

24 THE COURT: All right. You all hold on just
25 a second.

1 (Pause.)

2 THE COURT: Let me ask you this question.

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: Tell me, specifically, for what
5 purpose do you offer 69 and 70?

6 MR. SPEARS: Your Honor, the purpose I have
7 for 69 and 70 is the fact that per testimony it's been
8 shown that they are all fired from the same weapon.
9 The sole purpose now is that there was a chain of
10 custody showing -- 69 and 70 were in evidence.
11 They were tested.

12 I want no doubt in the jury's mind that
13 they were all fired from the same weapon. I want to
14 prove that only one weapon was fired in that bathroom.
15 That is the concern and the repeated efforts to get 69
16 and 70 in, to show that a single firearm was fired.
17 It is nothing more than that.

18 It is, basically, not allowing the jury
19 to take an idea that there's another shell casing and
20 bullet around and wonder what might have happened with
21 it, or where it might have come from, what the source
22 handgun of it was. And I think through, you know,
23 901(b)(3) the authentication is truly the sole purpose
24 of it.

25 THE COURT: Hold on. Hold on.

1 MR. SPEARS: Yes, ma'am.

2 (Pause.)

3 THE COURT: Okay. Yes, sir.

4 MR. CHISHOLM: Thank you, Your Honor.
5 May it please the Court.

6 THE COURT: Yes.

7 MR. CHISHOLM: I guess, basically, our
8 position is to the projectile, No. 69. They can't even
9 say if it was fired from the same gun. I think that's
10 probably the easier one to discuss. But, I mean, at the
11 end of the day, I mean, you're talking about an item of
12 evidence they want to present at trial.

13 I mean, the fundamental question is where
14 did you get it? Which we can't answer. We don't know
15 when it was found, where it was found, who found it.
16 They called -- I imagine I probably know why they called
17 Mohamad Alabsa, I believe it was, to the stand. And he
18 shows up with something. He's basically a courier.
19 He's like an Uber, basically. Here, I've got a delivery
20 for you. Mohamad is from IHOP; we know that much.
21 But we have no idea where the package is. He didn't
22 even know what was in it.

23 So there's been nothing -- there's no
24 testimony otherwise showing these were recovered from
25 the IHOP. You've got testimony from Sergeant Berg who

1 said he went through the entire crime scene. Obviously,
2 he didn't catch it. We have no idea where it was, when
3 it was found, who it was found by, or anything else,
4 other than Mohamad showing up, saying these are for you.
5 I don't think that's a foundation.

6 THE COURT: I think it's -- I think that --
7 let me just tell you what my concern is, and I'm going
8 to sort of get to the end. I agree with you that the
9 foundation -- if the State was intending to argue that
10 the casing, the projectiles from 69 and 70 were fired by
11 the Defendant on this occasion, no foundation has been
12 laid for that. Here's my -- let me tell you what my
13 concern is. My concern is, and help me with this.

14 MR. CHISHOLM: Sure.

15 THE COURT: My concern is that I don't -- if
16 the jury now knows that we have 69 and 70, that they're
17 out there. We know through scientific examination that
18 70 was fired from the same weapon as the others.
19 Scientifically, we know that. And we know
20 scientifically, based on the testimony of this expert,
21 that 69 was not fired from the other two weapons, don't
22 know about the third weapon, but the weapons which
23 inferentially are associated with the alleged victims.

24 Here's my concern. My concern is that to
25 allow when there's expert testimony that can say that

1 69 was not fired from either of these two weapons,
2 and that 70 wasn't fired from the other two weapons,
3 which is more important than even saying that it was
4 fired from that third weapon, why ought not the State
5 be allowed that expert testimony to allay the jury
6 speculating that those casings, projectiles came from
7 the other weapons?

8 MR. CHISHOLM: I understand. And, Your
9 Honor, I mean, the impression I have is the purpose
10 of allowing this casing or this projectile in would be
11 the same as all the rest, which I believe their argument
12 is going to be that all these shell casings that match
13 to a particular gun, and not the two that were
14 submitted, but to another gun, were fired by him.
15 So, I mean, this is just more bullets they're going
16 to be alleging were fired by him.

17 As to why they shouldn't be allowed
18 to explain the projectile and the casing to the jury
19 to kind of explain what happened to those, basically,
20 my position would be, I mean, this is a problem of their
21 own making in that if they could have had the person
22 come in to actually set the foundation, you know,
23 to come in before Mohamad, then have him come in and,
24 you know, complete the chain, that would be one thing.
25 But, I mean, it's a problem that they have created by

1 not having that person here. And there's nothing that
2 ties this to the crime.

3 MR. SPEARS: Your Honor, if I may?

4 THE COURT: Yes.

5 MR. SPEARS: I mean, at this point in time,
6 it's pretty clear what the State's intent on this is.
7 If he would be allowed to testify to these as an
8 exhibit, and I would not put them in evidence for the
9 sole purpose of again solving speculation.

10 But the big issue here is that it's not just
11 a problem of the State's own making. These were all
12 in case of custody sheets that could have been brought
13 up by the defense at any time. Witnesses can be
14 unavailable to prove these things. I'm absolutely fine
15 with not putting them in evidence if we can simply have
16 Agent Smith testify to what he just said in the presence
17 of the jury and then forget about them, simply to
18 prevent speculation.

19 MR. LOY: Where it failed in the initial
20 analysis, it still fails. There's nothing that ties
21 it to the crime. For the State to come in -- they could
22 have done it in camera; they could have done any number
23 of things to try and lay a foundation.

24 But to publish to the jury facts and
25 evidence in existence, which will not be admitted

1 because there's no foundation, for somebody to say it
2 simply materialized in Florence. And then to say, well,
3 now they're going to wonder about what happened to the
4 stuff that we couldn't get into evidence. That doesn't
5 create a foundation.

6 I mean, if it creates a problem for them,
7 it's something that they can deal with in argument, etc.
8 But they can't come in -- that would be like them coming
9 in on opening statement, and saying we're going to
10 produce evidence that shows A, B, and C. And in the
11 course of the trial, they can't do it. They can't lay
12 the foundation, they can't get it in from the rules of
13 evidence. And for the Court to say, oh, it's really
14 going to hamstring them. The jury is going to wonder
15 about what happened with A, B, and C after they promised
16 it, and now they haven't gotten it in, I think that
17 would unfair.

18 This is the same situation. For them to
19 come in and say -- Mohamad to say someone, I don't know
20 who, brought this bag that I don't know what was in it,
21 to Florence, and then somebody in Florence tasked me
22 to deliver it to the sheriff's office.

23 At that point, we've got -- that's where the
24 chain starts, at the office in Florence. Nobody ever
25 says it was from this IHOP; nobody says it was from that

1 night; nobody says it was recovered in the parking lot,
2 in the yard, in the bathroom. And no matter how many
3 times they say there's only one IHOP, there is the other
4 one on Main Street also, and it's been there as long
5 as I could remember.

6 But when it was not admissible because
7 foundation could not be laid through the original
8 witness, Mr. Alabsa, that has not been cured.
9 We're still exactly where we are. I mean, we're still
10 skipping ahead in saying these items materialized in
11 Florence. There's no one who has testified they were
12 recovered at an IHOP.

13 Now the State wants you to surmise and wants
14 the jury to surmise. But there's -- you know, the first
15 rule is does it make any evidence in contention more or
16 less likely, as far as is this probative. For them just
17 to say, here's a bullet that -- a cartridge that at some
18 point in time, at some place, was fired from the same
19 gun doesn't make any fact in contention more or less
20 likely.

21 THE COURT: Here's my concern -- I agree
22 with you completely with one exception. And I cannot
23 ignore that I have an expert witness. And the expert
24 witness can say two things that are relevant. Thing
25 number one is that, and most importantly I think,

1 is to say that neither 69 nor 70 came from those
2 two weapons.

3 And here's the piece of that. Here's the
4 piece of that. Is that inculpatory? Is that
5 exculpatory? The fact that those items were delivered
6 to the sheriff's department, they're in this case.
7 They're in the case. And it very well may be there
8 can be no foundation laid. Given what the witness
9 testified, there can't be a foundation laid. And they
10 are still left with what they have, and what they have
11 are these casings.

12 Now, now, I'm less inclined to allow them
13 -- I'm not inclined to allow them to be inculpatory in
14 this sense, to say or to intimate that either of those
15 casings are associated with the Defendant's weapon,
16 period. Period. The question -- and that's because
17 of the foundation. They can't put it there with him.

18 And I will -- you know, there are all kinds
19 of fanciful scenarios that you can make up. Some of
20 them more nefarious than others. And because there can
21 be no foundation, because there can be no foundation,
22 I would not allow the testimony to be that -- to be
23 presented to this jury that either 69 or 70 came from
24 the weapon associated with the Defendant. Not
25 happening. Forget that. That's done. We're done.

1 The question is, we have expert testimony.
2 We have the ability to identify based on science,
3 based on science, as I understand it. And can say
4 that neither came from the other two weapons that were
5 associated by inference with the alleged victims on the
6 same. That's where I am concerned, and the science gets
7 us there.

8 MR. LOY: Your Honor, I believe the witness
9 also has -- I don't know if the Court is disallowing,
10 but I heard the testimony to be, and that is that this
11 shell casing was fired by the same gun as the other
12 shell casings recovered on scene.

13 THE COURT: Yes, correct. But I don't know
14 when.

15 MR. LOY: Excuse me?

16 THE COURT: He doesn't know when. No one
17 knows when.

18 MR. LOY: Or where. There's nothing that
19 ties these to the IHOP. They materialized in Florence.

20 THE COURT: Absolutely.

21 MR. LOY: There's nothing that ties them
22 to the crime scene.

23 THE COURT: Absolutely.

24 MR. LOY: And so they're irrelevant.
25 They shouldn't have been brought up in the first place.

1 They should have looked at that, and say we don't
2 know where these came from. It just muddies the water.
3 But they don't get the benefit of their poor play.
4 That is to bring up -- to muddy the water, to start
5 talking about these things they cannot lay a foundation
6 for. And then to say, wow, this will really be
7 a hamstrung, if the Court doesn't fix this for us.

8 We have no foundation for this. This stuff
9 just materialized in Florence. If they had never
10 brought it up, it would have never been mentioned before
11 the jury, because we certainly weren't calling this
12 gentleman in here to talk about the other unrelated
13 or unassociated casing.

14 So it doesn't look like again that they get
15 the benefit of having put this out there when they have
16 no foundation for it, when it would have been just as
17 easy on the front end to say these things materialized
18 in Florence. We don't know how they got there, who had
19 them, where they came from, where they were recovered,
20 what happened, let's try and just jam it through. If we
21 can't get them in by the rules of evidence, maybe the
22 judge will fix it for us so the jury doesn't speculate.

23 THE COURT: But here's the problem.
24 The problem is with -- the only problem with that
25 is that these items, these items, appeared.

1 They were not part of the traditional investigation
2 by law enforcement. You have a gentleman that just
3 shows up and says, hi, here. And at that point,
4 law enforcement has it.

5 What they cannot do at that point when
6 somebody brings those items from IHOP and delivers
7 them to law enforcement, they cannot deep six them,
8 if you will. They cannot because they may be
9 exculpatory. They may be. And so what they cannot
10 do is ignore it. They can't say, well, it didn't come
11 in the normal course of our investigation. We got them.
12 What do we do with them?

13 MR. LOY: But they can pick up the phone,
14 call whatever the regional office is in Florence
15 and say, we just got some evidence in a murder case.
16 Your guy dropped it off. He didn't give us any
17 information. Where did it come from? Who do we need
18 to talk to? Somebody knows. It's as simple as that.

19 I mean, they can't then say, well,
20 we neglected to do an investigation. This stuff showed
21 up. We could have gotten on the phone and track this
22 down. If there's a trail, somebody knows who picked
23 this up, where they picked it up and what time.
24 They completely neglected to do that.

25 They don't look into it at all, so they're

1 completely unable to lay the foundation at this point.
2 And again, they want you to fix it for them. Again,
3 that's what they could have done. They could have just
4 put a chain together. They chose not to, and now they
5 want the benefit of the work they didn't do.

6 THE COURT: Well, I don't know the answer.
7 I mean, I don't know that. Certainly, inferentially,
8 you're correct, but I don't know that. And that's not
9 before me. The person that is before me is the person
10 who had the ability to receive that, given his position
11 with the IHOP.

12 He got it. He's not real sure where it
13 came from, but he's got it. He doesn't know the
14 circumstances. He does what he thinks is correct.
15 He takes it to law enforcement, and law enforcement
16 has it. So what do they do? They send it to SLED,
17 who said, yeah, fired from the same gun.

18 Inferentially, inferentially, it was
19 a shell casing that was missed by the person at the
20 scene that evening. Inferentially, inferentially.
21 More importantly, scientifically, it can be established
22 that it was not fired by the other two weapons.
23 It doesn't have a foundation. It does not get to come
24 in. And for the purpose of saying, inferentially,
25 it was fired that evening, it just doesn't get --

1 it doesn't get to do that.

2 That foundation is not happening. It's not
3 happening. I may have many colleagues that would say,
4 it is unique, those markings are unique, and the jury
5 can -- I'm going to admit it, and the jury can give
6 it the weight that the jury thinks it's entitled.
7 I don't like the foundation. I don't like -- and,
8 therefore, for that one, I'm not going to allow it
9 to be directed inculpatory for this Defendant.
10 I'm just not going to do it.

11 The other part of it that I am concerned
12 about is he, he being this expert, because of the
13 uniqueness of the way that weapons lay down a pattern
14 on shell casings since they did not come from the other
15 two weapons, and that is unique. That is unique,
16 and I'm troubled by that. I shouldn't let y'all see
17 the sausage being made, that I am uncomfortable.
18 I'm sufficiently uncomfortable. I'm not going to make
19 a determination.

20 But let me say, as you all step away this
21 evening, I am not inclined to allow -- well, I'm not,
22 I'm simply not going to allow this witness to testify
23 that Exhibit 70 was fired from the same weapon.
24 I'm not inclined to do that. I very well may allow
25 him to testify to the negative that it did not come

1 from the other two weapons.

2 And the reason is -- and if I wasn't
3 dealing, if I was not dealing, with the caliber
4 of the people from the Dorchester County Sheriff's
5 Office, if I was not, and I say that to cover my
6 examples. To cover my examples because I, in no way,
7 shape or form -- well, I know, you know, I do not under
8 any circumstances believe that this sheriff's department
9 would ever be involved in nefarious conduct. I don't.
10 So, I want you to hear that.

11 But the extreme example would be they had
12 possession of the weapon, they had possession, and then
13 took it back and threw it down and say, good, you need
14 to go back and look, there's a shell casing. That's
15 the reason I would not allow it to come in directly
16 as inculpatory to say it came from that. That isn't
17 happening.

18 The question is whether or not it's
19 appropriate to allow the expert because of the
20 uniqueness, because of the pattern that is laid down
21 on those casings. I don't know, but I will know in
22 the morning. So you're very clear now, that was just
23 an example. Did I cover all that? Because I generally
24 don't ---

25 I mean, there is not a fiber in my being

1 that would ever -- and certainly I certainly don't
2 believe that. But that's the reason that's so important
3 because it was in the hands of others. But the other
4 -- the evidence is there. The evidence had to be --
5 I say it's evidence. These items had to be dealt with.

6 They were delivered to the sheriff's
7 department. They became part of the case. I don't
8 believe that law enforcement could have ignored it.
9 I believe at that point it had to be dealt with.
10 And the difference is that there are markings that
11 are intentionally laid down on casings to identify
12 those casings to unique weapons. And it isn't random.
13 It's done intentionally, and that's what makes this
14 a bit of a sticky wicket for the judge.

15 So, I'm going to dismiss the jury, and tell
16 them I'll see them in the morning at 9:30, and then I'll
17 be working this evening. All right. Yes? Anything
18 else?

19 MR. SPEARS: Your Honor, may I speak with my
20 witness for a second? I'm pretty sure he is also under
21 subpoena at a different county tomorrow. Is that still
22 the case?

23 THE WITNESS: Yes, sir.

24 MR. SPEARS: When are you under subpoena,
25 morning or afternoon?

1 THE WITNESS: Allendale in the morning,
2 possibly Aiken in the afternoon.

3 THE COURT: You're so popular.

4 MR. SPEARS: I will do my best, Your Honor,
5 to speak with those two offices today in regards to
6 Agent Smith.

7 THE COURT: I got him.

8 MR. SPEARS: I understand, Your Honor.

9 THE COURT: I got him. All right.
10 Let me get my jury back. How many more witnesses?

11 MR. SPEARS: Nine, Your Honor.

12 THE COURT: Nine more witnesses?

13 MR. SPEARS: Yes, Your Honor.

14 THE COURT: Okay. Today is Tuesday, right?

15 MR. SPEARS: Yes, ma'am.

16 THE COURT: Okay. All right. Okay.

17 (The jury enters the courtroom at 4:45 p.m.)

18 THE COURT: I am still working, so, I'm
19 going to let you go. Ladies and gentlemen, I'm going
20 to ask you to be back in the morning at 9:30. This
21 exact same admonitions as yesterday also exists for
22 today. I need to tell you though that the interest
23 is going to be heightened, so expect it.

24 But remember anyone that wants you to talk
25 about the matter, you have to say I cannot discuss this

1 matter. I cannot let you discuss it with me. Remember
2 to put it on the judge. Let them be upset with me.
3 Put it on me, not you. Same admonitions; don't read,
4 don't listen to anything about this matter, and that's
5 the radio, the television, the newspaper, the internet.
6 Don't do any Columbo; don't do any research; don't go
7 to the internet; don't look up any words.

8 You have to receive all of the information
9 from which you will make up your minds here in court
10 while court is in session. Do not go to social media;
11 do not text; do not blog; do not tweet; do not do any
12 of the communications face-to-face, or in any other
13 regard. And it's just because it's really important
14 that you receive all of the information here in court
15 while court is in session.

16 Cell phones, you know, leave them somewhere
17 other than the courthouse. When they follow you in,
18 just remember to give it to our bailiffs. Don't think
19 you can put that bugger in your pocket or your
20 pocketbook. The Gremlins will turn it back on, and it
21 will ring in the middle of court. So if your cell
22 phone, or other communication device, comes in with you,
23 just give it to our bailiffs, and they'll take great
24 care of it while you're here in court.

25 Your notepads. Let me tell you what's going

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SC Court of Appeals

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

**Appeal from Dorchester County
Hon. Diane Schafer Goodstein, Circuit Court Judge**

Appellate Case No. 2020-000095

The State Respondent,

vs

Keunte D. Cobbs Appellant.

**RECORD ON APPEAL
VOLUME II**

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1 to happen with your notepads. That's why you have that
2 cover sheet. That cover sheet will act as a cover
3 sheet. And in just a moment, our bailiffs are going
4 to get those. And they're going to be secured over
5 the evening.

6 And in the morning, just before you come
7 out into the courtroom, they will help you reacquaint
8 yourself with your notepad, so you get your notepad.
9 And they'll do that -- they'll help you do that in
10 the morning. But they will be secured over the balance
11 of the evening. Have a terrific evening, and I cannot
12 wait to see you in the morning. Good night.

13 (The jury exits the courtroom at 4:51 p.m.)

14 THE COURT: Yes?

15 MR. SPEARS: Nothing from the State,
16 Your Honor.

17 MR. CHISHOLM: Nothing, Your Honor.

18 THE COURT: All right. We will be at ease.

19 (End of Transcript of Record)
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
2016-GS-18-1267

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) January 8, 2020 - Vol 3 of 4

Keunte Cobbs)

) St. George, South Carolina

B E F O R E:

The Honorable Diane Goodstein, Judge

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

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William Baker Allen, Esquire
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Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

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DIRECT EXAMINATION - MR. SPEARS

1 THE COURT: Please be seated. Good morning.
2 I understand you all have some ---

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: All right. Whatcha got?

5 MR. SPEARS: In regard to our motions for
6 Agent Smith, I will request to be able to put him on the
7 stand for a brief couple of questions, just a part of
8 final argument for clarification purposes. If I could
9 just elicit a little bit more testimony from Agent Smith
10 in regards to the shell casing and projectile.

11 THE COURT: Gotcha. Okay. All right.

12 MR. SPEARS: State calls Agent Smith.

13 THE COURT: Because he was on the stand
14 anyway, he's got to be back here whether he wants to
15 be or not. Good morning.

16 THE WITNESS: Good morning. How are you?

17 THE COURT: I'm so glad you made your way
18 back.

19 THE WITNESS: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MR. SPEARS:

22 Q. Agent Smith, I'm showing you what's been marked
23 as State's 69. This is the previously discussed
24 projectile.

25 MR. SPEARS: If I may approach, Your Honor?

CROSS-EXAMINATION - MR. LOY

1 THE COURT: You may.

2 BY MR. SPEARS:

3 Q. Is this the container -- the package that you
4 received that item in?

5 A. Yes, sir. The bullet was received in this Ziploc
6 bag.

7 Q. And in that bag, with the casing, is there
8 a note?

9 A. There is. It appears to be a posted note.

10 Q. What does that note say?

11 A. On one side it says IHOP 3242, shooting 6/5/2016,
12 case number 16005645, Detective Elmore, 843-693-4996.
13 That's the cell -- the cell number. On the other side
14 of the note it says found in men's room during cleanup
15 by district manager Chris Morris, 843-617-9113.

16 MR. SPEARS: That's all the questions
17 I have, Your Honor.

18 THE COURT: Sure.

19 CROSS-EXAMINATION

20 BY MR. LOY:

21 Q. Who wrote the note?

22 A. I could not tell you.

23 Q. And, essentially, it's got a case number,
24 which is the case number that law enforcement identified
25 -- you knew which bag to put it in. I mean, it arrived

CROSS-EXAMINATION - MR. LOY

1 and somebody decided this is the case we're looking at?

2 A. Correct. This was received with the other
3 evidence that I received for examination.

4 Q. So, basically, this confirms that it was received
5 with the other evidence, and that someone put a note in
6 there?

7 A. Correct. Other than what's, you know, submitted
8 with this ---

9 Q. As far as the authenticity of it, who wrote it,
10 whether it's accurate, when it was supposedly recovered,
11 by whom, or if the person who wrote the note even had
12 firsthand knowledge that that's what happened, or if
13 someone told them what happened, historically, you can't
14 clear anything up for us, except once the bullet got to
15 you, these are the procedures you performed and the
16 findings you received?

17 A. That's correct.

18 Q. Thank you.

19 THE COURT: All right. Let me go back
20 and ask this question. Specifically, what is it that
21 you are offering into evidence?

22 MR. SPEARS: Your Honor, simply we're trying
23 to offer the shell casing.

24 THE COURT: Okay.

25 MR. SPEARS: And the projectile.

1 THE COURT: Okay.

2 MR. SPEARS: Solely for the testimony that
3 they were not fired by the two victims' guns.

4 THE COURT: You're not trying to put this
5 note in?

6 MR. SPEARS: Your Honor, it's in the sealed
7 package, but I consent to having it taken out. It's in
8 the evidence bag and sealed.

9 THE COURT: Okay, okay.

10 MR. SPEARS: Yes, ma'am.

11 THE COURT: All right. Obviously, the note
12 is not going back to the jury for so many reasons.
13 All right. This will be the determination and the
14 reasoning. 69 and 70, because this expert has been able
15 to opine that these -- that neither of these exhibits
16 are associated, and I know this is a general term, but
17 he uses his technical terms, associated with the weapons
18 that were found in the proximity of the alleged victims,
19 I will allow him to testify as an expert regarding that.

20 I think that there is sufficient
21 authenticity offered, and I don't point to the note.
22 I point to the gentleman that testified. I think he's
23 the vice president of the IHOP, the gentleman that
24 testified, that delivered them, received them, delivered
25 them.

1 I have heard the testimony of this expert.
2 And what Agent Smith says is that he can testify within,
3 I gather, a reasonable degree of certainty. But as an
4 expert, he can testify that these casings, the
5 projectiles, were not associated with the two weapons
6 found in the proximity of the alleged victims.

7 And I do that, I make that determination so
8 everyone is clear, out of the discretion surrounding the
9 admissibility of evidence and the gatekeeping function.
10 And there's a whole litany of cases that point to that,
11 one is State v. White and State v. Anderson. There are
12 a number of cases that I could also point to.

13 Now, I do not believe that there is
14 sufficient foundation laid for this witness to opine
15 that -- on any kind of direct testimony to give an
16 expert opinion that these projectiles, casing, were
17 or were not associated with the Defendant's weapon,
18 or weapon found and associated with the Defendant
19 for this reason.

20 The temporal nature of the foundation
21 is unimportant with regards to the expert opinion
22 that I'm allowing in. It is critical with regards
23 to the Defendant. So -- and let me give an example.
24 If the projectile was -- or the casing that is
25 identified with the Defendant's weapon, if it was fired

1 yesterday, so tremendous importance and difference than
2 if it was fired on the 6th of June 2016. And that is --
3 that temporal element, while it is unimportant with
4 regards to the opinion, which is offered with regards
5 to the other two weapons, it is critical with regards
6 to the Defendant.

7 I do not believe that this foundation
8 sufficiently -- is sufficiently authenticated to allow
9 this expert to testify regarding the relationship
10 between 69 and 70 and the Defendant's weapon. Okay.
11 Done. All right, anything else?

12 MR. SPEARS: Your Honor, I believe the
13 defense has two other quick motions.

14 THE COURT: Okay. Yes?

15 MR. CHISHOLM: Thank you, Your Honor.
16 It's kind of an anticipatory, I guess, motion you would
17 say. My understanding is the State intends to call
18 Detective Mosier to the stand.

19 THE COURT: Okay.

20 MR. CHISHOLM: And my understand is that,
21 essentially, one of the witnesses from yesterday put
22 into evidence a picture of what they say is Mr. Cobbs
23 in the IHOP restaurant. A person was sitting at a table
24 that happens to be videoing. And I believe the State
25 would like to call Detective Mosier to come in and say

1 that he saw this photograph and recognized Mr. Cobbs
2 from, I guess, his background. And, therefore, that's
3 how they got him as a suspect, initially.

4 My concern would be, obviously, this gives
5 an inference that they've had prior law enforcement
6 contact with Mr. Cobbs. And also, I mean, we conceded
7 it in opening, and I'm going to go ahead and tip my
8 hand, I'm going to concede in closing that the guy
9 in the red shirt is Mr. Cobbs. I don't think it's
10 important for them to get in it at this point.
11 And I think it does cause concern -- the jury to be
12 looking at him, saying how does he know him.

13 THE COURT: Well, let me also remind you
14 that the -- and I apologize that I don't recall her
15 name, the young woman who testified who was in the
16 photo, who's the subject of the photo. She identified
17 that it was the Defendant who -- and don't young people
18 use the term photo bomb. Is that the new phrase when
19 someone appears in a photo, puts themselves in
20 somebody's else selfie?

21 MR. CHISHOLM: Yes, ma'am.

22 THE COURT: And I think she identified
23 him, which is really the best evidence. The photo
24 is the best evidence, and that would be a step away.
25 I understand your concern. Let me hear from you.

1 MR. SPEARS: Just briefly, Your Honor.

2 THE COURT: Okay.

3 MR. SPEARS: The nature of the testimony
4 is one, obviously, the identification, even though that
5 has been conceded. But the Defendant wasn't immediately
6 identified at this point in time until the video came
7 in. And Ms. Pulliam didn't even identify him at that
8 point in time. It was -- the first instance of Keunte
9 Cobbs being the man in the red shirt was when at the
10 time Detective Moiser identified that. That's the
11 jump-off point of the investigation. That would be
12 the nature of that.

13 THE COURT: Tell me why that matters?

14 MR. SPEARS: I think it would be important
15 for the jury to understand when he was initially
16 identified, Your Honor.

17 THE COURT: Okay. Let me say this. Let me
18 say this to you. Do not allow him to respond to that
19 question. I tend to agree with Mr. Chisholm. I'm not
20 going to allow him to intimate we know him because we
21 dealt with him. I'm a law enforcement officer, and I've
22 dealt with him, and I know him. We're not going there.
23 And there's -- number one, it's not an issue.

24 Number two, he's on video. Number three,
25 he's in a photo bomb, and that's just simply gentleman

1 in the red shirt is not an issue in this case.

2 And we are not going to interject other stuff.

3 MR. SPEARS: And, Your Honor, in abundance
4 of caution what I think I'll do is just strike him from
5 our witness list. I don't want any ---

6 THE COURT: I understand.

7 MR. SPEARS: --- accidental testimony.

8 Yes, ma'am.

9 THE COURT: Very well. Thank you.
10 What else you've got?

11 MR. CHISHOLM: The other issue I would have
12 relates to a State's witness. I believe it's Corporal
13 Nate Green. He's with the jail. He's in here right
14 now. But, basically, my understanding is the State
15 in the last trial and in this trial, they intend to
16 introduce a phone call that was made by Mr. Cobbs while
17 at the jail.

18 My concern would be this violates equal
19 protection, fundamental fairness, a variety of different
20 issues, and that basically the situation defendants find
21 themselves in is if they cannot bond out of jail because
22 they don't have the financial resources, as the case
23 here, he had a bond, he just couldn't make it. They are
24 in a situation where they have no contact whatsoever
25 with the outside world.

1 If they have somebody come and see them,
2 it's recorded. If they make a phone call, it's
3 recorded. They can talk to me, but as far as having
4 any contact with the outside world that isn't, you know,
5 surveilled, I guess you could say, they don't have that
6 opportunity. I will acknowledge, obviously, I believe
7 the phone calls when you make a call, it does say ---

8 THE COURT: Yes, it does.

9 MR. CHISHOLM: --- that you're
10 being recorded.

11 THE COURT: Yes, it does, a couple of times.

12 MR. CHISHOLM: The privacy rights.

13 I understand that. But, you know, my understanding is
14 they've got these in place for security purposes, you
15 know. If they have a threat that's, you know, rumored
16 to be on the outside, they can look into it, investigate
17 it. It's intended to be, basically, an extension,
18 just an arm of law enforcement to get extra information
19 on a defendant, which is how they basically routinely
20 use it.

21 THE COURT: And, yes, they do. Overruled.
22 I'm going to allow that in. Now if something has
23 absolutely nothing to do with this, and it's not
24 relevant, but I'm not just going to on that basis.
25 Overruled. Jail calls -- those jail calls, unless this

1 one is unique, and you want me to listen to it,
2 I'm excited and happy to listen to it. But I have
3 listened to many, many hours of jail calls, and without
4 exception, because they hire a company, and the company,
5 you know, you're told 45, no, no that's an exaggeration.
6 But you're told that it is recorded. You are told at
7 the beginning of the call, it's going to be recorded.
8 And the person who is being called is told that it is
9 going to be recorded.

10 So, I know -- it is my belief in all
11 the ones that I have listened to, and it's a lot,
12 individuals are told twice that the call is recorded,
13 both when it is initiated -- at initiation, and then
14 before the individual who is being called picks up.
15 So they also know. So for that reason ---

16 MR. CHISHOLM: No, I understand, Your Honor.
17 I would have a request. In this last trial, what they
18 did is they had a clip that was pulled out of, you know,
19 one phone call because there's a lot of stuff that went
20 into attorney/client privilege, and I think the State
21 conceded that. I would ask if the Court could hear
22 the call ---

23 THE COURT: Sure.

24 MR. CHISHOLM: --- to determine the
25 relevance, and make sure there's nothing else on it.

1 THE COURT: Sure. I'm happy to do that.

2 MR. SPEARS: Just for clarification,
3 Your Honor, the State didn't concede the attorney/client
4 privilege part of the last one. That's a part of what
5 we were trying to get in. But I'll happily play the
6 whole thing for you right now, Your Honor.

7 THE COURT: Okay. Absolutely. Would you
8 just tell the jury that we're not going to be long.
9 But there's a matter that I'm tending to, and will be
10 with them shortly. Enjoy that biscuit.

11 (Phone call played in open court.)

12 MR. SPEARS: That would be all, Your Honor.

13 THE COURT: Okay. Yes, sir.

14 MR. CHISHOLM: Your Honor, I mean, when it
15 comes to prejudice, I don't think you can be more
16 prejudicial than this. I mean, basically, the entirety
17 of the conversation is here's what I was talking about
18 with my lawyer. We're talking about our possible
19 defenses, issues to raise, and all of that. I mean,
20 the entirety of the conversation is the discussion that
21 we had. So, I think it should be kept out.

22 I mean, if he were to testify, and they
23 would offer in reply to rebut self-defense or something
24 like that, that would be another issue. But as far as
25 them just putting a witness up and hitting play without

1 that being the scenario, I think the prejudice is,
2 you know, pretty overwhelming. And I think it should
3 be covered by privilege.

4 THE COURT: Well, unfortunately, it's not
5 covered by privilege because it belongs to your client.
6 He can waive it, if he wishes to waive it. He clearly
7 waived it because I don't believe that is you with whom
8 he is speaking. I think it is someone else. It is a
9 female voice. And clearly I know your voice, and that
10 is not you. He clearly is having a conversation with
11 someone who is not a lawyer. Privilege belongs to him.
12 And he can waive it or not by having a conversation with
13 someone other than his attorney. He's clearly waiving
14 the attorney/client privilege.

15 Obviously, he is also having a conversation,
16 not only about self-defense, but he's having a
17 conversation about who's not going to testify in this
18 trial. Although, they know the solicitor is in need
19 of that testimony because he's already talked to him.
20 Tell me why that wouldn't be relevant?

21 MR. CHISHOLM: Your Honor, that was the
22 portion that they entered in the last trial to say that
23 -- so they can argue, you know, that he had been in
24 touch with them and all of that.

25 THE COURT: Yes.

1 MR. CHISHOLM: Which, obviously, I objected
2 to. But I think it was a different scenario than the
3 other stuff, about what we discussed, trial strategy,
4 self-defense, and all of that. I guess there's
5 ambiguity in there about -- I talked to him about
6 what he talked to them about and all of that. I mean,
7 I understand that it's up for interpretation.

8 THE COURT: It is. It absolutely is,
9 but it certainly is relevant. All right. Anything
10 further?

11 MR. SPEARS: I mean, just briefly, Your
12 Honor, in regards to prejudice. The State in their --
13 the defense in their opening has already raised the two
14 victims in this case, or the one victim with another
15 person as assassins, and said who's predator and who's
16 prey in this scenario. I think that clearly this
17 is required to come in -- allowed to come in because
18 it looks like a self-defense argument already.

19 MR. CHISHOLM: The last thing that I didn't
20 point out was not only the prejudice to him. I mean,
21 you know, how it all appears on the tape. But, I mean,
22 it pretty much cast us in a pretty poor light, in that
23 he's saying, basically, I'm trying to force him into
24 a strategic decision he doesn't agree with.

25 I mean, it casts the defense team in

1 a pretty bad light, which I think also causes kind of
2 a separate layer of prejudice. They're trying to make
3 me say this, or they're trying to make me go this
4 direction, which puts us in an odd spot.

5 MR. SPEARS: And, Your Honor, that's
6 completely understandable. The State is not trying
7 to cast any issues towards the defense team on this.
8 It's just simply what he was saying, and if there's
9 an argument about self-defense. He's literally at
10 one point in time said, "I don't know nothing about
11 self-defense. I didn't shoot nobody." That's it.

12 THE COURT: And that's his position.
13 I mean, his, you know -- in terms of that part of the
14 conversation, this would be my observation. It is the
15 Defendant's position that he had nothing to do with this
16 event. You're his attorney. Obviously, as you have
17 conversations in your representation of him, you have to
18 deal with the physical realities of what was occurring.
19 And based on the information that you had, I think,
20 quite frankly, it would have been malpractice for you
21 not to have examined fully that theory of law.

22 And it is -- for my mind, it was an
23 extraordinarily appropriate conversation for you to
24 have. You know, being charged with a serious crime
25 is a terribly frightening experience for human beings.

1 And lawyers are charged with a very difficult
2 responsibility to -- in the face of people who are
3 being frightened and have a position to begin to have
4 a conversation about the physical realities, and what
5 very well may have been going on.

6 You were not there. You looked at the
7 physical evidence. And as it has already been argued,
8 you have a gentleman that goes to the bathroom, you have
9 people that come in immediately, and they bypass the
10 hostess, and they immediately go to the bathroom.
11 It would have been malpractice for you not to have begun
12 a conversation with your client to explore, to
13 investigate. You know, I think it ---

14 MR. LOY: Can I just ---

15 THE COURT: --- takes pretty good lawyering.
16 But that's not his position, and he was very clear about
17 that. Yeah?

18 MR. LOY: If I could?

19 THE COURT: Yeah.

20 MR. LOY: Just as one more layer ---

21 THE COURT: Sure, sure.

22 MR. LOY: --- and that is, my understanding
23 would be self-defense is an affirmative defense, in that
24 there would be no charge. It wouldn't be before the
25 jury, et cetera, unless someone gets on the witness

1 stand and testifies as to some evidence of self-defense.
2 I don't think it's fair for the State to set up that
3 defense for us just for the purpose of knocking it down.
4 So unless there's some evidence of self-defense when
5 it was offered, they don't have to knock it down,
6 they don't have to beat it.

7 And in the last trial -- we've tried
8 this case once. The Defendant did not testify,
9 the defense didn't call anyone. No one else got up
10 and offered any evidence of self-defense. Again,
11 I don't think it's fair for them to be able to refute
12 just for prejudicial nature a defense that's not been
13 offered.

14 Again, if the defense were offered of
15 self-defense, that scintilla would get us the charge,
16 then obviously, they would be entitled to introduce
17 this. But at this stage, there is no evidence of
18 self-defense. Self-defense is not an issue in the case,
19 unless someone gets up and testifies.

20 Your Honor is not going to, I don't believe,
21 charge self-defense without the State -- without the
22 defense calling witnesses, someone to support it.
23 There's not anything in the State's case which I think
24 would substantiate a request for a self-defense charge.
25 We didn't get it last time, or asked for it, I don't

1 believe. And at this point, we're certainly not
2 entitled to it.

3 So if we're not entitled to it, there's not
4 going to be an instruction to the jury, nobody is going
5 to argue it at this point. I don't think they should be
6 able, again, to set it up just so they can knock it down
7 with this particular tape, Your Honor.

8 THE COURT: I'm with you. My concern
9 is that in the opening statement, as I recall, and y'all
10 correct me because there has been a lot of argument, and
11 there was conversation about the two assassins that came
12 into the bathroom. And that's in -- it's in the case.
13 And the reality is it's got to be dealt with by the
14 State. Yes?

15 MR. LOY: My understanding is the Court will
16 instruct the jury that opening as well as close are not
17 evidence, that they are to decide the case based on the
18 evidence that is presented ---

19 THE COURT: Already told.

20 MR. LOY: --- and that would be reiterated.
21 I have no reason to think the jury doesn't incorporate
22 that instruction and the rest of the Court's
23 instructions and apply it as they are instructed to do,
24 So again unless there is evidence of that, I don't think
25 there's any right on their part to refute a defense

1 that's not offered.

2 THE COURT: I understand. Got it.

3 All right, just a second.

4 (Pause.)

5 THE COURT: Very well. Noting the exception
6 of the defense, it comes in. I think that -- I don't
7 find it unduly prejudicial. It certainly can be
8 perceived that it is the defense's position he had
9 absolutely nothing to do with shooting these people,
10 that while his lawyer had a conversation about
11 self-defense, why would self-defense apply when he had
12 nothing to do with it. These were -- he says at one
13 point these were his friends. These were his homeboys.
14 These were his friends. Why would he -- he just didn't
15 have anything to do with it, and that's his position.

16 And the other part that I do think is
17 relevant is the portion where he says he made phone
18 calls to the witnesses, and I certainly think that's
19 relevant for this jury. So note your exception for
20 the record. All right. What else you've got?

21 MR. SPEARS: Your Honor, I think that's it.

22 MR. CHISHOLM: That's it, Your Honor.

23 THE COURT: Let me have the jury. And I'm
24 going to instruct him do not talk about that note.

25 MR. SPEARS: Yes.

1 THE COURT: If there's any conversation
2 about this bag, this seal having been broken, do not
3 talk about that.

4 THE WITNESS: Yes, ma'am.

5 (Jury enters the courtroom at 10:35 a.m.)

6 THE COURT: Hold on one second. Y'all come
7 here for a minute.

8 (Off-the-record conversation held at sidebar.)

9 (Back on the record.)

10 THE COURT: Yes, ma'am, Juror 102. I have
11 your note. I'm so sorry you're feeling -- I'm watching
12 you trying to walk. You need to go home, correct?
13 Thank you so much. I'm going to -- can you all let her
14 come on out. Thank you. Ease yourself. Do we need to
15 drive you home? Could we help you in any way?

16 THE JUROR: I've got to -- I'm sitting up.

17 THE COURT: We will help you. We will do
18 anything we can. We'll call an ambulance. I'll do
19 whatever you need. Do you want us to drive you home?

20 THE JUROR: I think I can drive. It's just
21 -- I don't know. It's like sharp pain. I don't know.
22 I can drive, but as long as I got my back sitting up
23 and stretching my muscles.

24 (Off-the-record conversation.)

25 (Back on the record.)

—DIRECT EXAMINATION - MR. SPEARS—

1 THE COURT: All right. Now please check
2 and be sure that you have your notepad. All right.
3 You may proceed.

4 MR. SPEARS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. SPEARS:

7 Q. Good morning, Agent Smith.

8 A. Good morning.

9 Q. Now continuing from your testimony from
10 yesterday, if we could just clarify that you have made
11 comparisons with State's 78 and 77, correct?

12 A. Yes, sir.

13 Q. All right. Now, I'm showing you what's been
14 marked as State's Exhibits 69 and 70.

15 MR. SPEARS: If I may approach the witness,
16 Your Honor?

17 THE COURT: Yes.

18 BY MR. SPEARS:

19 Q. Do you recognize these items?

20 A. Yes, sir. This was a fired bullet and fired
21 cartridge case that I received for examination.

22 Q. And were you able to perform an examination in
23 comparing those to these firearms, State's 78 and 77?

24 A. Correct. I compared the two pieces of evidence
25 with the test fires from the firearms.

DIRECT EXAMINATION - MR. SPEARS

1 Q. And as to State's 69, were you -- within a
2 reasonable degree of scientific certainty, were you able
3 to determine if that was fired by either one of these
4 handguns?

5 A. I was able to conclude that State's Exhibit 69
6 fired bullet was not fired by either of the firearms
7 based on the differences of class characteristics.
8 Again what I was talking about yesterday, the number
9 of lands and groves, the type a rifling, the direction
10 of the twist of the rifling.

11 State's Exhibit 69 had six lands and groves,
12 with a right-hand twist, conventionally rifled.
13 And again the two firearms, the Smith and Wesson,
14 had five lands and groves, and the Glock had polygonal
15 rifling. So, I can negate those two guns from having
16 fired this fired bullet.

17 Q. And as to State's 70?

18 A. State's Exhibit 70 also was not fired by either
19 firearm based on class characteristics and/or individual
20 characteristics. It just had different characteristics
21 than what those two firearms would have.

22 Q. All right.

23 MR. SPEARS: Please answer any questions
24 the defense might have for you.

25 THE WITNESS: Okay.

CROSS-EXAMINATION - MR. CHISHOLM

1 THE COURT: Cross-examination.

2 MR. CHISHOLM: Thank you, Your Honor.

3 May it please the Court.

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. CHISHOLM:

7 Q. Good afternoon, Mr. Smith.

8 A. Good morning.

9 Q. Good morning. All right. Obviously, you receive
10 items from law enforcement pretty routinely in your
11 position; is that correct?

12 A. Yes, sir.

13 Q. And when you get it, I mean, you kind of get what
14 you've got, in that you don't know the back story from
15 guns or bullets, projectiles, whatever the case may be.
16 You don't know the back story of what happened on
17 a crime scene, who was involved. Unless they put it
18 in their notes to you, you don't have any personal
19 knowledge of what happened; is that correct?

20 A. Correct. Typically, we have limited knowledge.
21 We could, I guess, investigate an incident report,
22 if there needs to be a certain question that needs
23 to be answered, or if law enforcement may give us
24 certain details. But, typically, we have limited
25 knowledge about what happens in a case. We just kind

CROSS-EXAMINATION - MR. CHISHOLM

1 of treat all evidence the same, you know, what we're
2 supposed to do with it as far as examination and
3 testing. So we just kind of go with that.

4 Q. But in a case like this, you wouldn't have any
5 firsthand knowledge of what happened at the scene of
6 the crime; is that correct?

7 A. Correct.

8 Q. I mean, obviously, you weren't there or anything
9 else. You pretty much get these items and test them
10 as you receive them?

11 A. Yes, sir.

12 Q. Okay. You mentioned something about checking for
13 function when you receive the firearm. Can you explain
14 that to me, what that means exactly?

15 A. Sometimes we get firearms that are not in so
16 great condition. They've been tossed out of a window or
17 a moving car or something like that, or they just might
18 not have been kept up with, have rust or broken parts.

19 So in order to -- first, to be able to test fire
20 a firearm, you have to see if it's going to work. Check
21 it over, see if there is any obvious defects. And then
22 we could, basically, just examine it. And the next step
23 would be to test fire it.

24 So, basically, it's just a step to see if
25 everything is working properly, if there's going to

CROSS-EXAMINATION - MR. CHISHOLM

1 be sort of problems test firing the gun, or, you know,
2 it could be unsafe to fire some guns. But the two
3 firearms I received were in working order.

4 Q. So, I guess, the simple version of my question
5 is you want to see if the gun will shoot, or if you can
6 make it shoot?

7 A. Correct.

8 Q. Okay. And do you have any knowledge when you get
9 a gun, can you look and say, well, I can see this gun
10 had problems in the past, or is it pretty much you're
11 looking to see if you can get it to fire so you can do
12 the examination?

13 A. Right. Yeah. We really don't know the history
14 behind these guns most of the time. Some of them may
15 have been found under a house or something, exposed to
16 moisture, expect to see rust, and some other corrosion.
17 But, typically, we just look at a gun, and see if we can
18 test fire it to see if it would work, and compare those
19 test fires with submitted cartridge cases or bullets.

20 Q. Okay. And could you please tell the jury, the
21 two firearms you received and the projectile -- I guess,
22 cartridges that you received. Can you tell if the guns
23 were filled to capacity? If you received, you know,
24 a full magazine, or if there were some missing? Do you
25 remember that? Is that in your report?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Yes. The firearms did come with magazines, which
2 -- the cartridges for firing. The Smith and Wesson
3 pistol, 40-caliber, had a magazine capacity of 14
4 rounds. So the magazine itself would hold 14 rounds.
5 But you can actually get another -- the full capacity
6 of the firearm would be 15 rounds. If you had one in
7 the chamber, and then the magazine was at full capacity,
8 it would be 15 rounds.

9 The Glock pistol 9-mm came with a ten-round
10 magazine. So again the magazine can hold ten rounds,
11 and you can have one in the chamber for the total
12 capacity of that firearm being 11 rounds.

13 Q. So neither gun was at capacity when you received
14 it?

15 A. Correct. The Smith and Wesson was received
16 with ten unfired cartridges. And the Glock was received
17 with eight unfired cartridges.

18 Q. And I'm guessing you couldn't say whether that's
19 because the gun had been fired and some cartridges have
20 been expelled, versus if it might have just been loaded
21 in the magazine without loading it fully; is that
22 correct?

23 A. Correct.

24 Q. And you can only examine what's turned in to you;
25 is that correct?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Yes, sir.

2 Q. So if I fired a revolver in here, and there would
3 be no casing for you to examine, unless I dumped it out
4 of the gun; is that correct?

5 A. Right.

6 Q. Same thing even with the semiautomatic.
7 If I shot a semiautomatic, and I got the shell casings,
8 or they got lost, or whatever the case may be, you would
9 have no way of knowing just from looking at the gun,
10 would you?

11 A. Correct. We can only examine what's received
12 for us to test.

13 Q. So it's hard for you to say how many shots were
14 fired on a crime scene. You can only look at the
15 evidence that's presented to you?

16 A. Correct.

17 Q. Okay. And the projectiles themselves in this
18 case, I think you previously told me that they all would
19 be consistent with a 38-caliber; is that correct?

20 A. Well, 38 is an umbrella class of projectiles.
21 But, more specifically, it was more consistent with
22 a 9-mm Luger, which falls under the 38-caliber umbrella.
23 So, specifically, it was consistent with 9-mm Luger
24 caliber bullets.

25 Q. And I'm trying to avoid getting too deep in all

CROSS-EXAMINATION - MR. CHISHOLM

1 of this.

2 A. Yes, sir.

3 Q. But I think in that same umbrella you referenced,
4 I mean, it could be a 9-mm, it could be a 9-mm Makarov.
5 There's a variety of specialized calibers out there that
6 it would be consistent with as well; is that correct?

7 A. Yes. Again, the 38 encompasses those calibers.
8 We're basically just giving our best guess as to what a
9 caliber could be based on the characteristics, weighing
10 it, and possibly measure the diameter, if it's not too
11 damage. So that's, basically, again our best guess
12 using what information is available to us.

13 Q. Okay. And it looks like as part of your
14 examination, you run -- you do all of your analysis,
15 you run it against the SLED database; is that correct?

16 A. We do have a database that was started by the
17 FBI. What they do is they put in the specifications --
18 rifling specifications of different guns. Again, going
19 back to the number of lands and groves, direction of
20 the twist, caliber, whether it's conventionally rifled
21 or polygonally rifled, and also to the widths of those
22 lands and groves.

23 So when we get a bullet that has the rifling
24 impressions on it, we can measure the land and groove
25 widths, and then put all that information into the

CROSS-EXAMINATION - MR. CHISHOLM

1 database to see what possible firearms could have fired
2 that projectile ---

3 MR. SPEARS: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Off-the-record conversation held at sidebar.)

6 (Back on the record.)

7 THE COURT: Ladies and gentlemen, step to
8 your jury room. Do not discuss this matter, or allow
9 anyone to discuss it with you. There's a matter that
10 I need to hear outside of your presence.

11 (Jury exits the courtroom at 10:52 a.m.)

12 THE COURT: All right. Yes, sir. Your
13 concern, as I understand it, Mr. Spears -- your concern
14 is that because you cannot -- you've tried this case
15 before.

16 MR. SPEARS: Yes, Your Honor.

17 THE COURT: And your concern is that
18 the testimony that is about to be elicited might
19 go to a specific event; is that right?

20 MR. SPEARS: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. SPEARS: Previously, it was testified
23 that this gun matched shell casings that are already
24 presented into AFIS from another event that was sent
25 to SLED. We don't know anything about that other event.

CROSS-EXAMINATION - MR. CHISHOLM

1 Honestly, I think it's just, you know, being put into
2 almost just kind of lay blame that, you know, those guns
3 have been used in multiple shootings, even though the
4 evidence in this case shows that it was not used here.
5 I think it shouldn't be allowed. The jury shouldn't be
6 allowed to hear it.

7 THE COURT: I understand.

8 MR. SPEARS: Thank you, Your Honor.

9 THE COURT: Just examine him. Go ahead.
10 Let me hear it. Just do your thing.

11 MR. CHISHOLM: Go ahead and examine him?

12 THE COURT: Yeah, yeah, yeah.

13 MR. CHISHOLM: Okay.

14 BY MR. CHISHOLM:

15 Q. Mr. Smith, you ran the firearm information that
16 you got when you do the examination. You ran it against
17 the SLED database in this case?

18 A. Okay. Are we talking about the database,
19 the IBIS database, or the database that gives you a list
20 of possible guns that could fire a particular bullet?

21 Q. I guess it would be the IBIS database that would
22 link it to possibly another case.

23 A. Right. That's IBIS.

24 Q. Okay.

25 A. We put the cartridge cases into IBIS, and it

1 searches against other images of cartridge cases
2 from other investigative cases to see if there's
3 a correlation between, you know, linking two incidents
4 together. But that's separate from what I thought
5 you were going with. If we don't have a gun that fired
6 a bullet, we can provide investigators with a list of
7 possible manufacturers ---

8 Q. That are consist?

9 A. --- of guns so they can be on the lookout for
10 certain guns, you know, if they come across it during
11 their investigation, that may have fired that gun.
12 Then, if they find one, they could submit it to us,
13 we can test fire it, then do a comparison under the
14 microscope to see if possibly it was fired by -- the
15 bullets were fired by that particular gun.

16 Q. Sure. I understand. My question would be about
17 IBIS. And, basically, my understanding is you do the
18 imaging and the markings, and all that kind of stuff.

19 A. Right.

20 Q. You do imagining, and you can run it against this
21 database. And if it hits a match -- a rough match to
22 another case, it will tell you that and say, basically,
23 you can link these cartridges, or these guns to another
24 case?

25 A. Correct. What will happen is, it's all

CROSS-EXAMINATION - MR. CHISHOLM

1 computerized. But it takes a digital scan of the breech
2 face surface of the cartridge case where all the
3 markings are, and then it saves it. It does some kind
4 of computer correlation against the other images that
5 are in there. Then it brings up a list. And I think
6 SLED looks at the top 25 or 30 correlations that it hits
7 against.

8 Then, our IBIS tech goes back, looks at images
9 to see if they look good compared to each other.
10 And, if they think it's a potential hit, they notify
11 both -- if there's two agencies involved, they notify
12 both agencies about what's going on. Then, they can
13 submit, you know, evidence that's already been returned
14 or whatever.

15 And then that examiner, such as myself, would
16 actually have to compare -- physically compare that
17 evidence with each other or test specimens with the
18 evidence to make a determination, you know, if it's
19 a possible match.

20 Q. Okay. Did you get, I guess, a hit, so to speak,
21 in this case with another case?

22 A. I did, I did.

23 Q. And could you tell me about that case; what the
24 charge was, the date of the incident, that kind of
25 thing?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. It was an attempted murder charge from Dorchester
2 County. The offense date is listed as May 14, 2016.
3 There are three cartridge cases -- 40-caliber Smith
4 and Wesson cartridge cases that were submitted.
5 And I believe the investigators had some reason to
6 believe that these two cases were related before the
7 IBIS hit. Charleston County has their own IBIS system.
8 I think Dorchester County runs their stuff through
9 Charleston County. But I remember having some
10 correspondence. Give me one second, please.

11 Yes, apparently, when it came to SLED, it was
12 already cross referenced. Both cases were cross
13 referenced together. So, I knew ahead of time that
14 I needed to look at both of those cases together.
15 And I think the IBIS part may have happened outside
16 of SLED with Charleston County with their IBIS system.
17 So when I got both cases in, it was already noted that
18 they needed to be looked at together. And that's what
19 I did.

20 Q. There's a belief there's a link between the two
21 already?

22 A. Yes, sir, yes.

23 Q. Okay. And where did that take place,
24 the attempted murder?

25 A. I'm not sure I have it on the paperwork that

1 I have because all I have is a receipt from the SLED lab
2 that has some basic information; the agency case number,
3 the offense county, offense date. It's got the victim's
4 name. That's all the information that I have.

5 Q. Thank you.

6 MR. CHISHOLM: I have no further questions.

7 THE COURT: All right. You may examine him
8 on that.

9 BY MR. SPEARS:

10 Q. Honestly, aside from the potential, Agent Smith,
11 in regards to the correlation between the two cases,
12 do you have any other information about the other case?

13 A. No, sir.

14 Q. Who had the gun in that case?

15 A. No, sir.

16 Q. Is there a case number to that case?

17 A. There is a case number. Dorchester County
18 Sheriff's Office has an agency case number.

19 Q. What's that number?

20 A. It's 16004788.

21 MR. SPEARS: No more questions, Your Honor.
22 Your Honor, simply in regards to the testimony because
23 there's an IBIS link, it doesn't necessarily mean that
24 this extraneous information should be brought in as
25 a part of this case right here. We've got no

1 information about this other case, other than a charge.
2 And no information about who had the gun.

3 Although, we might know when it happened, no
4 parties are identified as a part of it. All it really
5 brings up is just simple conjecture. There's no solid
6 information that we have here. I think it's kind of
7 moving the target, Your Honor.

8 THE COURT: All right. What issue which
9 is of consequence to this litigation does this evidence
10 make more probable or less probable?

11 MR. CHISHOLM: Right. Well, and I think --
12 I'll start with the solicitor. I mean, what he was just
13 saying, I think it all could be addressed in closing
14 arguments. Basically, what we've got is, and I think
15 the testimony was there was -- his information, it
16 wasn't just an IBIS hit like he normally would get where
17 they could possibly look into it. There was information
18 that this case was linked to the other case.

19 And, basically, we're in a situation where
20 with the telephone evidence that you allowed to come in,
21 they are being allowed to refute self-defense. I think
22 we should be allowed possible evidence that goes towards
23 self-defense to show the violent nature of the alleged
24 victim, and how he could have acted in accordance with
25 that nature in this case.

1 And also I think I should be able to ask
2 him if they looked into this. They had the information
3 there's a link between the two. I would be curious
4 what it was, and I think I should be able to ask them,
5 did you look into it.

6 THE COURT: Well, I pondered that.
7 So here is where that becomes important, very important.
8 That evidence would -- I agree with you. It would be
9 very important because it could corroborate testimony,
10 for example, of someone who would say, look, I know that
11 this person is very violent, and this person cornered
12 me, and I knew they were violent. And I took the first
13 shot because I believe that my life was in danger, and
14 guess what, I knew that they were out there, and a month
15 earlier, blah, blah, blah, blah, blah. Corroboration.
16 Excellent corroboration.

17 Now if that's where this case is going,
18 just tell me. I need to know that. That's important.
19 But I don't know you can just throw it out there in
20 a vacuum. If it is corroborative of something that
21 is a part of self-defense, because as you know, if you
22 are afraid, if you have information that the victim
23 is someone who is violent and means you harm, you don't
24 have to wait to get shot. You can be the first
25 aggressor. So if that's where I'm going, just tell me.

1 MR. CHISHOLM: No, I understand that.
2 And I don't know that's our situation.

3 THE COURT: Okay.

4 MR. CHISHOLM: Talking about Mr. Cobbs
5 testifying and bringing this in, and kind of back up,
6 or other witnesses for self-defense.

7 THE COURT: That's right.

8 MR. CHISHOLM: I understand what you're
9 saying. But, again, I think it's kind of a unique
10 situation in that they're being allowed to refute
11 a self-defense argument that hasn't been made.
12 And I think in fairness, we should be able to -- if
13 that's the route they're allowed to go, we should be
14 able to present evidence on the other side. And, yeah,
15 we should both be able to talk about that.

16 THE COURT: Gotcha. Gotcha. You know,
17 and my concern at this point, at that point, is just --
18 at this point, is just, if you will, there isn't -- this
19 has to do with a gun. It doesn't have to do with the
20 individual at this moment. It has to do with this
21 particular weapon.

22 And at this moment, I do not believe that
23 it is admissible. In other words, I don't think that,
24 for these reasons, given where this testimony would be
25 at this moment, that testimony does not make an issue

1 that is of consequence to this litigation more probable
2 or less probable. It could. It may get there.

3 My concern is that, obviously, I have the
4 ability to conditionally admit it. I'm concerned about
5 doing that at this point. However, having said that,
6 he's not going to get released from his subpoena.
7 But we will let him go to Allendale and Aiken when
8 he's finished, but he may be coming back.

9 MR. CHISHOLM: Yes, ma'am.

10 THE COURT: Okay?

11 MR. CHISHOLM: I understand.

12 THE COURT: Thank you. All right, anything
13 else? No? Let me have the jury.

14 (Jury enters the courtroom at 11:07 a.m.)

15 THE COURT: Okay. All right. Thank you.
16 Mr. Chisholm, you may proceed.

17 MR. CHISHOLM: Thank you, Your Honor.
18 No further questions.

19 THE COURT: All right. And is there any
20 redirect?

21 MR. SPEARS: No redirect, Your Honor.

22 THE COURT: Very well. Happy travels.
23 You're not, however, released from your subpoena.

24 THE WITNESS: Okay.

25 THE COURT: But enjoy.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Call your next witness, please.

3 MR. SPEARS: Thank you, Your Honor.

4 State calls Hadley Harkins.

5 MS. HADLEY HARKINS, was called as a witness,
6 being duly sworn, was examined and testified as follows:

7 THE COURT: Good morning, and how are the
8 two of you?

9 THE WITNESS: Good. Very good. Thank you.
10 How are you?

11 THE COURT: Your witness.

12 MR. SPEARS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SPEARS:

15 Q. Good morning, Hadley. Can you just tell the jury
16 how old you are?

17 A. I'm 19.

18 Q. And where are you from originally?

19 A. Summerville, South Carolina.

20 Q. Okay. Are you employed currently?

21 A. I am, for now.

22 Q. I gotcha. How far along are you?

23 A. Nine months. I'm 38 weeks.

24 Q. Congratulations. But, Hadley, where did you work
25 back in 2016?

1 A. I worked at IHOP.

2 Q. All right. The one on Dorchester Road?

3 A. Yes.

4 Q. All right. Were you working the night of January
5 5th of 2016?

6 A. January?

7 Q. June 5th. Yeah, June 5th, 2016. I apologize.
8 The early morning of June 5th?

9 A. Yes.

10 Q. And can you just describe to the jury -- looking
11 at our slide here, can you just kind of describe to us
12 what you recall from that night while we're getting this
13 linked up?

14 A. Yeah. It was a really busy night. It was like
15 really early in the morning. The bar rush was coming
16 in. And there were so many people waiting up front,
17 taking to-go orders, trying to be seated. And right
18 here, I was about to seat a table, and I'm just waiting
19 for them to get their party together.

20 Q. And seating that table, what direction are y'all
21 going here?

22 A. We're going to the right, pass the, like,
23 front desk, the kitchen entrance to the booths.

24 Q. To the booths. Okay. So just the main dining
25 area?