

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 28 2023

Certiorari to SC Court of Appeals

S.C. SUPREME COURT

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

Appellate Case No. 2023-001160

The State Respondent,

vs

Keunte D. Cobbs, ... Petitioner.

APPENDIX
VOLUME II

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DIRECT EXAMINATION - BY MR. SPEARS

1 A. Yes, sir.

2 Q. And what happened right after you went off screen
3 there? What do you recall happening?

4 A. I took off, yeah. After that, I'm pretty sure
5 a few gunshots went off, and everybody just scattered
6 and hid underneath tables.

7 Q. What did you do when you heard the gunshots?

8 A. I hid under the table. I didn't know where
9 it was coming from, couldn't really see anything.
10 Just -- naturally, just ran and hid.

11 Q. I understand. Now you say you're going off
12 to the right, you're going into the main dining area?

13 A. Yes.

14 MR. SPEARS: If I may approach up here,
15 Your Honor?

16 THE COURT: You may.

17 BY MR. SPEARS:

18 Q. If instead you went down in that direction,
19 where would that have led you?

20 A. It would have led to, like, the entrance to the
21 bathrooms. There's, like, a little hallway back there.

22 Q. So right here, that individual coming up that
23 way, and you're knowledge of that IHOP?

24 A. Yeah. Because if it was coming from the opposite
25 direction, in the lobby, -- but in the back, it would

DIRECT EXAMINATION - BY MR. SPEARS

1 just be the bathroom.

2 Q. All right. You said that would come from the
3 bathrooms, right?

4 A. Yes.

5 Q. All right.

6 MR. SPEARS: Hadley, please answer any
7 questions the defense might have for you.

8 THE WITNESS: Okay.

9 THE COURT: Cross-examination.

10 MR. CHISHOLM: No questions, Your Honor.

11 THE COURT: Very well. All right. Is this
12 witness free to leave?

13 MR. SPEARS: Yes, please, Your Honor.

14 THE COURT: Any objection?

15 MR. CHISHOLM: No objection.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you. Good luck.

18 Take your time. Call your next witness, please.

19 MR. ALLEN: Louis Colon.

20 MR. LOUIS COLON was called as a witness,
21 being duly sworn, was examined and testified as follows:

22 MR. ALLEN: Good morning, Mr. Colon.

23 Please have a seat.

24 DIRECT EXAMINATION

25 BY MR. ALLEN:

DIRECT EXAMINATION - BY MR. ALLEN

1 Q. Mr. Colon, can you tell us where you're from?

2 A. I'm from Philadelphia, Pennsylvania. I reside
3 in Summerville, South Carolina.

4 Q. And how long have you lived in Summerville?

5 A. Since approximately 2005, I think.

6 Q. Okay. Tell us what do you do for a living?

7 A. I work for the Department of Defense.

8 Q. And how long have you done that?

9 A. Currently now, started as a contractor in '97,
10 and then changed over in 2013, I think. So it's been
11 a while.

12 Q. A long time, a long time. So do you recall the
13 evening of June 5th, 2016?

14 A. It's been quite some time.

15 Q. Of course. Do you recall going to a restaurant
16 that -- well, early that morning, I should say?

17 A. Yes.

18 Q. And do you recall which restaurant you went to?

19 A. IHOP.

20 Q. Sure. Just real briefly, what were you going
21 for?

22 A. We went out with some -- we met up with
23 some friends for a birthday and stuff like that.
24 Then decided to go get something to eat afterwards.

25 Q. How many were you?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. There was four in the party total.

2 Q. I'm going to show you some video in a moment.
3 But before we do that, just real briefly talk to me
4 about what you recall when you first got to the
5 restaurant.

6 A. When we first arrived, there were some bikers and
7 stuff outside on the bench. We entered the restaurant.
8 I had to go to the bathroom. So the rest of my party
9 went to the table, and I went to use the restroom.
10 It's been so long, so I'm not sure if somebody walked
11 in front of me, or somebody was behind me.

12 I went in. Pretty much used the bathroom, didn't
13 talk to anybody or anything, came right back out, and as
14 soon as I sat down, pretty much just started hearing,
15 like, somebody was banging pots and pans. Come to find
16 out it was gunfire.

17 Q. Sure, sure. And it was a long time ago,
18 so you're memory is not great. You can't tell us
19 with any specificity; is that correct?

20 A. Correct.

21 Q. Okay. Tell you what, why don't you -- can you
22 direct your attention to your screen there, and we could
23 just play this forward.

24 (Video played in the courtroom for the jury.)

25 BY MR. ALLEN:

DIRECT EXAMINATION - BY MR. ALLEN

1 Q. We can stop right there. These four people
2 walking in the door in the top right-hand frame, can you
3 -- do you recognize those people?

4 A. Yes.

5 Q. And the man in the blue shirt, do you recognize
6 him?

7 A. That would be myself.

8 Q. Okay. So the man in the blue shirt is you.
9 Can we play -- give us a moment to get to where we're
10 looking. Perfect. That's it right there. So, I guess,
11 while this is frozen, looking at the bottom left-hand
12 frame here, this is a little bit later, there's people
13 standing at the hostess stand. Is that your group there
14 again?

15 A. Yes, that is.

16 Q. Is that you in the blue, it looks like?

17 A. Yes.

18 Q. I guess, we'll call that maybe teal. So we'll
19 just play this forward for a bit.

20 (Video played in the courtroom for the jury.)

21 BY MR. ALLEN:

22 Q. Okay. So sort of break down what's happened
23 here. So, y'all walked off to the right-hand side of
24 that screen. Where were you all walking in to in terms
25 of geography of the restaurant?

1 A. As soon as you walk in, so on the right screen,
2 I think it was, like, the very last table closest
3 towards, we walked all the way down in through.

4 Q. Okay. So where you all were initially walking,
5 as you're passing the hostess stand there, I guess what
6 you're saying is that's where the dining area would be?

7 A. Correct, yes.

8 Q. Okay. And so when you returned to the screen
9 here, or perhaps I should do this first. On the screen
10 at the bottom center, we see the teal shirt again.
11 Is that you again?

12 A. Yes, that is.

13 Q. So where are you walking towards?

14 A. I'm walking towards the bathroom.

15 Q. Okay. And so this shows the part where you're
16 going to the bathroom. I think we can -- let me ask you
17 this, and you testified to this a moment ago, that you
18 have a poor memory of whether somebody came in or after
19 you; is that right? You don't really remember which?

20 A. Right.

21 Q. Okay. So for this section, I just want to walk
22 through it very slowly, and you can focus your attention
23 to the bottom left-hand screen, sort of stepping through
24 frame-by-frame here, and see that teal shirt on the very
25 bottom of the corner there. And I'll ask you, is that

DIRECT EXAMINATION - BY MR. ALLEN

1 you walking out of the bathroom there?

2 A. Yes, that is me walking out.

3 Q. And so the direction you're coming from was
4 the bathroom. And where were you going after that?

5 A. To the table to meet up with my party.

6 Q. Sure. And, I guess, we'll play forward a little
7 bit.

8 (Video played in the courtroom for the jury.)

9 BY MR. ALLEN:

10 Q. Direct your attention to the bottom right-hand
11 screen. I'm sorry. And so in the middle of the bottom
12 right-hand screen there, the teal shirt, is that you?

13 A. Yes, that is.

14 Q. So is that y'all's table?

15 A. Yes.

16 Q. Once you got back to your table, about how long
17 do you recall before you heard gunshots?

18 A. This sounded almost like it was, like, as soon
19 as I sat down, almost instantaneous.

20 Q. Sure, sure.

21 MR. ALLEN: That's all I have for you,
22 Mr. Colon. Please answer any questions the defense
23 might have.

24 THE COURT: Cross-examination.

25 MR. CHISHOLM: Thank you, Your Honor.

CROSS-EXAMINATION - BY MR. CHISHOLM

CROSS-EXAMINATION

BY MR. CHISHOLM:

Q. Good morning, sir.

A. Good morning.

Q. When you went back to the bathroom that night, I think you previously told me you weren't really paying attention to who was in there, who wasn't in there, anything like that; is that right?

A. Right.

Q. And the same for when you left. You said you weren't paying attention if anybody was in there or not, right?

A. Correct.

Q. And there's nothing back there that drew any suspicion, or seemed out of place, or odd when you went to the restroom. It was a normal trip to the restroom and out, right?

A. Correct.

Q. Thank you.

MR. CHISHOLM: No further questions.

THE COURT: All right. Any redirect?

MR. ALLEN: No, ma'am.

THE COURT: Is this witness free to leave?

MR. ALLEN: Yes, ma'am.

THE COURT: Is there any objection?

1 MR. CHISHOLM: No, ma'am.

2 THE COURT: Thank you. You're free to go.
3 Call your next witness, please.

4 MR. SPEARS: State calls Julie Creel.
5 Your Honor, may we approach?

6 THE COURT: Yeah.

7 (Off-the-record conversation held at sidebar.)

8 (Back on the record.)

9 THE COURT: We will take our morning break.
10 We will take ten minutes. I know you were all, like,
11 what, we haven't had a break. We didn't get one.
12 So we're going to take ten minutes. Please remember
13 do not discuss this matter, or allow anyone to discuss
14 it with you. Leave your notebooks in your seat.

15 (Jury exits the courtroom at 11:23 a.m.)

16 (Back on the record.)

17 THE COURT: All right. Anything from the
18 State?

19 MR. SPEARS: Nothing from the State,
20 Your Honor.

21 THE COURT: From the defense?

22 MR. CHISHOLM: No, Your Honor.

23 (Jury enters the courtroom at 11:38 a.m.)

24 THE COURT: All right. Yes, sir.

25 MR. SPEARS: Thank you, Your Honor.

DIRECT EXAMINATION - BY MR. SPEARS

1 State calls Julie Creel.

2 MS. JULIE CREEL was called as a witness,
3 being duly sworn, was examined and testified as follows:

4 THE COURT: Your witness.

5 MR. SPEARS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. SPEARS:

8 Q. Good morning, Julie.

9 A. Good morning.

10 Q. Can you tell the jury where you live currently?

11 A. I live in Ridgeville.

12 Q. All right. And how long have you lived there?

13 A. About three and a half, four years.

14 Q. Where are you employed currently?

15 A. Carter's Fast Stop.

16 Q. Okay. And where were you employed back in June
17 of 2016?

18 A. IHOP on Dorchester Road.

19 Q. What was your job there?

20 A. Server.

21 Q. And about how long did you work there?

22 A. For about six and a half years.

23 Q. All right. And were you working there the night
24 -- the morning of June 5th, 2016?

25 A. Yes, I was.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Okay. Can you just give the jury a brief summary
2 of your memory of that morning?

3 A. I got to work late. I was supposed to be there
4 at ten. I didn't get there until a quarter after one.
5 Probably around 2:10, 2:15-ish, I was leaving one table
6 going into the backroom. And all of a sudden, I hear
7 pop, pop, pop, pop, pop, pop, pop, pop. Couldn't see
8 nothing up front, nothing but smoke. Somebody said what
9 was that? They're dropping pots and pans. And I said,
10 y'all ain't from the hood, and I ran. That's exactly
11 what I said. I duck down and ran.

12 Q. All right. Now, Julie, looking at the security
13 footage, can you just -- as a waitress, did you have
14 a certain section that you took care of?

15 A. Yes.

16 Q. And on this screen, can you kind of tell us
17 if this was your section?

18 A. That night, my section was the tables over here
19 on this side. The ones right here out of the away,
20 and this one right here.

21 Q. And if you touch the screen, you can mark on
22 them.

23 A. Oh. These ones right here, these ones right
24 here, this one, and that one.

25 Q. All right. The one from the bottom right,

DIRECT EXAMINATION - BY MR. SPEARS

1 it looks like there's kind of something off camera
2 there. Is that still another booth?

3 A. Yeah. This right here is the back of the booth,
4 and then there's one right here, and then there's a long
5 -- this one connects onto this one. And then this is
6 a separate booth over here.

7 Q. And who was sitting at that booth that's off
8 camera there?

9 A. This one right back here?

10 Q. Yes.

11 A. The Hell's Angels.

12 Q. Gotcha. Now going forward a little bit, waiting
13 until it gets on screen. This individual sitting kind
14 of right around the top -- with a red shirt right there.
15 Do you know who that is?

16 A. I do.

17 Q. And how do you know him?

18 A. He's a regular at IHOP. I've waited on him
19 at least two or three times a week for about a year
20 and a half, two years.

21 Q. All right. And I'm showing you what's been
22 marked as State's 72, already in evidence. Is this
23 that same individual there in the red shirt?

24 A. Yes, it is, the one standing up.

25 Q. And you say you -- he was a regular.

DIRECT EXAMINATION - BY MR. SPEARS

1 You've taken care of him before?

2 A. Yes.

3 Q. As a regular, does he normally order something
4 there? When does he normally come in?

5 A. Usually after bars close. Between 2:15
6 and 2:30-ish, he comes in.

7 Q. Any specific days?

8 A. With me, I normally waited on him on Saturday
9 nights. During the week, occasionally, he would come
10 in.

11 Q. And so does he normally order specific things
12 when he comes in?

13 A. Most of the time, he would rotate between a steak
14 tip breakfast -- dinner and another meal, but I can't
15 remember what that meal was.

16 Q. Does he usually eat it there?

17 A. No, he takes it home.

18 Q. On this night, did he order anything?

19 A. No, he had not placed an order yet.

20 Q. Did you see him around the time when the shooting
21 happened?

22 A. I saw him right before the shooting happened.

23 Q. Was he sitting at the table when the shooting
24 happened?

25 A. When I saw him, he was still making his rounds

DIRECT EXAMINATION - BY MR. SPEARS

1 around the restaurant. Like, he was a social butterfly,
2 go from person to person, talking to everybody before
3 he would sit down. I went and got his drink. He was
4 at the table when I dropped the drink off, and that
5 was the last time I saw him.

6 Q. All right. Now on the bottom left screen right
7 here, I believe that's been previously identified as
8 Brannon Mack. Are you familiar with Brannon Mack?

9 A. Not as familiar as I am with the other gentleman.

10 Q. And had you seen him before?

11 A. Yes.

12 Q. Had you served him before?

13 A. I served him on Friday nights probably for about
14 maybe a year.

15 Q. Does he normally come in around the same time
16 as the Defendant does?

17 A. He had different times of coming in.

18 Q. Did you ever see them at the IHOP together at the
19 same time?

20 A. Not that I can recall, no.

21 Q. All right.

22 MR. SPEARS: Please answer any questions
23 the defense might have for you.

24 THE COURT: Cross-examination.

25 MR. CHISHOLM: Thank you, Your Honor.

CROSS-EXAMINATION - BY MR. CHISHOLM

1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MR. CHISHOLM:

4 Q. Good morning, I guess, it is.

5 A. Good morning.

6 Q. Ms. Creel, right?

7 A. Yes.

8 Q. And we had a chance to speak before, correct?

9 A. Yes.

10 Q. And I've got a few questions I'd like to go over
11 with you.

12 A. Okay.

13 Q. What you told me before is that you worked this
14 shift pretty often, is that right, back in 2016?

15 A. Uh-huh.

16 THE COURT: Is that a yes?

17 THE WITNESS: Yes, ma'am. Yes. Sorry.

18 THE COURT: That's okay.

19 BY MR. CHISHOLM:

20 Q. And you said you knew Mr. Cobbs because he was
21 in a couple of times a week; is that right?

22 A. Yes.

23 Q. So, I guess, you can call him a regular?

24 A. Yes.

25 Q. Nothing unusual to see him at this time on this

CROSS-EXAMINATION - BY MR. CHISHOLM

1 kind of day at all?

2 A. Not at all.

3 Q. Okay. And this is, I guess, you said the late
4 night shift, people come in after bars close?

5 A. Yes.

6 Q. Okay. And I'm guessing you've got a pretty good
7 rush around that time?

8 A. Yeah. Usually about 2:03, the parking lot was
9 full.

10 Q. Gotcha. And I think you told me before he would
11 always order the same thing, grapefruit juice?

12 A. Grapefruit juice, no ice.

13 Q. And I think you told me that he was such
14 a regular that when he would come in, you would pretty
15 much go ahead and get that for him. He didn't need
16 to order?

17 A. Nope, he never told me what he wanted. As soon
18 as I see him, I didn't even speak to him, I would go and
19 get his drink, bring it to him, and then speak to him.

20 Q. And I think you told me before, you know, you
21 would already automatically get his drink. And a lot
22 of times, he would just kind of hang around before he
23 ever ordered food?

24 A. Uh-huh.

25 Q. And I think you just said he was a social

CROSS-EXAMINATION - BY MR. CHISHOLM

1 butterfly. He would kind of make his rounds around
2 the restaurant?

3 A. Yep.

4 Q. That was pretty typical for him?

5 A. Yes, it was.

6 Q. And it wasn't anything different on this night.
7 He was doing the same thing he always does?

8 A. Same thing he always did.

9 Q. And it sounds like you told me you guys had
10 a pretty good relationship, and that you joke around,
11 that kind of stuff?

12 A. Yeah, we did.

13 Q. And I think what you told me -- I don't want
14 to misquote you. You can correct me. But I think
15 you told me that you thought he was a wonderful guy.
16 And when you heard he was being accused, you were
17 dumbfounded; is that correct?

18 A. I was.

19 Q. Okay.

20 A. The only problem we ever had out of him was
21 his steak tips came out bloody, and he's, like, oh,
22 no, no, no, I can't eat blood. I can't take the blood.
23 And he sent them back to be recooked.

24 Q. And even then he wasn't a jerk or violent
25 or anything like that?

CROSS-EXAMINATION - BY MR. CHISHOLM

1 A. No problem, no attitude, no lip.

2 Q. And you said you waited on him for quite a while.
3 Had you ever seen aggression or violence out of him?
4 I think you told me before you've never seen anything
5 like that?

6 A. No, no. I also didn't know him outside of IHOP
7 though.

8 Q. I understand. But as far as you knew from the
9 relationship ---

10 A. Right. From what I've seen him, I have never
11 seen any kind of temper, attitude, anything like that.

12 Q. Yes, ma'am. And you told me, I believe, he was
13 a good tipper?

14 A. Yes.

15 Q. Okay. And he would come in and hang out and have
16 a good time?

17 A. Yes.

18 Q. Okay. And I think you just -- you've testified
19 to this, just to make sure. On this night in
20 particular, as far as you're concerned, he was doing
21 the exact same thing he always does when he comes in?

22 A. Yes, sir.

23 Q. He wasn't acting any differently?

24 A. No, sir.

25 Q. Okay. And you said you might have known

REDIRECT EXAMINATION - BY MR. SPEARS

1 Mr. Mack. But you never saw him come in when Mr. Cobbs
2 was there that you recall?

3 A. Not that I recall.

4 Q. Okay. And ---

5 MR. CHISHOLM: May I have one moment?

6 THE COURT: All right.

7 MR. CHISHOLM: Thank you, Ms. Creel.

8 I don't have any further questions.

9 THE COURT: All right. Any redirect?

10 MR. SPEARS: Very briefly, Your Honor.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. SPEARS:

14 Q. And, Ms. Creel, this is just for me. What day
15 did you say that Mr. Cobbs usually comes in?

16 A. Mr. Cobbs usually came in on Saturdays.

17 Q. And you said Mr. Mack came in on ---

18 A. On Fridays.

19 Q. --- on Fridays, right? This was a Sunday night,
20 right?

21 A. It was Saturday night, Sunday morning.

22 Q. Sunday morning. All right. And if you can ---

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

24 THE COURT: Okay.

25 BY MR. SPEARS:

REDIRECT EXAMINATION - BY MR. SPEARS

1 Q. And was he sitting with someone that night,
2 Mr. Cobbs?

3 A. He was.

4 Q. All right.

5 A. Well, the gentleman sat down at his -- if
6 I remember correctly, the gentleman sat down at his
7 table. And then he got up and went to a different
8 table, if I'm not mixing nights up.

9 Q. Now ---

10 A. I would say that if I'm not mixing up nights.

11 Q. When you say different table ---

12 MR. SPEARS: May I approach up here,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. SPEARS:

16 A. If I'm remembering correctly, they sat at,
17 I want to say, this one. He was sitting -- Mr. Cobbs
18 was sitting at this one. The gentleman joined him.
19 And then he got up and came to this one, if I'm not
20 mistaken.

21 Q. I believe we saw this footage earlier when you
22 were initially testifying. The gentleman in the white
23 shirt was sitting right here, and Mr. Cobbs just kind
24 of sat over in this booth beside him?

25 A. Right.

RECROSS EXAMINATION - BY MR. CHISHOLM

1 Q. Yeah. I mean, were their backs to each other,
2 or were they side by side talking?

3 A. I don't remember.

4 Q. Okay.

5 A. That part I don't remember.

6 MR. SPEARS: No more questions for this
7 witness, Your Honor.

8 THE COURT: Any recross?

9 MR. CHISHOLM: Yes, ma'am.

10 RECROSS EXAMINATION

11 BY MR. CHISHOLM:

12 Q. Okay. Just for clarification, I believe you
13 testified Mr. Cobbs normally comes in on Saturday
14 nights?

15 A. Yes, sir.

16 Q. And this was a Saturday night?

17 A. Yes, sir.

18 Q. And this was his typical time when you would
19 see him?

20 A. Yes, sir.

21 Q. So if you're looking to find Mr. Cobbs, you can
22 probably find him there on a Saturday night?

23 A. Yes, sir.

24 Q. And he always came in around the same time,
25 roughly?

RECROSS EXAMINATION - BY MR. CHISHOLM

1 A. Just about around the same time.

2 MR. CHISHOLM: Thank you. No further
3 questions.

4 THE COURT: All right. Is this witness free
5 to leave?

6 MR. SPEARS: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. CHISHOLM: No, Your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: I do apologize for my absence
11 this morning. I do apologize for holding y'all up.

12 THE COURT: Thank you. We needed a morning
13 break anyway.

14 THE WITNESS: Well, good. I'm glad
15 I helped.

16 THE COURT: You did.

17 THE WITNESS: Y'all have a great day.

18 THE COURT: All right. Next witness,
19 please.

20 MR. SPEARS: Your Honor, State calls Mikell
21 Nelson.

22 MR. MIKELL NELSON was called as a witness,
23 being duly sworn, was examined and testified as follows:

24 THE COURT: Your witness.

25 MR. SPEARS: Thank you, Your Honor.

DIRECT EXAMINATION - BY MR. SPEARS

DIRECT EXAMINATION

1

2 BY MR. SPEARS:

3 Q. How old are you, Mikell?

4 A. Thirty-four.

5 Q. All right. And where are you from initially?

6 A. North Charleston.

7 Q. All right. Obviously, it's a stupid question.

8 Are you currently incarcerated?

9 A. Yes, I am.

10 Q. For what charges?

11 A. Bank robbery.

12 Q. All right. And, Mikell, do you know Keunte

13 Cobbs?

14 A. I know him. I never had no dealings with him,
15 but I know him.16 Q. Say if you saw him at a bar or something like
17 that, would you walk over and say, hey?

18 A. No.

19 Q. Gotcha. Did you know Brannon Mack?

20 A. Right.

21 Q. Same question. If you saw him at a bar
22 or somewhere, would you go over and say hi?

23 A. Good friend of mine.

24 Q. All right. And can you tell us where you were
25 the night of June 4th, 2016, or the early morning

DIRECT EXAMINATION - BY MR. SPEARS

1 of June 5th, 2016?

2 A. In Fairlawn.

3 Q. Where?

4 A. In Fairlawn, a subdivision on Ladson Road.

5 Q. Was the -- was Keunte Cobbs there also?

6 A. Correct.

7 Q. Did you speak with him at all?

8 A. No.

9 Q. Were there more people there?

10 A. Yeah.

11 Q. All right. Did he say anything?

12 A. Well, there was a bunch of us out there. We was
13 all in little separate groups. And long story short,
14 I guess, he got a phone call, and then he -- I heard
15 him say, I'm about to kill that nigga. Then he jumped
16 in the car and left.

17 Q. Was anyone in the car with him?

18 A. Yeah.

19 Q. Do you recall what he was wearing?

20 A. A red T-shirt and some black jeans shorts?

21 Q. Do you recall about what time that happened?

22 A. I would say from about 12:00 or 1:00.

23 Q. All right.

24 MR. SPEARS: Please answer any questions
25 the defense might have for you.

CROSS-EXAMINATION - BY MR. CHISHOLM

1 THE COURT: Cross-examination.

2 MR. CHISHOLM: Thank you, Your Honor.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. CHISHOLM:

6 Q. Good morning, Mr. Nelson.

7 A. (No response.)

8 Q. I've got a few questions for you. I'm going to
9 ask you a couple of things you just answered. You said
10 you're 34?

11 A. Yeah.

12 Q. You're from North Charleston?

13 A. Right.

14 Q. Okay. And you said you were good friends with
15 Brannon Mack?

16 A. Right.

17 Q. The alleged victim in this case; is that correct?

18 A. Correct.

19 Q. Okay. And you said you heard Mr. Cobbs make
20 this statement back in June of 2016; is that correct?

21 A. Correct.

22 Q. But you didn't come forward with this
23 information in 2016, did you?

24 A. No.

25 Q. Did you bring this up in 2017?

CROSS-EXAMINATION - BY MR. CHISHOLM

1 A. No.

2 Q. 2018?

3 A. Right.

4 Q. You brought it up in 2018?

5 A. '18 or '19. Could have been January of last
6 year, I think.

7 Q. Okay. January of 2019, that would be, then.

8 And you're currently incarcerated for bank robbery,
9 you testified?

10 A. Yeah.

11 Q. But you're charged federally; is that correct?

12 A. Right.

13 Q. And they're the ones that have a hold on you
14 right now?

15 A. Right.

16 Q. How many counts of bank robbery do you have?

17 A. Two.

18 Q. Two. You were formally charged at the state
19 level; is that correct?

20 A. Right.

21 Q. And you were prosecuted by the Dorchester County
22 Solicitor's Office?

23 A. The charges was dropped in Dorchester.

24 Q. Okay. And your case -- have you pled in your
25 case? Has it been to trial? Is it still pending?

CROSS-EXAMINATION - BY MR. CHISHOLM

1 What's the status of your case right now?

2 A. Waiting to get sentenced.

3 Q. Did you do a plea?

4 A. Right.

5 Q. So you did a plea in your case. When are you due
6 to be sentenced?

7 A. Sometime next month.

8 Q. Okay. When did you do your plea?

9 A. Last year in January.

10 Q. About the same time you came forward. Okay.
11 I'm guessing that timing isn't a coincidence, is it?

12 A. (No response.)

13 Q. Yes or no?

14 A. I don't understand what you're saying.

15 Q. Is it a coincidence that you came forward with
16 this information as you were doing your plea?

17 A. I guess, yeah.

18 Q. So it's unrelated to your plea completely?

19 A. Right.

20 Q. You didn't provide this information to the State
21 in expectation of getting consideration in your case?

22 A. No.

23 Q. You had no discussions about that whatsoever?

24 A. Not with them, no.

25 Q. You just came forward that same time you did

CROSS-EXAMINATION - BY MR. CHISHOLM

1 your plea ---

2 A. Right.

3 Q. --- as a coincidence? Fair enough. And this
4 stuff that you testified about, what you heard Mr. Cobbs
5 say, I understand you're saying that's what happened.
6 Would you agree with me, I mean, if you wanted to
7 completely make that up, you could, couldn't you?

8 A. I could, but I ain't.

9 Q. I understand that. And I'm assuming you've
10 met with some of the law enforcement or the solicitor's
11 office in Dorchester County prior to today, haven't you?

12 A. Sure.

13 Q. You discussed your testimony?

14 A. Told them what I know.

15 Q. Okay. Did they express concern that this
16 is something that could have been just completely made
17 up? Did they ask you to get information that would
18 corroborate your story or to verify it in some way?

19 A. They just told me to tell the truth.

20 Q. Okay. Did you tell them of other people that
21 were out there they could speak to?

22 A. I did.

23 Q. You did?

24 A. I don't know if they talked to them or not,
25 but yeah.

CROSS-EXAMINATION - BY MR. CHISHOLM

1 Q. You gave them that information? You don't know
2 if they're going to call them in or not though,
3 is that what you're saying?

4 A. (No response.)

5 Q. Okay. How many times have you met with the
6 police to discuss other cases?

7 A. None.

8 Q. This is your first time. Have you ever tried to
9 provide information on other cases where they weren't
10 interested?

11 A. No.

12 Q. No. Okay. Have you ever testified in court
13 in a proceeding such as this?

14 A. No.

15 Q. Did you ask that your interview with the police,
16 with the solicitor's office, that it be recorded?

17 A. No.

18 Q. Do you know if it was recorded?

19 A. (No response.)

20 Q. Okay. Are you aware that sometimes people come
21 forward with information like this because they're
22 trying to get a deal cut on their case?

23 A. Right.

24 Q. They're trying to get some consideration on the
25 back end. For example, you're being sentenced next

CROSS-EXAMINATION - BY MR. CHISHOLM

1 month; is that right?

2 A. Yeah.

3 Q. But it's your testimony today you've never even
4 discussed that with anyone, the possibility of getting
5 some favor in your case?

6 A. Yeah, I haven't.

7 Q. Okay. I would like to talk to you -- I mean,
8 you're obviously being held right now. But this isn't
9 your first time you've been in legal hot water, so to
10 speak, is it?

11 A. No.

12 Q. And, for example, it looks like you've been
13 convicted of giving false information back in 2010;
14 is that right?

15 A. (No response.)

16 Q. Been convicted of financial identity fraud back
17 in 2010? It looks like -- I don't know if this is the
18 same case. How many counts of financial identity fraud
19 -- this may be the same one here. Another giving false
20 information in 2015. And let's see what else we have
21 here.

22 MR. CHISHOLM: Beg the Court's indulgence.

23 THE COURT: All right.

24 BY MR. CHISHOLM:

25 Q. Looks like -- you've been convicted, it looks

CROSS-EXAMINATION - BY MR. CHISHOLM

1 like, on a federal -- U.S. Secret Service passing
2 counterfeit money case; is that correct?

3 A. (No response.)

4 Q. That was a federal prosecution as well.

5 A. Uh-huh.

6 Q. So you've been through the system before; is that
7 right?

8 A. Right.

9 Q. What is the charge that you're about to be
10 sentenced on? What does that carry?

11 A. My guideline is from 22 to 27 years.

12 Q. 22 to 27, so a minimum of 22, up to 27?

13 A. (Witness nods head.)

14 Q. Okay. And it's your testimony, your sworn
15 testimony here today, you're not hoping to get that
16 22 by coming in here?

17 A. Well, if it helps me then I'll be willing to get
18 it. But, I mean, if not, then, you know, it is what it
19 is.

20 Q. I understand.

21 MR. CHISHOLM: May I have one moment?
22 No further questions.

23 THE COURT: All right. Redirect.

24 MR. SPEARS: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

REDIRECT EXAMINATION - BY MR. SPEARS

1 BY MR. SPEARS:

2 Q. Mikell, just for clarification purposes, has the
3 State offered you anything for your testimony here
4 today?

5 A. No.

6 Q. All right. Thank you.

7 THE COURT: Recross.

8 MR. CHISHOLM: No, ma'am.

9 THE COURT: All right. All right, sir,
10 you can return. Call your next witness, please.

11 MR. SPEARS: Nate Green.

12 MR. LOY: Your Honor, can we have a moment?

13 (Pause.)

14 THE COURT: Call your next witness, please.

15 MR. ALLEN: He's on his way, Your Honor.

16 THE COURT: All right.

17 MR. NATHANIEL GREEN, was called as a
18 witness, being duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. ALLEN:

22 Q. Good morning, Mr. -- good afternoon now,
23 Mr. Green. Is it corporal?

24 A. Yes, sir, corporal.

25 Q. Corporal, can you tell me where you work?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. I work for the Dorchester County Detention
2 Center.

3 Q. And what do you do for the detention center?

4 A. I supervise and oversee the visitation system
5 and the phone system for the jail.

6 Q. So let's just kind of get right to it. So you
7 oversee the telephone system. Is that the telephone
8 system that inmates are allowed to use?

9 A. Yes, sir.

10 Q. And is there anything special about that phone
11 system that is different from, I suppose, everyday phone
12 systems?

13 A. Yes, sir. Each inmate when they're booked into
14 the Dorchester County Detention Center is issued a jail
15 ID number. And then with that jail ID number, they're
16 able to create a telephone account on the Pay-Tel
17 System.

18 Q. So in order to gain access to that system,
19 and, I guess, to be given a number -- they get the
20 ID number in order to use the system, is that what
21 you said?

22 A. That's correct.

23 Q. In order to get that number, do they have to do
24 anything special? Do they have to register or something
25 like that?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. Yes, sir. When they're in the booking process --
2 the jail ID number follows the detainee throughout the
3 whole time he's housed at the detention center. And it
4 also correlates with his canteen account. And family
5 members can put money on the account, and the money can
6 be transferred onto their telephone account. The inmate
7 has the ability to do that when they come on the phone,
8 on the computer.

9 Q. Okay. And so, specifically, in order to have
10 access to the phone system, is there anything special
11 that they have to do to be eligible for that?

12 A. Yes, sir. They have to do voice recognition.
13 The voice recognition system that requires -- the
14 computer will require them to say a series of numbers
15 and letters and their name. And after that, it then
16 records that information, and then they have to use --
17 each time they make a phone call, they have to put in
18 their pin number. And they also put in their four-digit
19 ID number, their personal number, like you would with
20 your Facebook account or something like that.

21 Q. So, for example, if I'm an inmate making a call,
22 I put in my ID number; is that correct?

23 A. The jail ID number. Then you create a four-digit
24 pin to go with that jail ID number.

25 Q. Okay. And you push that number into the phone?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. Right. And then it will tell you -- once it
2 comes on, then it will tell you did you dial your
3 number. And it says -- there's a recording that comes
4 on in front of every call that says this call is
5 monitored and recorded.

6 Q. And do they have to do anything to verify their
7 voice?

8 A. The computer does that automatically.

9 Q. I see. I see. So it's an automatic system that
10 verifies?

11 A. It recognizes the voice of the person.

12 Q. Recognizes the voice. And then that's based
13 on the sample that they had previously given?

14 A. That's correct.

15 Q. And I think you just said it, but are they
16 notified in any way that they're being recorded?

17 A. Yes, sir. When a phone call is made, it says
18 this call is being monitored and recorded. It says
19 that before they're allowed to connect the phone call.
20 So before they connect the phone call, it says this call
21 is monitored and recorded. And that's each and every
22 call. And that's our normal course of operation,
23 and it has been since we've had the Pay-Tel System.

24 Q. What about the person on the receiving end,
25 do they have any indication?

DIRECT EXAMINATION - BY MR. ALLEN

1 A. When the phone call is made from the detention
2 center by a detainee, the person on the other end their
3 phone rings. And it says -- it's a computer voice that
4 generates a message to them before they accept the call
5 and says, this is a call from the Dorchester County
6 Detention Center, so they know, and these calls are
7 monitored and recorded.

8 Q. Bear with me just one moment. Corporal,
9 I'm going to show you what has not yet been marked ---
10 (State's Exhibit No. 91 was marked for identification.)
11 BY MR. ALLEN:

12 Q. I'm going to show you what has been marked
13 for identification purposes as State's Exhibit 91.

14 A. Yes, sir.

15 Q. Do you recognize that disc? Feel free to take
16 it out of the jacket.

17 A. Okay. Yes, sir, this is a disc of phone calls.
18 These are disc -- Pay-Tel System when they request calls
19 they send out, and these are my initials and date on
20 this.

21 Q. Okay. And that was going to be my next question.
22 Have you listened to the contents of that disc?

23 A. Not totally. I don't generally listen to all
24 the contents. But I did listen to the initial part.
25 And it is a recording from the Dorchester County

CROSS-EXAMINATION - BY MR. CHISHOLM

1 Detention Center.

2 Q. So you've listened to enough of the record
3 to establish that it is from your system?

4 A. Yes, sir.

5 Q. And I believe you said a second ago -- are those
6 your initials?

7 A. Yes, sir, that's my initials and date.

8 Q. All right.

9 MR. ALLEN: Nothing further at this time,
10 Your Honor. Please answer any questions the defense
11 might have.

12 THE COURT: Cross-examination.

13 MR. CHISHOLM: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. CHISHOLM:

16 Q. Corporal Green?

17 A. Yes, sir.

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. And you just testified you guys have ways of
21 linking, saying, we know this is the person making this
22 call based on a variety of different facts?

23 A. Yes, sir. All calls -- we can identify calls,
24 yes.

25 Q. I'm assuming you don't record half the calls,

CROSS-EXAMINATION - BY MR. CHISHOLM

1 and the other half go unrecorded. You record them all?

2 A. Yeah. As a common course of practice, all calls
3 from inmates are automatically recorded and kept in
4 archives.

5 Q. Okay. So you've got access to all of them?

6 A. Yes, sir.

7 Q. Thank you.

8 MR. CHISHOLM: I have no further questions.

9 THE COURT: All right. Any redirect?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: Is this witness free to leave?

12 MR. ALLEN: He is, Your Honor.

13 THE COURT: Any objection?

14 MR. CHISHOLM: No, Your Honor.

15 THE COURT: Thank you. You're free to go.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness, please.

18 MR. SPEARS: Thank you, Your Honor. May we
19 approach briefly, Your Honor?

20 THE COURT: Sure.

21 (Off-the-record conversation held at sidebar.)

22 (Back on the record.)

23 MR. SPEARS: Your Honor, at this time,
24 State calls Dr. Lee Tormos.

25 THE COURT: All right. Very well.

1 Ladies and gentlemen, as you've just heard, the next
2 witness is a doctor. And as oftentimes happens,
3 you're going to be hearing -- this is not the doctor.
4 This is my law clerk. You met him. This is Gil Gatch,
5 my law clerk. He's a juris doctor. He's just not
6 a medical doctor. You don't want him to take your
7 temperature.

8 Now, we have the ability to have someone's
9 testimony be taken and then brought to a jury. It
10 happens from time to time. I'm going to share with you,
11 it oftentimes happens with doctors, not juris doctors,
12 medical doctors. And so that has been done. You're
13 about to hear the sworn testimony of Dr. -- is it Tomas?

14 MR. SPEARS: Lee Tormos, Your Honor.

15 THE COURT: Tormos. And it's like -- I know
16 all of you have had occasion to have been somewhere,
17 where the role, blah, blah, blah, this evening will
18 be played by blah, blah, blah. My law clerk is going
19 to be reading the responses of Dr. Tormos.

20 The reason that we do it that way is that
21 we just have learned over time that, question, blah,
22 blah, blah, blah, answer, blah, blah, blah, question,
23 blah, blah, blah. And jurors are like, whoa, whoa,
24 whoa, I can't keep it straight. That's the reason
25 that we call on someone to read the answers.

READING OF DR. TORMOS' TESTIMONY

1 The lawyers typically will read their
2 questions, and then we'll have someone do the responses.
3 And the reason he's seated here, primarily, because
4 it's closer, and hopefully you can hear him a little bit
5 better. Why we use law clerks? Because it's real fun
6 for the judges to see if they can handle the big medical
7 words.

8 So this is Mr. Gil Gatch. He's going to be
9 reading the responses of Dr. Tormos. Mr. Spears will
10 read his questions. And then the defense, they'll read
11 theirs. That way you can just keep it -- kind of keep
12 it straight, okay, who's doing the question, who's doing
13 the answers.

14 So without further adieu -- it is important,
15 though, for you to know this is the sworn testimony of
16 Dr. Tormos.

17 MR. SPEARS: Page 2, Line 4 is the first
18 question.

19 THE WITNESS: Yes. Thank you.

20 (The reading of previous testimony from Dr. Tormos.)

21 MR. SPEARS: Your Honor, may I submit this
22 into evidence?

23 THE COURT: Is it still State's 87?

24 MR. SPEARS: Your Honor, it's actually,
25 at this point in time, State's 74.

DIRECT EXAMINATION - MR. SPEARS

1 THE COURT: All right. Any objection?

2 MR. CHISHOLM: No objection.

3 THE COURT: Very well.

4 (State's Exhibit No. 74 was admitted into evidence.)

5 (Continue to read previous testimony of Dr. Tormos.)

6 THE COURT: All right. That would conclude
7 the testimony. Thank you. All right, next witness.

8 MR. SPEARS: Your Honor, at this time,
9 we request the testimony be marked and entered into
10 evidence.

11 THE COURT: It will be marked for
12 identification.

13 MR. SPEARS: For identification.

14 THE COURT: Yes.

15 (State's Exhibit No. 92 was marked for identification.)

16 MR. SPEARS: Your Honor, at this time,
17 the State calls Detective Dwayne Peters.

18 DETECTIVE DWAYNE PETERS, was called as a
19 witness, being duly sworn, was examined and testified
20 as follows:

21 THE COURT: Your witness.

22 MR. SPEARS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. SPEARS:

25 Q. Lieutenant Peters, can you please tell the jury

DIRECT EXAMINATION - MR. SPEARS

1 where is it that you're employed?

2 A. I'm employed by Dorchester County Sheriff's
3 Office.

4 Q. And how long have you been there?

5 A. Approximately 12 years.

6 Q. And do you have any prior law enforcement
7 experience before this?

8 A. I do. I started my law enforcement career in
9 March of 1995 with the Isle of Palms Police Department.
10 I worked there until 1999, when I joined the Summerville
11 Police Department. And I left the Summerville Police
12 Department in 2008 to go to the sheriff's office.
13 I'm also currently in the Reserves, United States Army,
14 as a special agent with criminal investigation.

15 Q. And what did you do prior to your law enforcement
16 career?

17 A. I was in the United States Marine Corps.

18 Q. During your -- during that time, did you become
19 familiar with firearms during the entire course of your
20 career?

21 A. I have. Basically, from the age of 17 to now,
22 I've carried a firearm.

23 Q. And going back to your current position, what is
24 your position at the sheriff's office?

25 A. I'm a lieutenant over the general investigations

DIRECT EXAMINATION - MR. SPEARS

1 unit, which falls under the criminal investigative
2 division. Criminal investigative division has three
3 different units -- actually four different units.

4 The first one is crime scene unit, which Sergeant
5 Berg is a member of. Then there's a narcotics unit,
6 which can basically conduct investigations on controlled
7 substances, drug police. School resource officers
8 also fall under the criminal investigation division.
9 And then what we call CID, our regular detectives.
10 We handle everything from larcenies to murders.

11 Q. And what was your position back in June of 2016?

12 A. At that time, I was a detective sergeant.
13 Basically, I was a sergeant. I was a day-to-day
14 supervisor over the unit. But I was a working sergeant
15 where I had my own caseload.

16 Q. You were one of the supervisors at the time?

17 A. Yes, sir.

18 Q. And after this incident occurred on June 5th,
19 2016, did you assign someone to investigate this case?

20 A. Detective Keith Elmore.

21 Q. Is Keith Elmore still a detective?

22 A. No, he's not.

23 Q. Where is he now?

24 A. He's presently a patrol deputy in our patrol
25 division. He actually left the sheriff's office in

DIRECT EXAMINATION - MR. SPEARS

1 20 -- December 2016 and joined the coroner's office.

2 And then he returned, I believe, last year. He returned
3 back to the sheriff's office.

4 Q. And who took over this case after he left?

5 A. After he left, I did.

6 Q. Okay. Were you familiar with the case prior
7 to that?

8 A. I had some working knowledge of it. I never
9 participated in any of the investigation. What I knew
10 about it was office talk that you hear between
11 detectives.

12 Q. And since you took it over, have you had the
13 opportunity to familiarize yourself with the case?

14 A. Yes, sir.

15 Q. Now, Detective Peters, where was Keunte Cobbs
16 arrested?

17 A. In North Charleston, the La Quinta Inn.

18 Q. All right. And how long after the incident was
19 that?

20 A. I believe it was a few months.

21 Q. In reviewing your file, did you find some
22 paperwork about cell phones being recovered at the time
23 of his arrest?

24 A. Yes, I did.

25 Q. And as a result of that, were you able to find

DIRECT EXAMINATION - MR. SPEARS

1 those cell phones?

2 A. There was no -- reviewing the file, the first
3 thing when you're assigned a case, you basically see
4 what's done, make a list of what needs to be done,
5 and all that. In there was a search warrant return that
6 was completed by Detective Elmore. And on it was three
7 cell phones that were seized from Mr. Cobbs at the time
8 of his arrest.

9 There was also a chain of custody filled out by
10 Detective Elmore that had three cell phones that were
11 seized at the time. But the chain was never signed.
12 That means he never turned it over to our crime scene
13 unit, Detective Berg's unit, and they never signed for
14 it.

15 Q. And as a result of this, have you made any
16 attempts to locate these cell phones?

17 A. We did. My first thing was, obviously, call
18 the crime scene unit. They're the evidence custodians.
19 Any time evidence is checked in, they log it into their
20 computer system, and that's how they track evidence.
21 They looked everywhere. They're no mention of it.
22 They could not find it.

23 We checked his desk. Even though he's been gone
24 about a year, we checked his desk. There's no signs
25 of cell phones. We checked the car. There's no signs

DIRECT EXAMINATION - MR. SPEARS

1 of cell phones. We talked to him. He had no idea where
2 the cell phones where at.

3 Q. So you have no idea where these cell phones are?

4 A. I do not.

5 Q. All right. Now in review of the case, did you
6 determine that there were any items that needed to be
7 sent to the state law enforcement division?

8 A. I did.

9 Q. All right. Ballistics, firearms?

10 A. Ballistics, firearms. And I know the blood was
11 sent up there, but it was never tested.

12 Q. And you heard testimony that, you know, blood was
13 picked up. Do you have any reason as to why it was
14 never tested?

15 A. I do not. It was sent back to us. I could have
16 easily sent it back up there for testing. I knew two
17 people were shot. I believe Mr. Spells suffered gunshot
18 wounds, and Mr. Mack suffered gunshot wounds. They were
19 the only two people injured, and they were bleeding at
20 the time.

21 Q. Now, in your experience with firearms, did you
22 become familiar at all with gunshot residue?

23 A. Yes.

24 Q. All right. Did you receive any training on when
25 to take gunshot residue samples?

DIRECT EXAMINATION - MR. SPEARS

1 A. Yes.

2 Q. Okay.

3 A. Any time that we take gunshot residue, SLED will
4 not test any substance or residue test after six hours.
5 That's their policy. About gunshot residue, a lot of
6 people believe just because of CSI, the TV and all that,
7 is if you have gunshot residue, you fired a weapon.
8 That is not the case. All gunshot residue is, is that
9 you're in close proximity to a weapon being fired.
10 It does not indicate whether you fired it or not.

11 Q. So if a suspect was arrested three weeks later,
12 would there be any purpose of taking gunshot residue?

13 A. No, sir.

14 Q. Okay. Now you heard this week the testimony of
15 Mikell Nelson. After the file became yours, did anyone
16 reach out to you in regards to him?

17 A. We were contacted by the Federal Bureau of
18 Investigation and the Assistant United States Attorney's
19 Office, Charleston district.

20 Q. And did you have the opportunity to meet with
21 Mr. Nelson?

22 A. I did.

23 Q. And did you attempt any followup from the
24 information he spoke with you about?

25 A. We took the information that he got, which was

DIRECT EXAMINATION - MR. SPEARS

1 very vague. And we tried to corroborate any of the
2 information, and it could not be corroborated.

3 Q. Now -- let me go back briefly because I missed
4 a question, I'm sorry, in regards to gunshot residue.
5 Basically, would there be any reason to take a gunshot
6 residual test on a victim of a shooting?

7 A. No, because he's -- obviously, he was in close
8 proximity of the gunshot. He's shot.

9 Q. All right. Now, I'm going to ask you a couple
10 of questions about Bradford Spells.

11 A. Yes.

12 Q. Are you familiar with him?

13 A. I am.

14 Q. All right. And we heard earlier that the EMT --
15 I'm sorry. I'm sorry. Are you aware -- have you had
16 the opportunity to watch the surveillance footage on
17 this case?

18 A. I have.

19 Q. Okay. Did you recognize him in the video?

20 A. I did.

21 Q. Did you reach out to him in regards to this case?

22 A. I have reached out to him. I have reached out
23 to his acquaintances to speak to him.

24 Q. Was he cooperative at all?

25 A. He is not.

—DIRECT EXAMINATION - MR. SPEARS—

1 Q. All right. Does the Dorchester County Sheriff's
2 Office monitor calls made from the jail?

3 A. We do.

4 Q. During your investigation, did you have the
5 opportunity to review any jail calls in regards to this
6 case?

7 A. Yes, sir, I did.

8 Q. All right. Now, I'm showing you what's been
9 marked as State's 75.

10 MR. SPEARS: If I may approach, Your Honor?

11 THE COURT: You may.

12 BY MR. SPEARS:

13 Q. I'm sorry. I gave you the wrong -- I gave you
14 the wrong piece of evidence. I'm sorry. I'm showing
15 you State's 91. I knew the number didn't sound right.
16 Do you recognize this?

17 A. I do.

18 Q. Okay. Now what is -- have you had the
19 opportunity to review this disc?

20 A. I have.

21 Q. And what is this?

22 A. This is a phone call that's made by Mr. Cobbs
23 on August 3, 2018.

24 Q. Is this -- how were you able to tell that this
25 was Mr. Cobbs?

DIRECT EXAMINATION - MR. SPEARS

1 A. He said his name, Keunte.

2 MR. SPEARS: Your Honor, at this point in
3 time, I would like to present State's 91 into evidence.

4 MR. CHISHOLM: May we approach, Your Honor?

5 THE COURT: You may.

6 (Off-the-record conversation held at sidebar.)

7 (Back on the record.)

8 THE COURT: All right. Ladies and
9 gentlemen, we've just got a little -- just a little work
10 that we need to accomplish. It's not going to take us
11 very long, however, it's about lunchtime. Ladies and
12 gentlemen, I'm about to dismiss you for your lunch.
13 I'm going to ask you to be back at two o'clock because
14 y'all got the culinary opportunities, like, you got it,
15 you're familiar with them in Saint George.

16 So, I'm thinking you can get your lunch,
17 and return to us by two o'clock. Do be mindful not to
18 discuss this matter. Do not let anyone discuss it with
19 you. Don't do any investigations. No Columbo. Don't
20 even look up a definition. You must receive all of the
21 information from which you will make up your mind here
22 in court while court is in session.

23 Remember to leave your cell phone or other
24 communication device somewhere other than the
25 courthouse. If it follows you back, please give it to

1 our bailiffs. Be mindful as you come and go from the
2 courthouse. You may have occasion to come within the
3 vicinity of folks who are associated with this matter.
4 They will not speak with you. They are not being rude.
5 If they should speak with you, however, or anyone tries
6 to talk to you about this case, please report that to me
7 upon your return. Have a good lunch. See you at two
8 o'clock.

9 (Jury exits the courtroom at 12:53 p.m.)

10 THE COURT: Of course, you're not to discuss
11 your testimony with anyone over the lunch break.

12 THE WITNESS: Yes, ma'am. Thank you.

13 THE COURT: All right. See everybody at
14 two.

15 MR. ALLEN: Thank you, Your Honor.

16 (Recess taken.)

17 (Back on the record.)

18 THE COURT: Thank you. You may be seated.

19 MR. SPEARS: Ready, Your Honor?

20 THE COURT: All right. Thank you.

21 (The jury enters the courtroom at 2:20 p.m.)

22 THE COURT: All right. You may continue.

23 MR. SPEARS: Thank you, Your Honor.

24 BY MR. SPEARS:

25 Q. Detective Peters, I'm showing you what's been

DIRECT EXAMINATION - MR. SPEARS

1 marked as State's Exhibit 93. Do you recognize this?

2 A. I do.

3 Q. And what is this?

4 A. This is a phone call from Mr. Cobbs that occurred
5 in August of 2018.

6 Q. And how were you able to tell that was Mr. Cobbs?

7 A. He stated his name.

8 Q. All right.

9 MR. SPEARS: Your Honor, at this point in
10 time, I would request State's 93 into evidence.

11 MR. CHISHOLM: Your Honor, I would ask the
12 Court to note my previous objection.

13 THE COURT: Very well and overruled --
14 sustained. Overruled on the basis previously stated.

15 (State's Exhibit No. 93 was admitted into evidence.)

16 MR. SPEARS: May I publish, Your Honor?

17 THE COURT: You may.

18 (Jail call played for the jury.)

19 BY MR. SPEARS:

20 Q. Now, Detective Peters, aside from some other
21 poignant statements on that call, he's referring to
22 Brad?

23 A. That's Mr. Spells.

24 Q. Detective Peters, I might have already asked this
25 before, and forgive me for repeating myself. Have you

DIRECT EXAMINATION - MR. SPEARS

1 had the opportunity to thoroughly review the security
2 camera footage in this case?

3 A. I have.

4 Q. All right. And in you reviewing it, were you
5 able to go through all of the gathered footage frame
6 by frame?

7 A. Yes, I was.

8 Q. All right. Now, I'm showing you what's been
9 marked as State's Exhibits 79 and 80. What are these
10 documents?

11 A. This is a Powerpoint -- State's Exhibit 80 is
12 a Powerpoint presentation of the video. And State's
13 Exhibit 79 is a printed out portion of the Powerpoint.

14 Q. And would these assist you in explaining to
15 the jury kind of where everyone was in this security
16 footage?

17 A. Yes, it would.

18 MR. SPEARS: Your Honor, at this time,
19 we would request 79 and 80 into evidence.

20 MR. CHISHOLM: Without objection.

21 THE COURT: Very well.

22 (State's Exhibit Nos. 79 and 80 were admitted into
23 evidence.)

24 BY MR. SPEARS:

25 Q. And, again, while we're waiting on this to load,

DIRECT EXAMINATION - MR. SPEARS

1 could you just kind of give us an idea of the purpose
2 of this Powerpoint?

3 A. This is going to show you who -- where everybody
4 was at, and that there was only three people in the
5 restroom at the time of the shooting, so Mr. Cobbs,
6 Mr. Mack and Mr. Spells.

7 Q. While we're waiting on that to load, I would
8 like to go back to the question I asked you in regards
9 to Mikell Nelson. You stated you were unable to
10 corroborate anything that he told you?

11 A. That's correct.

12 Q. Can you just explain to us why you were unable
13 to?

14 A. I went down to the initial interview, down at
15 the Assistant United States Attorney's Office downtown.
16 And the information that we got, he could not provide
17 us a good address where this occurred at. He could not
18 provide us with any proper names. We had generic street
19 names, and there's just no leads to follow up on
20 anything.

21 Q. So he provided names, but not like, driver's
22 license ---

23 A. Correct.

24 Q. Okay. If we could go to slide two here.

25 Now looking here at slide two, can you just kind of give

DIRECT EXAMINATION - MR. SPEARS

1 us an idea of, one, what information we have on these
2 stills in regard to the time?

3 A. Okay. The stills are date stamped June 5, 2016,
4 approximately 1:49 and eight seconds. And, obviously,
5 it's IHOP 3242, and it's the outside of the front door.
6 The picture on the left is Mr. Cobbs, who's in a red
7 shirt, and an unknown male in a white shirt, who we have
8 not yet been able to identify.

9 The picture on the right, it was time stamped at
10 1:49:54 on the 5th. And you can see the gentleman that
11 Mr. Cobbs is with on the left, he's actually sitting
12 down at the desk and then Mr. Cobbs -- in the booth.
13 And Mr. Cobbs is standing up.

14 Q. So showing them walking in together and sitting
15 down together?

16 A. Yes, that is correct.

17 Q. All right. Now slide three kind of -- were you
18 able to listen to the audio and determine when the first
19 shot was fired to when the last shot was fired?

20 A. That is correct.

21 Q. All right. Kind of give us an idea.

22 A. The first shot was at 0215 and zero seconds.
23 And the shot ended at 0215 and four seconds.

24 Q. And you're kind of showing the lobby here,
25 shots fired?

DIRECT EXAMINATION - MR. SPEARS

1 A. That's correct.

2 Q. All right. Now for the next few slides, kind of
3 give us an idea of, not only why we're looking at what
4 we're looking at, but what's happening on the left side
5 versus the right side.

6 A. All right. The left side is going to be during
7 the shooting incident. The right side is just before,
8 or when the shots are first fired, okay. And this is
9 how we're going to eliminate all the people inside,
10 what area was actually shooting, and the possible
11 shooter.

12 If you look at -- there's number one. There he
13 is running. That picture is taken at 0215, shots are
14 starting to fire right then. The second picture is at
15 2:15 and three seconds. So the shots are still going
16 on. There's two -- I'm sorry. I can't write. Those
17 three are, obviously, eliminated from being the shooter
18 because shots were still being fired during that time
19 frame.

20 Q. And let's go to slide five. All right.
21 Now looking at this one, who are we kind of trying
22 to determine in this one?

23 A. Well, you got -- let's see. This guy right here
24 is that person, okay. You look right there, her, she's
25 right there. And that occurred at 0125 and no seconds,

DIRECT EXAMINATION - MR. SPEARS

1 and there's 0215 and four seconds.

2 Q. And, in general, a lot of these people that
3 you were able to eliminate were they -- had they even
4 entered the lobby?

5 A. No, they haven't.

6 Q. All right. I mean, I assume there's some in
7 there. All right. Now for the next slide, I believe
8 on the right side?

9 A. Right here, and she is right there.

10 Q. All right. And for the next slide?

11 A. On this one, eliminated that person as that
12 person.

13 Q. And that person, before the shooting started,
14 was she initially visible in the lobby?

15 A. I can't ---

16 Q. I understand.

17 A. But the shooting is on the right-hand side.
18 It's 2:15:02. And then, obviously, on the left-hand
19 side it's 2:15:04. So she's present during -- while
20 the shots are fired.

21 Q. And on the next?

22 A. If you look right here, right in there, it's kind
23 of hard just because of the picture quality.

24 Q. All right. And this woman on the left we see
25 running out here, I mean, were you able to actually find

DIRECT EXAMINATION - MR. SPEARS

1 her in the lobby, or is she kind of stuck ---

2 A. She's kind of stuck. If you look -- you see
3 where my marking is? Right there at the very back,
4 the dark contrast, that's her right there. She's right
5 there.

6 Q. Now for the next slide, and then the next slide.
7 These individuals, were you ever able to see any of them
8 in the lobby also?

9 A. If you go back to the -- this one right here,
10 she's actually right here, okay. So she's in the lobby
11 at 2:15:03, and she's exiting at 2:15:06.

12 Q. All right.

13 A. And then right there, at 2:15:01, right next --
14 right there, and here they are at 2:15:07.

15 Q. All right. Now on the right-hand side --
16 obviously, we've got the gentleman in the white shirt
17 you mentioned before. But just above the hostess stand
18 on the right-hand side, what are we looking at there?

19 A. This is a couple right here and right here,
20 and they are right there. Actually, what happens
21 on this, we see on the video, is he kind of grabs her,
22 pulls her into a bear hug to get her out of the way.

23 Q. Out of the way of what?

24 A. People coming out. And I think you should
25 be seeing Mr. Cobbs come out here shortly.

DIRECT EXAMINATION - MR. SPEARS

1 Q. And so for the next six slides, just kind of deal
2 with the guy in the red shirt?

3 A. Yes.

4 Q. Now what are we showing here?

5 A. This is Mr. Cobbs where he was sitting at
6 2:12:02. He's walking towards the bathroom at this
7 time at 2:12:08.

8 Q. And on the right-hand side, what's on the shirt
9 there?

10 A. I believe it was, like, a polo emblem.

11 Q. Oh, okay.

12 A. American flag, I think.

13 Q. All right. And next slide?

14 A. This is -- the slide on the left, if you can see
15 right here, that's Mr. Cobbs, bottom corner, at 2:12:17.
16 And you can see from the previous side, there's his polo
17 emblem.

18 Q. And on the left slide, where is he going?

19 A. It looks going towards the restroom.

20 Q. All right. And here, what's the focus of this
21 slide?

22 A. This is the unidentified male that was with
23 Mr. Cobbs. Mr. Cobbs is right back there, and here's
24 the unidentified male at 2:12:23 going towards the
25 restroom also.

DIRECT EXAMINATION - MR. SPEARS

1 Q. Now in your investigation, did you take lengths
2 to try to identify this person?

3 A. Yes, we have.

4 Q. At any point in time, were you able to?

5 A. He's still unidentified.

6 Q. All right. Now whose that on the ground on the
7 right side?

8 A. Right here, that would be Mr. Spells. And if you
9 actually look on the left slide, you see Mr. Cobbs.
10 Dark space right here, that's Mr. Spells.

11 Q. All right. Now a couple of slides ago, we saw
12 the individual identified as Keunte Cobbs turning
13 towards the restroom. Where is he coming from on this
14 one?

15 A. He's coming from the restroom.

16 Q. What was the time on that?

17 A. That's at 2:12:17.

18 Q. All right. Go forward. When is he exiting?

19 A. 2:15:07.

20 Q. And when were the shots fired?

21 A. 2:15:00 through 2:15:04.

22 Q. Let's go to the next one. And I believe this
23 is still him exiting?

24 A. It is.

25 Q. And you kind of broached this one earlier in

DIRECT EXAMINATION - MR. SPEARS

1 regards to the couple where the individual was pulling
2 the other one. Can you kind of elaborate a little bit
3 on that? Who's he pulling that person from?

4 A. Mr. Cobbs was walking out, and you can see as
5 clear as day on the video, this gentleman right here
6 grabs whoever he's with and just basically bear hugs
7 and moves her out of the way.

8 Q. All right. Let's go to the next one. What time
9 -- again, who are these individuals?

10 A. It's Mr. Mack and Mr. Spells.

11 Q. What time did they enter into the IHOP?

12 A. At 2:14:35.

13 Q. And where did they immediately go?

14 A. Straight to the restroom.

15 Q. Okay.

16 A. And if you look down on the right-hand slide,
17 that gentleman right there, that's your unidentified
18 male at 2:14:51.

19 Q. All right. And here, what are we looking at?
20 If we could just look for Mr. Mack and Mr. Spells on
21 these.

22 A. Yes. This is Mr. Spells and then Mr. Mack.

23 Q. You said Mr. Spells is on the left. Where's
24 Mr. Mack? On the right?

25 A. On the right, right here.

DIRECT EXAMINATION - MR. SPEARS

1 Q. And after they entered the restroom, is this the
2 first time you see them after they enter?

3 A. This is when they're coming out, yes. Actually,
4 Mr. Spells has been out because Mr. Cobbs ran passed
5 him.

6 Q. All right. Let's go to the next one. And just
7 a little general thing. What are we looking at here?
8 What happens on the left side when they exit the
9 building?

10 A. When they come out, they actually initially come
11 this way to the left. And then they turn back to the
12 left to go back to the right.

13 Q. When you say go back to the right, you mean just
14 kind of in front of the IHOP?

15 A. Right, correct.

16 Q. And I believe State's 84 that Adam Sutton
17 testified to, is that kind of the area which they went
18 to?

19 A. I believe so.

20 Q. Is this where one of the two collected handguns
21 was found?

22 A. Yes, it was.

23 Q. And what happens on the right side there?

24 A. I don't understand.

25 Q. On the right side. I mean, do they come back

DIRECT EXAMINATION - MR. SPEARS

1 into view?

2 A. They do, and then they walk off.

3 Q. All right. Now you were present in the
4 courtroom, you heard Mr. Colon. On the left slide here,
5 what time does he enter into the men's room?

6 A. He entered in 2:11:34.

7 Q. All right.

8 A. He exited on the right at 2:13:50.

9 Q. Okay. And these next few we're probably not
10 going to go too in depth on them. But Ms. Creel
11 mentioned that Hell's Angels sit in that spot.

12 A. Correct.

13 Q. And you just tell us, you know, kind of where
14 they are on the right side?

15 A. They were in the very back of the restaurant
16 on the right-hand side. If you look at the picture
17 on the right, at 2:15:02, shots are actually starting.
18 The bikers actually just grab their party members and
19 get on the floor. And then once the shooting stop,
20 exited the business.

21 Q. Were you able to eliminate them as being around
22 the bathroom ---

23 A. Yes, I was.

24 Q. -- at the time of the shooting?

25 A. Yes, I was.

DIRECT EXAMINATION - MR. SPEARS

1 Q. I just want to go over a few things from the
2 security video because I know these stills don't always
3 show the full story. I mean, what time are we looking
4 at right now?

5 A. This is at 2:14:59.

6 Q. And if you could just play that for a moment.

7 (Video played for the jury.)

8 BY MR. SPEARS:

9 Q. Rewind for me to right there. Let's go forward
10 frame by frame. I want to direct your attention to
11 the gentleman in the yellow shirt, Detective Peters --
12 in the red shirt.

13 A. Okay. I thought you said yellow.

14 Q. Right here. In your experience, are you able
15 to determine anything about the way he's running?

16 A. Yes.

17 Q. Now the nature -- the way he's running out in
18 the bottom left frame, and then I believe he's going
19 to appear in the top right frame, what can you tell by
20 that?

21 A. People that carry firearms concealed, they have
22 to carry the firearm somehow, all right. Either they're
23 -- the uncommon ones are they carry it on their ankle
24 or on the shoulder holster. Most people prefer to carry
25 a concealed firearm either in a waistband or the holster

DIRECT EXAMINATION - MR. SPEARS

1 or in a pocket.

2 A firearm weighs -- it's heavy. It doesn't
3 matter what kind it is, and it's habit. I do this.
4 I know other officers that do this; I know military
5 personnel that do this. If you're carrying a firearm,
6 you're constantly aware of where that is.

7 Without reflex, you actually might touch it.
8 I do it. Whenever I sit down or anything, I'm touching
9 my handgun. If it's on my ankle, I'm using my other
10 ankle to make sure it's there. It's a natural reflex.
11 Whenever you're moving, and whether it's appendix carry,
12 which is basically your ---

13 THE WITNESS: Judge, may I stand?

14 THE COURT: You may stand.

15 BY MR. SPEARS:

16 A. Appendix carry is right here, or you can do it
17 on the small of your back. It appears that Mr. Cobbs,
18 when he's running or moving quickly, is to hold right
19 here. To me, that's indicative of carrying a firearm
20 right there, and he doesn't want to lose it, obviously.

21 Q. And you're kind of referencing that from about
22 right here?

23 A. Yes.

24 Q. All right.

25 A. And if you play it at full speed, you can

DIRECT EXAMINATION - MR. SPEARS

1 actually -- and then go frame by frame, you can actually
2 see it.

3 Q. Now let's go forward to about right here.
4 We were discussing a couple a little bit earlier,
5 and I believe we're going to see them appear in the ---

6 THE COURT: A what?

7 MR. SPEARS: A couple.

8 THE COURT: A couple.

9 BY MR. SPEARS:

10 Q. We referenced it in the Powerpoint. On the top
11 right, is this the couple you were referring to earlier?

12 A. Yes.

13 Q. And does he pull her in one direction or two?

14 A. Looks like one.

15 Q. And of all the people that you watched in this
16 video, after the shots were fired, was anyone not really
17 running?

18 A. Yes.

19 Q. Who would that be?

20 A. Actually, there's a lady in there when Mr. Mack
21 and Mr. Cobbs actually come out, she kind of looks
22 at them, and then she just walks right into the door.

23 Q. Well, actually before that, in the lobby area,
24 are there any individuals not running once the shots
25 are fired?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Oh, the unidentified male was not running.

2 He just simply walked out the front door.

3 Q. All right. Is this the lady you're referring
4 to on the top right?

5 A. It is.

6 Q. And those two individuals walking out are?

7 A. Mr. Cobbs and Mr. Mack.

8 MR. SPEARS: Detective, please answer
9 any questions the defense might have for you.

10 THE COURT: Cross-examination.

11 MR. CHISHOLM: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CHISHOLM:

14 Q. It's Lieutenant, right?

15 A. Yes, sir.

16 Q. All right. Lieutenant Peters, you came to this
17 case fairly late; is that correct?

18 A. That is correct.

19 Q. I believe you testified that at the time of
20 the arrest up until, I guess, six months into the case
21 it was Detective Elmore that was the investigator?

22 A. That's correct.

23 Q. And I believe you testified that there had been
24 a six-month period after he left, roughly, before you
25 came onto the case; is that right?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Actually, I think it was more than a year.
2 I think he left in December of 2016, and I came on
3 January of 2018.

4 Q. So there's a pretty good gap?

5 A. Yes, sir.

6 Q. Okay. And the case was just kind of, I guess,
7 in flux at that point?

8 A. Correct.

9 Q. And by the time you got on the case, obviously,
10 the suspect that you guys were going with had already
11 been identified and all of that had already taken place;
12 is that right?

13 A. Yes, sir.

14 Q. But you had to catch up to speed. You had to
15 look at all the other officers' reports. I believe you
16 said you talked to Detective Elmore. And you looked at
17 all the evidence that had been collected. And you had
18 to make decisions on how to follow through, how to
19 follow up, which way to go; is that right?

20 A. Yes, sir.

21 Q. Okay. And in doing all that, you became familiar
22 with basically all the evidence in the case, right?

23 A. Yes, sir.

24 Q. All right. From your review of the case, you
25 weren't able to ever see where either of the alleged

CROSS-EXAMINATION - MR. CHISHOLM

1 victims ever picked Mr. Cobbs out of a lineup, were you?

2 A. No.

3 Q. Okay. And you've heard the EMS testimony
4 that neither Mr. Spells or Mr. Mack ever identified
5 Mr. Cobbs, right?

6 A. That's correct.

7 Q. And they never gave any information at all about
8 Mr. Cobbs, correct?

9 A. Correct.

10 Q. And you're aware that Detective Elmore went and
11 met with, I guess, both of these guys shortly after they
12 got to the hospital to try and get information from
13 them; is that correct?

14 A. That's correct.

15 Q. And they would not give him any information?

16 A. I wouldn't say they would not give him
17 information. I know they were being treated for their
18 injuries. I don't know if they were able to.

19 Q. But you weren't there, you don't know that that's
20 the case?

21 A. Correct.

22 Q. So the only thing you know is he went out there
23 to try to talk to them, and he didn't get information
24 back?

25 A. That's correct.

CROSS-EXAMINATION - MR. CHISHOLM

1 Q. And you're aware that Detective Elmore then
2 went back to the hospital later, again to speak with
3 Mr. Spells?

4 A. Yes.

5 Q. And, likewise, was unable to get any kind of
6 information from him about what he was doing out there,
7 what they were up to, why they had guns or anything
8 else, right?

9 A. Correct.

10 Q. And he tried to show them a photo lineup of
11 Mr. Cobbs, didn't he?

12 A. Yes.

13 Q. And I believe his notes would indicate he refused
14 to look at it?

15 A. Yes.

16 Q. Okay. And from our previous discussions,
17 it sounds like you've been familiar with Mr. Spells
18 for quite a while?

19 A. I have.

20 Q. Okay. In your professional capacity?

21 A. Yes, sir.

22 Q. And I believe you told me that you weren't
23 surprised to hear Mr. Spells didn't cooperated because
24 I think what you said, and I don't know if this is
25 a direct quote, is that he never cooperates in any

CROSS-EXAMINATION - MR. CHISHOLM

1 of his cases?

2 A. That's correct.

3 Q. And I believe you also told me that based on --
4 and I think you just testified to this -- the evidence
5 that the direction Mr. Spells ran when he came out
6 of the entrance to the IHOP, he ran to the right where
7 the gun was found in the bushes. That made you believe
8 that his gun ---

9 A. I believe the Glock 26 was Mr. Spells, yes.

10 Q. Okay. And you also said that based on your prior
11 interactions, you also weren't surprised at all to hear
12 that he might have had a gun that night; is that right?

13 A. That's correct.

14 Q. Okay. And you've testified you tried to reach
15 out to him multiple times, and you get nothing back?

16 A. That's correct.

17 Q. And you told me previously that it's not a matter
18 of you just having no idea where to look, you told me
19 that you believe he knows you're trying to get in touch
20 with him, he just ain't returning your calls?

21 A. He definitely knows that we're trying to get
22 in touch with him, yes.

23 Q. He's stonewalling?

24 A. He wants nothing to do with us.

25 Q. Okay. And you heard the testimony that

CROSS-EXAMINATION - MR. CHISHOLM

1 Mr. Mack's gun was actually found in the ambulance ---

2 A. That's correct.

3 Q. --- is that correct? And when you come back
4 to Mr. Spells' gun, the gun that was in the bushes,
5 you told me that this gun -- you previously told me
6 this gun had been reported stolen out of Summerville
7 in 2014?

8 A. That's correct.

9 Q. And in your role as an investigator, were you
10 ever a street cop, so to speak?

11 A. I was a long, long time ago.

12 Q. It's been a while?

13 A. Yes, sir.

14 Q. But you've been doing this a long time?

15 A. Twenty-five years.

16 Q. And in the course of your career, have you been
17 familiar with any scenarios where sometimes people
18 that intend to commit a crime will use a weapon that
19 has the serial number obliterated, or a stolen gun?

20 A. Yes.

21 Q. Sometimes, I guess, you can call it a burner gun.
22 They will take a stolen gun so it can't be traced back
23 to them?

24 A. That's correct.

25 Q. Okay. And I don't know how much of this to put

CROSS-EXAMINATION - MR. CHISHOLM

1 on you versus Detective Elmore, but you can never
2 tie Mr. Cobbs to the scene with forensics, the blood,
3 the DNA, whatever stuff was collected; is that correct?

4 A. No, the only -- I mean, fingerprint.

5 Q. But that was on the front door?

6 A. That was on the front door. Inside the restroom,
7 no.

8 Q. And search warrants were executed for Mr. Cobbs'
9 residence, car, his person, correct?

10 A. There were two search warrants executed, yes.

11 Q. And based on those search warrants, there was
12 never any evidence collected that connects him to this
13 case, was there?

14 A. Correct.

15 Q. Okay. And when you got this case, do you feel
16 like the investigation had been handled competently?

17 A. No.

18 Q. So when you got it, it was a mess, is that fair
19 to say?

20 A. I used different words.

21 Q. Okay. So you had to start fresh?

22 A. Yes, sir.

23 Q. I did have one question. These stolen phones,
24 which we'll talk about here in a minute. But Sergeant
25 Berg testified that he had never heard -- he's the

CROSS-EXAMINATION - MR. CHISHOLM

1 evidence custodian, I guess, is a simple way to call it.
2 He said he had never received any calls from anybody
3 looking for these phones?

4 A. I don't know who I -- I reached out to crime
5 scene. That was the first call. I mean, that's number
6 one. Maybe Detective Elmore didn't do the paperwork
7 properly in evidence. Whether I talked to Sergeant Berg
8 or Sergeant Scott or Lieutenant Gates [ph.], I don't
9 know. I called up there, and it wasn't there. Believe
10 me, if the phones were there, I would have breathed
11 a sigh of relief.

12 Q. Because you would want them same reason we would,
13 in that cell phones can give you all kinds of
14 information; is that right?

15 A. That's correct.

16 Q. They can tell you -- well, they could tell you
17 probably a lot more than anybody wants to be known about
18 them. But they can tell you if you've been
19 communicating with someone else specifically, correct?

20 A. Yes.

21 Q. And I would imagine as a detective on the case,
22 you would want to know was there contact between
23 Mr. Cobbs and these other two guys?

24 A. Yes. I'm looking for evidence that -- my role
25 as an investigator, I find facts. I'm not a person that

CROSS-EXAMINATION - MR. CHISHOLM

1 -- I don't decide on the facts. I just present them so
2 other people can actually make a decision based on those
3 facts.

4 Whether it exonerates somebody, great, if it
5 helps convict them, great. It's not my decision on
6 how to utilize that information, okay. So if there
7 was information that could exonerate Mr. Cobbs, I want
8 to see it. And if there's information that could hurt
9 Mr. Cobbs, I want to see it.

10 Q. Okay. And back to these phones, it's your belief
11 that Detective Elmore, based on the paperwork you got,
12 is the actual person that collected them?

13 A. Yes.

14 Q. And from there, the trail goes cold?

15 A. Correct.

16 Q. You have no idea where they are?

17 A. Yes, sir.

18 Q. He has no idea where they are either; is that
19 correct?

20 A. Yes, sir.

21 Q. And as far as you're aware, no one else ever
22 looked at them at all?

23 A. As far as I know, no one looked at them.

24 Q. Okay. Do you not have policies and procedures
25 that would apply, especially in a murder case, that

CROSS-EXAMINATION - MR. CHISHOLM

1 would prevent something like this from happening?

2 A. Yes, we do.

3 Q. And were they followed in this case?

4 A. Obviously not.

5 Q. Okay. Have you ever done this personally?

6 Have you ever lost items of evidence like this in
7 a case?

8 A. No.

9 Q. Okay. It's a pretty big mistake, would you
10 agree?

11 A. Yes. It would -- being in charge of the unit,
12 if that happened, or if it does happen, that person
13 would no longer be a detective. I can guarantee you
14 that.

15 Q. So you're put in a position where you don't have
16 any information about where they went?

17 A. I have none.

18 Q. You don't know if they were misplaced out
19 of negligence. You also wouldn't know if they were
20 misplaced intentionally?

21 A. Correct.

22 Q. You're in the dark as I am?

23 A. Yes, sir.

24 Q. Okay. Were you the head of investigations back
25 in 2016?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. No, I was not.

2 Q. I guess I can rephrase my question. Were you
3 in a supervisory capacity over Detective Elmore?

4 A. Yes and no.

5 Q. Explain.

6 A. We handled, like, day-to-day questions, you know,
7 make accountability aspects of it. Each investigator
8 actually runs his own investigation. And at some point,
9 the lieutenant over the unit will actually be in charge
10 and oversee the investigation because the sergeants,
11 they're working on their own investigations.

12 They're working sergeants, so they have a
13 caseload, just as the detectives do. So that's why the
14 lieutenant doesn't carry -- I carry a small caseload,
15 but not nearly as much as the detectives. So, I can
16 actually follow along, get updated regularly, and follow
17 along with the investigation.

18 Q. Were policies and procedures changed at all
19 in light of these phones going missing? Do y'all
20 do anything different now than you did back then?

21 A. No.

22 Q. Okay. You're aware -- I believe you told me
23 that a phone that's been attributed to Bradford Spells
24 was found in the IHOP restaurant that night; is that
25 correct?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. Yes, sir.

2 Q. And I believe you told me you're aware this
3 phone was examined and its contents were downloaded?

4 A. It wasn't downloaded. Once I realized that it
5 wasn't downloaded, we forensically downloaded it, yes.

6 Q. That's something that hadn't been done initially?

7 A. Correct.

8 Q. And after you did that, you didn't find anything
9 of evidentiary value that would connect Mr. Cobbs to the
10 crime, correct?

11 A. No. The only communication was between him
12 and his girlfriend.

13 Q. All right. So, obviously, you just said this,
14 but there's no communication between him and Mr. Spells
15 or Mr. Mack, obviously?

16 A. No.

17 Q. Okay. And I believe from the case, there's
18 no evidence that Brannon Mack had a phone that night,
19 correct?

20 A. Not as far as I know.

21 Q. Okay. You testified briefly about Mr. Nelson,
22 and you probably heard the question I asked him, how do
23 we know that you didn't just come in here and completely
24 make this up, and you said you tried to verify, but that
25 wasn't the case, but you were unable; is that right?

CROSS-EXAMINATION - MR. CHISHOLM

1 A. That's correct.

2 Q. Because, basically, he gave you street names?

3 A. Yes.

4 Q. He said you can go ask Slick, he lives
5 in Lincolnville, that kind of thing?

6 A. We had nothing to go on.

7 Q. Okay. And there's nothing else to show that
8 his testimony is accurate whatsoever?

9 A. No.

10 MR. CHISHOLM: May I have one moment,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. CHISHOLM:

14 Q. Detective Peters, you've been in Dorchester
15 in the investigation unit for quite a while now?

16 A. Yes, sir.

17 Q. Been there with then Detective Elmore for quite
18 a while?

19 A. Yes, sir.

20 Q. Do you remember the case of State v. Devonte
21 [ph.] Johnson?

22 A. I think that was ---

23 Q. Do you remember another case where cell phones
24 were missing?

25 A. Yes, I do.

1 Q. Thank you.

2 MR. CHISHOLM: No further questions.

3 THE COURT: All right. Redirect.

4 MR. SPEARS: None, Your Honor.

5 THE COURT: All right. Come on back down
6 to the table.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness, please.

9 MR. SPEARS: Your Honor, at this time,
10 I believe the State rests.

11 THE COURT: All right. Ladies and
12 gentlemen, you have now heard the witnesses and received
13 the evidence which you will from the State in the
14 State's case-in-chief. That signifies to me that there
15 are matters that I must take up outside of your
16 presence. So, I'm going to ask you to please step
17 to your jury room. Leave your notebooks in your seat.
18 Do not discuss this matter; do not allow anyone to
19 discuss it with you. And we will be with you shortly.

20 (Jury exits the courtroom at 3:01 p.m.)

21 THE COURT: All right. Motions?

22 MR. CHISHOLM: Thank you, Your Honor.

23 At this time, I will make a motion for a directed
24 verdict. Viewing the evidence in the light most
25 favorable to the State, I find that they have failed

1 to present evidence to convict the Defendant on the
2 basis of the case. It's almost entirely circumstantial,
3 and I just don't think it rises to the necessary level.

4 THE COURT: Thank you. Of course, as you
5 know, I'm not charged the responsibility of weighing
6 the evidence. That's the jury's determination.
7 I must ascertain whether or not there is evidence from
8 which this jury can make a determination, and that there
9 is evidence on each and every element. I find that
10 there is evidence on each and every element of the
11 offense. And on that basis, I would respectfully deny
12 your motion, noting your exception. Any additional
13 motions at this time?

14 MR. CHISHOLM: No.

15 THE COURT: All right. Very well. Y'all
16 ready to proceed? Yes? All right. And I just ask
17 at this time, will the Defendant testify?

18 MR. LOY: Your Honor, I assume the Court ---

19 THE COURT: I am going to need to examine
20 him. All right. If you'll place him under oath,
21 please, ma'am.

22 (Whereupon, Mr. Keunte Cobbs was duly sworn.)

23 THE COURT: Now, Mr. Cobbs ---

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I am going to explain to you

1 certain of your rights. If you do not understand
2 anything that I say, please let me know. There are many
3 ways to explain any one thing. And if you want me to
4 explain anything in more detail, please let me know.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: We've now reached the stage of
9 the trial where you may present your defense. You have
10 the right to claim the protections given to you by the
11 Fifth Amendment to the constitution of the United
12 States. This amendment states, in part, that no person
13 shall be compelled in any criminal case to be a witness
14 against himself.

15 This means that you cannot be required to
16 testify in this case. You have the right to testify on
17 your own behalf, however, no one can make you testify.
18 This is a personal right. And no one can waive this
19 right, except you. If you decide to testify, you'll be
20 subject to the same rules that govern other witnesses,
21 and you may be examined and cross-examined on any
22 relevant issue in this case.

23 In addition, if you have any convictions
24 involving dishonesty or false statement, or for crimes
25 punishable by imprisonment for more than one year,

1 and this Court determines that the probative value
2 of admitting this evidence outweighs its prejudicial
3 effect to you, the solicitor will be allowed to
4 introduce that part of your record to attack your
5 credibility.

6 If you decide to testify, this decision on
7 your part must be freely, voluntarily, and intelligently
8 made, with knowledge of the protections given to you
9 by the Fifth Amendment and the consequences of your
10 decision to testify.

11 If you decide not to testify, I will
12 instruct the jurors they cannot give the fact that
13 you chose not to testify any consideration whatsoever,
14 and that there is to be absolutely no prejudice to you
15 because you did not testify. The decision is left
16 entirely up to you whether or not you testify.

17 I expect, I want you to talk, I think
18 it is appropriate that you speak with your attorneys.
19 You may wish to talk to your family, trusted friends,
20 or anyone else whose advice you may choose to seek.
21 However, it's very important that you understand that
22 the final decision will be left entirely up to you.
23 Do you understand what I've just explained to you?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you have any questions about

1 what I have just explained to you?

2 THE DEFENDANT: May I talk to my attorney?

3 THE COURT: Absolutely.

4 MR. LOY: Your Honor, he's inquiring if we
5 could stand down for a moment to converse with us one
6 more time.

7 THE COURT: Believe it or not, you're ahead
8 because my next question is, do you wish to speak with
9 your lawyer or lawyers, I should say, any more? And you
10 just said, yes, and that would be okay.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You got it. All right. We will
13 certainly take that break, Mr. Cobbs, and y'all just let
14 me know.

15 MR. LOY: We will. Thank you, Your Honor.

16 THE COURT: All right.

17 (Recess taken.)

18 (Back on the record.)

19 THE COURT: All right. Have you all had
20 an opportunity to talk?

21 MR. LOY: Yes, ma'am.

22 THE COURT: All right. And, Mr. Cobbs,
23 do you wish to testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Very well. All right. Can you

—DIRECT EXAMINATION - MR. LOY—

1 tell me -- can you share with me approximately how many
2 witnesses y'all -- this is just for scheduling purposes.

3 MR. LOY: Three.

4 THE COURT: Three? Very well. Thank you
5 so much. We will have the jury.

6 MR. LOY: Can I have one moment?

7 (Pause.)

8 MR. LOY: Three's good.

9 THE COURT: All right. Thank you.
10 All right. Thank you all so much. All right,
11 let's have the jury.

12 (Jury enters the courtroom at 3:35 p.m.)

13 THE COURT: All right. Ladies and
14 gentlemen, at this time, we will turn to the defense.
15 Call your first witness, please.

16 MR. LOY: Thank you, Your Honor.
17 The defense calls the Defendant, Keunte Cobbs.

18 THE COURT: Yes, sir. Come along this way.

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

21 DIRECT EXAMINATION

22 BY MR. LOY:

23 Q. Good afternoon, Mr. Cobbs.

24 A. Good afternoon.

25 Q. Mr. Cobbs, certain rules apply here, one is that

DIRECT EXAMINATION - MR. LOY

1 -- you're doing good -- you have to answer with words.
2 You can't nod or shake your head, and you can't uh-huh
3 or uh-uh because the court reporter is taking down
4 everything you say.

5 A. Yes, sir.

6 Q. I understand you're nervous, but try to keep
7 that in mind, okay.

8 A. Okay.

9 THE COURT: And if you forget, we're right
10 here to remind you. Go ahead, Mr. Loy.

11 MR. LOY: If the court reporter throws a pen
12 at you that means you're not doing it right.

13 THE WITNESS: Okay.

14 BY MR. LOY:

15 Q. How old are you, sir?

16 A. I'm 38 years old.

17 Q. 38 years old?

18 A. Yes, sir.

19 Q. And where are you from?

20 A. From North Charleston. I reside in Ladson,
21 South Carolina.

22 Q. Okay. Have you lived most of your life in the
23 Lowcountry?

24 A. Yes.

25 Q. Around ---

DIRECT EXAMINATION - MR. LOY

1 A. I was a military brat, so I've lived a few
2 places, but predominantly here ---

3 Q. Okay.

4 A. --- in the Lowcountry, yes, sir.

5 Q. Where did you go to high school?

6 A. Fort Dorchester High School.

7 Q. Fort Dorchester. Are you married, sir?

8 A. No, sir, single.

9 Q. Do you have children?

10 A. Yes, sir, I do, two.

11 Q. How old are your kids?

12 A. My daughter is 14; my son is 12.

13 Q. Are you the type of guy who's involved in your
14 kids' life? Are you involved with your children?

15 A. Very much so. PTA meetings, sports, modeling
16 competitions, stuff like that.

17 Q. That sort of thing?

18 A. Yeah.

19 Q. What do you do for a living, sir?

20 A. My primary job is a club promoter. What we do
21 is we bring, like, local acts, and they're trying to get
22 a name for themselves. They come ask us to have a party
23 for them. They get paid to perform, and kind of, like,
24 brings clientele, so to speak, to the club to spend
25 money, and I get money from the door.

DIRECT EXAMINATION - MR. LOY

1 Q. Okay. So essentially you arrange the musical
2 acts, the booking ---

3 A. Yeah, the musicals and the promotion of the
4 musical acts, which is, like, putting them on a flyer,
5 or do Facebook or e-mails, or something like that.

6 Q. Okay. And how long have you done that sort
7 of work?

8 A. I have been in that business for roughly about
9 seven, eight years now.

10 Q. Okay. Now you said that's your primary source
11 of income. Do you have any other work?

12 A. Yes, I have two friends who own a -- one owns
13 a painting business, Kenny's [sp.] Painting Service.
14 And then I have another one who owns a hardwood floor
15 company called Imperial Floors. So, I do hardwood
16 floors and I paint. And that's just on some weekends
17 when they need me, or I might need some extra money,
18 and I'll call them, or however it works.

19 Q. But you do that sort of work also to supplement
20 your income?

21 A. Oh, yes, sir.

22 Q. Okay. Now we've heard some names in here through
23 the course of this trial, Brannon Mack and Bradford
24 Spells. Do you know those two guys?

25 A. Yes, sir.

DIRECT EXAMINATION - MR. LOY

1 Q. Okay. And when you say you know them,
2 how is it that you've come to know them?

3 A. I met them back in 2011. And they would come
4 around the neighborhood, and they would come to my
5 aunt's house. They were friends with a cousin of mine
6 named Marcus [sp.].

7 Q. Okay. And your cousin, is he roughly your age?

8 A. No, sir, none of them are. I'm older than all
9 of them by 15, 16 years, maybe.

10 Q. Okay. So when you say you knew them, did you
11 consider yourself their contemporary, or are they
12 somebody that knew your cousin?

13 A. Not at all, just little kids at my cousin's
14 house. They were around the same age, so.

15 Q. Okay. And they visited your cousin -- people
16 call a lot of people their cousin. You've got long
17 cousins, short cousins, close, whatever. Is his mother
18 your aunt?

19 A. Yes.

20 Q. Okay. So they visited in her home?

21 A. Yes. Well, I'm not going to tell you it was her
22 knowledge that they were there, but pretty much, yeah,
23 they visited when she was at work.

24 Q. Okay. And do you live close to your aunt's
25 house? Are you close -- are you all a close family?

DIRECT EXAMINATION - MR. LOY

1 A. Okay. You have adjoining neighborhoods. One is
2 called Fairlawn subdivision, and the next other one is
3 Jamison Terrace. I lived in Jamison Terrace; she lived
4 in Fairlawn.

5 Q. Were you at your aunt's home often? Are you all
6 a close family?

7 A. I would go over there and check, you know,
8 to make sure everybody was all right and stuff like
9 that. And then -- yeah, I would go over there often,
10 probably once or twice a day. That was Ms. Robinson,
11 and she did, like, during the summertime ---

12 Q. All right. Right now, I'm just asking you about
13 your family.

14 A. Okay, okay, I gotcha.

15 Q. Okay. And you say you were a relatively close
16 family, you checked on your aunt's home regularly?

17 A. Yes.

18 Q. Okay. And these two fellows, Spells and Mack,
19 you say that's how you got to know them, they were
20 associates or friends with your nephew?

21 A. Yes, sir.

22 Q. Okay. And this continued for a period of time?

23 A. Yes.

24 Q. Okay. Did there come a time eventually where you
25 decided to discourage this relationship or this contact

DIRECT EXAMINATION - MR. LOY

there at your aunt's place between your nephew ---

A. Cousin.

Q. Your cousin and these two fellows, Spells and Mack?

A. Yes.

Q. And why was that?

A. Well, there were a number of incidents that happened throughout the time frame towards the end once they got older. When they were younger -- but once they got older, it started getting worse and worse.

Q. Is there anything that happened at your aunt's house by way of example you can talk about?

MR. SPEARS: Your Honor, may we approach?

THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

BY MR. LOY:

Q. I'm sorry, Mr. Cobbs. I think I was asking if there's anything in particular you could point to, problems at your aunt's, or reasons that you decided to try to carve these folks out of your family life?

A. Yes, sir. There were a number of incidents, but two offhand that I can remember.

Q. Let's do them one by one, one to start with which is?

DIRECT EXAMINATION - MR. LOY

1 A. The first one was a shooting incident where this
2 guy got shot in her yard.

3 Q. In your aunt's yard?

4 A. Yes, sir.

5 Q. What's his name?

6 A. Shaquille [ph.] White.

7 Q. How many times was he shot?

8 A. Like six or seven times.

9 Q. And was this reported to the sheriff's department
10 at the time?

11 A. They were aware of it, yes, sir.

12 Q. And they investigated it, police were called,
13 all that sort of thing?

14 A. Yes, sir.

15 Q. Okay. And you say this was part of what caused
16 the problem, or caused you to try to distance yourself
17 from these two fellows?

18 A. It was one of the incidents that happened.

19 Q. All right.

20 A. They were ---

21 Q. Hang on.

22 A. Okay.

23 Q. Why did this cause a problem between you and
24 these two guys? Why did you -- were they involved?

25 A. They were perpetrators.

—DIRECT EXAMINATION — MR. LOY—

1 Q. And how do you know that?

2 A. Firsthand knowledge. They told me.

3 Q. Okay. And so they told you that they did this,
4 in your aunt's yard I mean?

5 A. That's when I was, like, whoa, you know.
6 Why would you do that in my aunt's yard, like,
7 you know. And it was just a conversation. It wasn't,
8 like, any animosity. It was, like, did he threaten
9 you -- I was trying to figure out what was going on.
10 But that was kind of iffy, like, my little cousin
11 wanting to go that route. But he wants to keep hanging
12 around those people, you know.

13 Q. So did you tell them not to come back to your
14 aunt's house? What did you do?

15 A. Not at that particular time, no. There was
16 another incident, and then I eventually stepped in,
17 and told them, like, look, don't have them over here
18 because, you know, my aunt has her grand kids ---

19 Q. What was the other incident?

20 A. The other incident was there was another
21 shooting, but the bullets went in a car of the yard.
22 And it went through the window where she was washing
23 dishes one night after work. And then at that point,
24 I was like, well, you know.

25 Q. And was this after you've had the conversation --

DIRECT EXAMINATION - MR. LOY

1 shortly after you've had the conversation, saying ---

2 A. The first one where they told me that they did
3 whatever they did, you know. And I was, like, whoa,
4 you know, because the only thing about it is their
5 mothers are, or whoever they live with, didn't live
6 around there. And people, as well as them, they had
7 different beefs going on. People were retaliating ---

8 Q. At your aunt's?

9 A. --- there at my aunt's house, you know, so.

10 Q. Okay. Now you talked about roughly knowing
11 these fellows for about a five-year span. Over that
12 time, obviously, everyone gets older, they were growing
13 up, I suppose. Did they acquire any sort of particular
14 reputation around that neighborhood?

15 A. They were, like, I guess, what you want to call
16 enforcers, so to speak. They were definitely shooters,
17 you know.

18 Q. Do you know whether or not within the
19 neighborhood, either or both of them, had a reputation
20 for violence?

21 A. Yes.

22 Q. And what was that -- does that mean, yes,
23 their reputation was for violence?

24 A. Basically, yes.

25 Q. Okay. And is that -- by reputation, I mean what

DIRECT EXAMINATION - MR. LOY

1 people say about you. So, I'm asking is that what
2 people in the neighborhood would have said or thought?

3 A. People in the neighborhood, law enforcement,
4 whoever that knew them, you know. If they heard about
5 anything going on, those are the names that would have
6 came up, anything associated with violence in the
7 neighborhood.

8 Q. So people in the neighborhood, as well as law
9 enforcement and anyone else who knew them?

10 A. Yeah.

11 Q. Okay. Thank you very much. Now did you ever
12 have cause to become concerned about these fellows after
13 you tried to carve them out of the family, once you told
14 them don't be back at the house, and all of that stuff?
15 Did anything else arise to cause you concern about
16 yourself as it relates to them?

17 A. Yes, sir. There was two young ladies that came
18 to me, and they were, like, you know, I don't know what
19 you did or said, but, you know, you might want to be
20 careful because this guy keeps mentioning and keeps
21 bringing your name up in conversation, like, you know.
22 So, I didn't understand why, or I really didn't know
23 why. And then they told us about how he wasn't happy
24 about me telling him, you know, don't come back to my
25 aunt's house.

DIRECT EXAMINATION - MR. LOY

1 Q. And did you receive any sort of information
2 or threats from any other source?

3 A. Well, basically, I found out later, like --
4 I found out during that time that Brad wanted me to
5 help him get out of jail. And I told him, you know,
6 that wasn't going to happen, and he didn't like that,
7 so, you know.

8 Q. And did ---

9 A. Whatever ---

10 Q. Did anyone else come to you and convey a message
11 or a threat from either of these guys?

12 A. My cousin ---

13 MR. SPEARS: Your Honor, after a while,
14 it is hearsay.

15 MR. LOY: Your Honor, may we approach,
16 or I could make the argument?

17 THE COURT: Yes.

18 (Off-the-record conversation held at sidebar.)

19 (Back on the record.)

20 BY MR. LOY:

21 Q. So, Mr. Cobbs ---

22 A. Yes, sir.

23 Q. Moving on. But before we do, is it your
24 testimony today then that on more than one occasion
25 you had been warned to be afraid or be careful because

DIRECT EXAMINATION - MR. LOY

1 of these two guys?

2 A. Yes, sir.

3 Q. Thank you. Now on the night in question --
4 I mean, the solicitor keeps talking about a red shirt
5 and all that stuff, I mean, was that you?

6 A. Yes, sir, that was me.

7 Q. Okay. Now this was, a Saturday night,
8 Sunday morning?

9 A. Yes, sir.

10 Q. Okay. And about what time did you get to the
11 restaurant?

12 A. Actually, I got there early.

13 Q. About what time?

14 A. About 1:40, 1:50, something like that.

15 Q. You say that's a little early for you?

16 A. Yes. What happened is I left the club early
17 that night because my daughter was supposed to be in
18 a commercial and had to do something the next morning.
19 So, I know I left early, but it ended up being late.

20 Q. I understand. Did you -- up until things went
21 south, so to speak, that evening, had it been an
22 ordinary course of sort of evening? Had something gone
23 bad? Were you having a ---

24 A. No, absolutely not. It was pretty normal.
25 Everything was normal, except I left early from

DIRECT EXAMINATION - MR. LOY

1 the club.

2 Q. Okay. And when you got to the restaurant,
3 to the IHOP, I mean, were you in a good mood when
4 you got there?

5 A. Yeah, I mean, regular mood, you know. I try
6 to stay in a good mood all the time. As, you know,
7 the young lady said, every time I came in I just get
8 breakfast, and then I go to the house.

9 Q. The waitress said you're a social butterfly,
10 bouncing around, speaking to everybody at the restaurant
11 and all. Does that sound like you?

12 A. Yes, sir. You know, once you go somewhere
13 a lot, you get a rapport with people in the restaurant.
14 So, I knew more than her. But she was usually the main
15 one who came into my section, like, come over with me,
16 you know, whatever, yeah.

17 Q. Okay. Did you have a gun?

18 A. Yes, sir.

19 Q. Why?

20 A. Due to the fact that my cousin warned me
21 that they came to his house sometime in the evening,
22 and he told me that they ---

23 MR. SPEARS: Your Honor ---

24 BY MR. LOY:

25 Q. So you were warned. And part of the reason you

DIRECT EXAMINATION - MR. LOY

1 had a gun was because you had been warned to be careful
2 about these two guys?

3 A. Right.

4 Q. Were there any other reasons why you would have
5 been armed?

6 A. Well, no -- that and what the girls had said put
7 together is the reason why I was, like, okay, you know.
8 But other than that, I've been robbed a couple of times
9 because like I told you at my job I carry a lot of money
10 from the door. It's just cash. So some people watch,
11 and you might not be paying attention, then that might
12 happen.

13 Q. So you also carried a gun because you've been
14 robbed a few times ---

15 A. Sometimes ---

16 Q. --- and you carry cash?

17 A. Not on a regular basis. But during that period
18 of time, primarily, because of the threats by -- well,
19 the warnings by these two looking for me, you know.

20 Q. Okay. All right. And the -- I think we heard
21 testimony that you regularly arrived at this restaurant
22 the same nights of the week, same time?

23 A. Primarily. Depending on my appetite, or if I had
24 something from earlier, I would go, yeah.

25 Q. So if somebody were looking for you Saturday

DIRECT EXAMINATION - MR. LOY

1 night at two o'clock in the morning who knew you,
2 would they know where to look?

3 A. Yeah, yes.

4 Q. Okay. And on this occasion, you were going
5 about your ordinary routine; is that right?

6 A. Yes, sir.

7 Q. And in the restaurant, I mean, did you order
8 food, do you recall?

9 A. I don't think that I made it to that point,
10 but I, knew I had to use the bathroom real bad.
11 Like she said, she always brings me the grapefruit
12 juice.

13 Q. No ice.

14 A. Yes. I was just having a conversation with the
15 guy that approached or whatever. But, no, I don't think
16 I ordered anything yet.

17 Q. And did you go to -- you did eventually go to
18 the restroom?

19 A. Yes.

20 Q. Tell the ladies and gentlemen of the jury about
21 that.

22 A. Okay. Me going to the restroom, my second
23 time actually, within a matter of 30 minutes, I want
24 to say ---

25 Q. Well, let me ask you this. When you went to the

DIRECT EXAMINATION - MR. LOY

1 restroom, did you use the urinal? Did you go in the
2 stall? Where did you go when you went in the restroom?

3 A. I went in the stall because I think looking
4 at the urinal, I think it had pee or something.
5 But, anyway, I went in the stall.

6 Q. So you used the stall?

7 A. Yes, sir.

8 Q. And, obviously, you had to exit the restroom.
9 Eventually, when you went to exit the stall or open
10 the stall door, what did you see?

11 A. I saw Mr. Mack first, and then I seen Mr. Spells.

12 Q. Now we'll get to what happened next. When you
13 saw them, what was your reaction as far as feelings
14 or in your heart?

15 A. Well, I was kind of scared senseless, like,
16 isn't these the same two that they told me was looking
17 for me earlier, you know what I'm saying. So, I'm,
18 like, what the heck. Did they follow me, kind of,
19 sort to speak, and ---

20 Q. Your reaction was fear?

21 A. All the way. All the way.

22 Q. All the way, meaning what?

23 A. I was scared because -- only because it happened
24 so quick. They actually seen me.

25 Q. I understand. When you stepped out of the stall,

DIRECT EXAMINATION - MR. LOY

1 is there only one door into this restroom that leads
2 back out into the restaurant?

3 A. Yes, one exit. There's no other way out.

4 Q. Okay.

5 A. Just that one.

6 Q. Behind you was what?

7 A. A wall.

8 Q. Okay. And on both sides of you was what?

9 A. Walls.

10 Q. And was anyone blocking the door?

11 A. Yeah, both of them. They were just walking in.

12 Q. And what happened?

13 A. Upon seeing me, both of them started reaching.

14 Q. Now when you say they started reaching, I saw
15 your action, but what do you mean? They started
16 reaching where?

17 A. Their waistlines. I saw the gun that Mack
18 had first, seeing him first, because we made eye
19 contact first, and then Spells.

20 Q. And have you known these two -- have you seen
21 these two fellows with guns before? Not just what
22 you've heard, have you seen them with guns?

23 A. All the time, you know.

24 Q. They just, essentially, carry, is that what
25 you're saying?

DIRECT EXAMINATION - MR. LOY

1 A. Something of the norm for these guys.

2 Q. Okay. So you came out, and you said your
3 reaction was fear. You saw both of them reaching
4 for their waistbands. What happened next?

5 A. I guess I beat them to the punch because
6 I pulled my gun out, and I started shooting because
7 I was, like, well, you know, I know what they were
8 going to do, or in my mind I assumed I know what they
9 were going to do next. And I was basically just trying
10 to exit and get out, you know. But they were in front
11 of the door, so it was kind of hard for me to be, like,
12 excuse me when you've got two guys pulling out weapons,
13 like, that were looking for you.

14 Q. Were you concerned for your life?

15 A. Yes, very much so.

16 Q. Did you feel like you had any option, other than
17 to do what you did, as far as to save your life?

18 A. No. Only knowing them and saying that, you know,
19 like, I know that they don't play. And if you heard
20 of any threat or any warning, don't take it as such,
21 you know, dealing with these two individuals, you know.

22 Q. All right. And you essentially pulled the
23 trigger until you can get out the door?

24 A. That's about accurate, yes.

25 Q. Did it seem like it happened quickly?

1 A. Fast, you know.

2 Q. Did it take a matter of three or four seconds,
3 something like that?

4 A. Yeah.

5 Q. Okay.

6 A. You know.

7 Q. Speaking of the tape that we -- and then when
8 you exited the bathroom, you left the premises?

9 A. Yes, sir.

10 Q. Now speaking of the tape, we also heard a tape
11 of what's purported to be a phone call that you made.
12 You recollect hearing that also?

13 A. Oh, yes, sir.

14 Q. Doesn't sound anything like what you're telling
15 us here today. Why is that?

16 A. At that time, I was in jail, and I was
17 incarcerated. And, you know, like I said, I was scared.
18 And I don't really -- like in that situation, it's hard
19 to explain because I've never been through anything like
20 that.

21 Q. What were you scared of?

22 A. Well, I was afraid of, you know, they know
23 a couple of people and have a couple of family members.
24 And I don't really know who are the people or anything
25 like that because, like I said, they isolated themselves

DIRECT EXAMINATION - MR. LOY

1 from, like -- and we didn't know about their family
2 members or anything. But they knew everything about
3 our family members.

4 Q. You were worried about some type of retaliation?

5 A. Or something like that, sort of speak.

6 Q. And do you recall what you were originally
7 charged with, and what they charged you with when
8 they put you in jail?

9 A. Murder and attempted murder.

10 Q. Okay. And those things there also, you say you
11 were scared. Are you scared about that, being in jail
12 on a murder charge?

13 A. Yes, sir, of course. You know, that's not of the
14 norm.

15 Q. So you were scared about that. And you spoke
16 with this person on the phone, and basically said,
17 I didn't have anything to do with it?

18 A. That's what I told that person, yes.

19 Q. And is that the reason, basically fear, and just
20 trying to distance yourself from the whole thing?

21 A. Yes, sir, and hoping in all hopes I'm in a bad
22 dream maybe, you know.

23 Q. I understand.

24 A. Like, I didn't want to hurt anybody or anything
25 like that, you know. Like, I just didn't want to be

DIRECT EXAMINATION - MR. LOY

1 hurt at the time. And I felt, like, that would have
2 been the outcome if I didn't do what I did.

3 Q. I understand. Just one moment. Detective --
4 Lieutenant made a point of talking about this white
5 shirt, some guy wearing a white shirt. Did you come
6 to the restaurant with any dude wearing a white shirt?

7 A. No, sir. I was approached by him.

8 Q. Okay. And did you leave with anybody wearing
9 a white shirt?

10 A. No, sir, I didn't leave with him.

11 Q. Was he essentially one of those folks like you
12 talked about in the restaurant, basically, just you
13 speak to anybody, and he spoke to you?

14 A. Well, actually, he approached me, but sort
15 of, kind of, yeah. I knew him from prior engagements,
16 but I never knew his name. But he seen me, you know,
17 at the club promoting. So a lot of people recognized
18 me.

19 Q. Okay. You're a club promoter, and you're not
20 quite an angel. You, in fact, got convicted once in
21 the past of assault and battery, didn't you?

22 A. Yes, sir, in 2006, I believe it was.

23 Q. Thank you.

24 THE COURT: All right. Cross-examination.

25 MR. SPEARS: Thank you, Your Honor.

CROSS-EXAMINATION - MR. SPEARS

CROSS-EXAMINATION

1
2 BY MR. SPEARS:

3 Q. Mr. Cobbs.

4 A. Yes, sir.

5 Q. I mean, obviously, you say you were there that
6 night, right?

7 A. Yes, sir.

8 Q. I'm curious. You say you've known Brannon Mack
9 and Bradford Spells for about five years, right?

10 A. Roughly, yes, sir.

11 Q. And -- but you didn't really know them.
12 They hung around with your cousin?

13 A. Yes.

14 Q. Okay. But they kind of had a dangerous
15 reputation?

16 A. Later on.

17 Q. All right.

18 A. Yes, during the later years.

19 Q. All right. As things progressed, they developed
20 a reputation?

21 A. Yes.

22 Q. All right. And then they participated in
23 a shooting, right?

24 A. Yes, sir.

25 Q. Okay. I believe you said the name was Shaquille

CROSS-EXAMINATION - MR. SPEARS

1 White was the person shot, right?

2 A. Yes, sir.

3 Q. And then they told you that they shot him,
4 is what you just said, right?

5 A. Well, indirectly, but yes, they told me. It was
6 one of those things where they say, well, he stole
7 something from me, not I shot him, but he shouldn't have
8 stole something from me, or something like that.

9 Q. So they didn't actually tell you?

10 A. Well, not them particularly. But he said he
11 stole something from him, and that's why that happened
12 to him.

13 Q. Okay. So ---

14 A. And then other people told me that they did it.

15 Q. So just heavily and right across the board that
16 they had shot this guy simply because he had stolen
17 something, right?

18 A. Supposedly, yes.

19 Q. But according to what you just said, these
20 two dangerous guys who have developed this reputation,
21 found out that they had shot someone, but you didn't
22 really step in then to them hanging around, right,
23 is what you just told the Court?

24 A. Yes, sir.

25 Q. You waited until, apparently, there was another

CROSS-EXAMINATION - MR. SPEARS

1 shooting, a drive-by shooting. And then you realized
2 that's the time for me to step in, right?

3 A. No, sir. The first shooting, I mentioned
4 something to them, and that's when he told me --well,
5 he stole something from me -- well, he shouldn't have
6 stolen something from me. And I'm, like, look, you
7 know, this is my aunt's house. She ain't do nothing
8 wrong to nobody. She don't deserve this.

9 And he was, like, we respect you, and you don't
10 got to worry about it again, basically. And then
11 I talked to my cousin, and he told -- you know, I was,
12 like, hey, be careful who you hang around and stuff like
13 that. But I did say something the first time, actually.

14 Q. Okay. So you said take it easy, stop shooting
15 people, all right?

16 A. Well, not in those words, but something like,
17 you know.

18 Q. And, apparently after that, according to what
19 you said, you stepped in again?

20 A. Yes, sir.

21 Q. And they took it personally?

22 A. I think they did this time, the second time,
23 because it was a little bit more, like, aggression
24 towards what I was trying to tell them.

25 Q. So suddenly then rumors are started and

CROSS-EXAMINATION - MR. SPEARS

1 everything, that you're in danger because you told them
2 not to come around your aunt's house anymore, or stop
3 shooting people in that area, right?

4 A. From what I was told, I didn't have a
5 conversation with them after that. I think Mr. Spells
6 was incarcerated, actually.

7 Q. Like I said, so the rumor is coming around that
8 you thought you were in danger and everything because
9 you told people to stop coming around. Now that night
10 at the IHOP you said you carried a gun, right?

11 A. Yes, sir.

12 Q. And a couple of reasons. Apparently, you're
13 afraid of these rumors, or also you've been robbed
14 a couple of times, and you had to protect the cash
15 on you, right?

16 A. From -- yes, from leaving work.

17 Q. Now you said you had to -- this individual
18 that approached you, that you walked in with ---

19 A. All right.

20 Q. You've seen the security camera footage, right?

21 A. Yes, sir.

22 Q. I assume -- you know, it's fair. You had
23 the opportunity to go over the evidence, right?

24 A. Um-hum.

25 Q. All right. Now, he walks in with you, and y'all

CROSS-EXAMINATION - MR. SPEARS

1 sit down together, right?

2 A. Yes, sir.

3 Q. All right. And you hang out for a while, right?

4 A. Yes, we talked.

5 Q. Then you get up together, right?

6 A. Um-hum.

7 Q. Head towards the lobby, right?

8 A. Well, hold on one second. I -- until my first
9 time seeing the actual video, I didn't know that he was
10 behind me, and that's what I told my attorney.

11 Q. Now you hang out with this guy for a while,
12 and he just happens to follow you to the bathroom,
13 right? Hang out just outside that area in the footage,
14 right?

15 A. Right, after seeing it, yes. Yes, sir.

16 Q. Okay. Now you're in there, a lot of rumors
17 going around, you're carrying a gun because you're
18 scared, and then you see these two people come in once
19 you exit the stall, right?

20 A. Yes, immediately.

21 Q. Okay. And, according to what you're telling
22 us today, you just drew quicker? You said you saw
23 Brannon Mack's gun, right?

24 A. Yes.

25 Q. Okay.

CROSS-EXAMINATION - MR. SPEARS

1 A. He pulled his. I saw his first, and then
2 Bradford eventually.

3 Q. So first ---

4 A. Both of them upon seeing me, pulled out -- well,
5 at least started trying to reach for their waistline.

6 Q. Pulled their gun, saw the gun, pulled your gun?

7 A. Yes.

8 Q. Shot?

9 A. Yes.

10 Q. Okay.

11 A. That's correct.

12 Q. And you managed in that instance to shoot Brannon
13 Mack in the left side a couple of times, right? You've
14 heard the testimony from the pathologist and all that,
15 right?

16 A. Yes, sir.

17 Q. Okay. Now ---

18 A. Well, particularly at that instant, I don't
19 know -- I mean, I know now from hearing the testimony
20 and watching the scene and all that. But I don't know
21 exactly where I was shooting. I was just scared and
22 trying to get out of the stall.

23 Q. I get it. I understand. I mean, you know where
24 the bullets hit him?

25 A. Yes, sir, now.

CROSS-EXAMINATION - MR. SPEARS

1 Q. Okay. And then you proceed forward, right?

2 A. To leave?

3 Q. To leave.

4 A. Yes.

5 Q. Now, I want to go over to State's 37, testified
6 to be the outside of the door to the bathroom, right?

7 You heard that testimony?

8 A. Outside of the door?

9 Q. Yes. This is the door to the bathroom, right?

10 A. Yes.

11 Q. Okay. Then a little towards the door has
12 a number of projectiles found right by the door,
13 right? So you shot -- you saw them, you saw them
14 pull, you pulled your gun, right?

15 A. No. They pulled -- they reached for their guns
16 first.

17 Q. Okay.

18 A. And then I pulled my gun.

19 Q. Okay. So they reached for their gun.

20 Brannon Mack reached for his gun, and you saw his
21 gun, right?

22 A. Yes.

23 Q. You saw Bradford Spells pull his second? You saw
24 it?

25 A. Yes.

CROSS-EXAMINATION - MR. SPEARS

1 Q. And you managed to pull your gun first, and shoot
2 Brannon Mack multiple times, right?

3 A. Yes.

4 Q. Okay. And Bradford Spells on his way out of the
5 bathroom, right?

6 A. No. He was -- I think he's trying -- in the
7 process of reaching for his gun, I don't think he could
8 have got it out. He didn't get it out fast enough
9 or something. But by the time he got to it and in his
10 hand, I already shot him as well.

11 Q. And at the same time as you exited the bathroom,
12 the guy who just happened to follow you there is just
13 kind of walking out when everyone else is running,
14 right?

15 A. I didn't ---

16 Q. You saw the footage?

17 A. Yeah, I saw the footage. But I didn't look to
18 see what he was doing or anyone was doing, for that
19 matter, man. I was just trying to really just get out
20 and get to safety, you know.

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

22 THE COURT: Yes.

23 BY MR. SPEARS:

24 Q. Now your testimony here is that you were scared
25 while you were in the jail. While you're in there,

CROSS-EXAMINATION - MR. SPEARS

1 you're worried about any type of -- some type
2 of retribution, right?

3 A. Yes. They had family members and friends,
4 you know.

5 Q. So your answer to that is to make a call and
6 speak about a conversation you had saying, "he's trying
7 to get me to say self-defense. I ain't stupid; I ain't
8 on drugs. I didn't shoot nobody." Right? We just
9 heard the call.

10 A. Yes.

11 Q. Okay. "These people want to make up a concept
12 of what happened. That means I shot my own homeboys.
13 I didn't know nothing about no self-defense." Right?

14 A. Yes, sir. Those were all deniables, man,
15 just not wanting the word to be that, you know ---

16 Q. And then you said you had told ---

17 MR. LOY: Your Honor, if he could complete
18 his answer.

19 MR. SPEARS: I apologize, Your Honor.

20 THE WITNESS: You can go ahead.

21 BY MR. SPEARS:

22 Q. And then you later mentioned you talked to Brad
23 and the rest of them in regards to Brad testifying,
24 right?

25 A. Yes, I did speak with him on the phone through

CROSS-EXAMINATION - MR. SPEARS

1 speakerphone, but with my cousin.

2 Q. Okay. So after this, you spoke with Bradford
3 Spells?

4 A. On the speakerphone.

5 Q. On a speakerphone?

6 A. Yes. He told me he wasn't coming to court,
7 so everything was all right. And, basically -- but
8 I don't know. He didn't say he was going to do anything
9 or anything like that. But he just said he wasn't going
10 to come to court.

11 Q. All right.

12 A. But he just happened to be at my aunt's house
13 talking to my cousin, and then he got on the phone.
14 It wasn't -- and they should have had that on the
15 recording too as well because it was from the county
16 jail.

17 Q. So Bradford Spells, the man you shot in the
18 bathroom, was hanging out at your aunt's house, and got
19 on the phone with you, and spoke with you?

20 A. After he got out, yes.

21 Q. Okay.

22 A. Yes.

23 Q. Okay.

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

25 THE COURT: All right. Redirect?

~~DIRECT EXAMINATION - MR. LOY~~

1 MR. LOY: No, thank you.

2 THE COURT: All right. Call your next
3 witness, please.

4 MR. LOY: Your Honor, we will recall Dwayne
5 Peters to the stand.

6 THE COURT: As you know, you've already been
7 sworn in this matter.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. LOY:

12 Q. Lieutenant, it sounded like you know Mr. Bradford
13 Spells; is that correct?

14 A. That's correct.

15 Q. And do you know his reputation for violence and
16 criminal behavior within the community, law enforcement
17 or the neighborhood?

18 A. Yes, I do.

19 Q. And what is that reputation?

20 A. Exactly how Mr. Cobbs described it.

21 Q. For violent and criminal behavior?

22 A. Yes, sir.

23 Q. And Mr. Spells, do you know his reputation?

24 A. I was speaking of Mr. Spells. Mr. Mack, I do not
25 know.

DIRECT EXAMINATION - MR. LOY

1 Q. Oh, okay. I'm sorry. I meant to go to Mr. Mack.

2 A. Okay. Mr. Mack, I do not know his reputation
3 whatsoever. I know Mr. Spells, yes.

4 Q. And Mr. Spells, you've confirmed what we've
5 heard?

6 A. Yes.

7 Q. Thank you.

8 MR. LOY: No more questions.

9 THE COURT: All right. Cross-examination.

10 MR. SPEARS: None, Your Honor.

11 THE COURT: Thank you. You may come down.

12 All right. Call your next witness, please.

13 MR. LOY: Your Honor, we could approach,
14 or I can -- I have a matter of law I need to discuss,
15 either at bar or outside ---

16 THE COURT: All right.

17 MR. LOY: Either way.

18 THE COURT: Could I have a hint?

19 MR. LOY: Yes, ma'am.

20 THE COURT: Just come on forward.

21 (Off-the-record conversation held at sidebar.)

22 (Back on the record.)

23 THE COURT: Ladies and gentlemen, there is
24 a matter that I must take up outside of your presence.
25 Please step to your jury room. Do not discuss this

1 matter, or allow anyone to discuss it with you.

2 (Jury exits the courtroom at 4:20 p.m.)

3 THE COURT: The issue is that you want
4 to recall the SLED agent who's still under subpoena,
5 you know, and I think you're entitled to recall him.
6 I don't know where it goes beyond that, but he's still
7 under subpoena. If you want him to come back, you want
8 him to come back.

9 MR. LOY: Well, Your Honor, I can
10 essentially proffer the testimony and get a ruling.
11 I mean, I think the State objects. Do you object
12 to this testimony coming in?

13 MR. SPEARS: In part, yeah.

14 MR. LOY: If they object -- I don't mind
15 making the proffer, and I don't want to bring him back
16 down, and then the proffer -- and get told he can't do
17 it anyway.

18 THE COURT: That's very considerate of the
19 agent. But tell me what you think he has, and then we
20 will see.

21 MR. LOY: Your Honor, what I think he has,
22 and what I believe the transcript from the prior
23 proceeding would reflect, I think this testimony came
24 in, in the prior proceeding.

25 MR. SPEARS: Yeah.

1 THE COURT: Okay.

2 MR. LOY: If he testified consistent with
3 the prior, then the testimony would be that he received
4 these two firearms, as he has described earlier.

5 THE COURT: Right.

6 MR. LOY: That he went through the
7 procedures that he described, test fired them,
8 et cetera, that was for purposes of both matching
9 cartridges, as well as the projectiles.

10 THE COURT: Right.

11 MR. LOY: That at SLED they have a databank
12 where shell casings are entered, photographs or some
13 way or another, they are entered into this database
14 so that when new shell casings come in, they're entered
15 into the database. And they're essentially scanned,
16 and will tell you if they've got any other shell casings
17 from that gun in their database.

18 And that in this case, one of the guns,
19 I don't think it matters which one, but that one of
20 these guns that was recovered from the victims in this
21 case, when the shell casing was put into the database,
22 it got a hit on a shell casing that had been submitted
23 in an earlier investigation as recovered on the scene
24 of an attempted murder. That is the testimony.
25 And it is -- if I could ask, is that inaccurate

1 as far as ---

2 MR. SPEARS: So, I can just read to the
3 Court.

4 (Off-the-record conversation held at sidebar.)

5 (Back on the record.)

6 MR. LOY: I think we've resolved it,
7 Your Honor.

8 THE COURT: Yay.

9 MR. LOY: That is if we could put our
10 resolution on the record before Mr. Sorenson queers the
11 deal. Mr. Spears and I had looked at the transcript.

12 THE COURT: Okay.

13 MR. LOY: And I will publish this much for
14 you, Your Honor.

15 THE COURT: Okay.

16 MR. LOY: And it basically says, this is
17 on examination by Mr. Sorenson. It says, okay, I was
18 looking at this, I mean, this image. It looks like it
19 matches to me, but you said there's no matches in this
20 case; is that correct? And the answer from the expert
21 is, this specific image is actually from a test fire,
22 State's Exhibit 56, with cartridge cases that were
23 submitted under another case that they asked to be
24 compared to.

25 And Mr. Sorenson asked, so there's a match

1 between this gun -- I'm sorry. There's a match between
2 this gun and a gun in another case? Yes. Okay.
3 And I'm sorry, I'm doing this wrong. I'm reading the
4 captions, which says by Mr. Sorenson, but, in fact,
5 it's got both cross and direct.

6 THE COURT: Okay.

7 MR. LOY: But the testimony then -- our
8 conversation was Mr. Spears told me, well, if that's
9 all it's going to be, I'm okay with that, essentially
10 carving out the charge of attempted murder, and simply
11 saying there was a hit between this gun and another
12 criminal investigation.

13 THE COURT: Okay.

14 MR. LOY: I'm okay with that, too.

15 THE COURT: Are you okay with that?

16 MR. SPEARS: Your Honor, aside from the
17 idea that it's still basically character evidence.

18 THE COURT: Of the gun.

19 MR. SPEARS: I understand.

20 THE COURT: I mean, it's a bad act on the
21 gun without question. Okay. But, you know, if you're
22 fine, you know -- okay.

23 MR. SPEARS: All right.

24 THE COURT: So you're fine with him reading
25 that?

1 MR. SPEARS: And the subsequent question,
2 too.

3 MR. LOY: Your Honor, the language that
4 he's marked, I think is fine. It accomplishes our needs
5 also. I do think I would need to preface the reading
6 of this to the jury with the simple stipulation that
7 we have agreed that were the firearms examined or to
8 be recalled, and ask questions about test firing pistols
9 recovered and shell casings, he would testify, as he
10 did, in an earlier proceeding, and then read the
11 language that we have marked.

12 And the specific images are actually from
13 a test fire, State's Exhibit 56, with cartridge cases
14 that were submitted under another case that they were
15 asked to compare. So there's a match between this gun
16 in another case. Yes. And then follow up with Agent
17 Smith, Mr. Chisholm just showed you a photograph up
18 there, but that has nothing to do with this case;
19 is that correct? No, sir, other than again they wanted
20 a firearm in one case compared to cartridge case in
21 another case.

22 MR. SPEARS: And, Your Honor, again,
23 I understand the Court's argument that was in the
24 instance of the gun. But it's in the specific instance
25 of the conduct in regards to this matching another case.

1 The concern there is it's still just outside
2 evidence coming in, with really just -- I just don't
3 believe that this should come in, in regards to this
4 instance right here. We're talking about this day.
5 We're talking -- they're attempting to show implied
6 conduct of the victim in this case by saying a gun
7 he happen to have had a shell casing that matched
8 another shell casing from another instance somewhere
9 else, not putting it in his hand or anything like that.
10 It's just implying a lot to the jury.

11 MR. LOY: They could certainly make that
12 argument in close. But the fact is we have heard
13 testimony as to the character of the victims, as to
14 the reputation of them. And this is simply supportive
15 or corroborative of what we've heard, that, in fact,
16 yes, these are dangerous people who carry guns.

17 Now, he can argue certainly that guns are
18 transferable, anybody could have had it at some other
19 point in time. The jury -- and the jury could draw what
20 conclusions they choose from.

21 THE COURT: Let me tell you what my concern
22 is. As I understand the case law, the case law has --
23 it is reputation, opinion, and specific acts of people.
24 People. This might be a really bad gun. This gun might
25 be a bad gun. And this gun might be involved in a

1 number of specific bad acts.

2 My problem -- here's my problem. And the
3 reason that I offered that is because he testified.
4 He had two files. He had a criminal file. He had,
5 as I understand it -- and it did get a little bit
6 confusing because I wasn't clear if he had two files
7 from Dorchester County, or if he had one from North
8 Charleston and one from Dorchester County.

9 And so by the time he received the gun,
10 as I understand it, he had two files. What I was
11 anticipating that you were going to argue was that one
12 of the people that they were investigating, they were
13 concerned about, was Mr. Mack because, as I now
14 understand it, the gun that was recovered near Mr. Mack,
15 that's the one that we are talking about.

16 So, I just thought that it would be a bad
17 act. It doesn't have to be a conviction. A bad act
18 associated with Mr. Mack, that the gun found near
19 Mr. Mack was involved in an investigation a month
20 earlier of Mr. Mack. So do we have that? He has
21 a file.

22 MR. SPEARS: Your Honor, if I recall in his
23 testimony, there's nothing that -- from what he spoke
24 to us about earlier today, there's nothing in there that
25 attributed that gun to Brannon Mack. He even gave us

1 the case file number. It was simply a shooting with
2 no suspect. And he even testified that he generally
3 doesn't get that sort of information anyways.
4 He's simply a ballistics person. I don't believe
5 it's attributable.

6 THE COURT: I understand. Let me just tell
7 you -- Mr. Chisholm, Mr. Loy, I did not release Agent
8 Smith from his subpoena. I am not inclined to allow
9 that testimony in because the rules with regards to
10 character have to do with people and the connection,
11 and not specific acts involving guns. Unfortunately,
12 guns are -- I hadn't heard anything about this
13 particular gun being registered to anyone.

14 MR. LOY: I think it was stolen.

15 THE COURT: Well, there you go. And so my
16 concern is -- that really underscores my concern.
17 However, however, what I really anticipated that I was
18 going to hear was that there was an open investigation,
19 and that the suspect was Mr. Mack, and that's the reason
20 they were so interested in this particular gun, was
21 connected back to a shooting involving this gentleman.
22 Now that isn't a conviction, but it absolutely,
23 I believe, could qualify as a specific bad act.

24 MR. LOY: I don't have that, Your Honor.

25 THE COURT: Well ---

1 MR. LOY: I have -- the testimony that
2 I have is what I've proffered.

3 THE COURT: Let me be clear with you though,
4 Mr. Loy. He had two files. He remains under subpoena.
5 And what I do not want -- I just don't want you put in
6 a position because you did not look at whatever his
7 second file was. Don't want you put in that position.
8 Do you understand what I'm saying?

9 MR. LOY: I do.

10 THE COURT: Okay.

11 MR. LOY: Your Honor, I have proffered
12 the testimony that I would seek to elicit.

13 THE COURT: I understand.

14 MR. LOY: I have reviewed some documentation
15 here during the Court's ruling.

16 THE COURT: I understand.

17 MR. LOY: I am prepared -- I am not
18 requesting any further testimony or to recall a witness.
19 If the Court is prepared to rule on the admissibility
20 of what I've proffered based on the proffer.

21 THE COURT: Gotcha.

22 MR. LOY: Is that convoluted enough?

23 THE COURT: No, it isn't. I understand
24 exactly where you are. With regards -- I want to be
25 very clear. I will have him come back. I'm not keeping

1 you from having him come back. I told you that.
2 My concern is that under the rules with regards to
3 character, they have to be associated. The bad act has
4 to be those of individuals. The reputation, the opinion
5 has to be with regards to individuals.

6 My concern is, is that we very well may have
7 -- we may have a gun with specific bad acts. But if
8 there's nothing that can tie this weapon, which I must
9 also say that the weapon was found near the alleged
10 victim. And, obviously, there's been this presumption
11 throughout the trial that this weapon was associated
12 with this individual, as I understand, we're talking
13 about Mr. Mack.

14 MR. LOY: Your Honor, I have reviewed the --
15 briefly reviewed the incident report of the shooting
16 where the shell casing in question was discovered.

17 THE COURT: Yes.

18 MR. LOY: The one that is initially already
19 in the databank when these guns were found.

20 THE COURT: Right.

21 MR. LOY: It doesn't list the suspect;
22 it doesn't name anyone. And it basically says the case
23 is administratively closed unless something else comes
24 along.

25 THE COURT: All right.

1 MR. LOY: And, again, you're still under
2 oath, Detective; is that right?

3 THE WITNESS: Yes, sir.

4 THE COURT: Very well. Got it. That is not
5 a specific bad act.

6 MR. LOY: Thank you, Your Honor.

7 THE COURT: Very well.

8 MR. LOY: In this case, we'll rest when ---

9 THE COURT: When the jury comes back in.

10 MR. LOY: Yes.

11 THE COURT: All right. Will there be
12 a reply?

13 MR. SPEARS: No, Your Honor.

14 MR. LOY: Can we get a cup of coffee before
15 we do that?

16 THE COURT: Yes. Take a comfort break,
17 maybe a couple of minutes.

18 (Recess taken.)

19 (Back on the record.)

20 THE COURT: All right. Everyone is here.

21 (Jury enters the courtroom at 4:44 p.m.)

22 THE COURT: All right. Mr. Chisholm.

23 MR. CHISHOLM: Your Honor, at this time,
24 the defense rests.

25 THE COURT: Very well. Now will there

1 be any response?

2 MR. SPEARS: None, Your Honor.

3 THE COURT: All right. You have now heard
4 from the witnesses and received the evidence from both
5 sides, and you've received the evidence in this case.
6 What remains for us are the arguments of counsel and
7 my charge or instruction on the law.

8 Now, here's the reality. The reality
9 is there's an -- I don't even know who started it.
10 But I think judges must have started back in the 50s
11 or the 60s, that if you begin to argue and charge after
12 four o'clock, you can rest assured the jury is going
13 to be with you well up into the evening.

14 Now -- because here's the reality. By the
15 time you would get this case, it would be probably 6:30,
16 7:00 o'clock. Everybody is tired. I think it is a
17 better practice to begin in the morning. So we are
18 going to do that at 9:30 in the morning.

19 What will occur in the morning is you will
20 hear the arguments of counsel, and then my charge or
21 instruction on the law, and then you're going to receive
22 this case for your deliberations. So that is where we
23 are in the case.

24 Now you do realize -- now when you go home
25 you realize the curiosity is going to be through the

1 roof. But you cannot discuss this matter, or allow
2 anyone to discuss it with you because you're still
3 learning, you're still in the trial. It would be
4 inappropriate. It would be a violation of your oath for
5 you to discuss this matter, or allow anyone to discuss
6 it with you.

7 You're not prepared to deliberate. You have
8 not heard the arguments of counsel; you have not heard
9 my charge on the law. And you simply are not, are not,
10 ready to deliberate. So please remember that you must
11 not discuss this matter, or allow anyone to discuss it
12 with you.

13 Now -- and those of you that are my night
14 workers, continue not to work. I need you to rest
15 so you will be prepared to listen to the arguments
16 of counsel and then my charge or instruction on the
17 law. All the other admonitions, of course, remain.
18 No Columbo; no investigation. Don't go to the internet
19 looking for information to include looking up a
20 definition.

21 There's still information -- you have
22 not heard the arguments; you have not heard my charge.
23 And it would be inappropriate for you to seek out,
24 to receive information about this matter, other than
25 here in court while court is in session.

1 But that is how we are going to be
2 proceeding in the morning, in the morning. Please leave
3 your notebooks in your seats. Again, we will secure
4 them, and we will give them back to you in the morning.
5 Everybody, you got your notebook this morning, right?
6 Very well. Very well.

7 Ladies and gentlemen, we're going to convene
8 in the morning at 9:30. And please have a very pleasant
9 evening, and I look forward to seeing you in the
10 morning.

11 (Jury exits the courtroom at 4:48 p.m.)

12 THE COURT: All right. Now, I have -- we
13 have the charge. It's being printed out. We've had
14 a couple of changes in it in the last several minutes,
15 but I do have the verdict form. I do want you all to
16 have an opportunity to look at the charge, so we will
17 be ready to proceed in the morning.

18 MR. CHISHOLM: Your Honor, I think I need
19 to renew my previous motions.

20 THE COURT: Yes, you do. Go right ahead.
21 Do it.

22 MR. CHISHOLM: As to the directed verdict,
23 I mean, it's essentially the same argument, except now
24 you've heard the testimony of Mr. Cobbs. I don't think
25 there's sufficient evidence to give to the jury for them

1 to reach a verdict.

2 THE COURT: Thank you so much. And, again,
3 the question is, for me -- is there evidence on each
4 and every element, and there is. I don't weigh it.
5 I just have to ascertain if it exists. It does.
6 And I would respectfully deny your motion, noting your
7 exception thereto. All right. So, again, y'all come
8 and look at the verdict form.

9 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
2016-GS-18-1267

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) January 9, 2020 - Vol 4 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
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Reported By:

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

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1 THE COURT: Good morning. Please be seated.
2 All right. Anything from the jury -- from the State
3 before we bring the jury out?

4 MR. SPEARS: Nothing from the State,
5 Your Honor.

6 MR. CHISHOLM: No, Your Honor.

7 THE COURT: Ready, ready?

8 MR. SPEARS: Ready, Your Honor.

9 THE COURT: My law clerk wanted me to just
10 share with you that he has added the part of the
11 self-defense, about the duty to retreat, that there is
12 unless you can't.

13 MR. SPEARS: Okay.

14 MR. CHISHOLM: Your Honor, I think what
15 we discussed with Mr. Spears, we were talking yesterday,
16 and I think he was going to delete all the language
17 about ---

18 THE COURT: Oh, yeah, yeah, absolutely.
19 Done.

20 MR. SPEARS: And I think we took out mere
21 presence also.

22 THE COURT: Yes.

23 MR. SPEARS: Thank you, Your Honor.

24 THE COURT: Thank you. I appreciate it.

25 (Jury enters the courtroom at 9:58 a.m.)

1 THE COURT: Good morning, ladies and
2 gentlemen.

3 THE JURORS: Good morning.

4 THE COURT: As I mentioned to you late
5 yesterday afternoon, what remains for us are the
6 arguments of counsel, and then my charge or instruction
7 on the law. And this is how we're going to be
8 proceeding.

9 You're first going to hear from Solicitor
10 Spears in his closing statement. You're then going to
11 hear from Mr. Chisholm in his closing argument on behalf
12 of Mr. Cobbs, and then you're going to hear reply
13 rebuttal argument from Mr. Spears. That will then
14 conclude the closing argument.

15 Then there's going to be a very short
16 self-explanatory break. And then I am going to deliver
17 to you the charge or the instruction on the law.
18 Then there'll be another short break that I will explain
19 to you. And then, ladies and gentlemen, you will
20 receive this case for your deliberation.

21 Now, ladies and gentlemen, I want you to
22 take a moment and be sure that your notepad is your
23 notepad. And then I ask at this time that you please
24 draw close as we listen to the closing argument.
25 Mr. Spears.

CLOSING ARGUMENTS - MR. SPEARS

1 MR. SPEARS: Thank you, Your Honor.

2 Good morning, ladies and gentlemen.

3 THE JURORS: Good morning.

4 MR. SPEARS: So just as the judge told you,
5 these are closing arguments. This is the first time
6 I can actually help y'all directly in regards to the
7 evidence that's been presented to you all week long.
8 And you know, as well as I do, that it's been a lot
9 of evidence.

10 I want to start, first off, just by thanking
11 you. I understand your attendance here is mandatory,
12 but for paying attention, for being involved in the
13 case, for listening to every bit of evidence. We've
14 noticed. It's truly appreciated. It's everything that
15 the entire court system could ask for from a jury.

16 Now what I'm going to do now is just give
17 you a brief preview of the law. The judge is going to
18 charge you with the law applicable to this case after
19 closing arguments are over. But I'm going to go over a
20 little of that, and it's going to help with the context
21 of our review of the evidence going forward.

22 So Keunte Cobbs has been charged with
23 murder. Murder is the unlawful killing of another
24 person with malice aforethought. Malice can be either
25 expressed or inferred, all right. Expressed malice

CLOSING ARGUMENTS - MR. SPEARS

1 is pretty simple, lying in wait or stating your intent.
2 I'm going to kill that guy, or hiding out and waiting
3 for a person.

4 Inferred malice is a little bit different,
5 all right. Now inferred malice, malice can be inferred
6 by conduct, showing total disregard for human life, all
7 right. It has the same quality as, you know, expressed
8 malice. It's just two different ways of malice being
9 shown. They're not two different types. That's just
10 it. Now conduct, showing a total disregard for human
11 life, a good example would be multiple shots into a
12 person using a gun.

13 You're also likely to be charged with
14 voluntary manslaughter. Voluntary manslaughter is
15 the killing of another human being in the sudden heat
16 of passion with proper legal provocation. And I believe
17 the judge is going to tell you that if you weigh the
18 evidence, and you find that the evidence does not prove
19 murder beyond a reasonable doubt, then you must take
20 that same evidence and weigh it to the charge of
21 voluntary manslaughter.

22 Now it's pretty obvious in this case at this
23 point in time that we're dealing with self-defense.
24 And you're going to be charged with the law of
25 self-defense, all right. There are three factors that

CLOSING ARGUMENTS - MR. SPEARS

1 go into that.

2 One is the person claiming it must not
3 have had a hand in bringing on the difficulty. Two,
4 they must have been in danger of serious bodily injury
5 or death, or actually in fear of serious bodily injury
6 or death. Now that's important. They must have
7 actually been in fear at that time that they were facing
8 serious bodily injury or death. Saying it a couple
9 of years later doesn't justify that.

10 And, lastly, they must have had no other
11 way to avoid the difficulty, all right. It's pretty
12 straightforward. I mean, it makes sense. I'm going
13 to go back to the second one. There's a number of ways
14 that the law will charge you to show that the person was
15 in fear of serious bodily injury or death.

16 We can look at the reputation of the victim,
17 or prior difficulties with the victim, victim's violent
18 reputation, prior violence by victim, threats by the
19 victim, and the Defendant's right to act on appearances.
20 And you're going to hear each one of those charged to
21 you and explained by the judge.

22 I would like to point out that the evidence
23 we have in this case, for all those factors, the only
24 bits of evidence we've got to justify those factors come
25 from that man standing right there, okay. One single

CLOSING ARGUMENTS - MR. SPEARS

1 source. And when we look at the rest of the evidence,
2 the source of that testimony just doesn't add up,
3 doesn't quite fit consistently across the board.

4 Now as Baker over here told you in opening
5 arguments, there are two different types of evidence.
6 There's direct evidence, and there's circumstantial
7 evidence, all right.

8 Direct evidence is simple. I can look out
9 that window and tell you right now that the sun is
10 shining outside. I can see it. It's what you sense.

11 Circumstantial evidence is a series of facts
12 put together to prove another fact. There's kind of
13 a pocky analogy for it. But if you take an empty room,
14 put a barrel of peanuts in the middle of it, and in that
15 room you've got an elephant and two mice. You close the
16 door, and there's no other way in or out that room.
17 You leave it for 15 minutes, and you open the door,
18 and that barrel of peanuts is empty. The circumstances
19 of the evidence we have show us that it was the elephant
20 that ate all the peanuts and not the two mice, all
21 right.

22 The State is charged with proving -- the
23 State's responsibility is to prove this case beyond
24 a reasonable doubt. That does not mean we have to prove
25 it beyond any and all doubt. It simply means that

CLOSING ARGUMENTS - MR. SPEARS

1 at the end of this case if you're firmly convinced that
2 the Defendant committed the alleged act, then you must
3 find him guilty. And now when it comes to self-defense,
4 the reasonable doubt standard applies, all right.

5 Now, I would like to start by us going
6 over the story we heard from Keunte yesterday, okay.
7 When he took the stand, he told us a number of things,
8 gave us a little history on the two people that Mr. Loy
9 called assassins. I think Keunte called them shooters.
10 He said that he'd known them for a while through his
11 cousin, I believe it was. He didn't quite know them,
12 but he knew them.

13 And these two guys started developing
14 a reputation. Suddenly, they started actually shooting.
15 They -- it wasn't quite clear. They shot out of
16 a window or towards a window. They had apparently,
17 actively fired at someone, and then Mr. Cobbs says that
18 he told them to stop. That's not cool, stop. And there
19 apparently wasn't a problem there, all right.

20 And then they did it again. He told us that
21 they shot again at another person, and then he told them
22 again to stop, more aggressively. But again at that
23 point in time, when he confronted these two shooters,
24 it wasn't a problem. Nothing actually happened there.

25 But following that, he started hearing

CLOSING ARGUMENTS - MR. SPEARS

1 rumors that now they're upset, instead of when he
2 confronted these assassins. Now he's hearing from,
3 he said, two ladies told him, or I believe it was either
4 his cousin or his nephew told him from another source
5 that now there's a problem.

6 So he starts -- now he starts worrying
7 for his safety. So June 5th, 2016, he shows up at
8 the IHOP earlier than usual, hangs out with this guy
9 who apparently just approaches him, walks in with him,
10 sits down with him, follows him to the bathroom, but
11 he doesn't really know his name. Never really got any
12 information about that guy.

13 Then he goes to the bathroom. The urinal
14 is dirty, so he goes into the stall instead. Then when
15 he walks out, he sees Brannon Mack and Bradford Spells,
16 and he sees them pull their guns. And in some wild west
17 fashion, he's able to pull his gun quicker and start
18 shooting to protect himself, and then he takes off.
19 Okay.

20 What I want to focus on here is this week's
21 worth of evidence that we've put together from multiple
22 sources. And I want to start with the clearest
23 evidence, the closest we have to direct evidence of
24 what happened in that bathroom, and that's the security
25 camera footage. It showed us everything that happens

CLOSING ARGUMENTS - MR. SPEARS

1 around it.

2 And I know you all have seen this a couple
3 of times already. We're going to be replaying it a few
4 times because if you notice there's kind of a lot of
5 chaos going on. There's a lot of chaos, and a lot of
6 moving parts that one would expect in a situation like
7 this. So we're going to focus on one person at a time,
8 watch that person's actions, and watch how other people
9 react to each of these people.

10 We're going to use a set of facts that
11 we have and see how things go from there, okay. Baker,
12 if you could start.

13 (Video played for the jury.)

14 MR. SPEARS: This would be Brannon Mack
15 and Bradford Spells. You see them coming this way after
16 they open the door for the lady. Focusing on Brannon
17 Mack, watch where he goes. Notice he actually goes this
18 way. He comes out here, looks in the direction that
19 Keunte went.

20 Now, remember, this guy was characterized
21 as a shooter, an assassin. Keunte Cobbs had just run
22 that way. Brannon Mack turns that way and turns back.
23 Cobbs told us that he had already drawn his gun in the
24 bathroom. This lady right here is standing there as
25 him and Bradford Spells come out, showing no reaction.

CLOSING ARGUMENTS - MR. SPEARS

1 There was just a shooting in that bathroom. She doesn't
2 run; she doesn't duck; she doesn't show any sign of fear
3 of Brannon Mack when he comes out there, all right.

4 The only way for that to work is if in that
5 bathroom we're to believe what Mr. Cobbs tells us, that
6 Brannon Mack pulled his gun, got shot multiple times,
7 holstered his gun, put it back, and then walks out here
8 because it's clear there's no reaction.

9 (Video continued to be played for the jury.)

10 MR. SPEARS: Obviously, he walked off this
11 way in front of the IHOP. These individuals right here
12 are watching them. They're not running from them;
13 they're not confronting someone. They are talking
14 to them, and here he goes. He goes down.

15 Again, there's more people that are in
16 the proximity of these two shooters that haven't run.
17 They don't know -- I submit to you that they don't know
18 that he's carrying a gun. The gun is found later in the
19 ambulance. You've heard William Mandeville tell us that
20 after they had him in the ambulance, cut off his
21 clothes, they didn't see it then, they just found it.
22 It had fallen out later. So it's, obviously, not in
23 front, somewhere around here. It's hidden.

24 So he managed to get shot, put his gun
25 back in a way that is not just not easily noticeable,

CLOSING ARGUMENTS - MR. SPEARS

1 but absolutely hard to see. We can tell that by the
2 reactions of the people around them, and the fact that
3 EMS didn't even see it when they were trying to sustain
4 him, all right.

5 So we're going to start over here, and this
6 time we're going to focus on Bradford Spells. So
7 there's Brannon Mack. Bradford Spells is right around
8 that point.

9 (Video continued to be played for the jury.)

10 MR. SPEARS: Now when they go in here,
11 we know what happens. We've seen that enough.
12 When he comes out, you will see him fall out right here.
13 In this video, the Defendant, the man in the red shirt,
14 Keunte Cobbs, jumps over him.

15 Keep in mind this is the guy that we've
16 heard from the defense that -- and law enforcement,
17 Dwayne Peters too -- he has had run-ins with Bradford
18 Spells before. He hadn't had anything with Brannon
19 Mack. You heard him say that after the defense put
20 him on the stand.

21 But Bradford Spells, this is another
22 shooter, this is another dangerous person, and he falls
23 right here. And the guy that just shot him in
24 self-defense, jumps over him. Watch what he does right
25 here.

CLOSING ARGUMENTS - MR. SPEARS

1 (Video continued to be played for the jury.)

2 MR. SPEARS: He's supposed to have already
3 drawn his gun, had his hands on his gun when him and his
4 friend get shot. Again, he apparently holsters again
5 also when he leaves the bathroom, and the man that just
6 shot him and his friend jumps over him. And what does
7 he do? He doesn't fire back. He hides around the
8 corner, and for the same as we just saw when he exits.

9 (Video continued to be played for the jury.)

10 MR. SPEARS: Curious as to what's going on,
11 no signs of fear. She turns her back to them. When
12 Brannon Mack -- Bradford Spells was right here. You can
13 see our Hell's Angels guys. You can see his head kind
14 of bobbling around. He had just turned the corner.
15 He's not trying to either restrain him, or get a gun out
16 of his hands or anything.

17 I want to touch on another thing that
18 we heard from Mr. Cobbs' testimony, and that's the man
19 in the white shirt, the guy that we've been unable to
20 identify. We heard Detective Peters -- Lieutenant
21 Peters, that they've tried. No idea who he is.
22 Apparently, the Defendant can't identify him either,
23 just walks up to him. We can play it.

24 (Video continued to be played for the jury.)

25 MR. SPEARS: The man in the white shirt

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1 is actually leaving. Immediately taken to the table,
2 taken directly to their seats. There's no, like, iffy
3 conversations of, like, hey, can I have a meal with you,
4 or anything like that. They're just taken straight to
5 their seats. That's them right there.

6 (Video continued to be played for the jury.)

7 MR. SPEARS: There's Mr. Cobbs, and there's
8 our unidentified man. Now not only do they come in
9 together, hang out, go to the bathroom when they both
10 get up and leave. But will note when Brannon Mack and
11 Bradford Spells walk in, look who's standing right
12 there, and he just watches them walk by.

13 Now watch his actions once these shots are
14 fired. We've seen everybody else run. We've watched
15 this enough over, everyone clears out. There's one man
16 that's not running here. And when he turns this corner
17 right here, and we see Keunte come up to his side and
18 pass him. Watch his reaction. He's been hanging out
19 with this guy for 30 minutes, came in with him.

20 They went to the bathroom. He's hanging out
21 from the bathroom. Shots are fired in this bathroom.
22 While he's walking out, his acquaintance, who is in this
23 bathroom, passes him. Watch his reaction.

24 (Video continued to be played for the jury.)

25 MR. SPEARS: They head off together in the

CLOSING ARGUMENTS - MR. SPEARS

1 same direction that they came from. So we heard from
2 Mr. Cobbs that in the bathroom he came out of the stall,
3 he saw these two guys, they pulled guns, he shot first,
4 all right.

5 We don't have direct evidence from
6 the State's side of what happened in that bathroom.
7 We have circumstantial evidence. We have a series
8 of facts we can put together to show what happened,
9 all right. One of those facts, which is pretty clear,
10 is what we just talked about with Brannon Mack and
11 Bradford Spells not having their guns drawn, okay.

12 Now, by the way, all of this that we've
13 placed into evidence is going back into the jury room.
14 Y'all will have plenty of time to review it. There's
15 about 50 photographs taken for the area for context.
16 But I'm showing you one right now that Sergeant Berg
17 took of the bathroom when he was surveying the area
18 and checking for evidence in there, okay.

19 What's important to note here is, one,
20 the location of the sink right here, all right, meaning
21 that if you're facing the sink, this wall -- the other
22 side of that wall is the lobby area. And in that
23 direction is the stall.

24 So if Brannon Mack walks into that bathroom,
25 puts his lanyard down on the sink, the one that he's

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1 carrying in his hand, you can see it in the video.
2 And we know this is Brannon Mack's lanyard because
3 Sergeant Berg testified to us that he took this key
4 and unlocked the door to Brannon Mack's car. So he
5 places his keys by the sink.

6 Now, ladies and gentlemen, this was State's
7 74. You heard the pathologist's testimony. This was
8 the diagram that she made that she referenced showing
9 the bullet locations of what happened to Brannon Mack.
10 Now in her testimony she said that while these are
11 labelled, that doesn't necessarily mean that one
12 happened before the other. She can't tell that.
13 It's just she has to start somewhere, okay.

14 What this does show us, and what you recall
15 from her testimony, that two shots went in here and in
16 here, on his left side. Keep in mind that he's standing
17 at the sink where he put his keys down. His left side
18 is this direction. And we'll note here there's two more
19 on his right leg, going in and to the right. So the
20 shot came from his left side.

21 And I know it was kind of confusing without
22 seeing the diagram when she spoke, but there is L here.
23 She referred to L as a shot that goes into the left leg
24 and up, all right. Meaning that, from what she said,
25 either someone was underneath him, or he had fallen

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1 on the ground. This is another piece of fact to show
2 as part of circumstantial evidence of what actually
3 happened in that bathroom.

4 Brannon Mack was shot in his left side.
5 Now as a part of Dr. Tormos' testimony, she said that
6 he got shot at the ten o'clock, all right. Now if you
7 take a clock like that, and you put it down in front,
8 nine, three, to the side, so ten about like that, okay.

9 He's at that sink. Someone comes out
10 of that stall with a gun and starts shooting. He's
11 going to turn towards him. There's your ten o'clock.
12 He's going to get shot, both on the left side, and then
13 on this side right here, also going to the left.

14 Now, ladies and gentlemen, I submit to you
15 right now that if he was trying to draw and shoot in
16 this direction, he's not going to keep his left shoulder
17 towards this person. Also we've heard the timing, and
18 we can review it if you need to. You're also going to
19 have that video player back there to watch the security
20 camera footage. You can review the timing in regards
21 to how long it takes before these shots are fired.

22 Somehow Brannon Mack has managed to go in
23 there, see Keunte, draw his gun, and get shot in his
24 left side multiple times without firing a single round
25 back. There's nothing over here. There are no

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1 projectiles over here. This is supposed to be
2 an assassin.

3 You've got all these shell casings that
4 were fired from a single gun. You've got all of these
5 projectiles. These casings and projectiles you heard
6 were not fired from either one of these guns. One of
7 them was picked up in the ambulance that Brannon Mack
8 was taken in. The other one was found in front of the
9 IHOP in the area that Bradford Spells walked over to.
10 I don't know 100 percent certain if that was Bradford
11 Spells' gun, but the assumption is there. We're still
12 able to eliminate it because it didn't fire any of
13 these.

14 One other thing I want to note about this
15 bathroom is Sergeant Berg's testimony on this shot
16 through the door. Remember, that door opens inwards.
17 Someone was -- that door was opened is what he testified
18 to when that shot was fired. Someone was getting out
19 of that bathroom running. There's three people in the
20 bathroom. Brannon Mack was on the ground being shot.
21 Bradford Spells, we saw him in the video falling out.
22 He was being shot at as he's running from that bathroom.

23 It doesn't fit an assassination. So, again,
24 in a self-defense situation, there are certain things
25 that can be used to show fear of great bodily injury

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1 or death. We just discussed prior difficulty,
2 victim's violent reputation, prior violence by the
3 victim, threats by the victim. And we've heard what
4 the Defendant had to say in regards to these things.
5 Miraculously, all of them are suddenly there, all right.

6 Now, I submit to you, ladies and gentlemen,
7 when reviewing -- it is the jury's ability to weigh
8 testimony or believability, all right. Just because
9 somebody said something doesn't mean it's true.
10 If I put Lieutenant Peters up on the stand, and he says
11 that the sun rises in the west, all right, you have the
12 opportunity to weigh his testimony and credibility,
13 okay.

14 And you've heard Lieutenant Peters talk
15 that he's charming. Charm does not equal authenticity.
16 And here's the thing. We heard what the Defendant has
17 to say about self-defense before. We've listened to it.
18 Back in 2018, we heard Lieutenant Peters testify when
19 those jail calls were pulled, we heard him talking about
20 self-defense.

21 Now, I don't really know who he's talking
22 to. But what we were told was that he was scared about
23 retribution, and that's why he said it. And I'm going
24 to go into that a little bit because at the same time --
25 first off, one of these people that the retaliation can

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1 come from is dead. Brannon Mack is dead at this point
2 in time.

3 The other one, in the same jail call,
4 he says that he's talked to Bradford Spells, his boys
5 have talked to Bradford Spells, and he ain't going
6 to testify. But he's apparently still scared of
7 retaliation. That's why he's telling us that he said
8 these things.

9 (Jail call played for the jury.)

10 MR. SPEARS: I submit to you, ladies
11 and gentlemen, what we're listening to there is not
12 a man who is pressured into saying this. He's talking
13 about his homeboys; he's talking about how his boys
14 already spoke with Brad. And then he's just yucking
15 it up about the case strategy.

16 This happened -- that conversation
17 happened back in 2019. And I submit to you now
18 that this change of heart didn't come from some sort
19 of divine inspiration. It came from the evidence.
20 There's a reason after opening when the defense told
21 us that it is him in the red shirt, it is him in the
22 bathroom.

23 We still spent two days littered
24 with testimony, some a lot more longer than others,
25 and I understand, but to show that it was him in the

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1 red shirt. Unequivocally, it's him. We had him pointed
2 out.

3 We had Lieutenant Peters go through every
4 individual around that bathroom and exclude him from
5 being in the bathroom. The proof is already there.
6 This claim that now he's suddenly scared of Brannon Mack
7 and Bradford Spells, and that miraculously they had this
8 reputation from -- that was told to from a bunch of
9 ladies, and that he bravely confronted them, but they
10 didn't do anything at that time, and now they're out
11 hunting for him, it doesn't hold water.

12 I submit to you this is just a Hail Mary
13 after he's been locked into that bathroom by all the
14 evidence available. I submit to you that it is a last
15 ditch effort because if you look at what he's telling
16 us, even that doesn't match.

17 So, I think I've been going on long enough
18 now. I just want to say go back to reasonable doubt,
19 all right. Beyond a reasonable doubt is the burden.
20 So if we're standing right here, and there's no evidence
21 in the case, none, the State hasn't proven anything,
22 because the State has to prove it. That's why all this
23 evidence is here. That's why you've heard all of this
24 testimony from the State. If you're standing here,
25 saying none of that existed, there's reasonable doubt,

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1 all right.

2 Now if we move over in this direction,
3 then there's some evidence. But it doesn't even really
4 paint a clear picture. It's just a bunch of hearsay,
5 and a bunch of just random allegations, no substantial
6 focus, I can't paint a clear picture, that's not beyond
7 a reasonable doubt. There's still doubts that could be
8 reasonable.

9 But if we stand here at the end, and we
10 have a case where we can show, through video, that he
11 is in this bathroom with three other people, we can show
12 ballistically all these were shot from one gun, we can
13 show that -- we can show that earlier in the night he
14 said, I'm going to kill that dude. We can show that
15 the two people who supposedly were pulling guns on him,
16 and he was scared for himself, are walking out free
17 and clear.

18 No one is running from them. There's
19 no fear of them or anything. This is the area where
20 we show that Keunte Cobbs shot and killed Brannon Mack.
21 This is where we show that he is guilty of murder.
22 Thank you.

23 THE COURT: Thank you. Mr. Chisholm.

24 MR. CHISHOLM: Thank you, Your Honor.

25 May it please the Court.

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1 THE COURT: Yes, sir.

2 MR. CHISHOLM: Good morning.

3 THE JURORS: Good morning.

4 MR. CHISHOLM: I appreciate you guys bearing
5 with us. I know this has been a long trial to sit there
6 as a jury. There's been a lot of technical testimony.
7 We've had to awkwardly read in testimony. I know it's
8 been a long week for you. I appreciate y'all paying
9 attention.

10 And you've been here pretty much a full
11 week. You've seen all the evidence that's been put in.
12 And it gets kind of laborious at some point. But after
13 all that's been put in, after all the witnesses took the
14 stand, after the solicitor just got up here and did his
15 closing argument, frankly, I still have no idea what
16 their theory of the case is.

17 If it's not self-defense -- sure,
18 they acknowledge these guys got shot in the bathroom,
19 and they're talking about the angles and all that stuff.
20 But what is their theory? Was this an ambush? I have
21 no idea because they haven't told us what their theory
22 is because they have no idea what happened in there.
23 And the only thing we have is what Mr. Cobbs told you.
24 And, incidentally, that's also what makes sense when
25 you watch the video.

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1 Mr. Loy, in the defense's opening argument,
2 he got up here. He telegraphed pretty well. This is
3 a self-defense case. If you were trying to draw up an
4 example of self-defense, you'd be hard pressed to find
5 a better example. Think about what we know in this
6 case. Mr. Cobbs is in the IHOP bathroom by himself.
7 There's one way in; there one way out. There's no door
8 behind him. He's surrounded by the walls. If he wants
9 to get out, he's got to get through that front door.

10 So what's the problem? Who's in the front
11 door? These two guys we've heard about, Mr. Mack and
12 Mr. Spells. And you've heard his history with them.
13 You've heard they were both armed, one of them with
14 a stolen gun. You've heard that he's aware these guys
15 are out there looking for him. And he knows exactly
16 what time it is, so to speak, when he sees them come
17 in that bathroom.

18 Mr. Spells. He told you, you know,
19 about that guy's reputation in the neighborhood,
20 about these other shootings, and how he's drawing
21 reprisals at his aunt's house and all of that.
22 You might remember Mr. Loy called Detective Peters
23 up to the stand at the very end, and said, well,
24 you're in law enforcement, what's your understand
25 of his reputation for violence and crime and that kind

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1 of thing? What did Detective Peters say, the law
2 enforcement witness? He said, it's exactly what
3 he told you.

4 That's the kind of guys that came in the
5 bathroom while Mr. Cobbs was in there by himself that
6 night, that had him in their cross hairs. And when
7 he saw them come in, he did what anybody that wanted
8 to get out the only door available would do. He got
9 out the way he had to, the only option he had, by acting
10 in self-defense.

11 This case is a little different than one
12 I would normally try. Normally, what I would like to do
13 is kind of go through witness by witness, and tell you,
14 okay, you might remember witness number one, her name
15 was Julie, and she told you this, and this is what she
16 put into evidence because in a longer case like this,
17 it's hard to remember what people said three days prior.

18 Luckily in this case, you guys have
19 notepads. I know you've been paying attention, taking
20 notes. So, hopefully, it's not, you know, something
21 I need to do. But to the larger point, all this stuff
22 in this case, doesn't really amount to a hill of beans.
23 I mean, we don't really need to talk about fingerprints
24 and everything.

25 And I will give the State this, they had

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1 done a wonderful job of proving beyond a reasonable
2 doubt that Mr. Cobbs is the man in the red shirt.
3 They had done a fantastic job of that. Now, I think
4 it's a fair question to ask yourselves if there's any
5 value at all in that since we told you he's the guy in
6 the red shirt in the very beginning.

7 They called all these witnesses to tell you
8 who is this here on the video? Do you recognize him in
9 the courtroom? Ms. Creel, you're a waitress. Do you
10 recognize this man? I mean, they brought in the
11 fingerprints and all this stuff. They spent 90 percent
12 of this trial telling you what we told you in the
13 beginning. It's him. He's in the bathroom.

14 And we told you in the beginning that --
15 they want a frame that says a two-question trial.
16 Who's the man in the red shirt, and was he in the
17 bathroom? That is not the question. The question
18 is what happened in there, and they have no idea.
19 And a large reason they only have a theory of it is
20 because the alleged victims in the case wouldn't tell
21 them what happened in there. We'll talk about that
22 a little bit more in a second.

23 So, I mean, obviously, we ask questions
24 when these witnesses get up here, and they talk about
25 the evidence, and they're talking about ballistics and

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1 all that stuff. And, frankly, a lot of it is asked out
2 of curiosity. I was curious how they lost three cell
3 phones in a case like this. I was curious how -- you
4 heard Detective Peters testify.

5 The same detective, Detective Elmore,
6 the guy who started this whole case off, that picked
7 Mr. Cobbs as a suspect and ran in that direction,
8 the same guy, he's lost phones in another case as well.
9 You can add whatever value you want to that.

10 But what it did in this case is we were
11 deprived the ability to come in here, show you these
12 phones and say, look, just like he said, he ain't
13 calling these guys, he ain't texting them saying, hey,
14 come out to IHOP so I can ambush you. There is no
15 communication. We can't show you that because they
16 lost the phones. I'm not going to go through all this,
17 except to say if you've been paying attention this was
18 a terrible investigation.

19 I mean, you've got evidence that was never
20 sent off, you've got the evidence that was sent off,
21 never got tested, nobody apparently checked on it, they
22 lost evidence. I mean, not the kind of investigation
23 anybody deserves, whether you're an alleged victim,
24 or especially, if you're on trial in a case like this.

25 So let's talk about what really matters

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1 here. Let's talk about what happened in the bathroom,
2 and let's talk about the parties. Mr. Cobbs, you heard
3 from him from the stand, and he told you he's a
4 promoter. He gets local acts to come into clubs, and
5 he gets these acts in there, and that draws in business.
6 People come in and have a good time, buy drinks, and
7 he gets paid in cash from the proceeds at the door.
8 He gets a cut, so to speak. And like a lot of people
9 in that scenario, jewelers, whatever the case may be,
10 they carry a lot of cash, he has a gun for protection
11 in that scenario.

12 I think he also told you he had a gun in
13 this case because he knew these guys were out there
14 looking for him, and that made sense. He's a creature
15 of habit. When the clubs close, he goes to IHOP.
16 Julie Creel, the waitress from IHOP, told you he's
17 also in here. He's in here a couple of times a week.
18 I've been waiting on him for a couple of years.
19 He always comes in on Saturday nights when the clubs
20 close, when his job ends.

21 This night he got there a little early, and
22 he told you why, but we're not talking an appreciable
23 difference. I think he probably got there 15 minutes
24 earlier than he normally does, but this is where you
25 would find him on this night, at this time. If you

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1 wanted to find this guy, that's where you would find
2 him. This night was no different.

3 Mr. Cobbs wasn't behaving differently at
4 all that night. You can watch the video. You'll have
5 the entire thing back there. I know they've showed you
6 a lot of clips. I don't know if you want to watch the
7 entire thing, but if you want to you can. You can also
8 watch any clips you need to see. You can watch him in
9 the restaurant. You can see him wondering around.
10 You can see -- Ms. Creel told you he acted that night
11 like he always does. He's an amicable guy. I mean,
12 you saw him on the stand. He's a social butterfly,
13 I think she said.

14 He walks around; he makes his rounds; he's
15 saying hello to everybody. He's doing what he always
16 does. She said he got his grapefruit juice. He doesn't
17 have to order it. She knows him that well that she just
18 automatically brings it. She said typically when he
19 comes in a lot of the times, he'll go, you know, 15
20 minutes or whatever it is, without even ordering food
21 because he's in there socializing. He usually takes his
22 food home. That's just part of his routine. This night
23 is no different.

24 He wasn't in there skulking around.
25 She said he wasn't in there angry. She said he's never

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1 angry. The only time he even acted angry -- he wasn't
2 even angry. The only time he was upset at all was when
3 his food wasn't cooked to the degree he wanted it.
4 And even then he wasn't a jerk about it. He says, oh,
5 I can't eat that. He got squeamish, if anything.
6 That's the far -- that's the closest thing to aggression
7 you got out of this guy from someone that knows him
8 pretty well.

9 Watch the video if you would like. See
10 if you see Mr. Cobbs peering out the window, acting
11 suspicious. I'll give you a hint. You're not going to.
12 The clips they showed you multiple times, I don't know
13 if you were paying attention to this as I was, but if
14 you weren't, you can see it again.

15 Contrast him walking into the restaurant
16 with Mr. Spells and Mr. Cobbs -- Mr. Mack. When they're
17 coming into the restaurant, what do they do? They're
18 looking to the left and looking to the right, looking
19 into the bushes where Mr. Spells ditched his gun,
20 ultimately. They're the ones that look suspicious when
21 they come in.

22 Let's talk about Mr. Spells and Mr. Mack
23 for a minute. I don't mean to denigrate the deceased.
24 I really -- that is not my intention. I'm not trying
25 to cause harm or pain to anyone. That's not my point.

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1 But I also have to represent Mr. Cobbs the best I can,
2 and to do that I've got to call a spade a spade.

3 These alleged victims were not victims.
4 These were criminals. You've heard the testimony.
5 You've heard law enforcement's understanding of these
6 guys. It's what we're dealing with here. This night,
7 they were the hunters. If you watch the video, you
8 watch them walk in, you can see that pretty plainly.
9 And, again, we never heard anything from them.

10 Mr. Spells, to this day, won't return
11 their calls, won't talk to them, won't tell them what
12 happened. Why do you think that is? If they just went
13 in there together, two guys, to use the restroom,
14 why wouldn't they say, I was going to use the restroom,
15 and I got shot out of nowhere. Why do you think they
16 wouldn't want to tell the police that?

17 And they're talking now. They're saying we
18 heard this phone call. They must have been threatened.
19 I mean, first off, these guys are always carrying guns,
20 shooting in the neighborhood. Do they seem like they're
21 squeamish to you? But, more importantly, they don't say
22 anything to EMS. They don't say anything to Detective
23 Elmore when he goes to the hospital. They don't say
24 anything when he goes back.

25 When Detective Elmore tries to show Bradford

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1 Spells a photo lineup of Mr. Cobbs in it, they won't
2 even look at it. Detective Peters, you know, he's
3 testified, he says, well, it could have been they were
4 medicated, but he has no idea. He wasn't in there.
5 Detective Elmore was.

6 He still works for Dorchester County.
7 They could have called him up to explain it, to say,
8 they were too medicated to give a statement. But they
9 didn't, and you can, you know, ask yourself why they
10 wouldn't do that. It's because they could have talked,
11 but they wouldn't talk.

12 Now, Detective Peters was able to
13 corroborate a lot of what Mr. Cobbs told you about
14 Bradford Spells. You've heard about the shootings in
15 the neighborhood. You've heard about all this stuff,
16 but Detective Peters agreed with them that he's not
17 surprised at all this guy is carrying a gun. That's
18 kind of his thing.

19 He's not surprised at all that he didn't
20 cooperate in this case because he never cooperates
21 in any of his criminal cases. To say that he's not
22 cooperating this time because of something Mr. Cobbs
23 said is ridiculous. He's never done it to begin with.

24 Mr. Cobbs, he testified about these guys,
25 how he knew them, how they came up, and all this stuff.

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1 And he testified that there was a shooting. He said
2 something to them, like, hey, why are you shooting
3 people in my aunt's yard. And then he said there
4 was another shooting, which I think he framed as more
5 of a reprisal. I think he was saying that these guys
6 were drawing heat to his aunt's house that had nothing
7 to do with any of the shenanigans. She almost got shot.
8 I think he said she was washing dishes when bullets came
9 in the house.

10 So, he talked to them again and said, look,
11 y'all got to get out of here. I'm not going to have
12 my aunt get killed because y'all are out here shooting
13 people in her yard. They didn't like that; they didn't
14 like being told what to do. These are the kind of guys
15 that aren't used to being told no, or being told to get
16 out of here, you have no right to be here because,
17 as Mr. Cobbs told you, these guys, they're shooters.
18 They're enforcers.

19 And when that came about, word got to him
20 pretty quickly that they're asking about him. They're
21 looking for him, and they're coming after him, which
22 is what we had in this case.

23 Now again, Mr. Cobbs went to the IHOP pretty
24 much every Saturday night, it sounds like. He was not
25 out of place. He wasn't acting differently. He was

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1 exactly where you would expect to find him, doing what
2 you would expect to see.

3 These guys were not the Saturday night
4 regulars. If you watch the video, they don't walk in
5 like somebody going to have a meal. They walk in like
6 mafia hit men, looking around the doors as they walk in.
7 They walk in, walk around a woman, on a beeline straight
8 to where he's alone in the bathroom. Again, both of
9 them armed, one with a stolen gun, the kind you might
10 want to use if you didn't want a crime traced back to
11 you. They go straight back, without hesitation.

12 They don't ask for a table; they don't ask
13 about the wait. They don't say, hi, how are you doing.
14 They go straight back to where he is in the bathroom by
15 himself. And you can watch, you can count the seconds
16 to do all that. But pretty shortly, thereafter, shots
17 are fired. Now again, I'm curious what their theory
18 is as to what they were doing in there that night.
19 We haven't heard it yet.

20 When Mr. Spells got shot, I think it's
21 pretty interesting how he responded. I mean, obviously,
22 he ran out of the restaurant. But what was his concern?
23 He ran out that front door, ran to the right, and
24 ditched his burner in the bushes. He just got shot,
25 mind you. His friend just got shot. That's what came

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1 to his mind, is I need to get rid of my gun. You can
2 ask yourself why that might be the case.

3 And you heard Mr. Cobbs' testimony,
4 everything that happened in the bathroom. He came out
5 of the stall, he locked eyes, he knew exactly why they
6 were there, he knew what time it was, he knew what they
7 were there to do, he saw them reach for guns.

8 And they're talking about is there bullets
9 in back of the bathroom? Of course, there's no bullets
10 in the back of the bathroom because he didn't say there
11 were bullets in the back of the bathroom. He didn't
12 say they shot at him. He said he locked eyes, he knew
13 why they were there, and when they reached for guns,
14 he reached first. And there's nothing to disprove that
15 in any of their diagrams, any of the testimony because
16 that's what happened. It's the only thing that makes
17 sense.

18 So the State, you know, they want to play
19 this jail call for you and say, well, he told you
20 himself it's not self-defense. It's right there in the
21 call. It's not self-defense, but he also said he didn't
22 shoot. And they had gone to pretty good lengths to show
23 you he's the only person that could have shot.

24 I mean, obviously, he's the shooter.
25 And he didn't tell the truth on the call, and he told

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1 you why. I think it was primarily because these guys
2 have friends. They've got family. They've got probably
3 associates, you can call it on the street, and in the
4 jail where he was when he made this call.

5 He doesn't know who they are. They might
6 know who he is. He didn't want his name in these guys'
7 paperwork talking to the police trying to get them
8 in any further trouble, which makes perfect sense.

9 So then from there, they brought in this
10 informant. Honestly, I have no idea why because with
11 all due respect they're scraping the bottom of the
12 barrel when they bring this guy because this guy,
13 he's the classic jailhouse snitch.

14 You hear them call it a rat sometimes.
15 And I saw in a movie the best description for that
16 on why it would be called a rat is because a rat will
17 do anything to survive, which is what this guy is doing.
18 I mean, he's looking at, you know, close to 30 years.
19 I get it. I think if they probably would have offer
20 him ten years off, he would probably come in here and
21 tell you I was the shooter, whatever he needs to say.

22 But consider his credibility when he says,
23 no, I've had no conversations about any kind of,
24 you know, consideration in my case. I don't expect
25 any benefit. I just came forward, I guess. Think about

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1 the timing. When did he come forward? Not the night
2 of the shooting, not in 2016 at all, not in 2017,
3 not in 2018.

4 I believe he testified he came forward
5 in January of 2019. I said, well, you got a couple
6 of pending federal bank robbery cases, right? Did you
7 plea to those? Yes. When did you plea? And I believe
8 he said January of 2019.

9 What an odd coincidence that as he's going
10 up to plea in his case, he suddenly comes forward with
11 this information. What an odd coincidence that he's
12 due to be sentenced, I believe he said, next week.
13 And he says that the timing of all this is completely
14 unrelated. I don't think anybody in the world would
15 believe that.

16 Beyond that, I asked him and Detective
17 Peters, I said, was there anything that would prevent
18 you from getting up here and just making this up,
19 just saying I heard this guy say he's going to shoot
20 somebody. I mean, anybody can say that. So, I said
21 is there anything to prevent him from saying that?
22 He said, no.

23 And I asked him, you know, well, did you
24 try to verify this guy's story? And he said he did,
25 and I believe him. And I also believe when he said

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1 basically everything this guy fed him was all smoke,
2 street names, nicknames, couldn't remember the address.
3 Nothing that could back up this guy's story.
4 So, I would ask you to take his testimony with the grain
5 of salt it deserves.

6 And then we're going to talk about the
7 bullet in the door and the shots in the left side
8 and all this stuff, and Mr. Cobbs -- what you've got
9 to remember is this. This happened fast, very fast.
10 I mean, this entire incident, you can watch the tape,
11 happened in a matter of seconds. So when it comes down
12 to the details, Mr. Cobbs comes out, finds himself in
13 a fight or flight situation, and flight ain't an option.
14 He's fighting for his life. If details are fuzzy,
15 it makes perfect sense.

16 They're talking about lanyards and all this
17 stuff. I doubt he's in there watching to see if this
18 guy tosses a lanyard, or whatever happens, and that
19 makes perfect sense.

20 So again, back to the State's theory.
21 I don't know what it is. I can only guess what it is,
22 so I'll do that. I'm assuming they're going to tell
23 you that this was some sort of ambush because I think
24 he might have referenced lying in wait at some point
25 in this case, you know, when he started his closing

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1 argument.

2 If this is an ambush, how was it done?

3 We know Mr. Spells, I believe it was, had a cell phone.

4 Mr. Mack did not. They looked at the one cell phone the
5 guys had between them, and there's zero communications
6 between Mr. Cobbs and them. Absent a carrier pigeon,
7 or something along those lines, how would he arrange
8 to have these guys come to the restaurant?

9 The alternative is if he didn't lure them
10 there, I guess, their other theory would be he's lying
11 in wait and just hoping beyond hope that if he goes
12 in the bathroom, these two guys will show up at this
13 restaurant, on this night, at this hour, and hopefully,
14 they'll just show up where I am, and I'll have a chance
15 to ambush them, which makes absolutely zero sense.

16 So, I have no idea what their theory is.
17 But whatever it is, doesn't match with what we've got
18 here. Ask yourself which scenario make more sense on
19 its face. That Mr. Cobbs somehow, without communicating
20 with anyone, and acting completely normal, was in the
21 bathroom waiting for these guys to show up so he could
22 ambush them, and shots come off quick, or what he told
23 you. That he's in there using the bathroom when these
24 guys come in, and he draws first. Which story on its
25 face makes more sense?

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1 Now, I'm going to wrap up here pretty
2 soon, I promise you. I appreciate you bearing with
3 me. I want to get into some of the, I guess, legal
4 terminology you'll be hearing in this case when the
5 judge gives her jury charge here in a few minutes.

6 Again, this is a self-defense case, which
7 is kind of a unique situation because self-defense
8 is what's called an affirmative defense, or a complete
9 defense. What that means is when self-defense is
10 asserted and charged to you, as it has been in this
11 case, the State has the burden of proving that this
12 was not self-defense.

13 We don't have to convince you. They have
14 to convince you it was not. And they don't have to
15 convince you to the degree that it could have been
16 self-defense, or it might have been self-defense, or it
17 probably wasn't self-defense. They have to convince you
18 beyond a reasonable doubt. A single reasonable doubt
19 that this was not exactly as Mr. Cobbs described,
20 a self-defense scenario. And that's a pretty high
21 hurdle for them, meaning, they're not going to be able
22 to do it in this case.

23 So let's talk about some of these charges.
24 Again, they have the burden of proving their case beyond
25 a reasonable doubt for murder. They have to show,

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1 first, that it was an unlawful kill. Mr. Loy told
2 you in his opening that you can have lawful killings
3 in several different scenarios, one of them is
4 self-defense.

5 So if you find this was self-defense, you
6 can stop your discussion because it's not an unlawful
7 killing. That's why they have to disprove self-defense.
8 If you get beyond that, you have to show there was
9 malice aforethought. And there's a lot of flowery
10 language I can never remember to explain what malice
11 aforethought means, a cold malignant heart, or a heart
12 bent on mischief. The judge will charge you on all that
13 stuff.

14 But, basically, I guess, it's the closest
15 equivalent we've had in common language, is
16 premeditation of some sort, which I submit to you in
17 this scenario, with this timing that you can hear with
18 the gunshots. I have no idea what their theory is of
19 how he would have had the ability to form malice
20 aforethought when this thing happened instantaneously.

21 The other option you've been given is
22 voluntary manslaughter, which again, the gatekeeping
23 role at the beginning here is you have to find for
24 voluntary manslaughter as well that this was an unlawful
25 killing. So again, if you find they haven't disproved

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1 self-defense, you can pretty much stop that discussion
2 because if he's acting in self-defense, or they can't
3 disprove it, it's not an unlawful killing.

4 If they got beyond that, what you have to
5 look for, I'm going to read some of this language to you
6 because I can't remember it, is that the Defendant took
7 the life of another in the sudden heat of passion based
8 on sufficient legal provocation. And they talked about
9 the heat of passion and things. What does that mean?
10 The kind of heat of passion that would make an ordinary
11 person unable to coolly reflect on his actions.

12 An example will probably clear that up for
13 you. I think the classic law school example is let's
14 say a guy gets home from work. He's had a long day
15 at the office. He walks in, kicks off his shoes.
16 He goes upstairs to his bedroom. He opens the door,
17 and lo and behold, there lies his wife in bed with
18 another man.

19 That's a pretty passionate situation.
20 It flows straight to his head. The anger, the
21 bitterness of how could this happen to me. He loses
22 his ability to coolly reflect on what's in front of him.
23 He pulls out a gun, and he shoots the man dead in his
24 bed. It's not a murder because he didn't have malice
25 aforethought. He didn't have premeditation or anything

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1 like that. But it is an unlawful killing.

2 I mean, you can't shoot and kill someone
3 in that scenario. That would be voluntary manslaughter,
4 a scenario like that where the passion is inflamed
5 in someone. We don't have that in this case either.

6 For self-defense, Mr. Spears mentioned
7 there's three things, and I think he kind of combined
8 them. But you have to show, first off, that the
9 Defendant was not part of bringing on the difficulty.
10 And I see this with my kids over and over, and you can't
11 go up to someone and then punch them. And then when
12 they hit you back, you escalate it, and hit them over
13 the head with a frying pan and say, I was acting in
14 self-defense. No, you weren't. You started the fight,
15 so to speak. We don't have that in this case. We've
16 got Mr. Cobbs in the restroom. That should be pretty
17 clear that he didn't bring on whatever happened to him.

18 Second, you have to show that the actor was
19 in a state where their life was in danger in this case,
20 or serious bodily harm, was an actual threat to them,
21 or that they believed they were in danger of serious
22 bodily harm or death.

23 You've heard the testimony. He comes out
24 of the stall. These two guys that he knows are after
25 him -- I'm not going to keep going over their

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1 background, but they're not good guys. And he knows why
2 they're there. He sees them draw a gun. Absolutely,
3 in that scenario you were going to believe that your
4 life is in danger.

5 And any reasonable person, which is the
6 third element -- that a reasonable person would also
7 feel the same way in his shoes, so to speak. And it's
8 clear, and he told you that was the case. He told you,
9 yeah, when they came in I was scared to death, and any
10 reasonable person was because here's how that works.

11 Let's say I'm sitting at the lunch table
12 with Mr. Loy, and he gets a pencil eraser, throws it,
13 and hits me in the chest. I can't pull out a gun and
14 shoot him, and then say, well, I thought he was going
15 to kill me because that's not a reasonable belief.

16 So it has to be a belief that somebody
17 else substituted in your place would also feel the
18 same way which given -- and you can take into account,
19 as Mr. Spears said, history between the parties,
20 the prior reputation for violence and all that stuff.
21 A reasonable person in that scenario would, obviously,
22 also feel like their life was in danger.

23 And the last thing, again, this is about
24 as textbook as you can get it, is that the Defendant
25 did not have an opportunity or an ability to retreat

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1 because if I see someone on the endzone of a football
2 field, and I'm on the other endzone, and they've got a
3 knife, I can't charge at them, pull out a gun and start
4 shooting at them at the 50-yard line, and say I was
5 acting in self-defense because I could have just gone
6 the other way.

7 In this case, we have almost the proverbial
8 cornered animal. He is in a bathroom with no way out,
9 except through them. There is no opportunity to retreat
10 whatsoever. So what does reasonable doubt mean?

11 If you think of guilt in a linear fashion,
12 I guess, kind of like a spectrum of guilt, so to speak,
13 down here on this end of the bar, you've got absolute
14 innocence. Down here, you've got absolute guilt.
15 Absolute innocence would be a situation where the State
16 has presented their side of the case, whatever the
17 charge may be.

18 And at the conclusion of their case,
19 you're saying to yourself they haven't proven anything,
20 or they've proven that he didn't commit the crime.
21 Absolute innocence. Down here, pretty rare a lot
22 of times in court.

23 You slide down the scale a little bit,
24 and you get to the situation where they presented
25 evidence, and you're telling yourself, yeah, they've

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1 made some points, I mean, some indication of guilt.

2 But, overall, I don't believe what they're telling
3 me at all. You've got a lot of between there.

4 Just to speed it up a little bit, when you
5 got around here, you get to the halfway mark between
6 absolute guilt and absolute innocence, which would be
7 they have presented enough evidence that I have no idea
8 what happened here, whether he's guilty or not.
9 It could go either way.

10 And you keep getting down here to where
11 you're saying to yourself, they have pretty much proven
12 this guy guilty. I mean, there's a few doubts left
13 or whatever, but, I mean, I'm pretty convinced of his
14 guilt.

15 Beyond a reasonable doubt reside down here
16 by absolute doubt. It's not absolute doubt, but it's
17 guilt that's been proven beyond a single reasonable
18 doubt. That's a high standard. That's the standard
19 they have to meet in this case.

20 Now to close, this is a case where it's hard
21 not to have anything but reasonable doubt. When you
22 listen to the history that these guys had, when you
23 understand the reputation for violence in the community,
24 when you understand that Detective Peters says he's not
25 surprised at all this guy was carrying a gun, how does

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1 that not cause reasonable doubt?

2 When you watch this video, if you choose to
3 watch it again, and you watch these guys as they enter
4 the restaurant, you watch them make a beeline straight
5 back to where Mr. Cobbs is all alone, how could that
6 not cause reasonable doubt? When you consider that the
7 alleged victims, the people they've pegged as victims
8 in the beginning for whatever reason, have never
9 cooperated.

10 To this day, Mr. Spells won't cooperate,
11 won't return their calls, wouldn't look at a lineup,
12 has done nothing to explain their side of the story
13 because I would tell you it would incriminate them.
14 Does that not cause reasonable doubt?

15 Ladies and gentlemen, these men didn't
16 act like your typical victims. And that's because they
17 were not victims at all. As Mr. Loy told you at the
18 beginning of this case, they were the predators, he was
19 the prey. Thank you.

20 THE COURT: Thank you, Mr. Chisholm.
21 Mr. Spears.

22 MR. SPEARS: Thank you, Your Honor. Y'all
23 I know we've been talking to you a lot. I've only got
24 a few things to touch on here, and then let you go.
25 Turn that on for me again, please. I'm first going to

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1 touch on maps, all right. Mr. Chisholm said something
2 about premeditation of the -- about premeditation being
3 required. And, honestly, I didn't explain it that well
4 at first.

5 Malice does have to exist before and during
6 the act, okay. There is no requirement though on how
7 long before the act that malice must exist. Malice
8 can be formed in an instant, in a snap of a finger,
9 or in a moment of recognition. It can be formed like
10 that, and that's important to note.

11 Now, what is the State's theory of the case?
12 I think he was asking for a motive. If you listen to
13 the law when the judge charges you, you will note there
14 is no requirement to prove motive.

15 Now if the evidence showed it, that would
16 be one thing, but it doesn't. There's a lot of things
17 that sometimes just go unsaid. And, honestly, the only
18 person I submit to you who knows the motive of what
19 happened that day is sitting right there. But we've
20 already heard him tell us multiple stories. I wouldn't
21 expect to get an honest answer out of that.

22 So we heard that we would have a hard time
23 drawing up a better case of self-defense. It hits every
24 single factor that the law would say you can use
25 self-defense for. When just a year prior, he didn't

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1 know nothing about self-defense.

2 But, suddenly, this story that's going to
3 be corroborated by two ladies or a cousin, never got
4 any names on there about reputation and threats and
5 all that. Suddenly, the story comes out this week
6 perfectly, hitting -- painting a picture of the most
7 straightforward self-defense case ever. But the stuff
8 that we see in our evidence doesn't directly corroborate
9 the story.

10 Now, I want to touch on Mr. Mack and
11 Mr. Spells walking in. They're making a beeline
12 into the restaurant and looking through the windows.
13 And we've seen them walk in a couple of times. You saw.
14 They looked to the left when they come in. Play that
15 for me.

16 (Video played for the jury.)

17 MR. SPEARS: Here's our unknown man and
18 Mr. Cobbs. They're looking to the left too. I don't
19 know what they're looking at. It looks like both
20 of them, whether it's Mack and Spells or Cobbs and
21 Mr. Mysteria, it looks like they're just looking at
22 the side of the building. It's hard to say. But that
23 doesn't prove that Mack and Spells are assassins when
24 they walk in.

25 And, apparently, Brannon Mack makes a

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1 beeline to the bathroom for some sort of assassination.
2 But then he immediately just puts his keys on the sink,
3 sits right here, and then gets shot in the side.
4 According to Mr. Cobbs, this is supposed to be a trained
5 shooter. It does not fit, ladies and gentlemen.

6 Harping on Bradford Spells, how he's
7 known -- you know, how he goes out and hides his gun.
8 We've seen the video. He doesn't have his gun drawn.
9 He hides from the person who just shot him. And then
10 he goes over there, and we assume the gun in the bushes
11 is his. It's a stolen gun.

12 Dwayne told us that he's not best person in
13 the world, so he throws away his stolen gun. What about
14 Brannon Mack? He doesn't throw away anything. That gun
15 isn't registered stolen. They're both still holstered.
16 They're not drawn like we've been told. Mr. Cobbs
17 didn't like both of these guys shooting people in his
18 aunt's yard, but yet he still confronts them about it.
19 He didn't get shot in his aunt's yard. He just heard
20 rumors about it.

21 Ladies and gentlemen, I can go through
22 all this all day. I don't want to hit you with another
23 closing. This was not some old west shootout in a
24 bathroom. The evidence shows us that Mr. Cobbs' story
25 doesn't work. His own call shows us that he's come

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1 up with this story.

2 Ladies and gentlemen, please review the
3 evidence, look through it, show how that story does
4 not work. I'm confident you'll come back with a verdict
5 of guilty. Thank you.

6 THE COURT: Thank you very much. All right.
7 Ladies and gentlemen, that first break, it's going to be
8 a short break. Here it is, just stand up. Feels great.
9 Why do I want you to stand? I need you to be able to
10 pay attention to me. I need oxygen flowing. Anybody
11 need to take a comfort break? Don't be shy. It's going
12 to take me a bit to deliver the charge. Yes? All
13 right.

14 Let me tell you'll what you'll do. Leave
15 your notepad. Do not discuss this matter. Do not allow
16 anyone to discuss it with you. Here's what we're going
17 to do. Take your comfort break. When you're ready to
18 return, knock on the door, and you all will come back
19 in then. It won't be a set time. It will be whatever
20 period you need.

21 (Jury exits the courtroom at 11:15 a.m.)

22 (Recess taken.)

23 (Back on the record.)

24 (Jury enters the courtroom at 11:33 a.m.)

25 THE COURT: All right. Ladies and

1 gentlemen, it is now my duty to instruct you regarding
2 the law applicable to this case. Ladies and gentlemen,
3 the indictments in this matter charges the Defendant,
4 Mr. Cobbs, with murder.

5 This offense is one which, of course,
6 is alleged by the State, in which the State has the
7 burden of proof. And I will define that offense for
8 you, and there is a lesser included offense that I will
9 talk to you about as well. And a defense, which has
10 been raised, which must be disproved by the State.
11 The burden of proof applicable to the State is beyond
12 a reasonable doubt.

13 Ladies and gentlemen, I'm going to get into
14 this in just a moment. But a defendant -- no matter the
15 seriousness of the charge, a defendant is never required
16 to prove him or herself not guilty. The burden is and
17 remains on the State to prove guilt beyond a reasonable
18 doubt.

19 I remind you that the fact that the
20 Defendant, Mr. Cobbs, and if I say Defendant, I mean
21 Mr. Cobbs. If I say Mr. Cobbs, I mean the Defendant.
22 They are interchangeable. I remind you that the fact
23 that Mr. Cobbs was arrested, charged, and indicted
24 in this case is not evidence in this case. It cannot
25 be considered by you as evidence of guilt in this case,

1 nor does it create any presumption or inference
2 of guilt.

3 Ladies and gentlemen, an indictment is,
4 first of all, a piece of paper. It's a notice document.
5 It gives a citizen notice that the State maintains that
6 that citizen has violated one or more of the criminal
7 laws of the state of South Carolina. And to this
8 indictment, Mr. Cobbs has pled not guilty. And that
9 plea places upon the State to prove him guilty beyond
10 a reasonable doubt.

11 Ladies and gentlemen, a person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove himself not guilty. And I charge you
14 that it is an important rule of the law that a defendant
15 in a criminal trial, no matter what the seriousness of
16 the charge may be, those people will always be presumed
17 to be innocent of the crime for which the indictment
18 was issued, unless guilt has been proven by evidence
19 satisfying you of that guilt beyond a reasonable doubt.

20 Ladies and gentlemen, Mr. Cobbs is presumed
21 to be innocent of the crime for which the indictment
22 was issued, unless guilt has been proven by evidence
23 satisfying you of that guilt beyond a reasonable doubt.

24 This presumption of innocence does not end
25 when you begin your deliberation. But it accompanies

1 the Defendant throughout the trial until you reach
2 a verdict of guilt based on evidence satisfying you
3 of that guilt beyond a reasonable doubt.

4 The presumption of innocence is like a robe
5 of righteousness placed about the shoulders of the
6 Defendant, which remains with him, with Mr. Cobbs, until
7 it has been striped from him by evidence satisfying you
8 of his guilt beyond a reasonable doubt. The presumption
9 of innocence is not a mere legal theory. It is not just
10 a legal phrase. It a substantial right to which every
11 Defendant is entitled, unless you, the jury, are
12 satisfied from the evidence of the Defendant's guilt
13 beyond a reasonable doubt.

14 What then is reasonable doubt in the law?
15 A reasonable doubt is the kind of doubt that would cause
16 a reasonable person to hesitate to act. Some of you may
17 have served as jurors in civil cases where you were told
18 that it is only necessary to prove that a fact is more
19 likely true than not true, such as by the greater weight
20 of the preponderance of the evidence.

21 In criminal cases, the State's proof must be
22 more powerful than that. It must be beyond a reasonable
23 doubt. Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the Defendant's guilt.
25 There are very few things in this world that we know

1 with absolute certainty. And in criminal cases, the law
2 does not require proof that overcomes every possible
3 doubt.

4 If, based on your consideration of the
5 evidence, you are firmly convinced that the Defendant is
6 guilty of the crime charged, you must find the Defendant
7 guilty. If, on the other hand, you think there's a real
8 possibility that the Defendant is not guilty, you must
9 give the Defendant the benefit of the doubt and find him
10 not guilty.

11 Ladies and gentlemen, I remind you that you
12 and I have had certain duties to perform during this
13 trial. As the trial judge, it is my responsibility
14 to preside over the trial of this case. And I also have
15 the duty to rule on the admissibility of the evidence
16 offered during the trial. I have the additional duty
17 to charge you regarding the law applicable to this case.
18 As the presiding judge, I am the sole judge of the law
19 of this case. And it is your duty as jurors to accept
20 and to apply the law as I now state it to you.

21 If you have already any idea as to what the
22 law is, or what it ought to be, and it does not agree
23 with what I tell you now the law is, you must abandon
24 your preconceived idea because you are sworn to accept
25 the law and apply the law exactly as I state it to you.

1 Now in every case tried in this court before
2 a jury, the jury becomes the sole and exclusive judge
3 of the fact. A trial judge cannot intimate, state,
4 comment on, or make any statement to a trial jury about
5 the facts in a case.

6 Since you, the jury, are the sole judge
7 of the facts in this case, you are not to infer from
8 what I have said during the progress of this trial,
9 in ruling on the admissibility of evidence or otherwise,
10 or anything that I say to you now during the course
11 of this instruction to you that I have any opinion
12 about the facts in this case. The law does not allow
13 me to have an opinion about the facts in this case.
14 This is a matter solely for you to determine.
15 As jurors, it is your duty to determine the facts
16 and to decide whether the State has met its burden
17 of proof of beyond a reasonable doubt.

18 Now, ladies and gentlemen, necessarily then,
19 you must determine the credibility of the witnesses who
20 have testified in this case. You must decide the
21 credibility of the testimony, the sworn testimony,
22 presented in this trial.

23 Ladies and gentlemen, credibility simply
24 means believability. Who do you believe? It becomes
25 your duty as jurors to analyze and evaluate the

1 evidence, and to determine which evidence convinces you.
2 In determining the believability of witnesses who have
3 testified in this case, you may believe one witness
4 over several witnesses, or several witnesses over one
5 witness.

6 You may believe a part of the testimony of
7 a witness and reject the remaining part of the testimony
8 of that same witness. You may believe the testimony of
9 a witness in its entirety, or you may reject the
10 testimony of a witness in its entirety. You may
11 consider whether any witness has exhibited to you any
12 interest or bias or prejudice or other motive in this
13 case. You may also consider the appearance and the
14 manner of a witness while on the witness stand.

15 Now, ladies and gentlemen, in this matter
16 there have been witnesses who have been deemed to be
17 expert witnesses. Our rules of evidence ordinarily
18 do not permit witnesses to testify regarding their
19 opinions, or the reasons for those opinions.

20 An exception to this rule exists for
21 witnesses deemed to be expert witnesses. And those are
22 witnesses who, by education and experience, have become
23 an expert in some art, science, professional calling.
24 And those witnesses may state opinions or an opinion
25 as to relevant and material matters in which the witness

1 claims to be an expert. And they may also state
2 the reasons for those opinions.

3 You should consider any expert opinion
4 received in evidence in this case, and like any other
5 evidence, give it the weight that you think it deserves.
6 If you decide that the opinion of an expert witness
7 is not based on sufficient education and experience,
8 or if you conclude that the reasons given in support
9 of the opinion are not sound, or that the opinion is
10 outweighed by other evidence, you may disregard the
11 opinion entirely.

12 An expert witness's testimony is to be given
13 no greater weight than that of other witnesses simply
14 because the witness is an expert. And you're not
15 required to accept an expert's opinion, even though
16 it is not contradicted.

17 Now, ladies and gentlemen, there are two
18 types of evidence which are generally presented during
19 a trial. One is called direct evidence; the other is
20 called circumstantial evidence. I am going to define
21 these terms for you, and then I am going to give you
22 an example.

23 Direct evidence is the testimony of a person
24 who claims to have actual knowledge of a fact, such as
25 an eyewitness. It is evidence which immediately

1 establishes the main fact to be proved.

2 Circumstantial evidence is proof of a chain
3 of facts and circumstances indicating the existence
4 of a fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or observation.

8 Now, I want to give you an example of each.
9 Direct evidence. It's February. It is cold, snow
10 is forecasted. You walk outside, you look up, it's
11 snowing, and snow is everywhere. You see it snowing.
12 Snow might actually hit you in the eye. When you walk
13 back inside and you say, it's snowing outside, you're
14 an eyewitness. You might literally be an eyewitness
15 if the snow got in your eye. You saw it. You perceived
16 it. You saw it. You are an eyewitness when you come
17 in and say, it's snowing outside. It's based on direct
18 information, direct perception. You're an eyewitness.
19 So when you come in and say, it's snowing outside,
20 you're immediately establishing that main fact to be
21 proved it's snowing outside.

22 Now, let's talk about circumstantial
23 evidence. I'm going to give you an example.
24 We're staying in February, still cold outside, and snow
25 is forecasted. You might even be looking forward to

1 a snow day. Well, just before you turn in for the
2 night, you look outside, and all you see is your poor,
3 brown, crunchy grass. It's not snowing. You look out,
4 no snow. You go to sleep. You wake up in the morning,
5 and the sun is shining, but snow covers everything.
6 You go wake up folks in your household, and you say,
7 it snowed last night.

8 Well, did you see it snow last night?
9 No. Do you know it snowed last night? Yes, through
10 inference because here's what you do know. You know
11 it's February, you know it's cold, you know snow is
12 forecasted, you know when you went to bed there was
13 no snow, when you awoke the sun was shining, but snow
14 covered everything. What you know by inference is that
15 it snowed overnight.

16 The things that you do know point to through
17 inference, and they point consistently and together that
18 it snowed overnight. You know it snowed overnight
19 through inference. That's circumstantial evidence.

20 Our law makes absolutely no distinction
21 between the weight or value to be given to either direct
22 or circumstantial evidence, nor is a greater degree
23 of certainty required of circumstantial evidence than
24 of direct evidence. You should weigh all of the
25 evidence in the case. And after weighing all of

1 the evidence, if you're not convinced of the guilt
2 of the Defendant beyond a reasonable doubt, you must
3 find the Defendant not guilty.

4 Now, I'm going to talk about criminal
5 intent. In order to establish criminal liability,
6 criminal intent is required. For example, the mental
7 state to be proven by the State as an element of a
8 particular crime might be purpose or intent, knowledge
9 or recklessness, and the like.

10 Criminal intent must be proven by the State
11 beyond a reasonable doubt. Criminal intent is always
12 a matter that must be determined by a jury from the
13 circumstances shown to have existed and surrounding
14 the situation. There's no way to prove intent to a
15 mathematical certainty. And there's no way that medical
16 science can dissect a person's brain and determine what
17 the person had in mind. So the law says that criminal
18 intent may be inferred from the circumstances shown
19 to have existed.

20 This is how you make a determination of
21 whether or not the element requiring intent was present.
22 It is not necessary to establish intent by a direct and
23 positive evidence. But intent may be established by
24 inference in the same way as any other fact, by taking
25 into consideration the acts of the parties, and all the

1 facts and circumstances of the case.

2 Criminal intent is a mental state, a
3 conscious wrongdoing. It is up to you to determine what
4 the Defendant intended to do based on the circumstances
5 shown to have existed.

6 Now, ladies and gentlemen, I am now going
7 to talk to you about the indicted -- I'm going to read
8 to you the allegations of the indictment. Then, I'm
9 going to go over the law regarding murder, which is the
10 indicted crime. And then I'm going to talk to you about
11 a lesser included offense. And I'm going to tell you
12 what that means in a minute, define that for you.
13 So that's how we're going to be proceeding.

14 Now, ladies and gentlemen, indictment
15 2016-GS-18-1267 alleges that in Dorchester County,
16 on or about June the 5th of 2016, with malice
17 aforethought, the Defendant, Keunte D. Cobbs, did kill
18 one Brannon Mack by means of shooting the victim.
19 The victim did die as a proximate result thereof.
20 This offense made in violation of the common law
21 in Section 16-310 of the South Carolina Code of Laws
22 as amended.

23 Now, ladies and gentlemen, the State has
24 the burden of proving each and every element of the
25 offense of murder before the Defendant could be found

1 guilty of murder, and then we're going to talk about
2 lesser included offense. I, again, wish to remind
3 you that to the indictment, the Defendant has pled
4 not guilty.

5 Now, ladies and gentlemen, the State must
6 prove beyond a reasonable doubt that the Defendant,
7 Mr. Cobbs, killed another person with malice
8 aforethought. What is malice? I am going to define
9 that for you. Malice is hatred, ill will, or hostility
10 towards another person. It is the intentional doing
11 of a wrongful act without just cause or excuse, and with
12 an intent to inflict an injury, or under circumstances
13 that the law will infer an evil intent.

14 Malice aforethought. Malice aforethought
15 does not require that malice exist for any particular
16 time before the act is committed. But malice must exist
17 in the mind of the Defendant just before and at the time
18 the act is committed. Therefore, there must be a
19 combination of the previous evil intent and the act.
20 Malice, the evil intent, aforethought must exist just
21 before and at the time the act is committed.

22 Now malice aforethought may be expressed
23 or inferred. These terms, expressed and inferred,
24 do not mean different kinds of malice, but merely the
25 manner in which malice may be shown to have existed,

1 meaning by direct evidence or by inference. I call your
2 attention to the discussion we just had about direct
3 evidence and circumstantial evidence. Now malice
4 aforethought may be shown to have existed by direct
5 evidence or through inference from the facts and
6 circumstances which are proved to have existed.

7 Ladies and gentlemen, I'm finished defining
8 for you murder. There is a lesser included offense
9 of murder, and it is called voluntary manslaughter.
10 Voluntary manslaughter. And this lesser included
11 offense really exists through the common law. What does
12 that mean? That means the law as it has developed
13 through case law, and it's developed through hundreds
14 of years. So through our common law, voluntary
15 manslaughter exists as a lesser included offense
16 of murder.

17 One of the ways that I think about lesser
18 included offenses, and we've just come through the
19 holiday season, I think they're called Russian dolls.
20 It's like the little dolls, and you take one off,
21 and there's one underneath it, you take one off -- yeah,
22 okay, I'm getting some nods. You know what I'm talking
23 about.

24 Lesser included offense -- you have murder,
25 and then the lesser included would be encompassed within

1 murder. It exists as a lesser included offense,
2 as I've stated, through the common law.

3 Now this is how lesser included offenses
4 are to be considered by juries. Based upon your
5 findings of fact and your consideration of the evidence,
6 if you find that the State has failed to prove beyond
7 a reasonable doubt that the Defendant committed murder,
8 then you consider whether the State has proved beyond
9 a reasonable doubt the lesser included offense of
10 voluntary manslaughter.

11 To prove voluntary manslaughter, the State
12 must prove beyond a reasonable doubt that the Defendant
13 took the life of another person in the sudden heat of
14 passion based on sufficient legal provocation.

15 Ladies and gentlemen, malice, whether it
16 is expressed malice or implied malice, is not an element
17 of voluntary manslaughter. However, both heat of
18 passion and sufficient legal provocation must be present
19 at the time of the killing to constitute voluntary
20 manslaughter. And let me say again that malice is not
21 an element of voluntary manslaughter.

22 Sudden heat of passion may, for a time,
23 affect a person's self-control and temporarily disturb
24 a person's reason. The sudden heat of passion must
25 be the type that would make an ordinary person unable

1 to coolly reflect on his or her actions and would produce
2 an uncontrollable impulse to do violence.

3 Sufficient legal provocation must be the
4 type that would make a person of ordinary reason and
5 ordinary caution to become enraged and to lose control
6 temporarily. The provocation needed for voluntary
7 manslaughter must come from some act of, or related
8 to the victim or victims.

9 Now words alone, however vulgar and
10 insulting, are not enough to be legal provocation.
11 When death is caused by the use of a deadly weapon,
12 the words must be accompanied by some overt threatening
13 act which could have produced the heat of passion.
14 The exercise of a legal right, no matter how offense
15 it is to another, is never sufficient legal provocation
16 for voluntary manslaughter.

17 If the heat of passion had cooled, or if
18 there was enough time between the provocation, if any,
19 and the killing for the passion of a reasonable person
20 to cool, the killing would not be voluntary
21 manslaughter.

22 In deciding whether a reasonable person
23 would have had enough time to cool off, you should
24 consider all the circumstances surrounding the killing.
25 You may consider the nature of the provocation, if any,

1 the Defendant's mental and physical state, and the
2 circumstances and relationship between the parties.

3 Now, ladies and gentlemen, in this case,
4 the defense has been raised of self-defense.
5 Now self-defense is a complete defense. If there is
6 self-defense, you must find the Defendant not guilty.
7 I'm going to give you the -- I'm going to define for
8 you self-defense.

9 The State has the burden of disproving
10 self-defense by proof beyond a reasonable doubt.
11 If you have a reasonable doubt of the Defendant's
12 guilt after considering all the evidence, including
13 that of self-defense, then you must find the Defendant
14 not guilty.

15 If, on the other hand, you have no
16 reasonable doubt of the Defendant's guilt after
17 considering all the evidence, including that of
18 self-defense, you must find the Defendant guilty.

19 Now here are the elements of self-defense.
20 The Defendant must be without fault in bringing about
21 the difficulty. If the Defendant's conduct was the
22 type which was reasonably calculated to and did provoke
23 a deadly assault, the Defendant would be at fault in
24 bringing on the difficulty and would not be entitled
25 to an acquittal based on self-defense.

1 Next, the Defendant was actually in imminent
2 danger of death or serious bodily injury, or that the
3 Defendant actually believed he was in imminent danger
4 of death or serious bodily injury. If the Defendant was
5 actually in imminent danger, it must be shown that the
6 circumstances would have warranted a person of ordinary
7 firmness and courage to strike the fatal blow to prevent
8 death or serious bodily injury.

9 If the Defendant believed he was in imminent
10 danger of death or serious bodily injury, it must be
11 shown that a reasonably prudent person of ordinary
12 firmness and courage would have had the same belief.

13 In deciding whether the Defendant actually
14 was, or believed he was, in imminent danger of death or
15 serious bodily injury, you should consider all the facts
16 and circumstances then and there existing, including
17 the physical condition and the characteristics of the
18 Defendant and the victim.

19 Now, ladies and gentlemen, the Defendant
20 does not have to show that he was actually in danger.
21 It is enough if the Defendant believed he was in
22 imminent danger, and a reasonably prudent person of
23 ordinary firmness and courage would have had the same
24 belief. A Defendant has the right to act on
25 appearances, even though the Defendant's beliefs may

1 have been mistaken.

2 It is for you to decide whether the
3 Defendant's fear of imminent danger of death or serious
4 bodily injury was reasonable, and would have been felt
5 by an ordinary person in the same situation. Evidence
6 of prior difficulties between the Defendant and the
7 victim may be considered in deciding whether a threat
8 existed, whether the Defendant had a reason to believe
9 a threat existed, and how serious that threat was.

10 The reputation of the victim as a violent
11 person may be considered in deciding whether there was
12 a need for force, whether the Defendant had reason to
13 believe there was a need for force, and whether deadly
14 force was reasonably necessary.

15 And prior instances of violence by the
16 victim may be considered in deciding whether a Defendant
17 actually believed he was in imminent danger of death
18 or serious bodily injury, or was actually in imminent
19 danger. Threats made by the victim may be considered
20 in determining whether a Defendant was, or believed
21 he was in imminent danger.

22 Now, the last element of self-defense is
23 that the Defendant had no other probable way to avoid
24 the danger of death or serious bodily injury than to
25 act as the Defendant did in this particular instance.

1 A person cannot be required to make an exact calculation
2 as to the degree or amount of force which may be needed
3 to avoid death or serious bodily harm.

4 Therefore, in self-defense, the Defendant
5 has the right to use the force needed to avoid death
6 or serious bodily harm. The force used in self-defense
7 does not have to be limited to the degree or amount of
8 force used by the victim. The Defendant has the right
9 to use so much force as appeared to be necessary for
10 complete self-protection, in which a person of ordinary
11 reason and firmness would have believed to be needed
12 to prevent death or serious bodily harm.

13 And if the Defendant is justified in
14 defending himself in firing the first shot, then the
15 Defendant is also justified in continuing to shoot until
16 it is apparent that the danger of death or serious
17 bodily injury has completely ended.

18 Now, ladies and gentlemen, a Defendant has
19 no duty to retreat if by doing so the danger of being
20 killed or suffering serious bodily injury would
21 increase. Ladies and gentlemen, the State has the
22 burden of disproving self-defense by proof beyond
23 a reasonable doubt.

24 Now, ladies and gentlemen, I want to go
25 over the verdict form with you. There are two things

1 that I want you to keep in mind. Firstly, your verdict
2 must be unanimous. Majority doesn't rule; no one of you
3 rules. This verdict must be the verdict of each and
4 every one of you.

5 Secondly, ladies and gentlemen, for the
6 indicted offense of murder and the lesser included
7 offense, on the verdict form I have listed the two
8 possible verdicts. There's no hidden meaning in which
9 the order of these possible verdicts have been placed on
10 paper, and you should not take there to be any comment,
11 intimation or hint as to what ought to be your verdict.

12 Ladies and gentlemen, it is just reality.
13 If you're going to put two things on a piece of paper,
14 one's got to be first, and the other has got to be
15 second. So please don't take any hidden meaning in
16 which the order of the possible verdicts have been
17 placed on paper. I think -- can you all see?
18 Obviously, this is going to be with you in your jury
19 room.

20 Ladies and gentlemen, the top part is just
21 the caption. It's the title of the case, and then there
22 are instructions. It says circle the appropriate
23 verdict below and follow the accompanying instructions
24 carefully. And number one says, as to the charge of
25 murder, we, the jury, unanimously find the Defendant,

1 and there are two possible verdicts. One is guilty,
2 and the other is not guilty. Irrespective of what is
3 the unanimous verdict of this jury, I need you to circle
4 it. It needs to be very clear.

5 Now in the event that you do not believe
6 that the State has met its burden of proof of beyond
7 a reasonable doubt for the offense of murder, then you
8 consider the lesser included offense of voluntary
9 manslaughter, and you would consider voluntary
10 manslaughter.

11 And number two states, as to the lesser
12 included charge of voluntary manslaughter, we, the jury,
13 unanimously find the Defendant, and then again you would
14 consider the possible verdicts of guilty or not guilty.
15 And whichever is found to be -- if you reach this point,
16 whichever is found to be the unanimous verdict of the
17 jury, you would simply circle that so it's very clear
18 which is the unanimous verdict of this jury. And then
19 stop and end your deliberations. And when you have
20 completed your deliberations, you will sign the verdict
21 form as the presiding juror. And you will date the
22 verdict form, and today is Thursday, January the 9th.
23 You will date it.

24 Now, ladies and gentlemen, obviously,
25 if you find with regards to number one, if you find

1 the Defendant -- unanimously, you find the Defendant
2 guilty, obviously, you do not consider number two,
3 which is voluntary manslaughter. You would simply
4 sign at that point and date the verdict form.

5 Now, ladies and gentlemen, in just a moment,
6 I'm going to ask you to step to your jury room with this
7 instruction. Do not discuss this matter, or allow
8 anyone to discuss it with you. And I am going to tell
9 you what is going to go on because in all right, based
10 on what I've told you, you ought to be expecting now
11 that I'm going to tell you to begin your deliberations.
12 So, I'm going to tell you exactly what is going to
13 happen.

14 When you step back to your jury room on
15 this next occasion, I'm going to ask these lawyers two
16 questions. Have I given this jury all the law that they
17 may need for their deliberations, and have I stated it
18 for them correctly? Ladies and gentlemen, these lawyers
19 will then help me know if I've left something out that
20 you may need.

21 So in the event that I need to bring
22 you back out because I have failed to give you an
23 instruction that you may need for your deliberations,
24 I'm going to ask you right now, please don't consider
25 that instruction with any emphasis. Just know I have

1 to give you all the law that you might need.

2 Now in the event that I have made an error,
3 these lawyers will help me know that. And in the event
4 that I need to bring you back out because I have made
5 a mistake, I'm going to ask you in advance, please allow
6 me to correct my error in your minds because, you see,
7 this is my one chance to get this right, to give you
8 all of the law that you may need for your deliberations,
9 and to state it for you correctly.

10 Now, ladies and gentlemen, in the event that
11 I do not need to bring you back out, you will be brought
12 the exhibits, which have been admitted into evidence,
13 the verdict form, and an instruction to begin your
14 deliberations.

15 And, ladies and gentlemen, we have been --
16 I've been doing this a long time with the folks here,
17 our clerks and our bailiffs, and let me share with you
18 that you may be the very first jury in 22 years that
19 they haven't said begin your deliberations. I don't
20 think you will be. But you will not have the verdict
21 form and the exhibits unless it's time to begin your
22 deliberations.

23 And let me say to you that all 12 of you
24 must be present to deliberate. So if you need to take
25 a comfort break, stop your deliberations, take your

1 comfort break, and then reconvene your deliberations
2 when all 12 of you are together again. That really
3 does make sense if you think about it because you need
4 to have everybody hear all of the discussion. You don't
5 need one juror to miss something because that might be
6 the thing. That's the reason that we instruct jurors
7 to all be together when they deliberate.

8 Now, ladies and gentlemen, let me talk to
9 you about your notes. When you step back to your jury
10 room, I am going to ask you to leave your notes in your
11 seats. When the time for you to deliberate has begun,
12 you're going to be brought those notes. Your notes are
13 for -- what was the James Bond movie -- your eyes only.
14 Those notes are not to be shared, but they are for you,
15 to allow you to refresh your recollection to assist you
16 in your deliberations. So please keep that in mind as
17 well.

18 Ladies and gentlemen, at this time,
19 I'm going to ask you to please step to your jury room,
20 remembering do not discuss this matter, or allow anyone
21 to discuss it with you. And leave your notepads in your
22 seat.

23 (Jury exits the courtroom at 12:30 p.m.)

24 THE COURT: Exceptions? Additions?

25 MR. SPEARS: None, Your Honor.

1 MR. CHISHOLM: None, Your Honor.

2 THE COURT: All right. If you all would do
3 this for me. Please look at the verdict form, and
4 please look at each of the exhibits that's going back to
5 the jury. Be sure that what is going back to them is
6 what is supposed to go back to them. And what are we
7 going to do about allowing them the ability to play the
8 disc?

9 MR. SPEARS: Yes, Your Honor, we have the
10 same laptop from the last time.

11 THE COURT: All right. Now you all want to
12 look at my laptop?

13 MR. CHISHOLM: Is this the clean version
14 that we got? I haven't seen it yet.

15 MR. SPEARS: Yeah.

16 THE COURT: And if you want to look at it
17 and make sure it's wiped, please feel free.

18 (Recess taken.)

19 (Back on the record.)

20 (Jury enters the courtroom at 1:48 p.m.)

21 THE COURT: All right. Now, here's what I'm
22 going to do. I'm going to charge you the elements of
23 murder and then voluntary manslaughter because that's
24 what I understand the request is. So murder first, and
25 then the lesser included offense of voluntary

1 manslaughter.

2 I want to give you an overview though
3 because voluntary manslaughter is a lesser included
4 offense of murder by virtue of what's called the common
5 law. The elements are different. But by the common
6 law, voluntary manslaughter is a lesser included offense
7 of murder. Now, first, I'm going to define murder, and
8 then voluntary manslaughter.

9 Ladies and gentlemen, the State must prove
10 beyond a reasonable doubt that the Defendant killed
11 another person with malice aforethought. That is the
12 definition. Malice is hatred, ill will or hostility
13 towards another person. It is the intentional doing of
14 a wrongful act without just cause or excuse, and with
15 the intent to inflict an injury or under circumstances
16 that the law will infer an evil intent.

17 Malice aforethought, the defined really
18 aforethought, does not require that malice exists for
19 any particular time before the act is committed. But
20 malice must exist in the mind of the Defendant just
21 before and at the time that the act is committed.
22 Therefore, in order for there to be malice aforethought,
23 there must be a combination of the previous evil intent
24 and the act.

25 Malice aforethought may be expressed or

1 inferred. These terms, expressed or inferred, do not
2 mean different kinds of malice, but merely the manner in
3 which malice may be shown to exist.

4 We talked about direct evidence and
5 circumstantial evidence. Direct evidence is the
6 evidence, like, and eyewitness, as opposed to
7 circumstantial evidence, which is by inference.

8 Malice aforethought may be expressed or
9 inferred. These terms, expressed and inferred, do not
10 mean different kinds of malice, but merely the manner in
11 which malice may be shown to exist. That is either by
12 direct evidence or by inference from the facts and
13 circumstances which are proved.

14 Murder. If you find that the State has
15 failed to prove beyond a reasonable doubt that the
16 Defendant committed murder, you may consider whether the
17 State has proved beyond a reasonable doubt that the
18 Defendant committed voluntary manslaughter.

19 To prove voluntary manslaughter, the State
20 must prove beyond a reasonable doubt that the Defendant
21 took the life of another in the sudden heat of passion
22 based upon sufficient legal provocation. Both heat of
23 past and sufficient legal provocation must be present at
24 the time of the killing to constitute voluntary
25 manslaughter.

1 Voluntary manslaughter is defined as the
2 unlawful killing of another without malice, without
3 malice, expressed or inferred. In other words,
4 voluntary manslaughter does not have the element of
5 malice.

6 Now sudden heat of passion may, for a time,
7 affect a person's self-control and temporarily disturb
8 a person's reason. The sudden heat of passion must be
9 the type that would make an ordinary person unable to
10 coolly reflect on his or her actions, and would produce
11 an uncontrollable impulse to do violence.

12 Sufficient legal provocation must be the
13 type that would make a person of ordinary reason and
14 caution become enraged and to lose control temporarily.
15 The provocation needed for voluntary manslaughter must
16 come from some act of, or related to the victim.

17 Words alone, however vulgar or insulting are
18 not enough to be legal provocation. Where death is
19 caused by the use of a deadly weapon, the words must be
20 accompanied by some overt threatening act, which could
21 have produced the heat of passion.

22 The exercise of a legal right, no matter how
23 offensive it is to another, is never sufficient legal
24 provocation for voluntary manslaughter. If the heat of
25 passion had cooled, or if there was enough time between

1 the provocation, if any, and the killing for the passion
2 of a reasonable person to cool, the killing would not be
3 voluntary manslaughter.

4 In deciding whether a reasonable person
5 would have had enough time to cool off, you should
6 consider all the circumstances surrounding the killing.
7 You may consider the nature of the provocation, if any,
8 the Defendant's mental and physical state, and the
9 circumstances and relationships between the parties.

10 Ladies and gentlemen, I have defined for you
11 murder and voluntary manslaughter. If you need any
12 additional instruction, you need only let me know. If
13 you'll please step to your jury room and continue your
14 deliberations.

15 (Jury exits the courtroom at 1:57 p.m.)

16 THE COURT: All right. Exceptions?
17 Additions?

18 MR. SPEARS: None, Your Honor.

19 MR. CHISHOLM: None, Your Honor.

20 THE COURT: We will continue to recess
21 in your case until we hear from the jury.

22 MR. SPEARS: Thank you, Your Honor.

23 (Recess taken.)

24 (Back on the record.)

25 THE COURT: All right. It's my

1 understanding that the jury has reached its verdict.
2 Anything before we bring the jury out from the State?

3 MR. SPEARS: Nothing, Your Honor.

4 THE COURT: All right.

5 MR. CHISHOLM: Nothing, Your Honor.

6 THE COURT: Very well. Let's have the jury.

7 (Jury enters the courtroom at 2:35 p.m.)

8 THE COURT: All right. It is my
9 understanding that the jury has reached its verdict;
10 is that correct?

11 THE FOREPERSON: Yes, ma'am.

12 THE COURT: All right. Yes, ma'am,
13 if you will publish the verdict.

14 THE CLERK: The state of South Carolina
15 versus Keunte Cobbs, indictment number 2016-GS-18-1267,
16 as to the charge of murder, we, the jury, unanimously
17 find the Defendant not guilty. As to the lesser
18 included offense of voluntary manslaughter, we,
19 the jury, unanimously find the Defendant guilty.
20 Signed by presiding juror, Mr. Forsyth, January 9, 2020.

21 THE COURT: I think it was Mr. Washington.
22 That's okay. All right. Very well. Ladies and
23 gentlemen, if this was your verdict in your jury room,
24 and it continues to be your verdict here in the
25 courtroom, if you would please indicate by raising

1 your right hand. Let me observe for our record.
2 All of our jurors have their hands raised. Thank you
3 so much. Anything from the State before we dismiss
4 our jury?

5 MR. SPEARS: Nothing, Your Honor.

6 THE COURT: And from the defense?

7 MR. CHISHOLM: No, Your Honor.

8 THE COURT: Very well. Ladies and
9 gentlemen, I want to thank you for your service on this
10 jury. I can promise you that your service on this jury
11 has been absolutely essential to our system of justice.
12 And I'm so very, very grateful for your time. We have
13 one additional matter that we are about to try, but I
14 do believe we have sufficient jurors -- I think we have
15 sufficient jurors to select our jury for that trial,
16 and so, I'm about to dismiss you for the balance of the
17 week.

18 Now, I do need to give you some
19 instructions. Remember, I promised you that we would
20 talk about your ability to discuss this matter.

21 Ladies and gentlemen, you are now at liberty
22 to discuss this case, if you wish. If you want to talk
23 about it, that is perfectly fine. If you do not want
24 to talk about it, that is perfectly fine. The practice
25 of law is an art and not a science. Sometimes,

1 particularly young lawyers, want to know what was
2 helpful, what could they improve, and you all are kind
3 of the best folks to ask that question of. And if they
4 call you, and you want to talk about it, it's fine.
5 If you don't, just tell them. They're not going to
6 persist.

7 Now, I am in the process of doing a little
8 letter that you can take with you, so if you could not
9 go to work at night, be mad at me, not you. My law
10 clerk is working on that now, and so we'll prepare it,
11 and I'll be able to sign that. And you'll have that
12 with you.

13 And, in addition, if you'll go down to
14 the clerk's office, you'll have the normal, you know,
15 whatever it is, the sheet that they give in the clerk's
16 office that says you served on jury duty. Probably
17 would be good for you to have both, but you're certainly
18 going to get a letter from me in just a few moments.

19 Ladies and gentlemen, I used to tell folks
20 that the check was in the mail. And then Ms. Graham
21 said, don't tell them that. It's not in the mail.
22 Stop. The check for your jury service is not in the
23 mail, but it will be shortly. And that's because of
24 our case management system. But our big trip to Tahiti,
25 it will get you to Jetburg. It is a very small --

1 obviously, it's a small token of all that you have given
2 to our system of justice, our way of life, and that is,
3 of course, your dear and precious time. And for each
4 and every tick of the clock, I want you to know how
5 grateful we all are. And I thank you on behalf of all
6 of us.

7 Now, ladies and gentlemen, at this time,
8 you are, of course, free to go. Sometimes jurors want
9 to know if they can remain for sentencing. I'm going
10 to proceed to sentencing. Completely up to you if you
11 wish to remain or if you wish to go. If you wish to
12 remain, you're fine where you are. If you wish to go
13 and exit, that is absolutely perfectly fine. And just
14 know that you take lots of thank you, lots of gratitude
15 from all of us to you for all of your dear and precious
16 time that you've given. Thank you again so very much.
17 Okay. Now motions.

18 MR. SPEARS: None from the State,
19 Your Honor.

20 THE COURT: All right.

21 MR. CHISHOLM: No, Your Honor.

22 THE COURT: Very well. Your sentencing
23 sheet.

24 MR. SPEARS: Yes, Your Honor.

25 THE COURT: All right, Mr. Spears, I need

1 to hear about any record that Mr. Cobbs has. And then,
2 of course, I am happy to hear from the victim's family
3 members.

4 MR. SPEARS: Yes, Your Honor. He has a 2000
5 possession of a stolen vehicle, along with a hit-and-run
6 with property damage. And in 2003, there was a driving
7 under suspension. In 2004, malicious injury to personal
8 property, and an assault and battery of a high and
9 aggravated nature from 2006.

10 Your Honor, there is a 2008 failure to stop
11 for a blue light, and a 2018 assault and battery of
12 a high and aggravated nature, which also stem from this
13 trial. And I believe Ms. Cobb, without an S, who is
14 Brannon Mack's mother, does wish to speak.

15 THE COURT: I am delighted to hear from her.

16 (Pause.)

17 THE COURT: All I need you to do is identify
18 yourself for our record, and I am listening to you.

19 MS. COBB: I am Michelle Cobb, Brannon's
20 mother -- Brannon Mack's mother. And, of course, I felt
21 that I am not agreeing with the charge. But because
22 of that -- my reason for that is because my son was
23 murdered. And nine bullets, nine shots, that's malice.

24 He's not coming back. Of course, I want
25 him to get the maximum charge of the manslaughter charge

1 because his kids, his family, can come visit him.
2 I have to go to the grave to visit my son. He was
3 only 22, and there's nothing in life that warrants that.
4 And taken temporaries -- you know, temporary actions
5 and making them permanent is not, you know, is not --
6 it's inhumane.

7 And, I mean, it's a good thing I'm not God.
8 And I'm glad I'm not because it's a huge responsibility
9 because we can get in the flesh because we are -- we
10 have feelings and emotions. But I clearly say that the
11 Defendant, Mr. Cobbs, throughout this whole time did not
12 show any type of remorse. He didn't seem remorseful at
13 any time for what he did to my son. And I really beg
14 you, and this Court, to please when you give your
15 sentence and your ruling, please the maximum, please.

16 THE COURT: Thank you for being here.

17 MS. COBB: Thank you.

18 THE COURT: I know that you have been here
19 throughout.

20 MS. COBB: Yes.

21 THE COURT: I know how difficult that has
22 been.

23 MS. COBB: It has been because you're
24 reliving it.

25 THE COURT: I know.

1 MS. COBB: It was tough the first time,
2 but this was, you know, even harder.

3 THE COURT: I know. I know.

4 MS. COBB: But, I mean, you've been fair.
5 You've shown that, and I appreciate it. I really do.

6 THE COURT: It's tough.

7 MS. COBB: It is tough.

8 THE COURT: And very difficult for you,
9 I know. And these people who are with you, are these
10 your family members?

11 MS. COBB: Yes. This is my fiance, Anthony,
12 and my cousin, Kelvin.

13 MR. SPEARS: And, Your Honor, I believe
14 Kelvin also wants to speak when the time is appropriate.

15 THE COURT: It's appropriate. And are you
16 ready for Kelvin to speak?

17 MS. COBB: My fiance wants to say something.

18 THE COURT: He wants to say something.

19 UNIDENTIFIED SPEAKER: Yes, Your Honor.
20 My name is Anthony. I just want to address that it's
21 been pretty rough for my fiance. Just to say that the
22 aftermath of seeing her struggling and trying to get her
23 life going, it's pretty hectic.

24 We've stayed together as a family, support
25 one another. I actually don't know this young man right

1 here, and I'm pretty sure he has kids and has family,
2 too. So to actually go through this and all this,
3 I just want the fairness done on my part of the family.
4 That's all I got to say.

5 THE COURT: Well, I'm delighted that she
6 has you to lean on.

7 UNIDENTIFIED SPEAKER: Thank you.

8 THE COURT: Yes, sir.

9 MR. WILLIAMS: My name is Kelvin Williams.
10 I'm Brannon's first cousin. And on behalf of my auntie
11 and my cousin, you know, we will live the rest of our
12 lives through Brannon's memories. And it's just an
13 unfortunate thing that we had to witness here in court.
14 But, nevertheless, you know, God will see us through
15 our pain, and see us through the memories that Brannon
16 has -- that we have for Brannon.

17 THE COURT: Well, you know, you rely so
18 much on family. I'm just delighted that you are here
19 because, you know, you can lean on each other moving
20 forward. And I know that you will be a great source
21 of comfort for Brannon's mom. So, I'm delighted that
22 you're here today. I'm so grateful that you'll be there
23 for her in the future.

24 MR. WILLIAMS: Yes, we will.

25 THE COURT: All right. Thank you so much.

1 MS. COBB: Thank you.

2 THE COURT: Mr. Chisholm.

3 MR. CHISHOLM: Thank you, Your Honor.

4 May it please the Court.

5 THE COURT: Yes, sir.

6 MR. CHISHOLM: You heard from the stand
7 Mr. Cobbs' biographical information. You have a lot
8 more information than you normally do in a setting
9 like this. He does have children, and his daughter
10 is present. He's got several friends and loved ones
11 here on his right, the third and fourth rows.

12 And you also heard the companion charge in
13 this case. He's currently serving an 18-year sentence,
14 Broad River up in Columbia. And he's been incarcerated
15 since June 27th, I believe, of 2016.

16 Obviously, I would ask the Court to give
17 him any consideration that you feel that you can.
18 I'm not going to argue with the verdict of the jury.
19 But I'll just add I don't feel it was a frivolous
20 defense that we put up. And I do have a couple of
21 family members that would like to speak.

22 THE COURT: Certainly. Happy to hear from
23 them.

24 MS. ROBINSON: Hi.

25 THE COURT: I just need you to identify

1 yourself for our record.

2 MS. ROBINSON: Angela [ph.] Robinson.

3 THE COURT: Yes, ma'am.

4 MS. ROBINSON: And under, you know,
5 bad circumstances -- I still love him.

6 THE COURT: Of course.

7 MS. ROBINSON: He is a great aspect to our
8 family. And because of what happened -- my condolences
9 goes out to his family. But it's, like, we can't forget
10 both sides. Nobody won. We're losing our family
11 member, and they lost a family member.

12 We still have to -- I mean, your sentence,
13 I wish you will be compassionate to us because we still
14 love him. He's very -- it's just that y'all seen this
15 side. This is not him. And the record that they read,
16 he changed from that. So that should not be held
17 accountable for what he did when he was younger.
18 He's grown up. He's matured, you know. So, I'd just
19 like to ---

20 THE COURT: Thank you.

21 MS. ROBINSON: You're welcome.

22 THE COURT: Thank you so much.

23 MR. COBBS: Hi. I'm his uncle.

24 THE COURT: And your name?

25 MR. COBBS: Robert Cobbs.

1 THE COURT: Yes, sir, Mr. Cobbs.

2 MR. COBBS: He has never given me no problem
3 in the younger days. I mean, kids are going to be kids;
4 boys are going to be boys. But he has never given me
5 no problem like this. My condolences to the family,
6 too. And I appreciate if you can be lenient on him --
7 on this sentence because that's not him. I just don't
8 feel it in my heart and my soul. I could feel it,
9 it's not him.

10 THE COURT: Thank you so much.

11 MR. COBBS: All right, thank you.

12 THE COURT: Thank you, Mr. Cobbs.

13 MR. CHISHOLM: And I believe Mr. Cobbs
14 would also like to address Your Honor.

15 THE COURT: Absolutely. Happy to hear from
16 Mr. Cobbs. Yes, sir.

17 THE DEFENDANT: How is everybody doing?
18 I just wanted to say, basically, I am very remorseful
19 because I was raised better than what I displayed.
20 And I never intended or wanted to hurt anybody ever
21 in my life.

22 But at that moment, you know, I know for
23 a lot of people it will never happen, and I can't really
24 explain it because everything happened so fast. I want
25 to apologize to that lady because I never felt in my

1 heart, even as a child, a parent should have to bury
2 their child because I've got kids of my own. And I
3 can't see how that lady feels. I can't tell how she
4 feel because I've never experienced it. But I only
5 can imagine because I get upset if my daughter gets
6 a scratch on her or something, or falls when she was
7 a child or whatever. She goes through something,
8 I feel it.

9 So, I can't imagine what she's going
10 through. But I want her to know that it's only human
11 nature to feel remorse for something that you know
12 that you did wrong. But, again, it's, like -- I realize
13 it now. But at that time I didn't, you know -- I don't
14 live like that, you know what I'm saying. I wish the
15 best for the family.

16 I hope she's able to overcome it.
17 And I know if she believes in God, like she says she do,
18 hopefully, one day, you know, if she ever wants to reach
19 out to me, we can sit and talk and have a conversation
20 because the crazy part about it is I knew her son for
21 the little couple of years. But you build a
22 relationship with people, and they got a lot of values
23 in them that remind you of you when you were younger,
24 so you take a liking. And I started to, you know,
25 take a liking to them at one point in time.

1 So, you know, like, I really wanted the best
2 for her son as well as Mr. Spells, you know, all of the
3 little kids in the neighborhood. That's why I do a lot
4 with the community and stuff like that, just to stay
5 and prevent stuff like this from happening.

6 Just at the time, like I said, I didn't know
7 what to do. And I don't want her to think that I just
8 go around, you know, do stuff like this because that's
9 not who I am, you know. I just wish that I had a chance
10 to meet her before any of this. We could have sat down
11 and have a conversation, and then she would understand
12 a lot better who I am as a person, you know. It's just
13 bad luck.

14 But, hopefully, God will fix everything.
15 I know he will. So, I'm going to leave it in his hands,
16 but I really apologize to the family. I want to
17 apologize for basically wasting your time. God bless
18 everybody.

19 THE COURT: Thank you. Anything further
20 from anyone?

21 MR. SPEARS: Nothing, Your Honor.

22 MR. CHISHOLM: No, Your Honor.

23 THE COURT: All right. Mr. Cobbs, I'm going
24 to commit you to the state department of corrections for
25 a period of 30 years. This sentence can run concurrent

1 with the one you're currently serving, and you're given
2 credit for the time that you have served. Good luck
3 to you, sir.

4 MR. SPEARS: Thank you, Your Honor.

5 MR. CHISHOLM: Thank you, Your Honor.

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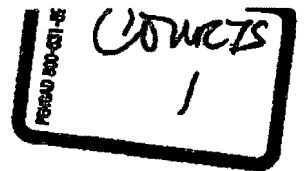
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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) THE FIRST JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) Warrant/Indictment Nos.:
2016a1810300321; 2016a1810300547;
2016a1810300548; 2016a1810300549
Plaintiff,)
V.)
KEUNTE DONTRELL COBBS,) MOTION FOR DISMISSAL
Defendant.)

Comes now the The Defendant, Keunte Cobbs by and through his attorney, Ash Chisholm, on a motion to dismiss the above-listed indictments for Possession of a Sawed-off Shotgun, Murder, Attempted Murder and Possession of a Weapon During the Commission of a Violent Crime due to a violation of Defendant's right to a speedy trial.

In State v. Hunsberger, our Supreme Court reiterated that Defendants are entitled to a speedy and public trial. State v. Hunsberger, 418 S.C. 335 at 342 (2016) (citing U.S. Const amend. VI and S.C. Const. art. I § 14). The court was clear that the remedy for a speedy trial violation is dismissal of the charges. Id. at 342.

Hunsberger states "to trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively

prejudicial" delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with ordinary promptness." *Hunsberger*, 418 S.C. at 342, 343. It was held in *State v. Langford* that a twenty-three month delay was presumptively prejudicial. *State v. Langford*, 400 S.C. 421 at 442-443 (2012).

Hunsberger instructs that upon a finding of presumptive prejudice, a court must look to the following factors to determine whether a Defendant's right to a speedy trial has been denied: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused. *Hunsberger*, 418 S.C. at 343.

In this case, Defendant was arrested June 27, 2016 and charged with Murder, Attempted Murder and Possession of a Weapon During a Violent Crime. Defendant was subsequently served an outstanding warrant for Possession of a Sawed-off Shotgun on June 28, 2016. Defendant has remained in custody since June 27, 2016, a period of over twenty-five months (787 days as of August 20, 2018.)

Defense counsel was appointed on June 12, 2017. Defendant has not requested a continuance in this case at any point of his incarceration.

A speedy trial motion was heard by the Honorable Judge Maite Murphy on December 14, 2017. Judge Murphy's order stated that the motion for a speedy trial was granted and that if the trial wasn't

scheduled during the week of January 16, 2018, bond would be revisited (see: enclosed order.) This case was not called to trial during the week of January 16, 2018 and on January 19, 2018, the Honorable Judge Maite Murphy granted Defendant a \$400,000 surety bond (see: enclosed.) Defendant has remained unable to secure his release with this bond.

On June 18, 2018, the Honorable Judge Maite Murphy heard a Defense motion to grant a personal recognizance bond pursuant to S.C. Code §17-23-90 and a renewal of Defense motion for a speedy trial. These motions were denied.

Defendant argues that he has asserted his right to a speedy trial, that he has not caused any delays in his case and that his twenty-five month delay prior to trial is presumptively prejudicial and he is entitled to above-requested relief.

Respectfully submitted,



Ash D. Chisholm
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ATTORNEY FOR DEFENDANT

Summerville, South Carolina
This 20th day of August, 2018.

STATE OF SOUTH CAROLINA

GENERAL SESSIONS COURT

COUNTY OF DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)

vs.)

KEUNTE D. COBBS,)

Defendant.)

Transcript of Record
2016-GS-18-01268

June 18, 2018

DEFENDANT'S MOTION TO AMEND BOND

B E F O R E:

The Honorable Maite Murphy, Presiding Judge

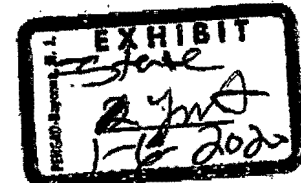
A P P E A R A N C E S:

Michael E. Spears, Esq.
Attorney for the Plaintiff

Ashley Chisholm, Esq.
Attorney for the Defendant

Court Reporter: Hilda Jordan

Transcribed by: Bobbi Fisher, RPR, CET



I N D E X

PAGE

Motion

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E X H I B I T S

(None.)

P R O C E E D I N G S

(Whereupon, the following proceeding commenced:)

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

THE COURT: Yes, sir.

MR. SPEARS: Judge, standing before you is Keunte Cobbs. He is represented by Mr. Chisholm. He is present under four separate indictments: 2016-GS-18-1266, charging him with possession of a sawed-off shotgun; 1267, for murder; 1268 for attempted murder; and 1269 for possession of a weapon during the commission of a violent crime.

Judge, this is a motion by the defense to amend the bond. Briefly, some factual background on this case, these events occurred on June 5th. The State is alleging that defendant, in an IHOP within Dorchester County, actually shot a Mr. Brandon Mack and a Mr. Bradford Spells (ph). Mr. Mack later died of his injuries. He was hit with approximately seven to nine rounds from a gun. Mr. Spells received two rounds to him. He survived his injuries.

This event stemmed from the possibility of the defendant being robbed of a certain amount of money by one of the two victims, allegedly. Since then, the defendant was arrested on June 27th, 2016. He didn't retain counsel, Mr. Chisholm, until June 14th, 2017.

Judge, earlier, at the end of 2017, in December, this case was before Your Honor when Mr. Glen Justice was

1 prosecuting the matter in regards to a speedy trial motion by
2 the defense. Your Honor, the order that was in the clerk's
3 file states that, if the case was not tried during the week of
4 January 16, then he shall receive a bond. The wording on it
5 is about the defendant's motion for a speedy trial is granted,
6 but the order later states that, if it's not tried, then he
7 can revisit the bond situation.

8 That case was not tried in January, and on January 19th,
9 the following order states that he was to receive a \$400,000
10 surety bond for the charges against him. Following that,
11 Judge, Mr. Justice no longer works at our office. The case
12 has come to me. I have been in contact with Mr. Chisholm
13 about my further investigation in this case. The victim's
14 family is present today.

15 Judge, the State fully intends -- and has expressed this
16 to everyone -- fully intends to try this case in August,
17 whether it's the 20th or the 27th. I believe those are the
18 two terms we have in August. I can double-check to make sure
19 that I have got those, but either of the terms in August is
20 when the State intends to call this for trial. We would
21 consent to anything. We, obviously, don't have to consent to
22 an order from the judge, but that's what we intend to do.

23 Because of that, we would request that the defendant's
24 bond remain the same. He's only just now at the end of the
25 six months from when he received the bond, and in two months,

1 the case is going to be called. Due to the nature of these
2 charges and the danger to the community and letting him out
3 for a simple two months before going to trial on attempted
4 murder and murder, I would argue the potential for a risk of
5 flight because of that.

6 The victim's family of Mr. Mack, the deceased victim,
7 she -- his mom is present in the courtroom today and would
8 like to address the Court at the appropriate time.

9 THE COURT: Yes, sir.

10 MR. SPEARS: Other than that, Your Honor, that would be
11 the State's argument against the motion.

12 THE COURT: Mr. Chisholm?

13 MR. CHISHOLM: Thank you, Your Honor. May it please the
14 Court, Did you want to hear from Mrs. Mack first or do you
15 want me to go ahead?

16 THE COURT: You can go ahead and then I'll hear her.

17 MR. CHISHOLM: Okay. Thank you, Your Honor. And we came
18 last week -- I believe it was last Wednesday and went before
19 Judge Goodstein, and it was basically a motion to remove my
20 speedy trial motion as well as reduce bond. And the order
21 that the Solicitor referenced from December, it's worded that
22 the speedy trial motion was granted.

23 But, at any rate, in reading through the State vs.
24 Hunsberger case, which is 418 S.C. 335, it's become an issue,
25 especially in this case, it mentions that, when the defendant

1 asserts a right to a speedy trial, when it's renewed. It was
2 an issue in that case. So just to be safe, I wanted to have
3 on that on the record that I am renewing that motion.

4 Mr. Cobbs is 36 years old; He is single. He has two
5 children. He's a high school graduate. He's taken business
6 classes at Trident Tech. He's worked as a club promotor.
7 He's a painter. He's done flooring work. He's from the area.
8 And our position would be that he's not a flight risk and he's
9 not a danger to the community. He has been in since June 27
10 of 2016, so he is right at almost exactly two years at this
11 point he's been waiting for his trial.

12 It's an interesting case in that there's a shooting in an
13 IHOP. There's video that catches some of the scene but not
14 all of it. And particularly, since it's in a restroom, you
15 don't have a video that shows exactly what happened. There's
16 no forensic evidence that links Mr. Cobbs to the case. The
17 victims in this case were asked at the hospital if they knew
18 who shot them. They said they did not. And I think we can
19 provide, you know, proof that they actually do know Mr. Cobbs.

20 When I was here before, when I asked for a bond before, a
21 \$400,000 bond was granted in January, and since then, in
22 reading this Hunsberger case, I have come across a statute
23 which I believe would apply here. And I have provided a copy
24 to Your Honor, and I believe to the Solicitor as well, which
25 is S.C. Code 17-23-90. And this is a statute that's

1 referenced in the Hunsberger case, is kind of how it was
2 brought to my attention. And the latter portion of which
3 states, "If any persons committed as aforesaid upon his prayer
4 of petition in open court the first week of the term to be
5 brought to his trial, shall not be indicted and tried the
6 second term after his commitment or, on his trial, shall be
7 acquitted. He shall be discharged from his imprisonment."

8 And the way they read that, Your Honor, is that, if you
9 enter a request for a speedy trial, as Mr. Cobbs has done here
10 back in December, if the case has not been tried to terms from
11 that point, then he should be discharged from the jail. It's
12 been more than two terms. It's been six or seven months at
13 this point since he made that request.

14 And, Your Honor, I believe I have a copy of the
15 Hunsberger case that I could pass up if you'd like and made
16 reference to it.

17 THE COURT: I think I have a copy.

18 MR. CHISHOLM: You have a copy?

19 In my copy, it looks like, on page, I guess, 358, this is
20 actually in the dissent of that case under Section C, the
21 accused's assertion of the right to a speedy trial.

22 THE COURT: Where are you reading that?

23 MR. CHISHOLM: This is -- it says page 358. It's under
24 Section C, "Accused assertion of the right to a speedy trial
25 in the dissent." Yes, ma'am.

1 THE COURT: All right.

2 MR. CHISHOLM: Two or three sentences in, it says, in the
3 parenthetical here, that, in that case, there's a denial of a
4 speedy trial claim where this code section I'm referencing
5 provided for release if not indicted and tried within a
6 certain time frame, not dismissal of the charge.

7 Essentially, what's going on in, in prior cases, people
8 have argued that this is -- this would be a basis for a motion
9 to dismiss; that this 17-23-90 would provide an affidavit to
10 have the case dismissed.

11 And what it's saying in this case as well as in State v.
12 Campbell is that what this code does is it addresses whether
13 someone should be granted bail in this situation where they
14 have asserted their right to a speedy trial in a certain time
15 frame, which I believe would be two terms of court past if
16 their case has not been tried.

17 I think this case, along with the statute, makes it
18 pretty clear that bail should be granted according to the law.
19 I have got a copy of State v. Campbell, which I can pass up,
20 Your Honor, which is the case that's referenced in Hunsberger.
21 I figured there's a question as to what constitutes bail,
22 because he did receive the \$400,000 bond back in January. But
23 if you read this case, it's a pure (indiscernible) of opinion
24 from -- looks like 1982 at 277 S.C. 408, State v. Campbell.
25 If you read this, it basically lays out what that means. It

1 says the statute -- it's three paragraphs in, about halfway
2 through. It says the statutory reference to discharge is
3 interpreted as requiring the prisoner -- and then it's got
4 quotations -- be as unrestrained as if upon his trial he was
5 acquitted. And it says this phrase "merely in the case, the
6 prisoner should be released without bail, not discharged from
7 further prosecution," which is essentially what we're here
8 asking for today, Your Honor. I guess the equivalent would be
9 a personal recognizance bond per the statute.

10 MR. SPEARS: And, Your Honor, if I may.

11 THE COURT: Yes, sir.

12 MR. SPEARS: First and foremost, Judge, I mean, this has
13 been quoted in the dissent of Hunsberger. The finding case
14 law for Hunsberger would lead us to the potential for a --
15 addressing these factors that Hunsberger has set forth in
16 regards to a speedy trial if the State fails to try the case
17 at a certain amount of time. If Hunsberger is activated, then
18 the State is subject to these four points to determine
19 prejudice to the defense.

20 This Campbell case, it's quoting an indictment that is
21 based off of a case from, I believe, it said 1852 on the
22 back -- 1892. I don't think it would apply here. I don't
23 think that if a case is not indicted or tried by the second
24 term thereafter someone requests a speedy trial, in modern
25 standards, it's physically possible.

1 At this point in time, Judge, the State -- he has been
2 granted a bond due to the failure of the State to try him
3 within a certain amount of time determined by the judge. Even
4 though he hasn't been able to make that bond, he has been
5 granted one. At this point in time, the State is saying on
6 the record that we will be going forward on this case in
7 August. We are not displaying any sort of prejudice. It was
8 simply further an investigation of gathering witnesses,
9 finding information, getting further reports, particularly
10 witnesses that are involved in this case. There is a witness
11 in Florida that states the defendant actually admitted to her
12 what happened on that day.

13 Hunsberger itself tells us that gathering a witness or
14 trying to find a witness is a legitimate reason for a
15 continuance on trial. If Your Honor orders us for a date
16 certain in August, I just don't see how we -- any sort of
17 prejudice is enough, even under Hunsberger. I mean, we are at
18 the two-year mark right now. There are other cases on our
19 docket that we are attempting to try. Multiple ones,
20 actually. This is the sixth from the top.

21 I do not think that an old statute, based on an 1800
22 case, referenced in the dissent of a recent case, warrants a
23 PR bond in this situation when the State is willing to go
24 forward and ready, and there's no display of prejudice or any
25 sort of deliberate attempt to hamper the defense in regards to

1 the delay.

2 THE COURT: And I understand the victim wishes to be
3 heard.

4 MR. CHISHOLM: Yes, Your Honor.

5 And may I respond, Your Honor, at the appropriate time?

6 THE COURT: Yes. You can go ahead and respond.

7 MR. CHISHOLM: Thank you, Your Honor. I'm quoting the
8 State v. Hunsberger, you know, the dissent from that case, but
9 that's a case -- the majority is basically writing about the
10 denial of the right to a speedy trial. That is a motion I
11 anticipate making in the future, a motion to dismiss based on
12 this case. That's not what I'm doing here today.

13 In the dissent, the reason they're talking about that is
14 because the judge is saying that the Court -- the appellate
15 court rightfully rejected the right -- the dismissal based on
16 the speedy trial right, and they said they did the right thing
17 in that they granted a PR bond in that case to this guy in the
18 Hunsberger case.

19 So that's why it's in here. She's saying they shouldn't
20 have dismissed it. Here's what they should have done,
21 according to the statute, is what they did. They granted him
22 a personal recognizance bond.

23 You know, we're not at a point where we're getting to the
24 factors that are discussed in Hunsberger because that all goes
25 to the denial of a speedy trial. I'm simply bringing that up

1 because it references the statute. It's pretty on point with
2 what the statute should mean.

3 And I do have family members here or friends and family
4 of Mr. Cobbs that I neglected to mention would like to speak
5 at the appropriate time, Your Honor, and I assume we could go
6 forward.

7 THE COURT: Thank you, Mr. Spears.

8 Yes, ma'am.

9 MS. COBB: Good afternoon.

10 THE COURT: Tell me your name first.

11 MS. COBB: My name is Michele Cobb. I am the mother of
12 the victim, Brandon Mack. Your Honor, I have suffered a
13 tremendous loss. My son got murdered at the age of 22 years
14 old, and since his death, I suffer with anxiety. I have
15 countless sleepless nights. And the fact that the defense is
16 living within close proximity of my mom and myself and he is
17 aware of our address, I really don't feel safe. With him
18 being released would be -- I feel like I would be at risk for
19 my parents -- my family and myself would be at risk.

20 And I see nothing stopping him -- with the court being in
21 August -- anything stopping him from being a flight risk,
22 although his defense says that he's no -- he's not one. But
23 it's -- I understand he has children that are going through
24 different type of -- they suffer from a different type of
25 instances, and I understand that, but his children can come

1 visit him. My son is buried, and I'll never see him again.
2 He's not coming back.

3 So his release will cause me and my family, you know, a
4 huge -- a huge issue for our safety and him -- I just don't
5 feel that, with it being so close to the possible court
6 hearing, that it would be -- you know, there's nothing keeping
7 him from leaving. And, I mean, I'm sorry that what his
8 children are suffering and, you know, may God be with them. I
9 mean, bless their hearts; they didn't ask to be -- and they're
10 innocent in the matter.

11 But like I said, my son, he's never coming back, and it's
12 not -- my family is suffering is huge void. I mean, it's not
13 fair to us.

14 THE COURT: Thank you.

15 Anything further from your side?

16 MR. SPEARS: Judge, just briefly. The defendant's record
17 has a 2000 hit and run with property damage; a 2000 possession
18 of a stolen vehicle, less than 5,000; 2001, possession of
19 Schedule I or a cocaine first offense.

20 Judge -- and I have spoken with defense about this
21 previously. There is a 2002 watercraft operator/failure to
22 render aid with death that was timed served. It's an
23 unfamiliar charge for the State's side on that.

24 A 2004 malicious injury to personal property; a 2007
25 assault and battery of a high and aggravated nature; and a

1 2008 failure to stop for a blue light.

2 THE COURT: Any family wishing to speak?

3 MR. CHISHOLM: Yes, Your Honor. Mr. Cobbs' minister,
4 Melvina Robinson, would like to address the Court.

5 MS. ROBINSON: Hello. Melvina Robinson.

6 THE COURT: Yes, ma'am.

7 MS. ROBINSON: I want to speak on behalf of Keunte Cobbs.
8 I'm also a spiritual advisor with him, where they hang out at.
9 I know the victim's mom, and I also knew him. I always saw
10 goodness come from him. He always was a supporter for the
11 neighborhood kids. I would, like, always pray with them when
12 I saw them doing -- going towards the wrong way. So I feel
13 like he won't be a flight if he is released, so he can support
14 his daughter, who is going through also -- of her dad being in
15 here.

16 Like I say, my condolence go out to her. But I lived in
17 that neighborhood for seven years. I have seen things,
18 Prayed. I walked the neighborhood. He's a good kid. I have
19 known him almost over 20 years.

20 THE COURT: Thank you, ma'am.

21 MS. ROBINSON: Yes, you're welcome.

22 THE COURT: I'm certainly familiar with Mr. Cobbs' case
23 because I do recall him coming for the original motion in
24 which the Court did set the trial date for the week of January
25 16th of 2018. In that order, it says motion for a speedy

1 trial. The Court does get a lot of form orders and it was the
2 Court's intent to certainly to set the case for trial pursuant
3 to Langford and not pursuant to Hunsberger in any way that
4 dismissal should that case not be tried.

5 And I understand that the defense understands that.
6 That's certainly not the motion here before the Court today.
7 The defense has asserted its right to a speedy trial, and
8 based upon it not being done and taking effect on January
9 16th, 2018, I did set a bond on January 18th of '18.

10 I understand it's been six months, and considering all
11 the factors relevant to whether or not to set a bond, I
12 certainly understand your argument, Mr. Chisholm, and the
13 dissent, but in looking at the factors that it was -- mainly
14 the fact which I'm considering, certainly whether the delay
15 would prejudice the accused and the time of the delay and the
16 reason for the delay, I think it's important to still consider
17 those factors and whether or not he's a flight risk and/or a
18 danger to the community.

19 I did consider those things in setting the \$400,000 bond,
20 and your bond for me to reconsider or to now set a PR bond on
21 the matter on a case that will be tried in August.

22 MR. CHISHOLM: Yes, Your Honor.

23 THE COURT: Whatever the term of court is available in
24 August, your motion is respectfully denied.

25 MR. CHISHOLM: Thank you, Your Honor.

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: State vs. Keunte D. Cobbs

3 2016-GS-18-01268

4 DATE OF PROCEEDING: June 18, 2018

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; that said proceedings were transcribed
9 to the best of my ability from the audio recording and
10 supporting information; and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14
15 *Bobbi Fisher*

16
17 _____
18 Bobbi J. Fisher, RPR, CET

19 NCRA Registered Professional Reporter (RPR)

20 AAERT Certified Electronic Transcriber No. CET-1148

21 Prepared: November 6, 2019

22

23

24

25

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 PETERS46

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, cosrrect?

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?

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

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

Weight:
Length:
Temp:
Hair:
Color:
Scalp hair:
Facial hair:

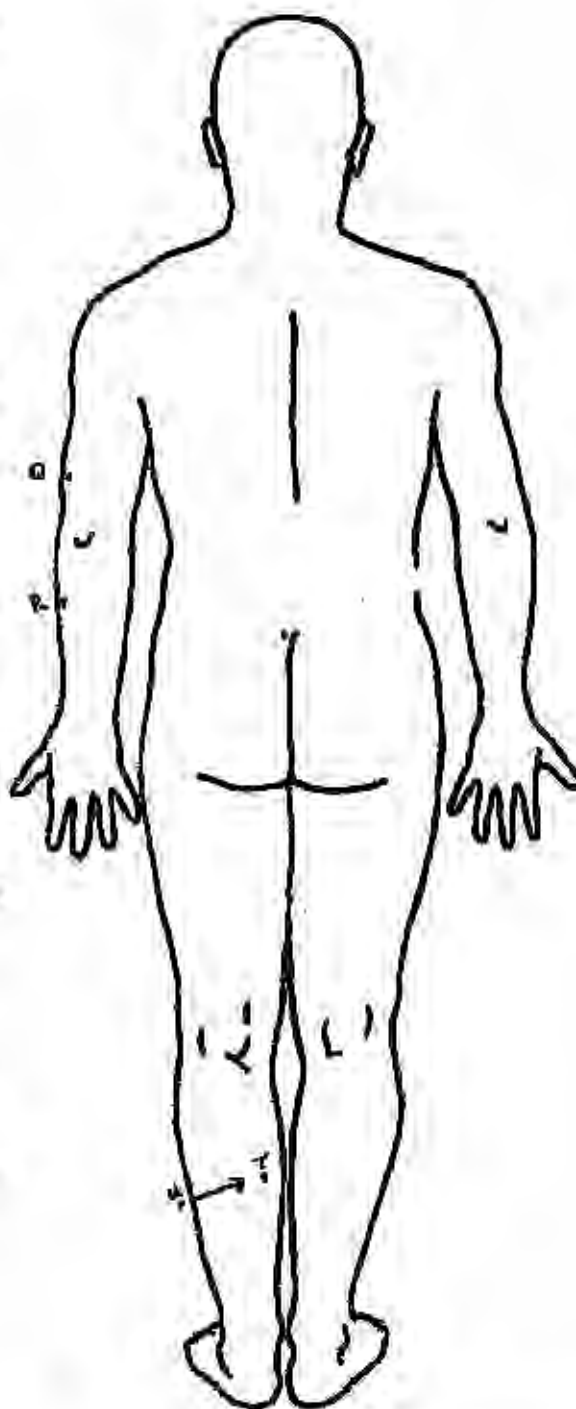
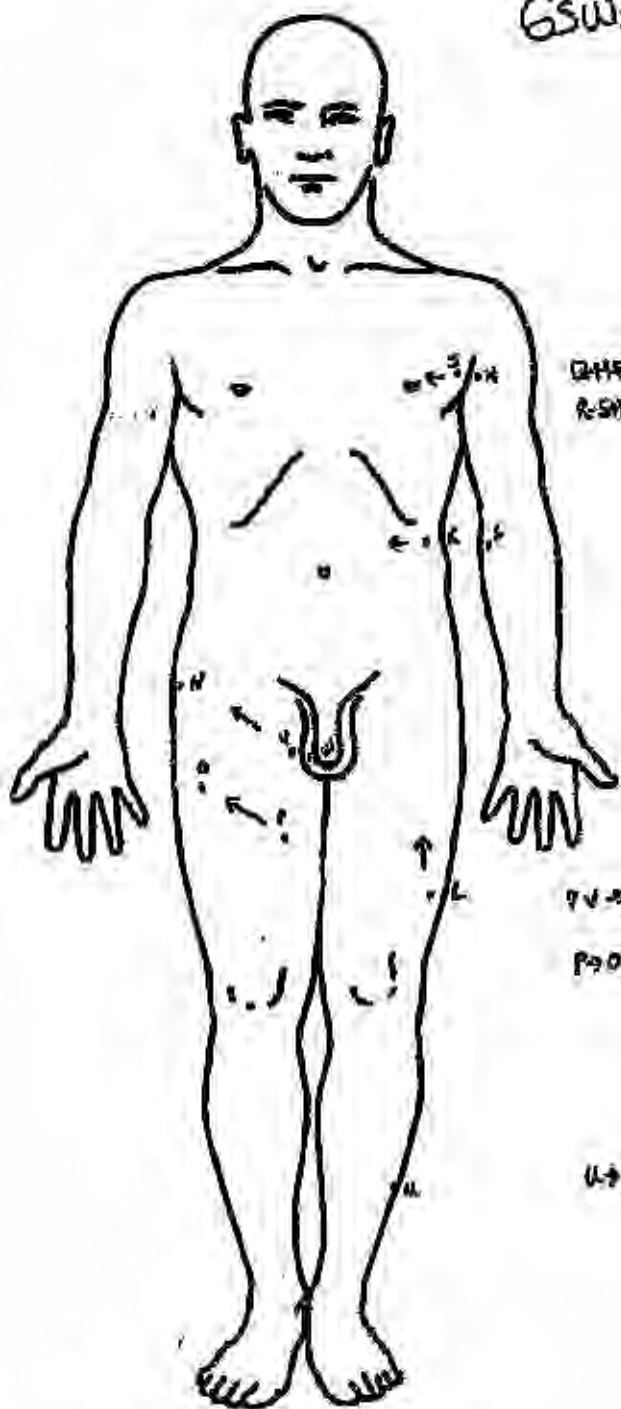
Eyes:
Ears:
Nose:
Teeth:
Neck:
Abdomen:
Genitalia:



FA16-412
06/10/2016

ADOR.
MACK, BRANNON
A. Autopsy

GSWs



1 MR. CHISHOLM: No, Your Honor.

2 THE COURT: Mr. Shaw, you may step down and you're
3 excused from the trial of this case. If you'll give that
4 document back to Mr. Spears right there. He handed it to
5 you. And you're excused from the trial.

6 Call your next witness.

7 MR. SPEARS: Your Honor, the State calls Dr. Marie
8 Tormos.

9 (WHEREUPON, Lee Marie Tormos was
10 sworn to tell the truth)

11 THE COURT: Have a seat. Good afternoon.

12 THE WITNESS: Good afternoon.

13 THE COURT: That microphone is going to amplify
14 your voice. You don't have to get right up next to it, but
15 you need to speak up like I'm doing right now so my jury can
16 hear you and the parties can hear you in the courtroom.
17 Will you do that for you?

18 THE WITNESS: I will do that.

19 THE COURT: Please. My court reporter would like
20 for you now to state your first and your last name and spell
21 both your first and last names for the record.

22 THE WITNESS: My name is Lee, L-E-E, middle name
23 Marie, Last name Tormos, T-O-R-M-O-S.

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

1 MR. SPEARS: Thank you, Your Honor.

2 LEE MARIE TORMOS - DIRECT EXAMINATION

3 BY MR. SPEARS:

4 Q Dr. Tormos, where are you employed?

5 A I currently work at the Palm Beach County Medical
6 Examiner's Office in Florida.

7 Q And where were you employed in 2016?

8 A In 2016, I was at MUSC in Charleston.

9 Q And what was the nature of your employment there?

10 A I was forensic pathologist at MUSC and I was also
11 (inaudible) director.

12 Q Now, how long were you employed there?

13 A I was employed at MUSC from 2010 to 2017.

14 Q And when did you leave -- well, no, I'm sorry.

15 A That's all right.

16 Q Can you please tell the court and the jury some of your
17 educational background?

18 A Absolutely. I am originally from Puerto Rico and I did
19 my pre-med studies in Puerto Rico, followed by medical
20 school, which is four years. And then I did my anatomical
21 and clinical pathology in Puerto Rico. Then I worked as a
22 medical examiner for two years in Puerto Rico and one year
23 in private practice. In 2009 I moved to Charleston to
24 complete my sub-speciality training in forensic pathology.
25 And shortly after arriving they asked me to stay. So I did

1 and I stayed for a total of seven years. During my time at
2 MUSC I was the attending pathologist so my job was to teach
3 resident and medical students and people their fellowships.
4 By the time I left, there was a fellowship director as well.

5 Q Now, have you had any specialized training for your
6 career?

7 A My specialized training is my sub-specialty in forensic
8 pathology. I am board certified in anatomical and forensic
9 pathology. I also keep up with my continuing medical
10 education.

11 Q And how many autopsies have you performed?

12 A Over two thousand.

13 Q Have you ever testified in general sessions court about
14 an autopsy that you've performed?

15 A Yes.

16 Q And have you ever been qualified as an expert in
17 general sessions?

18 A Yes.

19 MR. SPEARS: Your Honor, at this time I would like
20 to submit Dr. Tormos as an expert in forensic pathology.

21 THE COURT: Counsel, any objection as to
22 qualifications?

23 MR. CHISHOLM: No, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury,
25 recalling my earlier instruction to you concerning expert

1 witnesses, this witness is qualified without objection in
2 the field of forensic pathology. You may proceed, counsel.

3 MR. SPEARS: Thank you, Your Honor.

4 BY MR. SPEARS:

5 Q Dr. Tormos, did you have an opportunity to perform an
6 autopsy on a Brandon Mack?

7 A Yes, I did.

8 Q When did you perform that autopsy?

9 A I performed the autopsy on June 10th, 2016 at 11:30 in
10 the morning.

11 Q Can you go over the -- some of your findings during
12 that autopsy?

13 A Absolutely.

14 Q Actually, doctor --

15 MR. SPEARS: And I apologize to the court. Let me
16 ask a different question, if it pleases the Court.

17 BY MR. SPEARS:

18 Q Doctor, I'm going to show you what's been marked as
19 State's Exhibit 87.

20 MR. SPEARS: May I approach the witness, Your
21 Honor?

22 THE COURT: You may.

23 BY MR. SPEARS:

24 Q Do you recognize this?

25 A Yes. This is a diagram that I did during the autopsy

1 marking down the position of the gunshot wounds I saw on the
2 outside of the body.

3 Q Doctor, is that diagram a fair and accurate
4 representation of the diagram that you wrote during -- after
5 your autopsy of Brandon Mack?

6 A Yes, it is.

7 MR. SPEARS: Your Honor, may I submit it into
8 evidence.

9 THE COURT: As to State's 87, counselor?

10 MR. CHISHOLM: No objection.

11 THE COURT: Ladies and gentlemen of the jury,
12 State's Exhibit No. 87 will be admitted into evidence in the
13 trial of this case without objection. You may publish to
14 the jury.

15 (State's Exhibit No. 87, diagram,
16 was marked and entered)

17 BY MR. SPEARS:

18 Q Now, Doctor, using this to help, can you describe to
19 the jury your findings in your autopsy?

20 A Absolutely. There are several gunshot wounds to the
21 body. Is his touchscreen?

22 MR. SPEARS: Yes.

23 THE WITNESS: Okay.

24 THE COURT: You can touch it.

25 THE WITNESS: It'll light up, okay.

1 A The first wound that I am going to describe is the
2 lethal wound; however, keep in mind that I cannot tell the
3 order in which these gunshot wounds were sustained. So I'm
4 just describe them top to bottom, but don't assume that they
5 were sustained top to bottom, okay? The first wound is this
6 wound, which starts here at Q and goes -- that's the back of
7 the arm and it goes through the armpit and it enters the
8 chest cavity, okay? That wound places the arm -- in order
9 for the holes to line up, it places the arm sort of around
10 uh -- I don't know, maybe a forty-five degree angle, maybe
11 less. The shoulder is scrunched forward and the bullet
12 enters the back of the arm, where the arm ended. In the
13 back of the arm, it comes under the armpits and it re-enters
14 the chest right at the armpit and it goes through a left
15 lung, causing internal bleeding into the left chest cavity.

16 Q And Doctor, which arm did that bullet go into?

17 A The left. The left arm. So you can see here --
18 discussing it at Q, it's kind of hard to visualize, because
19 we're thinking a round human and put them in three
20 dimensions, so the proportions can be a little off. But you
21 can see that it goes in the back of the arm, out the armpit,
22 in the other side of the armpit and enter the chest. And
23 then it goes through the lung and it goes into the muscles
24 of the back. And it's recovered in the muscles of the back.

25 The second one I'm going to describe is the gunshot

1 wound to the forearm. Again, the diagram is an anatomical
2 position, but the true placement for the trajectory still
3 lining up is that the arm needs to be pretty much in front
4 of the abdomen. And it goes through the back part of the
5 arm. It does fracture the ulna, so it does fracture the
6 smaller of the two bones in the forearm. It comes out of
7 the medial aspect and then it goes into the abdomen. And,
8 again, once it goes into the abdomen it really is muscular
9 trajectory and the bullet is also recovered in the soft
10 tissues of the back. So those are the first two.

11 There is a tangential wound to the scrotum, which given
12 the fact that I wasn't able to examine the clothing, I am
13 pretty sure that it just a graze wound in association with
14 trajectory D to N. So this grazed wound to the scrotum
15 actually is in a rightward direction and it grazes the
16 scrotum right before entering the medial aspect of the right
17 thigh. And the bullet comes out a little bit higher up in
18 the hip, in the right hip. The trajectory of the
19 (inaudible) is pretty parallel to the one that's higher up
20 and it also goes right to left through the thigh.

21 Now, a potentially fatal gunshot wound and this one is
22 the hardest one to delineate because he survived the initial
23 shooting. He was taken to the hospital. He was surgically
24 intervened and so I am seeing a lot of surgical artifact.
25 For sure, I can tell you that this bullet entered the left

1 thigh and is traveling upward through the soft tissues. It
2 hits the spermatic cord in the groin and then it also enters
3 the pelvis from the bottom up. And I can place that bullet
4 via CT scan right around the left prostate area. And I have
5 a contusion to the thigh that tells me that the bullet
6 (inaudible) there. Now, there are two findings that I
7 cannot say if they are associated to this trajectory or they
8 are surgical artifact. One is a laceration to the
9 (inaudible) and one is a laceration to the very edge of the
10 liver. It can be due to this bullet traveling upward and
11 then eventually falling back down right into the rectal area
12 or it can be due to the doctors opening up the abdomen
13 surgically and retracting the tissues, causing tears. So,
14 again, I cannot tell you whether muscle tears and the
15 lacerations to the liver that were surgically repaired were
16 due to the doctors themselves or they were due to this
17 trajectory.

18 The last one would be this trajectory that -- this is
19 backwards, this is the left leg. So it's still, that
20 trajectory towards the right. So all the shots are left to
21 right. And this one just go through the calf in a left to
22 right trajectory. Okay.

23 Q Doctor, you said all of these trajectories are left to
24 right?

25 A All of them.

1 Q Briefly looking at the first top trajectory, you stated
2 that it went through the left arm -- out the left arm and
3 into the chest cavity?

4 A Correct.

5 Q How can you tell the difference between like an
6 entrance and an exit wound?

7 A Okay. When the bullet leave these muzzle of a weapon,
8 it usually flies through the air pretty much the same way as
9 a well-tossed football. So you'll see that it has some
10 rotation, some spinning to it as it's traveling through the
11 air. When the bullet hits the skin and hit any intermediate
12 objects it leaves an abrasion color around the entrance.
13 And this bullet in particular it leaves an abrasion
14 entrance, then as it hit the tissues, it starts tumbling.
15 Just like when a football hits the floor, it's no longer
16 traveling in that spinning trajectory. It starts tumbling
17 inside the tissue. So when it comes out it leaves lacerated
18 irregular exits.

19 Q Now, Doctor, looking at the two bullet wounds in the
20 right thigh --

21 A Uh-huh. (Affirmative response).

22 Q -- you stated that those are still left to right?

23 A Left to right because they're coming in the inner
24 aspect of the right thigh and they're coming out the lateral
25 aspect of the right thigh.

1 Q Now, when you're looking at the trajectory of bullet
2 wounds in the body, are you able to determine the
3 positioning of the body towards the bullet pathway?

4 A I can only tell you how the muzzle of the weapon would
5 line up. Pretty much, it's drawing a straight line. Now,
6 when I describe a trajectory I am describing the trajectory
7 in terms of the anatomic position. We use exactly what
8 you're seeing here. Someone standing up straight with their
9 palms facing forward. But when people are shot, they are
10 not standing in an anatomic position. So that is why we
11 have to think of how the body could move to have, for
12 example, these outward deviation into the thigh. So you
13 have to look at the scene and you have to look at the
14 (inaudible) and figure out what positioning of the body
15 explains why this bullet, even though it's right to left, is
16 also traveling a little upward.

17 Q Doctor, you stated that you can testify to the location
18 of the muzzle of the firearm?

19 A Uh-huh. (Affirmative response)

20 Q What direction would the muzzle be to this individual
21 when it comes to the highest two bullet holes?

22 A Okay. So to get into consideration that by lining up
23 the holes, I am able to tell the position of the left arm
24 only. The left arm for the first one is slightly lifted and
25 sort of scrunched forward to allow for lining up of the exit

1 and reentry. However, because the bullet is traveling
2 slightly downward -- if the bullets they were traveling
3 horizontal to the ground, which is an assumption, then this
4 person had to be leaning towards where the weapon is a
5 little bit. And that's one thing, but we don't know whether
6 the weapon is shooting horizontal to the ground, whether the
7 shooter is higher up or lower on the ground. So you have to
8 take everything into consideration. The top most trajectory
9 has a slight, very slight downward trajectory to it, which
10 could be explained if the person is leaning just a little
11 bit towards the left.

12 Q All right. And the two lower bullet trajectories, same
13 question. Were you able to identify the direction of the
14 muzzle?

15 A Okay. Well, the one to the forearm that one is
16 horizontal, completely horizontal. So the one to the
17 forearm is just going, you know, kind of straight back. And
18 then the muzzle is sort of in the 10:00 o'clock position in
19 relation to the person. So that's the direction that it's
20 coming in, into the arm and into the abdomen and is going in
21 a straight line towards the back.

22 Q And now the L bullet wound?

23 A Okay. The L bullet wound enters the left thigh and
24 it's actually just above, just a smidge higher than I drew
25 it on my diagram. And this one is traveling upward and then

1 to the left. Now, you have to think that, again, people are
2 in motion and not necessarily are the standing in an
3 anatomic position, so there's two reasonings behind this:
4 one, the person is to 11:00 o'clock or the 10:00 o'clock
5 position. The muzzle is at a 10:00 o'clock position and
6 lower and they're shooting from the gun, from the bottom up;
7 or, the person has lifted up their leg and that also would
8 account for the upward trajectory; or, they are seated on
9 the floor and then someone is shooting down when they're on
10 the floor. So there's multiple scenarios placed on what you
11 see in the body. So you have to take into account that.

12 And in generality the muzzle of the weapon is mostly kind of
13 like the 10:00 o'clock position on the left. So they're all
14 coming that way. And then you see it more slightly here and
15 there they seem to be going kind of in the same direction.

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

17 BY MR. SPEARS:

18 Q Now, Dr. Tormos, during the course of your autopsy did
19 you recover any bullets out of the body?

20 A I recovered three bullets.

21 MR. SPEARS: May I approach the witness, Your
22 Honor.

23 THE COURT: You may.

24 BY MR. SPEARS:

25 Q Doctor, do you recognize these?

1 THE COURT: Refer to the exhibit number for the
2 record.

3 MR.. SPEARS: I apologize, Your Honor.

4 BY MR. SPEARS:

5 Q Do you recognize Exhibit 78?

6 A Yes, I do.

7 Q Now, what is that?

8 A It's the three bullets that were recovered from the
9 decedent?..

10 Q And which of these bullet pathways were these bullets
11 recovered from?

12 A Well, the bullet number one is the one that goes
13 through the arm. It goes through the arm and doesn't hit
14 bone. It goes through the arm. Again, it just into the
15 muscle. So in the middle there is soft tissues and the
16 bullet is pretty pristine. The second bullet that I
17 recovered, I recovered in the right chest cavity. I think
18 that is an artifact of resuscitation because there was no
19 entrance to the chest cavity. It just was there. And,
20 again, that is the one that went up the side and into the
21 abdomen for the trajectory. And then the third one is the
22 one that goes through the bone of the forearm and it also
23 goes through (inaudible). Because that one hit bone twice,
24 that bullet is flattened.

25 Q Now, Doctor, with these bullet pathways, how many

1 pathways were you able to find on this individual?

2 A Well, it would be -- assuming that the grazed one to
3 the scrotum is connected to the adjacent trajectory through
4 the side, it would be six.

5 Q Now, Doctor, were you able to formulate a professional
6 opinion as to whether these wounds were lethal?

7 A Yes.

8 Q And within a reasonable degree of medical certainty,
9 were you able to come a conclusion as to the manner of
10 death?

11 A Yes.

12 Q And what was that?

13 A It's a homicide.

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

15 BY MR. SPEARS:

16 Q And what would be the cause of death?

17 A The cause of death is the gunshot wounds to the torso.

18 Q Please answer any questions the Defense might have for
19 you.

20 THE COURT: Cross-examination.

21 MR. CHISHOLM: Thank you, Your Honor.

22 LEE MARIE TORMOS - CROSS-EXAMINATION.

23 BY MR. CHISHOLM:

24 Q Good afternoon, Doctor?

25 A Hi.

1 Q And I guess I'll start -- the cause of death in this
2 case, I'm a little bit confused. From reading the report it
3 looks like Mr. Mack passed away after a surgery on his elbow
4 area?

5 A That's correct?

6 Q Was it a complication from the surgery that caused the
7 death?

8 A It was a complication for the treatment of his multiple
9 gunshot wounds, yes.

10 Q But I was just curious how the surgery on the elbow
11 would lead to the death, if you could answer that?

12 A He was not medically stable.

13 Q Okay. So that was -- I'm sorry.

14 A But he was not medically stable they did the surgery.
15 He had a lot of organ damage secondary to blood loss?

16 Q Okay. So this was ongoing treatment, but the elbow
17 might have had nothing to do with the actual cause of death;
18 is that what you're saying?

19 A Can you repeat that?

20 Q The surgery on the elbow might have not been what
21 caused the death. He was already heading that way to begin
22 with?

23 A Everything is stemming from the treatment of his
24 multiple gunshot wounds. The repair to the elbow is the
25 repair from a fracture from the gunshot wound. So it was

1 very difficult without the medical records available to
2 determine exactly what the information was.

3 Q Okay. I think I understand. And you've had a lot of
4 training to be a pathologist -- I guess in the study of
5 ballistics -- what happens when bullets enter the body, that
6 kind of thing?

7 A Yeah, that's one of the training of forensic
8 pathologist.

9 Q Okay. But for clarification and I think you spoke to
10 this a little bit, despite, you know, all the education and
11 the knowledge and the training that you have, you can't say
12 exactly what happened at the shooting; is that correct? As
13 far as -- in this case, this involves a shooting in a
14 bathroom at the IHOP. From your examination, you wouldn't
15 be able to tell what happened in the bathroom; is that
16 correct?

17 A I can only tell you about what has entered his body.

18 Q Correct?

19 A Yes.

20 Q And that's what I'm getting at. You can see where the
21 bullet entered, where it went, where it exited, but you have
22 no idea what happened in there. You weren't there?

23 A Yes.

24 Q I've also heard that -- is it true that bullets kind of
25 do weird things once they enter the body sometimes?

1 A Yes.

2 Q And that can be based on the clothing you're wearing,
3 if it hits a bone or not, things it deflect off, organs I
4 guess?

5 A Not organs, but they can deflect on bone and they love
6 traveling through fat. So sometimes not exactly in a
7 straight line.

8 Q I got you. And when you're looking at a case like this
9 -- and I'm assuming it's easier for you to -- doing your
10 work, you can a bullet path through the body probably fairly
11 easily as opposed to figuring out trajectories of where a
12 bullet came or entered a body?

13 A Can you repeat that?

14 Q Sure. When you get a case --

15 A Uh-huh. (Affirmative response)

16 Q -- and during the autopsy you can pretty well this is
17 the entrance wound, this is the exit wound, if there is one.
18 Here's the path of the bullet within the body.

19 A That's correct, yes.

20 Q But as far as -- I think the Solicitor's kind of
21 touched on, I guess, angles of gunfire --

22 A Uh-huh. (Affirmative response)

23 Q -- is that tougher to do for you?

24 A It is very tough. Thankfully the bullets travel in a
25 straight line, so it makes it a little bit more logical.

1 But, you know, I'm only taking into consideration
2 (inaudible) the scene (inaudible).

3 Q And as far as the Solicitor was asking you about the
4 muzzle, where it was in relation to the entrance wounds and
5 that thing -- I mean, that's essentially speculation. Would
6 you agree with me that you can say it's consistent with
7 certain angles, but you can't tell exactly how it happened?

8 A I pretty much can tell you where it was coming from
9 based on lining up the holes.

10 Q I'm sorry. I'm not explaining myself. Let's put it
11 this way. I think I could probably rephrase it with an
12 example. Someone was laying in front of me?

13 A Yes.

14 Q Their head away from me and they're laying on their
15 back on the floor. If I shot them in the chest, you would
16 have an entrance wound in the chest. And say in this
17 example, say there's an exit wound in the back. And if I
18 shot them from here, it would be an upward trajectory; is
19 that correct?

20 A Yes.

21 Q If I was laying on my back -- which I never do -- but
22 if I was laying on my back and someone was standing in front
23 of me and I shot them in the chest, you would have an
24 entrance wound in the chest, possibly an exit wound in the
25 back. And that would also be an upwards trajectory; is that

1 correct?

2 A Absolutely, yes.

3 Q Okay. So it's hard to say exactly where people were --

4 A And that's why I'm saying I can only describe pretty
5 much the general position of the muzzle or the weapon, but I
6 cannot tell you the position of the people --

7 Q Right.

8 A -- holding the weapon. Absolutely not. That's what I
9 was trying to convey.

10 Q And I think you did. And I just wanted to make sure
11 that I had it right; didn't have it mixed up.

12 A Yes.

13 Q I'd like to ask you about toxicology in this case. Can
14 you explain what toxicology is?

15 A Yes. Toxicology we draw blood from most autopsies, and
16 in this particular case we did not do a toxicology because
17 there was a survival. When we do toxicology we like to show
18 the substance that that (inaudible) was not in someone's
19 body at the time that the incident happened. Because there
20 was a survival time of four days, when we did the autopsy,
21 the samples that we would have drawn at that time would not
22 reflect what was going on in the body four days prior. So
23 in this particular case we did not do toxicology.

24 Q Okay. And as you just said, I mean, the toxicology
25 report you'll be able to tell if someone was under the

1 influence of alcohol, narcotics, that kind of the thing at
2 the time --

3 A Absolutely. Absolutely. We would have been able to
4 say both what was there and what wasn't there. But in this
5 case it had not value because we wouldn't be reflecting what
6 was going on after blood transfusions and administration of
7 fluids and administration of medications in the hospital.

8 Q Do they typically take blood samples, whatever is taken
9 for analysis, do they typically do that when someone gets to
10 the hospital or is it typical that they would --

11 A Yes.

12 Q -- take the specimens four days later?

13 A No. The moment someone goes in the hospital, most
14 people get a basic labs drawn and those basic labs are
15 usually provided if left-over.

16 Q That wasn't done in this case?

17 A There was left-over. They throw the samples away on
18 the third day and he died on the fourth.

19 Q So based on that, you would have no way to know whether
20 he was -- had alcohol in his system, any kind of drugs or
21 anything because it wasn't drawn?

22 A It wasn't drawn because it couldn't be done, yes.. I
23 have no way of knowing.

24 Q I understand.

25 MR. CHISHOLM: Okay. One moment, Your Honor.

1 Q Thank you, Doctor. I don't have any more questions.

2 THE COURT: Redirect?

3 MR. SPEARS: Briefly, Judge.

4 LEE TORMOS - REDIRECT EXAMINATION

5 BY MR. SPEARS:

6 Q Very briefly, doctor, just to clarify a question I had
7 in my mind. Looking at the bullet pathway in a person, can
8 you tell the side of a person that the muzzle was on when
9 the bullet entered them?

10 A Yes..

11 Q Okay. And on this autopsy, what side was that?

12 A The left side.

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

14 THE COURT: Recross, limited to redirect?

15 MR. CHISHOLM: None, Your Honor.

16 THE COURT: As to this witness, Solicitor?

17 MR. SPEARS: Your Honor, may she be excused?

18 THE COURT: Any objection?

19 MR. CHISHOLM: No objection.

20 THE COURT: Doctor Tormos, you may step down and
21 you're excused from the trial of this case and you may leave
22 the witness stand.

23 THE WITNESS: Thank you.

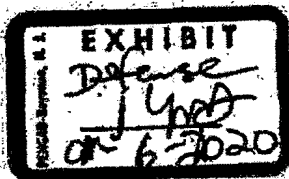
24 MR. SPEARS: Your Honor, may we approach?

25 THE COURT: Counsel approach.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	Warrant/Indictment Nos.:
STATE OF SOUTH CAROLINA	)	2016a1810300321; 2016a1810300547;
	)	2016a1810300549
Plaintiff,	)	
V.	)	
	)	
KEUNTE DONTRELL COBBS,	)	MOTION FOR DISMISSAL
	)	
	)	
Defendant.	)	

Comes now the The Defendant, Keunte Cobbs by and through his attorney, Ash Chisholm, on a motion to dismiss the above-listed indictments for Possession of a Sawed-off Shotgun (Indictment No. 2016GS1801266), Murder (Indictment No. 2016GS1801267) and Possession of a Weapon During the Commission of a Violent Crime (Indictment No. 2016GS1801269) due to a violation of Defendant's right to a speedy trial.

In State v. Hunsberger, our Supreme Court reiterated that Defendants are entitled to a speedy and public trial. State v. Hunsberger, 418 S.C. 335 at 342 (2016) (citing U.S. Const amend. VI and S.C. Const. art. I § 14). The court was clear that the remedy for a speedy trial violation is dismissal of the charges. Id. at 342.



Hunsberger states "to trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with ordinary promptness." *Hunsberger*, 418 S.C. at 342, 343. It was held in *State v. Langford* that a twenty-three month delay was presumptively prejudicial. *State v. Langford*, 400 S.C. 421 at 442-443 (2012).

Hunsberger instructs that upon a finding of presumptive prejudice, a court must look to the following factors to determine whether a Defendant's right to a speedy trial has been denied: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused. *Hunsberger*, 418 S.C. at 343.

In this case, Defendant was arrested June 27, 2016 and charged with Murder, Attempted Murder and Possession of a Weapon During a Violent Crime. Defendant was subsequently served an outstanding warrant for Possession of a Sawed-off Shotgun on June 28, 2016. Defendant's case was called to trial on August 20, 2018 before the Honorable Judge Perry Buckner for the charges of Murder and Attempted Murder. The Possession of a Sawed-Off Shotgun charge and the Possession of a Weapon During the Commission of a Violent Crime charge were not called to trial at that time. The jury could not

reach a verdict on the Murder charge and the Defendant was found guilty of Assault and Battery of a High and Aggravated Nature as a lesser included charge of Attempted Murder. Defendant received a sentence of eighteen years.

At the time of the first trial, Defendant had been in custody from June 27, 2016 until August 20, 2018, a period of over twenty-five months (787 days as of August 20, 2018.) As of January 6, 2020, these charges have been pending for over forty-two months (1287 days.) The Murder charge was pending for over twenty-five months prior to trial and has been pending approximately sixteen additional months since trial. Of note, the Possession of a Sawed-Off Shotgun charge and Possession of a Weapon During the Commission of a Violent Crime charges have been pending without being called to trial since June 27th and June 28th of 2016.

Defense counsel was appointed on June 12, 2017. Defendant has not requested a continuance in this case at any point of his incarceration.

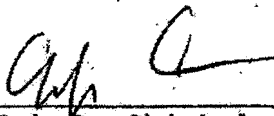
A speedy trial motion was heard by the Honorable Judge Maite Murphy on December 14, 2017. Judge Murphy's order stated that the motion for a speedy trial was granted and that if the trial wasn't scheduled during the week of January 16, 2018, bond would be revisited (see: enclosed order.) This case was not called to trial during the week of January 16, 2018 and on January 19, 2018, the Honorable Judge Maite Murphy granted Defendant a \$400,000 surety bond

(see: enclosed.) Defendant remained unable to secure his release with this bond.

On June 18, 2018, the Honorable Judge Maite Murphy heard a Defense motion to grant a personal recognizance bond pursuant to S.C. Code §17-23-90 and a renewal of Defense motion for a speedy trial. These motions were denied.

Defendant argues that he has asserted his right to a speedy trial, that he has not caused any delays in his case and that these pretrial delays are presumptively prejudicial and in violation of his Constitutional right to a speedy trial and that he is entitled to above-requested relief.

Respectfully submitted,



Ash D. Chisholm
Assistant Public Defender
107 W. 6th North Street
Summerville, SC 29483
(843) 821-9800 Office
(843) 871-0523 Facsimile
ATTORNEY FOR DEFENDANT

Summerville, South Carolina
This 6th day of January, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS
THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

WARRANT NO.: 2016a1810300321;
2016a1810300547; 2016a1810300548;
2016a1810300549

v.

KEUNTE DONTRELL COBBS,

ORDER

FILED-RECORDED

12-14-2017

Cheryl Graham
Clerk of Court
Dorchester County

THIS MATTER is before me pursuant to the Defendant's Motion for Speedy trial. The Defendant is presently incarcerated on Warrant Nos.: 2016A1810300321; 2016A1810300547; 2016A1810300548; 2016A1810300549. After careful consideration of this matter, I hereby grant the motion for speedy trial and find that if the trial is not scheduled during the week of January 16, 2018, bond shall be revisited; and

IT IS SO ORDERED!

Mark M...
PRESIDING JUDGE OF THE COURT
OF GENERAL SESSIONS FOR THE
FIRST JUDICIAL CIRCUIT

St. George, South Carolina
This 14 of December, 2017.

FILED-RECORDED

01-18-18

54

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Cheryl Graham
Clerk of Court
Dorchester County

THE COURT OF GENERAL SESSIONS
THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

WARRANT NO.: 2016a1810300321;
2016a1810300547; 2016a1810300548;
2016a1810300549

v.

KEUNTE DONTRELL CORBS,

ORDER

THIS MATTER is before me pursuant to the Defendant's Motion to Set Bond. The Defendant is presently incarcerated on a Weapons/Articles Regulating Use, Possession Of Machine Guns, Sawed Off Shotguns, Rifles; Weapons/Poss. Weapon During Violent Crime; Warrant Nos.: 2016A1810300321; 2016A1810300549 with a \$65,000.00 surety bond and Murder; Assault/Attempted Murder; Warrant Nos.: 2016A1810300547; 2016A1810300548; with no bond set. After careful consideration of this matter, I find that the Defendant's bonds shall be consolidated and set at a \$400,000.00 surety bond; and,

FURTHER, Defendant must be placed on GPS monitoring, and must have no contact with victims and victims' family and he is not allowed to go within a 1 mile radius of the victims' residence;

IT IS SO ORDERED!

Marte' M...
PRESIDING JUDGE OF THE COURT
OF GENERAL SESSIONS FOR THE
FIRST JUDICIAL CIRCUIT

St. George, South Carolina
This 19 of January, 2018.

ARREST WARRANT
2016A1810300321

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
Dorchester

THE STATE
against
Kenzie D Cobbs

Address: **117 Barbara Dr
Ladson, SC 29456-4861**

Place: **SC** Race: **B** Height: **5 3** Weight: **215**
DOB: **06/28/1986** Agency ORI #: **SC0180200**

Presenting Agency: **Summerville Police Department**
Presenting Officer: **Robert Barrington - 8135**

Offense: **Weapons / Articles regulating use, possession of
machine guns, sawn off shotguns, rifles**

Offense Code: **0552**
Criminal Justice Act: **23-31-0330**

This warrant is ☒ County ☐ Municipality of
to be executed and brought before me to be
back with according to the law.

Signature of Judge
Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant: **Kenzie D Cobbs**
on: **17:45 06/28/2016**

Signature of Defendant
Signature of Court Clerk

RETURN WARRANT TO:
General Sessions
5200 E. 5th Street Blvd.
St. George, SC 29477

ORIGINAL

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STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
Dorchester

Presented before me the above
Kenzie D Cobbs
and with this county and state as evidence
of South Carolina for evidence of

DESCRIPTION OF OFFENSE: **Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On March 02, 2016 Detectives with the Dorchester County Sheriff's Summerville PD Metro Narcotics Unit, executed a search
warrant at 117 Barbara Drive, located in the County of Dorchester. During the execution of the search warrant, Detectives located
in the closet of the master bedroom, Remington 12 gauge shotgun, (model 6870 and serial #C976408A). The shotgun barrel and the
stock had been sawed-off. Detectives also located multiple pieces of paperwork bearing the Defendant's name, Kenzie Cobbs, in the
closet next to the firearm. Also some of the paperwork is bearing the Defendant's name was also addressed to 117 Barbara Drive.
Detective Barrington seen with a Confidential Informant to identify the Defendant from a SLED Photo Line-up. The CI positively
identified the Defendant from the SLED Photo line-up. The Affiant believes from his training and experience, the sawed-off
shotgun belongs to the Defendant. This being in violation of S.C. State Section 23-31-0330.

Signature of Affiant: **R.B.**

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
Dorchester

Affiant's Address: **300 West 2nd North Street
Summerville, SC 29483**
Affiant's Telephone: **(843) 671-2463**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR JURISDICTION OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

an arrested **3/2/2016** defendant **Kenzie D Cobbs**
did violate the criminal laws of the State of South Carolina for evidence of
☒ County ☐ Municipality of **Dorchester**) as set forth below:

DESCRIPTION OF OFFENSE: **Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles**

Having been sworn to execute and the above affidavit having been before me, you are requested and directed to arrest the said defendant and bring him or
her before the Court to be executed according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Signature of Judge
Signature of Court Clerk
Judge Clerk: **7173**

Judge's Address: **Troy Knight Judicial Complex
Summerville, SC 29483-4707**
Judge's Telephone: **(843) 632-0370**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ARREST WARRANT

2016A1810300547

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester

THE STATE
 against **KEVIN D COBBES**
 Address: **208 Sandra Lane**
Summerville, SC 29483

Place: **M** Room: **B** Height: **6** 3 Weight: **215**
 DL State: **SC** DL #: **1A00000000**
 Date: **6/9/2016** Agency OR#: **SC0180000**
 Prosecuting Agency: **Dorchester County Sheriff**
 Prosecuting Officer: **Keith Elmore - 0669**
 Offense: **Murder / Murder**

Offense Code: **0116**
 Cause/Charge No: **16-03-0010**

This warrant is RETURNED FOR RECORD to the
☐ County ☐ Municipality of

It is to be searched and brought before the court to be dealt with, according to the law.

(L.A.)

Date: _____
 Signature of Judge: _____

RETURN
 A copy of this arrest warrant was delivered to
 defendant **Kevin D Cobbs**
 on **6/22/16**
 Signature of Defendant: _____

RETURN WARRANT TO:
 General Sessions
 5208 E. Jim Bitten Blvd.
 St. George, SC 29477

ORIGINAL **ORIGINAL**

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester

AFFIDAVIT

ORIGINAL

Personally appeared before me the undersigned **Keith Elmore**
 being duly sworn, depose and say that defendant **Kevin D Cobbs**
 did within this county and state on or about **6/9/2016** violate the criminal laws of the
 State of South Carolina (or otherwise of ☒ County ☐ Municipality of **Dorchester**)
 in the following particulars:
 DESCRIPTION OF OFFENSE: **Murder / Murder**

I, the undersigned, being duly sworn, depose and say that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 9, 2016 at approximately 4pm, while at Trident Hospital Brandon Mack died from gunshot wounds he received on June 5, 2016; while at 9976 Dorchester Rd, Summerville, SC, county of Dorchester. KEVIN D COBBES AKA "KEY", AKA "KEITH", shot Brandon Mack 7-9 times while inside the IHOP bathroom. Cobbs was identified by Det. Mosler from a witness's cell phone video inside of the IHOP. June 10, 2016 a witness provided a written statement stating that "KEITH", admitted to doing the shooting at the IHOP because the victim robbed him of \$20,000. The witness also positively identified Kevin D Cobbs as "KEITH" from a SLED photo array.

Signature of Affiant: **Det. Keith P. Elmore**

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester

Affiant's Address: **100 Sans Street**
St. George, SC 29477
 Affiant's Telephone: _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I appearing from the above signed that there are reasonable grounds to believe that

on or about **6/9/2016** defendant **Kevin D Cobbs**
 did violate the criminal laws of the State of South Carolina (or otherwise of ☒ County ☐ Municipality of **Dorchester**) as set forth below:

DESCRIPTION OF OFFENSE: **Murder / Murder**

Having based probable cause and the above stated having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or as soon thereafter as is practicable.

Signature of Judge: **Peter Grant Shaboune**
 Judge's Address: **Tray Knight Judicial Complex**
Summerville, SC 29483-4707
 Judge's Telephone: **(843) 332-0370**

Judge's Code: **7175**

Issuing Court: ☒ Magistrate ☐ Circuit ☐ Circuit

ORIGINAL **ORIGINAL** **ORIGINAL** **ORIGINAL** **ORIGINAL**

ARREST WARRANT
2016A1810300548
 STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester

THE STATE
 against
Keonte D Cobbs
 Address: **203 Sandra Lane**
Summerville, SC 29483
 Person: **SC0180000**
 Sex: **M** Race: **B** Height: **6** 3 Weight: **215**
 DOB: **SC** DL#: **SC0180000**
 Processing Agency: **Dorchester County Sheriff**
 Processing Officer: **Keith Elmore - 0463**
 Charge: **Murder / Attempted Murder**

Offense Code: **3410**
 Code/Ordinance Sec: **16-03-0029**
 The warrant is returnable for service in the
☐ County ☐ Municipality of
 to be executed and brought before me to be
 dealt with according to the law.

RETURN
 A copy of this arrest warrant was delivered to
 defendant **Keonte Cobbs**
 on **6/27/16**
 by **[Signature]**
 Sheriff of Dorchester County

RETURN WARRANT TO:
 General Sessions
 5200 E. Jim Elliot Blvd.
 St. George, SC 29477

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester
AFFIDAVIT
 I, **Keith Elmore**
 being duly sworn, depose and say that defendant **Keonte D Cobbs**
 did within the county and state on or about **6/3/2016**
 State of South Carolina for offense of ☒ County ☐ Municipality of **Dorchester**
 in the following particulars:
DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 3, 2016 at approximately 0215 hours while at 9978 Dorchester Rd Summerville, SC, county of Dorchester, **KEUNTE COBBS**, AKA "KEY", AKA "KEITH", shot Bradford Spills twice in the stomach. Facts are while in the bathroom of the HOP restaurant Keonte shot Bradford Spills twice after shooting Shannon Mack 7-8 times. Keonte was positively identified from a witness's cell phone video by Det. Mosier. June 10, 2016 a witness provided a written statement stating that "KEITH" admitted to doing the shooting at the HOP because the victim robbed him of \$20,000. The witness also positively identified Keonte Cobbs as "KEITH" from a SLED photo array.

Signature of Affiant **Det. Keith P. Elmore**
STATE OF SOUTH CAROLINA
☒ County ☐ Municipality of
 Dorchester
 Affiant's Address: **100 Sears Street**
Saint George, SC 29477
 Affiant's Telephone:

ARREST WARRANT
 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR JURISDICTION OR ANY CONSTABLE OF THIS COUNTY:
 It appearing that the above affiant has shown no adequate grounds to believe that
 on or about **6/3/2016** defendant **Keonte D Cobbs**
 did within the criminal laws of the State of South Carolina (or offenses of ☒ County ☐ Municipality of **Dorchester**) as set forth below:
DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are requested and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
 Given under my hand and seal of office
 on **6/13/2016**
Peter Randall Sheehan
 Judge Code: **7175**
 Judge's Address: **Troy Knight Judicial Complex**
Summerville, SC 29483-4707
 Judge's Telephone: **(843) 832-0970**
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

509

ARREST WARRANT

2016A1810300549

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Dorchester

Properly appeared before me the sheriff Keith Elmore

being duly sworn deputies and upon that defendant **Keonte D Cobbs**

did within this county and state on or about **6/5/2016** violate the criminal laws of the

State of South Carolina (or otherwise of ☒ County ☐ Municipality of **Dorchester**)

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

THE STATE

against **Keonte D Cobbs**

Address: 208 Sandra Lane

Summerville, SC 29483

Phone: **616-0056**

Sex: **M** Race: **B** Height: **6' 3"** Weight: **215**

DL State: **SC** DL#: **SC0180000**

Prosecuting Agency: **Dorchester County Sheriff**

Prosecuting Officer: **Keith Elmore - 6668**

Other: **Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole**

Offense Code: **0549**

Code/Ordinance Sec: **16-23-0990**

The warrant is ☒ County ☐ Municipality of

is to be executed and brought before me to be dealt with according to the law.

RETURN

A copy of this arrest warrant was delivered to defendant **Keonte D Cobbs** on **6/5/2016**

RETURN WARRANT TO:

General Sessions

5200 E. Jim Edson Blvd.

St. George, SC 29477

ORIGINAL **ORIGINAL** **ORIGINAL**

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Dorchester

AFFIDAVIT

ORIGINAL

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 5, 2016 at approximately 0215 hours while in 9978 Dorchester Rd Summerville, SC, county of Dorchester; **KEUNTE COBBS, AKA "KEY", AKA "KEITH"**, while armed with a handgun shot Bradford Spells and Brandon Mack. Facts are while in the bathroom of the IHOP restaurant Keonte shot Bradford spells twice and Brandon Mack 7-9 times. June 9, 2016 Brandon Mack died from the gunshot wounds. Keonte was positively identified from a witness's cell phone video by Det. Moxie. June 10, 2016 a witness provided a written statement stating that AKA "KEITH", admitted to doing the shooting at the IHOP because the victim robbed him of \$20,000. The witness also positively identified Keonte Cobbs as AKA "KEITH" from a SLED photo array.

Signature of Affiant **Det. Keith Elmore**

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Dorchester

Attach Address **100 Sears Street**

Saint George, SC 29477

Attach Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **6/5/2016** defendant **Keonte D Cobbs**

did within the criminal laws of the State of South Carolina (or otherwise of ☒ County ☐ Municipality of **Dorchester**) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above stated having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before the authorities to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or an arrest warrant shall be served on the defendant.

on **6/5/2016**

Signature of Affiant **Det. Keith Elmore**

Attach Address **Troy Knight Judicial Complex**

Summerville, SC 29483-4707

Attach Telephone **(843) 632-0370**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL **ORIGINAL** **ORIGINAL** **ORIGINAL** **ORIGINAL**

WITNESSES

Robert Barrineau

Summerville Police Department
16-001024**ARREST WARRANT NUMBER**

2016A1810300321

Arrested: June 30, 2016

ACTION OF GRAND JURYForeperson of Grand Jury
Date: March 8, 2018**VERDICT**Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1266

**The State of South Carolina
County of DORCHESTER****COURT OF GENERAL SESSIONS**

March 12, 2018 TERM

THE STATE
vs.

Keunte D Cobbs

Indictment forArticles Regulating Use, Possession of
Machine Guns, Sawn off Shotguns;
Rifles

SC Code: 23-31-330

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORD
2018 MAR - 9 PM 12:55
CLERK OF COURT
DORCHESTER COUNTY

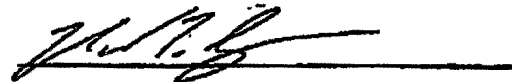
STATE OF SOUTH CAROLINA**INDICTMENT****COUNTY OF DORCHESTER****2016GS18-1266**

As a Court of General Sessions, convened on March 8, 2018 the Grand Jurors of DORCHESTER County present upon their oath:

**ARTICLES REGULATING USE, POSSESSION OF MACHINE GUNS, SAWN OFF
SHOTGUNS, RIFLES**

That in Dorchester County, South Carolina, on or about March 2, 2016, the Defendant, Keunte D Cobbs, did unlawfully store, keep, possess, or permit another to store, keep or possess a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle with a barrel less than 18 inches in length and/or an overall length of less than 26 inches long. This offense in violation of Section 16-23-230 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Michael Spears, Solicitor

WITNESSES

Keith Elmore

Dorchester County Sheriff
16-005645

ARREST WARRANT NUMBER
2016A1810300547

Arrested: June 28, 2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1267

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 6, 2016 TERM

THE STATE
vs.

Keunte D Cobbs

Indictment for

Murder

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2016 SEP -1 PM 2:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1267

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

MURDER

That in Dorchester County on or about June 9, 2016, with malice aforethought, the defendant, Keunte D Cobbs did kill one Brannon Mack by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in cursive script, reading "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

WITNESSES

Keith Elmore

Dorchester County Sheriff
16-005645

ARREST WARRANT NUMBER
2016A1610300547

Arrested: June 28, 2016

ACTION OF GRAND JURY

TRUE BILL

J. C. Smith
Foreperson of Grand Jury
Date: August 16th 2016

VERDICT

Foreperson of Petit Jury
Date:

AMENDED

DOCKET NO. 2016GS18-1267

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

August 20th 2016 TERM

THE STATE
vs.

Keunte D Cobbs

Indictment for
Murder

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CLERK GRANT
CLERK OF COURT
DORCHESTER COUNTY

2016 AUG 16 PM 12:05

FILED-RECORDED

513

AMENDED

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

2016GS18-1267

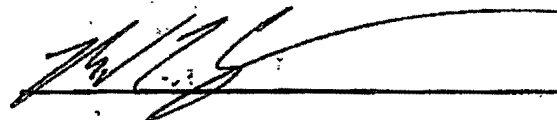
As a Court of General Sessions, convened on August 16th 2018 the Grand Jurors of DORCHESTER County present upon their oath:

MURDER

That in Dorchester County on or about June 5, 2016, with malice aforethought, the defendant, Keunte D Cobbs did kill one Brannon Mack by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JUNE 11 2018



Michael Spears, Solicitor

WITNESSES

Keith Elmore

Dorchester County Sheriff
16-005645

ARREST WARRANT NUMBER
2016A1810300548

Arrested: June 28, 2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Guilty of Assault and
Battery of a High and
Aggravated Nature

Foreperson of Petit Jury
Date: 8/23/2018

RANDY D. EUOY

DOCKET NO. 2016GS18-1268

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 6, 2016 TERM

THE STATE
vs.

Keunte D Cobbs

Indictment for

Attempted Murder

SC Code: 16-3-29

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2016 SEP - 1 PM 2:49
CHERYL ENMARK
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1268

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Keunte D Cobbs, did in Dorchester County on or about June 5, 2016 with the intent to kill, attempt to kill one Bradford Spells with malice aforethought by shooting the victim twice. This offense being in violation of Section 16-3-29, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

WITNESSES

Kath Elmore

Dorchester County Sheriff
16-005545**ARREST WARRANT NUMBER**
2016A1810300549

Arrested: June 28, 2016

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: September 1, 2016**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2016GS18-1269****The State of South Carolina**
County of DORCHESTER**COURT OF GENERAL SESSIONS**

September 6, 2016 TERM

THE STATE
vs.

Keunte D Cobbs

Indictment forPossession of a Firearm or Knife During
the Commission of a Violent Crime

SC Code: 16-23-490

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECU
2016 SEP -1 PM 2:48
CLERK OF COURT
DORCHESTER CO.

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

2016GS18-1269

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Dorchester on or about June 5, 2016, the defendant, Keunta D Cobbs, did visibly display or have in his possession a pistol during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: murder and/or attempted murder, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in cursive script, reading "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dorchester
 STATE VS.
Keunte D Cobbs
 AKA:
 Race: BLACK Sex: M Age: 38
 DOB: SS#
 Address:
 City, State, Zip:
 DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughter

INDICTMENT/CASE#: 2016GS18-1267
 A/W#: 2016A1810300547
 Date of Offense: 6/5/2016 - 1/1/1753
 S.C. Code § 16-3-10
 CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Spears, Michael 102370 Defendant Chisholm, Ash 76426
 SC Bar# SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Sentence currently serving

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Cheryl Graham

Court Reporter: Yvette Torres

SCCA/217 (04/2018)

Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

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JAN 21 2020

☐ Appointed PD or appointed other counsel
 Proviso requires \$500 be paid to Clerk during
 probation and shall be collected before any other
 fees.

Presiding Judge Dane S. Scott
 Judge Code: 9112
 Sentence Date: 1-9-2020

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Cobbs, Keunte D

Warrant/Ticket #: 2016A1810300547

AKA:

Date of Arrest: 06/28/2016

Addr:

Date of Offense: 06/09/2016

Date Rcv by Clerk 07/07/2016

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0116/Murder / Murder

SSN#

Sex: M Race: B

DOB:

DL#

Indictment # 0000GS18-2016-1247

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 1/9/20

Disposition

- ☒ 1. Guilty plea ~~Voluntary manslaughter~~
☒ 2. Trial -- guilty ~~Voluntary manslaughter~~
☐ 3. Trial -- not guilty
☐ 4. Dism/Not Pros/Pros Ended Explain: _____
☐ 5. Judicial Commitment Explain: _____
☐ 6. Judicial Dismissal
☐ 7. Remanded Explain: _____
☐ 8. Dismissed at Prelim
☐ 8. No Bill
☐ 9. Failure to Appear Explain: _____
☐ 10. Other Explain: _____

Judge: Goodstein

Court Reporter: Torres

Defense Atty: Chisholm / Loy

Solicitor: [Signature]

Counts: Code:

Sentence:

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JAN 21 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
Keunte D Cobbs

AKA:

Race: BLACK Sex: M Age: 36DOB: [REDACTED] SS# [REDACTED]Address: 208 Sandra LaneCity, State, Zip: Summerville, SC 29483DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault and Battery of a High and Aggravated Nature

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 102370 [Signature] 76426
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

519

INDICTMENT/CASE#: 2016GS18-1268A/W#: 2016A1810300548Date of Offense: 6/5/2016S.C. Code §: 16-3-29CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2122 Perry M. BucknerSentence Date: 8/23/18

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Cobbs, Keunte D

AKA:

Addr:

SSN#

Sex: M Race: B

DOB:

DL#

Warrant/Ticket #: 2016A1810300548

Date of Arrest: 06/28/2016

Date of Offense: 06/05/2016

Date Rcv by Clerk 07/07/2016

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 3410/Murder / Attempted Murder

Indictment #

0000GS18

2016-1268

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 8/22/18

- Disposition
- ☐ 1. Guilty plea
 - ☒ 2. Trial -- guilty *AMMAN*
 - ☐ 3. Trial -- not guilty
 - ☐ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge: *Goodstein*

Defense Atty: *Chisbblm / Loy*

Counts: Code:

Sentence:

Court Reporter: *Torres*

Solicitor: *[Signature]*

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JAN 21 2020

SC Court of Appeals

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Cobbs, Keunte D

AKA:

Addr:

SSN#

Sex: M Race: B

DOB:

DL#

Warrant/Ticket #: 2016A1810300549

Date of Arrest: 06/28/2016

Date of Offense: 06/05/2016

Date Rcv by Clerk 07/07/2016

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0549/Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

Indictment # 0000GS18 2016-1269

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 1/10/20

Disposition	1. Guilty plea	Explain:
	2. Trial -- guilty	Explain:
	3. Trial -- not guilty	Explain:
	4. Dism/Not Pros/Pros Ended	Explain:
	5. Judicial Commitment	Explain:
	6. Judicial Dismissal	Explain:
	7. Remanded	Explain:
	8. Dismissed at Prelim	Explain:
	8. No Bill	Explain:
	9. Failure to Appear	Explain:
	10. Other	Explain:

Judge:

Defense Atty:

Counts: Code:

Sentence:

Court Reporter:

Solicitor:

RECEIVED

JAN 21 2020

SC Court of Appeals

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Cobbs, Keunte D

AKA:

Addr:

SSN#

Sex: M Race: B

DOB:

DL#

Warrant/Ticket #: 2016A1810300321

Date of Arrest: 06/30/2016

Date of Offense: 03/02/2016

Date Rcv by Clerk 07/07/2016

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0552/Weapons / Articles regulating use,
possession of machine guns, sawn off shotguns,
rifles

Indictment #

~~0000GS18~~

2016-1246

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 1/6/20

- Disposition
1. Guilty plea
 2. Trial -- guilty
 3. Trial -- not guilty
 4. ☒ Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain:

NP

Explain:

Explain:

Explain:

Explain:

Judge: Goodstein

Defense Atty: Chisholm / Loy

Counts: Code:

Sentence:

Court Reporter: Torres

Solicitor:

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JAN 21 2020

SC Court of Appeals

JAIL W/ SCDC

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

STATE OF SOUTH CAROLINA

ORDER OF APPOINTMENT OF LEGAL

VS.

COUNSEL FOR INDIGENT DEFENDANT

Defendant: Keunte Cobbs

SSN#

Age: 35 Birthdate: [REDACTED] Race/Sex: B/M Date of Arrest: June 27, 2016 ?Address: [REDACTED] (Mother - Tangea Matthews)
Address/Friend or RelativeCity: Ladson State: SC Zip: 29456City: (843) 343-3519 (Michael - Dad) State: SC Zip: (843) 270-5947 (Tangea - mom)
Telephone TelephoneOffense: Murder
Magistrate: _____ Warrant No.: 2016A1810360547Bond: \$ No bond Type: Signature Recog Property Bondsman: _____
*****Offense: Att Murder 2016A1810360548
Magistrate: _____ Warrant No.: 2017A1810360549Bond: \$ No bond Type: Signature Recog Property Bondsman: _____
*****Offense: Possession of weapon during violent crime
Magistrate: _____ Warrant No.: 2016A1810360549Bond: \$ 5000 ?? Type: Signature Recog Property Bondsman: _____
*****→ Possession of a sawed off shotgun also ? 2016A1810360321
The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.THEREFORE, Ash Chisholm
is appointed as counsel for the defendant.This 12th day of June
at 3:20 (am - pm)White - Clerk of Court
Green - Attorney
Canary - Criminal Justice Coordinator
Pink - Solicitor
Goldensrod - Defendant

Criminal Justice Coordinator

6/12/17 - Appointed by Judge Goodstein

Att. murder victim
Bradford Spells - MW

17-975

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS
THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
Plaintiff,

Warrant/Indictment Nos.:
2016a1810300321; 2016a1810300547;
2016a1810300548; 2016a1810300549
Weapons / Articles regulating use,
possession of machine guns, sawn
off shotguns, rifles; Murder /
Murder; Assault / Attempted
Murder; Weapons / Poss. weapon
during violent crime

v.

KEUNTE DONTRELL COBBS,
Defendant.

MOTION FOR DISCOVERY
AND INSPECTION
(Rule 5 and Rule 6)

2017 JUN 19 AM 11:11
CLERK OF DISTRICT COURT

NOW COMES the Defendant by and through his undersigned counsel of record, pursuant to Rule 5 of the Rules of Criminal Practice in the Circuit Court, and moves the prosecution to permit Defendant to inspect and copy or photograph, including but not limited to, the following, the expressed provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

(a) Any written or recorded statements made by the Defendant or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution;

(b) The substance of any oral statements which the Prosecution intends to offer into evidence of the trial made by Defendant, whether before or after arrest, in response to interrogation by any person then known by Defendant to be a Prosecution State agent;

(c) A copy of Defendant's prior driving and or criminal record,

if any, as is within the possession, custody, or control of the Prosecution, the existence of which is known, or by the exercise of due diligence may become known to the Attorney for the Prosecution;

(d) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody, or control of the Prosecution, and which are material to the defense, or are intended for use by the Prosecution as evidence in chief at the trial, or were obtained from or belonging to the Defendant;

(e) All results of reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are in the possession, custody, or control of the Prosecution, including any blood alcohol tests or other tests which were conducted by the State, the existence of which are known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution, and which are material to the preparation of the defense or are intended for use by the Prosecution as evidence in chief at the trial; and

(f) The statement of any witness or prospective Prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution.

(g) Any and all audio and/or video recordings in the custody of the Prosecution, or may come into the possession of the Prosecution; including, but not limited to:

(1) interviews of victim(s), defendant(s), witnesses and/or any other party related in any way to the matter at hand;

(2) surveillance footage of any type and/or format related

to this case or investigation;

(3) any "dash-cam" footage or any other recorded footage.

Defendant further moves that compliance with the foregoing request be made within ten days from the service of this motion, and upon failure of the Prosecution to so comply, Defendant will move before the Presiding Judge of this Circuit by Notice and Motion, for an Order prohibiting the Prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or other such Order as the Court in its discretion deems just under the circumstances. For the purposes of this motion, Defendant asserts that any item requested in paragraphs (a), (b), (c), (d), (e), (f) and (g) above is material to the preparation of the defense in this case.

Additionally, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of any chemist's or analyst's report and demands the appearance, in Court of all chemists or analysts, as well as all persons within the chain of custody.

Respectfully submitted,

By: 

Ash D. Chisholm
Assistant Public Defender
107 West 6th North Street
Summerville, SC 29483
Attorney for Defendant
(843) 821-9800

Summerville, South Carolina
This 14th day of June, 2017.

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served on Glenn Justis, Esquire, Assistant Solicitor, First Circuit Solicitor's Office, 140 North Main Street, Suite 102, Summerville, South Carolina, 29483 by either depositing a copy of same, enclosed in a first class, postage paid wrapper, properly addressed, in a post office or official depository under the exclusive care and custody of the United Postal Service or via the Dorchester County Courier, this 14th day of June, 2017.



REC'D
2017 JUN 19 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

STATE OF SOUTH CAROLINA)

Plaintiff,)

v.)

KEUNTE DONTRELL COBBS,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THE FIRST JUDICIAL CIRCUIT

Warrant/Indictment Nos.:

2016a1810300321; 2016a1810300547;

2016a1810300548; 2016a1810300549

MOTION FOR SPEEDY TRIAL

FILED-RECORDED
2017 DEC 15 PM 4:19
CLERK OF COURT
DORCHESTER COUNTY

The Defendant, by and through his undersigned attorney, should show
this Honorable Court:

1. That the Defendant is presently awaiting trial on the charge of Weapons/Articles regulating use, possession of machine guns, sawn off shotguns, rifles; Murder; Assault/Attempted Murder; Weapons / Poss. weapon during violent crime, brought against the Defendant by the State of South Carolina;
2. That the Defendant is informed and believe that he is entitled to a speedy trial and does hereby demand such, as provided in the Sixth Amendment in the United States Constitution and Article 1, Section 9 of the South Carolina Constitution.

Respectfully submitted,



Ash D. Chisholm
Assistant Public Defender
107 W. 6th North Street
Summerville, SC 29483
(843) 821-9800 Office
(843) 871-0523 Facsimile
ATTORNEY FOR DEFENDANT

Summerville, South Carolina
This 13th day of December, 2017.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	Warrant/Indictment Nos.:
STATE OF SOUTH CAROLINA	)	2016a1810300321; 2016a1810300547;
	)	2016a1810300548; 2016a1810300549
Plaintiff,	)	
V.	)	
	)	
KEUNTE DONTRELL COBBS,	)	MOTION FOR SPEEDY
	)	
Defendant.	)	

FILED-RECORDED
 2018 JUN -8 PM 3:59
 CLERK OF COURT
 DORCHESTER COUNTY

The Defendant, by and through his undersigned attorney, hereby shows this Honorable Court:

1. That the Defendant is presently awaiting trial on the charge of Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles; Murder; Attempted Murder; Poss. weapon during violent crime, brought against the Defendant by the State of South Carolina;
2. That the Defendant is informed and believe that he is entitled to a speedy trial and does hereby demand such, as provided in the Sixth Amendment in the United States Constitution and Article 1, Section 9 of the South Carolina Constitution.

Respectfully submitted,



Ash D. Chisholm
 Assistant Public Defender
 107 W. 6th North Street
 Summerville, SC 29483
 (843) 821-9800 Office
 (843) 871-0523 Facsimile
 ATTORNEY FOR DEFENDANT

Summerville, South Carolina
 This 6th day of June, 2018.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS
THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
Plaintiff,

Warrant/Indictment Nos.:
2016a1810300321; 2016a1810300547;
2016a1810300548; 2016a1810300549
Weapons / Articles Regulating Use,
Possession Of Machine Guns, Saw
Off Shotguns, Rifles; Murder /
Murder; Assault / Attempted
Murder; Weapons / Poss. Weapon
During Violent Crime, If Not Also
Sentenced To Life Without Parole
Or Death

v.

BOND MOTION

KEUNTE DONTRELL COBBS,
Defendant.

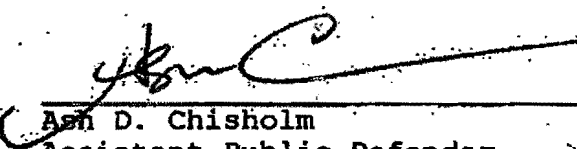
CLERK OF COURT
DORCHESTER COUNTY

2018 JUN -8 PM 3:58

FILED RECORDED

YOU WILL please take notice that the undersigned will move on behalf of the Defendant for an Order setting, reducing, and consolidating the Defendant's bond[s] on the 11th day of June, 2018, or as soon thereafter as the matter may be heard.

Respectfully submitted,


Ash D. Chisholm
Assistant Public Defender
107 West 6th North Street
Summerville, SC 29483
Attorney for Defendant
(843) 821-9800

Summerville, South Carolina
This 6th day of June, 2018.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Diane S. Goodstein, Circuit Court Judge

Case No. 2016-GS-18-1267

The State, ...Respondent.

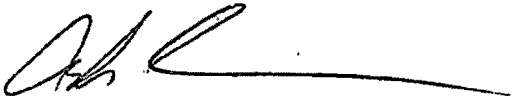
v.

Keunte D. Cobbs, ...Appellant.

NOTICE OF APPEAL

Keunte Dontrell Cobbs, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Diane S. Goodstein, on January 9, 2020. This appeal is filed at the request of Defendant Keunte Cobbs.

January 17, 2020



Ash D. Chisholm
107 West 6th North Street
Summerville, SC 29483
(843) 821-9800
Attorney for Defendant

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Other Counsel of Record:

Michael Spears
Assistant Solicitor
101 Ridge Street
St. George, SC 29477
(843) 871-2640

JAN 21 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

JUL 07 2021

SC Court of Appeals

Appellate Case No. 2020-000095
Lower Court Case No. 2016A1810300547

The State Respondent,

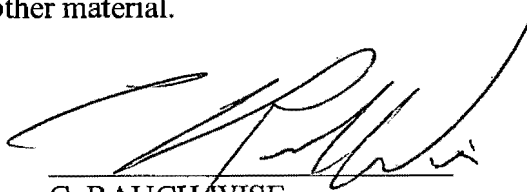
vs

Keunte D. Cobbs, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 24th, 2021



C. RAUCH-WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Appellant

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JUL 07 2021

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
Lower Court Case No. 2016A1810300547**

The State Respondent,

vs

Keunte D. Cobbs, ... Appellant

FINAL BRIEF OF APPELLANT

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
Bar #: 006188**

Attorney for Appellant

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Statement of Issues on Appeal

Question I: Did the trial court err in failing to direct a verdict in favor of Keunte Cobbs when the State failed to prove substantial circumstantial evidence of either malice aforethought or sudden heat or passion based upon sufficient legal provocation nor did they disprove a element of self-defense?

Question II: Did the trial court err in failing to dismiss the charges based upon the speedy trial provision of Article I § 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the United States Constitution when the two year delay in the first trial and the eighteen month delay in the second trial were attributable to the State not being prepared to try the case?

Statement of the Case

Keunte Cobbs was arrested and charged with murder on June 27, 2016 for a shooting that occurred on June 5, 2016. He filed a motion for a speedy trial on December 18, 2017 and again on June 18, 2018. After the first speedy trial motion, the case was ordered to be tried in January of 2018. When the case was not tried, bond was set at \$400,000 and a new speedy trial motion was filed and heard on June 18, 2018.

A trial was held on August 20-23, 2018. At this trial, Mr. Cobbs was convicted of assault and battery of a high and aggravated nature. The jury was unable to reach a verdict on the charge of murder.

The State re-tried the murder charge on January 6-9, 2020. At this trial, the jury convicted Mr. Cobbs of voluntary manslaughter. He was sentenced to 30 years in prison. Mr. Cobbs filed his Notice of Appeal on January 17, 2020.

Standard of Review

As the trial Court erred as a matter of law in failing to direct a verdict, the standard of review should be de novo. While no South Carolina case specifically so holds, other states have recognized the standard of review as de novo. “We hold review of a grant of a directed verdict is, in fact, de novo.” *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 633, 668 N.E.2d 601, 604 (1996).

As to the issue of a denial of a speedy trial, the standard of review is abuse of discretion. “The trial court’s ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. . . . An abuse of discretion occurs when the court’s decision is based on an error of law or upon factual findings that are without evidentiary support.” *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 371–72 (2016)(internal citations omitted)

Argument

Question I

Did the trial court err in failing to direct a verdict in favor of Keunte Cobbs when the State failed to prove substantial circumstantial evidence of either malice aforethought or sudden heat or passion based upon sufficient legal provocation nor did they disprove a element of self-defense?

The trial court applied an incorrect standard in ruling upon the motion for a directed verdict

The trial judge twice denied the motion for directed verdict. At the conclusion of the trial, the judge stated, “And, again, the question is, for me - - is there evidence on each and every element, and there is. I don’t weigh it. I just have to ascertain if it exists. It does.” Rec, at 608, ll 2-5. In her ruling, she decided the motion on the existence of any evidence and not on whether substantial circumstantial evidence exists. The appellate courts in our state have long held that if the case is based upon circumstantial evidence, the evidence must be substantial. *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998); *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 677 S.E.2d 603 (2009).

Simply looking as to whether there is the existence of evidence on each element is applying a scintilla of evidence standard. The United States Supreme Court specifically rejected the scintilla standard in *Jackson v. Virginia*, 443 U.S. 307 (1979). As the Court said, “Any evidence that is relevant—that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence, . . . could be deemed a ‘mere modicum.’ But it could not seriously be argued that such a ‘modicum’ of evidence could by itself rationally support a conviction beyond a reasonable doubt.” *Id.* at 320. *Jackson* establishes a

federal constitutional floor below which no state may go. An “any evidence” standard of review is below that floor. The trial court did not apply the correct standard.

The trial court also incorrectly stated as to the evidence, “I don’t weigh it.” This is simply not correct. Our Supreme Court has said on more than one occasion, “In ruling on a motion for a directed verdict, a trial judge is concerned only with the existence of evidence, not with its weight.” *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). In the same Opinion, the Court stated, “In reviewing a denial of a motion for a directed verdict, the evidence must be reviewed in the light most favorable to the State and if there is any direct or any substantial circumstantial evidence, reasonably tending to prove the guilt of the accused, we must find that such issues were properly to be decided by the jury.” *Id.* at 264, 387 S.E.2d at 272–73. The Court did not explain, nor has the Court since explained, how a trial judge determines if the circumstantial rises from the level of a scintilla of circumstantial evidence to substantial circumstantial evidence without weighing the circumstantial evidence. Even concluding the direct evidence is more than a “modicum” would require a trial judge to weigh the evidence.

As the trial judge applied an improper standard, this Court is not bound by any factual determinations the trial court made. This issue should be reviewed de novo.

Even if the trial court had applied a proper standard, this Court should still review the evidence de novo. In ruling on a motion for directed verdict, the court is ruling that as a matter of law, the State has or has not produced sufficient evidence to sustain a conviction. As the lower court ruled on a matter of law, the standard of review should be de novo. This Court considers the evidence in the same manner as the trial court. The evidence is viewed in the light

most favorable to the State. Neither the lower court, nor this court should consider credibility.¹ As to self-defense, the South Carolina Supreme Court has said, “While the State must present evidence to support the existence of each element of the crime charged, the State is under no burden to produce evidence to refute the existence of self-defense. However, if there is some evidence to support each element of self-defense—whether found in the State’s presentation of evidence or produced by the defendant—it becomes the State’s burden to persuade the jury beyond a reasonable doubt that at least one element of the defense does not exist.” *State v. Williams*, 427 S.C. 246, 249–50, 830 S.E.2d 904, 906 (2019). This case must be analyzed to determine if the State has offered sufficient evidence to negate one of the required elements of self-defense.

The State failed to negate an element of self-defense

In this case, Keunte Cobbs testified and contended he was confronted by two armed men in the small confines of the men’s restroom of an IHOP restaurant in Dorchester County. Rec. on App. at 575, 1 20 to 578, 1 24. One person was wounded. The other died several days later in the hospital. The surviving person did not testify nor did he make any statements to law enforcement at the time of the shooting or while he was in the hospital. Lt. Dwayne Peters with the Dorchester County Sheriff’s office testified Bradford Spells, the survivor, has a reputation in the community for violent and criminal behavior. Rec. on App. at 592, 11 12-22. Mr. Cobbs also testified he knew the reputation of Mr. Spells for violence. Rec. on App. 566, 1 18 to 497, 1 2. The undisputed fact in this case is both individuals had a bad reputation for violence. The State

¹ Of course if the testimony is so incredible that no reasonable juror could believe it a trial court and this Court should not hesitate to disregard it.

offered no evidence to refute this conclusion.

This case should be decided by the principles set forth in *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011). In that case, the Court found the State had failed to negate self-defense when the Defendant raised a plausible case of self-defense. The Court first noted the essential elements of self-defense:

A person is justified in using deadly force in self-defense when:

(1) The defendant was without fault in bringing on the difficulty;

(2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;

(3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Id. at 499, 716 S.E.2d at 101.

In this case, the State has failed to negate any of these factors.

The Defendant was without Difficulty in Bring on the Difficulties

The facts in this case show that Mr. Cobbs first entered the restroom alone. He was followed within seconds by two men both of whom were armed. The facts establish that neither man first seated himself in the restaurant before heading to the restroom. They entered and both went to the restroom. Under these facts, Mr. Cobbs did nothing to bring on the difficulty. The State offered no proof that Mr. Cobbs did any act or made any comment that brought on the difficulty. Thus, no credibility issue exists for the jury to decide on this element. The State failed to negate this element.

*The Defendant Actually Believed he was in Imminent Danger of Losing his Life or Sustaining
Serious Bodily Injury, or he Actually was in Such Imminent Danger*

The fact is also undisputed that both men who entered the restroom behind Mr. Cobbs were armed with pistols. Mr. Cobbs testified that he observed the pistols before he started shooting. Rec. on App. at 577, ll 17-19. As our Supreme Court has said, "The accused has a right to rely upon his belief in the necessity, provided that the circumstances in which he was placed were such as would, in the opinion of the jury, justify such a belief in the mind of a person possessed of ordinary firmness and reason." *State v. Blackstone*, 157 S.C. 278, 154 S.E. 161, 161 (1930). The State cannot overcome its burden by suggesting that Mr. Cobbs did not actually see a firearm. "Fuller was entitled to a charge that the jury could find that Fuller could act on appearances because he testified that he saw Dixon and Phillips open the trunk of their car and also thought he saw a shiny object in Dixon's hand." *State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). In addition to the above testimony, the evidence is undisputed that both individuals who were shot had reputations for being violent people. Here, the State has failed in its obligation to prove that Mr. Cobbs improperly believed he was in danger of losing his life or serious bodily injury.

*A Reasonable Prudent Man of Ordinary Firmness and Courage Would have Entertained the
Belief he was in Danger of Losing his Life or Serious Bodily Injury*

The State has to prove that Mr. Cobbs acted unreasonably when he perceived two armed men in the restroom both of whom had reputations for violence. The State offered no such evidence. As a matter of law, any person of ordinary firmness and courage would be fearful of two armed men, known to be violent, when confronted by them in the small confines of a

restroom of a restaurant. The State has offered no evidence this belief by Mr. Cobbs was not reasonable.

The Defendant had no Other Probable Means of Avoiding the Danger of Losing his own Life or Sustaining Serious Bodily Injury

The State could not prove that Mr. Cobbs had a duty to retreat because he did not have such a duty. Mr. Cobbs was at a place where he is legally entitled to be. He had no other avenue of escape as the restroom had only one exit. The testimony establishes that the two armed men came into the restroom shortly after Mr. Cobbs. Thus, the undisputed fact is they were blocking the only avenue of escape Mr. Cobbs had. The State has not proposed any facts to suggest otherwise. The State has not negated this element.

The Circumstantial Evidence Does not Support a Finding of Mr. Cobbs Acting in Sudden Heat or Passion with Sufficient Legal provocation

The jury rejected the argument of the State that Mr. Cobbs acted with malice aforethought in shooting Mr. Mack. The jury, instead, found he acted with sudden heat or passion with sufficient legal provocation. The argument of the State had been that Mr. Cobbs simply started shooting the two individuals when they entered the restroom without regards as to whether they were armed. Rec. on App. at 554, ll 5-11. Under these facts, the verdict should have been murder.

What the jury believed to reduce the charge to manslaughter is not known. If they believed that Mr. Cobbs saw both men armed in the restroom, then under the facts, the verdict should have been not guilty as he acted in self-defense. The circumstantial evidence in this case simply does not point to the guilt of the accused. It is speculation at best.

Suppose two men are seen outside a house and both are seen armed with pistols. They both enter the house and within seconds shots are heard. One man exits the house and the other man is found dead of a gun shot wound from the firearm of the survivor. Under these facts, has the State proven by substantial circumstantial evidence that the survivor is guilty of murder or manslaughter? While murder could be a very real possibility, has it been proven beyond a reasonable doubt? Has the State proven manslaughter under these facts?

Suppose at a trial the survivor testifies he shot in self-defense because the other person pulled his pistol first. Could the State argue the credibility of the testimony is for the jury to decide and, therefore, the murder charge should be upheld? Is this permissible even if the State did nothing to attack the credibility of the survivor except cross examine him? And if at trial, the survivor does not testify, should the trial judge have directed a verdict? Simply put, when there is no evidence as to who was the aggressor, has substantial circumstantial evidence been presented to sustain a conviction?

Mr. Cobbs argues that the evidence in such a case is not legally sufficient to sustain a conviction. In civil cases, our Supreme Court has held that circumstantial evidence must be proven with reasonable certainty. *Gastineau v. Murphy*, 331 S.C. 565, 570-571, 503 S.E.2d 712, 714-715 (1998) (“Viewing the evidence in the light most favorable to Gastineau, the circumstances under which other inspections were performed do not lead with reasonable certainty to the conclusion that Hudson would have told anybody he was there because of Gastineau's report.”) If “reasonable certainty” is required in a civil case, then a higher standard is required for a criminal case. The United States Supreme Court has said that a conviction cannot be sustained “without convincing a proper factfinder of his guilt with utmost certainty.” *In re*

Winship, 397 U.S. 358, 364 (1970). Again, this constitutional floor exceeds the “any evidence” standard of review. As our Supreme Court said over ninety years ago, “Neither the evidence nor the circumstances warrant his conviction; while the whole case raised a suspicion, and a grave one at that, it does not warrant a verdict of guilty.” *State v. Turner*, 117 S.C. 470, ___, 109 S.E. 119, 120 (1921). At the most, the evidence here raises a grave suspicion.

Over eighty years ago, our state had a standard of review in circumstantial evidence cases that arguably was greater than “substantial circumstantial evidence.”² “

All of the facts proved must be consistent with each other, and, taken together, should be of a conclusive nature and tendency, producing a reasonable and moral certainty that the appellant and no one else committed the offense charged. It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true, which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of appellant, then the proof fails. The reason for this is that all presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent until he is proved to be guilty. As has often been stated, it is not sufficient to establish a probability of guilt arising from the doctrine of chances that the fact charged is likely to be true. *State v. Kimbrell*, 191 S.C. 238, ___, 4 S.E.2d 121, 122 (1939). See, also, *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949) overruled by *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989).

This standard of review became firmly entrenched until *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) which held the standard is whether there is substantial circumstantial evidence. In *Edwards*, the South Carolina Supreme Court held a judge “should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his

² Arguably “substantial circumstantial evidence” would have to exclude another reasonable hypothesis to be substantial. As mentioned earlier, if both hypothesis are close to equal the evidence is not, as a matter of law, substantial.

duty to submit the case to the jury *if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.*" *Edwards*, at 275, 379 S.E.2d 888, 889 (1989)(emphasis in original). The Court did not, however, provide any definition of "substantial circumstantial evidence." The term remains undefined today.

The South Carolina Supreme Court has, however, applied the *Kimbrell* and *Mains* standard in affirming a conviction. As Justice Toal stated in her concurring opinion, "Put another way, the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis." *State v. Daniels*, 401 S.C. 251, 263, 737 S.E.2d 473, 479 (2012). Support for this standard of review is also found in *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) where in footnote 2, after citing the "to the exclusion of every other reasonable hypophysis" standard, the Court stated, "[I]t nonetheless illustrates the lack of evidence against Petitioners." *Id.* at 626, 677 S.E.2d at 606. The same principle applies in this case. Applying the "to the exclusion of every other reasonable hypophysis" standard illustrates the lack of evidence against Mr. Cobbs.

This Court should reverse the conviction of Mr. Cobbs under the standard of appellate review that requires this Court to review the evidence to find if the State has excluded every reasonable hypothesis of innocence or the substantial circumstantial evidence standard. As stated by one author:

As evidenced by the standards of review currently applied in the federal courts, there has been an apparent shift from a standard tailored to ensuring unjust convictions are overturned to a standard that ensures proper convictions are upheld. This shift implies a value shift from warranting that the innocent are not convicted to

ensuring that the guilty are. If the standards causing this shift have been inadvertently implemented, the federal courts should reconsider the purpose of these standards. If the courts aim to follow the Fourteenth Amendment and *In re Winship*, they need to fully assess reasonable doubt under circumstantial evidence by consideration of every reasonable hypothesis of innocence and not which theory fashioned by the evidence preponderates. Julie Schmidt Chauvin, Comment, "*For It Must Seem Their Guilt*": *Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217, 253 (2007)

On three occasions, our Supreme Court has cited with approval the law review article Irene Merker, Rosenberg, Yale L. Rosenberg, "*Perhaps What Ye Say is Based Only on Conjecture*" - - *Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995). In that article the authors stated:

In the case of circumstantial evidence, however, the ultimate determination of guilt is based also on inferences from the evidence, and the court is in as good, if not better, position to assess the rationality of these inferences and whether they establish guilt beyond a reasonable doubt. Thus, use of the reasonable hypothesis standard for appellate sufficiency review would preserve the appropriate roles of judge and jury in circumstantial evidence cases.
Id. at 1416

In *Holland v. United States*, 348 U.S. 121 (1954), frequently cited as a basis for not giving a circumstantial evidence charge, the Court cautioned appellate courts to review circumstantial evidence case with great caution. The Court said, "Appellate courts should review the cases, bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation." *Id.* at 129. The reason for such caution, while not discussed in the Opinion, is obvious. A circumstantial evidence case is the only type of case tried in our courts where every witness can

tell the truth, but an innocent person can be convicted. We should be reminded of the comments of Judge G. Duncan Bellinger in his concurring opinion when he stated, “The maxim of the law is that it is better that many guilty should escape than that one innocent should suffer, and while I am far from expressing the opinion that the person involved is innocent, I think it consistent with the rules by which this Court is governed in like cases that the defendant should have the benefit of the doubt.” *State v. Baker*, 208 S.C. 195, 207, 37 S.E.2d 525, 530 (1946)(concurring opinion)

Such a standard of review is used in many states. *New Hampshire v. Roy*, 167 N.H. 276, ___, 111 A.2d 1061, 1075 (2015) (“[T]he reviewing court evaluates the evidence in the light most favorable to the prosecution and determines whether the alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt.”); *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (“This heightened scrutiny requires us to consider ‘whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.’”); *United States v. Spradlen*, 662 F.2d 724 (1981) (“When reviewing the sufficiency of the evidence supporting a criminal conviction, the standard of review is whether, viewing the evidence and all reasonable inferences derived therefrom in the light most favorable to the government, the jury could conclude that the evidence is inconsistent with every reasonable hypothesis of the defendant's innocence.”); *Garcia v. State*, 227 So.2d 209, 210 (1969) (“[T]he circumstances relied upon must be not only consistent with guilt, but inconsistent with innocence; and must even go further by excluding every reasonable hypothesis except that of guilt.”); *LaPrade v. Commonwealth*, 191 Va. 410, 418, 61 S.E.2d 313, 316 (1950) (“[I]f the proof relied upon by the Commonwealth is

wholly circumstantial, as it here is, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence.”)

The day has come for our appellate court to define substantial circumstantial evidence. Also, the day has come for our courts to definitively say when the evidence supports another reasonable explanation other than guilt, then the State has not met its burden. Viewing the record under this standard, the evidence is not sufficient to convict.

What exactly does “substantial circumstantial evidence” mean? Logic would seem to require that the evidence favoring conviction must be substantially more probable than the evidence favoring an acquittal. Substantial circumstantial evidence cannot mean the odds are equal as to the probability of the defendant being guilty or innocent. Nor can substantial mean a mere 51% probability of being guilty. Such a standard would be a mere modicum.

Under the facts of this case, there are no facts that make the guilt of Mr. Cobbs substantially more likely than his innocence. While credibility is for the jury, the facts established in this case do not depend upon credibility. At the close of the State’s case, all that had been proven was two armed men entered the bathroom of the IHOP shortly after Mr. Cobbs. One person was shot and wounded and the other killed. No facts exist by which the jury could determine whether or not Mr. Cobbs saw the weapon of at least one of the two men who were shot. Once two men, both armed and known to be violent, enter the confines of a small bathroom, Mr. Cobbs has the right to act upon appearances. The State has failed to establish by substantial circumstantial evidence that Mr. Cobbs shot in sudden heat or passion with sufficient legal provocation. The conviction of Keunte Cobbs should be reversed.

Question II

Did the trial court err in failing to dismiss the charges based upon the speedy trial provision of Article I § 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the United States Constitution when the two year delay in the first trial and the eighteen month delay in the second trial were attributable to the State not being prepared to try the case?³

This case should be controlled by *State v. Hunsberger*, 418 S.C. 335, 794 S.E.2d 368 (2016). In that case, the delay between indictment and trial was approximately 10 years. The Court attributed about two years to the defendant which left an eight-year delay attributed to the State. *Id.* at 346, 794 S.E.2d at 373. Furthermore, the case was complicated by Mr. Hunsberger being extradited to Georgia and tried on a serious case there arising out of the same set of facts. The Court discussed the four factors to be considered in making an analysis under the speedy trial provisions of the state and federal constitutions. The Court noted that “An accused’s speedy trial right begins when he is ‘indicted, arrested or otherwise officially accused.’” *Id.* at 342, 794 S.E.2d at 372. (internal citations omitted). “Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness.” *Id.* at 343, 794 S.E.2d at 373. The Court then proceeded to discuss the four factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972).

Mr. Cobbs was arrested on June 27, 2016 for a shooting that occurred on June 5, 2016. For a reason not explained in the lower court proceedings, Mr. Cobbs was not appointed counsel

³ This identical issue is presented in *State v. Cobbs*, Appellate Case № 2018-001599. This case includes the delay after that trial as an additional reason to grant the motion.

until June 14, 2017. Rec. on App. at 88, ll 19-20. On December 15, 2017, Mr. Cobbs filed his first request for a speedy trial. Rec. on App. at 784. This motion was granted and a trial ordered for January of 2018. This trial was not held. When the case was not tried, Mr. Cobbs was granted a \$400,000 bond which he was unable to make. Rec. on App. at 90, ll 1-4. On June 8, 2018, a motion for a PR bond and a renewed motion for a speedy trial was filed. Rec. on App. at 90, ll 5-6. The case was ultimately tried on August 20-24, 2018. The jury convicted Mr. Cobbs of assault and battery of a high and aggravated nature. The jury was unable to reach a verdict on the murder charge. The murder trial was then called for trial on January 6, 2020. At this trial, Mr. Cobbs was convicted of voluntary manslaughter.

The delay in this case is in excess of four years. While Mr. Cobbs was tried once on the murder charge, there was a delay of approximately 17 months in conducting the second trial. This period of delay is sufficient to require the State to explain or justify the delay and establish a lack of prejudice. *State v. Langford*, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012)(holding a 23 month delay “is presumptively prejudicial and triggers the remaining *Barker* inquiry.”) Thus, this case must be examined with the burden being on the State to justify the delay. Mr. Cobbs’ right to a speedy trial starts when he was arrested and not when he was appointed counsel. *Langford*, at 442, 735 S.E.2d at 482 (“In the case before us, Langford’s speedy trial clock began when he was arrested on October 3, 2008, and ran until he was tried twenty-three months later on September 7, 2010.”). Of particular note in this case is the fact that a speedy trial motion by his appointed counsel was filed six months after being appointed.

1. Length of Delay

The initial delay was more than two years from the date of arrest to the date of the first

trial. After the first trial, another 17 months passed before the second trial. This length of time is sufficient to require the State to establish a reason for the lengthy delay. No action by Mr. Cobbs prevented the State from proceeding to trial.

2. Reason the Government Assigns to Justify the Delay

In this case, the reason attributed to the first delay was simply inexcusable. The first inexcusable act was not appointing counsel for almost a year. Nothing in this record established why the delay was so lengthy. Next, the excuse used by the government was the first investigator left the office in January of 2017. Another investigator was not assigned to the case until early 2018. Rec. on App. at 98, ll 9-11. When the second investigator was placed on the case in January of 2018, he learned many items had not been sent to SLED for analysis. Rec. on App. at 103, ll 15-20.

3. Accused's Assertion of the Right to a Speedy Trial

In this case, Mr. Cobbs twice filed separate motions for a speedy trial. Rec. on App. at 784 to 785. As noted above, within 6 months of being appointed, counsel for Mr. Cobbs filed a speedy trial motion. Mr. Cobbs could have done no more. "A defendant has no duty to bring himself to trial, the State has that duty as well as the duty of insuring that the trial is consistent with due process." *Barker v. Wingo*, at 527. While Mr. Cobbs did not file a motion for a speedy trial after the trial resulting in a hung jury, the State was well aware Mr. Cobbs wanted his case tried. Mr. Cobbs never threw any obstacle in the path of the State that would have prevented the case from being called. Mr. Cobbs clearly asserted his right to a speedy trial.

4. Prejudice to the Accused

Of particular importance in this case, the original investigator apparently lost cell phones

belonging to Mr. Cobbs. Rec. on App. at 100, ll 5-6. Rec. on App at 83, ll 1-13. The trial court noted there was confusion as to the prejudice from the loss of the cell phones. Rec. on App. at 125, ll 4-18. The Court finally concluded, "It is very difficult to assess the level of prejudice." Rec. on App. at 126, ll 1-2. The Court then concluded as to prejudice from the loss of the phones, "So, I think that issue really weighs against both sides, although, I think probably more against the State than the Defendant." Rec. on App. at 126, ll 8-10. The finding was in error.

The trial court failed to explain how the loss of the cell phones while in the possession of the State could ever be the fault of the Defendant. She concluded that the prejudice was in part against the Defendant because "defendant did not . . . make a request of the Court to preserve the phones or the records or to obtain the records." Rec. on App. at 126, ll 5-7. Mr. Cobbs has the right to rely upon the State to properly preserve the evidence. With the cell phones in the possession of the State, Mr. Cobbs had no need to request the records from the cell phones company. The phones contained all the records that were needed. And the State knew that because the phone was missing and the records could not be obtained, Mr. Cobbs had no means to contest the testimony of Mikell Nelson, who claimed an incriminating call was made to Mr. Cobbs.

The State did not establish when the cell phones were noticed as missing. The State never called as a witness Officer Keith Elmore, the officer who seized the phones. The only known fact is when Officer Dwayne Peters took over the investigation, the cell phones were missing. The records established that the cell phones were seized from Mr. Cobbs. Rec. on App. 519, l 21 to 520, l 13. With a delay in the first trial of over two years, the presumption of prejudice is in favor of Mr. Cobbs. The State has not produced sufficient evidence to overcome

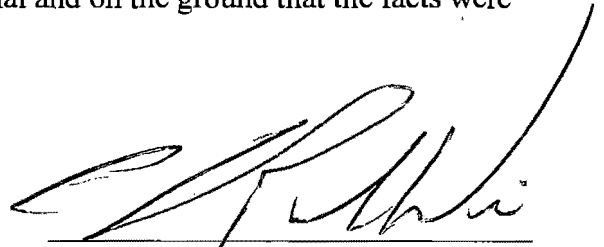
this presumption of prejudice.

If the presumption of prejudice means anything, it has to mean the Defendant is prejudiced when the State, with no explanation as to why, loses evidence that could help prove the innocence of the Defendant. The trial court erred in failing to dismiss the charges for a violation of the speedy trial provision of Article I, § 14 of the Constitution of the State of South Carolina and the Sixth Amendment of the Constitution of the United States of America.

CONCLUSION

For the foregoing reasons, this Court should reverse the conviction of Keunte D. Cobbs on the ground that he was denied his right to a speedy trial and on the ground that the facts were not sufficient to convict him of voluntary manslaughter.

July 6th, 2021



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IN THE COURT OF APPEALS

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

Appellate Case No. 2020-000095
Lower Court Case No. 2016A1810300547

RECEIVED
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SC Court of Appeals

The State Respondent,

vs

Keunte D. Cobbs, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),
SCACR.

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THE STATE,

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vs.

KEUNTE D. COBBS,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court err by failing to direct a verdict in favor of Appellant when the State failed to prove substantial circumstantial evidence of either malice aforethought or sudden heat of passion based upon sufficient legal provocation nor did they disprove an element of self-defense?

II.

Did the trial court err by failing to dismiss the charges based upon the speedy trial provisions of both the state and federal constitutions when the two-year delay in the first trial and the eighteen month delay in the second trial were attributable to the State not being prepared to try Appellant's case?

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Are Appellant's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion properly preserved for appellate review when those arguments were neither raised to nor ruled upon by the trial judge? Moreover, notwithstanding any issue preservation concerns, did the trial judge correctly decline to grant a directed verdict motion when the evidence presented during trial was sufficient for the jury to rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter?

II.

Did the trial judges who presided over Appellant's two murder trials abuse their broad discretion by refusing to dismiss Appellant's case based on an alleged violation of Appellant's speedy trial rights when neither the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, nor the roughly sixteen-month span of time incurred prior to the second trial was excessively or unreasonably lengthy based on the circumstances involved, resulted from any intentional willfulness or unreasonable neglect on the part of the State, hampered the defense, or otherwise caused any undue prejudice to Appellant?

STATEMENT OF THE CASE

In June of 2016, Appellant Keunte D. Cobbs was arrested following an investigation into a shooting that had occurred a few weeks earlier. In September of 2016, the Dorchester County Grand Jury indicted Appellant for murder, attempted murder, and possession of a weapon during the commission of a violent crime. In March of 2018, the Dorchester County Grand Jury additionally indicted Appellant for possession of a machine gun, sawed-off shotgun, or sawed-off rifle. On August 20, 2018, a jury trial was commenced solely on the murder and attempted murder charges in the Dorchester County Court of General Sessions with the Honorable Perry M. Buckner, III, circuit court judge, presiding.¹ At the conclusion of the four-day trial, the jury convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature (“ABHAN”) but was unable to reach a verdict on the murder charge. Following that, Judge Buckner granted a mistrial on the murder charge and sentenced Appellant to a term of imprisonment of eighteen years for ABHAN. Appellant then timely appealed.

While that appeal was ongoing, a second jury trial was commenced on the murder charge in the Dorchester County Court of General Sessions on February 6, 2020, with the Honorable Diane Schafer Goodstein, circuit court judge, presiding.² At the conclusion of the four-day trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter. Following the verdict, Judge Goodstein sentenced Appellant to a thirty-year term of imprisonment. Appellant then timely filed a notice of appeal.

¹ Shortly before trial, the murder indictment was amended to correct a scrivener’s error in the original. (R. pp. 767-768).

² The records associated with Appellant’s appeal from his ABHAN conviction are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=68286>.

STATEMENT OF FACTS

Around 1:49 a.m. in the early morning hours of June 5, 2016, Appellant Keunte Cobbs, who was wearing a red shirt at the time, entered an IHOP restaurant located in Summerville, South Carolina, along with a confederate and sat down at a table.³ (R. p. 394; pp. 474-475; p. 487; p. 490; p. 530; State's Ex. # 76 (Surveillance Footage)). Thereafter, at approximately 2:12 a.m., Appellant got up and went into the restaurant's bathroom, and his confederate followed in the same direction and waited nearby. (R. p. 529; p. 534; State's Ex. # 76). Roughly two minutes later, two individuals—Brannon Mack and Bradford Spells—came into the restaurant and quickly headed to the bathroom area. (R. pp. 535-536; State's Ex. # 76). Within seconds of the two entering the bathroom, numerous gunshots were fired, which led to panic inside the restaurant. (R. p. 276; p. 294; p. 476; pp. 479-482; p. 486; pp. 535-536). Shortly after that, Spells, Appellant, and Mack came out of the bathroom one by one and exited the restaurant. (R. p. 290; p. 535; State's Ex. # 76). Appellant and his confederate then quickly left the area while Spells and Mack, who both had been shot, collapsed outside. (R. p. 277; p. 280; pp. 294-295; p. 307; pp. 539-540; pp. 541-542; State's Ex. # 76).

In the ensuing aftermath, emergency medical personnel quickly responded to the scene and transported Spells and Mack to the hospital to receive treatment for their injuries. (R. pp. 294-296). Likewise, law enforcement officers from the Dorchester County Sheriff's Office rapidly headed to the restaurant and began an investigation into the shooting. (R. pp. 275-276; p. 309; pp. 315-317; p. 518). While conducting their investigation at the scene, the officers observed a substantial amount of blood inside the restaurant's bathroom along with numerous cartridge cases and fired bullets, found the key to Mack's vehicle on the bathroom's sink along

³ Years later, the identity of Appellant's confederate still remains unknown. (R. p. 101; p. 535).

with some money, and located Spells's cell phone. (R. pp. 277-278; p. 318; pp. 334-339; p. 347; p. 375; p. 553). Additionally, the officers obtained a recording of surveillance footage from the restaurant, and they were able to recover some fingerprints from the restaurant's front door, including in an area Appellant was depicted touching in the footage. (R. pp. 283-284; pp. 289-290; pp. 351-356). Furthermore, the officers found a loaded gun outside the restaurant near the location where Spells had been found after the shooting, and the emergency medical personnel provided them with another gun that had been found amongst Mack's clothing.⁴ (R. pp. 297-299; p. 304; p. 309; pp. 311-312; p. 314).

Ultimately, Spells survived the injuries he sustained in the shooting, but he declined to provide any information to or otherwise cooperate with the officers investigating the incident. (R. p. 523; pp. 545-546). Meanwhile, Mack—who had been shot approximately six times in the left side of his body—died within just a few days of the shooting due to the severity of his injuries, and he was not able to provide any information to the investigating officers prior to his death. (R. p. 279; p. 303; p. 307; pp. 736-745; p. 750; p. 752). Nonetheless, despite the lack of information from the victims, officers were able to identify Appellant as a suspect through information obtained from recorded footage captured at the restaurant along with information provided by a source who indicated Appellant confessed to shooting the victims because they purportedly owed him a substantial sum of money. (R. pp. 759-762). As a result, Appellant was tracked down and arrested at a motel on June 27, 2016. (R. p. 519; pp. 759-762).

Subsequent to his arrest, Appellant was indicted for a number of offenses, including murder and attempted murder, and he proceeded forward to trial solely on the murder and

⁴ Through subsequent analysis of the recovered cartridge cases, fired bullets, and guns, an expert forensic firearms examiner was able to determine neither Mack's gun nor Spells's gun fired any of the recovered projectiles connected to the shooting. (R. p. 396; pp. 400-403; p. 405; p. 407; pp. 456-457).

attempted murder charges. (R. p. 8; pp. 763-772). Ultimately, at the conclusion of that first trial, the jury convicted Appellant of the lesser-included offense of ABHAN in connection to the non-fatal shooting of Spells. (R. p. 71). However, the jury was unable to reach a verdict on the murder charge stemming from the fatal shooting of Mack. (R. p. 67). After those decisions were reached, the trial judge declared a mistrial on the murder charge, sentenced Appellant to an eighteen-year term of imprisonment for the ABHAN conviction, and awarded Appellant credit for all the time he served in pre-trial custody toward his ABHAN sentence. (R. pp. 69-70; p. 73).

Thereafter, roughly sixteen months later, Appellant again proceeded forward to trial on the murder charge. (R. p. 79; pp. 190-192). At the conclusion of the second trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter. (R. p. 690). Following the verdict, Appellant personally addressed the court, indicated he was “very remorseful,” explained it was human nature “to feel remorse for something that you know you did wrong,” and candidly apologized to Mack’s family. (R. pp. 700-702). The trial judge then sentenced Appellant to a thirty-year term of imprisonment for voluntary manslaughter, ordered that sentence to run concurrently to Appellant’s earlier sentence for ABHAN, and expressly stated Appellant would receive credit for the time he had served. (R. pp. 702-703).

ARGUMENT

I.

Appellant's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion are not properly preserved for appellate review because those arguments were neither raised to nor ruled upon by the trial judge. However, notwithstanding any issue preservation concerns, the trial judge correctly declined to grant a directed verdict motion because the evidence presented during trial was sufficient for the jury to rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter.

Appellant contends the trial judge reversibly erred by denying his directed verdict motion. In support of that contention, Appellant—while raising a number of arguments that were never raised to or ruled upon by the trial judge—maintains the State failed to present substantial circumstantial evidence of the required elements of murder and voluntary manslaughter and further failed to disprove the elements of self-defense. Initially, Appellant's appellate arguments are not properly preserved for appellate review because they were neither raised to nor ruled upon by the trial judge. As a result, they cannot now appropriately be addressed or considered for the first time on appeal. However, even assuming Appellant's current arguments were somehow preserved for appellate review, the State presented evidence from which the jury could rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter. Accordingly, the trial judge was required to submit the issues of self-defense, murder, and voluntary manslaughter to the jury, and she committed no conceivable error by doing just that. Appellant's conviction should be affirmed.

Relevant Facts

During the course of Appellant's second murder trial, the solicitor presented evidence including witness testimony, recorded footage, forensic evidence, and fingerprint evidence. (R.

pp. 275-290; pp. 293-387; pp. 391-408; pp. 456-461; pp. 474-476; pp. 478-483; pp. 485-493; pp. 498-513; p. 515; pp. 517-553; pp. 733-752; State's Ex. # 76). Through it, the solicitor offered proof from which the jury could have reasonably and rationally concluded the following sequence of events occurred:

- Around midnight to 1:00 a.m. on the date of the incident, Appellant was hanging out with “a bunch” of other people in the Fairlawn subdivision in Dorchester County when he received a phone call from someone that led him to exclaim he was “about to kill” some specific—but unidentified—person.⁵ (R. pp. 498-499). Appellant then “jumped” into a car along with another person and headed off. (R. p. 499).
- At 1:49 a.m., Appellant and an associate entered the IHOP restaurant located on Dorchester Road and sat down at a table together. (R. p. 282; p. 354; p. 394; p. 530; State's Ex. # 76).
- At 2:12 a.m., Appellant went to the bathroom, and his associate followed behind him, stopped just outside, and waited. (R. pp. 534-535; State's Ex. # 76).
- At 2:14 a.m., Mack and Spells, who may have been armed with concealed firearms, came into the restaurant and immediately headed to the bathroom. (R. pp. 297-298; p. 309; p. 314; State's Ex. # 76). Once inside, Mack approached the bathroom counter and set his vehicle's key lanyard—and likely some money—down near the sink. (R. p. 278; pp. 336-337). Within no more than twenty-five seconds of that, Appellant alone began shooting a pistol, continued to do so for a period of four seconds, and fired at least eight shots at Mack and Spells. (R. p. 277; p. 294; pp. 337-339; p. 349; p. 407; pp. 456-457; pp. 535-536; pp. 736-739; p. 745). As those shots were being fired, the bathroom door was open in a manner consistent with someone attempting to leave and the muzzle of Appellant's gun was positioned to Mack's left side. (R. p. 332; p. 739; p. 752). Mack was also likely positioned *on the floor* at some point during the shooting based on the upward trajectory of one of the bullets that struck his body. (R. pp. 736-739; pp. 742-743; p. 745).

⁵ Later on, Appellant personally confirmed he lived in a neighborhood directly next to the Fairlawn subdivision, which was where his aunt lived, and visited that subdivision “probably once or twice a day.” (R. pp. 564-565).

- A few seconds after the shooting ceased, Appellant, Mack, and Spells left the bathroom one by one and exited the restaurant along with Appellant's associate. (R. p. 290; p. 535; pp. 541-542; State's Ex. # 76). When they did, none of them was holding a firearm, but Appellant was moving in a manner that suggested he had one concealed in his clothing. (R. p. 290; p. 535; pp. 539-540; State's Ex. # 76).
- Once outside, Mack and Spells collapsed from their injuries while Appellant and his associate fled from the area without waiting for law enforcement to arrive. (R. p. 277; p. 280; pp. 294-295; p. 307; pp. 539-542; State's Ex. # 76).
- Subsequent to that, Appellant did not report the shooting and was not ultimately arrested until he was tracked down at a motel *weeks* later. (R. p. 277; p. 519).

Moreover, to refute any suggestion the shooting was an act of self-defense, the solicitor presented a recording of a jail call Appellant made in August of 2018. (R. p. 524; p. 527; State's Ex. # 93 (Recording of Jail Call)). Through that recording, the jury heard Appellant deny shooting his victims or acting in self-defense and candidly state he was being encouraged to "say" self-defense even though it was not what had occurred. (State's Ex. # 93). Furthermore, the jury heard Appellant assert such a made-up "concept of what happened" would mean he shot his "own homeboys." (State's Ex. # 93).

Following the presentation of that evidence, defense counsel moved for a directed verdict and—in total—argued: "Viewing the evidence in the light most favorable to the State, I find that they have failed to present evidence to convict [Appellant] on the basis of the case. It's *almost* entirely circumstantial, and I just don't think it rises to the necessary level." (R. pp. 555-556) (emphasis added). Upon considering those limited arguments, the trial judge denied the motion, stating:

Of course, as you know, I'm not charged the responsibility of weighing the evidence. That's the jury's determination. I must

ascertain whether or not there is evidence from which this jury can make a determination, and that there is evidence on each and every element. I find that there is evidence on each and every element of *the offense*. And on that basis, I would respectfully deny your motion, noting your exception.

(R. p. 556) (emphasis added).

The trial then proceeded forward, and Appellant elected to testify in his own defense. (R. p. 561). During his testimony, Appellant confirmed he knew Mack and Spells, whom he stated were friends with one of his younger cousins, and claimed the two were “shooters” or “enforcers” who “[b]asically” had a reputation for violence. (R. pp. 563-564; p. 569; p. 582). He further alleged he had received hearsay information suggesting the two were not pleased with him because he had told them to stay away from his aunt’s house in the past, and he asserted he had been warned on multiple occasions to be careful around them prior to the date of the incident. (R. pp. 570-572). Similarly, Appellant detailed two past incidents in which he thought Mack and Spells had fired shots outside his aunt’s house, including one in which they shot an individual named Shaquille White “supposedly” for stealing from them.⁶ (R. pp. 566-568; p. 583).

As to the incident itself, Appellant asserted he—while armed with a gun—went alone to the IHOP restaurant at around 1:40 a.m. or 1:50 a.m. (R. p. 572; pp. 581-582). After arriving there, Appellant indicated he spoke with a “guy that approached or whatever” and eventually went to the bathroom. (R. p. 575; p. 581). Upon heading inside, Appellant stated he entered a stall, and, when he later moved to exit from it, he saw Mack and Spells walking into the bathroom. (R. pp. 575-576). Upon seeing the pair, Appellant indicated he became “scared

⁶ In recounting the details surrounding the shooting of White, Appellant initially claimed Mack and Spells personally told him they were the ones who shot White, but he later shifted his account and claimed they had actually only indirectly implied they had done so. (R. pp. 567-568; pp. 582-583).

senseless,” thought “isn’t these the same two that they told me was looking for me earlier,” and wondered if Mack and Spells had followed him. (R. p. 576). Appellant claimed Mack and Spells then saw him, too, and responded by beginning to reach toward their waistbands. (R. pp. 576-577). At that point, Appellant indicated he saw Mack and Spells pull their guns, drew his own gun, “beat them to the punch,” and started shooting. (R. pp. 577-578; pp. 586-589). Appellant claimed he then continued to shoot until he could get to the bathroom’s exit, which had purportedly been blocked by Mack and Spells since “[t]hey were just walking in.” (R. pp. 577-579).

In addition to providing that account, Appellant also acknowledged he had previously stated something *entirely different* during the jail call he had placed after his arrest. (R. p. 579). Specifically, Appellant directly admitted he had earlier stated: (1) he was being encouraged to “make up” a “concept” of what happened and say the shooting was done in self-defense; (2) he did not know “nothing about no self-defense;” (3) it would mean he shot his “own homeboys” if he made such a claim; and (4) he did not shoot anyone. (R. p. 590). Nevertheless, Appellant insisted he only made those earlier inconsistent statements out of fear of retaliation of some kind. (R. p. 579).

Following Appellant’s testimony, defense counsel presented some testimony from Lieutenant Peters confirming Spells had a reputation in the community for engaging in violent behavior, and, after that testimony was elicited, the defense rested.⁷ (R. p. 592; p. 604). Defense counsel then renewed his directed verdict motion, arguing: “As to the directed verdict, I mean, it’s essentially the same argument, except now you’ve heard the testimony of [Appellant]. I don’t think there’s sufficient evidence to give to the jury for them to reach a verdict.” (R. pp.

⁷ Significantly, Lieutenant Peters testified he did *not* know anything about Mack’s reputation. (R. pp. 592-593).

607-608). Once again, the trial judge denied the motion, explaining: “[A]gain, the question is, for me -- is there evidence on each and every element, and there is. I don’t weigh it. I just have to ascertain if it exists. It does. And I would respectfully deny your motion, noting your exception thereto.” (R. p. 608).

Thereafter, the parties presented their closing arguments to the jury. (R. pp. 613-660). Through his remarks, the solicitor pointed out various problems and inconsistencies with Appellant’s claim of self-defense, reminded the jury Appellant himself had earlier denied shooting his victims in self-defense, and argued Appellant should be convicted of murder based on the evidence presented. (R. pp. 613-631; pp. 656-660). Conversely, through his remarks, defense counsel contended Appellant was acting in self-defense when he shot his victims and had merely been lying when he earlier made statements to the contrary. (R. pp. 632-656).

Following the closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 660-684). In doing so, the trial judge affirmed the State had the burden of proving Appellant’s guilt beyond a reasonable doubt, discussed the presumption of innocence, thoroughly defined reasonable doubt, explained the differences between direct and circumstantial evidence, and advised the jurors on evaluating witness credibility. (R. pp. 661-670). Additionally, the trial judge instructed the jury on the elements of murder and—without objection—the elements of the lesser-included offense of voluntary manslaughter. (R. pp. 672-676; pp. 684-685). Furthermore, the trial judge explained the elements of self-defense and specifically instructed the jurors the State had the burden of disproving self-defense beyond a reasonable doubt. (R. pp. 676-679).

Subsequently, the case was submitted to the jury. (R. pp. 684-685). Ultimately, after roughly two hours of deliberations, the jury unanimously convicted Appellant of the lesser-included offense of voluntary manslaughter. (R. pp. 684-685; p. 690).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) ("It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]"); see also State v. Herndon, 430 S.C. 367, 373, n. 6, 845 S.E.2d 499, 502 (2020) ("As an appellate court, we must be careful not to weigh the evidence."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders."); United States v. Lowery, 306 F.2d 133, 135 (4th Cir. 1961) ("It is not the function of [the appellate court] to determine guilt or innocence."); see also People v. Wilson, 484 P.3d 36,

68 (Cal. 2021) (“That a different trier of fact could have concluded otherwise does not mean the verdict is not supported by the evidence. We are not free to reform the verdict simply because another theory is plausible.” (citations omitted)).

Analysis

A. Appellant’s Failure to Properly Preserve His Current Arguments for Appellate Review

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is “to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance “to rule properly after it considered all relevant facts, law, and arguments[,]” and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen’s Grant, 368 S.C. at 373, 628 S.E.2d at 919 (“The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error.”).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135,

620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”). Likewise, an appellant is precluded from arguing one ground or theory in support of an issue during trial and then a different ground or theory in support of the issue on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”).

Notably, in State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998), this Court was confronted with an appellate challenge to a trial judge’s directed verdict ruling that was raised on a ground different from the one actually raised during trial. Specifically, during trial, Adams sought a directed verdict solely on the basis the evidence supposedly did not rise to the level of reasonable doubt as to the charged offenses. Id. Conversely, on appeal, Adams shifted his argument and asserted the trial judge erred by denying the directed verdict motion because the State allegedly failed to present sufficient evidence of his intent to accomplish a sexual battery. Id. Because the “precise argument” Adams raised on appeal was neither raised to nor ruled upon by the trial judge, this Court found that argument was not properly preserved for appellate review and declined to address it. Id.

In the case sub judice, Appellant has raised numerous arguments on appeal in support of his contention the trial judge erred by refusing to grant a directed verdict in his case. Specifically, Appellant maintains: (1) the trial judge applied an incorrect standard when conducting her directed verdict analysis because she indicated she could not weigh the evidence and was only concerned with the matter of whether evidence had been presented as to each

element of the charged offense; (2) his motion should have been granted because the State failed to disprove an element of self-defense; (3) his motion should have been granted because the State failed to present substantial circumstantial evidence to establish he shot his victims in a sudden heat of passion upon sufficient legal provocation; (4) the appropriate standard of review that should be applied is one in which the court reviews the evidence to determine whether the State excluded every reasonable hypothesis of innocence; and (5) his case should be reversed because the State's evidence did not exclude every reasonable hypothesis of innocence.

Significantly, *none* of those arguments was raised by defense counsel during trial, and the trial judge never considered or ruled upon any of them. Instead, looking to the arguments actually presented to the trial judge, defense counsel solely contended: (1) the evidence presented was not sufficient to either convict Appellant “on the basis of the case” or rise “to the necessary level;” and (2) there was not sufficient evidence “to give to the jury for them to reach a verdict.” Meanwhile, defense counsel did *not* argue the trial judge should have applied a standard in which she—as a judge and not a juror—evaluated what hypotheses of innocence might exist from the evidence and whether any of them seemed reasonable to her, did *not* argue the analysis the trial judge actually applied was an improper one, and did *not* argue the State failed to disprove self-defense. Likewise, defense counsel did *not* argue the State failed to present evidence sufficient to establish the elements of the lesser-included offense of voluntary manslaughter and, instead, raised no objections whatsoever when the trial judge submitted that lesser-included offense to the jury. See Ramaker v. State, 46 S.W.3d 519, 230 (Ark. 2001) (“[I]n order to preserve challenges to the sufficiency of the evidence supporting convictions for lesser-included offenses, defendants are required to address the lesser-included offenses, either by name or by apprising trial courts of the elements of the lesser-included offenses, in their motion for directed verdict.”); see also State

v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown’s issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none). He similarly did not even point to or mention a single specific element of the indicted offense of murder on which the State’s evidence was purportedly lacking. See State v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) (“A general directed verdict motion . . . does not preserve any issue for appeal.”). Based on that, the trial judge solely limited her directed verdict analysis to the matter of whether evidence supporting all the elements of the offense—not offenses—charged had been presented, and, in doing so, she did *not* rule upon or consider any arguments related to self-defense, voluntary manslaughter, Appellant’s “reasonable hypothesis of innocence” theory, or the propriety of the manner in which her analysis was conducted. See State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) (“If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.”); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) (“Only matter that has been ruled on below can be reviewed[.]”).

Under such circumstances, the new arguments Appellant has raised on appeal in support of his current challenge to the sufficiency of the evidence are not properly preserved for appellate review since they were unquestionably neither raised to nor ruled upon by the trial judge. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton’s challenge to the trial judge’s refusal

to give a requested charge was not preserved for appellate review where Benton “argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)”; State v. Jordan, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) (“The contention of the appellant that the trial judge erred in failing to grant a directed verdict on the ground that the proof showed the commission of the crime of obtaining property by false pretenses, rather than a breach of trust with fraudulent intent, raises no issue for determination by us because such was not a ground of his motion for a directed verdict. This court has, in numerous cases, held that it will not consider a question on appeal which was not presented in the court below.”); Adams, 332 S.C. at 144, 504 S.E.2d at 126 (“This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the ‘level of a reasonable doubt as to counts 1, 2, and 3.’ . . . Adams’s argument, therefore, is not preserved for our review.”). Therefore, pursuant to the mandates of South Carolina’s issue preservation requirements, those arguments simply cannot appropriately be considered or addressed for the first time on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court “cannot address unpreserved errors”). Appellant’s conviction should be affirmed.

B. Propriety of the Trial Judge’s Ruling on the Directed Verdict Motion

Under our system of justice, the judge and jury have distinct roles when a jury trial is conducted in a criminal case. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the

case); State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) (“A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice.”). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, choosing what inferences should be drawn from it, and ultimately deciding whether the State has met its burden of proving the defendant’s guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) (“[T]he jury’s constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence.”); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (“It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.”); State v. Pruitt, 187 S.C. 58, ___, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing “it was within the *jury’s* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict”); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) (“The task of determining the weight of the evidence lies within the exclusive province of the jury.”).

Based on that distinction in roles, our Supreme Court explicitly recognized *more than six decades ago* the analysis a trial judge must apply when reviewing the sufficiency of the evidence is very different than the analysis that must be applied by a jury. State v. Littlejohn, 228 S.C. 324, 328-329, 89 S.E.2d 924, 926 (1955). As to the proper test for a jury, the jury must determine whether the evidence presented constituted proof of the defendant’s guilt beyond a reasonable doubt or—stated differently—to the exclusion of every reasonable hypothesis of innocence. Id. at 328, 89 S.E.2d at 926. Importantly, such an analysis “goes to the weight of the

evidence,” which makes it a matter solely for the jury. Id. at 329, 89 S.E.2d at 926. Conversely, as to the proper test for a trial judge, the trial judge must simply focus on the existence or non-existence of evidence as opposed to its weight and determine whether evidence exists from which the defendant’s guilt can reasonably, rationally, and logically be deduced. Id.

Thus, when presented with a directed verdict motion challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight.”); see also State v. Franklin, 80 S.C. 332, ___, 60 S.E. 953, 955 (1908) (“The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v.

Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); United States v. Hernandez, 433 F.3d 1328, 1334-1335 (11th Cir. 2005) ("[O]ur standard for evaluating the sufficiency of the evidence preserves the right to trial by jury and due process of law. A jury determined Hernandez's guilt, and we respect that determination. Under our standard, we are bound by the jury's credibility determinations, and by its rejection of the inferences raised by the defendant. The evidence does not have to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." (citations, internal quotations, brackets in original omitted)); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.").

In the case at bar, the jury was presented with three key fact-based issues to resolve. Specifically, the jury had to decide whether the State disproved at least one element of self-defense and whether the State met its burden of proof as to either murder or the lesser-included offense of voluntary manslaughter. When viewed in a light most favorable to the State as required, the evidence presented during Appellant's trial was sufficient to warrant submission of each and every one of those issues to the jury.

Turning to the issue of self-defense, the State introduced a recording in which Appellant personally and explicitly denied he shot his victims in self-defense. Based on that, *direct*

evidence was presented from which the jury could rationally and reasonably conclude Appellant was not, in fact, acting in self-defense when he shot Mack, and, thus, the issue of self-defense necessarily had to be submitted to the jury. See State v. Curtis, 356 S.C. 622, 633-634, 591 S.E.2d 600, 605 (2004) (“If there is *any direct evidence* or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” (emphasis added)); State v. Nesmith, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) (explaining direct evidence is testimony tending to directly to prove a fact in issue if believed); see also State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009) (recognizing a prior inconsistent statement constitutes and can be used as substantive evidence). However, even assuming the presentation of direct evidence refuting self-defense was somehow not sufficient to survive a directed verdict motion, the State also introduced evidence establishing Appellant fled from the scene after the shooting and never reported it to the police, which were actions markedly inconsistent with a genuine claim of self-defense. See People v. Hernandez, 247 P.3d 167, 177 (Cal. 2011) (“Defendant’s flight from the scene was . . . inconsistent with self-defense.”); State v. Tassin, 129 So. 3d 1235, 1248 (La. Ct. App. 2013) (explaining the defendant’s acts of failing to report the shooting after it occurred and fleeing from the scene were inconsistent with a claim of self-defense); State v. Kirby, 697 S.E.2d 496, 502 (N.C. Ct. App. 2010) (“[Kirby]’s flight after the shooting is *clear evidence* from which the jury could reasonably infer that [Kirby] knew that he had not killed in self-defense, otherwise he would have stayed and waited for the police to come, or he would have called the police himself.” (emphasis added)); People v. Blake, 21 N.E.3d 214, 217 (N.Y. 2014) (concluding Blake’s flight after the shooting was conduct undermining his claim the shooting was justified and committed in self-defense); see also Jenkins v. Anderson, 447 U.S. 231, 240-241 (1980) (determining it was not

unconstitutional for Jenkins, who claimed during trial he had acted in self-defense, to be impeached with evidence establishing he remained silent about fatally stabbing his victim for the roughly two-week period that elapsed between the killing and his arrest). Likewise, some of the evidence presented—such as the evidence establishing Mack’s key lanyard was found on the bathroom counter and the bathroom door was open at the time of the shooting—was inconsistent with Appellant’s trial account of the shooting, which raised credibility issues that could only properly be resolved by the jury. See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) (“[Richburg] contends . . . that the trial judge should have directed a verdict, as a matter of law, of not guilty in favor of the defendant on the plea of self-defense. When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury.”); cf. Wright v. West, 505 U.S. 277, 296 (1992) (“As the trier of fact, the jury was entitled to disbelieve West’s uncorroborated and confused testimony. In evaluating that testimony, moreover, the jury was entitled to discount West’s credibility on account of his prior felony conviction . . . and to take into account West’s demeanor when testifying, which neither the Court of Appeals nor we may review. And if the jury did disbelieve West, it was further entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt[.]” (citations omitted)); State v. Butler, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) (“[T]he evidence in the present case created a jury issue on the issue of self-defense. For example, as the trial court recognized when ruling on the directed verdict motion, [Butler]’s various, inconsistent accounts of how the

stabbing occurred created credibility issues and questions of fact to be resolved by the jury.”). Therefore, the issue of self-defense was properly a matter for the jury based on the evidence presented.

Turning to the issues of murder and voluntary manslaughter, the evidence introduced during trial indisputably established Appellant shot Mack and Mack died as a result. As a result, Appellant’s mental state at the time of the shooting was the only matter actually in dispute as far as the murder and voluntary manslaughter charges were concerned. Based on some of the evidence presented, Appellant expressly stated he was going to kill a particular unnamed person earlier on the date of the shooting and then gunned down Mack a short time later. From that, the jury could have reasonably and rationally concluded Appellant was acting with express malice when he carried out his stated goal of perpetrating a killing. See State v. Wilds, 355 S.C. 269, 276, 584 S.E.2d 138, 142 (Ct. App. 2003) (“Express malice is when there is a deliberate intention to unlawfully take the life of another.”); cf. State v. Cox, 221 S.C. 1, 5, 68 S.E.2d 624, 626 (1951) (concluding Cox’s act of stating “someone would pay for this” a few weeks before he killed his wife constituted admissible evidence of *express malice* for purpose of proving the charged offense of murder). Meanwhile, based on some of the other evidence presented, Appellant was in extreme fear of the victims based on numerous threats he had heard, and, when they later came upon him in the restaurant bathroom and provocatively moved in a manner that suggested they were reaching for guns, he became “scared senseless” and proceeded to suddenly shoot Mack *at least six times*, including once while Mack was completely defenseless on the ground. From that, the jury could have reasonably and rationally concluded Appellant was acting under a sudden heat of passion upon sufficient legal provocation when he repeatedly and uncontrollably shot Mack. See State v. Starnes, 388 S.C. 590, 598-599, 698 S.E.2d 604, 609

(2010) (“[A] person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. . . . Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it.”); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (“[F]ear can constitute a basis for voluntary manslaughter.”); cf. State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (including a voluntary manslaughter instruction was required where the evidence showed “the decedent and Lowry were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred”); State v. Gilliam, 296 S.C. 395, 397, 373 S.E.2d 596, 597 (1988) (“[Gilliam]’s testimony that the victim threatened him and then fired at him would support a finding of sufficient legal provocation and heat of passion.”); State v. Oates, 421 S.C. 1, 26, 803 S.E.2d 911, 924 (Ct. App. 2017) (concluding the jury could have reasonably inferred Oates was acting under a sudden heat of passion when he shot his victim six times). Therefore, the issues of whether Mack’s killing constituted murder or voluntary manslaughter were properly matters for the jury based on the evidence presented.

Accordingly, because the evidence presented was sufficient to raise issues for the jury as to murder, voluntary manslaughter, and self-defense, the trial judge was required to submit those issues to the jury so it could carry out its fact-finding role. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is “required” to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused’s guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); see also State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) (“[T]o warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is *no evidence whatsoever*

tending to reduce the crime from murder to manslaughter.” (emphasis added)); cf. United States v. Zayyad, 741 F.3d 452, 464 (4th Cir. 2014) (“[I]t does not matter that the Government’s evidence also supported innocent inferences. As a general proposition, circumstantial evidence may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence. The jury was entitled to reject the theory consistent with innocence and accept the one consistent with guilt, so long as there was substantial evidence for its choice.” (citations, internal quotations, and brackets in original omitted)). As a result, the trial judge correctly denied Appellant’s directed verdict motion, and there is no legitimate basis upon which that ruling can be disturbed on appeal. See Cavazos v. Smith, 565 U.S. 1, 2 (2011) (“[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury’s verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. . . . Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold.”); United States v. Moye, 454 F.3d 390, 396 (4th Cir. 2006) (“[A]s appellate judges, we enjoy no greater vantage point on appeal than did the jury at trial and we have no right to usurp the jury’s role to find facts. If we did otherwise, we would be substituting our judgment for that of the jury.” (citation omitted)). Appellant’s conviction should be affirmed.

II.

The trial judges who presided over Appellant's two murder trials did not abuse their broad discretion by refusing to dismiss Appellant's case based on an alleged violation of Appellant's speedy trial rights because neither the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, nor the roughly sixteen-month span of time incurred prior to the second trial was excessively or unreasonably lengthy based on the circumstances involved, resulted from any intentional willfulness or unreasonable neglect on the part of the State, hampered the defense, or otherwise caused any undue prejudice to Appellant.

Appellant contends the trial judges erred by failing to dismiss his murder charge based on an alleged violation of his speedy trial rights. In support of that contention, Appellant maintains his murder charge should have been dismissed based on the total delays incurred from his arrest to his second trial because the State's reasons for the delays were "simply inexcusable," he clearly asserted his speedy trial rights, and he was prejudiced by the loss of his cell phones. To the contrary, the trial judges who presided over Appellant's two murder trials did not abuse their discretion by failing to dismiss Appellant's case based on an alleged violation of his speedy trial rights because the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, and the roughly sixteen-month span of time that was incurred prior to the second trial were not excessively or unreasonably lengthy based on the circumstances involved, did not result from any willfulness or unreasonable neglect on the part of the State, and did not hamper the defense or otherwise result in any undue prejudice to Appellant. Under such circumstances, Appellant's speedy trial rights were not violated and the extreme sanction of dismissal was not warranted. Appellant's conviction should be affirmed.

Relevant Facts

Although the fatal shooting at the IHOP restaurant occurred a few weeks earlier, Appellant was not arrested until June 27, 2016. (R. p. 88; pp. 104-105; p. 276). Subsequent to his arrest, Appellant was indicted for a number of offenses, including murder and attempted

murder. (R. p. 79; pp. 763-772). After that, Appellant apparently did not request the appointment of counsel or retain counsel to represent him for an extended period of time, which resulted in defense counsel not being appointed until June 12, 2017. (R. p. 89; p. 104; p. 779). Once defense counsel had been appointed, defense counsel then promptly filed a discovery request in order to properly prepare Appellant's case for trial. (R. pp. 780-783).

Thereafter, in December of 2017, defense counsel filed—for the first time—a motion seeking a speedy trial, and a hearing was quickly conducted on that motion. (R. p. 4; p. 107; p. 784). During the hearing, the solicitor that was then representing the State requested Appellant's case be placed on the court's docket for a January 2018 trial. (R. pp. 4-5). The solicitor further asserted the issue of bond could be revisited if the State ended up unprepared to go forward with the trial at that time. (R. p. 5). In response, defense counsel agreed with the solicitor's proposed course of action, and the trial judge issued an order scheduling Appellant's case for trial in January of 2018. (R. p. 5; p. 107; p. 757).

However, around the time of the scheduled January 2018 trial, the solicitor originally assigned to handle Appellant's case abruptly left the solicitor's office, and Appellant's trial could not go forward as planned. R. pp. 42-43; pp. 48-49; pp. 106-107; p. 710). As a result, the circuit court judge who previously scheduled the case issued an order setting bond for Appellant. (R. p. 710; p. 758). Appellant's case was then reassigned to a new solicitor for prosecution. (R. p. 44; pp. 106-107; p. 710).

Roughly five months after that, defense counsel filed a second motion seeking a speedy trial along with a motion seeking a reduction in Appellant's bond, and, once again, a hearing was promptly held in response to the motion. (R. p. 709; pp. 785-786). During the hearing, the solicitor recounted the circumstances associated with Appellant's case up to that point and

explained the State intended to try the matter by August of that year. (R. pp. 709-710). The solicitor further noted many of the delays that had been incurred resulted from a need for further investigation, the gathering of witnesses, and attempts to obtain additional information and were not caused by any deliberate or intentional efforts to hamper the defense. (R. p. 716). The circuit court judge then declined to take any additional actions at that time. (R. pp. 720-721).

Following that, Appellant's case proceeded forward to a first trial on the murder and attempted murder charges in August of 2018. (R. p. 8; pp. 709-710). Toward the outset of trial, defense counsel moved for the charges to be dismissed based on an alleged violation of Appellant's speedy trial rights. (R. pp. 10-11; p. 13; pp. 704-706). As support for that motion, defense counsel identified all the reasons he believed warranted dismissal, and he offered testimony from Appellant about various things that followed his arrest to show prejudice had resulted.⁸ (R. pp. 16-32). Furthermore, defense counsel proffered the testimony of Lieutenant Dwayne Peters, who had taken over the Dorchester County Sheriff's Office's investigation of Appellant's case following the departure of the original investigator assigned to handle the matter. (R. pp. 34-39). Through his testimony, Lieutenant Peters acknowledged three currently-missing cell phones had been seized from Appellant's motel room at the time of Appellant's arrest, and he confirmed those phones had been lost by the original investigator at some point between June of 2016 and December of 2016, which meant they were lost within just a few

⁸ Specifically, Appellant testified his post-arrest incarceration had caused him a great deal of anxiety, had been difficult on his children, and had resulted in the loss of his job, home, and car. (R. pp. 26-27). However, Appellant candidly admitted he lost his home and job as a result of and at the time of his arrest as opposed to due to the passage of time. (R. pp. 28-31). Furthermore, Appellant admitted his car had actually been lost when it was stolen several months before his arrest. (R. pp. 30-32). Beyond that, Appellant made no reference to any actual prejudice caused to his defense as a result of the delays associated with his case, and he did not mention anything about any purported exculpatory evidence he would have been able to present if not for the delays incurred, including anything about the contents of his cell phones. (R. pp. 26-32).

months of Appellant's arrest. (R. p. 28; pp. 35-38). Lieutenant Peters further indicated one of the victim's phones was recovered at the incident scene, had been analyzed, and was determined to contain no communications with Appellant. (R. pp. 35-36).

After listening to that testimony and considering the circumstances presented, the first trial judge found the length of the delays involved in Appellant's case was sufficient to trigger a speedy trial analysis. (R. pp. 40-42). In response, the solicitor offered a variety of explanations for the delays. (R. pp. 42-50). Initially, the solicitor noted some delays resulted from the fact Appellant did not request the appointment of counsel or retain counsel for almost an entire year after his arrest. (R. p. 42). Additionally, the solicitor indicated the lead investigator assigned to the case left the sheriff's office by January of 2017 while the solicitor originally assigned to prosecute the case suddenly left the solicitor's office in January of 2018, which led to the case needing to be reassigned in multiple respects. (R. pp. 42-44; pp. 48-49). Moreover, due to the sudden nature of the original solicitor's departure, the solicitor asserted he was not able to consult with him about the case to aid with his own prosecution of it. (R. pp. 48-49). Beyond that, the solicitor indicated some of the delays were associated with the time necessary to locate all the witnesses involved in the case, including out-of-state witnesses. (R. pp. 44-45). Furthermore, the solicitor stated a substantial portion of the delays were associated with the gathering and locating of evidence, including after the case was scheduled for an August 2018 trial a few months earlier. (R. pp. 46-48). Finally, as to the prejudice factor, the solicitor noted the delays only led to the discovery of additional evidence and did not result in the loss of any witnesses while the personal prejudice Appellant claimed to have suffered appeared to have resulted from Appellant's arrest itself. (R. pp. 49-50).

In rebuttal, defense counsel referenced the prejudice to which Appellant testified, and he further asserted Appellant was prejudiced by the loss of the three cell phones that were missing, which he contended—without any evidentiary support—would have contained exculpatory evidence and would have demonstrated a lack of communication between Appellant and the victims. (R. p. 53). Additionally, defense counsel maintained no actual showing of prejudice was necessary in order for dismissal to be appropriate while contending the mere presumption of prejudice could be sufficient in Appellant’s case. (R. p. 53).

After considering the arguments of counsel, the first trial judge denied the speedy trial dismissal motion. (R. p. 55). In doing so, the first trial judge found the prejudice identified by Appellant largely occurred due to his arrest as opposed to due to any delays involved in bringing the case to trial. (R. p. 54). Additionally, as to the reasons for the delays, the first trial judge found some of the delays were associated with legitimate investigative needs while other delays were associated with the changes in the personnel assigned to investigate and prosecute the case. (R. pp. 54-55). Furthermore, the first trial judge found Appellant did not assert his right to a speedy trial until December of 2017 and had bond set as a result of the motion. (R. p. 55). For those reasons, the first trial judge concluded the extreme sanction of dismissal was not warranted based on what had been presented. (R. p. 55).

Following that ruling, the trial proceeded forward, and the jury ended up being unable to reach a verdict on the murder charge.⁹ (R. pp. 67-69). Based on that, the trial judge granted a mistrial as to that charge. (R. pp. 67-69). Ultimately though, the jury was able to reach a verdict on the attempted murder charge and convicted Appellant of the lesser-included offense of

⁹ During the evidentiary phase of the first trial, Lieutenant Peters confirmed for the jury one of the victims’ cell phones was recovered after the shooting, analyzed, and determined to contain nothing at all connected to Appellant. (R. pp. 60-61).

ABHAN. (R. p. 71). The first trial judge then sentenced Appellant to eighteen years of imprisonment with credit for time served. (R. p. 73).

Subsequently, Appellant timely filed and perfected an appeal. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=68286>. Through that appeal, Appellant challenged the first trial judge's denial of the motion to dismiss all the indictments based on an alleged speedy trial violation. Id.

During the pendency of that appeal, Appellant's case proceeded forward to a second trial on the murder charge in January of 2020. (R. p. 79; pp. 190-192). Toward the outset of the second trial, defense counsel—just as he had done during the first trial—promptly moved for dismissal based on an alleged violation of Appellant's speedy trial rights. (R. p. 79; pp. 753-756). As support for the motion, defense counsel again offered the testimony of Appellant to discuss the prejudice he had purportedly suffered, and Appellant asserted his incarceration had resulting in him losing his rental home, job, and several vehicles. (R. pp. 80-82; p. 84). However, Appellant conceded all those losses occurred within a short period of time of his arrest. (R. pp. 84-86). Beyond that, Appellant alleged his defense was hurt by the loss of his cell phones because those items would have purportedly shown he had no contact with the victims and did not know any of the witnesses against him. (R. pp. 83-84; pp. 86-87).

Following the presentation of Appellant's testimony, defense counsel rehashed what had occurred in Appellant's case up to that point while largely focusing on the events preceding the first trial. (R. pp. 88-96). However, defense counsel maintained the additional sixteen-month period of delay that was incurred since the first trial should be considered "as well" for purposes of the speedy trial analysis. (R. p. 97). Defense counsel then contended all the delays since the

date of Appellant's arrest were without adequate justification. (R. p. 120; p. 123). In addition to that, defense counsel maintained Appellant was prejudiced because his cell phones were lost at some point after his arrest. (R. p. 96; pp. 122-123). Importantly though, defense counsel acknowledged he had never made any attempts to obtain any phone records from Appellant's service providers. (R. p. 97). Likewise, defense counsel further conceded Appellant had already received one trial, acknowledged the solicitor lost control over the trial docket subsequent to the first trial, and admitted the State's personnel changes would have "slow[ed] things down" for the prosecution. (R. p. 95; pp. 120-122).

In rebuttal, the solicitor recounted the history of Appellant's case and noted Appellant was being tried a second time on the murder charge roughly sixteen months after his first trial ended. (R. pp. 104-108). Since Appellant had already been tried once, the solicitor maintained the second trial judge's analysis of the speedy trial issue should be focused on and limited to the period that had transpired since Appellant's first trial. (R. p. 108). Regarding that time period, the solicitor affirmed none of the delays involved were deliberate. (R. p. 111). Instead, the solicitor explained the delays had resulted from: (1) the trial judge ordering him and others from his office to try a number of other cases first, which prevented Appellant's case from going forward earlier due to limited space on the docket; (2) time spent conducting further investigation after the first trial, which included a time-consuming attempt to employ facial recognition technology to identify Appellant's confederate; and (3) the time needed to find all the in-state and out-of-state witnesses, marshal the evidence, and once again bring everything together for the trial. (R. pp. 111-113; pp. 118-119). Additionally, the solicitor indicated the prejudice Appellant claimed to have suffered, including the loss of the cell phones, did not result from any delays and, instead, had occurred shortly after Appellant's arrest. (R. pp. 114-116).

Furthermore, the solicitor noted Appellant did not file any speedy trial motions after his first trial ended and had been incarcerated as a result of his ABHAN conviction during that period. (R. p. 112; pp. 116-117).

After considering the arguments of counsel, the second trial judge denied the speedy trial dismissal motion. (R. p. 129). In doing so, the second trial judge primarily focused on the sixteen-month period of delay incurred after Appellant's first trial ended because—as she explicitly recognized—the first trial judge had already made a speedy trial determination concerning the period of delay that preceded the first trial. (R. pp. 124-129). She then weighed the appropriate factors, including the reasons for the delays and the possible prejudice suffered, and concluded the delays incurred were sufficiently explained such that the extreme sanction of dismissal was not warranted in Appellant's case.¹⁰ (R. pp. 124-129).

Subsequently, the trial proceeded forward, and, at its conclusion, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter.¹¹ (R. p. 690). Based on that conviction, Appellant was sentenced to a thirty-year term of imprisonment, and he once again received credit for time served. (R. pp. 702-703).

Standard of Review

When reviewing a ruling on a speedy trial motion on appeal, the appellate court must review the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418

¹⁰ As to the reasons for the delay, the trial judge determined the delays resulted from: (1) time spent attempting to employ facial recognition technology for investigative purposes; (2) the nature of the docket in Dorchester County, which was experiencing a “serious backlog” of cases; and (3) time associated with a plea offer being extended. (R. pp. 126-128).

¹¹ During the course of trial, Lieutenant Peters confirmed for the jury Spells's cell phone was recovered after the shooting, analyzed, and determined to contain no communications with Appellant. (R. p. 553). In addition to that, defense counsel called the jurors' attention to the flawed nature of the investigation both through his cross-examination of Lieutenant Peters and his closing argument remarks. (R. pp. 548-551; pp. 632-656).

S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) (“[A] trial court’s decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion.”); cf. State v. Palmer, 415 S.C. 502, 522, 783 S.E.2d 823, 833 (Ct. App. 2016) (affirming the trial judge’s ruling no speedy trial violation occurred after finding that ruling was supported by the evidence and based upon consideration of the appropriate factors). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Analysis

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. See U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]”); S.C. Const. art. I, § 14 (“Any person charged with an offense shall enjoy the right to a speedy and public trial[.]”). That right is designed to limit undue pre-trial incarceration, to protect against anxiety stemming from public accusation of a crime, and—most seriously—to limit the possibility of a lengthy pre-trial delay impairing an accused’s defense. Barker v. Wingo, 407 U.S. 514, 532 (1972); see State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) (“The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused’s defense.”); State v. Pittman, 373 S.C. 527, 550, 647 S.E.2d 144, 155-156 (2007) (“[T]he most serious interest to be protected by the guarantee to a speedy trial is the possibility of impairment of the defense.”). Critically though, the criminal trial process is designed to move at a deliberate pace due to the many procedural safeguards involved,

and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966).

In order to trigger a speedy trial analysis, a defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which necessarily depends on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 442. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. Doggett v. United States, 505 U.S. 647, 652, n.1 (1992). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination "*is not based on the passage of a specific period of time*" and delay alone is not singularly dispositive. Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (emphasis added).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant's right to a speedy trial has been violated is necessarily dependent on the specific circumstances of the defendant's particular case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker, 407 U.S. at 530.

Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, “they are related factors and must be considered together with such other circumstances as may be relevant.” Id. “In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” Id.

In the case sub judice, two separate periods of delay were involved: (1) a twenty-five-month period of delay extending from Appellant’s arrest to Appellant’s first trial on the murder charge; and (2) a sixteen-month period of delay extending from the grant of a mistrial on the murder charge during the first trial to Appellant’s second trial. Based on that, the first trial judge and the second trial judge were each confronted with a different period of delay that needed to be analyzed for speedy trial purposes. See Hallowell v. State, 178 A.3d 610, 627 (Md. Ct. Spec. App. 2018) (“In a case . . . in which there was a retrial following the declaration of mistrial, the starting point for computing the length of delay *begins at the time when the mistrial was declared*, and the relevant time period runs until the commencement of the retrial.” (emphasis added)); see also Graham v. State, 299 So. 3d 273, 286-287 (Ala. Crim. App. 2019) (explaining the majority of jurisdictions measure “the starting date for purposes of a speedy-trial analysis from the declaration of a mistrial”). Accordingly, the period of delay incurred prior to Appellant’s first trial was relevant to the first trial judge’s speedy trial analysis while the second trial judge’s analysis was properly focused on the period of delay that had not already been addressed through the first trial judge’s speedy trial ruling.¹² See Rule 4(b), SCRCrimP (“If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no

¹² Significantly, on May 19, 2021, this Court issued an unpublished opinion affirming the first trial judge’s speedy trial ruling. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=68286>.

subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.”).

Looking to two distinct periods of delay involved in Appellant’s case, both were likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors by the trial judges. See Barker, 407 U.S. at 530 (“Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.”); State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing the length of the delay may be sufficient to trigger review of the relevant speedy trial factors); see also State v. Echols, 765 N.E.2d 379, 386 (Ohio Ct. App. 2001) (instructing a delay of one year “between a mistrial and the commencement of a second trial” is generally sufficient to trigger a speedy trial analysis); Waites, 270 S.C. at 108, 240 S.E.2d at 653 (finding a delay of twenty-eight months sufficient to warrant review of the pertinent factors in a speedy trial analysis). However, neither was excessively or unreasonably long in light of the unusual circumstances of Appellant’s case, which had to be reassigned in multiple respects due to the unexpected departures of the personnel originally assigned to handle the matter and which had to be tried on two separate occasions due to the inability of the first trial’s jury to reach a verdict on the murder charge. Cf. United States v. Gregory, 322 F.3d 1157, 1162 (9th Cir. 2003) (holding a twenty-two-month period of delay “was not excessively long” for speedy trial purposes); Langford, 400 S.C. at 445, n. 10, 735 S.E.2d at 484 (noting a twenty-three-month period of delay between arrest and trial had not “crossed that threshold” of constituting an “extreme” delay). As a result, the length of the two periods of delay involved—the first of the relevant factors in a speedy trial analysis—did not and should not weigh heavily against the State for purposes of either of the speedy trial analyses.

Turning to the second of the relevant factors, some portion of the delays prior to Appellant's first trial was incurred as part of the normal process involved in bringing any criminal case to trial and could not legitimately be held against the State for speedy trial purposes. See Ratchford v. State, 785 A.2d 826, 830 (Md. Ct. Spec. App. 2001) (explaining the initial seven-month period of time between the date of the arrest and the case initially being scheduled for trial was "necessary for the orderly administration of justice and is not considered an unreasonable delay that calls for further accounting"); see also State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution); cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Beyond that, some portion of the delays prior to first trial resulted from the need to reassign Appellant's case to both a new investigator and a new solicitor following the departures of the original ones handling the matter, which was a period of delays that could only be held slightly against the State if it could fairly be held against the State at all. See Strunk v. United States, 412 U.S. 434, 436 (1973) (instructing factors leading to unintentional delays such as "understaffed prosecutors" should be weighed less heavily than intentional delays in a speedy trial analysis); Manix v. State, 895 So. 2d 167, 176 (Miss. 2005) ("The State's discretion as to which prosecutor will try a particular case is a basic tenet of our criminal justice system. This Court has never held that the State's replacement of prosecutors amounts to a speedy trial violation warranting a reversal of a criminal conviction. Therefore, this factor is slightly weighed against the State."); Hallowell, 178 A.3d at 628 (finding the resignation of the original prosecutor assigned to the case, which resulted in delays that were

needed for a new prosecutor to get familiar with and prepare the case for trial, constituted a more neutral reason for delay in a speedy trial analysis and only weighed slightly against the State). Likewise, some of the delays incurred prior to both the first trial *and* the second trial resulted from the need to fully investigate the matter, analyze collected evidence, and locate both in-state and out-of-state witnesses, and those periods of delay were wholly warranted under the circumstances and could not logically be held against the State. See Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (“A valid reason presented by the State may justify an appropriate delay.”); Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966) (“A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.”). Furthermore, some of the delays incurred prior to the second trial were directly related to the limited availability of opportunities for the case to be tried due to the crowded condition of the docket in Dorchester County, which—just as the second trial judge recognized—was a circumstance that militated against a finding of a speedy trial violation. See Langford, 400 S.C. at 444, 735 S.E.2d at 483 (recognizing the limited availability of terms of court can constitute a valid reason for delays). Moreover, based on the fact Appellant apparently did not retain or seek the appointment of counsel for nearly a year after his arrest, some portion of the delays involved was necessary for defense counsel to begin preparing the matter for trial after he was appointed, and, thus, Appellant was not completely blameless for the entirety of the twenty-five-month period of delay that preceded the first trial. See State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) (“The delay must be attributable to the State before the appellants can complain.”); see also State v. Tyson, 283 S.C. 375, 377-378, 323 S.E.2d 770, 771 (1984) (considering the fact Tyson created delays through his initial lack of acceptance of appointed

counsel when conducting a speedy trial analysis). Meanwhile, none of the delays involved in Appellant’s case prior to either of the trials resulted from any intentional efforts on the part of the State to purposefully delay the matter or hamper Appellant’s defense. See Reaves, 414 S.C. at 130, 777 S.E.2d at 219 (explaining deliberate attempts to create delay to injure the defense should be weighed heavily against the State while neutral reasons, such as mere negligence, should be weighed less heavily). Therefore, the non-willful reasons for the distinct twenty-five-month and sixteen-month periods of delay that were incurred prior to Appellant’s two trials simply did not warrant a finding Appellant’s speedy trial rights were infringed.

Turning to the third of the relevant factors, Appellant unquestionably did seek a speedy trial subsequent to his arrest and prior to his *first* trial, but he did not do so until a period of over sixteen months had elapsed. See Waites, 270 S.C. at 109, 240 S.E.2d at 653 (considering the length of time Waites waited before first attempting to assert his speedy trial rights and characterizing it as “significant” when conducting a speedy trial analysis). And, once he had done so, his case was brought to trial—for the first time—just eight months later. See Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (considering the fact “Robinson’s trial began only ten months after his first motion [asserting his right to a speedy trial] was filed” in finding no speedy trial violation occurred in Robinson’s case); cf. Salahuddin v. State, 592 S.E.2d 410, 413 (Ga. 2004) (“[Salahuddin] did not assert his right to a speedy trial until fifteen months after indictment, which was nine months before the trial court heard pretrial motions. Accordingly, this particular factor, though not dispositive, must be balanced against [Salahuddin]’s interest.”). Thereafter, following the grant of a mistrial, Appellant never did anything to express an interest in a speedy retrial on the murder charge and, instead, waited until the second trial was set to commence before again asserting his rights. Cf. State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (Ct.

App. 2020) (finding the factor related to the assertion of speedy trial rights weighed against Barnes because he did not assert his speedy trial rights after his case was sent back for a retrial until just two months before his second trial was set to commence). Thus, considering the delayed nature of Appellant's initial assertion of his rights, his relatively prompt receipt of a trial following that assertion, and his failure to do anything to express a desire for a speedy *second* trial, Appellant's assertion of his speedy trial rights did not weigh in his favor and could not have legitimately supported a finding those rights were violated.

Finally, turning to the fourth of the relevant factors, Appellant personally claimed he was prejudiced as a result of the periods of delay involved in his case because he and his family experienced issues while he was incarcerated during the pendency of the charges, but, significantly, Appellant did not identify any undue or unusual factors involved in his incarceration, which undermined the significance of that identified harm for purposes of a speedy trial analysis. See United States v. Henson, 945 F.2d 430, 438 (1st Cir. 1991) (explaining "considerable anxiety normally attends the initiation and pendency of criminal charges" and, as a result, only undue pressures are considered when conducting a speedy trial analysis); Langford, 400 S.C. at 445, 735 S.E.2d at 484 ("While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford's case."). Beyond that, Appellant asserted he was prejudiced by the loss of his job, home, and car coupled with the State's loss of his cell phones, but, critically, all of those losses were incurred shortly after—and, in the case of Appellant's car, *before*—Appellant's arrest, which meant those losses were not, in fact, caused by the delays involved in bringing Appellant's case to trial either a first or second time. See Reaves, 414 S.C. at 132, 777 S.E.2d at 220 (concluding Reaves's claim

evidence was lost as a result of delays was not supported by the record where it was not clear when exactly the missing evidence was lost and, most likely, it happened earlier during the investigation as opposed to later). Moreover, Appellant was able to use the flaws in the investigation against the State during trial by pointing them out to the jury, and, although he claimed the loss of his phones hampered his defense by preventing him from demonstrating he had not been in contact with the victims prior to shooting, the jury nonetheless learned during trial there was no evidence Appellant had been in communication with the victims prior to the shooting through the testimony actually presented, which meant the loss of Appellant's cell phones did not actually alter or impact his defense. See id. (considering the fact Reaves was able to exploit the State's "bungled investigation" in finding the trial judge did not abuse his discretion by denying a motion to dismiss for an alleged speedy trial violation); see also Robinson, 335 S.C. at 626, 518 S.E.2d at 272 ("[L]ost witnesses and documents are also disadvantages that hamper the State."). Furthermore, although Appellant remained incarcerated during the period between his arrest and first trial, Appellant did receive full credit for that period of incarceration toward the sentence he ultimately received, which helped to minimize any harm that could have resulted from the time he spent in pre-trial custody. See State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) (considering the fact Monroe received full credit for the time he spent incarcerated prior to his trial in finding his speedy trial rights were not violated). Finally, since Appellant was sentenced to an eighteen-year term of imprisonment for ABHAN at the conclusion of the first trial, Appellant was not incarcerated for any period of time while awaiting retrial on the murder charge during which he would not have otherwise been incarcerated, which—just as the second trial judge recognized—helped to minimize the prejudice he suffered during the sixteen-month period of delay that preceded his

second trial. See State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred). Therefore, because Appellant’s defense was not hampered by any of the delays and because he did not suffer any undue prejudice as a result of the delays, Appellant was not sufficiently prejudiced by the delays incurred before either of his trials to justify a finding his speedy trial rights were violated.

Accordingly, because the relevant circumstances in Appellant’s case—when properly considered—do not support a conclusion either the twenty-five-month period of delay between Appellant’s arrest and first trial or the sixteen-month period of delay between the grant of a mistrial and his second trial was excessively lengthy, was the result of any intentional or willful actions on the part of the State, or resulted in any undue prejudice to Appellant, Appellant’s speedy trial rights were not violated. See United States v. Loud Hawk, 474 U.S. 302, 317 (1986) (“We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment.”); cf. Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (finding no speedy trial violation where Robinson was tried within one year of his first assertion of his speedy trial rights, adequate justification was presented for delay, and no evidence of actual prejudice was introduced). Based on that, the judges who presided over Appellant’s two trials did not abuse their discretion by refusing to impose the extreme—and unwarranted—sanction of dismissal in Appellant’s case. See Langford, 400 S.C. at 442, 735 S.E.2d at 482 (“A court’s decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion.”); cf. Tyson, 283 S.C. at 377-378, 323 S.E.2d at 771 (finding no speedy trial violation occurred in a case in which Tyson was tried roughly thirteen months after his

arrest and roughly nine months after he first requested a speedy trial where “there was no showing of detriment other than the incarceration itself,” nothing was presented to suggest the State caused unnecessary delay, and some of the delays involved were incurred through delays in Tyson’s acceptance of appointed counsel); State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years). Appellant’s conviction should be affirmed.

CONCLUSION

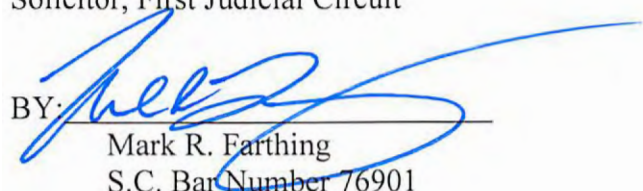
For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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July 16, 2021

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2020-000095

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

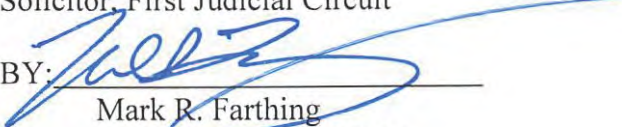
CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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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
Lower Court Case No. 2016A1810300547**

The State Respondent,

vs

Keunte D. Cobbs, ... Appellant

REPLY BRIEF OF APPELLANT

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Question I

Did the trial court err in failing to direct a verdict in favor of Keunte Cobbs when the State failed to prove substantial circumstantial evidence of either malice aforethought or sudden heat or passion based upon sufficient legal provocation nor did they disprove a element of self-defense?

Error Preservation

The State contends that the argument put forth by Mr. Cobbs in this appeal as to a directed verdict is not preserved. They argue, “If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.” *State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 489 (2007). In this case, the pitch was in fact thrown. Mr. Cobbs is entitled to argue the call, be it that the pitch was not high, low or wide. They are all versions of Mr. Cobbs’ contending the pitch was a strike. Mr. Cobbs asked for a directed verdict. He threw the pitch. He told the judge, “It’s almost entirely circumstantial, and I just don’t think it rises to the necessary level.” Rec. on App. at 556, ll 2-3. And, at the end of the trial, he renewed the same argument. Rec. on App. at 607, ll 22-24. On appeal, Mr. Cobbs has argued that the lower court did not apply the proper standard as to a circumstantial evidence case. This is precisely the same argument made below. At the trial below, Mr. Cobbs is entitled to presume the lower court knew the proper level of proof in a circumstantial evidence case. “Trial judges are presumed to know the law and correctly apply the law.” *Liberty Mut. Fire Ins. Co. v. Tussey*, 946 N.E.2d 656 (Ind. Ct. App. 2011). Because the pitch was thrown, Mr. Cobbs is now entitled to argue the pitch was not high, low or wide. All of those are variations on why the pitch was good.

In addition, Rule 19 of the South Carolina Rules of Criminal Practice provides, “On

motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor . . . if there is a failure of competent evidence tending to prove the charge" Under the rule, the trial judge is required to direct a verdict even if the defendant did not ask for a directed verdict. The rule uses the mandatory word "shall." This is true for the simple reason that the State should have no interest in sustaining a conviction that the State failed to prove.¹

Argument

The State correctly notes that many cases in South Carolina have used the phrase "substantial circumstantial evidence" when discussing what is necessary to send a case to the jury when the evidence is circumstantial. Unfortunately, no case in South Carolina has ever defined the phrase, "substantial circumstantial evidence." "A conundrum exists in the criminal case law of South Carolina: the term 'substantial'-as it relates to the scope of review for directed verdict motions-has never been defined." *State v. Cherry*, 348 S.C. 281, 295, 559 S.E.2d 297, 304 (Ct. App. 2001), *aff'd but criticized*, 361 S.C. 588, 606 S.E.2d 475 (2004)(J. Anderson, concurring and dissenting)² The State appears to argue that if the jury is given two equally plausible explanations based on the circumstantial evidence, then the jury is entitled to elect either one. This cannot be the meaning of "substantial circumstantial evidence." Nor can it rise to the level of proof beyond a reasonable doubt.

If two plausible inferences can be drawn from the circumstantial evidence, a valid

¹ Rule 50 of the South Carolina Rules of Civil Procedure uses the permissive word "may" in the directed verdict rule. Also, the civil rule does not expressly say a trial judge on its own motion shall direct a verdict.

² Judge Ralph King Anderson in his opinion, attempts to only define "substantial evidence" and not "substantial circumstantial evidence." Regardless, his opinion as to circumstantial evidence is instructive.

argument can be made that the State has not proven its case. As noted by the Florida court, “[I]t is the actual exclusion of each other hypothesis which clothes mere circumstances with the force of proof. Thus, evidence leaving uncertain which of several hypothesis may be true, or establishing only a probability favoring one hypothesis rather than another, cannot be equal to proof of guilt, no matter how strong the probability may be.” *Jones v. State*, 466 So. 2d 301, 319 (Fla. Dist. Ct. App. 1985), approved, 485 So. 2d 1283 (Fla. 1986). Thus, if a reasonable hypothesis of innocence has not been excluded, the proof is short of beyond a reasonable doubt. Counsel recognizes that the South Carolina Supreme Court has, on at least one occasion, upheld a verdict when the opinion itself has recognized the Defendant has a plausible theory of innocence. “Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations.” *State v. Larmand*, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015); *But see, State v. Lollis*, 343 S.C. 580, 585, 541 S.E.2d 254, 257 (2001) (“Finally, Lollis presented a plausible explanation for placing valuables in the storage room on the day of the fire—he was trying to protect them from drywall dust as he remodeled his home.”). In *Lollis*, the jury had the opportunity to judge the credibility of *Lollis*, but the Court still reversed the conviction.

Should a case be submitted to the jury if the theory of guilt is plausible but less plausible than the theory of innocence? Is not making a determination as to which is more plausible also weighing the evidence, an act the courts constantly say is not proper for a judge. Indeed, the simple determination of whether the circumstantial evidence is substantial, an act the law requires trial and appellate judges to perform, is in fact weighing evidence, at least to some degree.

In *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016), the Court said, “Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” The problem with the comment is that if the evidence in a circumstantial evidence case shows a plausible explanation consistent with innocence, has the State truly proven the case beyond a reasonable doubt? Put another way, when the State fails to disprove the plausible explanation, has the State met its burden of proof? In this case, the State failed to disprove self-defense.

Once issues of credibility are resolved in favor of the State, the review of the evidence as to whether the State has proven a circumstantial evidence case beyond a reasonable doubt should be the same for the jury, the trial judge, and the appellate court. No court should hold that two equally plausible explanations of the facts are sufficient to convict beyond a reasonable doubt. To do so would literally make proof in such a circumstantial evidence case a flip of the coin. Such a standard does not meet the requirements of *In re Winship*, 397 U.S. 358 (1970).

To be substantial circumstantial evidence, the proof should be, at the very least, facts that make one theory substantially more probable than the other. To truly give life to the beyond a reasonable doubt standard on appellate review, the standard should be that the State has excluded any reasonable explanation but that of the guilt of the accused. Any other standard would be short of proof beyond a reasonable doubt. If another theory is plausible, then doubt must exist as a matter of law.

As stated by the author of a law review article:

Alternatively, a less discriminating standard would more easily

find guilt, being more sensitive to evidence of guilt. Thus, this standard would convict one hundred percent of factually guilty defendants. However, this broader standard would inevitably convict some factually innocent defendants, as it would be so broad that it would mistake the possibility of guilt (some proof of guilt in the evidence) for guilt beyond a reasonable doubt. Thus, a broader standard derogates from that mandated by the Due Process Clause and the Winship Court.

Julie Schmidt Chauvin, Comment, *"For It Must Seem Their Guilt": Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217, 233 (2007)

So, the question to any court reviewing a circumstantial evidence case is whether the standard of review is to be a standard that frees more innocent defendants at the expense of freeing a few guilty defendants, or is the standard to be one that convicts innocent defendants to prevent the freeing of some guilty defendants? If we are to have a standard of review that seeks to enforce the beyond a reasonable doubt standard, it should be the former.

The State has further argued that because in a recorded telephone conversation, Mr. Cobbs stated he was not going to use self-defense, then that is evidence that he did not shoot in self-defense. The State ignores the fact that the comment was made in the context of his saying he was not present and therefore did not shoot. If one says they were not present, of course, they are not shooting in self-defense. Rec. on App. at 589, 1 24 to 590, 1 15.

The State has further argued that the Defendant leaving the scene is proof of lack of self-defense. They cite a California case. A reading of the case shows that the Defendant in that case did not have a self-defense case. As the Court stated in the sentence preceding the statement about flight, "Defendant's own testimony thus defeats the claim that he acted in self-defense." *People v. Hernandez*, 51 Cal. 4th 733, 747, 247 P.3d 167, 177 (2011).

In *State v. Tassin*, 129 So.3d 1235 (La. Ct. App. 2013), the issue was whether the Defendant was entitled to a charge on self-defense. The Court looked at many factors, which included the fact the crime was not reported and the Defendant left the scene. The Court ultimately said, “We have thoroughly considered these claims presented by Defendant and conclude that the evidence which Defendant alleges entitled him to a self-defense instruction, when viewed with all the other evidence, does not permit a reasonable inference that defendant acted in self-defense.” *Id.* at 1248.

While the Court in *State v. Kirby*, 206 N.C. App. 446, 454, 697 S.E.2d 496, 502 (2010) did state that flight by the Defendant could be considered by the jury, the facts of the case also establish that Mr. Kirby had a weak self-defense case at best. Two other eyewitnesses gave testimony which negated the claim of self-defense. In the present case, there are no eyewitnesses who testified other than Mr. Cobb.

Likewise, in *People v. Blake*, 24 N.Y.3d 78, 83, 21 N.E.3d 214, 217 (2014) ample evidence existed of the lack of self-defense other than the Defendant leaving the scene. As the Court noted, “Yet, perhaps most damaging to defendant's contention that the missing video would have borne out his assertion that he acted to defend himself, was the proof that he attempted to bribe the arresting officers to destroy videotapes the officers said they had of the altercation.” *Id.* at 83. Again, in this case there is no evidence other than the Defendant leaving the scene. Also, the issue of flight after the shooting was never argued by the State as an admission of guilt nor in opposition to the motion for a directed verdict by the Defendant.

Neither the comment about not using self-defense nor the fleeing of the scene truly make the facts any stronger for the State. They do not make it either more or less likely that the event

in the bathroom was less likely to be as Mr. Cobbs stated. The circumstantial evidence from which the State seeks to convict is that two armed men entered the bathroom shortly after another armed man entered the bathroom. Shots were fired from the weapon of the first man. One man was wounded and another killed. Those facts do not disprove that Mr. Cobbs acted in self-defense. We must bear in mind that a pure circumstantial evidence case is the only case tried in our court system in which everyone can tell the truth, and an innocent defendant be convicted.

Question II

Did the trial court err in failing to dismiss the charges based upon the speedy trial provision of Article I § 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the United States Constitution when the two year delay in the first trial and the eighteen month delay in the second trial were attributable to the State not being prepared to try the case?

The State in its brief correctly notes that the Court has set no specific time limit as to when a presumption of prejudice arises in any one case. The State, however, improperly argues that in this case the time for speedy trial purposes should start to run from the date of the mistrial. While *Hallowell v. State*, 178 A.3d 610 (Md. Ct. Spec. App. 2018) and *Graham v. State*, 299 So.3d 273 (Ala. Crim App. 2019) do state the speedy trial time starts to run from the date of the mistrial, nothing in either case suggests that prior to the mistrial either Defendant had ever asserted his right to a speedy trial. In this case, Mr. Cobbs has since before his first trial filed a speedy trial motion. That motion was not ended by a mistrial on the manslaughter charge. The motion continued. The State was aware of the desire of Mr. Cobbs for a speedy trial. The time from his original arrest cannot, therefore, be ignored. Mr. Cobbs has constantly asserted his right

to a speedy trial.

The American Bar Association in its publication *Criminal Justice Standards: Speedy Trial*, 12-2.1 says, “(b) If the defendant is to be tried again following a mistrial, then a new reasonable speedy trial time limit should be set. The new speedy trial time limit period generally should be shorter than that applicable to the original charge and should commence from the date of the mistrial.” Even this Standard does not involve a defendant who even before the mistrial was requesting a speedy trial. This was clearly not followed in this case.

The State in its brief argued that one reason the first trial was delayed was due to the fact that Mr. Cobbs did not seek appointment of counsel for almost a year. Br. of Resp. at 29. The failure of Mr. Cobbs to seek the appointment of counsel did not prevent the State from continuing its investigation of the case and sending different items to SLED for analysis. In fact, the failure to request counsel could not have prevented the state in preparing for trial.

After the first trial, the State did not for about 16 months seek to re-try Mr. Cobbs. Part of the claim for delay was they were conducting an investigation of the case. The State learned nothing at the first trial that they did not know before the first trial that needed to be investigated. The failure or delay of the State in investigating the case simply cannot ever be a basis for denying the Defendant their right to a speedy trial. To so hold makes a mockery of the right to a speedy trial.

The burden should be on the State to justify any failure to try this case. On the record in this case, the Solicitor stated that he had been ordered by the trial judge to try four other cases. Rec. on App. at 111, 121 to 112, 111. The State only mentioned one case they tried which was in fact older than Mr. Cobbs’ case. The State did not attempt to justify the delay in re-trying Mr.

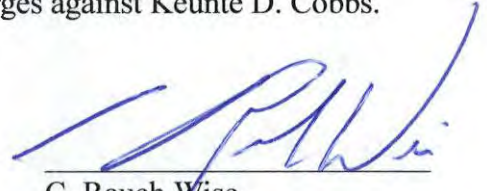
Cobbs by pointing to the cases it had to try that were older than Mr. Cobbs' case. The State can not justify not trying Mr. Cobbs because it had to try a case not as old as Mr. Cobbs' case. To do so would give the State the right to always violate a Defendant's right to a speedy trial with no repercussions. In a matter as important as the denial of a speedy trial, the State should be required to produce more simply saying, "Trust me, I'm from the government, and I'm here to help." Prior to the hearing the government knew or should have known what its burden was to counter the argument of a denial of a speedy trial. They took no action or produced no firm facts to meet that burden.

The State has further argued that Mr. Cobbs has not proven prejudice. After a delay of over 16 months since the previous trial, the State should have the burden of proving a lack of prejudice. As the Texas Court noted, "This Court's case law holds a defendant has the burden to make some showing of 'prejudice' although a showing of 'actual prejudice' is not required. This Court's case law also holds that when a defendant makes a 'prima facie showing of prejudice,' the State carries 'the obligation of proving that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay.'" *State v. Munoz*, 991 S.W.2d 818, 826 (Tex. Crim. App. 1999)(internal citations omitted). With a weak at best exaltation as to why the case was not tried sooner, this Court should hold the State has not proven that Mr. Cobbs was not prejudiced and dismiss the indictment in this case.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Opening Brief, this Court should reverse the conviction in this matter and dismiss the charges against Keunte D. Cobbs.

July 6th, 2021



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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
Lower Court Case No. 2016A1810300547

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SC Court of Appeals

The State Respondent,

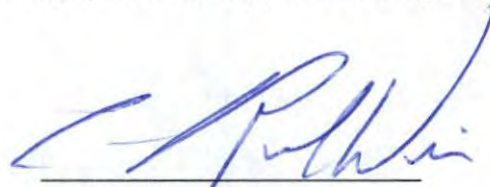
vs

Keunte D. Cobbs, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

July 6th, 2021



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2020-000095

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

RESPONDENT’S PETITION FOR REHEARING

Through an unpublished decision issued on March 29, 2023, this Court affirmed Appellant Keunte D. Cobbs’s conviction for voluntary manslaughter. State v. Cobbs, Op. No. 2023-UP-130 (S.C. Ct. App. filed Mar. 29, 2023). In doing so, this Court correctly concluded: (1) the trial judge properly denied Cobbs’s directed verdict motion; (2) Cobbs’s appellate challenge to the submission of the lesser-included offense of voluntary manslaughter to the jury was not properly preserved for appellate review; and (3) the trial judge did not abuse her discretion by declining to dismiss based on a purported speedy trial violation. However, in addition to reaching those correct conclusions, this Court rejected a portion of the State’s issue preservation arguments and expressly found “the trial court applied an improper standard when it ruled its only responsibility in deciding Cobbs’s directed verdict motion was to ascertain whether there was evidence to support a guilty verdict.” Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent (“the State”) respectfully petitions for rehearing because this

Court appears to have overlooked and misconstrued several important points when partially rejecting the State’s issue preservation arguments and finding error on the part of the trial judge concerning the manner in which she conducted her directed verdict analysis.¹

First, regarding the matter of issue preservation, issue preservation requirements—as noted in the State’s appellate brief—are a fundamental component of appellate procedure in South Carolina that *must* be consistently applied. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004); see Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329-330, 730 S.E.2d 282, 285 (2012) (instructing South Carolina’s issue preservation rules must be applied in a consistent manner and affirming those rules serve an “important function”). The key purpose of those requirements is “to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance “to rule properly after it considered all relevant facts, law, and arguments[,]” and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen’s Grant, 368

¹ Although this Court correctly affirmed Cobbs’s voluntary manslaughter conviction through its decision, the State is currently seeking rehearing solely for the purpose of best ensuring its arguments concerning issue preservation and the propriety of the trial judge’s directed verdict analysis are not waived or foreclosed in any future proceedings that potentially may occur in Cobbs’s case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91 n. 2, 579 S.E.2d 613, 615 n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

S.C. at 373, 628 S.E.2d at 919 (“The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error.”).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”). Likewise, an appellant is precluded from arguing one ground or theory in support of an issue during trial and then a different ground or theory in support of the issue on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”).

Considering Cobbs’s case with those important issue preservation principles in mind, Cobbs—on appeal—raised *many* arguments as to why the trial judge supposedly erred by refusing to direct a verdict of acquittal, including ones claiming: (1) the trial judge applied an incorrect standard when conducting her directed verdict analysis because she indicated she could not weigh the evidence and was only concerned with the matter of whether evidence had been presented as to each element of the charged offense; (2) the appropriate standard of review that should be applied is one in which the court reviews the evidence to determine whether the State

excluded every reasonable hypothesis of innocence; and (3) his case should be reversed because the State’s evidence did not exclude every reasonable hypothesis of innocence. (App. Br. pp. 4-15). Meanwhile, when moving for a directed verdict during trial, defense counsel—in total—argued: “Viewing the evidence in the light most favorable to the State, I find that they have failed to present evidence to convict [Cobbs] on the basis of the case. It’s almost entirely circumstantial, and I just don’t think it rises to the necessary level.” (R. pp. 555-556). Thus, defense counsel—unlike Cobbs on appeal—did not argue the trial judge should have applied a standard in which she—as a judge and not a juror—evaluated what hypotheses of innocence might exist from the evidence and whether any of them seemed reasonable to her, did not argue the analysis the trial judge actually applied was an improper one, and did not argue the State failed to disprove self-defense.

Significantly, because defense counsel did not challenge the method in which the trial judge conducted her directed verdict analysis or raise any arguments concerning the standard that was or should be applied during trial, Cobbs could not properly do so for the first time on appeal based on our state’s issue preservation requirements. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton’s challenge to the trial judge’s refusal to give a requested charge was not preserved for appellate review where Benton “argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)”; State v. Jordan, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) (“The contention of the appellant that the trial judge erred in failing to grant a directed verdict on the ground that the proof showed the

commission of the crime of obtaining property by false pretenses, rather than a breach of trust with fraudulent intent, raises no issue for determination by us because such was not a ground of his motion for a directed verdict. This court has, in numerous cases, held that it will not consider a question on appeal which was not presented in the court below.”); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) (“This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the ‘level of a reasonable doubt as to counts 1, 2, and 3.’ . . . Adams’s argument, therefore, is not preserved for our review.”). Therefore, this Court should respectfully reconsider its partial rejection of the State’s issue preservation arguments along with its decision to address the merits of Cobbs’s appellate-level—but *not* trial-level—claim the trial judge applied an incorrect standard when conducting her directed verdict analysis, and it should ultimately find such an argument was not properly preserved for appellate review since it was neither raised to nor ruled upon by the trial judge.

Second, regarding the propriety of the directed verdict standard applied by the trial judge, the judge and jury have distinct roles when a jury trial is conducted in a criminal case under our system of justice. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the case); State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) (“A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice.”). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, choosing what inferences should be drawn from it, and ultimately deciding whether the

State has met its burden of proving the defendant's guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) (“[T]he jury’s constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence.”); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (“It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.”); State v. Pruitt, 187 S.C. 58, ___, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing “it was within the *jury*’s purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict”); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) (“The task of determining the weight of the evidence lies within the exclusive province of the jury.”).

Based on that distinction in roles, our Supreme Court explicitly recognized roughly sixty-seven years ago the analysis a trial judge must apply when reviewing the sufficiency of the evidence is very different from the analysis that must be applied by a jury. State v. Littlejohn, 228 S.C. 324, 328-329, 89 S.E.2d 924, 926 (1955). As to the proper test for a jury, the jury must determine whether the evidence presented constituted proof of the defendant’s guilt beyond a reasonable doubt or—stated differently—to the exclusion of every reasonable hypothesis of innocence. Id. at 328, 89 S.E.2d at 926. Importantly, such an analysis “goes to the weight of the evidence,” which makes it a matter solely for the jury. Id. at 329, 89 S.E.2d at 926. Conversely, as to the proper test for a trial judge, the trial judge must simply focus on the existence or non-existence of evidence as opposed to its weight and determine whether evidence exists from which the defendant’s guilt can reasonably, rationally, and logically be deduced. Id.

Thus, when presented with a directed verdict motion challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight.”); see also State v. Franklin, 80 S.C. 332, ___, 60 S.E. 953, 955 (1908) (“The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury’s exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 (“[The

directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”); United States v. Hernandez, 433 F.3d 1328, 1334-1335 (11th Cir. 2005) (“[O]ur standard for evaluating the sufficiency of the evidence preserves the right to trial by jury and due process of law. A jury determined Hernandez’s guilt, and we respect that determination. Under our standard, we are bound by the jury’s credibility determinations, and by its rejection of the inferences raised by the defendant. The evidence does not have to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt.” (citations, internal quotations, brackets in original omitted)); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) (“[I]t is exclusively within the jury’s province to decide how much weight the evidence deserves.”).

Looking to what occurred in Cobbs’s case, the trial judge—when presented with a directed verdict motion—recognized the limited nature of her role and correctly explained she was “not charged the responsibility of weighing the evidence.” (R. p. 556). The trial judge then proceeded—as was proper and required—to consider whether evidence existed from which the “jury c[ould] make a determination” of guilt as to each and every element of the indicted offense. (R. p. 556). By focusing purely on the existence of evidence as opposed to its weight and considering whether it was sufficient for the jury to be capable of reaching a determination of guilt for all the required elements of the charged crime from it, the trial judge did precisely what she was tasked with doing when conducting a directed verdict analysis. See Bennett, 415 S.C. at 237, 781 S.E.2d at 354 (“[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly,

in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.”); see also Wright v. West, 505 U.S. 277, 296 (1992) (emphasizing “the prosecution need not affirmatively rule out every hypothesis except that of guilt” in order to survive a challenge to the sufficiency of the evidence in a criminal case); Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938) (explaining “substantial” evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”); United States v. Smith, 21 F.4th 122, 139-140 (4th Cir. 2021) (“Substantial evidence is that which a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” (citation and internal quotations omitted)); United States v. Banker, 876 F.3d 530, 540 (4th Cir. 2017) (“A defendant challenging the sufficiency of the evidence faces a heavy burden. The jury’s verdict *must be upheld* on appeal if there is substantial evidence in the record to support it; that is, there must be evidence that a reasonable finder of fact could accept as adequate and sufficient to support the defendant’s guilt. The Court’s review is thus limited to determining whether, viewing the evidence and the reasonable inferences to be drawn therefrom in the light most favorable to the government, the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt.” (citations, brackets, internal quotations, and ellipses omitted)); United States v. Wilson, 118 F.3d 228, 234 (4th Cir. 1997) (“We may not weigh the evidence or review the credibility of the witnesses. Those functions are reserved for the jury, and if the evidence supports different, reasonable interpretations, the jury decides which interpretation to believe.” (citation and internal quotations omitted)); cf. State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) (“Although Respondent presented plausible

explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt."). Therefore, this Court should respectfully reconsider its determination the trial judge applied an improper standard when ruling of the directed verdict motion, and it should ultimately find the trial judge committed no error through the proper manner in which she conducted her directed verdict analysis.

For all the foregoing reasons coupled with the reasons articulated in the State's brief, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming Cobbs's voluntary manslaughter conviction without finding any error on the part of the trial judge as far as her directed verdict analysis was concerned since Cobbs's appellate arguments challenging the directed verdict standard applied by the trial judge were—in addition to be inconsistent with well-established South Carolina law—not properly preserved for appellate review and the trial judge committed no error through the manner in which she conducted her analysis when ruling on the directed verdict motion.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General



By: _____
Mark R. Farthing
S.C. Bar Number 76901

April 6, 2023

RECEIVED

Apr 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Keunte D. Cobbs, Appellant

Appellate Case ¹ 2020-000095

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion ¹ 2023-UP-130
Submitted January 1, 2023 - Filed March 29, 2023

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Keunte D. Cobbs, Appellant, hereby Petitions this Court to rehear this matter and correct the following errors or omissions in the opinion:

1. The Court erred in finding that “Cobbs exclaimed shortly before his fatal encounter with the victim that he intended to kill someone” Opinion at 2. The record in this case establishes two facts the Court apparently failed to consider. First, the alleged statement was not shortly before the shooting but was from one hour and fifteen minutes to two hours and fifteen minutes before the shooting. Rec. on App. at 499, ll 14-22. Second, nothing in the record indicates the comment was referring to either of the two people who were shot. If Mr. Cobbs made the statement about a third person, he still would have been able to assert self defense

against the two people who were shot in this case. No substantial circumstantial evidence establishes that the statement was made shortly before the shooting nor that the statement was directed at either of the two men who were shot.

2. The court erred in finding “neither the victim nor his companion drew a weapon at the time of the shooting.” Opinion at 2. This Court failed to consider that Mr. Cobbs had the right to act upon appearances and the known reputation of the two men. The record in this case established the reputation for violence of both men. Lt. Peters of the Dorchester County Sheriff’s office testified Braford Spells, the survivor, had a reputation in the community for violent and criminal behavior. Rec. at 521, ll 12-22. Mr. Cobbs himself testified as the reputation for violence of the two men. Rec. 495, l 18 to 497, l 2. The State never refuted any of this evidence. The undisputed evidence is that both men had a reputation for being violent. In concluding that neither person drew a weapon, this Court ignored the testimony of Mr. Cobbs that he saw a weapon on at least one of the men. Mr. Cobbs testified, “I saw the gun that Mack had first, seeing him first, because we made eye contact first and then Spells.” Rec. at 577, l 17-19. He further testified, “But they were in front of the door, so it was kind of hard for me to be, like excuse me when you’ve got two guys pulling out weapons like, they were looking for you.” Rec. at 578, ll 10-13. Thus, the conclusion by this Court that “neither the victim nor his companion drew a weapon” (opinion at 2) is simply not supported by the record.

In viewing the evidence in the light most favorable to the state, this court erred in concluding that the absence of evidence by the state is evidence. The ruling as to the directed verdict should be viewed from two perspectives. The first perspective is at the conclusion of the state’s case in chief. The second, perspective is at the conclusion of all the evidence. The

conclusion by this Court that neither person involved in the shooting with Mr. Cobb drew a weapon is made due to the lack of evidence, if that conclusion is based upon the directed verdict motion at the end of the State's case. At no point in the state's presentation was there any evidence that either man did or did not draw a weapon. While each man was found with a weapon, neither made a statement they drew their weapon or they did not draw their weapon. Thus, the conclusion by this court that neither drew a weapon is based upon the complete absence of the testimony as to whether either person drew a weapon or not.

Mr. Cobbs testified both drew weapons. Rec. at 577, l 17-19; Rec. at 578, ll 10-13. So, if the Court concluded neither drew a weapon based upon the fact the jury convicted Mr. Cobb, such a conclusion is not proper. As the South Carolina Supreme Court said, "The fact that Appellant testified, necessarily placing her credibility in issue, further does not operate to waive consideration of her testimony where the testimony does not present patent inconsistencies with the State's evidence." *State v. Hepburn*, 406 S.C. 416, 437, 753 S.E.2d 402, 413 n.19 (2013). No testimony by Mr. Cobbs presented any patent inconsistencies with the State's case. Thus, this Court cannot summarily reject his testimony under the guise of reviewing the evidence in the light most favorable to the state. Thus, based upon the testimony of Mr. Cobbs that was consistent with the State's case, this Court cannot conclude neither man drew a weapon.

In ruling on this matter the Court failed, or at least appeared not to consider, the holding of the South Carolina Supreme Court in *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989) where the court held a defendant could act upon reasonable appearances.

3. This Court erred in holding substantial circumstantial evidence supported a finding that Mr. Cobbs acted with express malice. For the reasons cited above, no facts support this

conclusion. Certainly the jury did not conclude Mr. Cobbs acted with express malice. A comment about killing someone over an hour before two armed men were shot, is not substantial circumstantial evidence of malice.

4. The Court further erred in concluding that circumstantial evidence existed to prove that “assuming Cobbs actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, a reasonable person of ordinary firmness and courage in the same situation would not have entertained the same belief.” Opinion at 2. What the court is, in essence, saying, is that an ordinary person would not have feared for their life had a person with a known reputation for violence entered a bathroom with only the ordinary person in it and started drawing a weapon. A person with even extraordinary firmness and courage would have felt threatened under those circumstances. This Court erred in its conclusion that substantial circumstantial evidence existed that Mr. Cobbs was not in imminent danger of losing his life or being seriously injured.

5. In discussing the three elements of self defense and not addressing the others, the logical conclusion is that this Court found no substantial circumstantial evidence to conclude that Mr. Cobbs was at fault in bringing on the difficulty. Substantial circumstantial evidence also did not exist to conclude that Mr. Cobbs had other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). If this Court made such a conclusion, the order should so state.

6. As requested by Mr. Cobbs in his brief, at page 15, this Court failed to define the meaning of substantial circumstantial evidence and therefore this Defendant is unable to determine if this Court applied a proper definition of substantial circumstantial evidence. Mr.

Cobbs recognizes that virtually no court in South Carolina has ever defined the term. As former Court of Appeals Judge Ralph King Anderson said, “A conundrum exists in the criminal case law of South Carolina: the term ‘substantial’- as it relates to the scope of review for directed verdict motions - has never been defined.” *State v. Cherry*, 348 S.C. 281, 295, 559 S.E.2d 297, 304 (Ct. App. 2001), *aff’d* but criticized, 361 S.C. 588, 606 S.E.2d 475 (2004)(Anderson, concurring in part and dissenting in part). This “conundrum” should not prevent this Court from defining what is substantial circumstantial evidence so that Mr. Cobbs and any reviewing court may be able to determine if this Court applied the proper standard of review.

For the foregoing reason this Court should rehear this matter and reverse the conviction of Keunte Cobbs. The Court should also define the term “substantial circumstantial evidence” so that Mr. Cobbs and any reviewing court could determine if the proper standard has been applied.

April 12, 2023

/s/ C. Rauch Wise

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Attorney for Keunte Cobbs

The South Carolina Court of Appeals

The State, Respondent,

v.

Keunte D. Cobbs, Appellant.

Appellate Case No. 2020-000095

ORDER

After careful consideration of the petitions for rehearing filed by both parties, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded; hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied. However, Opinion No. 2023-UP-130, filed March 29, 2023, is withdrawn and the attached opinion is substituted.

 J.

 J.

 A.J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Clarence Rauch Wise, Esquire

FILED
May 24 2023

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Keunte D. Cobbs, Appellant.

Appellate Case No. 2020-000095

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2023-UP-130
Submitted January 1, 2023 – Filed March 29, 2023
Withdrawn, Substituted and Refiled May 24, 2023

AFFIRMED

Clarence Rauch Wise, of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Mark Reynolds Farthing,
both of Columbia, for Respondent.

PER CURIAM: Following a retrial on a murder charge after a mistrial on the charge was declared during an earlier proceeding, Keunte Cobbs was convicted of the lesser-included offense of voluntary manslaughter and sentenced to thirty years' imprisonment. Cobbs appeals his conviction and sentence, arguing the trial court

erred in denying his directed verdict motion and in refusing to dismiss the case based on an alleged violation of his right to a speedy trial. We affirm pursuant to Rule 220(b), SCACR.

1. As to whether the trial court should have directed a verdict on the murder charge, we reject the State's argument that Cobbs failed to preserve this issue for appeal because Cobbs specifically argued the evidence against him was "almost entirely circumstantial" and did not "rise[] to the necessary level," and the trial court responded its only responsibility was to ascertain whether there was evidence from which the jury could find him guilty. *See State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."). We also agree with Cobbs that the trial court applied an improper standard when it ruled its only responsibility in deciding Cobbs's directed verdict motion was to ascertain whether there was evidence to support a guilty verdict. *See State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) ("A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000))).

Nevertheless, in view of testimony establishing Cobbs exclaimed shortly before his fatal encounter with the victim that he intended to kill someone and neither the victim nor his companion drew a weapon at the time of the shooting, we hold there was substantial circumstantial evidence to support findings that (1) Cobbs acted with express malice; (2) Cobbs was not in imminent danger of losing his life or sustaining serious bodily injury; and (3) assuming Cobbs actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, a reasonable person of ordinary firmness and courage in the same situation would not have entertained the same belief. Therefore, viewing the evidence in the light most favorable to the State, we hold the trial court properly denied Cobbs's directed verdict motion. *See id.* at 139, 708 S.E.2d at 777 ("On appeal of the denial of a directed verdict of acquittal, [the appellate court] must look at the evidence in the light most favorable to the State."); *State v. Wilds*, 355 S.C. 269, 276, 584 S.E.2d 138, 142 (Ct. App. 2003) ("Express malice is when there is a deliberate intention to unlawfully take the life of another."); *State v. Bixby*, 388 S.C. 528,

554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that [self-]defense has not been established if any one element is disproven.").¹

2. We hold the trial court acted within its discretion in refusing to dismiss the case based on an alleged violation of Cobbs's right to a speedy trial. See *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016) ("The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard."); *id.* at 343, 794 S.E.2d at 372 (requiring a court to consider, among the totality of the circumstances, the length of the delay of the trial, the reason for the delay, the accused's assertion of the right to a speedy trial, and prejudice to the accused from the delay when deciding whether the right to a speedy trial has been unfairly denied). Although the State conceded the delays in bringing Cobbs's case to trial were long enough to warrant consideration of the relevant speedy trial factors by the trial court, its reasons for not trying the case sooner—the loss of the investigator and the prosecuting attorney assigned to the case, trial preparation needs, the crowded condition of the docket, and a directive from the court to try other cases first—do not indicate prosecutorial neglect or willfulness. See *State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Second, we find it significant that although Cobbs asserted his right to speedy trial before his case first went trial, he did not reassert this right until the onset of his second trial. See *Barker v. Wingo*, 407 U.S. 514, 531-32 (1972) ("The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the right is being deprived."); *id.* at 532 (emphasizing the failure to assert a speedy trial right will make it difficult for a defendant to prove that he was unfairly denied a speedy trial). Furthermore, we reject Cobbs's argument that he suffered prejudice from the alleged delays because (1) he made only a conclusory reference to presumptive prejudice and conceded the loss of certain evidence, and (2) the personal adversities he claimed to have

¹ To the extent Cobbs now challenges the trial court's instruction on voluntary manslaughter, such is not preserved for our review. When Cobbs moved for a directed verdict at trial, he argued only that the State "failed to present evidence to convict [him] on the basis of the case" and never referenced the lesser included offense of voluntary manslaughter. Furthermore, after the trial court issued its jury charge, which included an instruction that Cobbs could be found guilty of voluntary manslaughter instead of murder, it invited both Cobbs and the State to express concerns about the charge, and Cobbs made no objection. See *Jennings*, 394 S.C. at 481, 716 S.E.2d at 95 ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court.").

suffered from the delay in his trial occurred either before his arrest or shortly thereafter; thus, none of these claims of prejudice resulted from his prolonged incarceration or the State's failure to schedule his trial sooner than when it took place. *See Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376 (allowing an accused to "assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial"); *id.* ("Actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.").

AFFIRMED.²

GEATHERS and MCDONALD, JJ., and HILL, A.J., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jun 06 2023
SC Court of Appeals

The State, Respondent,

v.

Keunte D. Cobbs, Appellant

Appellate Case № 2020-000095

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion № 2023-UP-130
Submitted January 1, 2023 - Filed March 29, 2023
Withdrawn, Substituted and Refiled May 24, 2023

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Keunte D. Cobbs, Appellant, hereby Petitions this Court to rehear this matter and correct the following errors or omissions in the opinion. This Court previously entered an order dated March 29, 2023 to which Mr. Cobbs filed a Petition for Hearing. The substituted opinion made technical corrections but failed to address the issues raised in his Petition for Rehearing. Mr. Cobbs submits this Petition for Rehearing as to the substituted order.

1. The Court erred in finding that “Cobbs exclaimed shortly before his fatal encounter with the victim that he intended to kill someone” Opinion at 2. The record in this case establishes two facts the Court apparently failed to consider. First, the alleged statement was not

shortly before the shooting but was from one hour and fifteen minutes to two hours and fifteen minutes before the shooting. Rec. on App. at 499, ll 14-22. Second, nothing in the record indicates the comment was referring to either of the two people who were shot. If Mr. Cobbs made the statement about a third person, he still would have been able to assert self defense against the two people who were shot in this case. No substantial circumstantial evidence establishes that the statement was made shortly before the shooting nor that the statement was directed at or made reference to either of the two men who were shot.

2. The court erred in finding “neither the victim nor his companion drew a weapon at the time of the shooting.” Opinion at 2. This Court failed to consider that Mr. Cobbs had the right to act upon appearances and the known reputation of the two men. The record in this case established the reputation for violence of both men. Lt. Peters of the Dorchester County Sheriff’s office testified Braford Spells, the survivor, had a reputation in the community for violent and criminal behavior. Rec. at 521, ll 12-22. Mr. Cobbs himself testified as the reputation for violence of the two men. Rec. 495, l 18 to 497, l 2. The State never refuted any of this evidence. The undisputed evidence is that both men had a reputation for being violent. In concluding that neither person drew a weapon, this Court ignored the testimony of Mr. Cobbs that he saw a weapon on at least one of the men. Mr. Cobbs testified, “I saw the gun that Mack had first, seeing him first, because we made eye contact first and then Spells.” Rec. at 577, l 17-19. He further testified, “But they were in front of the door, so it was kind of hard for me to be, like excuse me when you’ve got two guys pulling out weapons like, they were looking for you.” Rec. at 578, ll 10-13. Thus, the conclusion by this Court that “neither the victim nor his companion drew a weapon” (opinion at 2) is simply not supported by the record.

In viewing the evidence in the light most favorable to the state, this court erred in concluding that the absence of evidence by the state is evidence. The ruling as to the directed verdict should be viewed from two perspectives. The first perspective is at the conclusion of the state's case in chief. The second, perspective is at the conclusion of all the evidence. The conclusion by this Court that neither person involved in the shooting with Mr. Cobbs drew a weapon is made due to the lack of evidence, if that conclusion is based upon the directed verdict motion at the end of the State's case. At no point in the state's presentation was there any evidence that either man did or did not draw a weapon. While each man was found with a weapon, neither made a statement they drew their weapon or they did not draw their weapon. Thus, the conclusion by this court that neither drew a weapon is based upon the complete absence of the testimony as to whether either person drew a weapon or not.

Mr. Cobbs testified both drew weapons. Rec. at 577, l 17-19; Rec. at 578, ll 10-13. So, if the Court concluded neither drew a weapon based upon the fact the jury convicted Mr. Cobbs, such a conclusion is not proper. As the South Carolina Supreme Court said, "The fact that Appellant testified, necessarily placing her credibility in issue, further does not operate to waive consideration of her testimony where the testimony does not present patent inconsistencies with the State's evidence." *State v. Hepburn*, 406 S.C. 416, 437, 753 S.E.2d 402, 413 n.19 (2013). No testimony by Mr. Cobbs presented any patent inconsistencies with the State's case. Thus, this Court cannot summarily reject his testimony under the guise of reviewing the evidence in the light most favorable to the state. Thus, based upon the testimony of Mr. Cobbs that was consistent with the State's case, this Court cannot conclude neither man drew a weapon.

In ruling on this matter the Court failed, or at least appeared not to consider, the holding

of the South Carolina Supreme Court in *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989) where the court held a defendant could act upon reasonable appearances.

3. This Court erred in holding substantial circumstantial evidence supported a finding that Mr. Cobbs acted with express malice. For the reasons cited above, no facts support this conclusion. Certainly the jury did not conclude Mr. Cobbs acted with express malice. A comment about killing someone over an hour before two armed men were shot, is not substantial circumstantial evidence of malice.

4. The Court further erred in concluding that circumstantial evidence existed to prove that “assuming Cobbs actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, a reasonable person of ordinary firmness and courage in the same situation would not have entertained the same belief.” Opinion at 2. What the court is, in essence, saying, is that an ordinary person would not have feared for their life had a person with a known reputation for violence entered a bathroom with only the ordinary person in it and started drawing a weapon. A person with even extraordinary firmness and courage would have felt threatened under those circumstances. This Court erred in its conclusion that substantial circumstantial evidence existed that Mr. Cobbs was not in imminent danger of losing his life or being seriously injured.

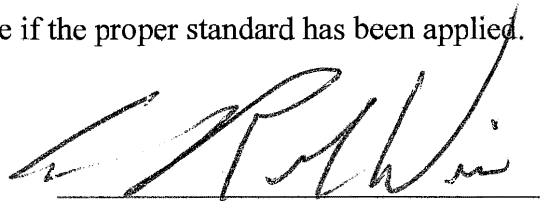
5. In discussing the three elements of self defense and not addressing the others, the logical conclusion is that this Court found no substantial circumstantial evidence to conclude that Mr. Cobbs was at fault in bringing on the difficulty. Substantial circumstantial evidence also did not exist to conclude that Mr. Cobbs had other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d

97, 101 (2011). If this Court made such a conclusion, the order should so state.

6. As requested by Mr. Cobbs in his brief, at page 15, this Court failed to define the meaning of substantial circumstantial evidence and therefore this Defendant is unable to determine if this Court applied a proper definition of substantial circumstantial evidence. Mr. Cobbs recognizes that virtually no court in South Carolina has ever defined the term. As former Court of Appeals Judge Ralph King Anderson said, “A conundrum exists in the criminal case law of South Carolina: the term ‘substantial’ - as it relates to the scope of review for directed verdict motions - has never been defined.” *State v. Cherry*, 348 S.C. 281, 295, 559 S.E.2d 297, 304 (Ct. App. 2001), *aff’d* but criticized, 361 S.C. 588, 606 S.E.2d 475 (2004)(Anderson, concurring in part and dissenting in part). This “conundrum” should not prevent this Court from defining what is substantial circumstantial evidence so that Mr. Cobbs and any reviewing court may be able to determine if this Court applied the proper standard of review.

For the foregoing reason this Court should rehear this matter and reverse the conviction of Keunte Cobbs. The Court should also define the term “substantial circumstantial evidence” so that Mr. Cobbs and any reviewing court could determine if the proper standard has been applied.

June 6, 2023



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The South Carolina Court of Appeals

The State, Respondent,

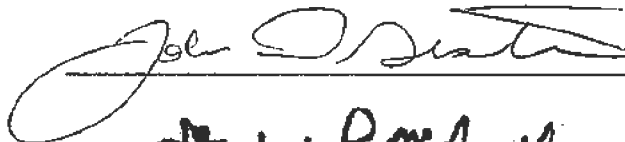
v.

Keunte D. Cobbs, Appellant.

Appellate Case No. 2020-000095

ORDER

After careful consideration of Cobbs's second petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 A.J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Clarence Rauch Wise, Esquire

Mark Reynolds Farthing, Esquire

The Honorable Diane Schafer Goodstein

FILED
Jun 22 2023