

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 26 2024

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2024-001039

S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

MARK ANTHONY HAILEY, JR.,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, South Carolina 29649
(864) 942-8800

ATTORNEYS FOR PETITIONER

LARA MARY CAUDY

S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

INDEX

INDEX i

RECORD ON APPEAL ii

 Index iii

 Transcript 1

FINAL BRIEF OF APPELLANT970

FINAL BRIEF OF RESPONDENT1001

COURT OF APPEALS OPINION (2024-UP-074).....1038

PETITION FOR REHEARING.....1042

RETURN TO PETITION FOR REHEARING1046

ORDER DENYING PETITION FOR REHEARING1054

1 time.

2 Q Why -- I'm sorry. You can finish your --

3 A In those times I went down there, of course I seen
4 the bowl in his hand and him smoking, yes, but any
5 particular time, I can't -- I assume because they were all
6 together.

7 Q You said that -- when he asked whether or not Mark
8 was smoking, you said, yes, I assume.

9 A I assume. I assume all of them were smoking.

10 Q So did you see -- yes or no. Did you actually see
11 him --

12 A Not at that very instant, no.

13 Q But because he was around them, you assumed he was
14 smoking; right?

15 A Yes, because I had seen him smoke once earlier that
16 day.

17 Q He smoked --

18 A Earlier, yeah.

19 Q He smoked with Joey earlier in the day?

20 A Yeah, I'm not going to take somebody to somebody's
21 house and not go check on them. Of course I went back
22 down to Joey's to speak and check and make sure everything
23 was okay.

24 Q So explain this. You took -- Mark went to Joey's
25 house; right?

1 A I took him down there, yes.

2 Q You took him down there to Joey's house. Then, you
3 left?

4 A I went up to the house in front.

5 Q But then, you came back?

6 A To Joey's.

7 Q Why did you take him to Joey's?

8 A Because I couldn't take him to the house in front.

9 Q And explain that because maybe I just missed it.

10 A The house in front is not -- Joey's is somewhere we
11 could go and get high and you can socialize. That's why I
12 went and took him down there and he couldn't come to the
13 house in front because Mr. Wes doesn't allow someone to go
14 in the house.

15 Q But you -- but Mr. Wes allows people who are high to
16 come to his house?

17 A He don't know that they're high.

18 Q He allows you to come there when you're high; right?

19 A Yeah, to do laundry or help or whatever it is. He
20 didn't know particularly any time I was high.

21 Q So he couldn't tell based off your body language?

22 A No.

23 Q Because people who are high, sometimes whenever
24 they're regular users, they look normal. Is that what you
25 testified to?

1 A They can.

2 Q And you're saying that -- I think you testified that
3 Marty just acted like Marty whenever he was high; right?

4 A That's right.

5 Q Did you ever see him really clean?

6 A What do you mean?

7 Q Did you see Marty clean?

8 A Clean?

9 Q Yeah, like --

10 A Sober?

11 Q Sober.

12 A Yes.

13 Q A long period of time sober?

14 A Not particularly. You would say it goes dry, we
15 couldn't find any drugs. A couple of days at the most,
16 maybe.

17 Q So a couple of days. A couple meaning three or four
18 days?

19 A Two, three days. Maybe a week. It depended on how
20 he slept and ate.

21 Q But most of the time you saw Marty, he was high;
22 right?

23 A I wouldn't say most of the time. I would say half of
24 the time.

25 Q He just acted like Marty whenever he was that way;

1 right?

2 A Yes.

3 Q Most of the time you saw Marty, you were high;
4 correct?

5 A Or was trying to get high, yes.

6 Q And even though you're a long-term drug user, you
7 were unaware of the fact that Marty sold methamphetamine?

8 A He never sold anything. We always shared. If I had
9 it or he had it, we always shared.

10 Q So he would be -- he would share methamphetamine?

11 A Yeah.

12 Q You said that he was not really a taxi cab -- not
13 really like a taxi cab person, but he did give a lot of
14 people rides?

15 A I didn't say that.

16 Q You didn't testify to that?

17 A I said he gave a lot of people rides. I never said
18 anything about a taxi cab. I can't remember if I did or
19 not, but I don't think I did.

20 Q You don't recall the Solicitor saying he was sort of
21 like a taxi cab driver?

22 A He said that. I didn't.

23 Q But you do recall that; right?

24 A Yes.

25 Q And you said, no, correct?

1 A I think -- I assume, yeah. Like -- yeah, I did, but
2 I did not say that.

3 Q Your response was not, no, to that question? Do you
4 remember your response?

5 A I do not, no.

6 Q Would you like us to have it -- the Court Reporter
7 read it back?

8 A I probably did. I don't know. I haven't had a lot
9 of sleep. I'm under a lot of stress. I have two children
10 up here in jail right now, and then I had this trial. I'm
11 not sleeping well.

12 MADAM COURT REPORTER: Judge, I'm having a hard time
13 hearing.

14 THE COURT: You need to sit close to the microphone
15 so we can hear you.

16 Q The methamphetamine does not help you sleep, does it?

17 A No, it doesn't.

18 Q It keeps you awake; right?

19 A Sometimes.

20 Q It can keep you awake for days at a time sometimes?

21 A It could.

22 Q Maybe four days?

23 A Four to 10. Methamphetamine is a speed. Sometimes,
24 it can have the opposite effect like Adderall. Adderall
25 also contains amphetamine.

1 Q You said Marty was docile like a cat; correct?

2 A Yes, I did.

3 Q He's not the kind of guy who would fight the police,
4 is he?

5 A No, he was not a violent person to me. I've never
6 seen him angry. I've never seen him violent, no.

7 Bickering doesn't make a person violent.

8 Q He bickered a lot with Joni?

9 A Sometimes. You know, couples bicker back and forth.

10 Q Did it ever get physical that you know of?

11 A No, I've never seen him get physical. No.

12 Q But they did get loud; right?

13 A Yeah, sometimes.

14 Q You wouldn't expect him to be the kind of person that
15 would try to -- if he's being arrested, try to fight the
16 cop and try to get a screwdriver and stab him, would you?

17 A He wouldn't cross me that way, no.

18 Q It would surprise you --

19 A If he was high and been high for a couple of days,
20 maybe.

21 Q Maybe if he was really high and had been high for a
22 couple of days?

23 A Maybe. That could be anybody. That could be me.

24 Q Because whenever you get high for a couple of days,
25 you get very angry, don't you?

1 A Angry? Due to lack of sleep, you don't think right,
2 but I don't have a degree to determine that either.

3 Q Did the State make any promises or talk to you in any
4 way about -- or did the State make any conversation about
5 your pending charges when they were talking to you about
6 this case?

7 A They just told me that you were going to be asking
8 about them.

9 Q And what did they tell you to say?

10 A Tell the truth.

11 Q What did they tell you to say about the pending
12 charges though?

13 A Tell the truth.

14 Q Did they offer you anything?

15 A No, absolutely not.

16 Q They didn't offer to help you out in some way?

17 A No, they did not.

18 Q Did --

19 A My pending charges have nothing to do with this case.
20 Nothing at all.

21 Q But you were first talked to last week; correct or
22 the week before?

23 A Yes, and a private investigator came to my home
24 because she told me that the Public Defender's Office took
25 his case and she is working for them now and a lawyer.

1 Q So Marty, did you ever know him to carry a gun?

2 A No.

3 Q He never said that to anything?

4 A No, knives. He played with a lot of knives.

5 Q He never said that he carried to people?

6 A No, I did say he had one in the car at one point.

7 Q And when was that?

8 A It was actually two days before all of this happened.

9 I was getting high and I needed a needle and he said that
10 he had some under his seat, to reach behind under the seat
11 and grab the bag of needles and when I did, that's when I
12 felt a handle and it startled me. So he did pull it out
13 and show me.

14 Q And did it look like this (indicating)?

15 A No.

16 Q It was something other than this?

17 A Yes.

18 Q Was it smaller or bigger?

19 A Smaller.

20 Q Was it in black?

21 A It was smaller.

22 Q Was it black?

23 A It had a brown handle on it.

24 Q But it was smaller than this (indicating)?

25 A Yes.

1 Q And was it a real gun or was it a --

2 A -- I did not touch it, but it looked like a real gun,
3 yes.

4 Q And you've never told that to anybody before?

5 A They didn't ask. I probably have told them that.

6 Q Did you tell the Solicitor's Office that?

7 A Yes, I probably did.

8 MR. SHAFFER: Court's indulgence. No further
9 questions.

10 THE COURT: Anything in redirect, Solicitor?

11 MR. BROWN: Nothing further.

12 THE COURT: Ladies and gentlemen, we're going to take
13 a short morning break. If you'll go back to the jury room
14 and we'll get you back out shortly and go to the next
15 witness.

16 (Whereupon, the jury was excused from open court for
17 a break.)

18 THE COURT: We will take a short break.

19 (Whereupon, a short break was taken.)

20 THE COURT: We're back on the record. Mr. Shaffer,
21 do you want to put on the record what we have been
22 discussing in the hall and back in-chambers?

23 MR. SHAFFER: Yes, Your Honor. I move to -- it's our
24 position that that last witness was --

25 THE COURT: Stella Burton?

1 MR. SHAFFER: Yes, sir. Was high on the stand. She
2 was rocking back and forth and everything and her eyes
3 kept sort of almost closing. It was pretty apparent that
4 she was high, at least to me and to Ms. McNeill. I move
5 to disqualify her as a witness and strike her testimony
6 under competence.

7 THE COURT: Well, based upon our conversations, I did
8 make the same observations that you did. She was,
9 however, responsive to the questions on direct and cross.
10 She appeared to understand all of the questions that were
11 asked to her. So I'm just going to allow her credibility
12 to be determined by the jury based upon her demeanor and
13 her various admissions that she made. So I'm not going to
14 find her incompetent to testify.

15 MR. BROWN: Judge, I'd also add it appears that she
16 was pretty consistent with the way she was acting from
17 last Friday, too --

18 THE COURT: Right.

19 MR. BROWN: -- at pretrial with her swaying, but
20 again, she was responsive to all of the questions and I
21 believe --

22 THE COURT: Right.

23 MR. BROWN: -- her statements were consistent.

24 THE COURT: Right and I did allude to that that from
25 what I remember from last Friday during pretrial, it

1 appeared that she responded somewhat consistently. So
2 your motion is so noted and denied. All right. You've
3 got Mr. Lawson?

4 MR. BROWN: Yeah, he's here.

5 THE COURT: Let's bring the jury out, please. Does
6 everybody think we're good to take care of Mr. Lawson's
7 direct and cross and still get Ms. McNeill to her meeting?

8 MR. BROWN: Yes, sir.

9 (Whereupon, the jury came into open court at
10 approximately 11:20 a.m.)

11 THE COURT: Let the record reflect that the jury is
12 back in the courtroom. Solicitor, call your next witness,
13 please.

14 MR. BROWN: The State calls Joey Lawson.

15 THE COURT: Come around, Mr. Lawson.

16 JOEY LAWSON, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Brown:

20 Q Good morning, Mr. Lawson.

21 A Good morning.

22 Q Mr. Lawson, did you know Marty George?

23 A Yes, I did.

24 Q How did you know Marty?

25 A I just knew him from the neighborhood.

1 Q Were you friends with Marty?

2 A Yeah, real good friends.

3 Q And how long had you known Marty?

4 A Just a few months. Probably six to eight months.

5 Q But you knew him?

6 A Yeah, I only lived in that house for a year. So I
7 met him probably within a couple of months after I moved
8 in the house.

9 Q What about Stella Burton? Do you know Stella?

10 A Yeah, I know her. I didn't know her until I moved
11 into the house, also.

12 THE COURT: Mr. Lawson, move a little closer to the
13 microphone, if you would, please, sir. Thank you.

14 THE WITNESS: Yes, sir.

15 Q What about Joni Kitchens? Do you know Joni?

16 A Yeah, I know Joni through Marty.

17 Q Through Marty. Did you know Mark Hailey?

18 A No, I don't know him.

19 Q Have you seen him before though?

20 A Yes, I did that day.

21 Q That day?

22 A Yes, sir.

23 Q Now, Mr. Lawson, we're talking about March 5th of
24 2019; is that correct?

25 A Yes.

1 Q When did you first see Mr. Hailey?

2 A When Stella and Debbie Woods dropped him off at my
3 house and said he needed a place to stay until Marty
4 picked him up.

5 Q Where did you live?

6 A Right behind Wes' house. I don't know Wes' last
7 name.

8 Q Describe your place where you live.

9 A It was a garage. It was made into a studio home and
10 that's what I -- I was working on that house.

11 Q What time of day, if you remember, did Mr. Hailey
12 arrive with Stella and Debbie Woods?

13 A I would say probably 9:00, 10:00, 11:00. Somewhere
14 in that area. I was working on the house. I usually
15 worked pretty much through the day and night on that
16 house.

17 Q Could it have been earlier?

18 A I don't know. I guess it could have been.

19 Q You're just not sure on when they got there?

20 A Yes, sir. I'm not sure.

21 Q So is the man, Mark Hailey, that arrived at your
22 house, is he in the courtroom today?

23 A Yes, sir.

24 Q Can you describe what he's wearing?

25 A Yes, sir. He's wearing either a navy blue or black

1 suit.

2 Q And that's who showed up to your house?

3 A Yes, sir.

4 MR. BROWN: Let the record reflect --

5 THE COURT: Sure.

6 MR. BROWN: -- that he's identified him.

7 THE COURT: Sure. The witness has identified the
8 Defendant, Mark Hailey.

9 Q Now, when Mr. Hailey first got to your house, where
10 did Stella go?

11 A Stella went up to the brick house in front to wash
12 clothes.

13 Q And where did Mark go?

14 A Mark came in my house and sat down on the couch.

15 Q How was Mark acting when he got there?

16 A He was acting pretty calm. A regular guy, you know.

17 Q Did he remain normal during the time?

18 A Within about 30 to 45 minutes I would say, he started
19 acting kind of strange. You know, he started reading his
20 Bible. He starting acting -- mumbling to himself. Then,
21 he pretty much started going in and out of the bathroom
22 and, you know, different things that wasn't normal I kind
23 of guess you could say.

24 Q He was in and out of the bathroom?

25 A Yeah, he went in the bathroom about two or three

1 times, maybe more.

2 Q Did he have anything with him?

3 A Some kind of bag or something.

4 Q In addition to his little Bible?

5 A Yes.

6 Q So his demeanor changed?

7 A Yeah, his demeanor did change. Yes.

8 Q Did he ever say anything to you?

9 A The only thing that I can recall him saying to me --
10 I was working. I was working in the kitchen. I was
11 remodeling the kitchen and he said, what are you all
12 doing? Are you all out to get me? Are you all plotting
13 something against me, or something in that category. I
14 don't know exactly what he said. I said -- and I tried to
15 calm him down. I said, no. I said, nobody here would
16 ever do that to you. You're safe in my house. That's
17 pretty much all that was said in that conversation.

18 Q But again, he was thinking you all were out to get
19 him?

20 A Yeah, somebody -- he said somebody -- he said, you
21 all. So I assume he was talking about whoever was around
22 this area.

23 Q Would you say he was somewhat paranoid?

24 A Yes, sir.

25 Q How long do you think he was around you that night?

1 A I would say around two or three hours. It could have
2 been an hour and a half. I can't remember.

3 Q But it was a good, long period?

4 A Yeah, it was awhile, but he was zooming out and when
5 he went outside, he stayed outside a little while. He
6 wasn't like in my house the whole time, but he would come
7 in and sit down, read the Bible. And then, he'd go back
8 outside or go to the bathroom. He never would sit still,
9 you know.

10 Q Yes, sir. When did he leave?

11 A When Marty and Joni came to pick him up and I don't
12 know exactly what time. I'm thinking around 11:30, 12:00.
13 Somewhere in that area.

14 Q It was dark outside?

15 A Yes, sir. It was dark.

16 Q But you can't say for certain what time it was?

17 A No, sir.

18 Q Did you ever smoke any meth with him or do you
19 remember him smoking meth?

20 A No, I can't recall smoking anything with him.

21 Q When Marty and Joni got there, how long were they
22 there?

23 A They wasn't there any more than 10, 15 minutes, even
24 if that and Marty was talking to me the whole time. There
25 was no drugs then and Joni was in a hurry to go. So she

1 went on out the door and Mark went out the door. And
2 then, Marty stood there and he told -- I told him -- I
3 said, where have you been? I said, everybody was wanting
4 him to go. Give him a ride home, you know, and he left.

5 Q So had you tried to get in contact with Marty and
6 Joni --

7 A No, I didn't try.

8 Q -- to tell them to come pick him up?

9 A I didn't try. I knew Stella or somebody was trying.

10 Q But you all wanted him to leave?

11 A I didn't per se say that I wanted him to leave. I
12 just felt uncomfortable, too around him.

13 Q You felt uncomfortable about him?

14 A Yeah, I did, but it wasn't because I was in fear. It
15 was because I didn't know what he -- I've seen people
16 almost OD and I just don't want to have that in my home.

17 Q So you're saying OD. Were you saying you believe he
18 was under the influence of drugs?

19 A I believe he was under the influence.

20 Q So later on, Joni and Marty came and picked up Mark
21 Hailey?

22 A Yes, they did.

23 Q Did you see Mark or Marty anymore that night?

24 A No, I didn't.

25 Q Mr. Lawson, would you say you've done meth in the

1 past?

2 A Yes, I've done some meth.

3 Q Have you done meth with Marty?

4 A No. With Marty?

5 Q Marty.

6 A Yes, with Marty. Yes, I have.

7 Q How did Marty act on methamphetamine?

8 A He pretty much acted himself. He didn't have a whole
9 lot of change in him. He was pretty much himself. I
10 guess you'd say a little perky. A little more perky and
11 active.

12 Q Have you ever known Marty to be aggressive or
13 violent?

14 A No, no. I never have.

15 Q And you'd never met Mark Hailey before that night?

16 A Never.

17 Q Mr. Lawson, are you -- when's the last time you did
18 methamphetamine?

19 A It's probably been a couple of weeks ago. I fell off
20 the wagon. I did go to rehab. I went to rehab. It was
21 Cornerstone. I graduated. It was intensive outpatient
22 where I had to go three nights a week, three hours a night
23 and it was pretty intense. I had to take a drug test
24 about every night. So, I mean, I stayed clean.

25 Q When's -- are you under the influence right now?

1 A No, I'm not.

2 Q Mr. Lawson, it's safe to say you have a criminal
3 history; is that right?

4 A Yeah, I'd say I was at the wrong place at the wrong
5 time a lot of the times.

6 Q It goes back to 1982?

7 A Yes.

8 Q How old are you?

9 A I'm 57.

10 Q Fifty-seven and you have stuff going from fraud
11 checks up to more serious things, is that correct?

12 A Yes, that's true.

13 Q And that was back in the '80's?

14 A Yes, in the '80's and I didn't get in trouble again
15 until -- it was 34 years before I got in trouble again and
16 that wasn't really me doing that. It was someone else,
17 but I took over the charge and I pled guilty.

18 Q Is that a burg third and a grand larceny?

19 A Yes.

20 Q In 2019?

21 A My vehicle was involved.

22 Q You don't deny that, do you?

23 A Excuse me?

24 Q About your criminal history.

25 A What about it?

1 Q You don't deny that you have it?

2 A No, I don't deny it. No.

3 Q What you're saying on the stand today is what
4 happened that night?

5 A Yes, yes. That I can remember. I did have a stroke
6 in February of 2000. In 2000, I believe it was in
7 February.

8 Q February of 2000?

9 A Yeah, and then I had a couple of incidents -- well, I
10 can't remember a lot of stuff now and it wasn't from the
11 drugs either. It was from the stroke.

12 Q But that night, you do remember what you've told me
13 today?

14 A I remember a good little bit, but, you know, still
15 some things just come to me and some things -- it's like I
16 can't finish a sentence sometimes.

17 Q Yes, sir. What you've told the Court and the jury
18 today, is that your recollection of what took place that
19 night?

20 A Yes, sir.

21 Q And you said you've done meth and drugs before?

22 A Yes, sir. I have.

23 Q Would you recognize somebody else on drugs if you see
24 them?

25 A I believe I could.

1 Q And you believe that Mr. Hailey was on drugs that
2 night?

3 A It seemed to me like he was.

4 MR. BROWN: No further questions.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 By Mr. Shaffer:

8 Q Mr. Lawson, I'm going to speak up a little bit; okay?

9 A Yes, sir.

10 Q And I'm turning this way so the jury can hear me
11 because I think my back was to them; okay?

12 A Yes, sir.

13 Q I'm not trying to like yell at you or anything like
14 that, but if I speak up and I'm looking away from you, I'm
15 not trying to be rude; okay?

16 A Okay.

17 Q So I guess when's the first time that you spoke with
18 anyone concerning this case? Anyone from the State.

19 A It was probably a week ago, two weeks ago. It was a
20 week before last Friday.

21 Q So about two weeks ago was the first time that you've
22 ever spoken to anybody and given a statement; right?

23 A Yes, yes.

24 Q And it's fair to say your memory is not perfect;
25 right?

1 A Yes, sir.

2 Q You had a stroke in 2000, you said?

3 A I think it was 2000. I believe it was.

4 Q Yes, sir. And have you had another stroke since
5 then?

6 A I don't think that I have.

7 Q But they came to talk to you about this; correct?

8 A Yes, they did.

9 Q Before they had talked to you, you knew about Marty
10 passing away; right?

11 A Yeah.

12 Q You had talked with Joni about it; correct?

13 A Yeah, we spoke about it.

14 Q And I imagine Stella had talked to you about it, as
15 well; correct?

16 A Stella and I, we don't communicate like that.

17 Q But Joni had talked to you about it; right?

18 A When we'd run into each other. She knew that him and
19 I were good friends.

20 Q But it wasn't until two weeks ago that an actual
21 person from law enforcement or the Solicitor's Office
22 talked to you; right?

23 A Right.

24 Q And last Friday, there was a pretrial hearing where
25 you testified; correct?

1 A Yes, sir.

2 Q You testified in this courtroom; correct?

3 A Yes, sir.

4 Q Right there in that chair; correct?

5 A Yes, sir.

6 Q And I asked you questions; right?

7 A Yes, sir.

8 Q And one of those questions was whether or not you
9 actually remembered Mark using any drugs that night?

10 A Yes, sir.

11 Q And you said, no?

12 A That's right.

13 Q You said you can't really recall; correct?

14 A Right.

15 Q And I had also asked you whether or not you have any
16 sort of training or experience with people with mental
17 health; correct?

18 A That's correct.

19 Q And you said that, no, you do not; correct?

20 A That's correct.

21 Q And so you said that -- is it fair to say that
22 perhaps, you couldn't tell the difference between someone
23 with mental health issues and drug use?

24 A Yes, sir.

25 Q You said that you did -- when you knew Marty, you

1 said that he would come to your house and you all would
2 shoot crap?

3 A Yeah, we'd talk.

4 Q So talk? That's what you meant by that?

5 A Yeah, yeah.

6 Q You all would also do drugs together; correct?

7 A Not necessarily.

8 Q Sometimes, you would?

9 A Sometimes.

10 Q And he used methamphetamine; correct?

11 A He'd use.

12 Q And he smoked methamphetamine; correct?

13 A That's correct.

14 Q Did he shoot methamphetamine?

15 A No, he did not.

16 Q Do you shoot methamphetamine?

17 A Yeah, I did.

18 Q Did he sell methamphetamine?

19 A We all did. I think when it comes to dealing when it
20 comes to methamphetamine, if you have a lot of meth, you
21 usually sell what you can to pay for your use is what I'm
22 saying. There's not like particular dealers in our little
23 group that we have. You know, our people. We don't
24 consider ourselves dealers. I'm not a dealer. Just
25 because I'm selling somebody some dope, I'm not a dealer.

1 I mean, I just -- I don't -- I guess I don't look at it
2 like a lot of people do, but no. He wasn't a dealer.

3 Q But he was someone who sold methamphetamine; correct?

4 A I guess you could say, yeah.

5 Q He also gave people rides places; right?

6 A Yes, he did.

7 Q Sort of all over the place; right?

8 A Yes.

9 Q Do you recall whether or not he also basically would
10 get paid for some of those rides?

11 A No, I don't know about that.

12 Q You don't know anything about that?

13 A No.

14 Q Do you recall -- to your knowledge, did he ever take
15 things in trade for methamphetamine or rides like --

16 A I wouldn't know.

17 Q You wouldn't know. Okay. So it's possible he did,
18 you just don't know?

19 A It's possible.

20 Q Last week, when we testified -- when you testified,
21 you had said to the best of your ability, you thought that
22 you were going to sleep that night afterwards; right?

23 A I did.

24 Q Did you contact Marty after he left?

25 A No.

1 Q What's your telephone number?

2 A I don't remember what my number was then.

3 Q If I read something --

4 A Huh?

5 Q If I read a number to you, you may be able to --

6 A I suppose.

7 Q [REDACTED]. Does that sound familiar?

8 A Yeah, that does sound familiar.

9 Q And does that sound like a number that you had around
10 the time that Marty passed away?

11 A I don't remember. I don't know.

12 Q Did you text him and say, if y'all want to hang out
13 with me, I'm here. No one else is here. If you got
14 points, bring one, period. Hell, might play cards. At
15 1:28 a.m. on 3/6/19?

16 A It could be possible.

17 Q What are cards?

18 A Play cards. Play Rummy or whatever.

19 Q And what are points?

20 A Points are hypodermic needles.

21 Q And if you said y'all --

22 A Me, him and his wife.

23 Q Now, that would have been just an hour or two after
24 Mark Hailey left your house; correct?

25 A Approximately, it'd be.

1 Q Were you inviting Marty to bring Mark Hailey back?

2 A No, because he was taking him home.

3 Q He was taking him home. And Mark wanted to go home,
4 didn't he?

5 A Earlier, he had mentioned home.

6 Q He had said earlier that day he wanted to go home;
7 right?

8 A Yeah, not earlier that day. Earlier within that time
9 period of him being in my house.

10 Q Yes, sir and I'm sorry. Earlier that evening when
11 you were around him, he wanted to go home?

12 A Well, it's kind of boring at my house.

13 Q Do you know what time he left specifically?

14 A I'm thinking it was 12:30, 1:00 o'clock or before.
15 To be honest with you, I was thinking earlier than that,
16 but it could have been later.

17 MR. SHAFFER: Court's indulgence.

18 THE COURT: Sure.

19 MR. SHAFFER: No further questions.

20 THE COURT: Anything in redirect?

21 MR. BROWN: No redirect.

22 THE COURT: You can step down, sir. Thank you.

23 (Whereupon, the witness stepped down from the witness
24 stand).

25 THE COURT: Let me see the lawyers for just a minute,

1 please.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: Ladies and gentlemen, the next witness
6 for the State was summoned to be here at 12:30. So what
7 we're going to do is, we're going to go ahead and break
8 for lunch, and then if you'll be back here at 1:00
9 o'clock. And then, we'll start back and the plan is,
10 ladies and gentlemen, is to finish up today about mid
11 afternoon; okay? We're not going to make you work as long
12 as we made you work yesterday. So the plan is to try to
13 break about mid afternoon for the weekend. And so go get
14 something to eat and be back here at 1:00 o'clock; okay?
15 Have a good lunch.

16 (Whereupon, the jury was excused from open court for
17 a lunch break.)

18 THE COURT: We'll be in recess until 1:00 o'clock.

19 (Whereupon, a lunch break was taken.)

20 THE COURT: Ms. Morgan approached Mr. Hamby and
21 indicated initially that she thought she may know somebody
22 on the Defendant's side, one of their family members from
23 work. She was not sure, but when she came back out after
24 the next break, she did indicate that she knew one of the
25 Defendant's family members from work. So I'm going to

1 bring her out and ask her about this, ask her to identify
2 which family member and it's probably a situation -- a
3 fact that she didn't recognize her initially or wasn't
4 sure. Probably not any sort of close connection, but
5 let's just see what she says. Mr. Hamby, can you bring
6 out just Ms. Morgan, please?

7 (Whereupon, Juror number 39, Lisa Morgan entered the
8 courtroom.)

9 THE COURT: Ms. Morgan, your first name is what? You
10 can stop right there. That's good.

11 MS. MORGAN: Lisa.

12 THE COURT: Huh?

13 MS. MORGAN: Lisa.

14 THE COURT: Lisa, you informed Mr. Hamby that
15 initially, you thought that maybe you recognized one of
16 the family members over on this side --

17 MS. MORGAN: I recognized their name.

18 THE COURT: -- from work. And then, you weren't
19 sure, but then you came out after a break, you looked and
20 you do know one of the family members?

21 MS. MORGAN: I think I know their name.

22 THE COURT: Know just the name?

23 MS. MORGAN: Yes.

24 THE COURT: What's the name you think?

25 MS. MORGAN: Joni Kitchens.

1 THE COURT: Then, it would not be over here? Now,
2 there is a Joni Kitchens, but I don't think -- has she
3 been sitting over here?

4 MR. BROWN: No, sir.

5 MS. MORGAN: I heard the name.

6 THE COURT: You heard the name. You don't recognize
7 anybody from work in this courtroom? Is there anybody you
8 may work with?

9 MS. MORGAN: No.

10 THE COURT: So we were a little confused. So the
11 name Joni Kitchens, how do you know her?

12 MS. MORGAN: She's a patient.

13 THE COURT: She is a patient. Where do you work?

14 MS. MORGAN: Uptown Family Practice.

15 THE COURT: Uptown Family Practice. So a Joni
16 Kitchens is a patient of your practice?

17 MS. MORGAN: Yes.

18 THE COURT: So you know her through that?

19 MS. MORGAN: Yes.

20 THE COURT: Would you consider her a friend or an
21 associate or anything of that nature?

22 MS. MORGAN: No, sir.

23 THE COURT: You just know her when she comes in to
24 receive some sort of treatment or care?

25 MS. MORGAN: Yes.

1 THE COURT: How long has Ms. Kitchens been a patient
2 or client of your practice?

3 MS. MORGAN: I have no idea how long.

4 THE COURT: Because she was a patient from when you
5 started working there, approximately?

6 MS. MORGAN: I'm not sure.

7 THE COURT: But the fact that you know her just by
8 virtue of work, you can still be fair and impartial to
9 both sides in this case?

10 MS. MORGAN: Yes, sir.

11 THE COURT: Go back to the jury room, please.

12 MADAM COURT REPORTER: What's her name, Judge?

13 MR. SHAFFER: What was her name, Judge?

14 THE COURT: Lisa Morgan.

15 MR. SHAFFER: Lisa Morgan. That's right.

16 MADAM COURT REPORTER: Thank you.

17 THE COURT: So this about work, then it's through her
18 work that she knows Ms. Kitchens and not necessarily that
19 she works with this person she knew and I don't know why
20 it was in this side of the courtroom that we thought maybe
21 one of the family members was the one she was referring
22 to. I don't personally have any problem with her
23 remaining. I think she can be fair and impartial. She
24 just knows Ms. Kitchens from work, but I'm going to give
25 the opportunity to both sides to state whatever position

1 that you may have. Do you still want to think a bit?

2 MR. BROWN: Judge, just to make sure I caught
3 everything. She said she worked at Uptown Medicine? Is
4 that what she said?

5 THE COURT: That's where she works and she's
6 apparently -- I guess I should have asked her maybe in
7 what capacity do you work and I didn't, but she's either
8 I'd say a nurse or she -- we're going to look at her --

9 MS. MCNEILL: She's a nursing manager.

10 THE COURT: She is a nursing manager. And so Ms.
11 Kitchens is a patient of that practice.

12 MR. BROWN: What was her name one more time? The
13 juror.

14 THE COURT: The juror, Lisa Morgan.

15 MR. BROWN: Can we have one minute?

16 THE COURT: Yeah, yeah. Take your time.

17 (Whereupon, a short break was taken.)

18 THE COURT: Solicitor.

19 MR. BROWN: Judge, I do think she has been probably a
20 nurse. I know that's where Ms. Kitchens goes to see her
21 doctor. I think that's actually where they canceled her
22 appointment today and is going back Tuesday. But at this
23 point, I don't think they've really had any interaction
24 with her at the office.

25 THE COURT: You're good with it?

1 MR. BROWN: The State's fine with it.

2 THE COURT: How about the Defense?

3 MS. MCNEILL: Defense is fine with her remaining as a
4 juror.

5 THE COURT: Very good. Thank you. All right.
6 Ready? Okay. All right. So what we're going to do is --
7 Solicitor, do you feel like you can accomplish your direct
8 before, say, 3:00 o'clock? I'm just -- 3:00 o'clock is
9 just kind of a --

10 MR. BROWN: Yes.

11 THE COURT: But we decided that we're just going to
12 wait for cross-examination until Monday morning?

13 MS. MCNEILL: Yes, sir.

14 THE COURT: Very good. All right. Let's bring the
15 jury out.

16 (Whereupon, the jury came into open court at
17 approximately 1:15 p.m.)

18 THE COURT: Let the record reflect the jury is back
19 in. Ladies and gentlemen, I hope you had a good lunch and
20 like I said, we're going to -- the plan is, the next
21 witness for the State wants the direct examination, which
22 is the questioning from the State from the Solicitor. And
23 once the direct examination of that witness is completed,
24 then we're going to go ahead and adjourn for the day and
25 Monday morning we'll start back with the cross-examination

1 from the Defense. So again, we're not going all
2 afternoon. And so, Solicitor Brown, are you ready for the
3 next witness?

4 MR. BROWN: Yes, Your Honor. The State calls Joni
5 Kitchens.

6 Joni Kitchens, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Brown:

10 Q Good afternoon, Ms. Kitchens.

11 A Good afternoon.

12 Q You can take the mask and pull it off, if you like.
13 Ms. Kitchens, do you know Marty George?

14 A Yes, sir.

15 Q And how did you know Marty?

16 A A friend introduced us and he was my fiance.

17 Q And how long did you know Marty?

18 A A year and a half.

19 Q Did you and Marty live together?

20 A Yes, sir.

21 Q Where was that?

22 A [REDACTED], Apartment A, Phoenix Street.

23 Q Now, Ms. Kitchens, I am going to jump right into
24 March 5th, into March 6th. Were you and Marty together
25 March 5th, March 6th of last year?

1 A Yes, sir.

2 Q And on that day did Marty have your car, driving
3 around?

4 A Yes, sir.

5 Q What kind of a car was that?

6 A It was 2003 Buick Century.

7 Q And was that car, was it registered to you or your
8 mother?

9 A Both of us.

10 Q Both of you. Now, that day were you with Marty most
11 of the day or was it later on in the afternoon?

12 A I was with him part of the morning, that was March
13 the 5th. That afternoon, on March 5th, he had went off
14 and done some things that I didn't want to go out and do.
15 He just had things to do and I didn't want to do.

16 Q So you weren't with him that afternoon?

17 A No.

18 Q That afternoon, were you with him, did you know that
19 he had picked up Mark Hailey?

20 A Yes, sir.

21 Q Were you with him then?

22 A No, sir.

23 Q When did you become -- when did you see Marty later
24 on that night or that day?

25 A I guess it was around supper time.

1 Q Around supper time?

2 A About 6:00.

3 Q 6:00. And at that time did you see Mark Hailey?

4 A No, sir.

5 Q Do you know where Mark was at that time?

6 A No, sir.

7 Q Had you ever met Mark at that point?

8 A No, sir.

9 Q Do you know if Marty knew Mark?

10 A Not that I know of.

11 Q But he could have?

12 A He could have.

13 Q After you and Marty -- I guess, where did Marty come
14 back or where did you and Marty meet up again?

15 A He came back to the house and we fed our dogs and
16 that's when our friend, that worked in Abbeville, called
17 and said I need y'all to come and get me at 10:00 o'clock.

18 Q And who is that friend?

19 A J.J.

20 Q Before or when you were going to get J.J. in
21 Abbeville, did you and Marty do any meth?

22 A Yes, sir.

23 Q You did, you and Marty smoked meth together?

24 A Yes, sir.

25 Q Did Marty ever do anything else or meth, or any other

1 drugs other than meth?

2 A Smoked a little weed and that was it.

3 Q And how would Marty do his meth?

4 A He would smoke it.

5 Q That night, so when he met back up with you around
6 dinner time, you said 6:00ish or a little after?

7 A Yes, sir.

8 Q When did y'all go to Abbeville?

9 A We left, it takes about thirty minutes to get there,
10 so we left right around 9:30 and we got there right at
11 10:00 o'clock.

12 Q And you were picking up J.J.?

13 A Yes, sir.

14 Q After you picked up J.J. where did you go?

15 A We took him home.

16 Q And where is that?

17 A That is over towards Windtree, (phonetic).

18 Q In between time, I guess while you are with Marty,
19 did you get any telephone calls about Mark Hailey?

20 A I did, yes sir.

21 Q From who?

22 A Stella.

23 Q And what were those conversations about?

24 MR. SHAFFER: Objection, hearsay.

25 THE COURT: I think Stella has already testified

1 concerning communication with Joni.

2 MR. BROWN: Yes, sir.

3 THE COURT: Did she not?

4 MR. BROWN: She did.

5 MR. SHAFFER: Your Honor, I would respectfully submit
6 that he still has to lay a foundation for hearsay
7 exception.

8 THE COURT: Well, if it has already been testified to
9 in court then I don't, because hearsay is an out-of-court
10 statement offered for the truth of the matter asserted.
11 Since she has already testified, Stella has already
12 testified, then I think it takes out of any hearsay issue.
13 Now, if you can cite me a specific rule, I will be glad to
14 look it up and see if I am in error.

15 MR. SHAFFER: Your Honor, may we approach?

16 THE COURT: Huh?

17 MR. SHAFFER: May we approach?

18 THE COURT: Sure.

19 (Whereupon, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: I am going to overrule the objection. I
23 find that it is not offered to prove the truth of the
24 matter asserted. So if you want to repeat your question,
25 Solicitor.

1 MR. BROWN: Yes sir, Judge.

2 Q Ms. Kitchens, did you receive phone calls from Stella
3 Burton that afternoon or that evening?

4 A Yes, I did.

5 Q What was she wanting you to do?

6 A She wanted me and Marty to come pick Mark up.

7 Q And where were they?

8 A They were at, the apartments right down from -- uh, I
9 can't -- the Housing Authority.

10 Q Initially they are at Stella's apartment?

11 A It was her apartment and her friend, Davey's, at the
12 time.

13 Q Did you also, did they also end up at Joey's house?

14 A Just Mark.

15 Q Just Mark?

16 A Yeah.

17 Q You didn't see Stella at Joey's?

18 A No.

19 Q After you and Marty got back from Abbeville and
20 dropped J.J. off, what time do you think you dropped J.J.
21 off?

22 A It was about 10:30, it takes about thirty minutes to
23 get from Abbeville -- it's the same distance.

24 Q And then what did y'all do after that?

25 A We dropped him off and we came straight home.

1 Q You went straight where?

2 A We went home and then that is when we started getting
3 more text messages and phone calls from Joey and Stella,
4 come pick him up. And Stella wasn't even at Joey's. So
5 it was mainly Joey wanting --

6 MR. SHAFFER: Your Honor, I renew my previous
7 objection.

8 THE COURT: Yes, you are protected on the record.
9 Objection is renewed.

10 Q Joey was calling and he finally called Marty's phone
11 and said, Stella --

12 MR. SHAFFER: Your Honor, objection, hearsay.

13 THE COURT: Just, I think let's not go beyond them
14 calling, to come get Marty.

15 Q So did y'all received more calls?

16 A Yes.

17 Q Did you see Stella at Joey's that night?

18 A No, I did not.

19 Q Did you ever go into Wes's house?

20 A No, I did not.

21 Q Once you arrived at Joey's, what did you -- and who
22 was with you when you got to Joey's?

23 A Marty.

24 Q And who is driving the car then?

25 A Marty was.

1 Q Marty was driving your car?

2 A Yes and I drove back.

3 Q And I want to show you what has already been marked
4 as State's evidence, number 5 and number 6. Do you
5 recognize that vehicle?

6 A No, I do not.

7 Q Is that not your car, a silver Buick?

8 A Okay, yes.

9 Q Okay. That side you recognize it. Was that the car
10 you were in that night?

11 A Yes.

12 Q Once you got to Joey's what did you and Marty do?

13 A We walked in and Joey was asking us to get Mark out.
14 And Mark was like, I am not going to leave. He wanted to
15 go upstairs and Joey kept saying, no. And they just kept
16 going back and forth and we were, I was telling Marty we
17 need to get him out of here, you know, Joey wants him out.

18 Q Ultimately did y'all get Mark Hailey to leave?

19 A Marty said, come on, let's go. You know, Joey
20 doesn't want us here, he don't want you here, let's go.

21 Q And, again, is Mark Hailey the person that was there
22 that night, is he in the courtroom?

23 A Yes.

24 Q Is he wearing a blue suit and tie?

25 A Yes.

1 Q Once you left Joey's who drove the car home?

2 A I did.

3 Q And where was Mark sitting at that point?

4 A In the backseat behind Marty.

5 Q Back passenger seat?

6 A Yes.

7 Q After you left Joey's, what did y'all do next?

8 A I was, I was heading home on Phoenix Street and Mark
9 spoke up and said, I have got to go get my phone, I have
10 got to -- I said, look, we don't have enough gas to go. I
11 am tired, I am hungry and I want to go home. Well, I want
12 to get my phone, they are going to steal it. I was like,
13 fine, let's go.

14 Q Where did y'all go?

15 A We went over to the apartments where Stella was
16 staying at out by --

17 Q Did y'all get out of the car?

18 A No.

19 Q Did anybody come out to the car?

20 A No.

21 Q Did you ultimately get a phone that belonged to Mark?

22 A No.

23 Q After you left there where did you go?

24 A We went back to my house.

25 Q What happened when you got back to your house?

1 A Marty got out and opened the door and I was getting
2 out and I told Marty that everybody had to get out. And
3 he started being snappy saying he wasn't going to do
4 anything, he won't take anything. I said, I don't let
5 nobody sit in my car without me in it. I said, will you
6 please get out. He said, I ain't getting out, I ain't
7 getting out. I was like, fine. So I sat there until
8 Marty got back out. And when I got in, I went inside,
9 Marty was coming out. I said, please get him to get out
10 of my car and come in. I don't want nobody sitting in it.
11 So he was like, come on. So he got him inside and I went
12 to the restroom and I sat on the couch. And Marty was
13 going to fix me something to eat until Mark started acting
14 crazy, just kind of out of it and back and forth from my
15 bathroom.

16 Q He started going back and forth to the bathroom, or
17 from your living room to the bathroom?

18 A Yes, sir.

19 Q How long were you at your house?

20 A Not even, not even an hour. It wasn't even an hour,
21 for about forty-five minutes and they left around a minute
22 after 1:00.

23 Q So you -- so at that timeframe you would have left
24 Joey's a little after midnight. So that would be now
25 March 6th?

1 A Yes.

2 Q And got back to your house on Phoenix Street?

3 A After we went to try to find the phone and nobody
4 wanted to come out, nobody went in. So they didn't know
5 where the phone was. And I said, look, I have got to go
6 home.

7 Q And then you are there at your house no more than an
8 hour, you say thirty, forty-five minutes?

9 A About that, maybe forty-five minutes. And I was
10 charging my phone, playing on my phone and watching TV, me
11 and Marty were just kind of sending little texts back and
12 forth, you know, just trying to get him to get Mark out of
13 the house. And it is like, I am trying. He finally said,
14 come on, she is tired, she is hungry and she is fixing to
15 sleep, I will take you home.

16 Q When Mark is going back and forth between the living
17 room and the bathroom, did you notice anything?

18 A He was acting strange like talking to himself. And
19 he kept trying to hide something. And I really didn't
20 want to know what it was until he sat down and he,
21 basically had -- he had it in his left hand, I saw
22 something. And I was like, no, nobody is doing in my
23 house. And when I saw the tip, I was like, I just kind of
24 looked over and I texted Marty and I said, I know he is
25 not shooting anything in my house.

1 Q Was it a syringe?

2 A Yes, without the needle.

3 Q What was his demeanor there at your house, Mark's
4 demeanor?

5 A Really, I don't know what his idea was. I don't know
6 what his plan was at all, I really don't.

7 Q What did he appear, did he appear like he was on
8 drugs or something else?

9 A Yes, he did. He was spacing out, looking around,
10 talking to himself, just kind of answering himself.

11 Q Did you feel comfortable with him there?

12 A No.

13 Q During that time you were on the couch and Mark was
14 between the living room and your bathroom, did you get
15 upset that he was back and forth?

16 A No, I got -- I got irritated, really. Because we
17 don't allow nobody there to go to the bathroom unless
18 somebody is with us, unless somebody is with, you know,
19 going back there with them. If they are going to the
20 bathroom that's fine but in and out, in and out, that's
21 just kind of makes you look suspicious.

22 Q Did you send Marty texts signifying that you were
23 getting pissed?

24 A Yes.

25 Q That you wanted him out of there?

1 A Yes.

2 MR. SHAFFER: Leading, Your Honor.

3 THE COURT: Sir?

4 MR. SHAFFER: Objection, leading.

5 THE COURT: Okay. Try to rephrase, please.

6 MR. BROWN: Yes, sir.

7 Q After texting Marty, what happened later on?

8 A After, you know,--

9 Q Did he ultimately leave the house?

10 A Yes, basically. He said I'm getting him out. So he,
11 that is when Marty actually told me in person, he said, I
12 am --

13 MR. SHAFFER: Objection, hearsay.

14 THE COURT: Okay. Don't repeat what Marty says.

15 A Okay. Basically they were leaving.

16 Q When you got back to the house did Mr. Hailey have
17 any items at your house?

18 A Just a box.

19 Q Did you see anything else that was picked up from
20 your house?

21 A No, sir.

22 Q How did Mr. Hailey's items get at your house, do you
23 know?

24 A I have no idea.

25 Q Earlier in the day had you had any interaction with

1 Mr. Hailey?

2 A No, sir.

3 Q Before that night, meeting him at Joey's, had you had
4 any interaction with Mr. Hailey?

5 A No, sir.

6 Q Once Marty and Mr. Hailey left your house at Phoenix
7 Street, what time was that?

8 A One minute after 1:00.

9 Q Right around 1:00 o'clock?

10 A Yes, sir.

11 Q When they left your house did you ever see Marty
12 again?

13 A No, sir.

14 Q Where was Marty taking him?

15 A He was taking him to a house, I don't know -- I can't
16 remember what road but it was in Ninety Six.

17 Q Had you ever been out to Mr. Hailey's house before?

18 A No, sir.

19 Q But you knew it was in the Ninety Six area?

20 A That's what he had said.

21 Q Did they take your car?

22 A Yes, sir.

23 Q Did you see where people sat in the car?

24 A No, sir.

25 Q You stayed inside?

1 A Yes, sir.

2 Q Do you know if they put anything else in the vehicle?

3 A Just a box.

4 Q Did you go outside with them when they were loading
5 up in the car?

6 A No, sir.

7 Q So they could have put something else in there, is
8 that right?

9 A They could have.

10 Q Were you concerned that -- with Mr. Hailey going back
11 and forth between the living room and the bathroom, were
12 you concerned that something -- that your items were being
13 taken?

14 A Yes sir, I was.

15 Q Do you remember if you sent a text to Marty asking
16 that?

17 A Yes, sir. Yes sir, I did.

18 Q You mentioned the text you were sending to Marty
19 about, I'm getting pissed. Was that before they left the
20 house?

21 A Yes, sir.

22 Q And you actually -- were you about to go off on him,
23 on Mark?

24 A Yes sir,--

25 MR. SHAFFER: Objection, leading.

1 THE COURT: Well, I don't think that is necessarily
2 leading but just -- that's fine, be careful, Solicitor.
3 Ask your next question.

4 Q After they left did you text or talk to Marty
5 anymore?

6 A Yes sir, I did. I text and asked him if he could
7 possibly bring home a bag of Doritos and a pack of
8 cigarettes.

9 Q A while later did Marty, or did you ever receive a
10 phone call from Marty?

11 A Yes, I did.

12 Q And tell me about that phone call?

13 A He called and said he had talked to --

14 MR. SHAFFER: Objection, hearsay.

15 THE COURT: You can't repeat what, what Marty told
16 you unless, Solicitor, you have a hearsay exception that
17 would apply.

18 Q What was the nature of the call?

19 A Just saying -- just, basically, talking to --

20 MR. SHAFFER: Objection, hearsay.

21 COURT REPORTER: Wait a minute, what, I didn't get --
22 can you repeat that?

23 THE COURT: It has got to be part of the record
24 before I rule on your objection. The Court Reporter did
25 not hear it so repeat the answer.

1 MR. SHAFFER: Can that be done without, that's fine,
2 Your Honor. We will just move to strike it after it is
3 done.

4 THE COURT: Right. Go ahead and repeat your answer,
5 Ms. Kitchens.

6 A Basically telling me--

7 THE COURT: Repeat exactly what you just answered,
8 don't start adding to your previous answer.

9 A That he had dropped him off and he was headed home.

10 THE COURT: And the Defense objects on hearsay?

11 MR. SHAFFER: Yes, Your Honor.

12 THE COURT: Sustained.

13 Q Ms. Kitchens, on that phone call, without saying what
14 Marty told you, could you tell if the phone call was on
15 speaker phone or up to his ear?

16 A Up to his ear.

17 Q If Marty was by himself in the car how would he
18 normally talk to you on the phone?

19 A Speaker phone.

20 Q Do you remember what the window sounded like, if the
21 window was up or down?

22 A It was cracked.

23 Q Without saying what Marty told you, did Marty have a
24 tone in his voice?

25 A No, sir.

1 Q How did you feel after getting off the phone with
2 Marty?

3 A Scared.

4 Q Is that the feeling you got after the phone call?

5 A (No verbal response.)

6 Q Did you ever talk to Marty again?

7 A No, sir.

8 Q Back to that phone conversation, did you send Marty
9 texts?

10 A Yes, sir.

11 Q Were you upset with him that he wasn't back yet?

12 A Very upset.

13 Q Did he ever respond to your text?

14 A No, sir.

15 Q Ms. Kitchens, the next morning did you get a call or
16 meet with the coroner?

17 A I got a knock on my door at 7:00 o'clock in the
18 morning.

19 Q Was that Sonny Cox, the Coroner?

20 A Yes, sir.

21 Q And then later on that morning you went and talked to
22 law enforcement?

23 A Yes, sir.

24 Q Ms. Kitchens, you mentioned you had done some meth
25 with Marty before. Is that correct?

1 A Yes, sir.

2 Q How was Marty's demeanor when he smoked meth?

3 A Hyper, on the go, happy, didn't let nothing bother
4 him.

5 Q Would it be safe to say, would Marty drive people
6 around?

7 A Yes, sir.

8 Q After picking up J.J. the night before in Abbeville,
9 were y'all going to pick J.J. up and take him to work the
10 next morning?

11 A Yes sir, we were.

12 Q That night was Marty agitated with Mark?

13 A Not that I know of.

14 Q Do you know Marty to be aggressive?

15 A As far as word wise, you know, just name calling.
16 But aggressive, as far as physical, no.

17 Q Where was Marty originally from?

18 A Alabama.

19 Q Where was his family living around 2019?

20 A They were living, between McCormick and Modoc. His
21 sister would, she volunteered at camp sites. And they
22 would stay where ever she was volunteering at and working
23 at and helping out.

24 Q Marty wasn't from Greenwood, was he?

25 A No, sir.

1 Q He wasn't from Ninety Six, was he?

2 A No, sir.

3 Q That night did you ever see a shotgun?

4 A No, sir.

5 Q Did you know of any problems between Mark and Marty?

6 A No, sir.

7 Q Again, you never laid eyes on Mark before?

8 A No, sir.

9 Q Now, at your house before he left, how was Mr. Hailey
10 acting?

11 A He was spacing out, just talking to hisself and
12 answering hisself and back and forth from my bathroom to
13 the living room. And just looking around like he didn't
14 know where he was or what he was doing or who he was, just
15 like twacked out. I mean, basically, that is --

16 Q Twacked out, you mean, what do you mean by that?

17 A Like he wasn't in his right mind.

18 Q Earlier you were saying he was under the influence
19 you think?

20 A Yes, I believe he was.

21 Q And what was Marty doing when they left your house?

22 A Just -- repeat the question, please.

23 Q What was Marty planning to do when he went out with
24 Mark, from your house?

25 A Take him home. That was it.

1 Q That's all I have.

2 THE COURT: Ms. Kitchens, you can step down. Ladies
3 and gentlemen, as I told you previously, we are going to
4 stop, we are not going to work all afternoon. And, you
5 know, if we were close to finishing this case, you know,
6 we would be working but since we have a few days next week
7 to go then this is not going to really factor into that.
8 So we will go ahead and start an early weekend. I would
9 ask you and caution you not to get around large crowds and
10 try to stay close to home if you can. Have a good restful
11 weekend and we will start back at 9:30 on Monday and,
12 again, remember all of my instructions. Y'all have worked
13 extremely hard. I mentioned to my Bailiffs is one thing
14 that I really do appreciate is that you have been prompt
15 coming back after breaks, whether it is an evening break,
16 getting here in the morning or after a lunch break. And
17 that is really important and I appreciate your promptness.
18 I have had jury's over the years where, you know, will
19 have a straggler come in late and then that delays us
20 getting started back in the case. I do appreciate your
21 jury service and promptness and get some rest and we will
22 see you at 9:30 Monday morning.

23 (Whereupon, the jury was excused from open court for
24 the day.)

25 THE COURT: We will be in recess until 9:30 Monday

1 morning.

2 (Whereupon, the trial will resume Monday, September
3 21st, 2020 at 9:30 a.m.)

4 September 21, 2020

5 THE COURT: We discussed on Friday was concerning the
6 need to have Dr. Salas see Mr. Hailey again. My
7 understanding, sometime before the trial started Dr. Salas
8 did a competency evaluation, found Mr. Hailey to be
9 competent. And due to some concerns that the Defense had,
10 I have just learned that she did see him once again. And,
11 Mr. Shaffer, where are we with that?

12 MR. SHAFFER: Your Honor, she saw him again Friday
13 afternoon via Webex and she said that there is no issue
14 involving competency.

15 THE COURT: Okay, all right. Very good, thank you.
16 Anything else before we bring the jury out?

17 MR. BROWN: Not from the State, Your Honor.

18 THE COURT: Okay. We've got the jury back in the
19 Grand Jury room, so we have to bring them around.

20 (Whereupon, the jury came into open court at
21 approximately 9:40 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.

23 (Whereupon, the Jury responds.)

24 THE COURT: Hope everyone is feeling well and doing
25 good. Everybody liking this cool weather that we're

1 having?

2 (Whereupon, the Jury responds.)

3 THE COURT: Oh, yeah, yeah. Me, too. Me, too. I
4 hope you got some good rest and are ready to get back to
5 work. We are beginning the cross-examination of Ms.
6 Kitchens. Ms. Kitchens, would you come back up, please.
7 I'll need to have you sworn in again. Madam Clerk, would
8 you handle that for me, please.

9 MADAM CLERK: Yes, sir.

10 JONI KITCHENS, being
11 first duly sworn, testified as follows:

12 CROSS EXAMINATION

13 By Mr. Shaffer:

14 Q Ms. Kitchens, I guess -- I know this is sort of weird
15 because you did your direct testimony on Friday. Okay?
16 But so, I'm going to cover a little bit of the same ground
17 just so to remind the jury of where we're at. Okay?

18 A Okay.

19 Q And I want you to speak up. And I may not look at
20 you and I'm not trying to be rude. I'm just trying to
21 make sure everybody hears me. Are you okay with that?

22 A Yes, sir.

23 Q Okay. You live down on Phoenix Street. What is the
24 address?

25 A [REDACTED].

1 Q And you lived there with Marty George; correct?

2 A Yes, sir.

3 Q Y'all were together about a year and a half before he
4 passed away?

5 A Yes, sir.

6 Q Okay. [REDACTED], about where is that on Phoenix Street?
7 If you're on Montague Avenue where is the -- about what --

8 A It's near DSS.

9 Q It's near DSS, okay. Now, it's my understanding he
10 moved here from Alabama; correct?

11 A Yes, sir.

12 Q And he moved to Alabama. He was getting in trouble
13 out there; right?

14 A As far as I know.

15 Q And then he came here; correct?

16 A He lived with his sister and his momma for a little
17 while in Aiken and Edgefield area.

18 Q And then he moved to Greenwood after meeting you;
19 right?

20 A Yes, sir.

21 Q He moved in with you?

22 A Yes, sir.

23 Q And he lived in Greenwood for about a year and a
24 half; correct?

25 A Yes, sir.

1 Q You testified that you, that you met him through a
2 friend; correct?

3 A Yes, sir.

4 Q What friend is that?

5 A A friend that I went to school with that just
6 happened to be at the lake at the time.

7 Q What -- what's that friend's name?

8 A I cannot say without her consent.

9 THE COURT REPORTER: I'm sorry. I didn't get that
10 answer.

11 A I cannot -- I can't say her name without her consent.

12 MR. SHAFFER: Your Honor, can you instruct the
13 witness to --

14 THE COURT: What was the question again?

15 MR. SHAFFER: What was the friend's name that --

16 THE COURT: That introduced her to Marty --

17 MR. SHAFFER: Yes.

18 THE COURT: -- was that the question? Okay. Yeah,
19 you need to go ahead and answer that, please, ma'am.

20 A Her name was Amy Prince.

21 Q So you met Marty through Amy Prince. And how long
22 did you all date before he moved in?

23 A Not very long.

24 Q Okay. And what do you think not very long is, a
25 month, two months?

1 A A week.

2 Q A week, okay. So you all moved pretty quickly;
3 correct?

4 A Yes, sir.

5 Q Now, you spoke to the officers the morning after --
6 after he passed away -- the morning he passed away;
7 correct?

8 A It was a little bit later in the morning.

9 Q Around 11:30?

10 A About that. I can't remember the time.

11 Q And you spoke over there at the Sheriff's Office;
12 correct?

13 A They actually came to my house that morning.

14 Q At first people came to your house and Sonny Cox was
15 with them; correct? The Coroner?

16 A Yes, sir.

17 Q And then you ended up going and sitting down and
18 getting an interview with Mr. Murdock; correct? The
19 investigator right there.

20 A Yes, sir.

21 Q And that was over there at the Sheriff's Department;
22 correct?

23 A Yes, sir.

24 Q And in that you told the truth; correct?

25 A Yes, sir.

1 Q And you told him that you met him -- that he came
2 here from Alabama; correct?

3 A Yes, sir.

4 Q And you told him that you met him through a dating
5 app; correct?

6 A I did at first, and then -- that was a while back.
7 And then when I was talking again to my friend it just
8 kind of dawned on me who he was.

9 Q Okay. You told him that you met him through Plenty
10 of Fish; correct?

11 A Yes.

12 Q And you told him that you went on a date the next
13 night; correct?

14 A The next night on -- no, sir. Not the next night. I
15 picked him up the next night.

16 MR. SHAFFER: The Court's indulgence.

17 Q Ms. Kitchens, I'm going to hand you an iPad. Okay?
18 And this iPad right there, that little folder icon at the
19 bottom, that has a whole bunch of different documents that
20 we may talk about. Okay? I'm going to hand you this.
21 I'm so sorry. And if you don't mind, listen to Exhibit B
22 from that iPad.

23 MR. SHAFFER: And this -- Your Honor, this
24 corresponds to Defendant's Exhibit 6 for ID.

25 THE COURT: Okay.

1 (Whereupon, the witness listened to an audio.)

2 Q The file labeled B is -- is your statement; correct?

3 A Yes.

4 Q That is you saying that you went to the -- you met
5 him on a dating app; correct?

6 A Yes, I did.

7 Q And you said you picked him up the next night;
8 correct?

9 A Yeah, but we didn't date the night we met.

10 MR. SHAFFER: Your Honor, at this time I'm going to
11 play B which will be one of the Defendant's Exhibit's
12 later. It's off of the file marked Defendant's 6 for ID.
13 I think I've laid a foundation under 613.

14 THE COURT: What says the -- I mean, he's not
15 offering it into evidence. What says the State?

16 MR. BROWN: I don't have an issue with them playing
17 it. I don't think she's said anything inconsistent with
18 it.

19 THE COURT: Okay, all right.

20 (Whereupon, Defendant's Exhibit B was published for
21 the jury.)

22 Q Fair to say that on Friday you never mentioned
23 anything about any dating app; correct?

24 A No.

25 Q And whenever I first asked you about it you never

1 mentioned anything about a dating app; correct?

2 MR. BROWN: Judge, can we approach?

3 THE COURT: Sure.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 THE COURT: Maybe you want to repeat your question
8 before the State requested a sidebar.

9 MR. SHAFFER: Yes, Your Honor.

10 Q It's fair to say that you never -- you never said
11 anything about this whenever -- on direct; correct?

12 A Yes.

13 Q It's fair to say you never said anything about this
14 on Friday either?

15 A No, because the question was not asked.

16 THE COURT: You need to speak up, please, ma'am.

17 A No, I do not, because the question was not asked.

18 Q That question was not asked on Friday?

19 A No, it was not.

20 Q Okay. On Friday they did not say, how did you know
21 Marty. And you said, a friend introduced us and he was my
22 fiance. You did not say that on Friday?

23 A If I did, I did.

24 Q Okay.

25 A Go ahead with your question.

1 Q So we'll move on from that. Okay?

2 A Okay.

3 Q I guess, Marty picked up JJ that night in Abbeville;
4 correct?

5 A Yes.

6 Q Marty was supposed to take JJ back to work in
7 Abbeville that morning?

8 A Yes. No. No. He was supposed to work in Greenwood
9 that morning and then go back to Abbeville that night.

10 Q Okay. So he was supposed to take JJ to work;
11 correct?

12 A Yes.

13 Q And Marty would give people rides; correct?

14 A Yes, he would.

15 Q And when people would ride with him they would pay
16 him; correct?

17 A Pay him as you --

18 Q Give him gas money, give him money for stuff.

19 A Gas money.

20 Q Okay. So people would give him a little bit of money
21 every time he took them somewhere; correct?

22 A Yes, sir.

23 Q Places like to the store?

24 A Yes, sir.

25 Q And to work?

- 1 A Yes.
- 2 Q And to social gatherings?
- 3 A If they need to go.
- 4 Q He was kind of like a taxi cab; correct?
- 5 A In a way. He was just helping people.
- 6 Q Was he getting a little side money from helping
7 people?
- 8 A No.
- 9 Q So he never got anything but the actual gas money?
- 10 A Gas money only, yes.
- 11 Q Okay. But he helped out a lot of people by giving
12 lots of people rides; right?
- 13 A Yes, sir.
- 14 Q Okay. He was sort of like an Uber?
- 15 A You could say that.
- 16 Q People would call him up; correct?
- 17 A Yes.
- 18 Q And they'd ask him for rides to places; correct?
- 19 A Yes.
- 20 Q And they'd give him a little bit of gas money to take
21 him places; correct?
- 22 A Yes.
- 23 Q And, you know, he didn't have a valid driver's
24 license; correct?
- 25 A No.

1 Q So he couldn't actually work as an Uber through the
2 Uber company; correct?

3 A No.

4 Q But he did this through people he knew; correct?

5 A Yes.

6 Q Contacts throughout the community; correct?

7 A Mainly just friends.

8 Q Okay. Mainly just friends. You weren't with him
9 24/7; correct?

10 A No, sir.

11 Q In fact, you testified that you specifically were not
12 with him 24/7 in the past; right?

13 A Exactly.

14 Q And Marty knew a lot of people; right?

15 A Define a lot.

16 Q He had a lot of people who asked him for rides?

17 A Like I said, mainly friends who he associated with.

18 Q Okay. But you all weren't together 24/7; correct?

19 A Correct.

20 Q Safe to say you didn't know every single person that
21 he knew; correct?

22 A Correct.

23 Q In addition to driving people around and getting gas
24 money he also sold a little drugs here and there; right?

25 A If it come down to it.

1 Q He left Alabama because he was getting in trouble;
2 right?

3 A Yes.

4 Q And he was getting in trouble for distributing drugs
5 in Alabama; correct?

6 A That's -- that's what I was -- that's what he told,
7 and so, I mean -- I didn't live down there, so --

8 Q -- fair enough. But he also used drugs; correct?

9 A Yes.

10 Q He would smoke weed; correct?

11 A Yes.

12 Q And he would smoke meth; correct?

13 A Yes.

14 Q And he would sell a little weed; correct?

15 A I wouldn't say really sell it. He would more like
16 just if he had extra he would help somebody.

17 Q And he would sell a little meth from here -- from
18 time to time?

19 A Yeah.

20 Q Okay. That night Marty never sold to Mark; correct?
21 To Mr. Hailey?

22 A As far as I know. I don't know if he did or not.

23 Q Okay. You remember talking to the investigator;
24 correct?

25 A Yes.

1 Q And you remember talking about the drug use; correct?

2 A Yes.

3 Q And at first you said no, he did not do that;

4 correct?

5 A Did not do what?

6 Q He did not -- at first you said no, he did not sell

7 anything to your knowledge to Mark?

8 A To my knowledge, no, I do not know that.

9 Q And also you recall testifying, you know, pretrial
10 hearing on March 4th, 2020, don't you?

11 A Yes.

12 Q You came into this courtroom; right?

13 A Yes.

14 Q You sat in that chair?

15 A Yes.

16 Q And you swore to tell the truth; correct?

17 A Yes.

18 Q And you were asked whether or not he sold him --

19 Marty sold anything to Mr. Hailey; correct?

20 A Yes.

21 Q And you said no; correct?

22 A I said no, yes.

23 Q And you also were asked whether or not they even

24 spoke about methamphetamine in your presence; correct?

25 A Yes.

1 Q And you said no; correct?

2 A Not in my presence, no, they did not.

3 Q Okay. So the entire time you were with Mark and
4 Marty they never spoke about methamphetamine in your
5 presence; correct?

6 A No, they did not, because that was their business,
7 not mine.

8 Q And they never made any business transaction to your
9 knowledge; correct?

10 A Not to my knowledge. No, they did not.

11 Q Okay. Now, sometimes Marty would get little people
12 to trade him stuff; correct?

13 A I don't know. Like I said, I was not with him 24/7.

14 Q People didn't provide property to him and ask him to
15 sell it for him?

16 A No.

17 Q Not to your knowledge?

18 A Not to my knowledge.

19 Q They wouldn't trade any, you know, property like
20 airguns and telescopes for drugs or anything like that?

21 A That, no, he would not.

22 Q Okay. Marty didn't have any guns; correct?

23 A No, he did not.

24 Q He never owned any guns while y'all were together;
25 correct?

1 A No, he did not.

2 Q You never saw him in possession of guns while y'all
3 were present; correct?

4 A No.

5 Q And you were -- on that March 4th, 2020 hearing you
6 were asked about whether or not he ever had any guns;
7 right?

8 A Correct.

9 Q And whenever you were asked about it you said he
10 never had any guns; correct?

11 A Correct.

12 Q And you were under oath on that stand; correct?

13 A Correct.

14 Q And you said that he's afraid -- that you're afraid
15 of guns; correct?

16 A Correct.

17 Q And you would never allow them in your house;
18 correct?

19 A Correct.

20 Q The house on Phoenix Street; correct?

21 A Yes.

22 Q And you were arrested in the house on Phoenix Street
23 back in May of 2018; correct?

24 A Correct.

25 Q And a search of that house revealed some guns;

1 correct?

2 A Correct.

3 Q A .12 gauge shotgun.

4 A Yes.

5 Q A .22 rifle?

6 A Yes.

7 Q And some ammunition?

8 A Yes.

9 Q And Marty was charged with that; correct?

10 A Correct, and they were not his.

11 Q But they were in your house; correct?

12 A Correct.

13 Q And he was charged with it; correct?

14 A Correct.

15 Q And you two were the only two people inside the house

16 at the time; correct?

17 A Yes.

18 Q And whenever they tried to arrest Marty he tried to

19 get away; correct?

20 A Yes.

21 Q Whenever they tried to arrest Marty he tried to reach

22 for the top of the table; correct?

23 A Yes.

24 Q And on the top of the table was some screwdrivers and

25 other blunt instruments; correct?

1 A I didn't even look over on the table.

2 Q Okay. And he was charged with resisting; correct?

3 A Repeat the question.

4 Q He was charged with resisting; is that correct?

5 A Please explain.

6 Q He was charged with resisting arrest?

7 A Yes.

8 Q And you were charged with resisting arrest?

9 A I was not resisting arrest.

10 Q Were -- okay. But you were charged with it; correct?

11 A Yes.

12 Q And the guns were found in the back room, correct, or
13 in the kitchen; correct?

14 A In the kitchen, yes.

15 Q And the kitchen is where this whole thing happened
16 where he was trying to resist and get away from the cops;
17 correct?

18 A Correct.

19 Q And at least one of those guns were loaded; correct?

20 A I have no idea.

21 Q Okay. And they confiscated the guns; correct?

22 A Yes.

23 Q They thought they were stolen; correct?

24 A Yes.

25 Q One of them came back stolen out of somewhere in

1 Washington; correct?

2 A To my knowledge, that right there was not only --

3 Q -- whose guns were they?

4 A They were my grandfather's.

5 Q Who -- they were your grandfather's guns and they
6 were in your house; correct?

7 A Yes.

8 Q And how long had you had them in your house?

9 A I had them as long as my daddy's been dead.

10 Q Okay. How long has that been?

11 A Twenty years.

12 MR. BROWN: Judge, may we approach?

13 THE COURT: Sure.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 Q Is it fair to say Marty was charged with resisting
18 arrest in that incident; correct?

19 A Yes.

20 Q You weren't necessarily charged with resisting
21 arrest; correct?

22 A Not necessarily, no.

23 Q But they did threaten to tase you if you didn't stop
24 resisting; correct?

25 A At the time I was not resisting. I was just trying

1 to ask a question towards the officer and he put a taser
2 in my face.

3 Q Okay. But that's not the only time you and Marty
4 have been arrested together; correct?

5 A Correct.

6 Q In that year and a half that y'all were together
7 y'all got arrested several times; correct?

8 A Several meaning?

9 Q Multiple times.

10 A Twice.

11 Q Twice, okay. And Marty was -- even though you -- you
12 and Marty were only arrested twice together; correct?

13 A Together, yes.

14 Q Marty was arrested several times when you weren't
15 arrested during that year and a half period; correct?

16 A Correct.

17 Q And he had charges in Greenwood County; correct?

18 A Excuse me?

19 Q He had charges pending in Greenwood County; correct?

20 A Correct.

21 Q And he had charges pending in Abbeville County;
22 correct?

23 A Correct.

24 Q Now, you've testified -- I think you said that you
25 did not know Mark until that evening; correct?

1 A Correct.

2 Q And on March 4th, 2020 you testified that you had
3 never met Marty before 11:30 that night?

4 A Marty or Mark?

5 Q Mark. I'm so sorry.

6 A No, I had not met him before that.

7 Q And you testified that you did not meet him until
8 that evening on Friday; correct?

9 A Correct.

10 Q And tell us what time you actually first met him?

11 A I can't remember. It was around midnight, I guess.
12 It had to be.

13 Q And in that March 4th hearing you testified that it
14 was around 11:30; is that correct?

15 A Around there. I don't remember the time. I mean,
16 just -- I just don't remember the time, but it was that
17 night.

18 Q And to your knowledge you had never -- Marty had
19 never met him before that night; correct?

20 A Not to my knowledge.

21 Q And before that -- to your knowledge, you testified
22 that prior to that 11:30 time period Marty had never met
23 with him; correct?

24 A Not to my knowledge.

25 Q So on March 4th, 2020 you testified that before, to

1 your knowledge, Mark and Marty had never met prior to
2 11:30 on that night; correct?

3 A Not to my knowledge. I don't know where he went that
4 afternoon. All I knew is he had a phone call and that was
5 it.

6 Q You don't know anything other than the fact he had a
7 phone call; correct?

8 A Correct.

9 Q Because before 11:30 you didn't know who Mark Hailey
10 was; correct?

11 A No, I did not.

12 Q Now, on the morning afterwards you spoke with the
13 officers over there; correct?

14 A Over where?

15 Q Over at the Sheriff's Office?

16 A Correct.

17 Q And you testified that the -- or you told them that
18 earlier that day Mark had called Marty; correct?

19 A Correct.

20 Q And you told them that earlier that day Marty had
21 tried to call Mark back?

22 A Yes, he did.

23 Q And you testified that you even tried to call him
24 back earlier that day?

25 A I did not try calling him because I didn't know who

1 he was.

2 Q But you told the officers that; correct?

3 A Marty used my phone.

4 Q Okay. If you don't mind, put on your earphones again
5 and listen to F. File number F.

6 (Whereupon, the witness listened to an audio.)

7 Q Am I correct in saying that you told the officers
8 that morning that you had tried to call him earlier that
9 day?

10 A And so did Marty from my phone.

11 MR. SHAFFER: Your Honor, at this time I believe that
12 she had initially provided an inconsistent statement,
13 therefore I move -- I would like to play F for the jury.

14 THE COURT: Well, if she's admitting to making that
15 statement why do you need to play what she -- the actual
16 recording to the officers? If she's admitted on the stand
17 that she told them that, then why do you have to play --
18 play it?

19 MR. SHAFFER: Because she initially denied it, Your
20 Honor.

21 THE COURT: Well, she said she didn't, and then she's
22 just admitted that she did --

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: -- make the statement. So I don't think
25 you need to necessarily play it if she's admitted to it.

1 Now, if she continues to deny it, then sure you play it.
2 But since she's already admitted to making the statement
3 to the officers I don't see why you need to actually play
4 it.

5 MR. SHAFFER: Your Honor, I have a matter of law.

6 THE COURT: Okay. All right, ladies and gentlemen,
7 let's go ahead and take a morning break and we'll get you
8 back out shortly.

9 (Whereupon, the jury was excused from open court.)

10 THE COURT: Okay, Mr. Shaffer.

11 MR. SHAFFER: Your Honor, obviously we're talking
12 about Exhibit F on Defendant's Exhibit 6 which, Your
13 Honor, I believe is -- and let me just double check that.
14 That's correct. Your Honor, I think under 613 all that's
15 required is a denial in order to lay a foundation for it
16 --

17 THE COURT: Right, but --

18 MR. SHAFFER: -- at that point.

19 THE COURT: Yeah, but 613(b) says if the witness does
20 not admit that he has made the prior inconsistent
21 statement, extrinsic evidence is therefore admissible.
22 All right. But she's already admitted to making that
23 prior inconsistent statement; correct?

24 MR. SHAFFER: Your Honor, she did not --

25 THE COURT: No, answer my question first.

1 THE COURT: All right. We're going to -- since we've
2 got the jury out let's take a short little break.

3 MR. BROWN: Yes, sir.

4 (Whereupon, a short break was taken.)

5 THE COURT: We're ready for the jury. The witness
6 can come back on the stand.

7 (Whereupon, the jury came into open court at
8 approximately 10:50 a.m.)

9 THE COURT: Let the record reflect the jury's back
10 in. Mr. Shaffer, we're still with your cross.

11 CONTINUE CROSS-EXAMINATION

12 By Mr. Shaffer:

13 Q So, Ms. Kitchens, I know that you have testified that
14 you didn't meet him until about 11:30 that night; correct?

15 A Correct.

16 Q And then you left at what time?

17 A It had to be -- I'm guessing it was around 11:30,
18 maybe 12:00. Wait, I'm -- it's been a long -- very, very
19 long time. I mean, I'm just -- I'm still trying to
20 remember bits and pieces myself as far as what I'm being
21 asked and what I'm being told, you know.

22 Q What do you mean what are you being -- what you're
23 being asked and what you're being told?

24 A What I'm being told like as far as memory-wise
25 myself.

1 Q I'm not sure I'm following you. What do you mean?

2 A Me telling myself, remembering. I mean, it's time --
3 it's hard for me to explain.

4 Q Okay.

5 A You know, I mean, I -- I have a mental disability and
6 I have a hard time remembering things --

7 Q Okay.

8 A -- as far as time-wise.

9 Q So it's fair to say that you're time -- your time --
10 any time that you've testified to about that evening may
11 be off?

12 A It could be or it -- I'm just -- it's like I'll
13 replay it in my head and I'm just trying to remember what
14 time it was exactly.

15 Q Okay. And you testified that they left about a
16 minute after 1:00. That's what you testified to on
17 Friday; correct?

18 A That's what time they left, yes.

19 Q And is it fair to say that you told the officers that
20 they left after that?

21 A After what?

22 Q After a minute after 1:00. At a different time?

23 A No.

24 Q You did not tell them that?

25 A No. They left a minute after 1:00.

1 Q That's what you told them on the morning of whenever
2 you talked to them across the street?

3 A Yes. They left a minute after 1:00.

4 Q And you're one-hundred percent positive about that?

5 A I'm a thousand percent positive about that.

6 Q As positive as you are about anything else in this
7 case?

8 A Yes.

9 Q So you did not tell them any other time other than a
10 minute after 1:00 is when they left?

11 A No, I did not.

12 Q Did you tell Sonny Cox that they left about between
13 1:30 and 2:00?

14 A No, I did not. It was a minute after 1:00. It was
15 after one 1:00 o'clock a.m.

16 Q Did you tell -- did you tell Sonny Cox that they were
17 going to the store and then maybe to drop somebody off?

18 A Not that I can recall.

19 Q Did they -- did you tell Sonny Cox that they were
20 going to the store? Can you recall that?

21 A No, I cannot.

22 Q You didn't tell the jury on Friday that they were
23 going to the store, did you?

24 A No, I did not.

25 Q But you -- but it's fair to say that you're saying

1 that you knew of Mr. Hailey at 11:30 that evening;

2 correct?

3 A Knew of.

4 Q Yeah.

5 A Knew of.

6 Q Yeah. Knew of Mr. Hailey. Did you -- did you know

7 who he was before 11:30 that evening?

8 A No, I did not know who he was.

9 Q Okay. Between 11:30 and 1:00 Mr. Hailey was, I think

10 you said, talking out of his head at one point; is that

11 correct?

12 A Yes, he was.

13 Q And you didn't know exactly where he lived, did you?

14 A No, I do not know where he lives.

15 Q And you wouldn't have told officers where he lived

16 that morning, would you?

17 A No, because I don't know.

18 Q And Mr. Hailey -- and you're sure you -- you wouldn't

19 have told officers where he was living at?

20 A I would have not told them because I do not know

21 where he lives.

22 Q And you would not have told him where you think he

23 lives, would you?

24 A No, because I do not know where or think where he

25 lives.

1 Q It seemed like you had a decent amount of background
2 information about Mr. Hailey on the morning that you
3 talked to the officers; correct?

4 A Just from -- just from what he had said and -- I
5 mean, that was it. I was just going by memory of what he
6 said. But no, I do not know where he lives. I don't know
7 anything about him.

8 Q You didn't know that he was living with a woman named
9 Heather, did you?

10 A I didn't know he was until she told me.

11 Q And she didn't tell you until after you found out
12 Marty had passed away?

13 A Until -- until then, yeah.

14 Q She didn't tell you until after you had already
15 spoken to law enforcement; correct?

16 A Correct.

17 Q So at the time you spoke to law enforcement you
18 wouldn't have known anything about Heather introducing
19 Mark to Marty?

20 A No.

21 Q And you wouldn't have said -- told them that Heather
22 introduced Mark to Marty that morning, would you have?

23 A No, I did not.

24 MR. SHAFFER: Court's indulgence.

25 THE COURT: Sure, take your time.

1 Q Let's talk about Defendant's Exhibit 3. Defendant's
2 Exhibit 3 is what?

3 A I have no idea what that is.

4 Q You've never seen this before in your life?

5 A No, I have not.

6 Q Marty carried a pellet gun, didn't he?

7 A Air pistol.

8 Q This was not the air pistol?

9 A No.

10 Q You've never seen Marty with that?

11 A No.

12 Q What kind of air pistol have you seen him with?

13 A The kind that are -- that you put BB's in.

14 Q But you testified that he carried an air pistol;
15 right?

16 A Yes.

17 Q You testified that -- previously on March 4th of this
18 year you've testified that he carried it for protection;
19 correct?

20 A Yes.

21 Q And you -- I believe you testified that he carried it
22 when you were in the car; correct?

23 A Yes.

24 Q Put it underneath the seat; is that correct?

25 A Yes.

1 Q But I think you also testified that he didn't carry
2 any -- any BB's with him, or pellets?

3 A No, he would not, because it was an air pistol and it
4 was broken.

5 MR. SHAFFER: Court's indulgence.

6 THE COURT: Sure, take your time.

7 Q I'm handing you State's Exhibit 66.

8 A I do not recognize them.

9 Q You don't recognize either of those things?

10 A The lighter, yes, but not -- not the container.

11 Q Where do you recognize this lighter from?

12 A That was his lighter.

13 Q Who's lighter?

14 A That was Marty's lighter. I bought it for him.

15 Q Okay. So you would have no idea how -- how those
16 pellets ended up in his pocket; is that correct?

17 A No, I would not.

18 Q Okay. And you said that basically he carried the air
19 pistol to protect you; correct?

20 A Yes.

21 Q And protect your property; correct?

22 A Yes.

23 Q From getting stolen; correct?

24 A Yes.

25 Q Now, at some point that morning you had sent Marty a

1 text message saying that -- asking him to check -- check
2 for anything stolen out of the bathroom; correct?

3 A Yes.

4 Q And that was about 1:15 or so a.m.; is that fair to
5 say, give or take a little?

6 A Yes.

7 Q Was he still there at the time you had asked him
8 that?

9 A No, he was not.

10 Q So he had already left and he was already on the road
11 at that point?

12 A Yes.

13 Q And you never told officers that he would have still
14 been there at that point; correct?

15 A Correct.

16 Q Never told anybody he still would have been there at
17 that point; correct?

18 A Right, because he was not.

19 Q And that would -- that would be true regardless of if
20 we're talking about the hearing on March 4th of this year
21 or during your initial statement; correct?

22 A Correct.

23 MR. SHAFFER: Court's indulgence.

24 THE COURT: Sure.

25 Q So is it fair to say that on March 4th, 2020 you

1 never identified a photograph of this particular airgun?

2 A No, I did not.

3 Q And you're absolutely sure? Do you need to take a
4 closer look at it?

5 A No. I do not like stuff like that. Thank you.

6 Q Would you like me to get the picture and actually
7 show you a picture?

8 A I still wouldn't like to see it, no.

9 Q But you're absolutely sure that you never saw even a
10 picture of that particular airgun?

11 A I've never seen that ever.

12 Q And you never identified that picture -- the gun in
13 that picture on March 4th, 2020; correct?

14 A I did not identify that at all. I do not -- I do not
15 know where that came from.

16 Q Okay. Fair to say that after looking for the --
17 after sending that text about, can you look for anything
18 that's mine out of the bathroom. That you then sent a --
19 that you then looked in the bathroom. Correct?

20 A Yes.

21 Q You sent a text saying you were looking in the
22 bathroom; correct?

23 A Yes.

24 Q And you didn't find anything missing, did you?

25 A No, I did not.

1 Q Did you find anything missing from that night that
2 was missing after Mr. Hailey was at your house?

3 A Not that I can recall.

4 Q And we talked about -- a little bit about the stuff
5 that Mr. Hailey had with him. It's fair to say he had a
6 box; right?

7 A Yes.

8 Q How big was the box?

9 A About like this. About that size. Maybe a crate.

10 Q Like a foot-by-foot?

11 A Just a regular single crate.

12 Q Can you -- can you demonstrate for the jury one more
13 time?

14 A It was about like this. About -- about a moving -- a
15 small moving box size of a -- a single crate.

16 Q How tall was it?

17 A As tall as a single moving crate.

18 Q Do you recall testifying it was about six inches
19 tall?

20 A No, I did not say that.

21 Q Do you recall saying it was about a foot-by-foot, by
22 about six inches?

23 A I didn't describe how big it was. I just -- not by
24 inches or feet or anything. I described what I saw
25 size-wise. I don't know foot-by-foot, inch-by-inch.

1 Q Do you recall demonstrating for me and me saying that
2 the Court Reporter can't see that, so is it fair to say
3 it's about a foot and a foot?

4 A I guess. I don't -- I didn't go measure the box.

5 Q But it's safe to say it wasn't big enough to carry a
6 shotgun; correct?

7 A Correct.

8 Q Never saw a shotgun that night?

9 A No, I did not.

10 Q Ever see any -- any box or anything -- other
11 container big enough to carry a shotgun?

12 A No, I did not.

13 Q And you would have been riding with them; correct?

14 A Going --

15 Q Going from -- you would have been -- sorry. You
16 would have been riding with them from Joey's house;
17 correct?

18 A Yes.

19 Q You actually were driving; is that correct?

20 A Yes, I was.

21 Q You would have noticed had there been a shotgun in
22 your car; correct?

23 A Yes, I would have.

24 Q But there was no shotgun there; correct?

25 A No, there wasn't.

1 Q And when they left your house you never saw anyone
2 load a shotgun; correct?

3 A Correct.

4 MR. SHAFFER: Court's indulgence.

5 THE COURT: Sure.

6 MR. SHAFFER: No further questions, Your Honor.

7 THE COURT: Anything on redirect, Solicitor?

8 MR. BROWN: Just a few.

9 MR. SHAFFER: Your Honor, Court's indulgence. Let me
10 move.

11 THE COURT: You're fine.

12 REDIRECT EXAMINATION

13 By Mr. Brown:

14 Q Good morning, Ms. Kitchens.

15 A Good morning.

16 Q Ms. Kitchens, Defense just asked you did you ever
17 notice a shotgun that night and you said you didn't see a
18 shotgun; is that correct?

19 A Correct. I did not.

20 Q Was there a time that they could have loaded that
21 shotgun in the back where you might not have seen it?

22 A They could have. I really don't know.

23 Q And the box they were asking you about, did you
24 measure it?

25 A No, I did not.

1 Q But it was a small box?

2 A It was a small box, yes.

3 Q And you stated before that Marty collected BB guns;
4 right?

5 A He collected BB guns, you know, stuff like that so he
6 could fix them if they were broken or trying to find out
7 what was wrong with it.

8 Q Pellet guns?

9 A Pellet guns, yeah. I mean --

10 Q Air pistols?

11 A Yeah, it was a hobby.

12 Q And sometimes he'd keep them in the car; is that
13 correct?

14 A If it was -- yeah, he would without the BB's and
15 without anything. He just -- he wouldn't use it like
16 that.

17 Q Now, Mr. Shaffer asked you a question about did you
18 remember -- who introduced Mark and Marty together? Do
19 you remember that?

20 A It was -- Heather Walker, she told me that
21 afterwards.

22 Q Are you positive that she told you that afterwards or
23 --

24 A She -- she told me that afterwards.

25 Q What if you told that to law enforcement that morning

1 that you were interviewed? Do you remember telling law
2 enforcement that?

3 A No, I don't.

4 Q If it was on a video would you dispute that you told
5 them that?

6 A Not that I -- I don't remember telling them that if I
7 did, because she didn't tell me until afterwards.

8 Q Could somebody else have told you how they met?

9 A They could have and I just don't remember.

10 Q But either way, Heather Walker introduced Mark --
11 introduced Mark to Marty?

12 A Yes.

13 Q And obviously that introduction would have been
14 before March 5th and March 6th; correct, if they knew each
15 other?

16 A If they knew each other, yes.

17 Q Mr. Shaffer asked you about if you knew where Mark
18 lived. Did you have an idea of what part of the county
19 Mark lived?

20 A No, I did not.

21 Q Do you remember telling law enforcement that morning
22 that he lived down in the Ninety Six area?

23 A That's -- I don't remember telling them that because
24 I don't know where he lives. I didn't know where he lived
25 until that night.

1 Q Until the night before?

2 A Yeah, when he said something to my fiance.

3 Q And you overheard that conversation?

4 A Yes.

5 Q So if Mark telling Marty a general idea of where he
6 lived, you heard a general idea where he lived?

7 A Yes.

8 Q And you told that to law enforcement the next
9 morning?

10 A Yes.

11 Q But you've never been down to Mark's house; is that
12 correct?

13 A No, I have not.

14 Q But you heard Mark telling Marty that night before
15 Mark -- before Marty tried to take him home --

16 A Yes.

17 Q -- where he lived? Now, Ms. Kitchens, Mr. Shaffer
18 asked you about texting Marty to check and see if anything
19 -- if anything was missing? You did text him?

20 A Yes.

21 Q What was Marty's number? Do you remember?

22 A 205-505-2030.

23 Q And how did you have that saved in your phone?

24 A My husband. A my husband.

25 Q A my 2?

1 A A my husband.

2 Q And would he also keep you in his phone as something

3 A my 2 or A my wife or something like that?

4 A Yes, A my wife.

5 Q And what was your number?

6 A [REDACTED].

7 Q So the call should show on Marty's phone when he
8 called you that night?

9 A It should, but he -- we would always erase or delete
10 because we didn't want other people to have our phone
11 number if they went through our phones.

12 Q But it could be there?

13 A It could be, yeah.

14 Q So your text to Marty also could be on there?

15 A They're actually not there. I've tried to look for
16 them but they're not there.

17 Q The text or the calls?

18 A Both.

19 Q And again, you only met Mark or seen Mark for the
20 first time that night?

21 A Yes.

22 Q And what was Marty planning to do when he left your
23 house?

24 A Just take him home and come back.

25 MR. BROWN: No further questions.

1 THE COURT: Anything on recross?

2 RECROSS-EXAMINATION

3 By Mr. Shaffer:

4 Q If you don't mind, I'm going to refresh your
5 recollection based off -- because you said you don't
6 remember if you did, I think, whenever he asked you about
7 did you tell officers where it was at.

8 A Where what was?

9 Q Where Mark's house was.

10 A I did not tell him where it was because I do not know
11 where it's at.

12 Q Other than Ninety Six area you definitely do not know
13 where it's at; correct?

14 A Definitely one-hundred percent sure I do not know
15 where it's at.

16 Q And you wouldn't have told officers that you didn't
17 know where it's at because you don't know where it's at;
18 correct?

19 A Exactly.

20 Q So that morning you did not tell them that across the
21 street from the courthouse -- I mean, across the street at
22 the Sheriff's Office; correct?

23 A Correct.

24 Q You said that your phones would erase stuff because
25 you didn't want others to know about your phone number; is

1 that --

2 A Yes. People would go through our phones and get
3 phone numbers or write our number down without even
4 asking.

5 Q But Marty's phone was password protected; right?

6 A Yes, but mine was not.

7 Q So you all would delete messages from each other;
8 correct?

9 A Yes.

10 Q And that was so that other people couldn't look in
11 your phone and figure out who -- who you've been talking
12 to; right?

13 A Exactly.

14 Q Were you doing illegal stuff on that phone?

15 A No.

16 Q Were you involved in the drug trade with Marty?

17 A Occasionally. Like I said, we wasn't together 24/7.
18 We were not together at all 24/7. I mean, sometimes I
19 would ride and sometimes I wouldn't.

20 Q So occasionally you'd help him out with the -- his
21 business?

22 A Just mainly answer his phone if he was driving or,
23 you know, just talk to whoever was -- we were picking up,
24 you know, because he couldn't -- he couldn't talk and
25 drive and have the window down and radio up at the same

1 time.

2 Q The Solicitor asked you about calls you made, and I
3 know that last Friday you had testified about the last
4 time you talked to him, Marty, was on a phone call and he
5 had it up to his ear which was odd; correct?

6 A Correct.

7 Q Isn't it true that on March 4th, 2020 you testified
8 that it was not odd for him to have it up to his ear, that
9 he did not always put it on speaker phone?

10 A Not always, but if he was driving, yes, he would put
11 it on speaker phone. If he was not driving it would be up
12 to his ear, because he did not like talking and driving at
13 the same time.

14 Q But you testified that it wasn't weird that he had it
15 up to his ear on March 4th, 2020; correct?

16 A Because he was not driving, so it was not weird.

17 Q So he was not driving when you talked to him for that
18 last time?

19 A No, he was not.

20 Q Okay. And do you recall testifying about the windows
21 being open and the wind noise?

22 A The window on the driver's side was cracked because
23 he was smoking a cigarette and the radio was down, too.
24 It was down low enough to where I could barely hear it.

25 Q But he was not driving?

1 A He was not driving, no.

2 Q So the car was at a standstill but you could still
3 tell that the window was down?

4 A Yes.

5 Q And on March 4th, 2020 didn't you testify that it was
6 normal for him to call you and talk with the phone up to
7 your ear?

8 A If he was parked, yes. If he was not, he would have
9 it on speaker phone.

10 Q You didn't say that on March 4th, 2020 about him
11 being parked. You said it was normal; correct?

12 A It was normal, yes. But if he was not driving at all
13 it -- I mean, he would not have it on speaker.

14 Q But you didn't explain that part on March 4th, 2020;
15 correct?

16 A No, I did not.

17 Q You just said that it was not unusual for him to talk
18 to you with the phone up to his ear; correct?

19 A Correct.

20 MR. SHAFFER: No further questions.

21 THE COURT: You can step down, ma'am. Thank you.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 THE COURT: Next witness.

25 MS. SUMNER: Your Honor, may we approach?

1 THE COURT: Sure.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: Okay. Ladies and gentlemen, before the
6 next witness is called we're going to take a short break.
7 So if you'd go back to the jury room and we'll get you
8 back out shortly. Okay?

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: All right. This will be about a 10
12 minute break so don't everybody go very far.

13 (Whereupon, a short break was taken.)

14 THE COURT: All right. Let's bring the jury out.

15 (Whereupon, the jury came into open court at
16 approximately 11:46 a.m.)

17 THE COURT: Let the record reflect the jury is back
18 in. Solicitor, are you ready to call your next witness?

19 MS. SUMNER: Yes, Your Honor. The State calls Mike
20 Murdock.

21 THE COURT: Come around, please, sir.

22 MIKE MURDOCK, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Ms. Sumner:

1 Q Good morning.

2 A Good morning.

3 Q Can you introduce yourself to the jury, please.

4 A I am Mike Murdock.

5 Q Where are you employed?

6 A I'm currently employed as a Lieutenant in the
7 Criminal Investigations Division at the Greenwood County
8 Sheriff's Office.

9 Q Are you a supervisor over investigations right now?

10 A Presently, yes.

11 Q What was your role back in March of 2019?

12 A I was an investigator.

13 Q And were you involved in the case we're here about?

14 A I was.

15 Q Will you go ahead and tell us what that involvement
16 entailed?

17 A The day in question was March 6th, 2019. Between
18 approximately 3:00 and 4:00 a.m., I was contacted by Major
19 Bishop who is the supervisor -- the overall supervisor of
20 the CID division and asked to respond to the area of
21 Booker Road and Warner Road in reference to a shooting
22 incident that had occurred.

23 Q Did you actually respond to Booker Road?

24 A I never went to Booker Road, in route, when you're
25 called it it's usually chaotic. Investigator Powell was

1 the primary on call investigator, so he was already in
2 route. I was contacted to come out as an assisting
3 investigator. In route I contacted both Investigator
4 Powell and Major Bishop to find out where I was needed.
5 Did I need to come to Booker Road or was I needed on
6 Warner Road, and I was directed to go to Warner Road.

7 Q So you went directly to Warner; correct?

8 A Yes, ma'am.

9 Q Once you arrived out on Warner Road what did you do?

10 A Once on scene uniform patrol was on scene. Speak to
11 them kind of getting the gist of what they observed and
12 kind of how they wound up getting there. I look around a
13 little bit, and then I kind of called back to Investigator
14 Powell to let him know what I see there because you got
15 almost two different scenes going on. One on Booker Road
16 and One on Warner Road. He's not there. He can't see
17 what's there. I'm not there. So we kind of exchanged
18 information so it'll make it more fluid and try to get a
19 better understanding of what is going on and what has
20 happened.

21 Q Did you see a body when you arrived on Warner Road?

22 A I did. Upon my arrival I observed a body, the
23 victim, off to the side of the road, later identified as
24 Mr. George. And he had already -- from my knowledge, EMS
25 had already checked him and they were -- they said he was

1 deceased and they were just awaiting the arrival of the
2 Coroner out there.

3 Q What was the state of the body when you observed it?

4 A The body -- Warner Road is a single dirt road.
5 Single-way. Mr. George was off to the -- if you're
6 looking down the road, I'm facing down the road and Mr.
7 George would have been to my right if you're going --
8 looking from I think it's Brooks Road back. He would have
9 been off to the side of the road into some bushes. Across
10 the little ditch and into some bushes. His right leg was
11 extended out. His left leg was kind of in an L-shape with
12 the heel kind of going back up towards his head, and his
13 arms were kind of elevated above him. Not up but --
14 consistent with someone having been pulled by their right
15 leg off to the roadway.

16 Q Did you observe a gunshot?

17 A I observed what appeared to be a gunshot wound to Mr.
18 George's head, yes.

19 Q And where was the gunshot to his head?

20 A I observed what appeared to be an entry wound
21 somewhere right around that right ear, taking off what
22 appeared to be part of the ear right here and a mass --
23 what appeared to be an exit wound coming out right around
24 the left orbital area.

25 Q Lieutenant, I'm going to show you a couple of

1 pictures from out on the scene of Warner Road that
2 evening. You may need to step down if you're having any
3 trouble seeing that.

4 THE COURT: Yeah. What you'll need to do is put your
5 mask on and just be sure to speak up louder since you're
6 away from the microphone. Okay?

7 THE WITNESS: Yes, sir.

8 Q Will you tell the jury what this is and the
9 importance of it to your investigation?

10 A Can I approach?

11 Q Absolutely.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 A You can see Mr. George right here. Right here you
15 can see what looks like scuff marks consistent with
16 someone -- Mr. George having been drugged. You can
17 actually see what looks like marks kind of going through
18 over here. And you can see again what looks like -- you
19 see tire tracks here, what appears to be blood right here,
20 and then you can see the drag marks kind of going over
21 toward where Mr. George is.

22 Q Is that consistent with a body being drug from the
23 driver's seat?

24 A Yeah, it is. Yes, ma'am.

25 Q And the same thing with this photo. The first photo

1 is already in evidence. It's State's 119. What I'm
2 showing you is State's 113. Can you tell the jury what
3 this is and also the importance of this to your
4 investigation.

5 A Yes, ma'am. Again, you see Mr. George. This is on
6 the opposite side of the road. You can see these marks
7 right here. More like scuff marks. On initial arriving
8 on the scene I had no clue -- I'd not been to Booker Road.
9 I had not seen the vehicle. So I was -- I did notice -- I
10 didn't know how we had scuff marks here and what looked
11 like drag marks on the other side of the road. So that's
12 when I called Investigator Powell trying to get oriented
13 of which way the car would be going so we'd know where Mr.
14 George would have been in the car. And that's when I was
15 told that Mr. George had been the driver of the vehicle
16 based on what was observed in the car. So that puts -- at
17 that time would put the vehicle going this direction,
18 which would have been toward what I think is Brooks Road.
19 This would have been on the passenger side. Mr. George
20 would have been on the driver's side.

21 Q So those scuff marks were consistent with markings
22 coming out of the passenger side of the vehicle?

23 A It would have. It would be consistent with someone
24 that had been seated on the passenger side of the vehicle
25 getting out and -- like I said, that's a dirt road.

1 Getting out of the vehicle and moving around and turning,
2 leaving scuff marks on the passenger side of the vehicle.

3 MS. SUMNER: Thank you. You can return to your seat
4 up there.

5 (Whereupon, the Witness returned to the witness
6 stand.)

7 MR. SHAFFER: Your Honor, may we approach?

8 THE COURT: Sure.

9 (Whereupon, a bench conference was held in the
10 presence of the jury but out of the hearing of the
11 jury.)

12 Q And was that pretty much the end of your involvement
13 out on Warner Road?

14 A I did. That's pretty much it. I get there. I just
15 surveyed the scene, waiting on the Coroner and the crime
16 scene investigator to arrive. And I just stayed there,
17 kind of communicated back and forth with investigators on
18 Booker Road and assisting the crime scene investigator,
19 Investigator Allison, as needed.

20 Q After you left Warner Road what did you do next in
21 this case?

22 A I left Warner Road and come to the -- came to the
23 Greenwood County Detention Center where Mr. Hailey, who's
24 seated over there by Defense counsel with the mask --
25 shield on, had already been booked into the Greenwood

1 County Detention Center.

2 Q And what was your reasoning for going over to the
3 booking department?

4 A I completed what they call a GSR kit. A gunshot
5 residue kit. Any time there's any incident where a
6 firearm is involved it's a pretty standard course of
7 investigation to GSR the hands of anybody involved in the
8 incident.

9 Q How was Mr. Hailey acting when you completed that
10 kit?

11 A When I got to the detention center Mr. Hailey had
12 already been booked in, which means he'd been changed out
13 of his attire that he'd been brought in and given a
14 detention center uniform. Mr. Hailey was seated in the
15 general booking area. In that booking area they have a
16 metal bench that is probably, I would say, six to eight
17 inches wide. It is bolted to the floor, and maybe six
18 foot long next to the wall for people waiting in the
19 booking area to be seated on. Mr. Hailey was seated on
20 the bench with his feet on the bench as well. He was
21 clutching a green Bible and kind of rocking back and
22 forth. And for a lack of a better way to describe it,
23 Counselor, he was rocking back and forth and making Tweety
24 Bird noises. I have no other way to describe it. He was
25 just kind of rocking back and forth going tweet, tweet

1 tweet, tweet. While he was doing that I spoke with him.
2 Never really had any interaction, but I was able to get
3 one hand at a time. He'd switch the Bible in the opposite
4 hand that I was GSR'g. I would complete one hand and
5 switch hand and I would do the other hand. And at that
6 time I was -- had no more interaction with Mr. Hailey.

7 Q And you've been here throughout the trial last week
8 and then today. Would that be the GSR kit that the SLED
9 expert testified about?

10 A Yes, ma'am.

11 Q Now, after completing the GSR collection kit did you
12 have any more involvement in this case?

13 A After that I think Investigator Powell had kind of --
14 the vehicle involved in this was towed from Booker Road to
15 Greenwood County's impound lot on Siloam Church Road.
16 There it was in a secure impound lot. Investigator
17 Powell, if I'm not mistaken, obtained a search warrant
18 from the Greenwood County Magistrate to allow us to enter
19 the vehicle to search for further evidence. I went along
20 with Investigator Powell and several other investigators
21 to assist in the execution of the search warrant.

22 Q So you were present for the search of the vehicle?

23 A Yes, ma'am.

24 Q I'm going to show you another picture --

25 A Yes, ma'am.

1 Q -- previously in evidence as State's 47. And feel
2 free to step down if you're more comfortable to look at
3 it.

4 (Whereupon, the Witness stepped down from the witness
5 stand.)

6 Q Will you tell the jury what is depicted in State's 47
7 and the importance of it in the investigation.

8 A This appears to be a photo of inside the vehicle
9 taken from the -- it appears to be the rear -- right rear
10 passenger seat. The sheets over here are just placed
11 there to cut down on the light inside so the -- I think
12 Investigator Allison took the picture, so the camera would
13 be able to pick up more detail inside the car. You can
14 notice right here what appears to be biological material
15 consistent with brain and bone matter. You can also see
16 some along here.

17 Q At this point in the investigation where was the
18 decedent, Mr. Marty George, seated?

19 A At this point in the investigation it appeared that
20 Mr. George had been seated here in the driver's vehicle --
21 on the driver's seat of the vehicle right there.

22 Q And where would Mr. Hailey have been seated?

23 A Based on what we saw, Mr. Hailey would have been
24 seated back here in the right rear passenger seat.

25 Q And how would the shooting have occurred?

1 A It appears that Mr. George was driving. Mr. Hailey
2 would have been seated here in the right rear passenger
3 seat. Mr. George would have been -- based on what we saw
4 he would have been -- his hand would have been facing --

5 MR. SHAFFER: Objection, Your Honor. May we
6 approach?

7 THE COURT: Okay.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 Q Where would Mr. Hailey have been seated when the
12 gunshot occurred?

13 A Mr. Hailey would have been seated here in the right
14 rear passenger seat over here. The passenger side of the
15 vehicle.

16 MS. SUMNER: All right. You can have a seat back up
17 there.

18 (Whereupon, the witness returned to the witness
19 stand.)

20 Q Lieutenant, after the search warrant was executed on
21 the vehicle what was your next involvement with this case?

22 A Then Lieutenant, now Captain Russ and myself, after
23 we left the search warrant, we went by Joni Kitchens'
24 residence, located her, and then brought her up to the
25 criminal investigations office to be interviewed.

1 Q Who all was present during that interview of Ms.
2 Kitchens?

3 A Now Captain Russ, then Lieutenant Scott Russ, Ms.
4 Kitchens and myself.

5 Q During that interview of Ms. Kitchens did she discuss
6 the last phone call made to her from Marty George?

7 A She discussed -- yes, ma'am. She discussed a good
8 bit, but one of those was what she -- the last phone call.
9 Yes, ma'am.

10 Q And did she describe that phone call to you all?

11 A She described it to us initially as being kind of
12 odd. We asked what was -- I think actually she was
13 asking, in the interview, what was odd about it. And she
14 said that Mr. George normally spoke to her on the speaker
15 phone --

16 THE COURT: You can't -- you can't repeat what she
17 told you, Lieutenant.

18 THE WITNESS: Yes, Your Honor.

19 Q Lieutenant, if you could just describe the oddness
20 without stating any hearsay. Anything she said.

21 A The phone was not on speaker phone.

22 Q Now, Lieutenant, after the interview was completed of
23 Ms. Kitchens did you all have the opportunity to dump her
24 cell phone?

25 A We dumped her phone in-house. She signed a consent

1 form and it was taken straight down to our IT guy who
2 performed what we call a phone dump or -- he has a program
3 that all the information on the phone he transfers to his
4 computer and into a disk. So her phone was dumped.

5 Q And then I believe on March 7th did you attend the
6 autopsy in this case?

7 A Yes, ma'am.

8 Q And just so the jury understands kind of the role of
9 everyone over at the Sheriff's Department, were you the
10 lead investigator in this case?

11 A No, ma'am. I was assisting the investigator.

12 Q Who was the lead investigator?

13 A Investigator Powell would be the lead investigator in
14 this case.

15 MS. SUMNER: Your Honor, this would be a good time to
16 take that break.

17 THE COURT: Okay, all right. Ladies and gentlemen,
18 based on some discussions I had with the lawyers, even
19 though we're not finished with this witness yet we're
20 going to go ahead and take a break -- a lunch break. And
21 if you'll be back here at 1:30 and we will proceed forward
22 with Lieutenant Murdock. So have a good lunch. Remember
23 all my instructions I've previously given to you.

24 (Whereupon, the jury was excused from open court for
25 a lunch break.)

1 THE COURT: Lieutenant, you can go ahead and step
2 down.

3 THE WITNESS: Thank you, Your Honor.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: All right. We'll be in recess until
7 1:30.

8 MS. SUMNER: Your Honor, can we go ahead and -- if
9 you would like, we've limited it down to the actual text
10 language that we feel we may need. So I can give that to
11 you to be reviewed.

12 THE COURT: Sure, yeah. If you've got it ready,
13 yeah. Go ahead and if you've got a copy of it maybe you
14 want to show Ms. McNeill and Mr. Shaffer first what you're
15 handing to me to review, and then I'll be glad to take a
16 look at it.

17 MS. SUMNER: Thank you, Your Honor.

18 (Whereupon, a short break was taken.)

19 THE COURT: We are on the record and my understanding
20 that there is not an issue related what the State wants to
21 put in concerning text messages, correct? That they are
22 not going to put in the messages related to Stella.

23 MS. SUMNER: That's correct, Your Honor. The only
24 actual content of the text messages the State intends to
25 get into are those outgoing from Joni Kitchens' phone to

1 still in direct examination, Solicitor.

2 MS. SUMNER: Thank you, Your Honor.

3 (Whereupon, the witness returns to the witness
4 stand.)

5 CONTINUE DIRECT EXAMINATION

6 By Ms. Sumner:

7 Q Good afternoon, Lieutenant.

8 A Good afternoon.

9 Q When we finished off this morning I believe we
10 started discussing Ms. Kitchens' phone dump; is that
11 correct?

12 A Yes, ma'am.

13 Q And you actually -- when you spoke with her the
14 morning of March 6th of 2019 you asked her for her consent
15 to dump that phone?

16 A Yes, ma'am.

17 Q And then you or someone in your department actually
18 dumped that cell phone?

19 A The investigator in IT, he dumped the phone.

20 Q What was produced from that phone dump?

21 A From Ms. Kitchens' phone it was a log of phone calls
22 and text messages and some other miscellaneous media.

23 Q So a report was produced?

24 A Yes, ma'am.

25 Q And have you had a chance to review that report?

1 A Yes, ma'am.

2 Q And then also was Mr. Marty George's phone dumped?

3 A It was -- yes, ma'am. It was dumped. It was not
4 dumped by our agency to my understanding. It was dumped
5 by either an outside agency -- I'm not sure who dumped it.

6 Q All you know it was an outside agency that dumped
7 this cell phone?

8 A Yes, ma'am. I'm not sure it was SLED that actually
9 dumped it, but it was not my agency.

10 Q If I told you it was Homeland Security would you
11 disagree with that?

12 A No, ma'am. That would not surprise me.

13 Q Was a report produced from that dump?

14 A Yes, ma'am.

15 Q And have you had a chance to review that phone dump?

16 A Yes, ma'am.

17 Q Starting with the incoming phone call portion of Mr.
18 George's phone dump on page four.

19 A Page four?

20 Q Yes. Do you see a phone number, [REDACTED]?

21 A [REDACTED].

22 Q Yes. Does that appear on the incoming calls on Mr.
23 George's phone?

24 A Yes, ma'am. On my sheet it's listed as number 8.

25 Q And what is the contact associated with that number?

1 A The name listed as the contact is J2450.

2 Q And again, that is her phone number, [REDACTED]?

3 A Yes, ma'am. [REDACTED].

4 Q Now, focusing on that phone number and the contact
5 alone, the J2450, are there any incoming calls on March
6 3rd from that phone number?

7 A Yes, ma'am. The one on March 3rd?

8 Q Yes, sir.

9 A Yes, ma'am. I've got one shown at 11:52, 12:03.
10 That's 11:52 a.m., 12:03 p.m.

11 Q And then going back to page three, are there any
12 incoming calls from that same number on March 4th?

13 A Yes, ma'am. I see one at March 4th at 12:20 p.m.

14 Q And then moving along to March 5th on page two, is
15 there incoming from that -- an incoming call from that
16 number on March 5th?

17 A Yes, ma'am. I'm showing March 5th at 4:02 in the
18 afternoon, or 16:02 military time.

19 Q So that would be on March 5th, the day before the
20 shooting, that would be an incoming call from that number?

21 A Yes, ma'am. That would be incoming -- according to
22 the report I have that would be incoming from

23 [REDACTED].

24 Q And again, that was at 4:02 p.m.?

25 A Yes, ma'am.

1 Q On that same day on March 5th do you see an incoming
2 call from an [REDACTED]?

3 A [REDACTED]?

4 Q Yes, sir.

5 A Yes, ma'am.

6 Q What is the contact associated with that number?

7 A That one is showing S, capital S, capital S, lower
8 case o-w, parenthesis, Stella.

9 Q And what time was that incoming call from Stella?

10 A It is 3/5 at 19:53 military time, or 7:53 p.m.

11 Q So Stella called Mr. George at 7:53 p.m.? Is that
12 what the report shows?

13 A Yes, ma'am.

14 Q And then moving to page one of those incoming calls.
15 Again on March 5th did Stella make another call to Mr.
16 George?

17 A Yes, ma'am.

18 Q And what time was that phone call on March 5th?

19 A On March 5th it's showing at 22:14 military time, or
20 10:14 p.m.

21 Q All right, Lieutenant, we're going to move now to the
22 text messages on Mr. George's phone, and I'm going to have
23 you refer to page 16.

24 A Sixteen?

25 Q Yes, sir. And without giving us the actual content

1 of that text message, is there a text message involving
2 the 450J2 contact?

3 A Yes, ma'am.

4 Q What is the first text message we see involving that
5 contact?

6 A The time?

7 Q The date and the time.

8 A Okay. The time I see there is it looks like February
9 23rd at 22:31, or 10:31 p.m.

10 Q And since you reviewed this phone dump, is that the
11 first contact you see between Mr. George and the 450J2
12 contact?

13 A Yes, ma'am. That's the first one that I looked at
14 it.

15 Q And then moving forward in the text messages from
16 February 23rd, moving forward toward the March 5th, March
17 6th, 2019, did there continue to be text messages back and
18 forth between Mr. George and the 450J2 contact?

19 A Yes, ma'am. There's periodic ones. Yes, ma'am.

20 Q We are now going to flip to the outgoing portion of
21 that call dump, or phone dump, and I'm going to have you
22 refer to page 18.

23 A Give me just a second. Page 18?

24 Q Yes, sir. Is there an outgoing call from Mr. George
25 to the J2450?

1 A Yes, ma'am.

2 Q What's the date and time of that phone call?

3 A I'm showing a February 24th at 13:00 hours, or 1:00
4 p.m. It's an outgoing call -- I mean, a text.

5 Q And, Lieutenant, I've actually moved on to the
6 outgoing portion of the calls. My apologies.

7 A What page are we on?

8 Q Page 18.

9 A My apologies. All right.

10 Q Do you see an outgoing call to the J2450 contact on
11 March 1st?

12 A Yes. Yes, ma'am. I do. My apologies. I do. On
13 March 1st at 11:40 a.m.

14 Q And then moving forward in Mr. George's outgoing
15 phone calls to page 15 and page 14, do there continue to
16 be outgoing calls to the J2450?

17 A Yes, ma'am.

18 Q And I believe if we keep flipping to page eight.
19 Actually, I'm going to back you up to page nine. Could
20 you tell the jury about the outgoing calls to J2450, the
21 times of the calls made to that number on March 5th on
22 page nine and eight?

23 A Yes, ma'am. On page nine I see outgoing on March 5th
24 at 16:22 or 4:22 p.m.; 16:23 or 4:23 p.m.; 4:25 p.m.; 4:26
25 p.m.; and another one at 4:29 p.m. And then I see another

1 one on March 5th at 4:38 p.m.

2 Q And, Lieutenant, do you know who the [REDACTED]
3 with contact J2450, who that phone belonged to that had
4 that contact information?

5 A That would be Mr. Hailey's phone.

6 Q So looking back in summary, is there communication
7 between Mark Hailey and Marty George starting back on
8 February 23rd of 2019?

9 A Yes, ma'am.

10 Q And then are there multiple calls between Mr. George
11 and Mark Hailey on March 5th of 2019 going back and forth
12 phone calls between the two of them?

13 A Yes, ma'am.

14 Q And what approximate time of day do those phone calls
15 seem to start happening on March 5th?

16 A The earliest that I see is at 4:22 p.m. on March 5th.

17 Q And again, that would be Marty George calling Mark
18 Hailey?

19 A Yes, ma'am.

20 Q Lieutenant, lastly on the outgoing call list from Mr.
21 George's phone, if you would turn to page seven.
22 Lieutenant, can you tell us the number and the contact of
23 the last call made from Mr. George's cell phone?

24 A On the outgoing?

25 Q Yes, sir.

1 A On my sheet what I'm showing is the last call
2 outgoing -- you want the number?

3 Q Yes, sir.

4 A [REDACTED]. The name listed is -- contact is A My
5 Wife. The date is 3/6/2019. The time, 1:47 a.m.

6 Q How long did that call last?

7 A The duration of that call is two minutes and 28
8 seconds.

9 Q Did Mr. George make a call immediate prior to that
10 phone call?

11 A Yes, ma'am.

12 Q Tell us about that phone call.

13 A It was outgoing to the same number to A My Wife. It
14 was at 1:47 a.m., and it doesn't look like that call
15 connected.

16 MS. SUMNER: Your Honor, may I approach the witness?

17 THE COURT: Sure.

18 Q Lieutenant, I'm showing you what's been marked as 168
19 for ID purposes. What is that?

20 A That is the outgoing -- beginning of that outgoing
21 phone call list.

22 Q Are those the two phone calls that you just described
23 to the jury?

24 A Yes, ma'am. Those are the two that I have on my
25 list.

1 MS. SUMNER: Your Honor, at this time the State would
2 move 168 into evidence with permission to publish.

3 MR. SHAFFER: No objection.

4 THE COURT: Without objection, 168 for the State into
5 evidence.

6 (Whereupon, State's Exhibit No. 168 was admitted into
7 evidence.)

8 THE COURT: What is that document, Solicitor?

9 MS. SUMNER: Your Honor, it is a copy of the outgoing
10 calls.

11 THE COURT: Okay.

12 MS. SUMNER: The two last calls made by Mr. George.

13 THE COURT: Got you.

14 Q Lieutenant, I'm going to have you step down. If you
15 would, just point out to the jury where the time and date
16 is and explain to them how the time would have been
17 recorded on this.

18 A All right.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 A The date is here. It's the month, the day and year,
22 same on both. This would be the times. I'm not sure
23 what's the -- but it's in military time, so in the
24 morning, early morning. You have a zero until noon. So
25 the 01:47 tells you this is 1:47 in the morning. Again,

1 1:47 in the morning. And this is your duration of the
2 call.

3 Q Okay. You can return.

4 (Whereupon, the witness returned to the witness
5 stand.)

6 Q And, Lieutenant, who does that phone number,

7 [REDACTED] belong to?

8 A Joni Kitchens.

9 Q And so, the last two phone calls that were made by
10 Mr. George, who were they made to?

11 A Joni Kitchens.

12 Q And again, what were the times of those phone calls?

13 A 1:47 in the morning.

14 Q Lieutenant, if you would now turn to the phone dump
15 that was done on Ms. Kitchens' phone. And if you would,
16 go to page 58 and 59.

17 A Yes, ma'am.

18 Q Are there text messages sent to a 205-505-2030?

19 A Yes, ma'am.

20 Q And do you know who that phone number belonged to?

21 A It belongs to Marty George.

22 Q And what was that contact saved as in Ms. Kitchens'
23 phone?

24 A It was saved as A My 2. Capital A My 2. The number
25 2.

1 Q And are there numerous texts that are sent from Ms.
2 Kitchens to Mr. George on March 5th into March 6th?

3 A Yes, ma'am.

4 MS. SUMNER: Permission to approach the witness.

5 THE COURT: Sure.

6 Q Lieutenant, I'm handing you what's been marked as
7 State's 169 for ID. Can you identify that for us?

8 A Yes, ma'am. That's what we just talked about. The
9 messages to or from the 205-505-2030 labeled as A My 2,
10 what we just went over.

11 Q Thank you, Lieutenant.

12 MS. SUMNER: Your Honor, at this time the State would
13 move these into evidence and ask for permission to
14 publish.

15 MR. SHAFFER: No objection.

16 THE COURT: All right. Without objection, 169 for
17 the State into evidence.

18 (Whereupon, State's Exhibit No. 169 was admitted into
19 evidence.)

20 Q Lieutenant, if you would be so kind to step back down
21 here. I'm actually going to have you read these to the
22 jury. Starting on March 5th at 9:01 would you please read
23 to the jury the messages sent to Mr. George from Ms.
24 Kitchens.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 A You want the actual messages?

3 Q Yes.

4 A All right. Starting on the 3/5 at 9:01 in the
5 morning. 3/5/2019. It looks like a series of emoji's.
6 And moving on, at 2:55 it says, I love you. I need you.
7 I want you. Moving on to 3:08. 3:08 in the afternoon.
8 3:08 p.m., another series of emoji's. Again at 6:20 p.m.,
9 I'm going to feed the babies and let them out. At 18:20,
10 or 6:20 p.m. it's got I emoji heart you. At 18:42, or
11 6:42, Hurry up and get home, please. The plastic and the
12 cushion fell from the window in the kitchen and I've got
13 both. And it actually continues onto the next page there.
14 I've got boards trying to hold it up. The kids are
15 outside and it's getting colder where the cold air is
16 coming from into the living room. At 6:53, Pick up a pack
17 of cigs, please, and Cool Ranch Doritos. Thank you, baby.
18 7:07, I didn't pick up a pack of cigs. I meant you pick
19 up a pack of cigs, please. Next one would be 12:54 a.m.,
20 or 54 minutes after midnight. It's got, I'm getting
21 pissed. And a series of emoji's. At 12:55 a.m. -- a.m.,
22 or 55 minutes after midnight, another series of emoji's.
23 At 1:02 a.m., I'm about to go off on him. At 1:14, Please
24 search for anything that looks like mine from,
25 abbreviated, bathroom. At 1:14, I'll go look in a minute.

1 2:16, Please her up and come home. 2:24, I'm going to
2 bed. Goodnight. 2:42, I see how it's going -- I see how
3 it's going to be. Now go have fun with whoever. I'm
4 going to bed. Goodnight. At 2:56, Hey, I need you to
5 hurry and come home because I think somebody's trying to
6 break in. And if you don't care about me and the kids let
7 him break in, shoot all of us, because you are not
8 answering your goddamned phone, evid -- should be
9 evidently -- you can F -- and a series of asterisks --
10 another girl. Have fun with her and her pimp. At 2:57,
11 Don't think you're going to be sticking your dick all up
12 in me after you done fuck another girl.

13 Q Thank you, Lieutenant. You can return to the stand.
14 (Whereupon, the witness returned to the witness
15 stand.)

16 Q And, Lieutenant, those texts you just went through,
17 those would have been the texts from Ms. Kitchens to Marty
18 George?

19 A Yes, ma'am.

20 Q And some of those texts on March 6th, did they go
21 into the early morning hours?

22 A Yes, ma'am.

23 Q If you would, if you will go back to the text
24 messages on Mr. George's phone and turn to page 66, which
25 is going to be from March 6th.

1 A Yes, ma'am.

2 Q Looking to March 6th, did Marty George ever respond
3 to Ms. Kitchens?

4 A On my sheets from what I'm reading, if I'm reading it
5 correctly, it tells you whether it was opened or unopened.
6 I have two that show they were read, one being at 12:54
7 a.m. and 12:55.

8 Q And those were to Mr. George; is that correct?

9 A Yes, ma'am.

10 Q But are there any text messages sent from Mr. George
11 to Ms. Kitchens on March 6th?

12 A No, ma'am. I see no outgoing from him to that
13 number.

14 MS. SUMNER: Beg the Court's indulgence.

15 THE COURT: Sure.

16 MS. SUMNER: Nothing further, Lieutenant. Please
17 answer any questions that the Defense may have for you.

18 THE COURT: Mr. Shaffer, any cross?

19 MR. SHAFFER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 By Mr. Shaffer:

22 Q You were present for the hearing on March 4th, 2020;
23 correct?

24 A Yes, sir.

25 Q In that hearing Joni Kitchens testified; correct?

1 A Yes, sir.

2 Q Let me ask you this. Is there anything -- any airgun
3 or BB gun or anything like that in this case except for
4 the Defendant's Exhibit 3? This one?

5 A Are you asking me if I know any other --

6 Q Yeah.

7 A -- pellet, BB gun, airgun other than the one you're
8 holding in your hand?

9 Q That's correct.

10 A I'm not aware of one. No, sir.

11 Q And there were pictures of this gun in the hearing on
12 March 4th, 2020; correct?

13 A Yes, sir.

14 Q And do you recall Joni Kitchens being shown pictures
15 of this gun on March 4th, 2020?

16 A I don't remember -- if she was -- if you say she was
17 I don't doubt you at all, but she -- but I don't really
18 remember her testimony --

19 MS. SUMNER: Objection, Your Honor.

20 A -- of what transpired between them. But I don't
21 doubt you.

22 MR. SHAFFER: I'll refresh his recollection.

23 THE COURT: Wait a minute. I've got Solicitor Sumner
24 standing. You have an objection?

25 MS. SUMNER: Yes, Your Honor, but may we approach?

1 THE COURT: Sure.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: All right. Ladies and gentlemen, we have
6 a legal issue that I need to deal with the lawyers on the
7 record outside of your presence, so if you'd go back to
8 your jury room. It shouldn't take too long and we'll get
9 you back out. Thank you for your patience and
10 understanding.

11 (Whereupon, the jury was excused from open court.)

12 THE COURT: Okay. As I understand it, Mr. Shaffer,
13 you want to ask Lieutenant Murdock what Joni Kitchens
14 testified to at that hearing on March 4th; correct?

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: In some effort to impeach her testimony
17 that she offered today; correct?

18 MR. SHAFFER: Because she denied saying that.

19 THE COURT: Right, okay. Well, I'm not going to let
20 you do that. I'll allow you to proffer this because we're
21 outside the presence of the jury, but I don't think you
22 can impeach Joni with her prior testimony that's
23 inconsistent. You certainly could have impeached her --
24 you may very well have, I don't -- I don't remember for
25 certain, when she was on the stand. I don't think it

1 you start back, please.

2 (Whereupon, there was a brief pause in the
3 proceedings.)

4 THE COURT: Okay. You may proceed.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: Sure.

7 CONTINUE CROSS-EXAMINATION

8 By Mr. Shaffer:

9 Q So, Lieutenant Murdock, do you -- at what time did
10 you basically -- when did you close the case?

11 A Close the case?

12 Q Yeah.

13 A I didn't.

14 Q When did you finish collecting all the evidence you
15 were going to collect?

16 A Talking about at the scene on Warner Road?

17 Q Yeah.

18 A When the crime scene tech went through it and said he
19 thought he had everything.

20 Q Did you all talk to anybody else after that?

21 A On Warner Road?

22 Q Yeah, did you -- you in particular, did you talk to
23 anybody other than Ms. Kitchens? Did you talk to anybody
24 else in this case?

25 A I didn't interview anybody other than when I brought

1 Ms. Kitchens in.

2 Q Okay. And that was -- about when was that? That was
3 the day afterwards, correct, or the morning of, I guess?

4 A Ms. Kitchens?

5 Q Yes.

6 A The same day, that morning.

7 Q About 11:00 o'clock?

8 A Somewhere right in there. I don't remember the exact
9 time. I didn't keep a log of the time, but --

10 Q Yes.

11 A -- it could have been around that. It sounds good.

12 Q And you are the -- you were assisting investigator;
13 correct?

14 A That's right.

15 Q The primary investigator is sitting back there,
16 right, Mr. Powell?

17 A Yes.

18 Q Okay. But you -- I believe that they had -- I think
19 the State asked you if Homeland Security had done the
20 extraction of the cell phone? Mr. George's cell phone?

21 A She told me that's who did it. I was unaware of who
22 did it.

23 Q Okay. Were you aware that his cell phone was locked?

24 A I knew nothing of his cell phone. Other than when it
25 went into evidence. I don't know what happened to it

1 after that.

2 Q Okay. Now, I believe she asked you about a couple
3 different calls that were made that day, and actually
4 there were several different calls. Is it safe to say
5 that my client's cell phone was used to communicate with
6 the cell phone that you collected that you have the
7 records of, they were used to communicate at least on two
8 weeks beforehand?

9 A Yes. Your client's cell phone with the records of
10 the cell phone that I have, that would be correct. That
11 would be correct. There was communication a few weeks
12 beforehand.

13 Q Okay. And there's a -- from your investigation did
14 you learn that there was a second cell phone that Mr.
15 George had?

16 A I was unaware of any other cell phone.

17 Q You were never aware of any other cell phone?

18 A I wasn't aware of it. I'm not saying there was or
19 there wasn't. In my -- just from my perspective in the
20 investigation and my involvement, I was not.

21 Q Do you know if any cell tower data was collected in
22 this case?

23 A I am not aware of any.

24 Q Okay. Can you explain what cell tower data is? I
25 know you're not an expert. But generally you have a good

1 -- you have an understanding of what it is; right?

2 A I probably know enough just to get myself in trouble.

3 Q What's enough to get yourself in trouble?

4 A Talking a little bit more than I really know about
5 it.

6 Q So I guess what information do you know of about cell
7 tower data?

8 A From -- just from having to deal with stuff in my
9 career there's a lot of data that -- and how it's stored
10 and all that I do not know.

11 Q And I don't expect you to.

12 A But as far as calls, times and all that and when it
13 goes through what tower, geographical location. There's a
14 lot of variables, but that type of information can be
15 obtained from various cell phone companies that are on the
16 towers.

17 Q And you've been lead investigator on cases; correct?

18 A In other cases. Yes, sir.

19 Q Have you ever requested cell phone tower data?

20 A Yes, sir.

21 Q And basically you get an expert to help you with
22 that; right?

23 A Yes, sir.

24 Q And then they -- they can tell you around where and
25 when someone's cell phone was; right?

1 A Yes, sir.

2 Q So they can tell you, hey, my cell phone was in
3 Greenwood at this time versus Ninety Six at a different
4 time, maybe?

5 A There have been occasions where they can tell you
6 it's -- I don't know how pinpoint they can get, but they
7 can tell you if it was -- yes, if it was Greenwood versus
8 Abbeville at a certain time.

9 Q Okay. But to your knowledge there's no cell phone
10 data -- cell phone tower data in this case; correct?

11 A To my knowledge there is not.

12 Q What time was that -- I think there was a Tweety Bird
13 sound that you testified to. Around what time was that?

14 A The Tweety Bird sound I testified to --

15 Q That you observed.

16 A -- as when I was dealing with Mr. Hailey doing the
17 GSR kit in the jail.

18 Q Around what time was that?

19 A Mid-morning. It was before Joni Kitchens.

20 Q Okay. It was before you talked to Joni?

21 A Yes, sir.

22 Q And you would have talked to Joni -- you wouldn't
23 disagree with me if you had talked to Joni around, say,
24 11:30ish?

25 A Don't doubt you at all, Mr. Shaffer.

1 MR. SHAFFER: No further questions.

2 THE COURT: Okay. Anything on redirect, Solicitor?

3 MS. SUMNER: No, Your Honor.

4 THE COURT: Okay. You can step down, Lieutenant.

5 Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: Next witness.

9 MR. BROWN: The State calls Ronnie Powell.

10 THE COURT: Come around, please, sir.

11 RONNIE POWELL, being

12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Brown:

15 Q Good afternoon. Investigator Powell, where do you
16 work?

17 A At the Greenwood County Sheriff's Office.

18 Q And how long have you been with them?

19 A I've been there for about nine and a half years.

20 Q And what is your role there?

21 A My role currently is Investigator with the Criminal
22 Investigation Division.

23 Q Were you an investigator back on March 6th, 2019?

24 A Yes, sir. I was.

25 Q Did you have the opportunity to go out to investigate

1 this case?

2 A Yes, sir.

3 Q Do you remember when you got called that night?

4 A It was early that morning. Not exactly the time. I
5 was called by our dispatch 911 center to make contact with
6 an officer that was Officer Young that was on the scene.
7 That he requested I give him a call.

8 Q And was that on Booker Road where he was on scene?

9 A Yes. He was at an address on Booker Road.

10 Q Where did you go when you responded?

11 A I went to Booker Road. At that time the -- that was
12 the only location where officers were responding, and when
13 I actually received the call there was some confusion.
14 Really they did not know what kind of incident that had
15 occurred, so I responded to Booker Road.

16 Q While you were pulling into Booker Road going down to
17 the Hailey residence did you pass Mike Young?

18 A Yes, sir.

19 Q And that's captioned on his in car camera; right?

20 A Yes, sir. It is.

21 Q Once you got down to Booker Road, [REDACTED] Booker Road,
22 what did you do?

23 A I observed a vehicle prior to me arriving at the
24 residence. It was several hundred feet from the -- from
25 the residence. But I went ahead further and met with

1 Officer Bonetti. His car was parked in the driveway. I
2 think he gave me another synopsis of what was going on
3 there. At that point Mr. Hailey was already inside of his
4 rear passenger -- I mean, rear compartment. I went to the
5 -- to the compartment. The window was down about halfway.
6 I attempted to make contact with him. Asked him some
7 questions to find out, you know, more information, what
8 was going on. He really didn't respond. Just kind of
9 ignored my words and never really gave a response to me.

10 Q After initially going up to his vehicle what else did
11 you do there on the scene on Booker Road?

12 A Like I say, I was informed that there were some --
13 some items that were found potentially in a vehicle that
14 was there. At that point we began to get information that
15 there might be a location of a body on Warner Road. I
16 identified really the car based on the things that were in
17 the car as a potential crime scene, at least one aspect of
18 it. So I secured the vehicle. Didn't enter it, secured
19 it. Photographed it just to maintain the evidentiary
20 value of anything that was inside of it.

21 Q So all the photographs of the car located on Booker
22 Road, you took those photographs?

23 A Yes, I did.

24 Q I'm going to show you State's 99. What are the items
25 sitting in the car?

1 A The shotgun. This is the passenger side of the
2 vehicle from the passenger -- facing into the passenger
3 window. There was a shotgun there observed. The phone,
4 the potato chip bag, Mountain Dew, and some kind of
5 handgun of some sort there you can see.

6 Q And the handgun, was that a pellet gun or BB gun?

7 A Later it was identified that it was a pellet gun.

8 Q Now, Officer Powell, Investigator Powell, after
9 taking the photographs there what happened to the vehicle
10 after that?

11 A We notified Collins Wrecker Service to come and tow
12 the vehicle. He responded. I stayed with the vehicle,
13 following to our impound yard which is a secured area on
14 Siloam Church Road. I stayed with the vehicle. I think I
15 had another couple officers meet me there, which they
16 stayed with the vehicle and while I went to secure the
17 search warrant for the vehicle so that we could collect
18 items inside.

19 Q And did you ultimately, there doing the inventory of
20 that car and search of that vehicle, were other pictures
21 taken?

22 A Yes, sir. There were pictures -- additional
23 pictures. Additional pictures were taken by the crime
24 scene investigator. He took pictures, Mr. Allison, he
25 took additional pictures, cataloged, marked and collected

1 the items that were inside of the vehicle.

2 Q Now, the catalog in those items in that vehicle,
3 especially the weapons, or the shotgun and the pellet
4 pistol, I'll show you State's 77. Is that a BB gun?

5 A Yes, sir. That appears to be the pellet gun that was
6 located in the passenger seat.

7 Q Was that gun loaded?

8 A At the time that we recovered it, it was not loaded
9 to my knowledge.

10 Q If it was, would you all have documented that?

11 A Yes, sir.

12 Q In addition to that pellet gun is State's 76.

13 A Yes, sir.

14 Q Is this the shotgun?

15 A Yes, sir. It was.

16 Q Was it loaded?

17 A No, sir.

18 Q It was not. And after executing that search warrant
19 y'all were able to collect items out of that vehicle?

20 A Yes, sir.

21 Q And that search warrant was executed about 8:36 that
22 morning on March 6th?

23 A Yes, sir.

24 Q Now, Officer Powell, were you also in attendance at
25 the autopsy?

1 A Yes, sir. I was.

2 Q And at the autopsy did you also take items into
3 evidence?

4 A Yes, sir. The pathologist was able to remove what he
5 identified as possibly a wadding. It was located inside
6 the eye. They belonged with some pellets from the -- from
7 the shotgun.

8 Q I'll show you State's 160. Is that what you're
9 referring to?

10 A Yes, sir.

11 Q And that was retrieved out of Marty George?

12 A Yes, sir.

13 Q In addition, at the autopsy a GSR kit of the victim's
14 hand, Mr. Marty George's hand was done too?

15 A Yes, sir. I did do a GSR kit, which is a gunshot
16 residue kit, of his hands there and submitted it into
17 evidence at the same time.

18 Q So all that would have gone back to the evidence --

19 A Right.

20 Q -- in Greenwood County?

21 A Yes.

22 Q Now, without going back through all the pictures.
23 You had an idea -- you got to look at the vehicle? You
24 looked at the vehicle that night, or early that morning,
25 and then also later on that morning?

1 A Mr. George's vehicle?

2 Q Yes.

3 A Yes, sir.

4 Q Could you tell where it appeared the shot came from?

5 A It appeared that the shot was from the direction of
6 the rear passenger seat based on the evidence that was
7 inside the car. What I described as brain matter. Small
8 bone fragments. They were located in the front left in
9 the driver compartment.

10 Q And the time you got there that night, or early that
11 morning, out on the scene on Booker Road, that pellet
12 pistol was where, in what seat?

13 A It was in the passenger seat.

14 Q Was it in the back floorboard?

15 A No, sir.

16 Q Was it in the front floorboard?

17 A No, sir.

18 Q Was it under the driver's seat under the steering
19 wheel?

20 A No, sir. It was positioned exactly where it was in
21 the picture --

22 Q -- next to his cell phone?

23 A Yes, sir.

24 Q Again, this scene you went to was [REDACTED] Booker Road?

25 A Yes, sir.

1 Q That's here in Greenwood County?

2 A Yes, sir. It is.

3 Q And the other scene, was that on Warner Road in
4 Greenwood County?

5 A Yes, sir. On Warner Road in Greenwood County, South
6 Carolina.

7 MR. BROWN: Beg the Court's indulgence.

8 THE COURT: Sure.

9 MR. BROWN: No further questions.

10 THE COURT: Mr. Shaffer, cross-examination.

11 MR. SHAFFER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 By Mr. Shaffer:

14 Q If you could, give us a timeline of the information
15 you collected in this case and when you collected it. I
16 mean, you don't have to go into real detail, but who did
17 you talk to and what -- you collected this evidence the
18 day of; correct?

19 A What are you speaking of? Multiple people in this
20 case what was collected?

21 Q Yeah.

22 A Okay.

23 Q This evidence right here was -- and you're the chief
24 investigator; correct?

25 A I am.

1 Q So you make sort of -- you're sort of captain of the
2 ship involving this investigation; right?

3 A So to speak. I'm the one that's responsible for
4 putting all the stuff together and submitting it to
5 prosecution and as well as to you to make sure all of the
6 items in there, videos, that kind of stuff. But multiple
7 people work on -- worked on this case. So I'm not the one
8 that's actually collecting all the evidence.

9 Q You're the one on the arrest warrants; correct?

10 A Yes, sir. I did do the arrest warrants.

11 Q And you testified for the indictment; correct? And
12 before a Grand Jury; correct?

13 A I believe I did do the Grand Jury on that one. That
14 month, yes.

15 Q Now, you did the arrest warrants. You then
16 transferred it over to the Solicitor's Office and
17 submitted the evidence to them; correct? Like what
18 basically the case was about?

19 A Yeah, the list of stuff that's there.

20 Q When was that?

21 A When was it submitted?

22 Q Yeah, around there.

23 A It would be on the cover pages. It's generally
24 within 20 -- 20 days, thereabouts. So it was within 30
25 days.

1 Q So March of 2019?

2 A Somewhere in that range. I mean, it would be on the
3 cover page of the submittal.

4 Q So you submitted it sometime around March of 2019;
5 correct?

6 A Sometime during that time.

7 Q And you submitted it as a murder charge; correct?

8 A Yes, sir.

9 Q And you submitted it as a possession of a weapon
10 during the commission of a violent crime; correct?

11 A Yes, sir.

12 Q You didn't submit it as a carjacking at that time;
13 correct?

14 A No, sir.

15 Q Instead they directly indicted for carjacking later;
16 correct?

17 A Yes, sir.

18 Q That was about six months later that they made the
19 decision to charge him with carjacking as well as murder
20 and possession of a weapon; correct?

21 A I don't know exactly the indictment date but it was
22 sometimes afterwards, yes.

23 Q If I told you around September of 2019 you wouldn't
24 disagree with me, would you?

25 A Whatever the record shows is -- would be accurate.

1 Q Fair enough. Between the time period of March of
2 2019 and the time that they directly indicted -- so March
3 of 2019 you get arrest warrants from the Judge --

4 A Uh-huh.

5 Q -- correct?

6 A Yes, sir.

7 Q And then in September of 2019 you take those arrest
8 warrants and the carjacking arrest warrant before the
9 Grand Jury?

10 A Yes, sir.

11 Q Between the time period that you submitted it to the
12 Solicitor's Office and got those arrest warrants in
13 September of 2019, what new evidence did you obtain
14 specifically related to the carjacking?

15 A I think the carjacking came from just a review by the
16 Solicitor's Office looking at the facts of the case and
17 determined that the criteria for a carjacking fit the
18 facts of the case. Therefore, he was directly indicted
19 for that charge.

20 Q So that was their decision, not yours; correct?

21 A Right.

22 Q Okay. I heard a decent amount about cell phones
23 here. Is it fair to say Marty George's phone was unlocked
24 just a couple of weeks ago where they dumped it?

25 A I believe so. I was not -- I mean, honestly, I'm not

1 technical savvy. It was submitted because of the fact
2 that we didn't have the capabilities to unlock it at our
3 department. I believe SLED actually processed it
4 initially, and from my understanding they were not able to
5 get anything off the phone. At the -- at the time,
6 honestly, it was in the vehicle I had -- I really did not
7 know if it was Marty George's phone, if it was just a
8 random phone that was in the car. So I honestly did not
9 know who the owner was of that phone other than it was at
10 the crime scene. So that was -- it was really unknown at
11 that time.

12 Q Okay. Are you aware that between 1:00 and 2:00 a.m.
13 there was several text messages and a call to a number
14 called 8 -- number of [REDACTED]?

15 A On what day?

16 Q On the night that Mr. George was killed?

17 A If there's -- if there's records on the phone records
18 I don't deny that.

19 Q Did you do anything to find out whose number that
20 was?

21 A Analysis on the phone records?

22 Q Yeah.

23 A No, sir.

24 Q Okay. Are you aware whether or not Marty had a
25 second phone?

1 A I'm not aware of a second phone. I don't -- we
2 didn't find a second phone. I'm not aware that he had
3 another one.

4 Q You would agree with me that this is the only air
5 pistol that's been collected in this case; correct?

6 A That's the only air pistol that I have any knowledge
7 of that's been collected.

8 Q Okay.

9 MR. SHAFFER: Court's indulgence.

10 THE COURT: Sure, take your time.

11 Q Now, it's my understanding that the air pistol was
12 found inside the car which you identified in one of the
13 pictures; correct?

14 A Yes, sir.

15 Q Then it's also my understanding that the -- that the
16 10 pellets were found inside Mr. George's pocket?

17 A That's right, yes. That's correct.

18 Q Okay.

19 MR. SHAFFER: No further questions at this time.

20 THE COURT: Anything in redirect, Solicitor?

21 MR. BROWN: No further questions.

22 THE COURT: Okay. You can step down, sir. Thank
23 you.

24 THE WITNESS: Thank you, Your Honor.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 THE COURT: Let me see the lawyers for just a minute.

3 (Whereupon, a bench conference was held in the
4 presence of the jury but out of the hearing of the
5 jury.)

6 THE COURT: Ladies and gentlemen, we're going to take
7 another very short break and then we'll get you back in
8 and proceed a little while longer. Okay? Go back to the
9 jury room, please.

10 (Whereupon, the jury was excused from open court for
11 a break.)

12 THE COURT: Okay. It's my understanding that the
13 State does not have any further witnesses, so I'll allow
14 you all at the appropriate time to rest. I'm allowing Ms.
15 Kitchens to come back on the witness stand to allow the
16 Defense on the limited purpose of examining her about the
17 pellet gun as it relates to the March 4th hearing. That's
18 been a topic of our conversation for a little bit. I'll
19 allow that. Allow the State to redirect as it relates
20 specifically to anything that Mr. Shaffer brings out with
21 Ms. Kitchens.

22 MR. BROWN: Is his cross just on the pellet gun?

23 MR. SHAFFER: There's two other areas that I was
24 going to impeach with. They are both relatively short.
25 They're just videos I was going to play.

1 approximately 3:33 p.m.)

2 THE COURT: Let the record reflect the jury is back
3 in. Ladies and gentlemen, you remember Joni Kitchens
4 testified this morning. She is being recalled for some
5 limited purposes. Ms. Kitchens, if you will come on up,
6 take the stand. I remind you that you're still under
7 oath.

8 (Whereupon, Joni Kitchens returns to the witness
9 stand.)

10 THE COURT: All right, Mr. Shaffer. You may proceed.

11 MR. SHAFFER: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 By Mr. Shaffer:

14 Q I'm showing you Defendant's Exhibit 3. This morning
15 you testified that you've never seen that gun before;
16 correct?

17 A Correct.

18 Q That was not correct, is it?

19 A Yes, it is correct.

20 Q Okay. On March 4th, 2020 didn't you testify that you
21 identified that gun as being Marty George's in a picture
22 in a hearing here in this courtroom?

23 A No, I did not.

24 Q I'm going to show you --

25 (Whereupon, Defendant's Exhibit No. 7 was marked for

1 identification.)

2 Q I'm going to show you what's been marked Defendant's
3 Exhibit 7 for the purposes of identification.

4 THE COURT: You may want to kind of point her to the
5 right area that you need her to look at, or do you need
6 for her to read the entire pages that you have?

7 Q What's been marked -- what's at the bottom is 36.
8 Okay? This right here, you feel free to read from 36,
9 from line 19 all the way to the end of 37, and then take a
10 look at the picture on the back.

11 THE COURT: Just take your time.

12 A Repeat what -- what --

13 THE COURT: Go back up and show her again, please,
14 Mr. Shaffer, exactly what you want her to read.

15 A You got to show me that number.

16 Q You can read it to yourself. I just want to refresh
17 your recollection.

18 THE COURT: Can you read it okay, Ms. Kitchens?

19 MR. BROWN: Judge, I think it might be helpful to her
20 if she knows what question's being asked on there. It
21 might be -- somebody that's never read a transcript know Q
22 and A of who says what.

23 THE WITNESS: And just a reminder, I have a mental
24 disability.

25 THE COURT: Do you have difficulties reading?

1 THE WITNESS: Yes, I do.

2 THE COURT: All right. Well, do this, Mr. Shaffer.
3 If you will go ahead and read the question and her answer.
4 Okay? You listen very carefully to what Mr. Shaffer says,
5 and he's reading from the transcript of the March 4th
6 hearing.

7 Q Question, Ms. Kitchens, I'm showing you State's
8 Exhibit 2, File 177. It's a photo. If you can, do you
9 see where those little numbers markers are?

10 Question -- or answer, Yes, sir.

11 Question, I'm presuming those were placed there by
12 the police. They weren't in the car beforehand; correct?

13 Answer, No, sir. They were not.

14 Question, Now, the number marker 8 is over what
15 appears to be a pistol. Is that the pellet pistol that
16 Mr. George had?

17 Answer, That was an air pistol and it was working.

18 Question, Okay.

19 Answer, And we kept it in the car.

20 Question, Okay. Where did you keep it at?

21 Answer, Under the seat.

22 Question, Okay. Why did you keep it under the seat
23 in the car?

24 Answer, I guess it didn't work.

25 Question, Okay.

1 Answer, And it was just in case anybody tried to rob
2 us or break into the car or something. It would be there
3 just to be there.

4 Question, All right. So in case somebody tried to
5 rob you, you'd use it for protection?

6 Answer, Yes.

7 Is that fair to say?

8 Okay.

9 To protect yourself; correct?

10 THE COURT: And do you want to show her the exhibit
11 picture that's attached to that transcript?

12 MR. SHAFFER: Yes, sir.

13 A That one I said there is not -- that was not the one
14 that was in the car.

15 Q So that's not the one that was in the car?

16 A No. I have that one at home.

17 Q Okay. So the marker number 8 is this gun?

18 A No, it is not. That air pistol in that picture is at
19 home on my coffee table. It was taken out. The one you
20 are showing me on that table is not the one that was in
21 the car.

22 Q Was this a picture that you saw at the hearing?

23 A Yes.

24 Q And you identified the marker number 8 as being the
25 one that's in the gun? I mean -- sorry. The marker

1 number 8 being the pistol that was in the car?

2 A Yes. That one was in the car but it is a plastic
3 one. That one was not in the car at all. The one on that
4 table you were showing me, that is not the one that we had
5 in the car, period.

6 MR. SHAFFER: Your Honor, if you wouldn't mind, I'd
7 like to publish the -- at least the picture portion of
8 Defendant's 7 for the purposes of identification.

9 THE COURT: I'll allow it.

10 Q So this pistol is not the one in marker number 8?

11 A No, it is not.

12 Q And you're saying that the picture with that little
13 marker number 8 is at your house?

14 A Yes, it is.

15 Q Did the police give it to you?

16 A No, they did not.

17 Q And isn't it correct that you, when asked on March
18 4th, 2020 in this room under oath, you said that the
19 pistol underneath marker number 8 was the gun that you
20 kept in the car?

21 A Yes, that's the one that we kept.

22 Q So that was the gun that you kept in the car?

23 A Yes. But that one that you were showing me on that
24 table is not.

25 Q Okay. You have another one that's at the house?

1 A Yes.

2 Q And the police did not give it to you?

3 A No, they did not.

4 Q How did you come to get it?

5 A A friend of mine gave it to me.

6 Q How did you get it out of the car though?

7 A I'm the one that had them switched, because I was not
8 with him 24/7 as I told you before.

9 Q You also testified that the only place that basically
10 -- and I'm paraphrasing because it's been since this
11 morning. But you testified that he did not give you
12 specific directions as to where the house was at; correct?

13 A No, he did not, because I don't know where he lives.

14 Q And you wouldn't -- and you did not tell that to
15 officers on March 7th, on that day that you talked to the
16 officers that morning?

17 A March the 7th or March the 6th?

18 Q March the 6th of 2019.

19 A I did not tell them because I don't know where he
20 lives.

21 Q Okay. I'm going to show you -- I think it's
22 Defendant's 6 for ID, Subfile J.

23 THE COURT: You're going to handle it the same way as
24 you did this morning as far as letting her listen to it?

25 MR. SHAFFER: Yes, Your Honor.

1 (Whereupon, the Witness listens to Defendant's
2 Exhibit number 6.)

3 Q After listening to that file J, would you agree with
4 me that you provided a fairly detailed description of
5 where Mark Hailey's house was supposed to be?

6 A Supposed to be, no. I directly said on here that I
7 knew the roads, but I do not know where that man lives.
8 I've never been to his house.

9 Q Okay. I'm not asking you if you've been to his
10 house, but you described pretty much exactly where he
11 lived at on the roads according --

12 A I don't even know what road he lives on.

13 Q Okay.

14 A I just know what roads I know in Ninety Six. I don't
15 even know where Warner Road is.

16 Q Okay. Didn't you -- didn't you describe a specific
17 spot and said that his house was behind an old abandoned
18 house that you used to walk through on a normal basis?

19 A That was my grandparents' house that used to be
20 there. It was abandoned and it was -- it had been torn
21 down.

22 MR. SHAFFER: Your Honor, at this time I would move
23 to admit J.

24 THE COURT: Okay. And again, I've not listened to
25 the video, but if her testimony conflicts with what you

1 claim she told law enforcement then, yes, I will allow you
2 to publish that. But again, I've not listened to the
3 video, so I don't know.

4 MR. BROWN: Judge, I think she answered something
5 right at the end of that, that the house had been torn
6 down, at the end of that question.

7 THE COURT: Well, again, if -- if Mr. Shaffer
8 believes --

9 MR. BROWN: Yes.

10 THE COURT: -- that her testimony conflicts with what
11 she told law enforcement. And again, I've not listened to
12 the video, and unless you say that it does not conflict
13 then I'm going to allow him to publish the video. But if
14 the State believes it does not conflict, then I have to
15 listen to the video first.

16 MS. SUMNER: Your Honor, may we approach?

17 THE COURT: Okay.

18 (Whereupon, a bench conference was held in the
19 presence of the jury but out of the hearing of the
20 jury.)

21 THE COURT: So, Mr. Shaffer, what you want to play
22 for the jury is a two minute clip of the interview between
23 Ms. Kitchens and law enforcement on the morning of March
24 6th; correct?

25 MR. SHAFFER: That's correct.

1 THE COURT: Okay, all right.

2 MR. SHAFFER: And it's currently on Defendant's
3 Exhibit 6, and it's Subfile J.

4 THE COURT: Okay, all right. Ladies and gentlemen,
5 it's about two minutes in length as I've been informed.

6 (Whereupon, Defendant's Exhibit number 6, Subfile J
7 was published for the jury.)

8 Q So would you agree with me that you gave them
9 specific instructions as to where Mr. Hailey was living?

10 A From what I was told.

11 Q Okay.

12 A And I've never been to that man's house.

13 Q Okay. But you said you walked down the road a whole
14 bunch; correct?

15 A Yes. My grandparents lived out there and I walked
16 that road as a child, yes.

17 Q And is it fair to say that the -- that you basically
18 were -- you took in what somebody told you; correct?

19 A Exactly.

20 Q And then you had in your mind pictured that
21 particular road in Ninety Six; correct?

22 A I assumed that's the one that they were talking
23 about. If they were talking about another road then
24 that's the way I would go to get to wherever.

25 Q But it's possible that you were wrong about exactly

1 where they were talking about? Is that what you're
2 saying?

3 A It could have been, but that's the -- that
4 description is exactly the one that I was given.

5 Q Okay. Now, you had also testified that at the time
6 you spoke to police that morning you would not have known
7 about Mark allegedly -- allegedly living with Heather; is
8 that correct?

9 A I didn't know who he was at all. I thought he -- I
10 mean, from what I understand, she said she was never
11 living there.

12 Q But you testified this morning that you're certain
13 that you did not tell officers that; correct?

14 A I did not tell them that.

15 Q I'm going to show you video clip N on that iPad.

16 MR. SHAFFER: Court's indulgence. It's taking just a
17 second to play.

18 THE COURT: Do you need for her listen to it now?

19 MR. SHAFFER: Yes, Your Honor. It's actually taking
20 a second to transfer from Cloud.

21 THE COURT: Okay. Just whenever it's ready then tell
22 her.

23 MR. SHAFFER: There you go.

24 (Whereupon, the Witness listened to a video.)

25 Q Ms. Kitchens, is it fair to say that in that video

1 clip you actually did know quite a bit about the back
2 story of Mr. Hailey?

3 A Not a whole lot, but as far as how -- as far as me
4 asking questions how did -- me asking Heather how did my
5 fiance meet him, you know, from what -- you know, she did
6 introduce him.

7 Q So Heather did tell you that she introduced you
8 before you talked to the police, you know, a couple of
9 hours after you found out about the death; correct?

10 A Yes, but she never introduced me to him because I
11 didn't want anything to do with it.

12 Q Okay. Now, I only have one or two more questions.
13 I'm showing you that picture in Defendant's 7 again, and
14 I'm also going to show you State's Exhibit 61. Okay? In
15 the six months since that hearing on March 4th, 2020 have
16 you told any law enforcement officer or investigator for
17 the Solicitor's Office that the gun underneath marker
18 number 8 was actually at your house?

19 A No, I did not.

20 Q Okay. And you would agree with me that we talked
21 about the air gun that was in the car during that hearing
22 on March 4th, 2020; correct?

23 A Yes.

24 Q But you never said, hey, actually that gun's at my
25 house. That's a different gun than you all have.

1 Correct?

2 A Correct.

3 MR. SHAFFER: No further questions.

4 THE COURT: Solicitor, anything in redirect on this
5 -- limited areas here?

6 MR. BROWN: Just a few.

7 CROSS-EXAMINATION

8 By Mr. Brown:

9 Q Ms. Kitchens, back on March 4th you did say that
10 Marty carried a pellet gun in the car; correct?

11 A Yes. It was an air pistol.

12 Q Okay. How many air pistols did Marty have?

13 A One.

14 Q One?

15 A Uh-huh.

16 Q Did it look like that one?

17 A No.

18 Q It didn't?

19 A No, it did not.

20 Q What does it look like? What does your pellet gun on
21 the table look like?

22 A It's plastic, a little red piece on the side of it is
23 broken. I mean, it's not heavy. It's not light. It's
24 just plastic.

25 Q Is it as big as that one?

1 A No, it is not.

2 Q It's not?

3 A No.

4 Q How big is the one you have in your house?

5 A The barrel is probably like this (indicating). The
6 handle was a little bit shorter like that (indicating).

7 Q In this picture that Mr -- and you said how big is
8 it?

9 A The barrel is like this (indicating), and it's got
10 the extra piece, you know, that you -- you know, for like
11 design up underneath or something. And the barrel -- the
12 handle is probably about like that (indicating). I mean,
13 it's not -- it's not -- it is nothing like that one on the
14 table.

15 Q Well, this picture here, can you see the whole gun on
16 this picture?

17 A No, I cannot.

18 Q Does it look kind of small in this picture?

19 A Yes, it does.

20 Q If the hat's covering it up?

21 A Yes.

22 Q If I cover that up does the gun also look kind of
23 small?

24 A Yes.

25 Q If I took that hat away?

1 A That is nothing like I have at home.

2 Q It's nothing like you have at home?

3 A No.

4 Q So what you have at home is different than this gun?

5 A Exactly different.

6 Q And again, can you see this complete gun in Defense

7 -- in this Defense Exhibit number seven?

8 A No, I cannot.

9 Q Does it look like of small with that hat covering it
10 up?

11 A Yes, it does.

12 Q Could you be mistaken on that gun you have at the
13 house and what was found in that car?

14 A No, because I do not -- I cannot see the rest of that
15 one. That barrel does not match anything that I have at
16 home.

17 Q Okay. And this gun doesn't match anything you have
18 at home?

19 A No, it does not.

20 Q And you've never seen this pellet pistol in that car
21 before?

22 A No, I have not.

23 Q The one you have at home is what you always knew
24 Marty to have; correct?

25 A Yes.

1 Q So does this gun just look foreign to you? Like you
2 just don't recognize it?

3 A I don't even -- I've never seen it.

4 Q And after -- when Marty left your house that night
5 you never saw your car again, have you?

6 A No, I did not.

7 Q You've never been able to access it, have you?

8 A No.

9 Q Law enforcement's had it; correct?

10 A Yes.

11 Q So there's no way of getting anything in and out of
12 that car?

13 A No, sir.

14 Q If you ask for it you've been told you can't have it;
15 right?

16 A Exactly.

17 Q Do you think you're confused about what gun that was?

18 A No, because that gun was not in there.

19 Q When you were in the car you never saw this gun?

20 A No, I did not.

21 Q And again, you don't -- you're not around Marty 24/7?
22 You don't know when he got pellet guns; right?

23 A I have no idea when he got anything.

24 Q Mr. Shaffer played a clip about you giving law
25 enforcement a description of where you heard Mark said he

1 lived; is that correct?

2 A Just heard, yes.

3 Q Do you know where Booker Road is?

4 A No.

5 Q Is Booker Road anywhere around where your
6 grandparents lived?

7 A No, but that's the way Marty probably would have went
8 if he was going an easier way. Instead of having to go
9 all the way through Ninety Six leaving Greenwood, go all
10 the way down. Marty always took the back roads.

11 Q Well, the directions you gave really aren't where he
12 lives, is it?

13 A No, but that's the way Marty probably would have
14 went.

15 Q And the last clip I think Mr. Shaffer played for you
16 again is that Marty and Mark were introduced through
17 Heather Lawrence; is that correct?

18 A Correct.

19 Q And again, you never met Mark before that night?

20 A No.

21 Q Just so we're clear, the little pistol that you have
22 -- the little BB gun you have at your house, what does it
23 look like?

24 A It's -- it's got like this (indicating). It's a
25 plastic one that you would probably get, you know, like at

1 Walmart or something, you know, for like just to practice
2 with. A little BB gun, pellet gun. Just something you
3 would maybe -- I mean, something like a -- just for a
4 shooting range or just practice or just to play with.

5 Q What you have at your house doesn't look like this?

6 A No, sir.

7 MR. BROWN: No further questions.

8 THE COURT: You can step down, ma'am. Thank you.

9 You got a question?

10 MR. SHAFFER: Yes, Your Honor.

11 MR. BROWN: Judge, can we approach?

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: You can step down, ma'am. Thank you.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 THE COURT: Does the State have any further
19 witnesses?

20 MR. BROWN: Judge, at this time the State rests.

21 THE COURT: Okay, thank you very much. All right,
22 ladies and gentlemen, I think this would be a good
23 stopping point for today. We could go another 45 minutes
24 to an hour, but I think probably what we'll do is the
25 Defense will start their case in the morning. So I think

1 this will be a good stopping point to break a little bit
2 early today. So I'm going to go ahead and let you go home
3 and get some good rest. Remember all my instructions,
4 have a good evening and we'll see you in the morning at
5 9:30. Let me mention one thing to you. You know, you all
6 did a great job when you were over here and I asked you
7 not to be real loud, which you never were, but not be real
8 loud because Judge Smithdeal had some matters going on
9 right next to the courtroom. Well, the same thing will be
10 going on tomorrow. Judge Addy, who has his chambers right
11 next to the room that you're in, he's going to be doing,
12 as I understand, some Webex hearings. And so, again, just
13 -- you know, you can talk among yourselves, but just be
14 sure that, you know, you don't get too loud or vociferous
15 where it would, you know, interrupt or have some affect on
16 the work that Judge Addy is doing in his office. Okay?
17 All right. Thank you very much and we'll see you in the
18 morning at 9:30.

19 (Whereupon, the jury was excused from open court for
20 the day.)

21 MR. SHAFFER: We have a matter -- obviously we have a
22 matter of law on moving for a directed verdict at this
23 time.

24 THE COURT: Yeah, I was just going to go ahead and
25 ask you if you had any motions you needed to place on the

1 record.

2 MR. SHAFFER: Yeah, Your Honor, we move for a
3 directed verdict and everything, I don't think that
4 there's sufficient evidence of any malice in this case. I
5 do, however, also move specifically related to the
6 carjacking. I don't think that they have met the elements
7 of that. So I essentially move -- no testimony other than
8 the fact that he ended up with the car over there, you
9 know, that would support a theory for carjacking.

10 THE COURT: Let me -- if the jury were to believe
11 that he shot Mr. George without self-defense, would that
12 act alone be enough to -- to send the carjacking to the --
13 to the jury?

14 MR. BROWN: Judge, the definition of carjacking on
15 the statute is, A person is guilty of a felony of
16 carjacking who takes or attempts to take a motor vehicle
17 from another person by force and violence or by
18 intimidation while a person is operating a vehicle while
19 the person is in the vehicle. Obviously we know Marty
20 George is in the vehicle. He's operating the vehicle. He
21 drug him out of the car and drove his car home. So by
22 definition that meets carjacking.

23 THE COURT: Yeah, viewing the -- go ahead.

24 MR. SHAFFER: Your Honor, specifically related to
25 carjacking, according to the State's theory Mr. George had

1 already been killed before he attempted to take the car.
2 So I don't think that -- you know, that they can actually
3 say that, you know. Even with the State's theory is that
4 he got shot while inside the vehicle. You know, perhaps
5 they could have charged a different charge, armed robbery
6 or something like that, but they didn't. They charged
7 carjacking instead.

8 THE COURT: Viewing the evidence in the light most
9 favorable to the State, I do find that there's enough
10 direct evidence and substantial circumstantial evidence to
11 send the case to the jury on all three charges. However,
12 Mr. Shaffer, if you want to do a little -- little more
13 digging and you want to resurrect your motion as it
14 relates to carjacking, I'll allow you to do that in the
15 morning. But right now I'm denying your motion, but I'll
16 allow you to renew it in the morning if you come up with
17 something that maybe changes the complexion of the thing.
18 But right now I'm looking at it as the State does insofar
19 as the -- send the case to the jury. But you can renew it
20 if you want to in the morning.

21 MR. SHAFFER: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. SHAFFER: And we have another matter we'd like to
24 bring up.

25 THE COURT: Okay. And I need to go ahead -- before

1 approximately 9:49 a.m.)

2 THE COURT: Let the record reflect that the jury is
3 back in. Good morning, ladies and gentlemen. I trust
4 everyone is feeling well today. Very good. Is the
5 Defense ready to proceed with its case?

6 MR. SHAFFER: Yes, Your Honor, we are, we call Kirby
7 Claphan to the stand.

8 KIRBY CLAPHAN, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Shaffer:

12 Q Officer Claphan, you work for the Greenwood Police
13 Department?

14 A At the time I did, now I work for the City of
15 Greenwood.

16 Q Okay. Can you spell your last name?

17 A Claphan, C-L-A-P-H-A-N.

18 Q And you work for the City of Greenwood now?

19 A Yes sir, I am a police officer but I work in the
20 finance department.

21 Q Okay, okay. Before that or when did you start
22 working for the City of Greenwood as opposed or the
23 finance department as opposed to the police department?

24 A I came back to the City in 2015 and then I started
25 this job October of 2019.

1 Q So before -- between 2015 and 2019 you were working
2 for the Greenwood City Police Department?

3 A Yes, sir.

4 Q What was your position there?

5 A Officer.

6 Q Now, you had nothing to do with investigating the
7 death of Marty George, correct?

8 A No, sir.

9 Q That was a County case?

10 A I guess, I didn't even know anything about it.

11 Q Okay. However, whenever you were with the City did
12 you have a chance to come into contact with Marty George?

13 A Yes, sir. On this one occasion.

14 Q Okay. And that was, what was the date on that?

15 A 5/15/2018.

16 Q Tell us about what happened on 5/18/2018.

17 A Approximately 9:17 we got a call from dispatch in
18 reference to a domestic at an address, [REDACTED] Phoenix
19 Street. It is a duplex, so it was on the B side, A and B,
20 so it was in B. When we get there and knock on the door
21 for several minutes, Lieutenant Caughman did. And I
22 observed one of the curtains move, I could tell somebody
23 was inside. So I walked across the road to a neighbor, he
24 confirmed that there was a man and a woman in the house.
25 So due to that we were going to try to find out what was

1 going on due to the type of call it was. So I went back,
2 she finally opened the door, I asked her what her name
3 was, she told us. Ask her if there was a man inside. She
4 said there wasn't, she said that her friend, Casey
5 Cunningham was inside and she gave her, Ms. Kitchens told
6 us her name was Joni Cunningham was her name and that a
7 friend that was in the house name was Casey Cunningham.
8 It was a female and said she was in the shower.
9 Lieutenant Caughman advised that we needed to speak with
10 her because of the type of call we got. She advised she
11 would have to go get her and she tried to shut the door.
12 So we advised her to leave the door open. We asked, she
13 said it was hot outside so she wanted to shut the door so
14 we asked if we could come in. She said, no, not without a
15 warrant. So we advised that we don't need a warrant to
16 come in because due to the fact of the call we need to
17 make sure everybody inside is fine. So we went in the
18 house, he came out of like a bathroom, Mr. George did. I
19 asked him what his name was. He told us. I ran his name
20 and come back with warrants for, I believe it was meth out
21 of Alabama. At that time he started shaking so I kind of
22 thought we were going to have a little problem with him.
23 So we asked, who winded up being Ms. Kitchens again, she
24 had lied about saying there was a female in the house. so
25 we then, you know, kind of figured out she wasn't being

1 honest with us. So I asked her for her ID, so we went
2 into the kitchen to get her ID, she kept trying to hug on
3 him. And we kept trying to get them separated and I think
4 I went to grab her at one time and we already figured out
5 she lied to us on her name because she admitted that
6 wasn't her name. So we had enough at that time to lock
7 her up but we were still trying to get to the bottom what
8 was going on. But at this time when she kept causing us,
9 you know, interfering with our investigation I went ahead
10 and grabbed her and went to put her in handcuffs. She
11 tried to pull away, I pushed her against the stove to get
12 control over her. I heard a motion behind me, turned
13 around and looked and Lieutenant Caughman had him from
14 behind.

15 Q Him being Marty George?

16 A Yes, sir. Had Mr. George from behind, yes sir. And
17 he was kind of flailing, trying to get away from Matt. He
18 was reaching onto a table and kind of pushed up against
19 the kitchen table. So Matt, in attempt from keeping for
20 reaching anything, he kind of hit him twice in the rib
21 right here to get him to pull his arm back and comply. So
22 I basically saw what was going on with that so I pushed
23 her away, went over and grabbed him and put him on the
24 ground. And while Matt was trying to put cuffs Ms.
25 Kitchens kept running over to us. At one point we told

1 her, you know, several times to get on the ground. At one
2 point I grabbed her shirt and pulled her to the ground
3 while I was holding Mr. George. But we was able to get
4 both of them in handcuffs and afterwards, you know, we
5 noticed several items that could have been used, you know,
6 against us, against officers. We noticed a shotgun in the
7 direction where he was at. Also there were like
8 screwdrivers and stuff all over the table. So I don't
9 know what he was trying to do, if he was trying to flee,
10 if he was trying to come towards me because my back was
11 turned toward them. All I know is when I turned around he
12 was at the table, the door was to your left, the shotgun
13 was here. So I don't know what he was trying to get, what
14 he was trying to just get away, was he trying to get to me
15 or was he trying to get to a weapon, we have no idea.

16 Q Okay. But he was reaching in the general direction
17 where there were weapons, correct?

18 A Yes, sir.

19 Q Where there was a shotgun, correct?

20 A Yes, sir.

21 Q And a screwdriver?

22 A Yes, sir.

23 Q And maybe--

24 A I said several items, they were all kinds of stuff in
25 the house, I mean it was --

1 Q Afterwards you ended up getting a search warrant for
2 the place, correct?

3 A Yes, sir.

4 Q What all was found inside that house as a result of
5 that search warrant?

6 A Let me see, I know it was -- found a little meth.
7 Let me find where the items were listed. It says there
8 was narcotics in plain view, single barrel shotgun was in
9 the corner of the kitchen. And beside it on the shelf was
10 three scales. Twelve gauge shotgun shells were located in
11 a drawer in the bedroom along with a loaded .22 caliber
12 rifle, two boxes of .12 gauge shells, a box of .22 caliber
13 bullets, two boxes of .32 caliber bullets, one box of .38
14 caliber --

15 Q Slow down.

16 A I am sorry, I just say a variation of bullets.

17 Q Okay. At least --

18 COURT REPORTER: Can you start over, when you were
19 talking about all the bullets.

20 A It is three .12 gauge shotgun shells located in a
21 drawer in the bedroom along with a loaded .22 caliber
22 rifle. Two boxes of .12 gauge shells; a box of .22
23 caliber bullets; two boxes of .32 caliber bullets; a box
24 of .38 caliber bullets; a box of .25 caliber bullets were
25 located in a hall closet. And no further narcotics were

1 found at that time. We field tested, the drug, narcotics
2 and it field tested, positive for meth.

3 Q And you seized the bullets -- I mean the guns and the
4 ammunition, correct?

5 A Yes, sir. I am pretty sure at that time we had ran
6 his criminal history and found out that he was a felon.
7 If I am not mistaken, the reason why we listed all of this
8 was because if he was in possession of a firearm we list
9 the bullets and what type firearms were in the house.

10 Q And he had a felony record out of Alabama?

11 A Yes, sir. I don't know exactly what it was. When
12 they told us, he had a came back, what they told us, it
13 was distribution of dangerous drugs and failure to appear,
14 felony warrants with full extradition.

15 Q Okay.

16 A But I don't know, like I say, that is Alabama. So I
17 don't know what, that would transfer over to South
18 Carolina charges.

19 Q Okay. No further questions.

20 THE COURT: Any cross-examination, Solicitor?

21 MR. BROWN: Yes, sir.

22 CROSS-EXAMINATION

23 By Mr. Brown:

24 Q Officer Claphan, this occurred back on May 16th,
25 2018?

1 A Yes, sir.

2 Q Is that right. Okay. And the charge that was
3 actually sent up to General Sessions Court was just a
4 possession of meth, right?

5 A I am not sure, sir.

6 Q Do you remember resisting, what you charged him with?

7 A I would imagine it was just resisting arrest.

8 Q The City Ordinance resisting arrest?

9 A Probably so, yes sir.

10 Q Which is a 30 day misdemeanor?

11 A Yes sir, it should be. I mean, I am assuming that is
12 -- I don't remember exactly what we charged him with
13 because it has been a while. I just remember what
14 happened in the house and that is it.

15 Q Okay. But if, you didn't charge him with assaulting
16 an officer?

17 A No, sir. No, sir.

18 Q You didn't charge him with State level resisting
19 arrest?

20 A I don't think so.

21 Q It is an Ordinance, City Ordinance.

22 A That is normally what we would charge with something
23 like this.

24 Q Now, if he was assaulting you you would have charged
25 him with assaulting an officer?

1 A Yes, sir.

2 Q And if it was a little bit more out of the ordinary
3 on resisting you would have charged him with a little
4 heftier resisting charge, right?

5 A Possibly. But we will normally go with the City
6 Ordinance on resisting arrest.

7 Q Something very minor?

8 A Yes, sir.

9 Q Okay. Now, the meth that was found in the house,
10 what was it, .2, less than a gram of .2?

11 A I remember it not being a whole lot.

12 Q Very little?

13 A Yes, sir.

14 Q And you didn't charge him with felony and possession
15 of a firearm, did you?

16 A I think the reason why we took, at that time what
17 they were doing was, I believe at that time Officer
18 Budreau, Officer Budreau, we would forward it to him and
19 then he would check to find out whether he met the
20 criteria and charge him with that. And he would be the
21 one that actually, you know, obtained that.

22 Q And he was not charged with a felony possession, was
23 he?

24 A I guess not, I don't remember.

25 Q So if he wasn't charged with felony possession, he

1 wasn't a felon?

2 A Yeah. I am not sure. Like I said, I don't know
3 about that, you would have to run his history.

4 Q Now, the guns in the home, mentioned that there was a
5 lot of ammunition and things of that nature. And that
6 initially there was a hit on items being stolen, a stolen
7 gun?

8 A Yes, sir. It was a very old shotgun and we ran the
9 shotguns and you know, the guns that was in the house.
10 That one showed up that it was, that it was stolen like
11 out of Washington State, I believe. After taking the
12 weapon, I believe it was found out later on that it
13 wasn't. Sometimes you will have a different manufacturer,
14 I am assuming just the bin may be close. And it showed up
15 at that time that it was stolen.

16 Q But ultimately it showed it was lawfully owned?

17 A That's what we believe, I don't think it was wind up
18 being stolen.

19 Q And --

20 A It was very old. I believe it was like showing
21 stolen from like the 60's or 70's, it was an old, old hit.

22 Q Did y'all eventually find out that it belonged to Ms.
23 Kitchens' grandfather?

24 A She told me it did. I thought she said her husband
25 but I remember it belonged to somebody, the mother -- she

1 would have been probably either Joni's father or
2 grandfather. I don't know but her mother came and talked
3 to us and said, actually she talked to me a couple of days
4 later and said that gun had belonged to, I can't remember
5 if it was her deceased husband or daddy or something like
6 that. I can't remember.

7 Q Okay. Either way they weren't stolen?

8 A Yes. That is what it looked like, it wasn't stolen.

9 Q Okay. And you mentioned with Mr. Shaffer asking you
10 questions. When Lieutenant Caughman was working with
11 Marty George, that he was reaching towards the table but
12 you don't know what he was reaching for?

13 A I had my back to him because I was placing Ms.
14 Kitchens under arrest when she was resisting and I had to
15 push her against the stove. At that time I heard like a
16 table being moved, to my back. And when I turned around
17 and looked, like I say, the doorway was here, the table
18 was here, the corner was here where the shotgun was. He
19 was in this direction pulling forward. He could have
20 been, when Caughman grabbed him, I have no idea which
21 direction he was trying to go. Maybe he was coming at me,
22 maybe he was trying to escape through the door. Maybe he
23 was, I don't know what he was doing. But when I came
24 around, when I turned around and looked to see he was
25 struggling with him. Obviously to me, we needed to handle

1 him first. So I assisted him and getting him arrested.

2 Q And ultimately you charged him with just simple
3 resisting and then possession of methamphetamine for that
4 small amount?

5 A I am assuming so. I believe that is right.

6 Q And, again, didn't charge him with felony possession
7 of a firearm and the guns didn't come back stolen?

8 A No, sir.

9 Q Okay. No further questions.

10 THE COURT: Anything in redirect?

11 MR. SHAFFER: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 By Mr. Shaffer:

14 Q He was resisting arrest, right?

15 A Yes, sir.

16 Q And he was reaching for an area that had objects that
17 could be dangerous?

18 A Yes, sir. He was in an area and his arms were in the
19 direction of several items that could be used for defense
20 on us.

21 Q Like a screwdriver that may be used to stab somebody?

22 A Yes, sir.

23 Q He is also moving in the general direction of where
24 that shotgun is at, correct?

25 A Yes, sir. It was within a few feet.

1 Q So, you didn't make any charging decisions on whether
2 or not he was actually a felon or not, right?

3 A Well being he was actually from Alabama, we have got
4 to determine whether those charges in Alabama, when it
5 transfers, similar to South Carolina, whether it would be
6 considered a felon. So they were just trying to figure
7 out if he was considered a felon in possession. That is
8 why we kept track of the bullets and stuff, just in case
9 he was a felon we would have it documented what items were
10 in the home.

11 Q Okay. And under state law you can't charge just
12 every felony --

13 MR. BROWN: Objection.

14 THE COURT: Wait a minute, I have got an objection.

15 MR. BROWN: May we approach.

16 THE COURT: Sure.

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

20 THE COURT: Repeat your question, Mr. Shaffer.

21 Q Okay. Under state law you can't charge just any
22 felony, correct?

23 A No, it is certain criteria for felony possession of a
24 firearm.

25 Q The ATF can charge any felony, right?

1 A I guess you have to ask ATF, I am not sure how that
2 goes.

3 Q Okay. Is it legal for someone -- do you know if it
4 is legal for someone who has a crime that carries over a
5 year under federal law to own a gun or ammunition?

6 A I know there is certain crimes that will constitute
7 felony possession of a firearm. I don't have the list in
8 front of me to tell you which ones it is.

9 Q And that is under State law, right?

10 A As far as State and Federal law, I mean, I couldn't
11 tell you what that would be as far as Federal law.

12 Q Okay. But NCIS said that he was a felony, correct,
13 or dispatch told you he was a felon?

14 A I don't remember how we come to that conclusion that
15 he was a felon. But we had to have heard something
16 because we would not have documented the bullets like we
17 did.

18 Q Okay.

19 A And what weapons were, you know, in the house. But I
20 can't remember what led us to believe that. So I don't
21 remember.

22 Q In your report you would have called, you indicated
23 that you called dispatch and they provided you some
24 information, right?

25 A Yes, sir. When he stepped out of the bathroom and I

1 asked his name and date of birth, immediately I gave that
2 information to dispatch through the radios and they
3 confirmed that he was wanted in Alabama.

4 Q On a felony warrant?

5 A They said it was, it was felony for -- would be
6 similar in South Carolina for trafficking meth. But they
7 had it listed as a little bit different but it sounded to
8 me -- it was like -- it just says, distribution of
9 dangerous drugs and failure to appear, felony warrants
10 with full extradition.

11 Q Okay. So at that point Alabama, according to that,
12 the report you got from dispatch, Alabama was looking to
13 extradite him, correct?

14 A Yes, sir.

15 Q No further questions.

16 THE COURT: Any recross?

17 RECROSS-EXAMINATION

18 By Mr. Brown:

19 Q Officer Claphan?

20 A Yes, sir.

21 Q Were you aware that Marty George was not extradited
22 back to Alabama, was he?

23 A I didn't know until today when they told us. He
24 won't be the first one that I placed under arrest, that
25 they said they were going to extradite them and don't come

1 get them.

2 Q And didn't come get him?

3 A No.

4 Q And also, ultimately you said that Officer Budreau
5 verifies and does further checking?

6 A I believe at that time, when we place somebody under
7 arrest, I am pretty positive at that time he was the one
8 that was checking, that would go back and try to charge
9 them with felony possession of a firearm. And I think
10 that may have been, maybe he had some dealings with the
11 Fed's and that is how they were doing it. I don't
12 remember. We would normally charge, we had to charge
13 them, we would send the report up to him and then he would
14 confirm whether he was and whether they were going to
15 pursue the charges on him.

16 Q And ultimately the Fed's, ATF, State level, City,
17 never charged him with felony possession, did they?

18 A I am assuming. Once this call was over we were on to
19 another call. So that is kind of, that is the only thing
20 I remember about this call.

21 Q So he is not charged with felony possession and he
22 was not extradited back to Alabama?

23 A That is what I was told today, that he wasn't.

24 Q No further questions.

25 THE COURT: You can step down, sir, thank you.

1 Court's indulgence.

2 THE COURT: Sure, take your time.

3 MR. BROWN: Yes, sir.

4 MR. SHAFFER: We call T.J. Chaudoin.

5 T.J. CHAUDOIN, being

6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Shaffer:

9 Q Chief Chaudoin, what is your current position?

10 A I am currently the active Chief of Police for the
11 City of Greenwood.

12 Q Okay. And your agency did not have any involvement
13 in the investigation of the death of Marty George,
14 correct?

15 A Tat is correct.

16 Q However, you have had contact with Marty George
17 through your roll at the police department, correct?

18 A That is correct, I have.

19 Q When he, I guess -- let's see. There has been at
20 least two times, two incidents that you have arrested
21 Marty George in the time that he was in South Carolina,
22 right?

23 A That is correct.

24 Q The first time, what was the date of the first time?

25 A According to my report the first time that I arrested

1 Mr. George was on 12/29 of 2018.

2 Q Tell us generally what happened in that arrest?

3 A At the time I was actually the head of our crime
4 suppression unit where we focus on shootings and
5 narcotics. And I was actually watching an area of
6 Greenwood that we had had some issues with narcotics. I
7 observed Mr. George pull up in a vehicle with another
8 young lady. They briefly stopped at the location we were
9 watching. They pulled off, we actually conducted a
10 traffic stop with Mr. George being the driver.

11 Q Okay. And after you conducted the traffic stop what
12 did you find out about him.

13 A Well, we just found out that he didn't have a drivers
14 license, he was not able to drive, wasn't suppose to be
15 driving. So we brought him out of the car and, you know,
16 we could tell something was wrong. He gave the appearance
17 that, you know, hands were shaking more than a normal
18 person at a normal traffic stop. A little bit of slur to
19 his speech, kind of hesitate a little bit like he was
20 severely nervous. We had enough to arrest him so we
21 actually brought him out of the car because of the no
22 drivers license part of it. And then we searched him
23 incident to arrest.

24 Q And as a result of the search incident to arrest and
25 the traffic stop what did you find, what evidence did you

1 seize in that case?

2 A He actually had a little bit of -- two individual
3 baggies of what later tested positive to be
4 methamphetamine, based on my training experience of course
5 I knew it was meth. You could tell right away.

6 Q And in addition to the two bags what else was
7 recovered?

8 A We took out, it looks like baggies; three counterfeit
9 one-hundred dollar bills; plastic baggies that we know to
10 be used for packaging illegal narcotics in the driver's
11 side door, was a clear plastic baggie and a clear glass
12 pipe that we commonly know is associated with smoking
13 illegal drugs such as methamphetamine.

14 Q Okay. Now, he -- whenever you say the baggies, you
15 are saying that those are commonly found, people keep --
16 people who distribute drugs keep a bunch of little
17 baggies?

18 A Well, these are baggies like sandwich baggies which
19 is usually known the -- I mean if you found a sandwich bag
20 in somebody's kitchen you would think nothing of it. But
21 if you find them in a car where there is actually, you
22 know, nothing that you would baggie up anything with then,
23 of course, we would put the two and two together.

24 Q Okay. But two of those baggies had a little over a
25 gram each in there, right?

1 A That is correct, sir. I believe one had an
2 approximate weight of 1.2 grams; and one had an
3 approximately weight of 1.1 grams.

4 Q And based off of the weight and the baggies that you
5 found, what did you decide to charge him with?

6 A We actually charged him with possession with intent
7 to distribute. Any time somebody has over a gram, that
8 meets the statute for the State law for possession with
9 intent. So we actually charged him with possession with
10 intent based on the weight.

11 Q Okay. And to your knowledge that case never actually
12 got resolved, right?

13 A I have no idea.

14 Q Okay. But you never called to court for it, right?

15 A No, no sir.

16 Q And this would have been a couple of months before
17 Mr. George passed away in March of 2019, right?

18 A That is correct. This was on 12/20, so that is
19 correct.

20 Q Now, you ended up arresting him again less than a
21 month later, correct?

22 A That is correct, sir.

23 Q He was out on bond, is that fair to say?

24 A Yes, sir.

25 Q Okay. And what did -- what happened in that incident

1 on 1/17/19.

2 A Pretty much the same thing. I was watching a
3 different area of Greenwood that was a known area that we
4 had been getting complaints about for narcotics use.
5 Actually observed Mr. George sitting in the parking lot of
6 Greenwood Motel which was what we were basically watching.
7 He had his lights on and everything but he never exited.
8 So I actually pulled around, observed the vehicle back out
9 and pull off. And when the vehicle pulled out I noticed
10 that it was Mr. George driving. Of course, from the
11 previous knowledge I already know that he doesn't have a
12 driver's license. So at that time I conducted another
13 traffic stop.

14 Q Okay. And in that second traffic stop what items
15 were recovered.

16 A When I walked up to the vehicle I could smell
17 marijuana. There was Ms. Kitchens that was actually in
18 the passenger seat of the vehicle. We had actually had
19 brought Mr. George out of the vehicle. Upon speaking to
20 Ms. Kitchens, I actually told her, look, first, they
21 declined any narcotics being in the vehicle. And I was,
22 look, we know y'all just went and picked up narcotics.
23 Tell me where it is and the time she actually padded her
24 pocketbook and said it is in here. At which time Ms.
25 Kitchens, we searched her pocketbook. She had a marlboro

1 cigarette box, it contained a clear glass pipe that is
2 commonly used to smoke illegal drugs such as meth, inside
3 a clear cigarette wrapper with a crystal like substance
4 that Kitchens said was meth. She advised this person gave
5 it to her to get rid of. I then conducted a search of the
6 vehicle and in the center console was a brown paper towel
7 that had a clear plastic pipe wrapped up in it. Also in
8 the center console was a set of additional scales. In the
9 driver's seat next to the center console where Mr. George
10 was, I located a black in color key box. It is one of
11 those magnet box, like a hide a key. Inside the key box
12 was a clear plastic baggie that contained a clear crystal
13 substance that appeared to be meth. In the driver's side
14 door was a cigarette pack that contained a plastic baggie
15 and a glass pipe. In that same area was another cigarette
16 pack that contained more clear plastic baggies. In the
17 same location was a live .22 caliber round and the
18 driver's seat was an open mini bottle of liquor that was
19 missing a top.

20 Q Okay. And Ms. Kitchens was the same lady who was
21 with him in the previous arrest, correct?

22 A That is correct.

23 Q Okay. That .22 caliber round that was found, you
24 noted that in the report obviously, correct?

25 A That is correct.

1 Q Now, what was the weight in the methamphetamine in
2 the baggies that you recovered in this case?

3 A The baggie that Kitchens had on her person had an
4 approximate weight of .06 grams. The baggie in the key
5 box in the driver's seat had an approximate weight of .4
6 grams.

7 Q Okay. Now, I know it has been a long time since you
8 have, you have spoken to or dealt with Mr. George?

9 A That is correct.

10 Q If I provided you a copy of his rap sheet, would that
11 help refresh your recollection as to what his record was?

12 A I mean, if I seen his rap sheet can I tell you what
13 his record is?

14 Q Yes.

15 A Yes, sir.

16 Q Okay. I am going to hand you this.

17 A This is his criminal history?

18 Q Yes, sir. Now, I am going to specifically ask you
19 not about the entire criminal history but I am
20 specifically asking you about one arrest or one conviction
21 rather and it was the highlighted conviction.

22 A I don't see Mr. George's name on this criminal
23 history. That is what I am looking for to make sure.

24 Q Yes, sir.

25 A I see Hugh Butler's name, he was the one who ran the

1 criminal history, it appears. Yes sir, this does have
2 Marty George's name on it.

3 Q Okay. Now, specifically related to that highlighted
4 section, Mr. George was convicted of a felony which is
5 common law conspiracy, correct?

6 A Criminal conspiracy, common law conspiracy. That is
7 correct.

8 Q So based off of that document I showed you Mr. George
9 was a convicted felon, correct?

10 A That is correct. On 5/24/1999.

11 Q Okay. No further questions.

12 THE COURT: Anything on cross-examination, Solicitor?

13 MR. BROWN: Just briefly, Your Honor.

14 CROSS-EXAMINATION

15 By Mr. Brown:

16 Q Chief Chaudoin, you said you had two incidents with
17 Mr. George?

18 A That's correct.

19 Q One on December 29th, 2018?

20 A That is correct.

21 Q And that was a DUS and a possession with intent to
22 distribute meth?

23 A That is correct, sir.

24 Q You mentioned that he had a little slurred speech,
25 other than that was Mr. George responsive to you?

1 A Oh, yes sir. He answered all the questions.

2 Q Did he give you any trouble?

3 A No, sir. Actually I dealt with Mr. George on two
4 occasions on incidents and I actually dealt with him on
5 another incident at the request of his mother.

6 Q And with that did you actually help him get a bond?

7 A We did. We actually set it up -- Mr. George appeared
8 to have issues as most people do with substance abuse
9 problems. So, you know, the idea is, the only way he was
10 going to get help with that is to be treated for it. So
11 we worked with his mother in efforts to get him into a
12 drug rehab place.

13 Q And on the second incident you charged him with DUS
14 and possession of meth. Is that correct?

15 A That is correct, sir.

16 Q And that was a small amount, .4 and then .0 -- .6
17 methamphetamine?

18 A Yes sir, I believe that is correct, sir.

19 Q And, again, that was simple possession of
20 methamphetamine, DUS?

21 A The .06 actually was Ms. Kitchens. The .04 was Mr.
22 George's.

23 Q Okay. And during that time, again, Mr. George didn't
24 give you any trouble?

25 A No, sir.

1 Q No further questions.

2 THE COURT: Anything in redirect?

3 MR. SHAFFER: Yes, sir.

4 REDIRECT EXAMINATION.

5 By Mr. Shaffer:

6 Q When was this incident where you helped him get --
7 helped him get his bond?

8 A This was after the second incident. Judge Miller had
9 contacted me in reference to his mother had set up for him
10 to go to rehab. And condition for his bond would be like
11 -- they would release him on bond but he would have to go
12 to rehab and do the rehab stuff to get off of narcotics.
13 And then, of course, he would still -- it didn't have
14 anything to do with his charges but it actually gave him a
15 chance to get out and go to rehab.

16 Q He didn't actually go to rehab, did he?

17 A I have no idea.

18 Q When would this have been?

19 A It would have been after his last arrest.

20 Q Okay. And his last arrest was what, two months
21 before he died?

22 A I am not sure when he passed away.

23 Q How long was the rehab program?

24 A I have no idea, sir. There is different ones, some
25 six months, some a year, some twelve weeks, just depends

1 on which -- what you have set up.

2 Q Okay. And you wouldn't disagree with me if I
3 informed you that he never actually went to that rehab?

4 A I wouldn't disagree or agree because I have no
5 earthly idea.

6 Q Fair enough.

7 THE COURT: Anything in recross?

8 MR. BROWN: No recross.

9 THE COURT: You can step down, sir.

10 (Whereupon, the witness steps down from the witness
11 stand.)

12 THE COURT: Next witness, Mr. Shaffer.

13 MR. SHAFFER: Your Honor, the next witness may be a
14 little bit longer. Do you want to let the jury take a
15 break or not?

16 THE COURT: Let's go ahead and get started with the
17 witness and then we can always take a break in the middle
18 of the witness' testimony.

19 MR. SHAFFER: Okay. Your Honor, the Defense calls
20 Dr. Amanda Salas.

21 AMANDA SALAS, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Shaffer:

25 MR. SHAFFER: Your Honor?

1 THE COURT: Yes.

2 MR. SHAFFER: Just for scheduling purposes, we
3 actually had a really, really short witness.

4 THE COURT: Okay.

5 MR. SHAFFER: Who I had planned on calling but I
6 didn't see back here. And now I am informed that he
7 actually is over there. Is there any way we --

8 THE COURT: Sure, we can call that witness and then
9 maybe take a morning break and then pick back up with Dr.
10 Salas.

11 MR. SHAFFER: We would call Sonny Cox, Your Honor.

12 THE COURT: Okay.

13 SONNY COX, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Shaffer:

17 Q Mr. Cox, you have already testified you are the
18 Coroner, right?

19 A That's correct.

20 Q Okay. And I called you up here just for one matter.
21 Okay. You were the first person who -- or you were there
22 whenever Joni Kitchens learned that Marty George had died,
23 correct?

24 A That's correct.

25 Q You and I guess someone from your staff were the two

1 people who informed her of that?

2 A That's correct.

3 Q Okay. Whenever -- what did she inform you of related
4 to the last time she had seen Mr. George.

5 MS. SUMNER: Objection, Your Honor.

6 THE COURT: Don't answer because I think I have got
7 an objection.

8 MR. SHAFFER: May we approach.

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: Ladies and gentlemen, I am going to have
14 to send you back to the jury room and we are going to have
15 to, I need to get with the Court Reporter concerning some
16 prior testimony. And it may take a little while to
17 accomplish that. So appreciate your patience and
18 understanding but I will need you to go back to the jury
19 room so I can get with the Court Reporter.

20 (Whereupon, the jury was excused from open court.)

21 THE COURT: All right, we had a sidebar conference
22 with the attorneys and Mr. Shaffer is wanting to impeach
23 some testimony from Joni Kitchens with Coroner Cox. And
24 Mr. Shaffer indicates that, in fact, he did put Ms.
25 Kitchens on notice of a prior conversation with Coroner

1 so we will just get the next witness. So over lunch, we
2 will get the Court Reporter to continue her work. Let's
3 bring the jury in.

4 (Whereupon, the jury came into open court.)

5 THE COURT: Let the record reflect the jury is back
6 in. Ladies and gentlemen, Sonny Cox, the Coroner, may be
7 recalled this afternoon. The Defense is going to go to
8 their witness. Mr. Shaffer.

9 (Whereupon, Defendant's Exhibits 6, 7, 8 were marked
10 for identification only.)

11 MR. SHAFFER: The Defense calls Amanda Salas.

12 DIRECT EXAMINATION

13 By Mr. Shaffer:

14 Q Good morning, Dr. Salas, how are you?

15 A Good morning.

16 Q You are obviously a doctor, correct?

17 A Yes.

18 Q Okay. Tell us a little bit about your background.

19 A I am a psychiatrist. I am Board Certified in General
20 Psychiatry, Child and Adolescent Psychiatry and Forensic
21 Psychiatry. I practice across all of my disciplines. I
22 work every weekend at South Regional Hospital, on-call,
23 making rounds for the Hospital for people that are on the
24 in-patient unit as well as in the Hospital. I have been
25 Medical Director of their in-patient over there. I also

1 work in Aiken, South Carolina at the methadone treatment
2 facility where I deal with a lot of patients that have
3 addiction. I work at a Federally qualified health care
4 center in Aiken and I provide general medical care for
5 adults and for children as well. And somewhere between
6 the use of all of that time, I do still practice forensics
7 occasionally on the weekend and after hours to review
8 cases to try to help apply under CND, (phonetic), of
9 mental illness and mental aspects to where it may have an
10 overlap with court.

11 Q So and I think you have pretty much explained this
12 but forensic involves psychiatry that deals with court?

13 A Yes, both civil and criminal.

14 Q Okay. And you have been qualified as an expert in
15 forensics psychiatry, correct?

16 A Yes, in general psychiatry, forensic psychiatry,
17 child adolescent psychiatry, general psychiatry. When we
18 are qualified as an expert, apparently it matters what the
19 words are that the attorneys use to identify your
20 discipline. And I remember that, I don't remember the
21 other language that was used to qualify me there. I will
22 reflect to the psychiatry training.

23 Q Okay. And you have been licensed to practice
24 medicine since what year?

25 A I don't remember. But I know I went to medical

1 school from 1999 until 2003. So I guess that is where I
2 got my degree. Then I think I got my South Carolina
3 license in 2004 and in Georgia as well. So I have got a
4 medical license in Georgia as well as in South Carolina.

5 Q And as a result of your work in Aiken with the
6 methadon clinic, you are also -- I imagine you have
7 training and experience involving addictions, correct?

8 A Correct.

9 MR. SHAFFER: And, Your Honor, at this time I would
10 move to qualify her as an expert in general psychiatry,
11 forensic psychiatry and addiction.

12 THE COURT: What says the State?

13 MR. BROWN: No objection.

14 THE COURT: Without objection, she is found to be an
15 expert in the various areas of psychiatry and addiction.

16 Q Okay. So your job involving Self, you said you are
17 on call every weekend. What exactly do you do on-call for
18 Self?

19 A I take phone calls for psychiatric consultations to
20 the Hospital and on the patients that are being treated in
21 the behavioral health unit. I provide consultative
22 services where I will evaluate patients that are in the --

23 COURT REPORTER: Wait --

24 THE COURT: You need to slow down a little bit,
25 please.

1 A I apologize, I also get very nervous when I testify
2 which I try to drink water and try to not tremor as much
3 by holding my hands.

4 Q Okay. So you've, we obviously consulted you in this
5 case, right?

6 A Yes. If you want me to finish answering that
7 question.

8 Q Yes, please do. I am sorry, yes.

9 A That's okay. So on-call for the hospital you end up
10 taking calls for psychiatry where a physician needs a
11 consult done. You make rounds with the patients that are
12 actually admitted to the hospital, you access them,
13 evaluate them, diagnose them, provide treatment for them.
14 Sometimes you will discharge them, you will admit patients
15 who are found to be in need of admission. We provide
16 services for patients with primary mental health issues,
17 patients with primary substance abuse usually are not
18 admitted unless they have symptoms of psychosis that are
19 not resolving within a couple of days. But I work with
20 behavioral health assessment team so that somebody else
21 going into the hospital as well and it is either a nurse
22 or social worker who is providing an initial assessment.
23 And then they staff the case with me and sometimes I
24 evaluate those patients face to face and sometimes they
25 staff the case with me that doesn't warrant a face to face

1 evaluation. And from that point we give a recommendation
2 for a treatment plan which could be anywhere from
3 admission; we need to look at a person again and do a
4 reassessment; it could even be recommending discharge
5 without even needing to come to the hospital.

6 Q And psychosis, will you describe that to the jury,
7 what that term means. I know that that's pretty in-depth.

8 A It is a very broad term and psychosis is used by
9 layman and it does not mean the same thing as it is used
10 by someone who is a specialist in the field. So we have a
11 diagnostic manual which is this big purple book and this
12 is the reference point that psychiatrist use to make
13 diagnoses and give considerations for getting to an
14 accurate diagnoses. And that way we all use the same
15 language. So when a psychiatrist talks about psychosis we
16 are talking about someone who is disconnected from
17 reality, who could be hearing voices or seeing things that
18 aren't there, they could feel things on their skin that
19 are not true perceptions. It could be that they just
20 aren't acting like themselves, it kind of changes their
21 personality, they become a lot more withdrawn. Or they
22 are guarded and suspicious where think that people are out
23 to hurt them that really aren't there to hurt them. It's
24 a distortion of thought processes, they cannot articulate,
25 their words are off clearly to make a point. And when

1 they do try to talk often times they don't give a relevant
2 answer. So you may ask a question, the answer has nothing
3 to do with the question that was asked and you can present
4 the question again and they still can't answer the
5 question in a way that makes coherence for the rest of the
6 people that would not be in the same level of distortion.

7 Q Okay. So you've come up with or you've -- you've
8 basically gotten a few opinions based off of your review
9 of this case and your review of the evidence that has been
10 provided to you, right?

11 A I have a case formulation that reflects my medical
12 opinion to what was going on.

13 Q And those opinions are to a reasonable degree of
14 medical certainty?

15 A Yes.

16 Q Could you tell us what your opinions are about the
17 case or I guess your opinion -- your medical opinions
18 concerning what you have reviewed in this case?

19 A That is a very broad question so I will do my best.

20 Q Okay.

21 A And I have not written down my thoughts so that
22 sometimes makes it a little bit harder for me. So what I
23 -- I had to figure out what was going on. The attorneys
24 case for the Defense has changed. There is an additional
25 attorney that retained me and contacted me, Mr. Goranson.

1 And he wanted me to come and meet with Mr. Hailey in the
2 jail. I met with him approximately two weeks after he was
3 arrested. And I interviewed him and at that time my
4 consideration for what was going on was very broad. It
5 included a primary psychotic element such as dispreidia;
6 schizo affective disorder; a mood disorder that could have
7 some psychosis such as bipolar disorder, substance induced
8 disorder. Lower down on my list of consideration is what
9 I really think was going on which is acute stress
10 disorder. So I don't think I have anything to write on.

11 Q Actually if you would like, you can put a mask on, I
12 can give you a piece of paper and you can write on.

13 A Okay, that would be great.

14 THE COURT: Now, Doctor, since you are away from the
15 microphone you will need to make an effort to speak up a
16 little louder, please, Ma'am.

17 A What I am drawing, I was initially asked to access
18 what I thought, or needed to be considered related to what
19 I would label as the event. And I have no opinions about
20 the events itself. That is not part of my assignment and
21 that is not my role or my job, that is a task given to the
22 jury to figure what those opinions are. So the events
23 that the Defendant, Mr. Hailey, found stressful, all I can
24 say is that for him he had a stressful traumatic event.
25 And that event relates to the charges that came out of the

1 event in which he has been charged with murder. So to do
2 a complete evaluation for mental health purposes, you have
3 to look and not just what was going on here but what was
4 going on beforehand and what was going on afterwards. And
5 you have to give consideration to, I am going to make it a
6 little bit simplified, what could be a mental illness, a
7 substance issue, a personality issue, faith, what we call
8 malingering, something else. And so that is what I had to
9 figure out and try to do by looking in hindsight as what
10 had happened with the benefit of being able to meet with
11 him in the future going forward which is -- where as other
12 people were assessing him right here or right here which
13 is -- this is where the police responded and his mother
14 saw him as well as some other family members. His mother
15 and his aunt saw him everywhere except for somewhere up in
16 here. And they all know what's going on. From that point
17 forward the police got that amount of time and my
18 assessment, to interview the others extends through all of
19 this amount of time. So what I have learned is that Mr.
20 Hailey had some stressors back here, that had nothing to
21 do with the case directly. But he is very odd and
22 eccentric which suggest something was going on with his
23 personality. What I also learned is that he had episodes
24 of drugs, sometimes they extend, sometimes they don't but
25 for approximately two years before the event itself he was

1 not using what he would intend to be using on a regular
2 basis except for marijuana. So for him there is
3 consideration to marijuana impact, cocaine and meth but
4 when he is on drugs he tends to be alone and both Mr.
5 Hailey and his mother in separate interviews, where I
6 don't think they had an opportunity to collaborate with
7 each other, described that he isolates even more, he is
8 more withdrawn, he is not agitated, and he doesn't eat.
9 Marijuana affects people very differently, cocaine and
10 meth are both uppers. So cocaine and meth can have an
11 acute intoxication, you can end up with symptoms of
12 psychosis which is the little pitchfork in our world. I
13 reviewed the video from the dash cam of the various police
14 cruisers as well as the on body cameras that document
15 exactly how Mr. Hailey was behaving at that time. It is
16 weird, that is the shortest summary I can give, it is not
17 normal behavior. But what is the origin of that behavior
18 that is not normal is something that is a long process to
19 go through these different considerations. I will call
20 this weird. So his mother tells me that prior to this
21 time period where she didn't know what was going on she
22 had seen him, I think this is approximately two days
23 beforehand, he is weird and odd per his baseline. They
24 had had an argument about he was doing things that she
25 didn't agree with such as, he thought she was trying to

1 keep him inside the house. And so they have this
2 disagreement and he decides that he is going to go away
3 for a few days. That is something that he decides on his
4 own. Somewhere in this period of time she has a
5 conversation with him, he acknowledges that he was rude to
6 her on the phone and she is going to shut off his phone
7 service. During that conversation that she had with him,
8 he was able to speak clearly and coherently. And even
9 though they had a difference of opinions about what they
10 disagreed on, she didn't think she was trying to keep him
11 in the house, he thought she was trying to keep him in the
12 house and they just don't agree on that. She did not find
13 him to be psychotic in a way that was different from his
14 baseline, he is odd and strange at baseline. Because he
15 is what he considers to be a merchant of the land capable
16 of reading nature and it is not uncommon for him to look
17 for symbols and meanings of things that the rest of us
18 might not find worthy of our attention more than never
19 having our attention.

20 Q What do you mean, give us an example of those,
21 reading symbols that he believes that he can do.

22 A So there were three rose bushes and that is the
23 number three; there were three toilets and that is the
24 number three; there are fence posts, some of them were
25 straight up and down; and some of them were at an angle.

1 On one side of the road where the victim was they were
2 straight up and down and on the other side of the road
3 they are off to the side. He doesn't really know what
4 that means. If I passed the toilet on the side of the
5 road, I would think, wow, there is a toilet on the side of
6 the road, maybe someone is throwing it away, maybe it is
7 getting picked up. For him it was, uh, I wonder what that
8 toilet is doing. And then another association comes back
9 to where there is another toilet and the next thing you
10 know he has amounted to three toilets and now he is trying
11 to figure out what is the significance of the number
12 three.

13 Q Is he thinking that this is -- a sign from God
14 basically?

15 A Well, he is a very spiritual person and since his
16 sister had died, she was young and in her 20's and it was
17 very traumatic for him and for the family. He has tried
18 to find meaning, probably at an accelerated rate for what
19 he was trying to find meanings from before that.

20 Q Okay.

21 A Where the family has kind of grieved and moved
22 forward, such as not the case for Mr. Hailey. So he also
23 has communications with the birds. So he is somebody who
24 believes that he can call for the birds and that they
25 provide him a source of comfort in communicating with

1 them. He whistles to the birds, you can hear him in the
2 video, you can hear him whistling, for several minutes he
3 whistles, he is singing hymns. Last week in the courtroom
4 he heard some birds that he thought other people heard up
5 above the courtroom. I was asked to do a competency
6 assessment again which I did this past Friday at 5:00
7 o'clock to see if there is any impairment because that is
8 an odd and strange thing that most people wouldn't
9 experience. He is competent. He feels like he can call
10 the birds and sometimes the birds come to him but they
11 provide comfort for him. It does not impair his ability
12 to focus, it does not impair his ability to communicate.
13 It is just something that he can do where somebody else
14 might take a breath. He is somebody who is going to
15 communicate either through whistling or through his
16 mentation in thinking with birds. I find all of these
17 things to be odd and not the norm of how most people think
18 and function. But I think there is something to be said,
19 that there is a personality issue for consideration to
20 this thing called Sezary personality which certainly can
21 have exacerbation by marijuana as well as cocaine and
22 meth. But marijuana would certainly take those symptoms
23 and make them more amplified. But even if you take out
24 the substances you still end up with this weird, odd,
25 eccentric thought process. So after this time period

1 where things are just weird, I saw him, is my assessment
2 which I think was on March 18th.

3 Q That is 2018?

4 A I am sorry, 2019. That was two weeks after the
5 event, two weeks. I didn't know what was going on. There
6 was a need for me to go get more information and try to
7 figure it out. My time is expensive and I don't put extra
8 effort to spend the State's money unless I am asked to do
9 something. So I had a conversation with the attorney at
10 that time and I said, yeah, there is something going on.
11 I understand why you need a psychiatrist to be involved
12 because these are really weird behaviors. This point and
13 time he was saying some weird things that related to ready
14 nature, being a merchant of the land, and these symbols
15 that I really couldn't figure out what it was about. So
16 my differential and consideration for what was going on
17 was basically --

18 Q And can you explain what differential means.

19 A All of the different things that it could be a final
20 diagnosis to explain what it is that is going on with this
21 person.

22 Q In psychiatry you look at every possibility that it
23 could be and then narrow it down from there, right?

24 A Yes. And it is the same thing that if you go into
25 the hospital and any physician there sees and will assess

1 an issue for initial complaint. You can have a belly ache
2 but they don't know if you have appendicitis,
3 diverticulitis, bad food or whatever. So they consider
4 all of that. So all of the different things that are
5 being considered are considered differential diagnosis.
6 So the list of things that may be the final diagnosis but
7 we are in the process of figuring it out and so we are
8 considering all of these things. And I'm considering all
9 of these things at that point and time and obviously this
10 is not drawn to scale. What is today, the 22nd. I spent
11 almost four hours interviewing Mr. Hailey. I didn't
12 assess him again until August 14th of this year. And in
13 the meantime a lot of the discovery had come through and
14 the attorneys had changed, they had some more
15 understanding and the assignment was a little bit
16 different at this point and time because the opinions were
17 he is working well with his attorneys. There really isn't
18 a competency issue so we knew at that point and time he
19 understood enough to be able to come and present at trial
20 and defend himself. And then the interview on Friday was
21 scheduled at the last minute for me to reassess his
22 competency at which time I also put together a little bit
23 more information, we got some of the jail records for his
24 medical care treatment. And he had told me on this date
25 that he takes a medicine called prazosin. So I don't know

1 what's going on here. After here I talked to his mom and
2 this is where I really can put together the story because
3 I have had more information. As you can see there has
4 been an extended period of time that went on in between.

5 Q And you had the opportunity to view hours and hours
6 worth of body camera and dash camera and videos?

7 A Oh yes, hours. A lot of times I don't have the
8 benefit of that much information but in this particular
9 case there were several police officers and deputies that
10 had their car dash on which gives audio, visual or at
11 least visual for some of it. And there was a lot of audio
12 including opportunity to hear Mr. Hailey in a police
13 cruiser by himself where I don't even know if he knew he
14 was being recorded. But also the benefit of the initial
15 officer on the scene who had on body cam and who was
16 recording his behaviors and his words in the home
17 environment. What all of this boils down to is that two
18 weeks later he would not be expected to be intoxicated or
19 withdrawal state from substances. Not the ones he uses.
20 From other substances, perhaps if you were a long term
21 addict of opiates or sedatives which are not things that
22 he uses. But he was still very disorganized and honestly
23 at that point and time probably highest on my differential
24 that he was in a bipolar manic episode and I was wrong, he
25 was not, because the same man that I interviewed over a

1 year later, he was less emotional at this point and time,
2 he was still odd and eccentric, he was still very focused
3 on the spirituality, figuring out how to read and
4 interpret signs, good versus evil and how that plays a
5 role in the world. He was still having thoughts that
6 don't rise to of being psychotic in a way that would make
7 him have a diagnosis of schizophrenia which is odd and
8 weird and probably you could pick up on that in a
9 conversation with him because he wants to talk about it
10 because he is not so paranoid as to hide it because he
11 doesn't see anything wrong with his thought processes.
12 And I know we don't think about three toilets on the side
13 of the road or three rose bushes that are planted together
14 or why the fence posts are leaning in one direction and
15 standing upright on the other, we are the weird ones. So
16 at that point and time I know that this is not -- and it
17 is not schizophrenia, it is not a substance induced issue
18 because it is persisting well over a year and a half later
19 with him not being in a place where he manifested
20 withdrawal symptoms for the two weeks afterwards. And
21 some of the things that I found weird were still happening
22 during the course of trial which related to him being,
23 hearing birds and thinking that he was communicating with
24 them. He is not faking this, he is not making this up,
25 the consistency of his story across the board had been

1 spot on in a way it is very atypical of me encountering
2 with most of the people that I see in the world of
3 forensics.

4 Q So most of the people aren't -- don't stay consistent
5 in the manner that he did?

6 A Not to the degree that he did. He has been very
7 consistent. And what all this amounts to is that he found
8 this event to be very stressful and very traumatic and he
9 thought his life was in danger to a point that he had an
10 emotional reaction from the experience that he went
11 through which leads to that weird, odd, strange behavior
12 and his mother felt is not how he acts when he is on
13 drugs. She has never seen him act like that before, she
14 knows that he has used drugs but that is not how he acts
15 when he uses drugs. He was still having that odd and
16 weird behavior going on two weeks later when I saw him.
17 It seems to have resolved somewhere in April based on the
18 records that I reviewed from the jail where the nurses had
19 noted that, in the same proximity to when I was seeing
20 him, they thought that he was bizarre and weird. But he
21 has been calm, coherent, cooperative from a little over a
22 month afterwards all the way through here. In September
23 of 2019 the medical provider at the jail starts him on a
24 medicine called prazosin. The only use that I have
25 encountered for it in the last ten years has been for

1 somebody who has nightmares associated with PTSD because
2 it is a blood pressure lowering medicine that is terrible
3 at that job. It doesn't work for lowering blood pressure
4 but because of how we figured out through the veteran
5 populations of using prazosin in people in the '70's and
6 '80's with that thinking that it would, realizing that it
7 didn't, but we found that it actually works on the
8 nightmares of PTSD. So it has an off label use and that
9 is what the physician at the jail initiated him for
10 treatment of nightmares.

11 Q So currently, you said in the last ten years,
12 basically prazosin is essentially only prescribed for
13 that?

14 A For the nightmares associated with PTSD.

15 Q Okay.

16 A Yes. And maybe even longer. But generously over the
17 last ten years. The other thing is that right up in here
18 Dr. Jones who is one of the ER doctors at Self-Regional
19 had an opportunity to evaluate Mr. Hailey. And I spoke
20 with Dr. Jones, not specific about Mr. Hailey but about
21 his documentation in general for how he does things.

22 Q And let me just ask, this was immediately after his
23 arrest, is that correct?

24 A Yes. He was handcuffed, I think within twenty
25 minutes he was brought straight from where he was arrested

1 at his house to Self-Reginal before he even went to the
2 detention center.

3 Q Okay.

4 A Dr. Jones does a medical clearance of it is not
5 unusual for the physicians at the hospital to be asked to
6 do this in the emergency department. But a medical
7 clearance exam to make certain that it is safe and from a
8 medical and emotional perspective, okay for him to be
9 mixed into the jail population. You don't want to put
10 somebody in the jail population if they are medically
11 compromised, they are having a heart attack, a stroke,
12 blood pressure problems out the wazoo that could put them
13 at risk, they are withdrawing, they are intoxicated to the
14 point where they can't defend themselves if they get
15 integrated into the inmates. So he did that assessment,
16 it is a brief assessment, he found that at the time that
17 Mr. Hailey was not responding to internal stimuli, his
18 medical exam was quite remarkable. Dr. Jones does not
19 give any consideration to what my opinion of what is going
20 on with Mr. Hailey at this time which is, he was having a
21 psychological distress immediately after what Mr. Hailey
22 found to be a traumatic and stressful event. By
23 definition you cannot diagnose acute stress disorder until
24 someone has had three days, and here is the number three
25 again, so you think about that right now. But three days

1 after you have been exposed to the event. So the event
2 could be, I get into a car accident and my personality
3 changes, I am shaken up from it, I am tremulous, I am not
4 able to think clearly because there is so much and I am
5 just reflecting on whatever that event was that happened
6 to me and I am trying to make sense of it. If I am still
7 incoherent three days later then I could meet criteria for
8 acute stress disorder. And if those symptoms continue to
9 persists and they happen in an ongoing fashion for a
10 month, 30 days after the event I get consideration of a
11 post traumatic disorder. So I have the benefit the other
12 people involved in this case haven't had, besides from the
13 expertise in what I do, with evaluating him months, plus,
14 plus; year, plus, plus after the fact to be able to figure
15 out what is going on. We have somebody who is weird, odd
16 and eccentric, has a substance use issue, behaviors
17 immediately proceeding this did not fit how he behaved
18 when he is intoxicated. The behaviors I saw do not have
19 compatibility with acute intoxication of drugs. He did
20 not go through a withdrawal phase. I don't think the
21 cocaine and meth play any role or bearing on what happened
22 at this point in time. And I don't see a significant role
23 for marijuana except for how it can relate to the
24 personality that he already has. So in times of mental
25 illness I ruled out schizophrenia, schizo affective

1 disorder, bipolar disorder, substance induced psychotic
2 disorder which relates to these things down here. And I
3 am left with acute stress disorder that evolved to PTSD
4 which is the cords of illness for how it unfolds for which
5 he is being treated with prazosin by the physician at the
6 jail. I don't know how to simplify that.

7 Q The characteristics you see under the -- do you think
8 those are related to drugs in any way?

9 A No.

10 Q Okay. And the -- do you believe that they are best
11 explained to a reasonable degree of medical certainty,
12 through a diagnosis of acute distress -- acute stress
13 disorder?

14 A Their representation of the psychological distress,
15 that once they persisted for 72 hours, i.e. three days, it
16 was acute stress disorder. I assess many people for how
17 mental illness, substance abuse relates to the circle, the
18 event. Because people have a certain defense, if they
19 have a mental health impairment that impacts the way they
20 are thinking at the time that a commission of a crime was
21 occurring, they get a different defense that other people
22 don't get. If it is their behavior in thinking it is off
23 because it is a substance issue, I may identify that but
24 it doesn't give them a special defense. So they are still
25 responsible for their actions if somebody becomes

1 voluntarily intoxicated on something. What I am saying
2 is, I find no factor to consider for special related to
3 mental illness and no factor to contribute related to a
4 substance abuse problem because it is weird behavior that
5 is very weird and not like him at any other point in time
6 that his mother has seen him prior to that moment when he
7 came in the house knocking on the door at like 3:00 a.m.
8 From that point forward we have weird strange behavior
9 that is an introduction of a new illness that he has not
10 had because of what happened bringing on the psychological
11 distress, the acute stress disorder that 30 days later is
12 PTSD.

13 Q Okay. And obviously you had the ability to talk to
14 Mark multiple times. You have also gotten the ability to
15 review the video?

16 A Yes.

17 Q And in that sort of standard, if you are accessing
18 for whether or not someone is insane, under the law where
19 they are not -- they are entitled to that defense, right?

20 A I think I paid attention to what you were saying.
21 Whether somebody is insane and entitled to a defense of
22 insanity?

23 Q Yes.

24 A He is not entitled to a defense of insanity.

25 Q Exactly. And even though he -- even though you have

1 reviewed all of this, there is nothing indicating that
2 insanity played a specific role in the actual shooting?

3 A No, no. Not at all. Even to the point that I had
4 asked him specifically about some of these odd and
5 eccentric things, did you hear voices that were, you know,
6 telling you. No. He will embrace all of his oddness but
7 he does not give systems of active hallucinations as
8 having any role or any bearing on what happened in that
9 circle.

10 Q Okay. So you are saying, I guess tell us the
11 difference between, what is an active hallucination?

12 A I am hearing somebody speak to me right now that is
13 not here and it is coming because there are changes in my
14 brain structure that make me hear things that are not
15 real. And it is happening right now, that would be an
16 active hallucination.

17 Q Okay. And generally if you are diagnosing an active
18 hallucination in someone, what are general signs you see?

19 A Of goodness. So this is a hard question to answer
20 because it is not the same for everybody.

21 Q I can rephrase it.

22 A Please.

23 Q And make it a little bit more narrow. Why do you
24 think that Mark Hailey was not suffering from an active
25 hallucinations at the point of -- or in that video before

1 hand.

2 A He told me he wasn't having hallucinations.

3 Q Okay.

4 A So if he had been having hallucinations, this is
5 where it becomes, "beneficial", because it gives him an
6 avenue to have a defense that he otherwise wouldn't be
7 entitled to have. He doesn't even know that, I don't
8 think he knows that. So he told me I don't hear voices, I
9 don't see things. But he does get a very keen sense of
10 being able to read nature which comes from a real object.
11 So a bird or a toilet, there really is a bird, there
12 really is a toilet when he is communicating with them, he
13 communicates with an owl out on the land. And there
14 really is an owl, whether he sees it or hears it go hoot,
15 hoot, I don't know. But there really is a stimuli that
16 makes him think that he is providing that communication.
17 There really is a toilet when he picks up on, I don't
18 know, the meaning or the significance of the event, but it
19 really is there. A hallucination has no physical auditory
20 trigger to say, should be thinking that something is there
21 and it's really not there. So it is like a mirage in the
22 desert, if you will. There is nothing there and yet you
23 see the cactus and the water and a pail to drink from.
24 There is not cactus, water, a pail to drink from.

25 Q He is just seeing objects and then thinking that they

1 are signs for him to do certain things?

2 A Correct.

3 Q Or warnings, for example, right?

4 A Simple then meanings.

5 Q Okay.

6 A And the one exception to what I just said is
7 communication with the Lord and God. So someone who is
8 spiritually inclined, connected, that is separate from all
9 of these things, you have to take into account someone's
10 cultural component. There is no point, if you will,
11 because somebody thinks that they have had Godsism or
12 special meaning or communicated with their Savior in a
13 way. There is not judgment past or held over that.

14 Q Okay. So after viewing the video, do you believe
15 that his behavior is related to drug use in the video?

16 A No.

17 Q Okay. Now, you used the DSM5 to help the diagnosis,
18 correct?

19 A Correct?

20 Q And there is a -- the DSM5, what is it?

21 A It is the diagnostic manual that, when you practice
22 in mental health you use to make diagnosis, we try to be
23 as accurate as possible in making a diagnosis because the
24 common language, the status criteria that we all know that
25 we are talking about the same thing, our field is not

1 black and white with a lot of people. We live in a gray
2 zone and this makes it a lot more consistent and clear
3 across the board so that when I tell my colleague this
4 individual has PTSD, they know what those diagnosis
5 criteria are as opposed to thinking it would be
6 schizophrenia or something different.

7 Q And it is a published book, right?

8 A Yes.

9 Q And it's generally seen as reliable in the community,
10 correct?

11 A I don't know how the community looks at mental
12 illness and how we make diagnosis, I think that is a
13 little different. But it is published by the American
14 Psychiatric Association. It's reviewed, I think the
15 current edition came out in 2012 and basically went into
16 effect in 2013.

17 Q Okay. It is generally seen, reliable in the
18 psychiatric community?

19 A Yes.

20 Q Okay. I am going to show you Defendant's number 18

21 --

22 THE COURT: Mr. Shaffer, do you still need the Doctor
23 down there?

24 MR. SHAFFER: She can get on the witness stand.

25 THE COURT: Do you mind coming back up, Doctor,

1 please.

2 (Whereupon, the witness returned to the witness
3 stand.)

4 MR. BROWN: Judge, can we approach?

5 THE COURT: Yes.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 Q I am showing you Defendant's 8 for ID. And what does
10 that appear to be?

11 A It appears to be and I recognize it as being the
12 Diagnostic Criteria for Acute Stress disorder that is
13 published in the DSM5 by the American Psychiatric
14 Association.

15 Q Okay. And the -- and that is, I guess, the DSM5 is
16 sort of like the -- generally recognized Bible of
17 diagnosing --

18 A I use an acronym, I realize someone might not have
19 been aware, DSM stands for diagnostic and statistical
20 manual of mental disorders, fifth edition. And that is
21 what the purple book that have with me today.

22 Q Okay. And that pretty much comes -- pretty much
23 every psychiatrist and psychologist uses that to diagnosis
24 stuff in America, correct?

25 A They should be and people who are practicing mental

1 health, even if they are licensed professional counselor,
2 social workers, working on addictions, they should all be
3 referencing this if they want to be current with the
4 standard of care that we promote by the American
5 Psychiatric Association.

6 Q Okay. What characteristics in that -- it has a list
7 of criteria for acute stress disorder, correct?

8 A Yes.

9 Q And what characteristics did Mark Hailey exhibit
10 which are also present in that document?

11 A He identified the event as traumatic for himself; he
12 witnessed it in person so he meets diagnostic criteria A;
13 diagnostic criteria B relates to the symptoms of
14 intrusion, having a negative mood, dissociative symptoms,
15 avoidance and arousal. He was having problems with his
16 concentration which is one of the arousal symptoms. He
17 was disconnected from the world around him. So there is a
18 dissociative component. Over time he has led to
19 avoidance, even the interview I had with him two weeks
20 thereafter he was not able to talk about the event itself.
21 In giving his story he had extreme emotional increase and
22 intensity which is the avoidance, it brings on the
23 negative mood. The negative mood was picked up also by
24 the jail staff in which within the first couple of weeks
25 afterwards they had considered treating him for depression

1 because his mood was so negative, which he does not have
2 depression. He has had, subsequent to the, what you see
3 on the body cam, he has developed nightmares. Obviously
4 he wasn't having nightmares at that time because he hadn't
5 even slept. But he had the dissociative reactions, some
6 of what I saw related to -- he was very still as far as
7 where he was standing with his posture. So when the
8 officer first comes on you see Mr. Hailey standing off to
9 the side of the kitchen, away from where his family was.
10 And he is intently reading his Bible. It is not uncommon
11 for somebody who has a significant amount of stress and
12 stress reaction to feel overwhelming amounts of guilt and
13 trying to find a way to resolve that in taking blame for
14 things out there to take blame for. That is part of what
15 we have to give consideration to. So separate from the
16 actual diagnostic criteria there are different components
17 and associated features that we have to give consideration
18 to. I previously mentioned cultural factors. What I saw
19 was somebody who was in shock, he was not paranoid by
20 observations. His eyes were not darting all over the
21 place. He had, what we call an increased onset of speech
22 which is, you ask me a question and it takes me a
23 prolonged amount of time, it is an uncomfortable amount of
24 time for me to respond to whatever your question is. And
25 that is something, in the world that I work in, we give

1 consideration to because it can be a manifestation of
2 psychosis. He was repeating things. If his mother or
3 aunt or officer asked him a question, he did give a
4 relevant answer, he wasn't off on a tangent. It just took
5 him a long time to get to that response and then when it
6 came it was repeated. Warner Road, Warner Road. It
7 wasn't incongruent with the evidence. I saw somebody who
8 was not hiding from an event. He was reexperiencing it in
9 real time. There was a lot of distress to the point that
10 he was shaking. And I might not have picked up on the
11 shaking except it was in the police report that he was
12 shaking and his mother told me he was shaking and she had
13 never seen him shake like that before. When we are under
14 stress we shake, hence when Mr. Brown approached me
15 earlier and I was standing there with my arms crossed, I
16 said to him, something to the effect that I get nervous
17 when I come to court and I shake. I mean, when we get
18 nervous we shake, that is what we do. That is similar to
19 what he did in that night. When you have somebody who is
20 psychotic on drugs and paranoid on drugs, they usually
21 have a lot of paranoia related to the law. And I didn't
22 find the behaviors that Mr. Hailey exhibited in that video
23 to be fearful, afraid, scared, guarded against law
24 enforcement. I saw somebody who was cooperative with law
25 enforcement for the most part. When he got in the police

1 cruiser and he gets real loud and is screaming out, just
2 this kind of sound, the officers I think said something to
3 him about, you know, I wonder if you can stop that or calm
4 down or be quiet or whatever. But it was a moment later
5 he got quiet again. The most resistance that I saw out of
6 Mr. Hailey was when, at the end of that audio from the
7 police cruiser who took him to the hospital, he was
8 singing hymns, he was whistling to the birds. When it
9 came time to get out and actually to go into the hospital
10 he didn't want to go apparently and they had to ask him
11 several times over and over again, please, please get out
12 of the car, just come with me, it is cold out here, don't
13 make me stand out here any longer. And eventually he went
14 and the record from Self-Regional shows that he was not
15 agitated or aggressive. His pulse was up, I think it was
16 117 documented by the nurse who would have done his
17 intake. They did not obtain a blood pressure on him. It
18 is not uncommon to have your pulse elevated in a variety
19 of issues but it is congruent with my retrospective
20 hindsight analysis as well as it could be other things.
21 But separate from that, Dr. Jones documented a normal rate
22 when he did his evaluation which tells me that, the
23 reading that the nurse staff got, what Dr. Jones
24 assessment from putting his stethoscope over his chest was
25 that, that is just not really an impressive finding.

1 Q Okay. And for the records at Self, there is
2 obviously no indication that he was actually on drugs or
3 high at the time, correct?

4 A No. In fact, Self-Regional records --

5 THE COURT: Mr. Shaffer, how much longer do you
6 believe your direct is going to take. We may want to take
7 a short break, I hate to interrupt.

8 MR. SHAFFER: I probably have one question after this
9 one.

10 THE COURT: All right, very good.

11 A Dr. Jones documents, he appears well developed, well
12 nourished, no distress, African American male sitting
13 upright in a wheelchair. He is able to get up and
14 position him on the bed. Cardiovascular, normal rate,
15 normal heart sound. Patient will respond to his name, he
16 will not verbalize any further conformation. Will follow
17 commands, he does not appear to be responding to any
18 internal stimuli. Psychiatric, unable to evaluate. Dr.
19 Jones did not order a behavioral health assessment consult
20 which had he suspected or identified psychosis would be
21 typical of what is done at the emergency department.

22 Q And you know that from personal experience from
23 working with Self, correct?

24 A There is a very low threshold by the psychiatric
25 providers as far as the ER doctors pursuing behavioral

1 health assessment evaluation.

2 Q Okay. And I actually had two more questions. One
3 is, eventually you were able to get -- talk to Mr. Hailey
4 and get a story about what had happened at that later
5 date, correct?

6 A Yes.

7 Q Now, and with this -- the only other question I have
8 is, obviously you X out cocaine and meth. These lines,
9 you didn't mean to point to the actual stimulus saying
10 that he was on cocaine or meth at the time, right?

11 A No.

12 Q Just wanted to make sure. I know you drew the lines
13 ahead of time, I just wanted to make sure that that was
14 not --

15 A That is not drawn to scale. And if it looks like
16 that it is not my intent to reflect that he was on drugs
17 at that time because my professional medical opinion is
18 that he was not being impacted by substances in the circle
19 of what I call the event.

20 Q Okay. And that would have been at the time Marty
21 George died and immediately thereafter, correct?

22 A I actually labeled the event at the time Marty George
23 died.

24 Q Okay. No further questions.

25 THE COURT: Solicitor, how long do you anticipate

1 your cross being. If you feel like you are going to be a
2 little while I would like to go and take a break.

3 MR. BROWN: Judge, it will probably be a little
4 while.

5 THE COURT: Ladies and gentlemen, before I make a
6 determination about lunch, I am going to kind of get a
7 better idea of how much longer we are going to be with
8 this witness. Go back to the jury room for a break and we
9 will get you back out and make a determination where we
10 are going to go from there. Thank you.

11 (Whereupon, the jury was excused from open court for
12 a break.)

13 THE COURT: Solicitor, just rough idea, I am not
14 going to hold you to it but how long do you think you are
15 going to need for cross?

16 MR. BROWN: Thirty.

17 THE COURT: It is almost 20 after, if we can get
18 finished with her by lunch time, by 1:00, and then we will
19 break for lunch. Let's take a break.

20 (Whereupon, a short break was taken.)

21 THE COURT: I understand that the lawyers have had an
22 opportunity to get with the Court Reporter. We will deal
23 with that, let's go ahead and get the jury out and wrap up
24 with the Doctor and then we can talk about the other
25 later. So let's bring the jury out, please.

1 (Whereupon, the jury came into open court at
2 approximately 12:29 p.m.)

3 THE COURT: Let the record reflect the jury is back
4 in. Ladies and gentlemen, we are going to finish up with
5 Dr. Salas and then break for lunch. Solicitor, you may
6 proceed.

7 MR. BROWN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 By Mr. Brown:

10 Q Good afternoon, Dr. Salas.

11 A Hey.

12 Q The first time we talked was this morning, is that
13 correct?

14 A Yes.

15 Q Okay. One of the things you mentioned to Mr.
16 Shaffer, you mentioned that Mr. Hailey said he hadn't
17 slept. I think you mentioned that kind of towards the
18 end, that he had not slept. When was that?

19 A He had not slept between the event and -- several
20 hours of the recording. So that will interval a time from
21 the time the event happened when he was on police body cam
22 and stuff. I wouldn't have expected him to have had sleep
23 so I wouldn't be able to assess a nightmare component.

24 Q Okay. Do you know close in time the death of Marty
25 George happened on Warner Road to the time law enforcement

1 got there?

2 A I think it was pretty proximate.

3 Q Now, Dr. Salas, you mentioned your diagnosis for Mr.
4 George or Mr. Hailey is acute stress disorder. Is that
5 correct?

6 A Yes.

7 Q Okay. And that would occur at the time of the event,
8 right?

9 A No.

10 Q Or it would be after that?

11 A Three days after the stressful event happens. So you
12 have a change in behavior. It used to be with the DSM4,
13 acute stress was immediate and with the DSM5 it has become
14 three days. So you have a stressful reaction and if it
15 persists for three days the third day is when you can
16 diagnose the acute stress disorder. And if it persists
17 greater than 30 days or after 30 days from the stressful
18 event, somebody develops new symptoms of PTSD that is when
19 they can qualify for the diagnosis of PTSD.

20 Q So he doesn't qualify for PTSD?

21 A He does qualify for PTSD.

22 Q And how close in time after the event did you first
23 meet with Mr. Hailey?

24 A I met with him on the 18th of March of 2019.

25 Q So approximately 12 days later?

1 A The event happened on the 6th, yes.

2 Q Now, you said you had a chance to review the video,
3 the body cam, is that correct?

4 A Yes.

5 Q And you also mentioned that he was able to, it would
6 take him a little bit to answer the question but he would
7 answer the question?

8 A Yes.

9 Q Like Warner Road, my name is Mark Hailey, sir.

10 A He would answer some of them. I think some of them,
11 there was a lot longer.

12 Q So his memory was working at that time?

13 A That's not an assessment of memory per se, that's
14 like knowing how to tie your shoes, great memory, the
15 ability to know your name is something that you are not
16 relying on what I ate for breakfast this morning. You are
17 not relying on short term, immediate. Warner Road might
18 be more of an immediate recollection.

19 Q And Marty George, the name?

20 A Yes.

21 Q You also mentioned that -- so acute stress disorder,
22 the trauma would be -- would be after the event, right,
23 his reaction would be after the event?

24 A Right. You can't have a stress reaction when you
25 don't know that you are stressed. So you have the event

1 and then you have a reaction.

2 Q Now, you mentioned you were able to talk with his
3 mother, Loretta Hailey?

4 A Yes.

5 Q And you have reviewed the video footage?

6 A Yes.

7 Q Did you hear in the video footage, when officers
8 asked Ms. Hailey, does he act like this before, does he
9 have any other mental health issues?

10 A Yes.

11 Q And Ms. Hailey said no?

12 A She said that he doesn't have the mental health
13 history, I don't recall how they were asking it at the
14 time, I don't remember if she was saying he hasn't acted
15 like that before or not. But she spontaneously put out
16 there his substance abuse, that's true.

17 Q And that he only acts like this when he is high?

18 A I don't remember that that is exactly how she said
19 it, I would have to replay the video to see how she
20 characterizes it. But there was a relationship that she
21 made between his current behavior was not his norm and
22 that she has seen him not function his normal when he is
23 high.

24 Q When he is high?

25 A Correct.

1 Q And also in reviewing this case, in the video did you
2 also hear about his behavior the day before?

3 A Yes. So his mother had not seen him the day of
4 because, I think somebody left the house, I don't know who
5 left when. But one of them was asleep and one of them
6 left and they didn't have any interaction of that
7 particular day. There was some lay person qualifications
8 about him being paranoid and not acting right. And what
9 that amounted to was a summation of he was in an up and
10 move out and didn't really have a plan of where he was
11 going to go, it just was a loosely organized plan, didn't
12 make sense that he was, "talking out of his head".
13 Because it didn't make sense what he was saying for what
14 the family thought would be part of his normal behavior.

15 Q And that would have been his aunt, right?

16 A I think that was coming from his aunt.

17 Q His aunt and then also his mother, that he had left
18 the day -- he left on March 5th before she was up, about
19 7:30 in the morning. Does that sound familiar?

20 A Yes. And I think he had seen his aunt on the day of
21 because he went and ate with her at Hardee's where she
22 works.

23 Q Were you also aware that he was talking about three
24 dots, seeing three dots on the way into town on March 5th?

25 A There was a lot about the number three having

1 significance.

2 Q With three dots?

3 A I don't recall the three dots specifically, quite
4 honestly.

5 Q Do you also remember hearing in the videos, talking
6 with the family. The reason why Loretta Hailey cut his
7 phone off?

8 A I remember the explanation was that he had been rude
9 to her in some form or fashion, they had had a
10 disagreement. I don't recall what the disagreement was
11 about. But I know from Mr. Hailey, his reflection on that
12 was that his mother should have cut his phone off because
13 he was very rude to her. And he, in hindsight, thinks
14 that she should have cut his phone off and he wanted to go
15 to the pawn shop so he could get money to have his phone
16 turned back on in anticipation that she was seriously
17 going to cut his phone off.

18 Q Are you familiar that he accused his mother and aunt
19 of putting roots on him?

20 A Yes.

21 Q And he was thinking that his aunt and mother were
22 against him, out to get him?

23 A Yes, they didn't want for him what he wanted for
24 himself.

25 Q Would you say that is paranoid, that somebody is out

1 to get you?

2 A Not necessarily. It depends on the context and the
3 extent. So when someone is paranoid, it is going beyond a
4 normal extreme. I do think that he is odd and eccentric
5 in functioning on the paranoid side of life. I think that
6 is just, that is his character, that is his personality,
7 that is his composition. But the dialogue that his aunt
8 and his mother were referring to in the video, where they
9 are trying to make sense of his behavior and they don't
10 really know how to make sense was an application of what
11 would be the most obvious answer which is, he uses drugs,
12 he is on drugs, must be. Because just like Dr. Jones,
13 they don't consider an alternative.

14 Q In your review of this case, did you speak with
15 anybody that he was with, after leaving his mother and
16 aunt that afternoon about what he was doing and his
17 behavior?

18 A I spoke with Dr. Jones about his documentation but I
19 did not speak with him directly about his assessment for
20 two reasons. Most paramount, is that at the time when I
21 spoke to Dr. Jones I didn't have written consent, I have
22 verbal consent from Mr. Hailey to be able to speak with
23 him but didn't have written consent. And number two, I
24 have no expectation that Dr. Jones is going to remember
25 Mr. Hailey.

1 Q Well, Dr. Jones was in after the event took place. I
2 am talking about the night of March 5th into the early
3 morning hours of March 6th, did you talk to anybody that
4 was around Mr. Hailey at that point?

5 A I did not talk to his aunt, I talked to his mother.
6 I did not talk with the people that he identified and I
7 did not reach out to the victims family or anything, I did
8 not reach out to the officers.

9 Q So you don't know what he was doing that night?

10 A I know what he told me.

11 Q And what was that?

12 A He told me that he was at somebody's else -- this is
13 a convoluted story, this is not my story so it's -- it's
14 very convoluted. He was at Mr. George's house and he had
15 taken his belongings with intent to stay there for a short
16 amount of time but longer than a few hours because he
17 wanted to be away from his mother because he felt like she
18 wasn't letting him out of the house and he wanted to be
19 away from that. And Mr. George wanted to go to Abbeville
20 and Mr. Hailey had reason to believe that that would
21 relate to a drug deal, he didn't want to participate in
22 being in a vehicle with what he, Mr. Hailey thought was
23 going to happen with this trip to Abbeville. So Mr.
24 George took him to somebody else's house and dropped him
25 off there with some other people who, one of them had to

1 go wash clothes at somebody else's house. So they go from
2 there, he goes with the person to wash clothes off of a
3 different location because the person at that house wanted
4 to go to Anderson and party and he didn't want to do that.
5 So he is over washing clothes with somebody, at somebody
6 else's house which actually put him back in closer
7 proximity to Mr. George's residence. And then they end up
8 going back to the house where he was waiting while this
9 trip to Abbeville was going on. And then Mr. George came
10 with his wife, his wife driving the car, Mr. George is the
11 passenger to pick up Mr. Hailey and then go back to Mr.
12 George's house where Mr. George says, you're not staying
13 here, I am going to take you home. Mr. Hailey went to
14 retrieve his belongings and Mr. George's wife stayed at
15 the house. Mr. George went to retrieve his belongings
16 from the bathroom and then get back in the car where Mr.
17 George told him to sit in the back even it was just the
18 two of them.

19 Q Now, the question would be, did you talk to any of
20 those people he was with that night on how he was acting
21 and different things he was saying?

22 A No.

23 Q Okay. Are you familiar with potential drug use that
24 night upon Mr. Hailey?

25 A Yes.

1 Q So what you are saying in this diagnosis is he could
2 have been doing drugs?

3 A What I am saying is that he could of had substances.
4 If you were to check a blood level or urine drug screen,
5 if you found something positive, in my brain I still would
6 have been processing why is it positive and how does that
7 apply to what is going on.

8 Q Now, if somebody had been doing drugs, say
9 methamphetamine or a combination of drugs for a long
10 period of time leading up to March 5th and March 6th,
11 could that person exhibit hallucinations?

12 A Yes.

13 Q Visual and audio hallucinations?

14 A Yes and other hallucinations. They usually have a
15 lot of tactile hallucinations as well. A lot of weight
16 loss because they quit eating, these are stimulants, they
17 rev you up. A lot of them are similar in chemical
18 composition as diet pills. They are stimulants, I mean
19 they do rev you up, they suppress your appetite. And if
20 it is chronic long ongoing drug use you would expect also
21 to see a weight loss. Some level of malnourished
22 appearance, you would expect to see picking of the skin, a
23 restlessness that is not a stretching of the arm,
24 extending it like what we saw him doing in the video and
25 not the fine tremors of holding the Bible and shaking per

1 se. But you get pacing, you get this internal energy and
2 you can't get rid of it and you are just back and forth,
3 back and forth and back forth.

4 Q Internal energy if you are on drugs?

5 A Internal energy if you are on uppers.

6 Q On uppers. Well, saying that, the internal energy,
7 are you familiar with -- again, you watched the video,
8 right?

9 A Yes.

10 Q Body cam. Do you remember him saying roughly between
11 four minutes and 30 seconds and five minutes and 30
12 seconds in this video that the energy was out of my mind
13 and I heard him?

14 A I do. I remember saying something that does not
15 refer to his internal energy. He is using the term,
16 energy, as it were relates and applies to a force of
17 nature which you also hear him repeat several times in the
18 video. And a negative energy force as if somebody was
19 experiencing God as a positive energy force, that there
20 was a negative energy. There was -- use of words and
21 terminology that in and of themselves sound weird and odd
22 and you cannot apply a rational non-odd and eccentric
23 brain to the interpretation of an odd and eccentric brain
24 because you are not coming from the same wave length.

25 Q Okay. But just to be clear, Mr. Hailey is competent,

1 he is not insane?

2 A Correct.

3 Q And there was also another statement where he says,
4 hallucinations, I couldn't reckon with it.

5 A I don't remember specifically where that one was.

6 Q It was right after the energy was out of my mind and
7 I heard him and symbols I was seeing, I was hallucinating.
8 I can't play these games no more. And then after that,
9 hallucinations, I couldn't reckon with.

10 A When he described to me related to spiritual
11 experience, and I want to be very careful about going into
12 the event because that is not for me to pass judgment on.
13 But what he described for me was related to reading nature
14 in the moments riding down the road before the event
15 occurs and trying to make sense of what happened in that
16 car and his words to me related to his physical body being
17 separate from his spiritual body which was not a psychotic
18 process as far as schizophrenia and hallucinations. But
19 it was his description of a spiritual belief system
20 applied to an event.

21 Q Now, but that would have been before the traumatic
22 event, right?

23 A That was related to the traumatic event directly.

24 Q Now, you did mention to Mr. Shaffer, you mentioned a
25 mirage, that sometimes you can see -- during the desert

1 you can see a water hole and a cactus but it might not
2 actually exist. You also mentioned, I think, distorted
3 views. So at this time could he have been seeing
4 something that was not firmly grounded in reality?

5 A At which time?

6 Q Going down the road.

7 A Going down -- I don't know that his brain at that
8 time was reading in the same reality that the rest of the
9 world without those odd and eccentric beliefs hold.

10 Q So he could have been seeing stuff that was not
11 actually happening?

12 A He told me he was not seeing things that were not
13 there. Like in his mind, even when I asked somebody who
14 is psychotic, are you hearing things that aren't there,
15 are you seeing things that aren't there. If they answer,
16 yes, that gets me to the next question which is, what is
17 it. And sometimes the answer is a very real, I am hearing
18 that too but I have a different concept of what it is.
19 And sometimes it is like, oh yeah, you are not on the same
20 playing field that I am on right now. And he has not
21 experienced or at least he has not endorsed auditory and
22 visual hallucinations when I have interacted with him, for
23 any of those three interviews, when I interviewed him.

24 Q Well, the night he was arrested you mentioned an
25 auditory hallucination. Do you remember that?

1 A I don't.

2 Q This was at the six minute, 40 minutes; six minute,
3 42nd mark, while he is sitting on the couch. What I heard
4 yesterday took me right over to that spot. I never heard
5 nothing in my life that sounded like that --

6 A I do remember now that you mentioned that.

7 Q -- he heard the day before.

8 A He talks to me about that. I am looking to see if I
9 wrote it down specifically. It is hard for me to write
10 and interview at the same time. But he believes he has a
11 gift from God on the inside. Everything is in it's place,
12 everything has it's place. The color red has a lot of
13 symbolism for him.

14 Q And that would have been things he was also -- the
15 symbols he was -- prior to this event?

16 A Yes.

17 MR. SHAFFER: Your Honor, I would ask that he allow
18 the witness to complete her answer before he asked her
19 another question.

20 THE COURT: Okay. If at any time, Doctor, you
21 believe that you are not being allowed to give your full
22 answer just let us know that. Okay.

23 WITNESS: Okay.

24 THE COURT: Thank you.

25 A Where were we?

1 Q I think the symbols prior to the event.

2 A Right and I think you were talking about something
3 related to he had heard -- he had never of heard
4 something.

5 Q That's right. What I mentioned about the six minute
6 and 42nd mark in the body cam of James Bonetti, while he
7 is sitting on the couch he says, what I heard yesterday
8 took me right over to that spot. I never heard nothing in
9 my life that sounded like that.

10 A I think that Mr. George was referring to --

11 Q Mr. Hailey?

12 A I am sorry, yes, Mr. Hailey. Thank you. Mr. Hailey
13 was referring to, well, the good Lord helped put something
14 in my path. And so Mr. Hailey left to go for a walk up
15 the path and he found three or four arrow heads which,
16 again, he is a merchant of the land so he relies on the
17 land to give him things so that he can go pawn them for
18 money or sell them to individuals for a source of income.
19 I think that is what he was talking to or referring to.
20 But there was, in the time period beforehand, these quasi
21 psychotic very bizarre ideas. When you talk with Mr.
22 Hailey, he conceptualizes them from his spiritual being in
23 existence which means you have to put a heightened
24 threshold on consideration of a bipolar and
25 schizo-affective type diagnosis because there is a lot of

1 hyper-religiosity that goes with those things. What I
2 have found in talking with him and those very distinct for
3 what his experiences are, it may take him a long time to
4 get there and sometimes I think he does and sometimes I
5 don't think he does. But in hindsight he can reflect on
6 something and say, you know what, that probably, I don't
7 know what it meant or didn't hold the meaning that I
8 thought of at the time when it was happening. But it
9 takes a lot of processing for him to get to that point.

10 Q So you said just now, in hindsight as he is
11 reflecting back on things that it probably didn't mean or
12 maybe didn't appear to be something he thought it did at
13 that time. Is that what you said.

14 A Correct. There are still some things that he
15 believes hold meaning. He is still trying to help me
16 understand something about some pink and blue rocks that
17 have symbols on them. And I don't know what you are
18 talking about, I don't know.

19 Q Speaking of pink and blue, in that video when he is
20 being transported to the hospital, did you catch him
21 saying anything about pink and blue ribbons?

22 A I did. And he mentioned that to me in one of the
23 interviews.

24 Q Now, going back to that six minute, 40 second mark,
25 what I heard yesterday took me right over to that spot.

1 Do you remember what the questions were prior to that from
2 his mother?

3 A I don't recollect.

4 Q About Warner Road?

5 A I don't remember.

6 Q That was all right there together, you don't dispute
7 that.

8 A No, I don't dispute what's on the video.

9 Q Okay. But, again, acute stress disorder would be
10 after the event, correct?

11 A Correct. So it had no bearing on the event itself.

12 Q So before the event his actions or demeanor would be
13 attributed to something else?

14 A Correct.

15 Q Perhaps drugs?

16 A Pardon?

17 Q Perhaps drugs?

18 A I think that his history points in the direction that
19 you have a substance abuse problem with Mr. Hailey. It
20 was, there were times when it was a lot more intense and
21 his use after his sister's death had become a lot less
22 intense, more sporadic. But across the board what I found
23 was somebody who has an odd, strange, eccentric, bizarre
24 personality where he takes a more guarded stand on
25 interpreting life. Because the explanations that I got

1 from understanding, it is hard for me to see my own graft
2 up there, the angle on that --

3 Q If you need to step down.

4 THE COURT: Or you can maybe hand it to her.

5 A Thank you. So the odd and eccentric personality and
6 the drug use that is before this particular event, the
7 drug use he tells me has not continued after his sister's
8 death at the same intensity that it had before his
9 sister's death. But he had used drugs subsequent to her
10 death and that was a two-year time period from when his
11 sister died until this event. And that after the event, I
12 am not naive enough to think that there is not an access
13 point for drugs in the detention centers. He has not been
14 using drugs for what he tells me his behaviors are not
15 congruent with substance use and I don't see concerns in
16 the medical records from the detention center about
17 substances. So what we are left with is somebody who has
18 these odd, weird perspectives before the event and
19 continues to have odd, weird, strange perspectives after
20 the event which is not explained by drugs, not explained
21 by PTSD, schizophrenia, bipolar, schizo-affective. It is
22 not anything other than his personality.

23 Q And his personality is some of the things he would
24 think or actually happening, would you agree that a lot of
25 this is a reasonable prudent person of ordinary firmness

1 might not agree with it, what he is saying or what he
2 believes?

3 A To the extent that --

4 MR. SHAFFER: Judge --

5 THE COURT: Wait a minute, Doctor, I got Mr. Shaffer
6 standing.

7 MR. SHAFFER: Can we approach.

8 THE COURT: Sure.

9 (Whereupon, a bench conference was held in the
10 presence of the jury but out of the hearing of the
11 jury.)

12 THE COURT: Solicitor, you may want to repeat that
13 question again.

14 Q Dr. Salas, again, you mentioned that Mr. Hailey could
15 have distorted views or what he is seeing or what he is
16 going through in his head is really not grounded in
17 reality. Is that correct?

18 A It is distorted that it is not mainstream beliefs,
19 yes.

20 Q Okay. And with that, generally speaking, in your
21 opinion some of these beliefs based on his personality,
22 would a reasonably prudent person of ordinary firmness and
23 courage have entertained the same idea?

24 A No. So for example, with the fence post. I would
25 not have found significance in meaning between fence post

1 on one side of the road standing up and down, holding a
2 meaning for me as I am driving down a dirt road and they
3 are leaning on the other side. But that doesn't really
4 matter to me. But what it doesn't mean that if you come
5 up here and punch me in the face do I think that has
6 anything to do with thinking that I have been attacked and
7 now being attacked, being a paranoid basis. No, there is
8 some things that you would have that is very congruent
9 with what everybody else is seeing. But the issue is that
10 I might think, well, I should have interpreted those fence
11 post to mean something was getting ready to happen. I
12 should have read nature better than what I did.

13 Q Or as far as something was not going to happen?

14 A Who knows.

15 Q Who knows. Now, you mentioned also the traumatic
16 stress, you mentioned that he witnessed the event, he
17 would also become disconnected or avoid people. Based on
18 talking with the family and him, was that said to you
19 before that he also avoided people and disconnected prior
20 to the event?

21 A He at times was isolating. I don't know if you would
22 call that disconnecting but essential isolation, essential
23 withdrawing with something that would happen when he was
24 on drugs. What that means is that, of course what would
25 normally come out in interactive people, when he was on

1 drugs he was in his room and not with the family. He just
2 didn't intermingle, he didn't spend time around them, he
3 went off on his own or he stayed in his room when he was
4 home.

5 Q So when he was doing drugs he would isolate himself
6 to his family but they wouldn't see what he was doing?

7 A Correct.

8 Q Going into another room?

9 A Correct or not be at home.

10 Q And, again, you haven't talked to any of the people
11 that were with him the night before, early hours before
12 this event?

13 A I did not.

14 Q To learn of his demeanor or behavior?

15 A I did not.

16 Q Or what they potentially witnessed?

17 A No.

18 Q So you can't say definitively that drugs didn't have
19 an affect on him leading up to this event?

20 A I can't say that there is a -- there is not somebody
21 who will say that they didn't see him using drugs because
22 there is probably somebody who will say he was using drugs
23 because he was around people who used drugs. But what I
24 can say is my assessment has considered substance use,
25 intoxication and withdrawal for what I have observed in

1 that period of time immediately following the event for
2 what is captured on police body cam and the time that has
3 unfolded since then. Drug use does not explain the
4 behaviors to why he is weird and odd and not his normal
5 self for what you capture on the body cam.

6 Q Could there be overlap somewhere with drugs and acute
7 stress disorder?

8 A There can be. There are people who, they could have
9 a stressor and a traumatic event and they are on drugs and
10 they still have a traumatic event and end up with an acute
11 stress disorder.

12 Q Again, hallucinations can occur and hear voices on
13 drugs, that could be a symptom of drug use, right?

14 A Yes. Hallucinations can be a symptom of drug use,
15 absolutely.

16 Q And, again, Mr. Hailey is competent?

17 A Yes, he is competent.

18 MR. BROWN: I beg the Court's indulgence.

19 THE COURT: Sure, take your time.

20 MR. BROWN: No further questions.

21 THE COURT: Okay. Mr. Shaffer, any redirect as to
22 any new matters brought out by, on cross?

23 MR. SHAFFER: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 By Mr. Shaffer:

1 Q Obviously we talked about the fact that you are a
2 substance abuse expert and you have had quite a good bit
3 of experience. The Solicitor asked you about a drug
4 overlap or overlap of drug use contributing to this as
5 well. Do you have -- while you can't definitively say it
6 didn't happen, do you have any evidence that drugs
7 contributed to this incident?

8 A I understand why somebody would consider drug use for
9 what they observed in the time period afterward. But what
10 happened afterwards, in my opinion, is not related to drug
11 use.

12 Q Okay.

13 A I don't find evidence of intoxication, I don't find
14 evidence of withdrawals when you put that whole timeline
15 together.

16 Q Okay.

17 A The only way how you can make those types of
18 conclusions is by considering the before, the during and
19 the after.

20 Q Okay. The Solicitor also asked you about what Mr.
21 Hailey said. And then you told part of what he said to
22 you and then the Solicitor asked you another question.
23 What did Mr. Hailey -- what was the rest of what Mr.
24 Hailey said to you.

25 A Which time, I am sorry.

1 Q Oh, about the event, about the events leading up to

2 --

3 MR. BROWN: Judge, I object to this question.

4 MR. SHAFFER: Can we approach?

5 THE COURT: Yes.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 Q These cultural religious things that you talked
10 about, I think you said something about roots. Can you
11 expand on what exactly you are talking about and why you
12 consider that not mental illness as opposed to a cultural
13 religious type thing.

14 A There is a geographic region which we live in, a
15 concept that a person has a root put on them which is, I
16 could say you wronged me, I don't like you and I am going
17 to put a root on you. And that is not psychosis from
18 drugs, it is not psychosis from schizophrenia, bipolar or
19 anything else. It is because you believe that the use of
20 roots to bring misfortune or a fortune on somebody else is
21 something that is very real and possible.

22 Q Okay. The signs that Mr. Hailey discusses, you don't
23 characterize them as hallucinations, is that because they
24 are grounded in reality or a lie?

25 A A hallucination comes where there is no trigger of --

1 it comes from impaired to wrong inspiring over excitedly
2 inside -- there is not an altered perception. So for
3 example, last week sometime Mr. Hailey thought that he
4 heard birds over the top of the Court House. That is not
5 a hallucination in that in proximity to when that was
6 happening there was an auditory sound that was attributed
7 to like the air-conditioning unit coming on or something
8 making a sound. And for him he took it to mean something
9 that nobody else would have taken it to mean. So that is
10 not an hallucination because there was a trigger that was
11 misinterpreted and miss-applied and the context of what he
12 believes which is when I am distressed I can call for the
13 birds or the birds will come to me and I can communicate
14 with the birds to reduce my stress. And this happened at
15 a time that the videos were being played which is very
16 congruent with a PTSD reaction when you are faced with
17 your stressor you begin to have opportunities that you are
18 more likely to have this type of distress occur. It is
19 very different than, I am hearing somebody talk to me, I
20 don't recognize the voice or the voices and there is no
21 explanation for why I am misperceiving something. It is
22 not a perceptual disturbance because I see this piece of
23 paper and I think that piece of paper is a green alien.
24 That is not a hallucination. An hallucination is, is I
25 see green aliens sitting up there in those empty seats and

1 they are empty.

2 Q Okay.

3 MR. SHAFFER: May we approach, Your Honor?

4 THE COURT: Sure.

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 MR. SHAFFER: No further questions at this time.

9 THE COURT: Anything Solicitor in recross as to any
10 new matters brought out in redirect?

11 MR. BROWN: Just briefly, Your Honor.

12 RECROSS-EXAMINATION

13 By Mr. Brown:

14 Q Mr. Shaffer asked you about cultural religious
15 things, that that wouldn't be considered a mental illness,
16 it could be where somebody actually believes, I think, the
17 example was roots. Can bring misfortune or bring fortune.
18 Is that what you said?

19 A Correct.

20 Q And in this kind of a different view on like roots or
21 even you said like religious issues, that he could have a
22 different view of that. Is that right?

23 A He can have a different perspective and
24 interpretation?

25 Q Yes.

1 A In most people. Yes.

2 Q Okay. So in reading scripture he could interpret it
3 as something completely flipped to what the whole context
4 would be. Is that correct?

5 A People interpret scripture however they interpret
6 scripture.

7 Q You mentioned hallucinations. Mr. Shaffer asked you
8 about hallucinations. And you said something is
9 triggered, overexciting part of the brain or the brain is
10 being overexcited. Explain that again.

11 A So there is parts of the brain that -- like in
12 Parkinson's disease. You have extra release of dopamine
13 in a very specific area of the brain. And that creates
14 the changes that you see in somebody having Parkinson's
15 symptoms, where they are shaking and they normally
16 wouldn't shake. They have a hard time walking and they
17 normally walk very fluidly, don't fall down, now they are
18 having problems with that. That same transmitter of
19 dopamine in a different part of the brain but still close
20 in proximity, when it gets too much in that particular
21 area can lead to hallucinations. So there is a neuronal
22 chemistry, the nerves have a chemical property that make
23 the hallucination, not a misinterpretation of the chair
24 right here or the box of tissues or I am sitting here.
25 There is something in my brain that is making me see

1 something where it is just space and silence. It is not
2 coming from a misinterpretation of perceptual disturbance
3 from a real now.

4 Q It is just completely made up?

5 A It is just in the brain and they hear it and another
6 person has no concept of what they are talking about
7 because it doesn't exist.

8 Q You mentioned, so an example you say somebody with
9 Parkinson's and dopamine, the dopamine affects a different
10 part of the brain could cause hallucinations. Is that
11 right?

12 A Yes. And in Parkinson's, especially towards the end
13 stage of the disease process you get hallucinations.

14 Q Now, explain how methamphetamine and dopamine all
15 work together and how the methamphetamine or actually the
16 brain stops creating dopamine. Is that correct?

17 A The methamphetamine, the dopamine is a very
18 transmitter of satisfactory components, the pleasures
19 speaking as well. So it hits on the dopamine and it is
20 like, oh, that felt good. And so I want more and I want
21 more. But in doing that in a different room of the brain
22 and we are getting the hallucination impact from like the
23 Parkinson example, but because there is overlap it creates
24 the auditory, visual hallucination. But typically
25 speaking there are certain types of hallucinations and

1 this what most people wouldn't know is that tactile
2 hallucinations are things we usually forget about. And
3 that is I feel something on my skin and you get a
4 sensation under the skin that leads to nothing is there
5 but something is perceived and so they have all of these
6 skin issues contributed as well. So aside if you use
7 needles and you have got IV lines and where people have
8 hot blood vessels and track marks and everything of how
9 they would want to use, you would also have a lot of skin
10 inflammatory responses from somebody picking and
11 scratching of their skin. I have even seen people who
12 shave every ounce of hair off their body, been to the
13 dermatologist to try to figure out what was wrong.
14 Because the hallucination that type get is not limited to
15 auditory and visual, it gets into this other component of
16 attack tactile hallucination.

17 Q Where they see stuff on their skin or hand?

18 A They feel it. And in addition to -- like I have had
19 people who, they pull their sleeve up, it is shaved. And
20 normally it wouldn't be. Now, you see that? No, I don't
21 see that. Well, I can tell you that I can see it and I
22 feel it. That feeling at part is the tactile
23 hallucination. They see it -- part is the visual
24 hallucination.

25 Q And, again, people that do methamphetamine can have

1 these hallucinations based off of their use?

2 A Yes.

3 Q Okay. And you also mentioned that somebody with
4 acute stress disorder, what they are hearing is something
5 different than, like you just mentioned, if the chair is
6 actually there, there is a difference in reality to what
7 they are seeing. But if they are hallucinating on drug
8 use or something like that, affecting another part of the
9 brain, they can be seeing something that is really not in
10 there.

11 A For acute stress disorder?

12 Q No, for let's say drug use.

13 A For drug use you can see something that is not really
14 there?

15 Q I am asking you.

16 A Yes, the answer is yes. If it is drug use you can
17 see something that is not really there. Where it applies
18 to acute stress disorder, is that it relates to the
19 trauma.

20 Q No further questions.

21 THE COURT: Thank you, Doctor, you can step down.

22 (Whereupon, the witness stepped off the witness
23 stand.)

24 WITNESS: May I be excused?

25 THE COURT: Just have a seat out in the audience if

1 you don't mind for a minute please.

2 WITNESS: Okay.

3 THE COURT: Thank you. Ladies and gentlemen, we have
4 kind of gone over a little bit. We are going to go ahead
5 and break for lunch and I want you back here at 3:00
6 o'clock. Remember all of my instructions and were to go
7 to a public restaurant make sure your badge is visible.
8 Have a good lunch and we will see you back at 3:00. Thank
9 you.

10 (Whereupon, the jury was excused from open court for
11 a lunch break.)

12 THE COURT: Mr. Shaffer, you are wanting to, we will
13 do this after lunch, we are not going to do it now but you
14 are wanting to proffer some testimony from Dr. Salas?

15 MR. SHAFFER: Yes, sir.

16 THE COURT: And it is related, let's make sure we are
17 all on the same page. We had several sidebar conferences
18 and I think you wanted to elicit from the Doctor
19 specifically what Mr. Hailey told her as related to the
20 event and his position that he acted in self-defense?

21 MR. SHAFFER: Not exactly it, I wanted her to finish
22 the question about the events that led up to it, that the
23 Solicitor cut her off from. The other thing I wanted her
24 to do, I was going to ask her a question simply about
25 whether or not she believes that the fence post led him to

1 commit this offense which I think is a question of fact
2 that -- I think it is an opinion that she can give.

3 THE COURT: We will take your proffer and my concern,
4 as I stated in some fashion when you were at sidebar, that
5 I didn't want any testimony from her that would vouch for
6 the credibility or believability of Mr. Hailey as to his
7 testimony that is expected to come about in this case. I
8 had the perception that that was going to be an issue.
9 Now, with the proffer that you give with Dr. Salas, if it
10 turns out it is not a problem then I will let you recall
11 her in front of the jury. But based upon what I have
12 perceived that you were wanting to do with the Doctor, I
13 felt that was going to run afoul of her vouching for his
14 credibility. But we will take --

15 MR. BROWN: Judge, one thing, I stopped intentionally
16 on that because we have not heard him testify yet and I
17 don't want there to be kind of -- we have not heard
18 exactly what happened. And it would be my take, I said
19 that, asked her a question to the events leading up to the
20 event. And I think we satisfied that when they left the
21 house and that is why I cut her short. So I think
22 anything after that really is going outside the question
23 of my cross-exam.

24 THE COURT: We will take her testimony, let's try to
25 get back together by 2:45 and give us a little time to

1 hear from her. And then we will see. And, again, if
2 after I hear her testimony on that and I feel like it is
3 not an issue then I will let you recall her and have her
4 -- I just didn't want to run afoul of what we all know
5 that, you know, an expert cannot vouch for the credibility
6 of their, well anybody in the case, victim, defendant,
7 whatever. Okay.

8 MR. SHAFFER: Your Honor, to that point, just so you
9 know what I am thinking in advance of it. My thought is
10 that she certainly isn't going to vouch for the
11 credibility. I think that she can relay and this is sort
12 of to the first issue and not to the second one. But the
13 first issue, I think -- the first sidebar we had I said
14 that, I wanted her to finish the Solicitor's statement.
15 It is my belief that she can't vouch for the credibility
16 but that doesn't mean that she can't disclose what was
17 actually said to her in the basis of an expert opinion.

18 THE COURT: Well, I think -- yeah, naturally you are
19 not going to say, Doctor, you believe Mr. Hailey. I know
20 you are not going to ask that. But by her repeating what
21 he told her and that is what he testified to in this case,
22 I think would have the effect of her vouching for his
23 credibility and that is why I don't want us to run afoul
24 of that. Again, you ask her anything you want to ask her
25 in-camera and then let me make that determination. Okay.

1 MR. SHAFFER: Thank you, Your Honor.

2 THE COURT: Let's try to get back about 2:45. Okay.
3 Do we need to go ahead and address the issue of Sonny Cox,
4 my Court Reporter has told me that she was able to locate
5 what was asked of Joni Kitchens. She didn't tell me what
6 was in the transcript but both of y'all, both sides have
7 heard that. Did Mr. Shaffer put Ms. Kitchens on notice as
8 to what he understood she told the coroner and she
9 continued to deny that?

10 MS. SUMNER: Your Honor, yes. Mr. Shaffer does ask
11 Ms. Kitchens if she told Sonny Cox the 1:30, 2:00 o'clock
12 timeframe. He does not ask her to review the report or
13 acknowledge, he doesn't mention that there is a report
14 that says that. He does ask her from 1:30 to 2:00
15 o'clock.

16 THE COURT: Okay. I am going to find that is
17 sufficient notice to where the Defense can call Sonny Cox
18 on that one limited issue, even though he didn't mention
19 anything about a report, I think it is enough notice to be
20 able to do that. Okay. Everybody have a good lunch and
21 we will see you back at 2:45.

22 (Whereupon, a lunch break was taken.)

23 THE COURT: We are back on the record and I believe
24 the first item of business, we are going to take some
25 in-camera testimony from, do you pronounce it Salas or

1 Salas?

2 WITNESS: Salas.

3 THE COURT: Dr. Salas, come around please, ma'am, you
4 are still under oath.

5 IN-CAMERA EXAMINATION

6 By Mr. Shaffer:

7 Q Dr. Salas, the State asked you what Mark had told
8 you about the stuff leading up to the actual shooting.
9 And without talking about the shooting, I know you talked
10 about stuff prior to him getting on that road, that Warner
11 Road. Could you tell us the remainder of your answer to
12 that question.

13 A I don't remember where I started or where I left off.

14 Q I think you had left off right around the time, right
15 before he got on that road.

16 MR. SHAFFER: Is that a correct characterization,
17 Yates?

18 MR. BROWN: I think I had stopped after he got in the
19 car and they started driving.

20 MR. SHAFFER: Okay.

21 Q So I guess I want you to pick up from the time of the
22 car until right before the actual shooting, what he had
23 informed you about it.

24 A He told me about, on at least two occasions, from two
25 different interviews. I am looking to find that. I think

1 that was on the first interview when I was looking at my
2 notes earlier.

3 THE COURT: Do you mind removing your mask, Doctor,
4 please.

5 WITNESS: Certainly.

6 THE COURT: Thank you.

7 WITNESS: I am used to wearing them now.

8 A This is after going to wash clothes?

9 Q Yeah.

10 A Okay. This is after Mark and Marty are out riding in
11 the car?

12 Q I think it is when Mark and Marty are out riding in
13 the car, yes.

14 A Okay. I will just start reading what my notes say
15 and tell me if I need to fast forward. Mark put all of
16 his stuff in the back seat. Marty comes out driving,
17 Marty's wife did not come out. I said, Marty, what's
18 going on. Thought something ain't right. Mark said he
19 needs to go by Debbie's and get his phone. Mark had left
20 his phone at Debbie's while they were going to wash
21 clothes. And I can't recall if Mark was picked up at the
22 clothes washing house or back at Debbie's.

23 Q Okay.

24 A Went back from the clothes washing episode to Marty's
25 house. And then from there it was just Mark and Marty in

1 the vehicle needing to go to Debbie's to get the phone.
2 Went over there, pulled up, no lights on. Did a Uee,
3 (phonetic). He thinks the Uee, "shady." They go out into
4 the country, I know things happen bad on that road. He
5 said something about the Holy Ghost. God told him, "you
6 shall not be moved". Mark told Marty to stop the car.
7 Marty was talking on his phone, "but I don't think he was
8 talking to nobody." And then I don't think you want me to
9 read farther than that.

10 Q Okay. And right -- and the reason I wouldn't want
11 you to read further than that is that goes into
12 self-defense, correct?

13 A Yes.

14 Q Okay. So and that would conclude the first question
15 I suppose.

16 THE COURT: That would be for purposes of where you
17 felt like Solicitor Brown cut her off and she didn't
18 finish her answer.

19 MR. SHAFFER: That's correct, Your Honor.

20 Q The second matter I was going to ask you about is
21 that you mentioned that there were, that he had assigned
22 some meaning to some leaning fence posts, correct?

23 A Yes.

24 Q And you are obviously an expert in forensic
25 psychiatry, correct?

1 A Yes.

2 Q Do you think that the fence post, in your opinion, do
3 you think that the fence post leaning contributed to the
4 shooting?

5 A No.

6 Q Okay.

7 THE COURT: When you say fence post, what was the
8 third word after fence post?

9 MR. SHAFFER: Leaning.

10 THE COURT: Huh?

11 MR. SHAFFER: Leaning.

12 THE COURT: Leaning?

13 MR. SHAFFER: Yes.

14 THE COURT: Okay.

15 Q And it is fair to say that your opinion involving --

16 A I am sorry, I just processed that. Did you say did
17 the fence post contribute to their leaning or to the
18 meaning?

19 Q Oh, no, no. I am sorry. The fence post leaning, did
20 that contribute to the actual shooting?

21 A No.

22 Q Okay. Would you agree that there was an intervening
23 cause that --

24 A Yes.

25 Q Okay.

1 MR. SHAFFER: No further questions, that would be the
2 extent to what I planned on asking.

3 THE COURT: Solicitor, do you have any problems with
4 the first thing as far as reciting what Mark told the
5 Doctor when they got out to the Warner Road and then
6 stopping and not going any further with that. Do you have
7 any problems with that?

8 MR. BROWN: With the first part of it?

9 THE COURT: Yes.

10 MR. BROWN: Where it says --

11 THE COURT: We have got three parts as I see it.
12 First is that where Mr. Shaffer believes that, and it
13 doesn't matter, believes where you cut her off and you
14 just wanted her to finish what Mark told her about what
15 took place up to the time of the shooting. And she knows
16 where to stop. Do you have any problems with that?

17 MR. BROWN: I think where she stopped was Mark told
18 Marty to stop the car, he was on the phone.

19 THE COURT: Yes, and stopped there. Do you have any
20 problems leading up to that.

21 WITNESS: It was actually a statement after that, I
22 did read.

23 MR. SHAFFER: Talking on the phone talking to nobody.
24 Or I don't think he was talking to nobody.

25 THE COURT: Right.

1 WITNESS: That is where I stopped reading.

2 THE COURT: Do you have any problems with that?

3 MR. BROWN: I don't think that has -- I don't have
4 any problem with that.

5 THE COURT: Don't have a problem with that. Okay.
6 The second thing, fence post leaning. You are actually
7 meaning where he sees fence post, they are --

8 MR. SHAFFER: Yes, Your Honor.

9 THE COURT: Over to one side. And you asked Dr.
10 Salas did that contribute to the shooting.

11 MR. BROWN: I would have an issue with that.
12 Honestly I don't know how she can say that didn't have --
13 that contributed or didn't contribute and we don't go any
14 farther without the self-defense. I just think that would
15 be more improper than talking on the facts of the case.

16 THE COURT: All right. And the third, what was the
17 third thing, Mr. Shaffer.

18 MR. BROWN: The intervening cause.

19 THE COURT: There was an intervening cause.

20 MR. SHAFFER: That was a follow-up.

21 MR. BROWN: To the fence post thing I think.

22 MR. SHAFFER: Yes.

23 MR. BROWN: I would object to that too.

24 MR. SHAFFER: And, Your Honor, all of those would
25 have been asked as opinion questions. The first part

1 relating to recant what happened. I can honestly live
2 without that and if you denied the other two things, I
3 probably wouldn't even touch on it.

4 THE COURT: What I am trying to figure out is how, I
5 don't necessarily have a problem with the first part, what
6 took place up until the time she says that Mark says he
7 was on the phone, probably wasn't talking to anybody.
8 Really don't have a problem with that. But I am trying to
9 figure out the last two is responsive to what was brought
10 out in cross. I don't think it necessarily vouches on the
11 believability of what Mark says what happened. I don't
12 think that but I am trying to figure out how that is in
13 response to what was brought out in cross. So I am going
14 to deny two and three, allow number one but I understand
15 what you are telling me, Mr. Shaffer, that you probably
16 not even going to go into number one if I deny you on two
17 and three.

18 MR. SHAFFER: That is correct, Your Honor. I would
19 cite, for the Court's attention, Rule 704 of the South
20 Carolina Rules of Evidence.

21 THE COURT: Let me take a look at that and see if
22 that is going to have any change of my opinion. Did you
23 say 703 or 704.

24 MR. SHAFFER: 703, Your Honor.

25 THE COURT: 3?

1 MR. SHAFFER: 4.

2 THE COURT: 4.

3 MR. SHAFFER: Yes, sir.

4 THE COURT: And it may very well, you may very well
5 be correct and this was brought out in direct but I am
6 trying to figure out how it responds to anything that was
7 brought out in cross-examination. So that is where I am
8 not going to allow it. May very well be right if this was
9 brought out in direct. So do you want to go into number
10 one or just --

11 MR. SHAFFER: And, Your Honor, I am not even going to
12 go into number one.

13 THE COURT: Okay.

14 MR. SHAFFER: I just would like, obviously I think it
15 is responsive to their stuff but if something they had in
16 cross but I understand the Court's ruling on that.

17 THE COURT: I appreciate that. I think we are done
18 with you, Doctor.

19 WITNESS: Am I excused?

20 THE COURT: Yes ma'am but you are more than welcome
21 to hang around with us if you like.

22 WITNESS: I would love the opportunity but my travels
23 take me to distance places today. Thank you.

24 THE COURT: Thank you, Ma'am.

25 MS. MCNEILL: Your Honor, we do have one other matter

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

By Mr. Shaffer:

Q Good afternoon, Coroner Cox.

A Good afternoon.

Q So I had asked you previously whether or not you were there whenever Joni Kitchens found out about Mr. George being killed, correct?

A That's correct.

Q And she provided to you information about when the last time she saw him was, correct?

A Yes, sir.

Q You would have documented that in your report, right?

A I did, sir.

Q And what did she tell you about the last time she saw Marty George?

A Said I think 1:30 or 2:00 a.m. That would be on the 6th of March.

Q Okay. And where did she say he was going at that time?

A Take a friend to a store or somewhere like that.

Q Okay. And she said it was between 1:30 and 2:00?

A That's right, that's correct, sir.

Q Okay. Did she also say something about maybe taking a friend home after that, going to the store?

A I don't recall that.

1 Q Okay. If it is in your report it may help you
2 refresh your recollection, right?

3 A That's right.

4 Q Okay. If you don't mind, look at the second page of
5 your report and read over that top paragraph.

6 A Okay, sir.

7 Q After reading that does that refresh your
8 recollection as to where she said she may -- where she
9 said Marty may have been going?

10 A The store, was going to take a friend to the store.
11 But anything beyond that really wasn't -- I know a friend
12 was with him.

13 Q Okay. But she clearly said between 1:30 a.m. and
14 2:00 a.m. she was -- he was going to take a friend to the
15 store?

16 A Yes, sir. That is what I had documented.

17 Q Okay. No further questions.

18 THE COURT: Solicitor, anything in cross?

19 MS. SUMNER: Very briefly, Your Honor.

20 CROSS-EXAMINATION

21 By Ms. Sumner:

22 Q Coroner Cox, referring to page two, that top
23 paragraph, does it not say, to the store and possibly take
24 a friend somewhere, in your report?

25 A Yes, ma'am.

1 Q That is all I have.

2 THE COURT: Thank you, sir, you can step down. You
3 are free to leave. Okay, Ms. McNeill, next witness.

4 MS. MCNEILL: The Defense calls Amanda Doty.

5 AMANDA DOTY, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Ms. McNeill:

9 Q Ms. Doty, good afternoon, Ms. Doty, how are you?

10 A I am doing well.

11 Q Can you please state your full name for the record?

12 A My name is Amanda Dawn Doty.

13 Q And can you spell that last name for us?

14 A D as in Dawn, O, T as in Tom, Y.

15 Q Okay. Now, Ms. Doty, how are you connected with Mr.
16 Mark Hailey?

17 A I am Mark Hailey's son's mother.

18 Q Okay. And how long did you and Mr. Hailey, how long
19 were y'all together for?

20 A Seven years.

21 Q Seven years. How old were you when you met him?

22 A 18.

23 Q 18, and how old are you today?

24 A 32.

25 Q Okay. So you have known him a long time?

1 A Yes.

2 Q And you and Mr. Hailey eventually moved in together,
3 is that correct?

4 A Yes.

5 Q Where was that?

6 A It started at Greenwood High Apartments when I was in
7 college and we eventually moved back home to Bluffton,
8 South Carolina.

9 Q When you say we moved back home, is that your home?

10 A We actually had an apartment set up when we got back,
11 we lived with my brother.

12 Q Okay. And how long did you live with Mark?

13 A Seven years.

14 Q Okay. And what caused the two of you to break up?

15 A We just grew apart.

16 Q And when you broke up did Mr. Hailey move back to the
17 Greenwood/Ninety Six area?

18 A Yes.

19 Q Are you close with Mr. Hailey's family?

20 A I am.

21 Q Even to this day?

22 A Yes.

23 Q And have you remained friends with Mark?

24 A I have.

25 Q Do you still care about Mark?

1 A I do a lot.

2 Q Do you love him?

3 A I do love him.

4 Q And you currently live where exactly?

5 A In Bluffton, South Carolina.

6 Q How far away is that from here?

7 A Three and a half hours.

8 Q And have you been here every single day for this
9 trial?

10 A Yes.

11 Q Where are you staying while you are here?

12 A I am staying with my best friend, Shaniya Gilchrist.

13 Q And let's talk about your relationship with Mark.
14 What kind of boyfriend was he?

15 A He was, we were actually in love like, nobody
16 couldn't tell us anything. He definitely worked very
17 hard, he paid all the bills. The only bills I paid were
18 the water and electric bills.

19 Q So you said that he was a very hard worker?

20 A He was.

21 Q Okay. Do you know a little bit about his work
22 history, like what kind of jobs he held?

23 A I do. When I first met him he was working at Fuji.

24 And then, of course, moved to Bluffton, South Carolina.

25 And my dad has worked with automatic fire systems which is

1 pipe fittings, sprinklers system that come on when you
2 have a fire. So he has been doing that probably for about
3 six years. And I know in this area he has worked for
4 Eaton, Carolina Pride. He has always seemed to keep a
5 job.

6 Q Okay. And I am going to hand you what has been
7 premarked as Defendant's, for ID purposes only at this
8 point, Defendant's photograph number 9. Do you recognize
9 that photo?

10 A I do.

11 Q Who took that photo?

12 A I did. I took it, I would meet him on lunch break
13 and I took it of him working. He was pipe fitting.

14 Q Okay.

15 MS. MCNEILL: Permission to publish.

16 THE COURT: Are you moving that into evidence?

17 MS. MCNEILL: Yes, sir.

18 THE COURT: Which number is that one?

19 MS. MCNEILL: This is Defendant exhibit number 9.

20 THE COURT: Okay. Subject to what has previously
21 been placed on the record, number 9 into evidence for the
22 Defendant.

23 (Whereupon, Defendant's Exhibit 9 was admitted into
24 evidence.)

25 Q What is this a photograph of?

1 A Mark at work pipe fitting.

2 Q So is he -- what is he doing in this photo, do you
3 remember?

4 A If I am correct because he talks about work all the
5 time, it would be -- looks like he was fitting a pipe into
6 that hole. There are very long pipes, it is like a water
7 pipe.

8 Q Right. And, Ms. Doty, you said that he was a really
9 hard worker?

10 A He was.

11 Q And how often would he work?

12 A Every day if not on the weekends as well, that job
13 you would be on call at all times. If somebody's system
14 were to go off you would have to go in, be with the fire
15 department, shut its system and check the leak and then
16 fix it and then -- it could be any time of day.

17 Q Okay. And how long did he work at this job, do you
18 know?

19 A He did during our relationship so between six and
20 seven years. I know I said six years but between six and
21 seven years he was pipe fitting.

22 Q Okay. And so he was working this job when you were
23 living in Bluffton together?

24 A Yes. As soon as we arrived my father, since he had
25 been in the field for my whole life, probably 35 years he

1 had been pipe fitting, he had him a job as soon as we
2 arrived.

3 Q Now going back to your relationship with Mr. Hailey,
4 you said that he paid a lot of the bills?

5 A Yes. He paid all the bills except for the electric
6 and water bill, I always worked six days as well. But he
7 definitely paid all the bills.

8 Q Okay. And was he pretty supportive in your
9 relationship?

10 A He was, even when I was pregnant with Mark, he was
11 there through the whole thing. He was at every single
12 appointment whether it was just a checkup or my
13 ultrasound, he was always there.

14 Q Okay. I am going to go ahead and show you what has
15 been premarked for ID purposes only for the Defense,
16 photographs number 12, 14, 11 and 13. I just want you to
17 look through those and tell us if you recognize these
18 photographs.

19 A I do.

20 Q Who took those photographs?

21 A I may have took all of these photographs except for
22 exhibit 12, my mother took that photo at my baby shower.

23 Q So you are in that photo that your mom took?

24 A As well as this exhibit number 14, my mother took
25 that at my baby shower.

1 Q Okay.

2 MS. MCNEILL: Judge, at this time I would like to
3 move these into evidence.

4 THE COURT: Subject to what has already been noted on
5 the record, with the exception of 10, the remaining
6 photographs, 11 through 14 into evidence for the Defense.

7 (Whereupon, Defendant's Exhibits 11 through 14 were
8 admitted into evidence.)

9 Q Ms. Doty, what is this a picture of?

10 A That is a photo from our baby shower.

11 Q And so this is you and Mr. Hailey?

12 A Yes.

13 Q And so you are pregnant at this point?

14 A Actually I had **M.H.** six days before this photo.

15 Q Okay. And you keep saying Mark, and just so that the
16 jury is not confused that you weren't pregnant with this
17 Mark, what is your son's name?

18 A **M.H.**.

19 Q And you call him Mark as well?

20 A I do, I call them both Mark.

21 Q Okay. And so he was present at your baby shower and
22 now I am going to show you, publish for the jury,
23 Defendant's exhibit number 14. Tell us what this is a
24 picture of.

25 A On the top photos, opening up our baby gifts and the

1 second picture is our baby shower in the back yard, we are
2 doing a little country boil with family and friends.

3 Q What family and friends were there?

4 A My parents, my brother and family friends from my
5 parents childhood days in Ohio. So it's a long term
6 friends and family.

7 Q Now, was Mark just involved and supportive of you at
8 the time that you were pregnant or did that support
9 continue after you gave birth?

10 A He continued to support me.

11 Q Okay. Now, I am going to show you what has been
12 marked as Defendant's exhibit number 13. What is this a
13 picture of?

14 A That is a picture of Mark and his son when he was
15 probably a few days old.

16 Q A few days old. So were you at home at this point?

17 A Yes, we were home.

18 Q Okay. I am going to show you Defendant's exhibit
19 number 11. What is this a picture of?

20 A That is Mark and his son at his son's birthday party,
21 I believe it was his fourth birthday party.

22 Q Okay. Tell us what kind of father Mark is?

23 A Mark has been a great father. He also gets him every
24 summer for two months out of the summer. He would always
25 help me with him and during Christmas we would meet up and

1 during Holidays we always met up. It is really important
2 to us to keep our family together.

3 Q So you have primary custody of M.H. [REDACTED] ?

4 A I do.

5 Q So how -- when you drop M.H. [REDACTED] off with his dad,
6 Mark, how long does M.H. [REDACTED] stay with his dad?

7 A It could be like 60 days, you know, the whole summer.

8 Q Okay. So for a couple of months?

9 A Yes.

10 Q So you obviously trust Mark?

11 A I do.

12 Q Would you say that he is a trustworthy person?

13 A I do.

14 Q Would you say he is reliable and dependable?

15 A Yes.

16 Q Knowing that Mr. Hailey is sitting here in trial for
17 murder, do you still feel like he is reliable, trustworthy
18 and dependable?

19 A I honestly do.

20 Q Do you feel safe with Mark?

21 A I have always felt safe with him.

22 Q Safe enough to leave your son in his care?

23 A Definitely.

24 Q I want to ask you, how old is your son again?

25 A He is 11.

1 Q And is he pretty close with his father?

2 A He absolutely loves him.

3 Q What kind of, and you are still friends with Mark to
4 this day, correct?

5 A I am.

6 Q So you used to be romantically involved, that ended
7 but y'all maintained a friendship?

8 A Yes.

9 Q What kind of friend is Mark?

10 A I would say he has always been supportive, if I need
11 somebody to talk to he would have been there for me. You
12 know, really I would try to keep him, you know we would
13 just keep a communication for our son. Just more cordial.

14 Q And have you had the opportunity to see Mark interact
15 with other friends and family to see what kind of friend
16 he is to them?

17 A Yes.

18 Q Now, I am going to show you what has been marked and
19 into evidence as, I am sorry, marked for ID purposes only
20 as Defense exhibit number 10. Do you recognize that
21 photo?

22 A I do.

23 Q Who took that photograph?

24 A I took this photograph.

25 MS. MCNEILL: Your Honor, I would like to move

1 photograph number 10 into evidence.

2 THE COURT: Subject to what has already been placed
3 on the record, 10 into evidence for the Defense.

4 (Whereupon, Defendant's Exhibit 10 was admitted into
5 evidence.)

6 Q Tell us what this photograph shows?

7 A That is Mark Hailey fixing the mailbox with his
8 nephews and it was his aunt's husband.

9 Q And is this guy here Mark?

10 A It is.

11 Q Okay. And when you say fixing the mailbox, what
12 happened to the old mailbox?

13 A I am assuming a car hit it because it is on the side
14 on the road.

15 Q Okay. So they were fixing it, rebuilding it?

16 A Yes, they had to redig a hole and repost the mailbox
17 and put it back into the ground.

18 Q Do you know if Mark is a religious person?

19 A He is very religious.

20 Q Are you a spiritual person?

21 A I am.

22 Q How close were you, are you with Mark's family, you
23 said you are pretty close?

24 A Yes, we are very close.

25 Q Very close. Okay. Did you know his sister?

1 A I did.

2 Q What was her name?

3 A Camil Hailey.

4 Q What did y'all call her?

5 A Trina.

6 Q And why did you call her Trina?

7 A Her middle name was Katrina.

8 Q So Trina for short for Katrina?

9 A Yes.

10 Q Okay. And did it affect you when Trina passed away?

11 A Yes, I think it affected all of us as a family.

12 Q And what does Mark typically do when he feels like he
13 needs to calm down or have some comfort?

14 A He would read his Bible.

15 Q Read his Bible, okay. Would he do anything else?

16 A I mean really just reading that Bible and he always
17 kept a picture of his mom and his sister and him in that
18 Bible.

19 Q And did you see a change in Mark when his sister
20 passed away?

21 A I did see a change. He would say, you know, he
22 thought it should have been him.

23 Q And were you and Trina pretty good friends?

24 A We were close family. I would say, there would come
25 a time we would get together and we would get our kids

1 together. We were pregnant at the same time. Her
2 daughter was born in April, **M.H.** was born in June. So we
3 would always get the kids together and hang out.

4 Q Have you been in contact with Mark since he has been
5 incarcerated across the street at the Greenwood jail?

6 A Absolutely, three times.

7 Q Three times on the phone?

8 A Yes.

9 Q Tell us about those phone conversations?

10 A The first two I was crying. It was hard to talk to
11 him. He would tell me to be strong when I felt like he
12 was the one that needed to be strong in his situation.
13 And that third phone conversation I literally, I remember
14 phone conversation, probably the only one I could actually
15 talk and I told him I know that we are not allowed to talk
16 over the phone but I knew he wouldn't hurt a fly. And
17 pretty much, let him know that I was hurting inside about
18 it and I just -- I just don't think that anybody can
19 believe that this has happened.

20 Q Did you talk about his sister at all in any of the
21 phone calls?

22 A I did.

23 Q Tell us about that?

24 A I told him that night, he had no idea that I was
25 coming to town. My best friend suffers from a rare skin

1 disease and I was coming to see her. And I was driving
2 through Ninety Six, around the same time that this
3 incident happened and I told him that I felt Trina's
4 spirit with me. Michael Jackson was playing on the radio
5 and I could feel her riding with us and I told him, I know
6 that Trina was there. She was trying to warn me, I felt
7 like she was sending me a sign, you know.

8 Q Okay. Is that because, what night was that when you
9 came into town, do you remember the date?

10 A March 6th, about 2:45 a.m., I was coming through
11 Ninety Six, South Carolina.

12 Q So the same time around that this incident happened
13 that Mark is on trial for?

14 A The exact same time. The only way I found out was
15 the next morning Shaniya was on Facebook and saw the news.

16 Q Okay. Did you find comfort in feeling Trina's spirit
17 with you?

18 A No, I just knew something, I knew she was telling me
19 something.

20 Q Do you know what church Mark attends?

21 A Yes. Mt. Olive in Saluda. And I also attended that
22 church multiple times. Every time I come here I try to go
23 to that church. But with COVID, of course, I can't do
24 that right now.

25 Q Is there another way that you attend church because

1 you live in Bluffton?

2 A I actually watch their sermon on virtual. It is my
3 favorite church, at any church I have ever been to.

4 Q Do you know if Mark has ever held any sort of
5 position while at that church?

6 A I know he was on the treasurer and he would sing for
7 the church, he seemed pretty active in the church.

8 Q Okay. Was he in regular attendance at that church?

9 A He was.

10 MS. MCNEILL: I beg the Court's indulgence.

11 Q Amanda, I have no further questions. Please answer
12 any questions that the Solicitor may have for you.

13 THE COURT: Solicitor, any cross-examination?

14 MR. BROWN: Yes, sir.

15 CROSS-EXAMINATION

16 By Mr. Brown:

17 Q Good afternoon, Ms. Doty?

18 A Good afternoon.

19 Q Ms. Doty, you said you met Mark or y'all got together
20 when you were 18 years old, is that correct?

21 A Yes.

22 Q And you are 32 now?

23 A Yes.

24 Q And you were together for seven years?

25 A We were.

1 Q The photographs of Mark working, was that over seven
2 years go?

3 A It was only about five or six years ago.

4 Q Where were those photographs taken?

5 A In Bluffton, South Carolina.

6 Q In Bluffton. When did he move back to Greenwood?

7 A About five or six years ago.

8 Q Five or six years ago. So the pictures of him
9 working in Bluffton, Defense number 9, that is five or six
10 years ago?

11 A Yes.

12 Q And y'all have not been together for about seven
13 years, is that what you stated?

14 A Well we have been split up since 2000, I think 14, so
15 in November, so it has been about five or six years since
16 we have been split.

17 Q Okay. And you said y'all just kind of drifted apart,
18 is that correct?

19 A We did.

20 Q And your son, Mark, M.H. [REDACTED], he lives with you?

21 A He does.

22 Q And the photographs of Mr. Hailey and your son, Mark,
23 you said your son is 11 years old now?

24 A He is.

25 Q So these are older photographs?

1 A Yes.

2 Q When he was first born, that is Defense number 13?

3 A Yes.

4 Q And then I believe you said M.H. [REDACTED] was about
5 four years old in that photograph?

6 A Yes.

7 Q So these are older photos?

8 A They are.

9 Q And then, again, the photograph, Defense 14, baby
10 shower, that would have been an old photograph?

11 A Yes.

12 Q About 11 years old?

13 A Yes.

14 Q And, again, Defense number 12, baby shower, I think
15 M.H. [REDACTED] had just been born in that photograph, is that
16 correct?

17 A Yes.

18 Q So about 11 years ago too?

19 A Eleven.

20 Q The photographs, Defense number 10 of putting up the
21 mailbox, do you remember how long ago that was?

22 A That was within five or six years. Me and my best
23 friend were down there visiting and Mark with his
24 grandmother and his cousin and we were just watching them
25 put the mailbox together. So that probably would be about

1 three years ago.

2 Q Three years ago. Nothing within the last couple of
3 years?

4 A No.

5 Q Okay. Since he moved back to Ninety Six, where has
6 Mark lived?

7 A Mark lives in Bluffton, South Carolina.

8 Q Big Mark?

9 A [REDACTED] Booker Road.

10 Q And his mom lives there, is that correct?

11 A Yes.

12 Q When M.H. [REDACTED] came to visit during the summer, he
13 would come visit Mark Hailey and also stayed with his
14 mother, Loretta, right?

15 A Also Katrina and Catlin, so all four people lived
16 there.

17 Q Okay. So he is not just spending all of his time
18 with Big Mark?

19 A The majority of the times I would say he was with his
20 dad. His mom would leave and let him spend time with his
21 son.

22 Q But Grandma was around too?

23 A She was around.

24 Q Okay. Ms. Doty, are you familiar with Mark's drug
25 history?

1 A Honestly, no.

2 Q You are not?

3 A Not really. He never did drugs when we were
4 together.

5 Q But he kind of moved back here six, five or six years
6 ago?

7 A Yes.

8 Q Do you really know what he has been up to while he
9 has been in Greenwood?

10 A Honestly, from me visiting everything seemed fine. I
11 was never suspicious you know, he's never seen suspicious
12 of any kind of drugs. He was still working, he was still
13 providing, you know, for his son. He was still, Christmas
14 presents were still coming. So I never had any issues
15 with him or, you know, worried about him being on any kind
16 of drugs.

17 Q But, again, you weren't around all the time?

18 A No.

19 Q You don't know who he was communicating with?

20 A No.

21 Q And the night this actually occurred you weren't with
22 him?

23 A No.

24 Q You don't know what happened on that road?

25 A I have no idea.

1 Q You don't know what led up to that, do you?

2 A No.

3 Q And, again, y'all have been separated five, six
4 years?

5 A Yes.

6 Q And he has been back here?

7 A Yes.

8 Q Okay. You said he would read his Bible to calm down?

9 A He did.

10 Q What would he be calming down from?

11 A Honestly, if he had a bad day and he wanted to read
12 the Bible then he would read the Bible. If something
13 happened you read your Bible.

14 Q And you mentioned that Mr. Hailey was active in his
15 church. Can you tell me how long ago that was that he was
16 a treasurer or do you remember?

17 A I mean he has always gone to that church. So
18 probably his whole life, he has always been a part of that
19 church.

20 Q But when he was, I guess, a member or an officer of
21 the church, do you know how long ago that was?

22 A I have no idea. He has been locked up for almost two
23 years. So it could have been two years ago.

24 Q And, again, that night you weren't here?

25 A I have no idea --

1 Q You were in Ninety Six but you --

2 A I was traveling through Ninety Six, he had no idea I
3 was coming to town. There was no need to tell him I was
4 coming, his son wasn't with me and it wasn't a visit for
5 him, it was a visit for my best friend.

6 Q So he didn't know you were coming?

7 A He had no idea.

8 MR. BROWN: Beg the Court's indulgence. No further
9 questions.

10 THE COURT: Anything in redirect, Ms. McNeill?

11 MS. MCNEILL: Nothing from the Defense, Your Honor.

12 THE COURT: You can step down, Ma'am, thank you.

13 Let's take a ten minute break. I understand you have one
14 more witness, correct?

15 MS. MCNEILL: Yes, sir.

16 THE COURT: Ladies and gentlemen, we will take a ten
17 minute break and will get you back out and start with the
18 Defense.

19 (Whereupon, the jury was excused from open court for
20 a break.)

21 THE COURT: Let me see the lawyers for just a second,
22 please.

23 (Whereupon, a bench conference was held with the
24 Court and the attorneys.)

25 (Whereupon, a short break was taken.)

1 THE COURT: Our Foreman, Mr. Lee, just get the
2 Foreman out first.

3 (Whereupon, the Foreman, Mr. Lee, entered the
4 courtroom.)

5 THE COURT: Come around Mr. Lee. I need you to come
6 about right in there and stop. I need to have you sworn
7 in. Madam Clerk, if you will swear Mr. Lee in, please.

8 Marcus Lee, being
9 first duly sworn, testified as follows:

10 THE COURT: Mr. Lee, you had indicated to the Bailiff
11 that you wanted to talk to me, something about your work
12 and maybe how it relates to Mr. Hailey. Is that right?

13 MR. LEE: Mentioned one of the companies and I work
14 for one of those companies. I don't recall or know of
15 him.

16 THE COURT: You don't know him but --

17 MR. LEE: No, sir. I just didn't want there to be
18 unknown information.

19 THE COURT: Okay. At some point and time he may work
20 at the same company that you may work at, correct?

21 MR. LEE: Yes, sir.

22 THE COURT: Very good. That is all we need to know.
23 Why don't you just go ahead and keep your seat, bring the
24 others out. There is no need for you to go back out and
25 turn around come back in.

1 (Whereupon, the jury came into open court at
2 approximately 4:17 p.m.)

3 THE COURT: Let the record reflect the jury is back
4 in. Mr. Shaffer.

5 MR. SHAFFER: Your Honor, the Defense would call Mark
6 Hailey.

7 MARK HAILEY, being
8 first duly sworn, testified as follows:

9 THE COURT: Mr. Hailey, I will allow you to keep your
10 mask, your face shield, if you prefer. Just so long as we
11 can hear you. If you want to take it off that's fine.

12 DIRECT EXAMINATION

13 By Mr. Shaffer:

14 Q Mr. Hailey, how old are you, sir?

15 A I'm 34.

16 Q Okay. And where are you from?

17 A I was born and raised in Ninety Six, South Carolina.

18 Q Have you lived in Ninety Six your whole life?

19 A No, sir.

20 Q Where else have you lived?

21 A I lived in Bluffton, South Carolina.

22 Q Okay. I am going to ask you about the day leading up
23 to the incident. Okay.

24 A Yes, sir.

25 Q That day, I guess I will start at the point you are

1 at the Hardee's. What happened at the Hardee's?

2 A I was at Hardee's and, I had asked my aunt if she
3 would give me something to eat because I was low on funds.
4 And she got me something to eat and I sat there and waited
5 until she got off work.

6 Q And what did you eat at Hardee's?

7 A It was a big box meal, large.

8 Q After leaving Hardee's where did y'all go?

9 A Went to EZ Auto Sales, across from the Cheeseburger
10 House.

11 Q Near the Cheeseburger House?

12 A It is a car lot across from the Cheeseburger house.

13 Q Why did you go there?

14 A I had my license there while I was test driving a
15 car.

16 Q Okay. Now, at the time you were -- you get to EZ
17 Auto Sales, does your aunt stay there with you?

18 A No, she left.

19 Q How were you planning on getting back?

20 A I had asked her if she would come back and get me but
21 she couldn't because she had a lot of running around to
22 do.

23 Q Okay. While you were at EZ Auto Sales, what
24 happened?

25 A I was talking to my mother on the phone and we had a

1 disagreement. And she turned my phone off.

2 Q Okay. You were under your mom's plan?

3 A Yes, sir.

4 Q Now, once she turned your phone off what did you do
5 next?

6 A I had called Marty and I had talked to him about
7 getting a ride to the house. And he said that he would.
8 And maybe a couple of minutes after my mother turned my
9 phone off so I had to walk to the Nu-way to recall Marty.

10 Q So your mom turned your phone off during that
11 afternoon, right?

12 A Yes, sir.

13 Q Marty, had you known Marty before this day?

14 A Yes, I have.

15 Q How long had you known Marty for?

16 A A little over a year.

17 Q Okay. And why did you call Marty to give you a ride?

18 A He was the closest one.

19 Q Okay. And Marty, at that point, gave you a ride.
20 Where did y'all go?

21 A We went to my house.

22 Q Why did you go there?

23 A I was just going to stay there but, you know, we was
24 talking and he was saying that he could give me a ride
25 back to town if I had gave him a Bluetooth speaker for the

1 ride. I didn't have any funds, so he confined that it was
2 okay. I grab some things from the house to pawn and to
3 take to Rainbow, Rainbow Antiques.

4 Q Okay. So the stuff you were going to take to Rainbow
5 Antiques, what kind of stuff do you take or did you take
6 there or were you planning on taking there?

7 A It was some mason jars and some old mason jar lids.

8 Q Where had you found those?

9 A Around the property.

10 Q Which property?

11 A The Booker residence.

12 Q So they were in your family's land, is that --

13 A -- yes, sir.

14 Q Correct. Okay. What else did you grab other than
15 the mason jars?

16 A I had planned on pawning my .20 gauge shotgun also.

17 Q Okay. Why were you going to pawn this stuff?

18 A To get, you know, I was going to school at AIU online
19 and I just, I needed a phone.

20 Q Okay. And your mom had turned off your's?

21 A Yes, sir.

22 Q Tell me something. The car lot, you were planning on
23 purchasing a car, how were you planning on doing that
24 without any money?

25 A Through a student loan.

1 Q So you were going to get a student loan?

2 A Yes, sir.

3 Q Okay. But obviously you hadn't gotten a student loan
4 at that point, right?

5 A Right.

6 Q When you left the house you said you grabbed the
7 shotgun, what did the -- what did you do with the shotgun?

8 A We was pushing for time because it was close to 6:00
9 o'clock. So I really didn't breach it until I got to his
10 car. The back door, I reached it and I placed my gun in
11 the floorboard in the backseat.

12 Q What do you mean by breaching it, explain what that
13 is?

14 A It was loaded and I took a shell out, I breached it
15 out. It is a single shot and it breaks down where you put
16 the ammunition in.

17 Q Does it bend in half sort to?

18 A Yes, sir.

19 Q Is that what you mean by breaching it, like opening
20 it up?

21 A Yes, sir.

22 Q You said that it was loaded when you were leaving the
23 house, right?

24 A Exactly.

25 Q What happened to that shell?

1 A I placed in my pocket.

2 Q Now, what happened to the shotgun after you breached
3 it and unloaded it?

4 A I put it in the floorboard in the backseat.

5 Q Was it opened or was it closed in the floorboard of
6 the backseat?

7 A I believe it was open.

8 Q Okay. Then obviously there wasn't a shell in it,
9 right?

10 A No, sir.

11 Q Where do y'all go from there?

12 A We went to Red Roof Inn.

13 Q Why did you go the Red Roof Inn?

14 A There was a lady by the name of Heather Walker that
15 had called Marty and asked for a ride.

16 Q Okay. So Heather Walker, what did you do when you
17 got to the Red Roof Inn, she was there?

18 A Yes, she was there. She got into the backseat.

19 Q Where did y'all go from there?

20 A We went over by the Garden Grill.

21 Q Okay.

22 A Across from Matthews. And it was a neighborhood
23 behind the Garden Grill that we met another guy by the
24 name of Cale Attaway.

25 Q Okay.

1 THE COURT: What is the first name?

2 A Cale, C-A-L-E.

3 Q Now, after meeting him, where did y'all go after
4 that?

5 A We came back over towards Phoenix. I think the road
6 was Hightower.

7 Q So it was a road near Phoenix?

8 A Yes, sir.

9 Q Now, during this time period were you using any
10 drugs?

11 A No, sir.

12 Q Had you used any drugs of any kind that day?

13 A Yes, sir.

14 Q What had you used that day?

15 A I smoked some marijuana earlier that morning.

16 Q Were you high at this time?

17 A At the time I was with Marty, no sir.

18 Q Had you used any other drugs other than just
19 marijuana?

20 A No, sir.

21 Q Okay. Now, after you left the place, the road near
22 Phoenix, where did y'all go from there?

23 A After we left Phoenix we dropped Cale back off over
24 by the Garden Grill.

25 Q And then where did you go?

1 A And we dropped Heather off by Self Memorial.

2 Q Did you ever make it to the Pawn Shop?

3 A No, sir.

4 Q Do you happen to know around what time that Pawn Shop
5 closes?

6 A I would say around 6:00.

7 Q Now, was this after 6:00 that you had gotten
8 finished, Marty had gotten finished dropping these people
9 off?

10 A Yes, it was after 6:00.

11 Q After dropping them off where did y'all go from
12 there?

13 A We came back to Marty's and Joni's house.

14 Q Okay. And from there you -- what did y'all do there?

15 A Well, I got out of the car, I had asked Marty if he
16 would just take me home, you know, it was no point in me,
17 you know, being in Greenwood because I really didn't have
18 no purpose. And he actually went in the house, we all
19 went in the house and we sat down. And Marty had got a
20 phone call and said he needed to go handle some business.

21 Q Without saying what he said, what kind of business
22 did you think that he was going to go handle?

23 A Some kind of drug activity.

24 Q Okay. Did you go with him?

25 A No, sir.

1 Q Where did you go?

2 A I went to Debbie Woods house.

3 Q And where did the shotgun go?

4 A Inside Joni's and Marty's house.

5 Q So it was at their house?

6 A Yes, sir.

7 Q Where was it at in their house?

8 A It was in their living room, in the far corner.

9 Q And I am going to fast forward to the next time you
10 saw that shotgun. Around what time was that?

11 A 12:30, 1:00 a.m.

12 Q Between 12:30 and 1:00 a.m. you saw the shotgun again
13 and where were you at?

14 A We were back at Joni's and Marty's.

15 Q And this is after you had gone to the two other
16 places, right?

17 A Yes, sir.

18 Q What happened when you were there about 12:30 to 1:00
19 a.m., what happened, describe what was going on that
20 evening or that late night?

21 A We got there, Marty got out first and I was still
22 sitting in the car. And he went and unlocked the door and
23 Joni, she was driving. And she got out and I got out and
24 we all went in the house.

25 Q Okay. So y'all go in the house, is the shotgun

1 inside the house at that point?

2 A Yes, sir.

3 Q And what happens when you get inside the house?

4 A Joni and Marty sat on the couch and I asked if I
5 could use their restroom. So I go use their restroom and
6 come back out, you know, sat down in like a kitchen chair
7 in their living area. And Marty said, you know, it was
8 time for me to go home. So me and Marty packed items that
9 I had put in his house including the shotgun into the
10 rear, the rear department of his car.

11 Q What do you mean rear compartment of his car?

12 A The rear seat.

13 Q Okay. You didn't put it in the trunk?

14 A No, sir. I put it in the same spot that I put it in
15 earlier that day.

16 Q Okay. And whenever you did that, did you get in the
17 car?

18 A Yes, I did.

19 Q Where did you get in the car at?

20 A I assumed that Joni and Marty was going to take me
21 home so I got in the same spot that I was sitting in once
22 they picked me up at Joey Lawson's house.

23 Q Okay. And where was that at?

24 A That was the passenger rear seat.

25 Q Okay. Did Joni come back out of the house and get in

1 the car?

2 A No, she did not.

3 Q Okay. Did Marty get in the car?

4 A Yeah, he did get in the car.

5 Q Okay. And he was in the driver's seat, right?

6 A Yes, sir.

7 Q Did -- at that point did you not think to get in the
8 front?

9 A But he sat there for a minute so I didn't assume that
10 nobody was coming because if we sat there in the yard
11 maybe for a couple of minutes. But after he put the car
12 in reverse, you know, I said, you want me to get up front
13 and he said I got too much going on up front. I have got
14 too much stuff up front.

15 Q Okay. And you leave Marty's house, correct?

16 A Yes, sir.

17 Q And eventually you are heading home, right?

18 A Yes, sir.

19 Q Now, at some point on the route did Marty take a
20 wrong turn?

21 A Yes, he did.

22 Q And what -- where was that at?

23 A We actually was going -- I had took him -- we was
24 going through Ninety Six and he said he did not want to go
25 through town. So we came up towards Star Fort Ninety Six

1 Golf Club, it is a road that goes down the side of Ninety
2 Six Golf Club and comes back up -- it comes out at the
3 cross roads. So we made a left onto Lawton Road and we
4 made a right on Tillman Territory. And as we got on up
5 that is when he made the wrong turn onto Warner.

6 Q So he turned onto Warner Road?

7 A Yes, sir.

8 Q What did you do whenever he turned onto Warner Road?

9 A I kind of -- I kind of said, Marty, where are you
10 going, you know, what are you doing, what you -- why you
11 turn down this, you know, this is not -- this is not the
12 way to go.

13 Q Did you tell him to turn around?

14 A Yes, sir.

15 Q How did he respond whenever you were telling him
16 this?

17 A He started making this noise.

18 Q What noise?

19 A Like you passing gas, he makes it -- he makes this
20 noise on occasion but it came more rapid, in a rapid pace.

21 Q Was it with his mouth or what?

22 A It was with his mouth, yes sir.

23 Q Okay. Did he respond to you in any other way?

24 A No, sir. He was unresponsive.

25 Q Now, y'all drive appropriately two miles down that

1 road. Did you tell him more than once to turn around,
2 that that was the wrong way?

3 A I did.

4 Q Were you aware of that road before that night?

5 A Yes sir, I live in the area.

6 Q And was that significant to you, that particular
7 road. Anything you are aware of that happened on that
8 road?

9 A Yes, sir. I know one incident, yes sir.

10 Q What kind of incident?

11 A A lady found burnt up in a car.

12 Q Okay. Now, at some point, after going about two
13 miles down that road, what happens?

14 A He started demanding that I get something from out of
15 his bathroom that I took.

16 Q What do you mean, he was demanding?

17 A He was waiving a gun in my face, asking me what did I
18 take out of his bathroom.

19 Q Okay. Now, I guess what happened with -- before he
20 was waiving the gun in your face did anything happen --
21 where was your shotgun at at that point?

22 A At that point I had to turn it around because it was
23 facing -- the barrel was facing my way so I had to flip it
24 around.

25 Q And was he pointing the gun at you when you flipped

1 it around?

2 A I don't think he was aware that I had turned my gun
3 around. No, sir.

4 Q Why did you turn the gun around?

5 A I felt I needed to protect myself.

6 Q And why was that?

7 A Because I was in fear of my life.

8 Q I will give you just a second Mr. Hailey. What
9 caused you to be in fear of your life?

10 A I never had somebody waive a gun in my face.

11 Q All right. Was the shotgun loaded or unloaded?

12 A It was already loaded by then.

13 Q When did it get loaded?

14 A Probably when he stopped the car.

15 Q About the time he stopped the car and that was about
16 two miles into the road?

17 A Yes. I knew something bad was going to happen, yes.

18 Q So you loaded the shotgun?

19 A Yes, sir.

20 Q Did it make a lot of noise when you loaded it?

21 A No.

22 Q Why not?

23 A Because I know how to load it without making any
24 sound because I hunt. It is just something I done adapted
25 to with my gun.

1 Q The gun, whenever you loaded it, where did you get
2 the shell from?

3 A It is the one I had in my pocket from earlier.

4 Q Do you think Marty saw you load the gun?

5 A I don't know, sir.

6 Q Okay. Was the gun -- was the -- what turned out to
7 be the air pistol, Marty's gun, was it already pointed at
8 you before you loaded the gun?

9 A No, sir.

10 Q Okay. Now, when he actually pointed the gun at you
11 -- was this the gun he pointed at you?

12 A Yes, sir.

13 Q Tell us the condition of the car, was it very bright,
14 I guess?

15 A No, it was really, really dark.

16 Q And he had pointed this at you, correct?

17 A Yes, sir.

18 THE COURT: Can you speak up a little bit, Mr.
19 Hailey, please, sir.

20 A Yes, sir.

21 Q What was he asking you?

22 A What did I take out of his bathroom.

23 Q Okay. And had you taken anything out of his
24 bathroom?

25 A No, sir.

1 Q At some point you actually lift your gun, what made
2 you lift your gun?

3 A When he turned -- when he turned.

4 Q Marty turned how?

5 A Something rung on his phone, I don't know what it
6 was. But he turned and I don't know, I guess, he was to
7 get back into motion and that is when it happened.

8 Q After the -- after it happened where did you go?

9 A I went home, I went straight home.

10 Q I am showing you State's 55. If I told you that
11 little yellow star is where this happened, if you went
12 down Warner Road, your house is on Booker, correct?

13 A Yes, sir.

14 Q It is just a couple of miles away, right, maybe four
15 or five?

16 A Yes, sir.

17 Q How did you get home?

18 A Marty's car.

19 Q Did you shoot Marty to steal the car?

20 A No.

21 Q Why did you take his car?

22 A To let somebody know what happened.

23 Q And you went to your mom's house, right?

24 A Yes, sir.

25 Q You were upset?

1 A Very upset.

2 Q Did you -- when you got there she called the cops,
3 right?

4 A Yes, sir.

5 Q Did you try to run?

6 A No, sir.

7 Q Now, were you high at that point?

8 A No, sir.

9 Q Had you used anything else other than marijuana
10 earlier on the 5th?

11 A No, sir.

12 Q Are you sorry that Marty died?

13 A I'm very sorry.

14 Q Were you defending yourself at the time?

15 A Yes, sir.

16 Q Defendant's exhibit 3, did you realize this was a BB
17 gun when you were inside that car?

18 A No, sir.

19 Q When did you find out it was a BB gun?

20 A When they told me here.

21 Q At the time that you lifted that gun did you think
22 your life was in danger?

23 A Yes, I did.

24 Q Did that have anything to do with signs and nature or
25 anything like that?

1 A Not at the moment.

2 Q Did it have a lot to do with Defendant's exhibit 3,
3 that pistol that was pointing at you?

4 A No, sir.

5 Q Did you think your life was in danger because of
6 this?

7 A Yes, sir.

8 Q No further questions. Please answer any questions
9 the Solicitor has for you.

10 THE COURT: Cross-examination.

11 MR. BROWN: Yes, sir.

12 CROSS-EXAMINATION

13 By Mr. Brown:

14 Q Mr. Hailey, how long did you say you knew Marty
15 George?

16 A A little over a year.

17 Q What was your relationship with Mr. George?

18 A Associates.

19 Q Associates in what?

20 A Marijuana deals.

21 Q What about methamphetamine?

22 A No, I never bought no meth from Marty.

23 Q Did you do meth from somebody else?

24 A In the past I have, yes sir.

25 Q Did your communication with Marty pick up around

1 February 23rd and 24th of last year, phone calls and
2 texts.

3 A We were communicating.

4 Q And several times were you trying to get Marty to
5 come down to your house?

6 A Yes, sir.

7 Q And Marty a lot of times didn't show up, is that
8 correct?

9 A Correct.

10 Q Is it true that one time you asked him to come down
11 to your house, you actually gave him your address?

12 A Yes, sir.

13 Q [REDACTED] Booker Road, is that right?

14 A Yes, sir.

15 Q Why did you give him your address? Had he ever been
16 there before?

17 A No, he hasn't.

18 Q Marty was unfamiliar with your neck of the woods, is
19 that correct?

20 A Yes, sir.

21 MR. SHAFFER: Objection, speculation.

22 MR. BROWN: Judge, I think --

23 THE COURT: Well, if he's ever had any communication
24 with Marty about his familiarity with the area I will
25 allow it.

1 Q In communicating with Marty, did you receive a text
2 where Marty told you he wasn't familiar with that area?

3 A I can't recall.

4 Q If I showed you a text message would it help you jog
5 your memory?

6 A Yes, sir.

7 MR. SHAFFER: Out of hearsay --

8 THE COURT: Well, don't go into what the text says,
9 but as a result of any text messages, did you understand
10 Marty wasn't familiar with the area. You can do it that
11 way.

12 MR. BROWN: Yes, sir.

13 Q Mr. Hailey, what was your telephone number?

14 A [REDACTED].

15 Q I will show you the high-lited portion there. Can
16 you read?

17 A Yes sir, I can read.

18 Q So, had you received a text from Marty where you
19 learned he didn't know the area?

20 A Yes, sir.

21 Q Were you also willing to trade items for something
22 that Marty had, specifically a battery?

23 A Yes sir, that was -- yes. But it never went down.

24 Q What were you trying to trade?

25 A A battery for a battery.

1 Q A battery for a battery?

2 A Yes, sir.

3 Q The trade didn't involve anything else?

4 A No, sir.

5 Q Mr. Hailey, you mentioned -- you mentioned you were
6 running low on money around March 5th, March 6th, is that
7 correct?

8 A Yes, sir.

9 Q Okay. Were you actually -- you also mentioned you
10 were trying to go to school or going to school at AIU?

11 A Yes, sir.

12 Q Were you actually enrolled or you trying to get
13 enrolled?

14 A I was on assignment number two.

15 Q But you hadn't received a student loan yet?

16 A No, it was in the process.

17 Q Now, March 4th, 2019, did you get in an argument with
18 your mother?

19 A It was March -- yes, I did.

20 Q What was that argument about?

21 A Her kicking me out of the house.

22 Q Her doing what?

23 A Being overprotective of me.

24 Q Why was she doing that?

25 A She is my mother.

1 Q Did you have a drug history?

2 A In the past, yes, I have.

3 Q Like seven to nine years before this happened?

4 A Yes, I have.

5 Q Had you gotten high before?

6 A Yes, I have.

7 Q Your mom had witnessed that?

8 A She would witness me being high but not witness me
9 getting high.

10 Q She never saw you ingesting whatever it was you were
11 ingesting to get high?

12 A No, sir.

13 Q How did you do that?

14 A Smoke, snort and in 2015 I had started to inject.

15 Q So smoke, snort and inject?

16 A Yes, sir.

17 Q Can you do that out of sight of your mother?

18 A Out of sight, yes sir.

19 Q Out of sight of your aunt?

20 A Out of sight.

21 Q Pretty much out of sight of anybody?

22 A Yes, just to myself.

23 Q But yet they see the ramifications of it later?

24 A Yeah, I wouldn't eat and I wouldn't socialize with
25 them.

1 Q Now, that morning of March 5th or after you got into
2 a fight with your mother on March 4th, you didn't go to
3 bed that night, did you?

4 A Yes sir, I did.

5 Q What time did you get up?

6 A Around 7:00.

7 Q What did you do then?

8 A I went out to start -- to let -- go around the
9 property.

10 Q Did you see your mother that morning?

11 A She was asleep.

12 Q How did you get to Hardee's?

13 A I caught a ride.

14 Q From who?

15 A I have no idea, I happened to be up by the road by
16 the mailbox and this guy, he stopped and ask if I needed a
17 ride. And he gave me a ride to Hardee's.

18 Q You don't have a clue who that is?

19 A I have no idea.

20 Q Or do you not remember?

21 A I have no idea. I remember it as plain as day.

22 Q What did you have with you when you went to Hardee's?

23 A I had a black bag with me.

24 Q That bag you kept with you all the time?

25 A Not all the time, just on the property.

1 Q You took it with you that day though, right?

2 A Yeah, I was up by the road, yes sir.

3 Q You were at the Hardee's?

4 A Yes, sir.

5 Q How long did you stay at that Hardee's?

6 A I would say around three hours.

7 Q Were you in and out of the bathroom there at the
8 Hardee's?

9 A Maybe went twice.

10 Q Were you high there?

11 A Absolutely not.

12 Q What time did your aunt take you to Greenwood?

13 A 3:30 or 4:00.

14 Q 3:30 and 4:00?

15 A Between 3:30 and 4:00.

16 Q Did you and your aunt have a confrontation in the
17 car?

18 A Not that I am aware of.

19 Q You don't remember?

20 A I don't recall, sir.

21 Q Do you remember talking about three dots on your hand
22 then?

23 A I don't recall, sir.

24 Q You don't recall? Do you remember accusing your aunt
25 of being against you?

1 A I believe I said something on the terms of having a
2 root on me.

3 Q Who did you think put a root on you?

4 A My aunt.

5 Q What about your mother?

6 A And my mother, yes sir.

7 Q Why would they put roots on you?

8 A I don't know. Because at the time our relationships
9 wasn't, wasn't good, it wasn't what I think it should have
10 been.

11 Q But your mom let you stay at her house, right?

12 A Yes, sir.

13 Q And your aunt fed you at Hardee's, right?

14 A Yes, sir.

15 Q She gave you a ride into Greenwood, right?

16 A Yes, sir.

17 Q Yet you thought they were putting roots on you?

18 A Yes sir, I did.

19 Q And you weren't high?

20 A No, sir.

21 Q During that ride from Hardee's to Greenwood, did you
22 talk to your mother?

23 A No, I didn't talk to her until I got to the car lot.

24 Q And at that time you also told her you thought she
25 had put roots on you, is that right?

1 A Yes, sir.

2 Q And you pissed her off, is that correct?

3 A Yes sir, I did.

4 Q At that point your phone was turned off?

5 A Yes, sir.

6 Q And the person you called was Marty George?

7 A Yes, sir.

8 Q And Marty came, is that right?

9 A Yes, he did.

10 Q You consider Marty a friend?

11 A He is an associate.

12 Q An associate. You wouldn't say he is a friend?

13 A He is a friend, an associate is the same term to me.

14 Q And a friend came and picked you up?

15 A Yes, he did.

16 Q And you told the jury that the friend then drove you
17 back out to your house on Booker Road?

18 A Yes, sir.

19 Q How far a drive is that from right there at the
20 Cheeseburger House out to Booker Road?

21 A Twenty minutes, twenty minutes.

22 Q A friend drove you twenty minutes out to your house,
23 is that right?

24 A Yes, sir.

25 Q At that time you gather up some items, correct?

- 1 A They were already gathered up.
- 2 Q And one was a shotgun?
- 3 A Yes sir, that I was going to pawn.
- 4 Q And Marty saw you have a shotgun?
- 5 A Yes, sir.
- 6 Q Marty saw you put that in your car, or in his car?
- 7 A Yes, sir.
- 8 Q At that time y'all came back into Greenwood?
- 9 A Yes, we did.
- 10 Q Marty ended up dropping you off at Stella Burton's
- 11 house or where Stells -- do you know Stella?
- 12 A No, I haven't met her since -- for the first time
- 13 that night.
- 14 Q That was the first time you met Stella?
- 15 A Yes, sir.
- 16 Q Who did you know that lived in that house?
- 17 A Debbie Woods.
- 18 Q What about Tasha Parks?
- 19 A She once stayed there.
- 20 Q But you are familiar with those two people that live
- 21 in that house?
- 22 A Yes, sir.
- 23 Q Do you remember walking in that house?
- 24 A Yes sir, I do.
- 25 Q Did you have your little black bag with you?

1 A No, sir.

2 Q Where was it at?

3 A At Joni and Marty's house.

4 Q So at that point you didn't have that black bag?

5 A No, sir.

6 Q Once you left, Stella and Debbie had to go wash
7 clothes, you rode with them, is that right?

8 A Yes, sir.

9 Q Let me back up. So before Marty dropped you off at
10 Stella Burton's house, you dropped your shotgun off at
11 Marty's house?

12 A Yes, sir.

13 Q So Marty was well aware that you had a shotgun?

14 A Well aware.

15 Q Did Marty see you unload that shotgun earlier that
16 day?

17 A I can't say if he did or he didn't.

18 Q After that you didn't know where Marty and Joni were
19 going, right?

20 A I know they had a call, he said he had to run to
21 Abbeville. And then after that he would be able to take
22 me home.

23 Q And Marty kept his word, didn't he?

24 A Yes, he did.

25 Q Marty went to Abbeville to pick up JJ and then later

1 on that night, do you remember when Marty and Joni arrived
2 at Joey's?

3 A I do.

4 Q When was that?

5 A It was around 12:00 or 1:00 o'clock.

6 Q What were you doing at Joey's the whole time you were
7 sitting there?

8 A Reading my Bible, conversating with Joey.

9 Q Did you feel like people were out to get you?

10 A No, sir.

11 Q You weren't paranoid?

12 A No, I was just a little uneasy because I hadn't never
13 met these people before.

14 Q Did you ever walk about outside the house?

15 A I walked to the big house one time.

16 Q Walked to the big house one time. Is that where they
17 were doing laundry?

18 A Yes, sir.

19 Q And try to mix up some drugs then?

20 A No, sir. I asked Debbie if she would call Marty to
21 see if he was still in route.

22 Q You didn't flip the can over and try to mix up drugs?

23 A No, sir. I am not aware of none of that.

24 Q How long were you there at Joey's?

25 A Five hours maybe.

1 Q Was Joey pleasant to you?

2 A Yes, he was.

3 Q Was Stella cordial to you?

4 A I didn't really conversate with her once she was --
5 once she closed.

6 Q Did you have any conversations with Stella?

7 A Not that I can recall, no sir.

8 Q Do you remember telling Stella you had a job to do?

9 A Absolutely not.

10 Q Do you remember talking to Stella about the colors of
11 the rainbow?

12 A No, sir.

13 Q You don't. Are you saying it didn't happen or you
14 just don't remember?

15 A I don't believe I talked about none of that.

16 Q Did you talk to anybody while you were there for five
17 hours?

18 A Just Joey and Debbie. I didn't know Stella.

19 Q Had you ever met Joni before that night?

20 A I have.

21 Q How did you know her?

22 A Through Marty.

23 Q Had you ever met Joey before?

24 A No, that was the first time I had met Joey.

25 Q Once Marty showed up at the house, what time was

1 that?

2 A The time that Marty and Joni showed up at Joey's
3 house?

4 Q Yes.

5 A It was around 12:30 to 1:00, I believe it was.

6 Q Where did you go from there?

7 A Came back to Joni and Marty's house.

8 Q At that time did Joni ask you to get out of her car?

9 A I got out.

10 Q Did she ask you to?

11 A Yes, sir.

12 Q She didn't want anybody sitting in her car, is that
13 right?

14 A Well, Marty was unlocking the door and I was just
15 reading my Bible and she said, just come on.

16 Q And y'all go in the house?

17 A Yes, we did.

18 Q While in the house did you make several trips to the
19 bathroom?

20 A I recall just one time.

21 Q Did you have anything in your hand at that point?

22 A No, sir.

23 Q Are you sure about that?

24 A Positive.

25 Q At that point did Marty ask you if you are ready to

1 go home?

2 A Yes sir, he did.

3 Q Actually did he say, come on and let's go?

4 A Yes, sir.

5 Q Why did he have to say it like that. Did you not
6 want to leave?

7 A I did want to leave.

8 Q Marty was going to give you a ride, is that right?

9 A Yes sir, he was.

10 Q Had you and Marty gotten into any arguments that
11 night?

12 A No.

13 Q Had you ever gotten in an argument with Marty?

14 A No, sir.

15 Q When you left Marty and Joni's house, did y'all go
16 anywhere else?

17 A Yes, we went to Debbie's to retrieve my phone.

18 Q Did you get out of the car?

19 A I did not get out of the car. There wasn't no lights
20 on.

21 Q Did you get your phone?

22 A No sir, I did not.

23 Q You are in the backseat at this point, right?

24 A Yes, I am still in the backseat.

25 Q And you testified when you left Marty's house and you

1 grabbed that .20 gauge shotgun, is that correct?

2 A Yes, sir.

3 Q And put in the back of the car?

4 A Yes, sir.

5 Q Did Marty see you had that shotgun?

6 A Yes, sir.

7 Q And you sat in the backseat?

8 A Yes sir, I did.

9 Q I believe you stated to Mr. Shaffer, you were telling
10 him how to get to your house?

11 A We was in route to Ninety Six and he did not want to
12 go through town.

13 Q And then you told him a different route?

14 A Well, he wanted to go through the back roads, so I
15 told him. He wanted to travel the back roads rather than
16 go through town.

17 Q Again, this is your neck of the woods, right?

18 A This is -- yes, that is where I stay at, yes sir.

19 Q And you are familiar with Warner Road, right?

20 A I am not familiar with it, I just know of it. I pass
21 it in route to Greenwood when I am pressed for time.

22 Q You were born and raised in Ninety Six?

23 A Yes, sir.

24 Q Booker Road is just a short distance away from Warner
25 Road, is it not?

1 A It is, sir.

2 Q You are familiar with different things that happened
3 on that road, right?

4 A I can recollect one incident.

5 Q If you go down Tillman Territory Road, you said Marty
6 took a wrong turn?

7 A Yes, he did.

8 Q You are going down Tillman Territory, isn't it true
9 that if you just keep going straight you will come out on
10 246?

11 A Yes, that was the plan, yes sir.

12 Q So Marty took the wrong turn, you didn't tell him to
13 turn down that road?

14 A No, sir.

15 Q Driving down Warner Road, did Marty talk on the
16 phone?

17 A Yes, I heard him say about fifteen minutes before I
18 got -- fifteen minutes before we would have gotten to my
19 house, he said something about -- I am on my way home,
20 that is all I could catch.

21 MR. SHAFFER: Hearsay, Your Honor.

22 THE COURT: Okay. Sustained.

23 Q Did you hear him on the phone, on a phone
24 conversation?

25 A Yes, I did. Yes, sir.

1 Q How was Marty's demeanor then, calm?

2 A He was real quiet other than making that noise.

3 Q Marty didn't have many teeth in his head, did he?

4 A I don't know.

5 Q You don't know?

6 A I don't know.

7 Q How long have you known him?

8 A A little over a year.

9 Q You were riding with him that day, right?

10 A Yes, I was.

11 Q You don't remember if he had teeth in his head or
12 not?

13 A I wasn't paying that close of attention.

14 Q Was the radio on?

15 A Not to my knowledge it wasn't.

16 Q That road is real dark, isn't it?

17 A Yes, it is, sir.

18 Q Is it safe to say you couldn't see anything in that
19 car or outside the car. Is that right?

20 A In the car you could see because of the speedometer
21 light. But as far as outside, no sir, it was pitch black.

22 Q You told the jury a few minutes ago as he got down
23 the road that Marty stopped suddenly, is that right?

24 A Yes, sir.

25 Q That Marty waived a pellet gun at you?

1 A Yes, sir.

2 Q Did you also say that then his phone lit up or he got
3 a phone call. Did you say that?

4 A Something happened with his phone and it got his
5 attention. His attention faded from me to phone, faded
6 from me to the phone.

7 Q And so where was the gun at after his attention got
8 distracted on his phone?

9 A I guess it was in his lap.

10 Q The gun was in his lap?

11 A I guess it was somewhere in his lap, yes sir.

12 Q And after the gun was in his lap what did you do?

13 A When I saw the gun brought back up --

14 Q Was he still on the phone?

15 A No, sir.

16 Q But before he even reached for that gun initially,
17 you had already picked up that shotgun and loaded it,
18 right?

19 A Yes sir, I have. Yes I did because I didn't know
20 what was about to happen.

21 Q Marty was a friend though, right?

22 A He was unresponsive when we turned down the road so I
23 didn't know what his plan was.

24 Q Wasn't you going home?

25 A Not that way. How could we be going to my house if

1 he took that turn.

2 Q Say that again.

3 A I was saying how could he have took that turn and
4 still would have been in route to my house.

5 Q After you shot him how did you get home?

6 A I drove his car.

7 Q And you kept going straight down Warner Road,
8 correct?

9 A There was no other way to turn around. The only way
10 I knew.

11 Q After you got to the end of Warner Road you took a
12 left, right, onto Brooks Road?

13 A I think so, yes sir.

14 Q And then you took another left onto 246, correct?

15 A Yes.

16 Q And then less than two miles down the road you took a
17 right into Booker Road, your house, correct?

18 A Yes sir, I did.

19 Q So there is no way, if you are riding down Warner
20 Road, to get to your house? Is that what you are saying?

21 A I don't believe I said that.

22 Q I think you just said, if I am not mistaken, going
23 down Warner Road, there is no other way to get to your
24 house? That is not the way to your house. But you can go
25 to your house that way, right?

- 1 A Yes, sir.
- 2 Q And you did?
- 3 A Yes, that is the way I took, yes sir.
- 4 Q An area you are familiar with, right?
- 5 A Yes, it is.
- 6 Q Where is Hastings Road?
- 7 A I think it is a road that connects to Warner.
- 8 Q Right in the middle of it, perpendicular to it?
- 9 A I think so.
- 10 Q Is that where that girl got burned up?
- 11 A I think so.
- 12 Q So you are familiar with that area, right?
- 13 A I grew up down there, in the area.
- 14 Q So that whole day Marty came to give you a ride,
15 correct?
- 16 A Yes, sir.
- 17 Q When you left with Marty at Joni's house, he was
18 giving you a ride home, right?
- 19 A Yes, sir.
- 20 Q And even if making a wrong turn down Warner Road, you
21 could have still got to your house, right?
- 22 A Yes, sir.
- 23 Q That is actually the way you got home, correct?
- 24 A Yes, sir.
- 25 Q When you shot Marty, Marty didn't have the gun

1 pointed at you, did he?

2 A It was in motion.

3 Q It was in motion?

4 A Yes, he was bringing it back up.

5 Q Once you shot Marty and drug his body out of the car,
6 did you move this gun?

7 A Yes, I did. I sat on it.

8 Q You sat on it. It was in the driver's seat?

9 A (No response.)

10 Q Where was the gun when you pulled Marty out of the
11 car?

12 A It was on his -- it was in the driver's seat.

13 Q Didn't have any blood on it?

14 A I am not aware.

15 Q You remember what Marty looked like after you shot
16 him?

17 A No, sir.

18 Q You remember what his shirt looked like?

19 A No, sir.

20 Q You don't remember it was covered?

21 A No sir, I don't.

22 Q You said this gun was in his lap, right?

23 A It was on the seat.

24 Q On the seat. Didn't have anything on it?

25 A I am not aware if it was.

1 Q I want to show you State's 118. What do you see on
2 his shirt?

3 A Blood.

4 Q And he had that gun in his lap?

5 A It was in -- I don't know if -- after I moved the
6 body out of the car the gun was in the seat. I don't know
7 if was in his lap or not. But I know I seen it in motion
8 and that is when it happened.

9 Q Do you even know if it was in his hand?

10 A Yes sir, it was in his hand.

11 Q Again, you loaded your shotgun prior to him even
12 pulling up a pistol, is that right?

13 A Yes, sir.

14 Q Going down a road you know goes to your house, right?

15 A Yes, sir.

16 Q After you shot Mr. George you drug him out of that
17 car, didn't you?

18 A Yes sir, I did.

19 Q Did you put him over there in that ditch?

20 A I put him on the side of the road, out of the way of
21 the vehicle.

22 Q And you took his car, right?

23 A Took his car to go report the incident.

24 Q Now, I show you what has been marked State's 99.
25 What is that?

1 A It is a picture of the passenger seat.

2 Q What is this thing sitting on the seat? Is that a
3 phone?

4 A Yes, sir.

5 Q Why didn't you use that phone call -- to call?

6 A I wasn't aware of it.

7 Q You weren't aware of it. Didn't you just say that
8 after he pointed the gun at you he got distracted by a
9 cell phone call?

10 A I wasn't aware of too much after the incident.

11 Q You weren't aware of too much after the incident?

12 A No, sir.

13 Q After you shot Mr. George, what did you do with the
14 your shotgun shell?

15 A Put it in my pocket. That is what I was taught.

16 Q That is what you were taught?

17 A That is what I was told.

18 Q You don't remember?

19 A I don't.

20 Q Bits and pieces you remember and other parts you
21 don't, is that correct?

22 A Yes, sir.

23 Q After you got back to your mother's house, do you
24 remember talking with your mother?

25 A I do. Bits and pieces I do.

1 Q Bits and pieces?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes, sir.

5 Q Do you remember talking about those three dots again?

6 A Talking about it in the video, I seen it in the
7 video.

8 Q Do you remember saying that energy was out of your
9 mind and I hurt him. Do you remember saying that?

10 A I remember saying force of nature.

11 Q You don't remember saying the energy was out of my
12 mind?

13 A I don't recall. But if it is in the video I don't
14 dispute it.

15 Q And then symbols I was seeing, I was hallucinating.
16 Do you remember saying that?

17 A I don't remember saying hallucinate, hallucinating.
18 But I do remember saying, I said something about symbols.

19 Q Were you seeing symbols?

20 A I saw signs.

21 Q You were seeing those signs or symbols prior to the
22 shooting?

23 A Yes, sir.

24 Q What kind of signs and symbols?

25 A Things I was trying to recollect after the incident.

1 Q You were trying to recollect after the incident?

2 A Recollect as far as, as we were traveling down the
3 road I was being observe on the headlights that was
4 shining from the car and I noticed that one side of the
5 road the posts was leaning in and on one side of the road
6 the posts was straight up and down.

7 Q What did that mean?

8 A This is a analysis of what I thought after the
9 incident.

10 Q I thought that you said that was before the incident
11 that you noticed these posts?

12 A I did. But I couldn't interpret them at the time.

13 Q But you were thinking about them at the time. Is
14 that right?

15 A I was thinking about a lot of things, yes sir.

16 Q Do you remember saying I can't play these games no
17 more?

18 A No sir, I don't.

19 Q You don't remember that?

20 A No sir, I don't.

21 Q Would you like to rehear it?

22 A I don't dispute it.

23 Q What would you have been meaning by saying I can't
24 play these games no more?

25 A I have no idea.

1 Q And then the force of nature or hallucination, a
2 force of nature I couldn't reckon with it?

3 A Yes.

4 Q What do you mean by that?

5 A Force meaning the gun. Nature meaning Marty.

6 Q You were talking about your hallucinations?

7 A No, I was speaking in another term. I didn't want to
8 take blame.

9 Q Say that again?

10 A I did not want to take credit for killing him in
11 self-defense.

12 COURT REPORTER: Did he say he did or did not?

13 Q Say that again.

14 A I did not want to take credit for him dieing in
15 self-defense. I was trying to speak in a different term.

16 Q You followed that up with, what I heard yesterday
17 took me right over to that spot. I never heard nothing in
18 my life sound like that?

19 A That was a different spot. It was a spot that my
20 mother had put some items that I had collected before I
21 moved to Bluffton.

22 Q Isn't that right there still in the same area where
23 trying to figure out where Marty is?

24 A This is on the Booker's property.

25 Q But you were hearing voices the day before?

1 A No, sir.

2 Q Well, then what spot are you talking about?

3 A It was a sound.

4 Q It was a sound?

5 A Yes, sir.

6 Q You were hearing sounds the day before?

7 A It wasn't -- it was an actual sound.

8 Q But it took you right over to that spot?

9 A Yes, this old house that sits right beside my house.

10 The roof fell in and the tin kind of made a loud noise and

11 I went over there to check it out and I found a collection

12 of bottles that I had collected before I went to Bluffton.

13 And my mother had just threw -- at the old house.

14 Q And you just pulled that out of the air when the
15 officer and your mother and aunt were asking you questions
16 about a place where bottles were?

17 A No, this was when me and my mother, when she was
18 trying to get some information out of me on the incident.

19 Q She was trying to get information out of you about
20 the incident, correct?

21 A On the couch, yes sir. And I brought that up.

22 Q And your reply was, what I heard yesterday took me
23 right over to that spot?

24 A I didn't -- I didn't say nothing to her about it so
25 at the time I was expressing myself about the situation.

1 Q About the situation that just happened?

2 A No, about the situation with the bottles being found,
3 that I had collected.

4 Q Bottles didn't come up in that conversation, did it,
5 on the couch?

6 A I never said anything about any bottles. No, I
7 didn't describe the situation.

8 Q And that response you gave was after your mom asked
9 you about Warner Road and what you doing over there on
10 Warner Road, right?

11 A Yes, but I wasn't referring to Warner Road.

12 Q You weren't referring to Warner Road?

13 A No, sir.

14 Q The road you knew bad things happened on, right?

15 A I have heard one incident.

16 Q After you got outside and were in the back of that
17 sheriff's car, the question was asked, where was Marty.
18 And you told Warner Road, right. Do you remember that?

19 A Yes, sir.

20 Q You said I shot Marty, my brother and Christ, it was
21 black and gray. Were you seeing stuff then too?

22 A No, sir.

23 Q You weren't still hallucinating?

24 A No, sir.

25 Q And he is on Warner, sir, I don't know why. Do you

1 remember saying that?

2 A It was after the incident. There was a lot of things
3 I probably said that I can't recollect or explain. I was
4 very upset.

5 Q Did you also talk about seeing the pink and blue
6 ribbons everywhere?

7 A I believe I do remember saying that.

8 Q And poles, telephone poles?

9 A Pink and blue ribbons on the telephone poles, yes
10 sir.

11 Q Is that before you shot Marty?

12 A This was weeks before I noticed them, those.

13 Q So were you hallucinating weeks before?

14 A No sir, there actually was -- they were on the
15 telephone poles. The line that secures the pole, it is
16 almost like a brace.

17 Q So do you dispute the day before that you were doing
18 any kind of drugs?

19 A Marijuana.

20 Q Marijuana?

21 A Yes.

22 Q You didn't do anything else?

23 A No, sir.

24 Q And on that couch when you say I am hallucinating,
25 you are now saying you weren't hallucinating?

1 A There is a lot of things I might have said that I
2 didn't. I can't explain.

3 Q After you got over and got arrested on this, you had
4 a time to sit and reflect, right?

5 A Yes, sir.

6 Q And the time to look at pictures?

7 A No sir, I haven't.

8 Q You haven't seen these photographs?

9 A No sir, I haven't.

10 Q You haven't seen the photographs inside that vehicle?

11 A I seen the photos -- yes, I have.

12 Q And this pistol was laying in that front seat, wasn't
13 it?

14 A Yes, sir.

15 Q Didn't have any blood on it?

16 A No where.

17 Q Did you place that pistol over there after you drug
18 Marty out of the car?

19 A Is when I got in the car and I sat on it and I placed
20 it over there.

21 Q How would you have sat on it if Marty had it in his
22 hand, when you drug him out of the car?

23 A I don't know how.

24 Q And it didn't have any blood on it?

25 A I don't know if it did or it didn't.

1 Q Had you been to drug rehab before?

2 A Twice.

3 Q For drugs other than meth, or other than marijuana?

4 A Yes sir, I have.

5 Q Methamphetamine?

6 A Yes, sir.

7 Q Cocaine or crack cocaine?

8 A Yes, sir.

9 Q You smoked, shot up?

10 A Yes sir, I have.

11 Q And snorted?

12 A Yes sir, I have.

13 Q Do you remember what you were reading in the Bible?

14 A Different passages.

15 Q Do you remember the context of it?

16 A Pretty much I was reading psalms, I believe it was.

17 But I can't give you -- I can't give you the direct
18 description and chat, doing both.

19 Q As you turned down or as y'all drove down Warner Road
20 your testimony is you loaded that shotgun before you knew
21 there was anything going on in that car just because you
22 turned down that road?

23 A After I couldn't get a response from Marty, yes, I
24 did.

25 Q Wasn't he on the telephone?

1 A No, he had got off by that time.

2 Q And when Marty was on the phone, was he acting
3 normal?

4 A He was quiet, just making, making a noise.

5 Q The noise bothered you, didn't it?

6 A It bothered me.

7 Q It did bother you?

8 A No, I just noticed it. He always made the noise but
9 it got more rapid and pace as he had turned down the road.

10 Q So you were paranoid?

11 A I did not say I was paranoid.

12 Q Do you think you were paranoid?

13 A No, sir.

14 Q Then why turning down that road get you so scared?

15 A Because I told Marty straight, I didn't tell him to
16 turn.

17 Q So you are saying Marty just turned down a dirt road
18 he was not familiar with?

19 MR. SHAFFER: Objection, Your Honor, speculation.

20 THE COURT: Sustained. Solicitor, if you think you
21 are going to go a little while longer on cross which is
22 fine, we may want to take a break.

23 MR. BROWN: I am about to wrap up.

24 THE COURT: Okay.

25 Q Let's go back, you mentioned that Marty pulled this

1 pellet gun out and was waiving it around, correct?

2 A He had it pointed at my face, yes sir.

3 Q And then got distracted and the gun was not pointed
4 at you anymore, is that right?

5 A No, sir.

6 Q Not pointed at you and then you shot?

7 A I shot when I seen his gun raising up again.

8 Q He wasn't facing you though, was it?

9 A He was in a turning motion.

10 Q Do you remember where you hit it?

11 A No, sir.

12 Q You didn't get him back here behind the right ear?
13 He wasn't looking at you, was he?

14 A No, sir.

15 Q No further questions.

16 THE COURT: You have much redirect, if you do we will
17 take a little short break.

18 MR. SHAFFER: Not very much at all, Your Honor.

19 THE COURT: Very good. You may proceed.

20 REDIRECT-EXAMINATION

21 By Mr. Shaffer:

22 Q Mark, the Solicitor asked you about different ribbons
23 and stuff like that. Did you recognize those as being
24 signs before the shooting or after the shooting?

25 A After.

1 Q Okay. Did you shoot him --

2 COURT REPORTER: I didn't hear his answer.

3 A It was after.

4 Q Did any of these signs cause you to shoot him?

5 A No, sir.

6 Q No further questions.

7 MR. BROWN: Just a few questions.

8 RECROSS EXAMINATION

9 By Mr. Brown:

10 Q Yes, Mr. Hailey, do you dispute that on the video,
11 while on the couch, you said the voice I heard yesterday
12 took me right over to that spot.

13 MR. SHAFFER: Your Honor, I think this is outside of
14 the scope at this point.

15 THE COURT: It might be outside. How is it
16 responsive to the two questions that Mr. Shaffer asked.

17 MR. BROWN: He said signs and symbols.

18 THE COURT: Right.

19 MR. BROWN: I will withdraw that questions.

20 THE COURT: All right.

21 Q Mr. Hailey, did you state, while sitting on that
22 couch that you were seeing signs and symbols?

23 A If it is in the video I don't dispute it.

24 Q And that it was black and gray, is that correct?

25 A Yes, sir.

1 Q No further questions.

2 THE COURT: You can step down, sir.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Does the Defense have any further
6 witnesses?

7 MR. SHAFFER: No, Your Honor, the Defense rest.

8 THE COURT: Thank you very much, Mr. Shaffer. Does
9 the State have any reply case?

10 MR. BROWN: No, sir.

11 THE COURT: Okay. All right, the evidentiary record
12 in this case is now closed. Ladies and gentlemen, we are
13 going to go ahead and break for the evening. Let me tell
14 you what we have left to do tomorrow. The lawyers will
15 make their closing arguments to you. I will instruct you
16 on the law to apply to the facts as you find them in this
17 case. And after that is done then I will instruct you to
18 begin your deliberations. Now, with that said, I have got
19 a prior commitment in the morning so I don't want you here
20 until 11:00 o'clock. It is a commitment I already made
21 some time ago so I need to follow through with that so
22 don't come until 11:00 and we will get started back up.
23 So get another good night's rest and we will see you at
24 11:00 in the morning. Appreciate your hard work,
25 appreciate your patience and understanding in this case.

1 See you in the morning at 11:00 and remember all of my
2 previous instructions.

3 (Whereupon, the jury was excused for the day.)

4 THE COURT: I should be here by 10:30. Madison is
5 going to go ahead, probably this evening, Madison will be
6 emailing you a draft charge for you to look at and then
7 let's regroup about 10:30 and we can talk about the
8 charge. Just for your information, we modeled it after
9 the Elmore charge which would contain some of the
10 suggestions that you made in that case, assuming that it
11 would be applicable to this case. But take a look at it,
12 pretty straightforward. And so I should be here by 10:30.

13 MR. SHAFFER: Your Honor, at some point this evening
14 I probably will be submitting a memorandum related to a
15 requested charge for involuntary manslaughter.

16 September 23, 2021

17 THE COURT: Okay. I had a conference with the
18 lawyers in-chambers. Since I needed to do some work
19 concerning some proposed charges and lawyers were fine
20 with this. I am going to bring the jury out and explain
21 to them that I have got some work to do with the lawyers
22 and send them on and they can get their own lunch and have
23 them back at 1:00 o'clock. So that is kind of the plan
24 that we are going to be working with. So if you will
25 bring the jury out.

1 (Whereupon, the jury came into open court at
2 approximately 11:25 a.m.)

3 THE COURT: Let the record reflect that the jury is
4 back in. Good morning, ladies and gentlemen. Hope
5 everyone is feeling well still. As I told you when we
6 broke yesterday evening, what we have to do is the lawyers
7 will make their closing arguments to you and I will charge
8 you the law in the case. As I normally do, when I am
9 preparing my charge on the law I will allow the attorneys
10 to make suggestions, request amendments or changes or some
11 additions, whatever. And I have already had a conference
12 with the lawyers and I am going to have to spend some time
13 on determining exactly what charge that I want to give to
14 you. So here is my options. I can leave you back sitting
15 in the jury room for like an hour and a half or so, or go
16 ahead and send you on home, you can get you a bite to eat
17 and then come back at 1:00 o'clock. I think you would
18 much rather, if I kept you back there I would feed you
19 lunch. Okay. I wouldn't let you go hungry. But I think
20 you probably would rather leave, get your lunch and be
21 back here at 1:00. So that's what we are going to do.
22 And that will give me some time to work on the charge,
23 continue to consult with these fine attorneys and so if
24 you will be back no later than 1:00 o'clock. Hopefully we
25 can get started soon at that time. Get you a bite to eat

1 and see you back at 1:00.

2 (Whereupon, the jury was excused from open court for
3 a lunch break.)

4 THE COURT: Okay, we will be in recess for a while.

5 MR. SHAFFER: Your Honor, can I say something before
6 I forget, on the record.

7 THE COURT: Yes.

8 MR. SHAFFER: We renew our directed verdict motion,
9 Your Honor.

10 THE COURT: Oh, sure. So noted.

11 MR. SHAFFER: Thank you. And denied?

12 THE COURT: And denied, yes sir.

13 MR. SHAFFER: Thank you, Your Honor.

14 THE COURT: Okay, we will be at ease for a while.

15 (Whereupon, a break was taken.)

16 THE COURT: Okay, we are back on the record. Let me
17 just kind of summarize a little bit concerning the jury
18 charge and then both sides can put on the record whatever
19 you need to. I will first acknowledge that the Defense,
20 two documents concerning request to charge, I think the
21 memorandum and then maybe an email outlining some things,
22 have been marked as a Court's exhibit, 4 and 5.

23 (Whereupon, Court's Exhibits 4 and 5 were marked for
24 identification only.)

25 THE COURT: Had an informal charge conference back

1 in-chambers. The State made two requests. One was to
2 provide some additional malice language and we were able
3 to, with the consent of the Defense, were able to agree on
4 that. So that has been inserted in the charge. Secondly,
5 the State requested a charge on voluntary intoxication not
6 being a defense. I have declined that charge. The
7 Defense requested, the Defense requested three charges,
8 character evidence which I am allowing and have quoted
9 verbatim of their request; an accident charge which I have
10 quoted verbatim, their language but have denied the
11 involuntary manslaughter charge. In reading all the cases
12 on involuntary manslaughter, I believe that the facts of
13 this does not fit into what involuntary manslaughter is.
14 The cases that allowed an involuntary manslaughter charge,
15 all deal with the facts like struggle, accidental
16 shootings, things of that nature. So because I don't
17 believe the case law supports an involuntary manslaughter,
18 notwithstanding the very creative memorandum that the
19 Defense offered, I am declining that. Now, with that said
20 I will allow the State to put on the record anything it
21 wants to concerning my refusal to charge voluntary
22 intoxication, not being a defense.

23 MR. BROWN: Judge, it is just the State's position
24 that, there has been a lot of talk about people believing
25 he was high. Actually he was saying he had been doing

1 some drugs. He even says on the video that he was
2 hallucinating, so that is the reason why we want voluntary
3 intoxication, that you are no less responsible even at a
4 mental state of intoxication. So that is not a defense to
5 committing the crime charged. That was the purpose of
6 that.

7 THE COURT: Sure. And I would just note that the two
8 cases that the State provided to me were both voluntary
9 manslaughter cases. And the way I read the cases, the
10 language in those cases dealing with voluntary
11 intoxication not being a defense, it is more related to
12 the voluntary manslaughter charge and not necessarily a
13 directive or a permissible charge by the Court. So I
14 denied that. All right, now the Defense, you want to put
15 anything on the record concerning the Court's refusal to
16 charge involuntary manslaughter.

17 MR. SHAFFER: Your Honor, related to the argument,
18 obviously I am just going to rely upon the written
19 memorandum. I think the evidence outlines, supports it,
20 911 call.

21 THE COURT: Right.

22 MR. SHAFFER: The witness related to accident and the
23 witnesses related to intoxication. But I would just rest
24 with the argument.

25 THE COURT: And your memorandum clearly sets out the

1 Defense's position. And I will state the reason why I am
2 charging accident is because throughout the videos with
3 the, on the body cam; the videos, the Defendant said it
4 was an accident. So because of that I am charging that.
5 Okay. Are y'all ready for your closing, do you need any
6 more time?

7 MR. BROWN: The State is ready.

8 THE COURT: Okay.

9 MR. SHAFFER: The Defendant is ready.

10 THE COURT: Let me go on and mention before I forget.
11 I think, I don't feel comfortable doing this, but I think
12 I am going to have to stand at the podium when I give the
13 charge. I think it is so awkward with the apparatus and
14 sit at the bench where I normally give my charge. So
15 hopefully no one has an issue with that. It might even
16 bring mack memories in making closing arguments to the
17 jury in the prior days. Madison has emailed the verdict
18 form, we will give that to you. She now has done it.

19 LAW CLERK: I did send it.

20 MS. SUMNER: We reviewed it last night.

21 THE COURT: Oh, okay. As we mentioned yesterday, in
22 line with the Beatty decision, the State will open in full
23 and then the Defense in full and then the State has the
24 right, if it so chooses, to come back and reply argument
25 as any new matters that the Defense may raise. Let's

1 bring the jury out, please.

2 (Whereupon, the jury came into open court at
3 approximately 1:10 p.m.)

4 THE COURT: Let the record reflect the jury is back
5 in. Good afternoon, ladies and gentlemen, hope you had a
6 chance to get you a bite of lunch. Okay. This is the
7 last opportunity that these fine lawyers have to advocate
8 for their respective sides, closing arguments are very
9 important, it is very important to these lawyers. So, as
10 you have done, since day one you have paid very close
11 attention and been alert throughout this trial which I
12 appreciate. I need for you to continue being alert and
13 paying attention as the lawyers give their closing
14 arguments to you. Is the State read?

15 MR. BROWN: Yes, Your Honor. May it please the
16 Court. Ladies and gentlemen, imagine thinking to
17 yourself, you are just taking another person home, giving
18 another person a ride home like you have done before, many
19 times before. But the other person, Mark Hailey, has a
20 different plan, different thoughts about what is going to
21 transpire that night. Driving him home, get on a dark
22 dirt road, feel uneasy. The next thing you know you have
23 got a hole through your head, being drug out of the car on
24 a remote, dark dirt road and left there. Never be able to
25 come back to your family, your friends or your fiancé.

1 Folks, a dark dirt road, Marty George is not familiar
2 with. A dark dirt road Mr. Hailey was familiar with,
3 going to his house. Somewhere that Mr. Hailey went down
4 that road and you will hear more about that later. Ladies
5 and gentlemen, thank you so much for your attention and
6 time during this whole trial. It has been a long time, a
7 lot of information you had to process, try to put
8 together. What I want to do is try to put it all back
9 together for you, it is like a big puzzle. You heard
10 something last week, you probably don't remember what was
11 all said last week in a video, we are going to watch part
12 of it, not the whole thing, I am not going to make you do
13 that. But I think it is important to listen to what was
14 said in part of that video. Before we get into the facts,
15 let's talk about the law. The Judge will instruct you on
16 the law and he already has kind of told you what he is
17 charged with. He is charged with murder, carjacking and
18 possession of a weapon during the commission of a violent
19 crime. So what is murder. Murder is, and we have to
20 prove beyond a reasonable doubt all of these charges, and
21 that is the unlawful killing of another person with malice
22 aforethought. What is malice. Malice is hatred, ill will
23 or hostility towards another person. It is the
24 intentional doing of a wrongful act without just cause or
25 excuse and with the intent to inflict injury. Malice is

1 defined as being hatred or ill will. Malice signifies,
2 rather, a general malignant recklessness of the lives and
3 safety of others or a condition of the mind which shows a
4 heart regardless of social duty and fatally bent on
5 mischief. It indicates a wicked or depraved spirit,
6 intent on doing wrong. And malice aforethought does not
7 require that malice exists for any particular time before
8 the event happened, before the act is committed. Malice
9 must exist in the mind of the Defendant just before or at
10 the moment that that shot happened. Therefore there has
11 to be a combination of the previous evil intent and the
12 acts. Okay. And malice can be shown by words, threat,
13 conduct, acts, showing a total disregard for human life
14 based on the evidence and the facts. And we will go
15 through some of that but just you will be looking out when
16 we go through this, the facts, malice. Let's look at the
17 type of killing this was, the close range, .20 gauge
18 shotgun, drag marks on the road, leaving his body on the
19 side of the road. The loading of the shotgun as they were
20 driving down the road. Remember that. Before anything
21 allegedly happened the Defendant said he loaded that
22 shotgun. In the head, the position of Marty George, where
23 he was shot. All ideas of malice, examples of malice. No
24 call for help by Mr. Hailey, never called 911, never
25 stopped at a house along the way and then we will get into

1 the statements he made out at his house that night.
2 Possession of a weapon during the commission of a violent
3 crime. It is what it sounds like. Murder and carjacking
4 is a violent crime and so if you find that he was in
5 possession of a weapon during that time then that is
6 position of a weapon during the commission of a violent
7 crime. And carjacking, carjacking is someone takes or
8 attempts to take a motor vehicle from another person by
9 force and violence, intimidation while the person is
10 operating that vehicle or while the person is in the
11 vehicle. As you have already heard, Marty George was
12 driving the vehicle, undisputed. Mark Hailey took that
13 vehicle after he murdered him. Ladies and gentlemen,
14 there is also a defense in this case that they raised,
15 self-defense. So it is something you have to consider as
16 well. What is self-defense. Well, there are four
17 elements required of self-defense. And again, it is our
18 burden of proof to prove to you beyond a reasonable doubt
19 that that does not fit self-defense. We disproved that.
20 So the first is, the Defendant was without fault bringing
21 on the difficulty. What did Mr. Hailey say on the stand
22 yesterday. As they are riding down this road Mr. Hailey
23 loaded this shotgun, do you hear that. Put the shell in
24 and he shot him. Can't be without fault on bringing about
25 the difficulty. Second, the Defendant must have been in

1 actual imminent danger of losing life or sustaining
2 serious bodily injury, he must have actually believed he
3 was in imminent danger of losing life or sustaining bodily
4 injury. Again, Mr. Hailey said he loaded up that shotgun
5 before anything happened on that road, while Mr. George
6 was on the phone he loaded that shotgun. Even if you want
7 to believe that Marty George somehow picked up the pellet
8 pistol, after knowing a .20 gauge shotgun was behind him
9 and pointed it at him, the Defendant has to be without
10 bringing on the difficulty. He said from the stand that
11 he loaded that gun before anything happened and you heard
12 that gun open and shut. But he has to be in actual
13 imminent danger, or third, a reasonably prudent, somebody
14 has to believe they are in imminent danger. But this is
15 where that reasonable prudent person of ordinary firmness
16 and courage would have entertained the same belief. If
17 the Defendant was actually in imminent danger then the
18 circumstances were such that it would warrant a person of
19 ordinary prudence, firmness and courage to strike that
20 fatal blow. This is also where we are going to watch the
21 video again. Just a small portion of it, of what was
22 going through his head and what he was seeing out there
23 that night. And also remember what Dr. Salas said. Some
24 things that he thought was reality is not firmly grounded
25 and what actually occurred. He can see stuff that really

1 wasn't taking place or visualize something that really was
2 not happening even though he is competent and he is not
3 insane. Fourth, the Defendant has no other probable means
4 of avoiding danger or losing his own life or sustaining
5 serious bodily injury and to act as he did in that
6 particular instance. What else did he say yesterday on
7 the stand. That apparently after he loads his shotgun and
8 has it behind him, behind Marty George, while Marty is
9 talking on the phone, Marty stops the car, pulls a pellet
10 pistol out or pistol and waives it all in his face. What
11 did he say after that. Marty got distracted with another
12 phone call, turned around and was looking at his phone and
13 the pellet pistol was in his hand up front. And Mark
14 pulled the trigger, he intentionally pulled the trigger.
15 Marty wasn't even looking at him. He wasn't looking at
16 him, he was distracted with the phone. We know that back
17 door opened. Mark Hailey got out of that back door after
18 he shot him, went around the car and drug him out of that
19 vehicle. He could remove himself from that vehicle. If
20 you choose to believe Mr. Hailey's version of the facts.
21 Self-defense does not work in this case. And even if you
22 believe what Mr. Hailey says about, he thinks that pistol
23 was in his hand, look at the pistol, look at the pistol in
24 the pictures. Look where the hat was, that Georgia
25 Bulldog hat that was on Marty, it is on the floorboard of

1 the driver's seat. Look what was in the seat in the
2 driver's seat.

3 THE COURT: Solicitor, I apologize.

4 MR. BROWN: Too close?

5 THE COURT: If you are not going to be masked back
6 up, stay behind the podium.

7 MR. BROWN: Yes, sir.

8 THE COURT: And I apologize.

9 MR. BROWN: Either way you look at it, self-defense
10 does not work in this case. The Judge will also charge
11 you on accident. Folks, Mr. Hailey said on the stand
12 yesterday he pulled that trigger. Now, going into the
13 facts of this case what did you hear. And actually before
14 I go into that, proof beyond a reasonable doubt, we have
15 to prove beyond a reasonable doubt that Mr. Hailey is
16 guilty of all of these charges. What is that. It is the
17 proof that leaves you firmly convinced of the Defendant's
18 guilt, firmly convinced, does not mean beyond all doubt,
19 does not mean beyond any doubt and does not mean beyond
20 every doubt. It leaves you firmly convinced that he
21 committed these crimes. And the Judge will go a little
22 bit farther in explaining what proof beyond a reasonable
23 doubt is. But, again, it is the State's burden, it is our
24 burden. So we walk through these facts right now, to
25 recap what everybody said in this case and how it all fits

1 together, how this puzzle fits together to show what
2 happened that night and what was actually going on. As
3 you heard from the getgo, the first thing we played was
4 the 911 call. Loretta Hailey, Mark's mom called, Mark
5 didn't call, Loretta called. So some of the things she
6 said is, I think he is on something, that is within the
7 first three minutes of the call, I think he is on
8 something. He has got specks of blood on his clothing.
9 He said it was a mistake. A mistake is different than
10 accident. Mistake is making a misguided or wrong judgment
11 decision, it is not accident. Mistake and accident are
12 two different things. Maybe he saw something that wasn't
13 really there and made a mistake. Again, Ms. Hailey says
14 he is on something, he is seeing three dots on his hand,
15 he is hallucinating or something. So then the 911 call,
16 Ms. Hailey, his mother who he has been living with for
17 seven to nine years and who raised Mark is saying he is on
18 drugs and he is hallucinating. Somebody that knows him
19 far longer than four hours, his mama. What did mom say.
20 A fight on March 4th, he was out of the house before she
21 was awake, he was talking out of his head then. Accusing
22 her of putting roots on him, she says he was paranoid and
23 thought she was out to get him. That afternoon she cut
24 his phone off because it pissed her off so much. She knew
25 that was his .20 gauge shotgun. She says he only acts

1 like that when he is high. Again, the woman he lives
2 with, his mother, he only acts like when he is high. The
3 only time he acts like this is when he is high, he doesn't
4 have any other mental health issues. He's bad on drugs.
5 Been on drugs seven to nine years, he is hallucinating.
6 He is worried a lot, worried about people hurting people,
7 would say things that didn't make a lot of sense. She was
8 familiar with Warner Road and you will hear about that in
9 a few minutes. She knew bad things happen on that road,
10 there is really no other excuse to be out there. What are
11 you doing, drugs on that road? And one of the last
12 questions she asked, it was on that body cam, what I said
13 was the truth, what I remember I don't dispute it. What
14 did Priscilla Watts say, his aunt. Mark was bad on drugs,
15 was afraid of him. She was actually afraid of him that
16 night. She walked by one of the officers and said, are
17 you going to put cuffs on him. He showed up at her work,
18 at Hardees and stayed for hours. He would go in and out
19 of the bathroom. She didn't know what he was doing in
20 that bathroom. What she did know when he came out, she
21 said he was talking out of his head on the ride to
22 Greenwood. She mentioned the day before he was seeing
23 three dots. He is already seeing stuff, he was acting
24 unusual. She said he snapped on me and said I was against
25 him too as she took him to Greenwood. Three dots, roots,

1 talking out of his head, small bag with him. Ms. Sumner
2 asked him, was his demeanor in the courtroom different
3 than it was that night. He was seeing stuff in his head,
4 different than he is acting today. His aunt said that,
5 somebody that lives right down the road. And, again, the
6 last thing that she said, I don't dispute what was on the
7 body cam, what I said was the truth on the body cam.
8 James Bonetti, the first officer that arrived. You saw
9 that, he was on the body cam. What did he do. The one
10 thing that you are going to get to decide also is Mr.
11 Hailey's statement, whether he freely and voluntarily
12 responded to it. Is he responding to the questions being
13 asked while he is on that couch. Yes he is, we are going
14 to listen to that for a second.

15 (Whereupon, a video was played for the jury starting
16 at 1:29, ending at 1:35 p.m.)

17 MR. BROWN: The initial talk on that body cam, he is
18 telling a lot. He is responding to those questions. Who
19 is out there. Marty. Why did you tell me it was somebody
20 else. I didn't tell you, Josh, you came up with that
21 yourself. That is not Josh's car. Right here on the
22 video, he says the voice I heard yesterday took me right
23 over to that spot. He never heard a sound like that
24 before in my life.

25 When I first got up here a few moments ago, I told

1 you, Mark got him to go down that road and he tells you
2 that. The voice I heard yesterday took me right over to
3 that road. In his head, that voice I told you yesterday
4 -- I heard yesterday took me over to that road. And mom
5 is talking with him and he kind of gets agitated with her.

6 (Whereupon, a video was played for the jury starting
7 at 1:35 p.m., ending at 1:41 p.m.)

8 MR. BROWN: Those first 11 minutes tell you a lot.
9 Mark has responded to them, answering the questions they
10 asked him and giving more. He tells you he was
11 hallucinating. His mom said, oh, god, you are
12 hallucinating. He said I was hallucinating. I was seeing
13 symbols and signs. I couldn't reckon with it, I can't
14 play these games no more. How do you refer to Marty, you
15 just said. My brother. If you want to you can watch the
16 whole video. I submit to you there is nothing in there
17 about a gun being put in his face or Marty being
18 aggressive towards him. You can watch it. I submit to
19 you that body cam, right after he gets there, you can
20 hear. You can use your common sense, you can use your
21 real life experiences to determine what is going on in
22 that. Was he responsive to those questions. Was he
23 telling what happened. I submit to you he was. James
24 Bonetti, when he took the stand, believed he was on drugs.
25 When he got in there he mentioned Marty's name almost

1 immediately and said, I shot Marty and referred to him as
2 his brother. Mike Young was the other officer that came
3 in. He is the one that went to both scenes. He
4 Mirandized him and everything after that, again, Mr.
5 Hailey freely and voluntarily was talking to them. As he
6 came out of the house, you heard him say, Lord have mercy
7 on my soul. You can watch these videos if you want, the
8 whole thing, they are in evidence, you can use them
9 however you want to use them. I am not going to go
10 through any more of them right now. You next heard from
11 Deputy Pendergrass. He is the one that rode the road.
12 You saw how dark that road was and how Mr. George was off
13 to the side of the road, how he was positioned. Dr. Kyle
14 Shaw, why was he important. Well, Dr. Shaw told you where
15 and how far away that shot would have been. I will show
16 you State's 126 of Marty. Entry wound behind the right
17 ear, exit wound around the left eye. It is undisputed
18 where Mr. Hailey was, the backseat. Undisputed where
19 Marty George was, front driver's seat. And to get that
20 shot and to get that shot from behind the ear, Mr.
21 George's head was not facing Mark Hailey. Mark Hailey
22 pulled the trigger killing him. Dr. Shaw said, based on
23 the entry wound and where you could see stippling and also
24 took in fact that there was a Georgia hat that was
25 covering part of it, around one to two feet, I think the

1 range was one to three, somewhere closer between around
2 two, but between one and two feet. There was also
3 questions asked regarding Mr. George's toxicology. 960
4 nanograms per milliliter. And what did Dr. Shaw say,
5 relatively high amount but it all depends on the
6 individual. Somebody that does meth a lot, be akin to
7 somebody that drinks alcohol a lot. You drink a lot it
8 might not affect them, you could have paranormal even on
9 high amounts of drugs like that. That's what Dr. Shaw
10 talked about. Meth tolerance, it depends on the person
11 could function even with higher levels. But with regard
12 to Mr. George, it is mostly about the distance on the
13 shot. Deputies Josh Hood and Gilbert Yates, remember they
14 are just transporting him from the hospital to the jail.
15 But what did they collect off of Mr. Hailey, shotgun
16 shells. After he shot Mr. George he broke the shotgun
17 down, took the spent shell out and put it in the front
18 seat and put that shell in his pocket. Greg Allison
19 testified next. What Greg did was process the scene, he
20 took all the photographs that we presented in this trial
21 so you can see where everything was in the car, what was
22 collected, what was sent to SLED. Then you heard from the
23 SLED agents, Sara Goodman was the DNA analyst. What did
24 she talk about. Well, Marty George's blood was on the
25 back of Mark Hailey's shirt. We know that. Also both the

1 victim and Defendant's DNA were on the shotgun. We know,
2 based on Mr. Hailey and if Mr. George had picked him up
3 earlier that day, he had a shotgun. The shotgun appeared
4 in that car. Now, definitely by hearing that thing open
5 you knew that shotgun was behind him or think Mr. George
6 would know that that shotgun was behind him as it opened
7 in the back of that car. But, as Mr. Hailey said, they
8 had that gun, he had that gun with him earlier in the day.
9 So Mr. George was aware of it. He claims Mr. George
10 actually took him out to his house on Booker and loaded it
11 up in the car. Remember that here in a few minutes.
12 Nicole Hardin was trace evidence. You say, you expect GSR
13 to be on both of their hands, being in tight quarters in
14 the vehicle like that. When you shoot a shotgun it sends
15 out a plume of gunshot residue and you expect it to be.
16 And it was, it was on both Mark Hailey's hands and on Mr.
17 George. Now, Cecila Modell, who is she. She was the
18 toxicologist from SLED and pharmacologist. She had the
19 expert in pharmacology and toxicology. She said the same
20 thing as Dr. Shaw said about Mr. George's drug levels of
21 methamphetamine, 960 nanograms per milliliter. That
22 really depended on the individual. Somebody with that,
23 you can still function depending on if they used a lot,
24 they could appear normal and still carry on their
25 day-to-day opportunity or day-to-day activities. In

1 general, I asked the question about somebody that is on
2 drugs or a bender, a meth bender. What would that look
3 like. Somebody on methamphetamine who has been on a
4 longer period of time, causes anxiety, nervousness,
5 paranoia, violent aggression, agitation, cause
6 hallucinations, audio and visual. So you are seeing
7 hallucinations but you are also hearing things. Who does
8 that sound like. Who does that sound like. We then got
9 into some of the people that Mr. Hailey was around later
10 on that afternoon on March 5th. We know Marty picked up
11 Mr. Hailey and gave him a ride, we know that. Picked him
12 up out at the gas station across from Cheeseburger House,
13 drove him around and ultimately dropped him off at the
14 house of Stella Burton and Debbie. Stella sees Marty,
15 Stella sees Marty drive off but Mark is left there. What
16 does Stella say. When he walked by her she got chill
17 bumps, felt uneasy. They didn't want him to stay there at
18 the house by himself so they got him in the car and rode
19 over to Joey's house. Joey stayed in that little building
20 behind the main house, they call it a studio, while Stella
21 and Debbie did laundry. What did you hear there. While
22 Stella was doing laundry Mark came up towards the house
23 and she saw him with a can flipped over. He was mixing up
24 drugs. Stella readily admits that she is a drug user, a
25 long time drug user. She knows when somebody is mixing up

1 drugs, she knows when somebody looks high or his high.
2 She says that, she didn't have anything to hide. What
3 other things did she say that was relevant in this case,
4 did she have any conversations with him. He is talking
5 about colors in the rainbow but he also said, I have got a
6 job to do. Kind of random but, again, these are all
7 puzzle pieces. Joey Lawson, what did Joey say. He said
8 Mark came in, Stella brought him over there, he had never
9 met him before, he was making strange mumbling sounds, he
10 was in and out of the bathroom. Who has all said that.
11 Mom said he kept to himself, he would go in and out of the
12 bathroom. Mark said he would go in and out of the
13 bathroom, he did drugs, out of sight, out of mind for mom
14 or other people. His aunt said he was in and out of the
15 bathroom at Hardees. Joey said he was in and out of the
16 bathroom. Joey also mentioned that he too believed Mark
17 was on drugs or high. He was acting paranoid, are y'all
18 out to get me? Joey didn't want Mark at his house. So
19 during this time Stella is calling Joni, calling Marty,
20 trying to get them to come pick him up, take him home. So
21 eventually, after Joni and Marty drove to Abbeville to
22 pick up their friend, J.J., who was getting off of work,
23 the family made it back from town and went over to Joey's.
24 Folks, if you have been following along, the timeline of
25 mama, aunt, Joni, Stella, Joey all matches. They go to

1 Joey's house, pick him up; get him in the car and then
2 they go, I believe Joni says they go back, he wants to try
3 to find his phone. Mark on the stand says kind of reverse
4 that, that they didn't go to the house first, to Stella's
5 house to see about the phone, but they go to Joni's house
6 first. But Joni says they go to Stella's to try to find
7 his phone, nobody gets out of the car, they go back to
8 Joni's house. Joni doesn't want him sitting in her car by
9 himself so they all go in the house. Joni mentions that
10 he is up and down, he is in and out of the bathroom, she
11 sees a syringe in his hand, he is talking out of his head,
12 he is looking around, talking to himself. She wants him
13 out of there. As you have heard, she thought that he may
14 be stealing something out of her bathroom. So she texts
15 Marty. Right after they left, a little after 1:00. What
16 did Joni say later on, later on as the texts, as the call
17 log will show, I think Mr. Murdock read out. At 1:47 Mark
18 or Marty tried to call Joni, it didn't go through. A few
19 seconds later Marty tried to call Joni again, talked for a
20 few minutes. What was Joni's impression or what did she
21 feel after she got off of that phone. She told you she
22 got scared. Why. I submit to you because Marty was
23 already on that road, he is on Warner. Even Mark says he
24 was on the phone. That is when Mark loaded that shotgun,
25 out of his own mouth, while Marty was on the phone with

1 Joni. Hearing that behind you going down a dark road, I
2 wonder why Joni got to feeling of scaredness, knew
3 something wasn't going right. Folks, readily admit, Marty
4 George, there is no denying that he had his own set of
5 problems. He used drugs, everybody came in here and said,
6 all of his friends, that he sometimes sold it. He also
7 gave people a lot of rides for money. What was he doing
8 that day. There is no doubt that he went and picked up
9 Mark, everybody says that, even Mark. Mark even says he
10 drove down his house in Ninety Six. He went to go pick up
11 somebody else from work but Marty came back and was
12 driving him home. Warner Road is right down the road from
13 where Mr. Hailey lives, he was driving him home. A
14 friend, an associate, a brother was driving Mark Hailey
15 home. During all of that time about Mark doing meth and
16 all, it is not denied, but one thing the Chief of Police,
17 T.J. Chaudoin said, he wasn't violent. Everybody
18 described Marty as just being Marty when he was on meth,
19 he was comical, kind of funny, make noises with his tongue
20 between his teeth, drove people around. Again, Marty
21 George, he had his own shortcomings, that doesn't excuse
22 somebody for murdering him, being shot in the back of the
23 head, being drug out of the vehicle and left on the side
24 of a road, it doesn't excuse that. Mr. Hailey's testimony
25 yesterday, downplaying about drug use. No, I wasn't on

1 drugs, I did some marijuana the day before. Every person
2 he came into contact with that day, even his mom and aunt,
3 all believed he was high on drugs. he was already seeing
4 things, he was seeing three dots, he was talking out of
5 his head. Why? What did Ceclia Modell describe for you.
6 Every single one of them. Going out of the bathroom with
7 a black bag, Mark said he wasn't paranoid yesterday. His
8 aunt did that day, that he thought people were putting
9 roots on him, that the aunt and mom had turned against
10 him. He denied being paranoid at Joey's house. Joey
11 doesn't have a dog in this fight, you saw him. He readily
12 admits he did meth, he said he was paranoid, he thought
13 people were out to get him. Mark stated, as they drove
14 down the road, that Marty made that wrong turn. If you
15 look at this map, he said they were coming down Tillman
16 Territory. Warner, after you cross over is a little dirt
17 road off to the side. If you keep going straight down
18 Tillman, you get down to 246, take a right, down here is
19 Booker. Marty didn't make that turn intentionally,
20 somebody else told him to. The one that said that voice
21 told him to go down that road the day before. However,
22 even if you want to believe Mark, that he wasn't high on
23 meth, what did the doctor say, their doctor. That is the
24 question, she goes, he is competent, he is not insane, he
25 is eccentric, he has got different views, he sees things

1 differently. That is the question, those views are
2 distorted. She mentioned it is like a mirage. Distorted
3 views that you see or you think you see something, it is
4 really not there, it is not grounded in reality, it is a
5 mirage, out in the desert, see water or pond or cactus, it
6 doesn't exist. So that goes back to the self-defense
7 claim. Was somebody in the ordinary, firmness, reasonable
8 person believe he was in imminent danger. Either way you
9 look at it, no. Because Mark loaded that shotgun before
10 anything happened on that road. He brought on the
11 confrontation, out of his own mouth. He loaded that
12 shotgun while Marty was on the phone and who was Marty on
13 the phone with, Joni. This whole diagnosis of acute
14 distress disorder. What did the doctor say. It happens
15 after the event, after the event. Mark was experiencing
16 some of this before the event. That is the reason why he
17 left that morning, talking to his aunt, talking with
18 Stella, talking with Joey, talking with Joni. Why? What
19 is the common denominator. He told you. He was seeing
20 things, things that weren't really happening, he was
21 seeing them. Everybody else around him knew why, they
22 witnessed it, they observed him, they saw his demeanor,
23 the way he was acting. His doctor said, being high does
24 not relieve you of responsibility. Mark still performed
25 malice, Mark still loaded that gun, Mark pointed that gun

1 and as he said yesterday, with Marty's head facing forward
2 Mark pulled the trigger. It is malice, it is murder, it
3 is a violent crime. He then removed his body from the
4 car, drug him to the side of the road, left him there and
5 took his vehicle. There you have it, murder, guilty.
6 Carjacking, guilty. Possession of a weapon during the
7 commission of a violent crime, guilty. This whole thing
8 about a BB gun being waived at him, folks, I submit to you
9 that it didn't happen. Marty's head was turned from him,
10 he was playing with his phone, got shot in the back of the
11 head. And further, where was the gun located in that
12 front seat. You can see the pictures, you can use your
13 common sense. He had that gun in his hand when he got
14 shot, like his clothes, like his hat. The only thing that
15 Mark sat on when he got in that driver's seat was a ripped
16 portion of his Bible. That was in that front seat, he sat
17 on it. You can believe he was hallucinating, high on
18 drugs or that he was just a eccentric person that his
19 thoughts and views and perceptions weren't grounded in
20 what was actually happening. Self-defense is out the
21 window, he brought it on by loading that gun. Murder,
22 malice, carjacking, the violence, removing him from that
23 vehicle, possession of a weapon, the shotgun. It makes a
24 noise and you can break it down as slowly and as quietly
25 as you want, but it makes a noise. He had that intent

1 going down that road, was out of his own mouth yesterday.
2 And the remaining things that day, that night, I submit to
3 you it was best evidence on that body cam when officers
4 first arrived. He told you what happened, he was seeing
5 symbols, he was hallucinating, he saw something that
6 didn't happen and he shot him in the back of the head.
7 And he knew he was going out there the day before because
8 of the voices he was hearing while either doing whatever
9 he does with voodoo or roots or whatever, or while he was
10 hallucinating while high on drugs which everybody believed
11 he was on. Regardless, he murdered that man, he shot him
12 in the back of the head, drug him out of that car and left
13 him on a dark dirt road and never called 911. Thank you.

14 THE COURT: Thank you, Solicitor. Mr. Shaffer, are
15 you ready, sir?

16 MR. SHAFFER: Your Honor, we have a matter of law.

17 THE COURT: Okay. Ladies and gentlemen, I have got
18 an issue with the lawyers, I need to take it up outside of
19 your presence. If you will go back to the jury room, we
20 will get you back out shortly.

21 (Whereupon, the jury was excused from open court.)

22 THE COURT: Okay, Mr. Shaffer.

23 MR. SHAFFER: Your Honor, based off of the -- in the
24 first matter, we actually have a couple of matters and I
25 need to use the bathroom at some point. But the first

1 matter is related to the jury instruction in self-defense.
2 And I wanted to bring this up before I started so that Mr.
3 Brown could have his chance to respond if necessary. But
4 the, you know, we are requesting an additional instruction
5 that I think we emailed to you which is basically -- oh,
6 we haven't emailed it yet. But basically we are
7 requesting an instruction on that there is no duty to
8 retreat if danger is increased by the retreat. So that is
9 sort of a new issue that came up. And also the State
10 versus Rash language, Your Honor. And it says, you don't
11 have to wait until the assailant gets the drop on you, you
12 have the right under the law of self-defense and
13 preservation, prevent the assailant from getting the drop
14 on you. If it is apparent or reasonably apparent that the
15 assailant is taking steps to get the drop on him he must
16 take steps to prevent such assailant from getting the
17 drop. So we are requesting and I think that there is a
18 charge book charge on both of those which we will be
19 sufficient with. You know, we can iron out the details
20 but that's basically the two things we are requesting as
21 for the self-defense charge.

22 THE COURT: So what you wanting is that one, no duty
23 to retreat if by doing so the danger would be increased.

24 MR. SHAFFER: If by doing so the danger would be
25 increased. Yes, Your Honor. And also that once a

1 Defendant has a right to act in self-defense he is not
2 required to wait until the adversary and him are at equal
3 terms in order to fire a weapon.

4 THE COURT: You have cited a case as to point two.

5 MR. SHAFFER: Your Honor, State versus Rash, Your
6 Honor.

7 THE COURT: Rash, how do you spell it.

8 MR. SHAFFER: Would you have a problem if Ms. McNeill
9 actually handled this because she was doing the research
10 on it.

11 THE COURT: Sure. What is that case, Ms. McNeill?

12 MS. MCNEILL: Your Honor, it is State versus Rash.

13 THE COURT: Is that R-A-S-H?

14 MS. MCNEILL: Yes, sir.

15 THE COURT: What is that cite?

16 MS. MCNEILL: 182 SC 42. And it is a 1936 case. It
17 says Supreme Court of South Carolina case, Judge, that was
18 decided November 17th, 1936. The other case is State
19 versus Hendrix. If Your Honor would like to go into that
20 language instead because it is a little bit more concise.
21 That language, State versus Hendrix says, "Once the
22 appellant's right to fire in self-defense arose he was not
23 required to wait until his adversary was on equal terms or
24 until he fired or aimed his weapon." And that case, Your
25 Honor, again, State versus Hendrix. The cite is 270 SC

1 653 and it is a 1978 case from the Supreme Court of South
2 Carolina as well.

3 THE COURT: So State versus Hendrix applies to point
4 number two?

5 MS. MCNEILL: Yes, sir.

6 THE COURT: Okay. All right. And as far as point
7 number one, do you have any case law support for that?

8 MS. MCNEILL: Yes, sir.

9 THE COURT: And I just say this, we matched up our
10 charge with the most recent self-defense charges that --

11 MR. BROWN: And, Judge, one thing, this was sent out
12 -- the self-defense charge was sent out yesterday
13 afternoon. To add this in after I completed my closing
14 argument, it is kind of -- knowing that self-defense was
15 going to be an issue in this case from the outset.

16 MR. SHAFFER: And, Your Honor, quite frankly, I never
17 thought in my mind that the State would ever argue that
18 when you are two miles down a deserted road that you have
19 some ability to retreat from that situation from someone
20 who had a gun. I didn't think they were going to argue
21 that, apparently they did, Your Honor. There is a statute
22 that basically says that you are allowed to ask for, I
23 think it is a statute, it may even be a constitutional
24 provision but I am pretty sure it is a statute, that says
25 you are allowed to object to jury charges even after the

1 charge is given. So I don't think I have done anything,
2 like waived the right to object just because I haven't
3 requested it.

4 THE COURT: I don't think you have. I mean, you do,
5 I mean often times, not real often but sometimes a light
6 comes on, lawyers previously agreed to the charge. But
7 during the charge a lawyer has a light come on and says,
8 hey, that is not proper. And, you know, we will make the
9 objection and take exception and sometimes the Court
10 agrees and then recharges the jury on that particular
11 portion. So while, I mean I understand your point,
12 Solicitor, I don't think there is any necessary statute
13 rule case prohibition against that. You may look at it as
14 being unfair, maybe it is unfair but I don't think he has
15 necessarily waived his right to raise an issue. But
16 anyways, as far as no duty to retreat, by doing so the
17 danger would increase. Do we have a case on that?

18 MS. MCNEILL: Yes sir, I do. It is State versus
19 Fuller and I will provide the State with all of these
20 cites.

21 THE COURT: State versus Ford?

22 MS. MCNEILL: Fuller, F-U-L-L-E-R.

23 THE COURT: What is that cite?

24 MS. MCNEILL: 297 SC 440, it is a 1989 case out of
25 the Supreme Court of South Carolina.

1 THE COURT: I will take a look at both of those
2 points and let you know.

3 MS. MCNEILL: And, Judge, I just have one more case
4 to cite.

5 THE COURT: Which point, one or two?

6 MS. MCNEILL: One.

7 THE COURT: Okay.

8 MS. MCNEILL: I beg the Court's indulgence.

9 THE COURT: Sure.

10 MS. MCNEILL: Actually, Judge, this one is not
11 exactly on point so I withdraw that.

12 THE COURT: Okay. I will take a look at both of
13 those and come up with a decision. Okay. Y'all need a
14 restroom break real quick?

15 MR. SHAFFER: We have a second matter of law as well,
16 Your Honor.

17 THE COURT: Excuse me?

18 MR. SHAFFER: There is a second matter of law.

19 THE COURT: Okay.

20 MR. SHAFFER: I am moving, I would move for a
21 mistrial and I am moving for a mistrial on two grounds.
22 And I am not trying to argue with the Court's ruling, I am
23 just trying to preserve this, is that basically, you know,
24 during Dr. Salas' testimony that I proffered about not --
25 any sort of signs that he was seeing did not contribute to

1 the event or there was an intervening cause in there.
2 That part that, I guess it was the second part that I did
3 in that proffer, Your Honor. They are sort of using the
4 exact evidence that was sort of what they said on cross
5 for Dr. Salas which is that a reasonable person wouldn't
6 have taken that as being a sign that would justify haunt.
7 And that is what they said in cross, I tried to address
8 that with Dr. Salas and I understand the Court's ruling.
9 But at this point they are actually arguing it so I would
10 move for -- I mean they are arguing what they were trying
11 to get out on cross and what they did get out on cross
12 from her. I wasn't allowed to respond to it, I think that
13 that constitutes a due process violation and requires a
14 mistrial at this point. And there is a second round for
15 the mistrial as well, Your Honor.

16 THE COURT: Let's address, I mean --

17 MR. BROWN: Judge, I am actually thoroughly confused
18 by that.

19 THE COURT: I don't recall Solicitor Brown arguing
20 that in his closings, specifically what you are saying.

21 MR. BROWN: Judge, I think the only thing that I
22 talked about was what Marty -- Mark Hailey said on his
23 body cam videos of seeing stuff out there, that he is
24 hallucinating. The only thing I said in closing regarding
25 Dr. Salas is that she said, the acute stress disorder

1 happened after the event.

2 THE COURT: Right, I remember that.

3 MR. BROWN: But his events and his demeanor were
4 actually happening before that. So ask them a rhetorical
5 question, what is the common denominator there, why is
6 that happening, going to the drug use. And then the other
7 part with Dr. Salas is she mentioned that he is an
8 eccentric person in his, in what he thinks he sees or what
9 he interprets is something that, and I actually read the
10 language in self-defense to her that maybe somebody with
11 ordinary firmness or courage may not agree with. That was
12 all my cross on her so I don't see how that would be
13 grounds for a mistrial when it is in evidence.

14 MR. SHAFFER: Your Honor, what I proffered was in
15 direct response to that part that he got out through his
16 cross, Your Honor. Because of the fact I wasn't able to
17 actually get the information to reply to it, I think it is
18 a due process violation. I mean he is arguing that,
19 because he saw signs and symbols which sort of goes under
20 the next point I was going to make for a mistrial, he is
21 arguing because he saw signs and symbols that a reasonable
22 person wouldn't have taken that as grounds to shoot
23 someone. And by implication at least, and I'm being
24 pretty favorable by saying at least here. He is saying
25 that it doesn't matter if he was seeing these things, it

1 still, you know, a reasonable person wouldn't have seen
2 that as being an issue. What I tried to get out through
3 Dr. Salas was directly related to the fact that he said
4 that the fence post -- a reasonable person wouldn't see
5 that as being something that they were in danger for which
6 is essentially what he is arguing here that a reasonable
7 person wouldn't have seen these signs as being something
8 that he is in danger for. I tried to get out the fact
9 that her opinion is based off of a intervening cause and
10 that is the basis for why I am saying a mistrial should be
11 granted. I respectfully, I mean I am not trying to argue
12 with the Court's ruling, just disagree that, I think that
13 ultimately he said that, you know, that they never brought
14 that out or anything related to it on cross and they did.

15 MR. BROWN: Judge, again, I feel like we are kind of
16 going in circles here.

17 THE COURT: If it was brought out on cross and
18 Solicitor Brown argued something that was brought out on
19 cross and how does that rise to the level of granting a
20 mistrial. I am confused.

21 MR. SHAFFER: Because I wasn't allowed to respond to
22 it on redirect, Your Honor, based off of your ruling. You
23 ruled that I didn't -- that he didn't bring it out on
24 cross.

25 MR. BROWN: One thing that I -- if I remember

1 correctly, I stopped the whole thing about -- Mr. Shaffer
2 was asking about, I cut Dr. Salas short and didn't want
3 her to go to the actual event. And apparently after I cut
4 her short is when she comes in talking about fence posts.
5 I didn't bring that out. I was trying to ascertain what
6 she's -- with her acute stress disorder that all these
7 symptoms happened after the event. But I was trying to
8 figure out what he was like before and what she would say
9 -- she gave basically a history on some of the things that
10 he sees that maybe not, that aren't grounded in reality.
11 I think she said that on his direct. And so what I
12 believe I told the jury in this closing is nothing outside
13 of what was going on in direct and cross and don't see how
14 that can rise to the level of a mistrial when it is in
15 evidence.

16 THE COURT: I am going to deny the motion for a
17 mistrial. I don't see where there has been any grounds to
18 justify declaring a mistrial based upon the closing
19 argument of the State.

20 MR. SHAFFER: Your Honor, there is a second motion
21 for a mistrial based off of the closing argument and it is
22 related to the fact that essentially at this point they
23 have argued that it didn't matter, and this is almost word
24 for word, it didn't matter if he was seeing signs. It
25 didn't matter if all of that was going on. It is not

1 self-defense. Your Honor, they know good and well if he
2 is seeing signs and it causes someone to -- him to shoot
3 somebody that is not guilty by reason of insanity. I know
4 that there is no evidence in the record to support that
5 but they can't very well get around that by saying, by
6 implying to the jury that -- that, you know, it's okay if
7 he was insane because, you know, if he is insane it
8 doesn't really matter for the purposes of culpability
9 because under the law it does matter if he is insane. The
10 State is more or less arguing that, their primary theory
11 is drug induced but their secondary thought is, even if it
12 is mental illness he is still culpable for acting on
13 hallucinations which I think is basically the State
14 arguing not guilty by reason of insanity. I would move
15 for a mistrial based off of it. And the reason I am
16 saying that is that at this point I can't present a
17 witness to say that, that, you know, he is insane or not
18 insane. They are arguing something that is a completely
19 different theory but, you know, doesn't establish
20 culpability. Under the law what he said does not
21 establish culpability, it is actually a defense to the
22 charge.

23 MR. BROWN: Judge, that's --

24 THE COURT: Well, if he did argue that, isn't that
25 contrary to the evidence because your doctor specifically

1 said, there is no insanity here whatsoever. So the way I
2 view that, if and I will take what you have said that he
3 argued verbatim, he is arguing something that there is no
4 evidence and the jury, you know, the jury has got to view
5 what was presented in this case.

6 MR. BROWN: Judge, what I was arguing is, he brought
7 the witness, she said he is not insane, he is competent
8 yet he is eccentric and sometimes he sees stuff based on,
9 because I think Mr. Shaffer asked about voodoo and roots,
10 that somebody that takes religious, I guess, beliefs a
11 little more than others or gets in depth with it can see
12 things and interpret things differently. And that is when
13 I was asking, so you are asking her so you could see
14 something or you would say he could see something that
15 maybe is not grounded in reality. And she said, yes. It
16 doesn't mean he is crazy, is what she said, he is not
17 insane, he is competent. And so I am arguing, if they
18 want to take what he says, is that he was not high, he is
19 the only one that said -- that he is not high and her
20 opinion that he is not high, but also take her opinion
21 that he is seeing things and interpreting things the wrong
22 way or what a normal person may not. I am arguing both
23 sides and I think that is perfectly okay. Either way I am
24 coming in and I think I finished that up in my closing is,
25 either way you look at it, he loaded that shotgun up

1 first, he brought on the difficulty and you think he is
2 high or if he is just seeing stuff or that maybe not be
3 there he is still reasonable for his actions. And it is
4 their witness that said he is not insane or not, that he
5 is competent. So I don't know what we are arguing here.

6 MR. SHAFFER: And, Your Honor, I think he
7 mischaracterized the, what her statement is. And I would
8 agree that there is no evidence in the record currently
9 that he is insane. There is no evidentiary record. I
10 think he is mischaracterizing a bunch of stuff she said.
11 But that being said, his mischaracterization is basically,
12 oh well, he was seeing stuff which she didn't actually say
13 he was hallucinating. She specifically said he wasn't
14 hallucinating. But the State said that -- she said he was
15 hallucinating but that, you know, that somehow doesn't
16 reach the level. And I know it is sort of an odd motion,
17 I am not trying to be outrageous. I am just trying to say
18 that it's odd that the State is sitting there arguing
19 essentially not guilty by reason of insanity but that that
20 doesn't apply here. I will try to address it in, assuming
21 you are denying the motion, I will try to address it.

22 THE COURT: I am going to deny the motion. I just
23 don't see where we have a situation that justifies
24 granting a mistrial. So I am going to deny that. I will
25 take a look at the request to charge on those two points

1 while you are arguing, I will look up those cases and see
2 if we can add anything to the self-defense. Again though,
3 my self-defense charge is based on the current law. So I
4 am curious to see what these cases say.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: Do y'all need a bathroom break real
7 quick.

8 MS. SUMNER: Your Honor, if the State can briefly
9 respond to those cases before you review them.

10 THE COURT: Oh yeah, you have already had a chance to
11 look at them?

12 MS. SUMNER: Briefly, Your Honor.

13 THE COURT: Okay.

14 MS. SUMNER: Your Honor, the State's response to
15 those, I have briefly reviewed them. The facts are very
16 different than what we are dealing with here.
17 Particularly it looks like there were, in these cases you
18 have previous known threats as well as previous violent
19 dealings with the person.

20 THE COURT: Okay.

21 MR. SHAFFER: And, Your Honor, I don't think that the
22 concepts of law, that those cases support, are limited to
23 the limited factual situations of that case as in most
24 jury charges.

25 THE COURT: Okay, I will take a look at them. If you

1 need a quick bathroom break then let's do it now.

2 MS. SUMNER: Thank you, Your Honor.

3 (Whereupon, a short break was taken.)

4 THE COURT: Let's bring the jury in.

5 (Whereupon, the jury came into open court at
6 approximately 2:41 p.m.)

7 THE COURT: Let the record reflect the jury is back
8 in. Mr. Shaffer, are you ready with your closing?

9 MR. SHAFFER: Yes, Your Honor, I am.

10 THE COURT: You may proceed, sir.

11 MR. SHAFFER: I want to tell you something, I am a
12 little afraid right now. There are a lot of butterflies
13 in my stomach, a lot of -- yeah, public speaking anxiety
14 type things going on. But it is not just that, it is also
15 related to the -- the fact that this case is built
16 assumptions. There were assumptions throughout this case.
17 Mark Hailey came home, his mom and aunt assumed that he
18 was high. The cops couldn't make sense of what exactly
19 happened so they just assumed its murder. And that is why
20 we are here. And the thing about assumptions are, is that
21 even when there is no evidence a lot of people think,
22 well, it is just easy to assume. Okay. It is easy to
23 assume. Now, I know that y'all are about to go in the
24 back and deliberate. You may hear from Mr. Brown, you may
25 not. You are going to hear from the Judge and then you

1 are going to go back and make a decision. You are going
2 to have to judge another person which is not an easy thing
3 to do and we all recognize that. I imagine some of y'all
4 are a little bit afraid of that as well. But before you
5 go back there and make that judgment there is a couple of
6 things I want you to see and I want you to pay a lot of
7 attention which I think the State has said pay a lot of
8 attention to the videos but I want you to pay a lot of
9 attention to the evidence and those puzzle pieces that the
10 State is talking about. The State kept talking about, oh,
11 well, this was a puzzle piece, this was a puzzle piece.
12 The problem with the puzzle piece is, they have to make a
13 full picture for you. And I imagine they haven't. I
14 imagine a lot of you don't have a full picture right now.
15 Now, I am going -- I am not going to play a ton of video.
16 Okay. I know everyone is tired of watching video but I am
17 going to play a little bit of it. Okay.

18 (Whereupon, a video was played for the jury starting
19 at 2:45 p.m.)

20 MR. SHAFFER: Marty, you are going the wrong way.
21 Marty, you are going the wrong way. Marty, this isn't the
22 way. Marty, turn around. What is going on, you are going
23 the wrong way. Where are you going.

24 (Whereupon, the video continues to play.)

25 MR. SHAFFER: Marty, this isn't the way to my house,

1 where are you going. Turn around, Marty. Where are you
2 going. What's going on, Marty. Marty, what's going on.
3 This isn't the way to my house.

4 (Whereupon, the video continues to play.)

5 MR. SHAFFER: This isn't the way to my house. Where
6 are you taking me.

7 (Whereupon, the video continues to play.)

8 MR. SHAFFER: Where are you taking me.

9 (Whereupon, the video continues to play.)

10 MR. SHAFFER: Marty, what is going on.

11 (Whereupon, the video continues to play.)

12 MR. SHAFFER: What is going on, Marty.

13 (Whereupon, the video continues to play.)

14 MR. SHAFFER: What did you take from my bathroom.

15 What did you take from my bathroom.

16 (Whereupon, the video continues to play and ended.)

17 MR. SHAFFER: Ladies and gentlemen, on that dark road
18 and I have tried to make this dark for you, on that dark
19 road you can't tell whether or not this is a real gun or a
20 BB gun. Mark didn't know that. Sure, some of y'all
21 noticed it but how many noticed that I actually breached
22 that gun during that video. Didn't make very much sound
23 except me trying to get up from underneath that table.
24 Marty -- I mean Mark testified that there was a way of
25 breaching that gun that wouldn't make a sound. The

1 Solicitor didn't do it, he was going like this,
2 (indicating). But Mark knew that if you opened it just a
3 little bit and held this down, you can close it without
4 making any sound. He knew that because he was a hunter
5 and it was his gun. Now, let's talk a little bit about
6 the elephant in the room. Okay. You can call it an
7 elephant in the room or you can call it a red herring, I
8 call it a red herring. Red herring is the term for
9 argument, it basically has not a whole lot to do with the
10 actual issue but it is basically sort of something that is
11 distracting. Ladies and gentlemen, there is one line and
12 maybe I am misquoting it but it is how I interpreted it,
13 there is one line that I would agree with what the
14 Solicitor said, maybe I am misinterpreting it. But I
15 think he said that it didn't matter if he was high or had
16 mental problems, maybe he didn't say that but that is how
17 I interpreted it. He said that. Because at the end of
18 the day, whenever that BB gun is pointed at you down that
19 road, it doesn't matter. Even people who are high and
20 even people who are mentally ill, even people who are a
21 little eccentric, Mark is not either high or mentally ill
22 but maybe he is a little eccentric. That is what the
23 doctor testified to. But even if he was, even if the
24 doctor is wrong and he is, he still has a right to defend
25 himself whenever someone points a gun at him and he thinks

1 it is a real gun. I am sure the State's going to say, who
2 would point a BB gun at a man in the back with a shotgun
3 and I think that they may have already said that at some
4 point during the argument. Someone is high and someone
5 who knows it is unloaded. The reason they know that it
6 was unloaded is that they were taking it to a pawn shop to
7 pawn and it was sitting in the back of his car like this
8 unloaded. Marty didn't realize he had a shell in it, that
9 Mark still had a shell. Do I think that Marty was
10 actually going to shoot him, maybe not. I don't know. It
11 is one of those puzzle pieces that are missing. But he
12 was going to intimidate him and he was going to make him
13 think that that gun was a real gun. Because remember,
14 what Joni eventually admitted to is that Marty carried a
15 BB gun for protection. And I asked her, protection of
16 your property. Yes. Marty carried a BB gun for this
17 specific purpose. And sure, sure, Joni said that's not
18 the BB gun out of nowhere for the first time in a year and
19 a half. Joni said a lot of things. But what she did do
20 is at a pretrial hearing about six months ago say that the
21 BB gun that was under the eight marker, in State's exhibit
22 61, was the BB gun he carried. That is what she did say
23 six months ago. The first time she ever said anything
24 else is here. She said under the eight marker, yeah,
25 that's a BB gun that he carried for self-defense to defend

1 yourself. Do defend you? Yes, to defend me. He was
2 protective over me. And to defend your property? Yes, to
3 defend our property. I am not saying that Marty was going
4 to shoot Mark but he certainly gave him that impression.
5 The State talked a lot about how, oh, there would have
6 been blood all over the gun. You never heard anyone say
7 that they ever tested the gun for blood. You never heard
8 them say that they tested it for microscopic blood. He
9 had someone from SLED serology say, yeah, we could have
10 tested it to see if there is blood or tested the other gun
11 to see if there was blood but we didn't do that. No
12 testing was done on the pellet gun. They had the ability
13 to do it and they didn't. State's exhibit 13. They want
14 you to think that there is blood all over the seat and
15 everything else and there is no way that that gun wouldn't
16 have been covered with blood. Take a look at this, this
17 will be back there in evidence with y'all. There is not
18 blood all over the place, there is specs of blood. Specs
19 of blood that could easily be missed on that gun. Or
20 specks of blood that didn't even land on that gun. I
21 don't know because they never tested it. That sort of
22 brings me to a fairly important point throughout this and
23 you are going to hear a lot about it in the Judge's jury
24 instructions. And the Solicitor said a little bit about
25 it. Mark Hailey, me, Ms. McNeill, Mr. Powers, the people

1 sitting on that side of the room have absolutely no burden
2 in this case. No burden. What that means is that, in
3 this Country you are presumed innocent and the -- and we
4 don't have to present any evidence if we don't want to.
5 You didn't have to hear from any of our witnesses if you
6 didn't want to, or if we didn't want to present those
7 witnesses. They have the burden, they have to present the
8 evidence in this case, all the evidence in this case and
9 not just to say that this killing was done by Mark which
10 is not really contested. There -- not just to say that,
11 that he acted with malice which is contested. They also
12 have to prove to you beyond a reasonable doubt that there
13 is no chance, no real possibility that he acted in
14 self-defense, they have that burden. And there is a lot
15 of reasons for that burden. They are in a different
16 position than us, you notice a lot of our witnesses were
17 people who work for the State, people who were police
18 officers and they are not going to be all that friendly to
19 us, they are just going to answer the questions that are
20 -- that are not lies. They are not going to lie but they
21 certainly are not going to be overly friendly either. I
22 mean they work for the Prosecution essentially. I am
23 going to show you something, a little diagram, okay.
24 Anything I say contradicts -- anything I say contradicts
25 what the Judge says, obviously listen to the Judge. Okay.

1 Because the definition that he is going to give you is
2 that -- the definition he's going to give you is the law
3 which is that you all have to be firmly convinced that
4 there has to be no reasonable doubt in your mind. Okay.
5 That is not, he is possibly guilty, that's not he is
6 probably guilty, that is not even a high likelihood that
7 he is guilty, it has to be beyond a reasonable doubt. You
8 can't have a reasonable doubt in your mind, it is their
9 job to expel every single doubt that each and every one of
10 you have in this case. You have a question in your mind,
11 they are the ones, through their evidence and through what
12 they presented, were suppose to answer those questions.
13 That is also another important point is that, in the
14 United States and in South Carolina we have 12 jurors and
15 all 12 of you must come to a unanimous verdict which means
16 each and every one of you have to vote the same way. If
17 you are going to reach a verdict, guilty or not guilty,
18 all of you have to vote the exact same way. But the
19 reason there is 12 of you and not six or seven or eight or
20 nine or ten or eleven, the reason that there is 12 of you
21 is because of the fact that you all have a voice. And if
22 any one of you has a reasonable doubt in their mind of
23 guilt, if you have a reasonable doubt of guilt in your
24 mind, anyone of you, then Mark Hailey should be not found
25 guilty. You cannot reach a guilty verdict if some of you

1 still have a doubt in your mind, it's a reasonable doubt.
2 Some of you are not firmly convinced, can't come to a
3 verdict. And that is important protection and that's the
4 reason that there is 12 of you and not a lesser number
5 because of that, because in this Country every one accused
6 of a crime, we want to make sure we are not locking up
7 innocent people. So there is this high burden that they
8 have and there is this requirement that all 12 of you all
9 agree. I am going to talk briefly about the charge that
10 has been forgotten throughout this entire case which is
11 carjacking, that he was not charged with until like six
12 months after he was arrested. I suspect that maybe the
13 cops didn't go get a warrant, you heard about that. I
14 suspect maybe that they were looking over the case and
15 realized that they don't really have a motive for this so
16 let's throw in carjacking and try to sell the fact that he
17 was trying to steal his car. I don't know that, just my
18 suspicion. But if he was trying to steal his car why does
19 he immediately go to his mama's house. Okay. Why go to
20 his mama's house. That alone would give me reasonable
21 doubt especially about the carjacking. Also give me
22 reasonable doubt about the murder too. You will have this
23 map back there. That red line or that star or that red
24 line on that map is about two miles long. Okay. This is
25 a very big area that this map covers, it is not zoomed in.

1 These are not individual houses, this is timber land and
2 cow pastures. If this was some murder, which I am not
3 sure they are trying to say he is crazy and he tried to,
4 like, I don't know, maybe they were trying to say he is
5 crazy and went out there and went out there the day before
6 to drag somebody out there and shoot somebody. If you are
7 going to go shoot somebody, you are going to kill somebody
8 in the middle of nowhere, okay, why would you leave the
9 body on the side of the roadway where officers can clearly
10 see it whenever they pull up to it, pulled just barely out
11 of the roadway. Why would you leave the body there and
12 why would you go to your mama's house and say, I just shot
13 somebody, I shot my brother. That is reasonable doubt
14 right there. The State's story doesn't add up and they
15 are saying that he, oh, he might just be crazy which I
16 think Mr. Brown mischaracterized a lot of things that were
17 said by Dr. Salas. But they are saying that he is crazy
18 and somehow planted a gun out there the day before,
19 contradicted by his mama who says that she saw the gun
20 there like immediately beforehand. But to the extent that
21 they are saying that, how on earth is a man in the state
22 that you saw him on on that video able to convince, how is
23 he able to comprehend and keep a coherent thought saying,
24 okay, I am going to go plant this gun and then I am going
25 to go through all of these people and go through this

1 convoluted thing. And then I am going to convince Marty
2 George to drive down this road and then from there I am
3 going to kill him and then I'm going to go to my mama's
4 house and tell her exactly what happened. My mama who I
5 knew was going to call the cops. Doesn't make any sense.
6 I am going to talk a little bit about that red herring
7 again, that reaction that he had. And obviously y'all
8 heard Dr. Salas but I am going to tell y'all what I think
9 she said which is different than what the Solicitor
10 thought she said. I heard her say that drugs or mental
11 illness had nothing to do with this shooting. That is
12 what I heard her say initially, before she went on the
13 explanation of everything. I heard her say that even
14 though Mark Hailey is a little different, odd, eccentric,
15 that those things, those things that she was talking about
16 did not contribute to the shooting and did not contribute
17 to his actions that day. Solicitor has talked and talked
18 and talked about, oh, there are hallucinations,
19 hallucinations, he admitted to hallucinations. And then
20 he said, listen real closely in their opening, listen to
21 what he is saying. I have listened really closely,
22 honestly I can't tell if he is saying I'm hallucinating or
23 I am not hallucinating. I am going to play it for y'all
24 just so y'all can pay attention. Okay.

25 (Whereupon, a video was played for the jury starting

1 at 3:09, ended at 3:10 p.m.)

2 MR. SHAFFER: Now, that was slowed down and I will

3 let your ears hear what your ears hear because I am by no

4 means an expert on exactly what he said that night because

5 I wasn't there. But whenever I slowed that down I heard

6 either mom or aunt in the background go, he is

7 hallucinating. And then I heard something, I heard

8 hallucinating but I didn't hear what he said immediately

9 beforehand. Solicitor Brown thinks he heard it, Solicitor

10 Brown thinks he is an expert on it and came up here and

11 said, he said I am hallucinating. I can't tell what he is

12 saying, I can't tell if he is saying, I am hallucinating

13 or I am not hallucinating whenever mama said, you are

14 hallucinating. But regardless of that, Dr. Salas never

15 said he was actually hallucinating. Okay. She said

16 hallucinations are like a mirage, they are not really

17 there. What Mark does is he sees stuff, a penny on the

18 ground. Oh, that means good luck for me, it is a good

19 sign for me. Black cat passes my path, oh, that is a bad

20 sign. Those are common things. Maybe Mark is a little

21 bit further out there and says, oh, well, I wonder if God

22 is trying to tell me something by, you know, stuff leaning

23 in certain directions. Maybe God is trying to tell me

24 something. But what Dr. Salas didn't say on that stand is

25 that he was insane, that he was -- that this shooting was

1 a result of some insanity that stuff wasn't actually
2 there. She never said that on that stand. Now, I
3 understand that we all don't have the same beliefs. I
4 understand that to some of this the idea of roots being
5 cast on us is sort of unbelievable, fantastic, the idea
6 God is sending you signs by things that you see is
7 unbelievable and fantastic. I will tell you there is
8 plenty of instances in the Bible where God was sending
9 signs to certain people. I think, Numbers, Chapter 22,
10 there is a -- this is old testament. Children from Israel
11 leave Egypt, they are in the desert. There is a King of
12 this area called Moab, King wants to cast an evil spell on
13 them. Gets his profit, was non-Israel like profit, to go
14 out there to Balaam. Balaam is basically told by God that
15 that is not a good idea but decides to go talk to the King
16 anyway. On the way God put some signs in his path, his
17 donkey runs off the road; his donkey runs him into a
18 fence; his donkey sits down and won't move; he starts
19 beating on the donkey. God gives and this is in the
20 Bible, God gives the gift of speech to the donkey who says
21 why are you doing this. Numbers, Chapter 22, I think
22 through 24. Why are you doing this. I am trying to help
23 you, the donkey says. I am paraphrasing because I don't
24 know the story all that well, it is sort of obscure. He
25 says there is an Angel of God there and I am trying to

1 protect you. There is an Angel in the roadway blocking
2 his path, it was a sword. The Angel says because at that
3 point God opens Balaam's eyes and says, that -- if you
4 would have came any closer I was going to kill you with
5 this sword. And that is why the donkey wouldn't move.
6 Okay. And I am not saying that it is or is not, that Mark
7 is or is not getting signs from God. I don't know, that
8 is between him and God and that is his beliefs. But I do
9 know one thing, an expert in psychiatry, forensic
10 psychiatry and, you know, substance abuse treatment
11 basically got up there and said he was not insane and he
12 was not under the influence whenever he was actually, when
13 this whole event happened. He did not -- those, excuse
14 me, she couldn't say that he was not under the influence,
15 she said, substance abuse had nothing to do with either
16 the incident or why he, why this -- why he was acting like
17 this on the video. She had another explanation for it.
18 And I am sorry, like I said, this is really an important
19 case, I just want to make sure I am not missing anything
20 because this is my last time to speak with y'all. I am
21 not trying to bore y'all, just checking off to make sure I
22 am not missing anything because we have been here a long
23 time. Oh, Solicitor Brown said something to the effect
24 of, that mama said he only acts this way whenever he's
25 high. I think that what she actually said in the video

1 is, he acts this way, or does -- does he hallucinate.
2 Yeah, he does, whenever he is high, something to that
3 effect. She got up there on the stand and said, I have
4 never seen him act like that, I just made an assumption
5 that he was high because he came in acting crazy. And
6 that is part of that red herring, I understand that. But
7 we have made so much about whether or not he is high or
8 not which ultimately doesn't matter because ultimately it
9 is a distraction to the fact that the State cannot
10 disprove the fact that that gun was pointed at him
11 immediately before the shooting. There is nothing that
12 they have done to disprove that. There is no physical
13 evidence. I got into it a little bit with Mr. Allison and
14 I sort of regret that because I was a little overly harsh
15 with him perhaps, probably overly harsh with the Judge as
16 well, whenever I shouldn't have been. But ultimately Mr.
17 Allison did admit, yeah, you are right, we can't -- the
18 physical evidence doesn't really show that he didn't point
19 the gun at him immediately beforehand. What also was not
20 addressed and the State did not ask, you know, or did not
21 really explain is what he meant by that spot. It was
22 asked of Mr. Hailey, he was saying it was where him and
23 his mom had this falling out over these bottles. I am not
24 saying that Mr. Hailey is normal, but just because he is
25 not me, just because his beliefs are not mine does not

1 make him guilty of murder. At the end of the State's
2 case, toward the end of the closing argument they said
3 something about, I submit to you that he did not point the
4 gun. Submit is one of these lawyer words that we really
5 can't prove it but we are going to say it anyway. He is
6 making an assumption, just like the cops said. An
7 assumption, which I am sure he is going to say, well,
8 there is no blood on the gun, the gun was in the seat.
9 Mark Hailey said it was in the driver's seat and then he
10 moved it over. He never tested it, there is not blood
11 covering the seat. I submit to you that he is assuming,
12 he is making assumptions because there is not any physical
13 evidence to say that that gun was not pointed at him. I
14 am about to sit down and I won't have another chance to
15 talk with you. But I do want to leave you with something.
16 And it is about the assumptions. His mama made some
17 assumptions and the cops made assumptions that he is
18 guilty of murder because they don't know what happened.
19 But, ladies and gentlemen, in order for someone to go to
20 prison you can't just say, you can't just assume them into
21 prison. We can't just assume that they are guilty. The
22 opposite is true. And in this Country each and every one
23 of you must presume and assume that he is not guilty and
24 let them show you the evidence that leaves you firmly
25 convinced that this was not self-defense. Thank you.

1 THE COURT: Thank you, Mr. Shaffer. Solicitor, do
2 you have any rebuttal argument in connection with any new
3 matters raised by Mr. Shaffer.

4 MR. BROWN: Just very short, Judge. Ladies and
5 gentlemen, Mr. Shaffer mentioned that, something about
6 planting a gun on a road. Never was that brought up,
7 never did I say that. I might have said there was a
8 planted gun out on the road but Mr. Hailey had the gun
9 behind in the backseat with him, as Mr. Hailey said. And
10 obviously, as you can tell from the pictures where that
11 gun was and when it was discharged. The assumptions --
12 base your opinion on assumptions? You have it, you can
13 see it. We are now assuming about some mason jars, that
14 he is responding to every question they are asking him
15 from the kitchen on that couch. But then he is going to
16 change it and say it is some mason jar top. Look at those
17 photographs, no mason jars. Convenient now. Wrong way,
18 Marty turn around, where are you going, where are you
19 going. Remember, Mark lived out there, Mark knew the
20 area, Mark drove himself home after he shot Marty, he knew
21 where he was going. Remember that. Talked about Dr.
22 Salas about high or mental problems. Not saying or either
23 saying, he is suggestive. Watch the video, listen to the
24 testimony from people before, everybody, about what they
25 view, about what they witnessed the day before, what they

1 recognized was going on with Mark, what mom and aunt who
2 had been there with him for years recognized. You could
3 judge the credibility, you can take whatever, all or all
4 or one. Just because somebody is deemed an expert on the
5 stand, you don't have to agree with it if you don't
6 believe it. You could judge their credibility too. She
7 met with him 12 days after this, met with him, a person
8 over a computer for a total of four hours. You all have
9 common sense, you all have life experiences, you all can
10 look at this evidence and you have enough to be firmly
11 convinced, it is what the law is, that is our burden of
12 proof and that is our burden of proof. They don't have to
13 prove anything. Firmly convinced, you have it, find him
14 guilty as charged.

15 THE COURT: Ladies and gentlemen, here is what we are
16 going to do. I will need a few minutes, they are going to
17 take this down. I usually charge from the bench and I
18 told the lawyers that I was going to charge from the
19 podium but my trusted bailiffs indicated that they can
20 take, remove this and so we need a few minutes to do that.
21 So go back to the jury room and we will get you back out
22 in just a few minutes and I will charge you the law that
23 applies to this case. And don't begin any discussions
24 yet.

25 (Whereupon, the jury was excused from open court for

1 a break.)

2 THE COURT: Okay, short break.

3 (Whereupon, a short break was taken.)

4 THE COURT: Okay, let's bring the jury out. Wait one
5 minute. I need, can you tell him to wait a minute. Okay.
6 Thank you.

7 THE COURT: The Defense made two additional jury
8 charge requests. I am going to charge the first one under
9 State versus Fuller, no duty to retreat and by doing so
10 increase the danger. But I am not going to charge the
11 language that is found in State versus Rash.

12 MS. MCNEILL: Thank you, Your Honor.

13 THE COURT: Let's bring the jury out.

14 (Whereupon, the jury came into open court at
15 approximately 3:45 p.m.)

16 THE COURT: Let the record reflect the jury is back
17 in. Mr. Foreman and ladies and gentlemen, I am going to
18 first give you just a couple of preliminary comments.
19 There will be a computer back in the jury room for your
20 use in watching any of the videos if that is what you want
21 to do. It is there for your use if you need it. I would
22 -- there will be a box of gloves too for your use in
23 handling these -- all the exhibits that will be brought
24 back to you. And, again, as you have been doing, continue
25 to be covered with either masks or the shield while you

1 are back during deliberations. And try to keep your
2 social distance to the extent that you can. And one thing
3 too, if you are deliberating and a juror needs to take a
4 break for bathroom, go outside for fresh air, that sort of
5 thing, the deliberations have to stop at that point
6 because deliberations, while they are going on, always to
7 have all 12 of you. Just keep some of those things in
8 mind if you would.

9 Mr. Foreman and ladies and gentlemen, I am now going
10 to charge you the law that applies to this case. And you
11 must consider the charge as a whole and not focus on some
12 portions to the exclusion of other portions.

13 The indictments charge the Defendant with murder,
14 possession of a weapon during the commission of a violent
15 crime and carjacking. I remind you the fact the Defendant
16 was arrested, charged and indicted in this case is not
17 evidence in this case and cannot be considered by you as
18 evidence of guilt in this case nor does it create any
19 presumption or inference of guilt. These documents are
20 simply the formal written instruments which contain the
21 charges made against the Defendant. These are the formal
22 documents by which this case is brought into this court.

23 Now, we have three separate offenses. Again, murder,
24 possession of a weapon during the commission of a violent
25 crime and carjacking. Each indictment charges separate

1 and distinct offenses. You must decide each indictment
2 separately on the evidence and the law applicable to it
3 uninfluenced by your decision as to any other indictment.
4 The Defendant may be convicted or acquitted on any or all
5 of the offenses charged. You will be asked to write a
6 separate verdict of guilty or not guilty for each
7 indictment. And I will show that to you, Mr. Foreman, at
8 the end of my charge.

9 The Defendant has pled not guilty to these charges
10 and that plea puts the burden on the State to prove the
11 Defendant guilty. A person charged with committing a
12 criminal offense in South Carolina is never required to
13 prove himself innocent. I charge you that it is an
14 important rule of the law that the Defendant in a criminal
15 trial, no matter what the seriousness of the charge may
16 be, will always be presumed to be innocent of the crime
17 for which the indictment was issued unless guilt has been
18 proven by evidence satisfying you of that guilt beyond a
19 reasonable doubt. This presumption of innocence does not
20 end when you begin your deliberations but it accompanies
21 the Defendant throughout the trial unless you reach a
22 verdict of guilt based on evidence satisfying you of that
23 guilt beyond a reasonable doubt.

24 Now, this presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the Defendant

1 which remains with the Defendant unless it has been
2 stripped from the Defendant by evidence satisfying you of
3 the Defendant's guilt beyond a reasonable doubt. The
4 presumption of innocence is not mere legal theory, it is
5 not just a legal phrase. It is a substantial right to
6 which every Defendant is entitled unless you, the jury,
7 are satisfied from the evidence of the Defendant's
8 guilt beyond a reasonable doubt.

9 Now, concerning reasonable doubt, some of you may
10 have in the past served as jurors in a civil case where
11 you were told that it is only necessary to prove that a
12 fact is more likely true than not true such as by the
13 greater weight or the preponderance of the evidence. In
14 criminal cases the State's proof must be more powerful
15 than that. It must be beyond a reasonable doubt. Proof
16 beyond a reasonable doubt is proof that leaves you firmly
17 convinced of the Defendant's guilt. Now, there are very
18 few things in this world that we know with absolute
19 certainty and in criminal cases the law does not require
20 proof that overcomes every possible doubt. If based on
21 your consideration of the evidence you are firmly
22 convinced that the Defendant is guilty of the crime
23 charged you must find the Defendant guilty. If on the
24 other hand you have a reasonable doubt as to the guilt of
25 the Defendant you must give the Defendant the benefit of

1 the doubt and find him not guilty.

2 Now, Mr. Foreman and ladies and gentlemen, I remind
3 you that during this trial you and I have certain duties
4 to perform. As the trial Judge it has been my
5 responsibility to preside over the trial of this case and
6 I also have the duty to rule on the admissibility of
7 evidence offered during this trial. You are to consider
8 only the competent evidence before you. If there was any
9 testimony ordered stricken from the record in this case
10 during this trial you must disregard that testimony. You
11 are to consider only the testimony which has been
12 presented from this witness stand, any exhibits which have
13 been made a part of the record in this case and any
14 stipulations of counsel. I have the additional duty to
15 charge you the law that applies to this case. As the
16 presiding Judge I am the sole Judge of the law in this
17 case and it is your duty as jurors to accept and apply the
18 law as I now state it to you. If you already have any
19 idea as to what the law is or what the law ought to be and
20 it does not agree with what I now tell you the law is you
21 must abandon your idea because you are sworn to accept the
22 law and apply the law exactly as I state it to you.

23 In every case tried in this court before a jury the
24 jury becomes the sole and exclusive Judge of the facts in
25 a case. A trial Judge cannot intimate, state, comment on

1 or make any statement to a trial jury about the facts in a
2 case. Since you, the jury, are the sole Judge of the
3 facts in this case you are not to infer from what I have
4 said during the progress of this trial in ruling upon the
5 admissibility of evidence or otherwise or anything that I
6 say now during the course of this instruction to you that
7 I have any opinion about the facts in this case. The law
8 does not allow me to have an opinion about the facts in
9 this case. This is a matter solely for you, the jury, to
10 determine. As jurors, it is your duty to determine the
11 effect, value, weight of the evidence presented during
12 this trial.

13 Now, Mr. Foreman and ladies and gentlemen of the
14 jury, there are two types of evidence which are generally
15 presented during a trial, that being direct evidence and
16 circumstantial evidence. Direct evidence directly proves
17 the existence of a fact and does not require deduction.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact. Crimes
20 may be proven by circumstantial evidence. The law makes
21 no distinction between the weight or value to be given to
22 either direct or circumstantial evidence. However, to the
23 extent the State relies on circumstantial evidence the
24 circumstances must be consistent with each other and when
25 taken together point conclusively to the guilt of the

1 accused beyond a reasonable doubt. If these circumstances
2 merely portray the Defendant's behavior as suspicious the
3 proof has failed. Once again, the State has the burden of
4 proving the Defendant guilty beyond a reasonable doubt.
5 This burden rests with the State regardless of whether the
6 State relies on direct evidence, circumstantial evidence
7 or some combination of the two.

8 Now necessarily, you must determine the credibility
9 of witnesses who have testified in this case and the
10 evidence presented. Credibility simply means
11 believability. It becomes your duty as jurors to analyze
12 and to evaluate the witnesses and the evidence and
13 determine the credibility of the witnesses and the
14 evidence. In determining the credibility of witnesses who
15 have testified in this case you may believe one witness
16 over several witnesses or several witnesses over one
17 witness. You may believe a part of the testimony of a
18 witness and reject the remaining part of the testimony of
19 that same witness. You may believe the testimony of a
20 witness in its entirety or reject the testimony of a
21 witness in its entirety. You may consider whether any
22 witness has exhibited to you any interest, bias, prejudice
23 or other motive in this case. You may also consider the
24 appearance and manner of a witness while on the witness
25 stand.

1 Now, there has been evidence presented that witnesses
2 may have made prior statements which are not consistent
3 with the witness' present testimony. You may use this
4 evidence to decide whether to believe the witness. You
5 may also use evidence of the earlier contradictory
6 statements to determine the truth of those statements. It
7 is up to you to decide whether to believe the earlier
8 statements or the testimony given at trial. If a witness
9 has shown to have knowingly testified untruthfully
10 concerning any material matter you may consider this in
11 determining whether to trust the witness' testimony as to
12 other matters. You may reject all testimony of that
13 witness or give all or part of the testimony the weight
14 you think it deserves.

15 Now, ladies and gentlemen, in order to establish
16 criminal liability, criminal intent is required. For
17 example, the mental state required to be proven by the
18 State for a particular crime might be purpose, intent or
19 knowledge. Criminal intent must be proven by the State
20 beyond a reasonable doubt. Criminal intent is always a
21 matter that must be determined by the jury from the
22 circumstances surrounding the situation. There is no way
23 to prove intent to a mathematical certainty. There is no
24 way medical science can dissect a person's brain and
25 determine what the person had in mind. So the law says

1 that criminal intent may be inferred from the
2 circumstances shown to have existed. This is how you make
3 a determination of whether or not the element requiring
4 intent was present. It is not necessary to establish
5 intent by direct and positive evidence but intent may be
6 established by inference in the same way as any other fact
7 by taking into consideration the acts of the parties and
8 all the facts and circumstances of the case. Criminal
9 intent is a mental state, a conscious wrongdoing. It is
10 up to you to determine what the Defendant intended to do
11 based on the circumstances shown to have existed.

12 Now, statement per video, made by the Defendant has
13 been admitted into evidence in this case. While the Court
14 has determined that the statement is admissible you must
15 determine whether the statement was made by the Defendant
16 voluntarily and of his own free will. This means that the
17 statement was not caused by pressure, force, fear,
18 threats, coercion or intimidation or by hope or a promise
19 of leniency or a reward of any kind. In determining
20 whether the statement was voluntary, you should consider
21 both the characteristics of the Defendant and the details
22 of the questioning. Some of the factors that you must
23 consider are, the age of the Defendant; the Defendant's
24 education or lack of education; the Defendant's mental
25 ability or capacity; the Defendant's I.Q. or intelligence;

1 the Defendant's background and environment; the place and
2 length of detention; the nature of the questioning; the
3 advice or lack thereof to the Defendant of his
4 constitutional rights including but not limited to the
5 right to remain silent; that any statement could be used
6 against him in a court of law; the right to have a lawyer
7 present; that if he could not afford a lawyer a lawyer
8 would be appointed to represent him without any cost; and
9 that he could stop making a statement at any time. You
10 must carefully consider all of the surrounding
11 circumstances before you give any weight to the statement.
12 The State has the burden of proving beyond a reasonable
13 doubt that the statement was voluntary. If you determine
14 it was you may give the statement any further
15 consideration that you deem proper. You must decide what
16 weight, if any, should be given to the statement. If you
17 determine the statement was not the free and voluntary
18 statement of the Defendant you should not consider the
19 statement at all.

20 Now, I am going to go through the three charges that
21 Mr. Hailey has been charged with. First of all, murder.
22 The State must prove beyond a reasonable doubt that the
23 Defendant killed another person with malice aforethought.
24 Malice is hatred, ill-will or hostility towards another
25 person. It is the intentional doing of a wrongful act

1 without just cause or excuse and with an intent to inflict
2 an injury. Malice is defined as being hatred or ill-will.
3 Malice signifies rather a general malignant recklessness
4 of the lives and safety of others, or a condition of the
5 mind which shows a heart regardless of social duty and
6 fatally bent on mischief. It indicates a wicked or
7 depraved spirit intent on doing wrong. Malice
8 aforethought does not require that malice exists for any
9 particular time before the act is committed but malice
10 must exist in the mind of the Defendant just before and at
11 the time of the act is committed. Therefore there must be
12 a combination of the previous evil intent and the act.
13 Malice may be shown by words, threat, conduct or acts
14 showing a total disregard for human life based upon
15 evidence from the facts and circumstances of the case.
16 Again, the State has the burden of proof to prove malice
17 beyond a reasonable doubt.

18 The second charge is possession of a weapon during
19 the commission of a violent crime. The Defendant is
20 charged with possession of a weapon during the commission
21 of a violent crime. The State must prove beyond a
22 reasonable doubt that the Defendant visibly displayed a
23 weapon during the commission of a violent crime. In order
24 to find the Defendant guilty of possession of a weapon
25 during the commission of a violent crime you must first

1 find the Defendant guilty of either committing a violent
2 crime or attempting to commit a violent crime. Murder and
3 carjacking are violent crimes. The State must prove
4 beyond a reasonable doubt that the weapon furthered,
5 advanced or helped in the commission of the crime.

6 Thirdly, carjacking. The State must prove beyond a
7 reasonable doubt that the Defendant took or attempted to
8 take a motor vehicle from another person by force and
9 violence or by intimidation while the person was operating
10 the vehicle or while the person was in the vehicle.

11 Now, Mr. Foreman and ladies and gentlemen of the
12 jury, the Defendant has raised the defense of
13 self-defense. Self-defense is a complete defense and, if
14 it is established, you must find the Defendant not guilty.
15 The State has the burden of disproving self-defense by
16 proof beyond a reasonable doubt. If you have a reasonable
17 doubt of the Defendant's guilt after considering all the
18 evidence, including the evidence of self-defense, then you
19 must find the Defendant not guilty. On the other hand, if
20 you have no reasonable doubt of the Defendant's guilt
21 after considering all the evidence, including the evidence
22 of self-defense then you must find the Defendant guilty.
23 The elements of self-defense are as follows and, again,
24 the Defendant has no burden to prove self-defense but the
25 burden is on the State to disprove self-defense beyond a

1 reasonable doubt. And there are four elements. The first
2 is without fault. First, the Defendant must be without
3 fault in bringing on the difficulty. If the Defendant's
4 conduct was the type which was reasonably calculated to
5 and did provoke a deadly assault, the Defendant would be
6 at fault in bringing on the difficulty and would not be
7 entitled to an acquittal based on self-defense. The
8 second element is imminent danger. The second element of
9 self-defense is that the Defendant was actually in
10 imminent danger of death or serious bodily injury or that
11 the Defendant actually believed he was in imminent danger
12 of death or serious bodily injury. The third element is
13 reasonableness. If the Defendant was actually in imminent
14 danger it must be shown that the circumstances would have
15 warranted a person of ordinary firmness and courage to
16 strike the fatal blow to prevent death or serious bodily
17 injury. If the Defendant believed he was in imminent
18 danger of death or serious bodily injury it must be shown
19 that a reasonably prudent person of ordinary firmness and
20 courage would have had the same belief. In deciding
21 whether the Defendant actually was, or believed he was, in
22 imminent danger of death or serious bodily injury you
23 should consider all the facts and circumstances
24 surrounding the case and the crimes including the physical
25 condition and characteristics of the Defendant and the

1 deceased. And the last element of self-defense is no
2 other way to avoid the danger. The final element of
3 self-defense is that the Defendant had no other probable
4 way to avoid the danger of death or serious bodily injury
5 than to act as the Defendant did in this particular
6 instance. An individual has no duty to retreat if by doing
7 so the danger of being killed or suffering serious bodily
8 injury would increase.

9 Now, let me explain accident. An act may be excused
10 on the ground of accident if it is shown that the act was
11 unintentional, that the Defendant was acting lawfully and
12 that the reasonable care and that reasonable care was used
13 by the Defendant. For example, if a person is lawfully
14 armed in self-defense and the gun accidentally discharges
15 the defense of accident would apply. The burden is on the
16 State to prove beyond a reasonable doubt that the act was
17 not an accident but was caused by the act of the Defendant
18 or by unlawful activity by the Defendant.

19 Now, good character. Let me explain that. The
20 Defendant has presented evidence of his good reputation
21 and character to show that it would be inconsistent with
22 the Defendant committing the crimes. The weight you give
23 to that testimony, like all other testimony in this case,
24 is for you to decide in your good judgment. You may
25 consider testimony of the Defendant's good character along

1 with all the other evidence in deciding whether or not the
2 Defendant committed the crimes charged.

3 Now, Mr. Foreman and ladies and gentlemen, there are
4 two possible verdicts for each charge, that being not
5 guilty and guilty. And I am going to show you in just a
6 moment the verdict forms, very easy to complete. And the
7 fact that on this verdict form guilty is shown above not
8 guilty is of no significance whatsoever. Your verdict as
9 to each charge, ladies and gentlemen, must be unanimous
10 among the 12 of you. And when you have reached a
11 unanimous verdict as to each charge, you just knock on the
12 door, let the Bailiffs know that you have received a --
13 have deliberated and there is a unanimous verdict as to
14 each charge. Now, Mr. Foreman, ladies and gentlemen of
15 the jury, in the event that during your deliberations
16 there is a split in your vote, the Court does not want at
17 any time to be informed of the actual split by number in
18 the vote if, one in fact, exist. Now, also, ladies and
19 gentlemen, I know that was a whole lot that was read to
20 you. I am going to provide a copy of what I just read to
21 you that you can use in the jury room in whatever manner
22 that you feel like is important and necessary. I am not
23 going to go all the way to you, Mr. Foreman. But this
24 just lays out the indictment numbers and the case and the
25 first charge deals with murder. And it says as to

1 indictment such and such which charges the Defendant with
2 murder, we, the jury find the Defendant either guilty or
3 not guilty. And on the line you will put your initials
4 indicating the verdict. And the same is for the second
5 charge, possession of a weapon during the commission of a
6 violent crime. And you will also indicate by your
7 initials guilty or not guilty and the same for the
8 carjacking. You will sign your name and put today's date.
9 Now, I need to talk with the lawyers, I will send you back
10 to the jury room, all 13 of you. Don't begin your
11 deliberations yet. I just need to talk to the lawyers one
12 more time about my charge and make sure I don't need to
13 add anything or correct anything as far as what I have
14 charged. Now, if I don't bring you out in order to
15 accomplish that then when the Bailiffs bring all the
16 exhibits to you, two things will happen. One, I will need
17 the alternate, the Bailiff will escort you to the
18 courtroom for further instructions. And secondly, Mr.
19 Foreman, you will begin your deliberations at that time.
20 That is only if the Bailiffs bring all the exhibits, the
21 verdict form and a copy of my charge to you. Okay. Go
22 back to the jury room, all 13 of you, don't begin any
23 deliberations or discussions yet.

24 (Whereupon, the jury was excused from the courtroom.)

25 THE COURT: Other than what has been noted on the

1 record, does the State have any exceptions or objections
2 to the Court's charge other than what has been noted on
3 the record?

4 MR. BROWN: No, sir.

5 THE COURT: And the Defense?

6 MR. SHAFFER: Your Honor, an accident, I know you
7 changed over and I understand you took out negligence in
8 there. But I think that you put, was caused by the act of
9 the Defendant or by the unlawful activity of the
10 Defendant. Is there any way you can charge intentional
11 act of the Defendant.

12 THE COURT: Okay. Now, the accident, let me just
13 first ask this. What I have in the charge, was that taken
14 from what you -- the language you provided to me and I may
15 have skipped over something in reading.

16 MR. SHAFFER: I think that you skipped over
17 negligence, if it is negligence in there, I mean, we can
18 just send it back.

19 THE COURT: It is.

20 MR. SHAFFER: I am fine with it, Your Honor. I am
21 actually completely fine with it as long as it is right on
22 the paper I am fine with it.

23 THE COURT: Yes. The last paragraph says, negligence
24 on the part of the Defendant or by unlawful activity by
25 the Defendant.

1 MR. SHAFFER: That's fine, Your Honor.

2 THE COURT: For whatever reason I didn't say the
3 word, negligence.

4 MR. SHAFFER: That's fine.

5 THE COURT: All right. Very good.

6 MR. SHAFFER: And we renew our previous requests.

7 THE COURT: Certainly. Okay, let's go off the record
8 and we will need some help getting all that stuff back
9 there along with this. Bring the alternate to me, please.

10 (Whereupon, the jury started deliberations at
11 approximately 4:10 p.m.)

12 (Whereupon, the alternate was excused at
13 approximately 4:12 p.m.)

14 THE COURT: And this is really for the benefit of the
15 family members of both sides. I know, you have been very
16 diligent in being here every single day. And we don't
17 know what the outcome is going to be. We never know, we
18 like to predict sometimes but we don't know. But what I
19 want y'all to do, this side, you thank these two lawyers
20 for the hard work they have put into the case and I am not
21 saying that law enforcement didn't work hard too, they
22 worked hard. This is for the lawyers. They have put a
23 ton of time into this case. I have firsthand knowledge
24 that they have. So regardless of the outcome you thank
25 these two lawyers for all the hard work they have put into

1 the case. And the same for the Hailey family. These two
2 lawyers have put a lot of work, equal amount of hard work
3 into the case so you thank them for what they have done
4 for Mark. And you do it now before you ever know what the
5 outcome is. Okay. Thank you very much.

6 (Whereupon, a break was taken in the case while the
7 jury deliberates.)

8 (Whereupon, the jury sent a note to the Court asking
9 was any toxicology taken for Mark Hailey.)

10 (Whereupon, the Court sent a note back to the jury
11 saying, your verdict must be based upon the testimony
12 and evidence presented at trial.)

13 (Whereupon, Court's Exhibit 6 was marked for
14 identification only.)

15 (Whereupon, the Court sent a note to the jury asking
16 the jury, would the jury like for the Court to order
17 you supper? An order form from Chick-fil-A will be
18 provided. The jury responded back with, yes.)

19 (Whereupon, Court's Exhibit 7 was marked for
20 identification only.)

21 (Whereupon, the jury sent a note to the Court at 8:15
22 p.m.)

23 THE COURT: On the verdict form we inadvertently
24 failed to put during the commission of a violent crime
25 with possession of a weapon. So the jury picked up on

1 that and felt like possibly that charge was not the same
2 as on the jury charge. So we are going to print out a new
3 verdict form with that additional language and I put on a
4 note that is going to go back to them. I said, it is the
5 same. On verdict form we failed to put during the
6 commission of a violent crime. Here is an amended verdict
7 form. We will give one, I am going to give them the old
8 one back. But I put on there, old, do not complete.

9 (Whereupon, Court's Exhibit 8 was marked for
10 identification only.)

11 THE COURT: We are back on the record and the Court's
12 exhibit number 9. The note from the jury, split. I don't
13 know why it is number one, but there is one circled. I
14 don't know what that means, split on carjacking charge.
15 The way I read that means they have reached a verdict on
16 the other, on the other two. Because otherwise why would
17 they just say -- they are split on all three charges. So
18 and that is the implication. So we will bring them out
19 and certainly confirm that without them telling us what
20 the verdict is, confirm that, they have reached a
21 unanimous verdict on the other two charges. And then the
22 question is, do I give them an Allen charge on the
23 carjacking, send them back in for deliberations or do I go
24 ahead and declare a mistrial on the carjacking. The
25 Defense wants me to go ahead and declare a mistrial, I am

1 kind of inclined not to do that. I typically like, when
2 they come out, indicating that they are hung on all of
3 them or some of the charges. My preference is to give an
4 Allen charge and give them one more shot at it, that is
5 typically what I do. So but, let me hear the position
6 from the State and then Mr. Shaffer, you can put on the
7 record your position.

8 MR. BROWN: Judge, the State's position, we would
9 request the Allen charge on that one if, in fact, they
10 have reached a verdict on the other two, do an Allen
11 charge on that and see where it plays out on that.

12 THE COURT: Okay. Mr. Shaffer.

13 MR. SHAFFER: Your Honor, they have had four and a
14 half hours. Clearly they are talking to each other,
15 clearly this was not a situation that they had the verdict
16 of the other ones right away. What likely happened is
17 that they are sitting there, you know, listening to each
18 other debating. I think any sort of Allen charge you
19 would give would be unduly coercive because of that fact
20 that they have clearly -- if they have reached a verdict
21 on the other ones they are clearly cooperating and
22 understanding that they need to listen to other people's
23 opinions.

24 THE COURT: Well, you know, that may be the case but
25 we don't know. I mean it could be they reached a quick

1 verdict on the other two charges and then back there the
2 whole time arguing over the carjacking. We don't know. I
3 have got an Allen charge that is -- you know, the recent
4 case came out about a year ago. I remember Rob Stilwell
5 was the trial Judge and I have amended my original Allen
6 charge to comply with that case, I can't think of the case
7 name. But I think I am going to go ahead and give them an
8 Allen charge on carjacking if, in fact, they tell me that
9 they have reached a verdict on the other two.

10 MR. SHAFFER: Your Honor, before you give it can you
11 provide a copy of it. I just want to make sure of what
12 you plan on charging.

13 THE COURT: I'll be glad to do it. Now, I am going
14 to tell you right now, I am not going to change any of it
15 but I will be glad to give y'all the heads up to see in
16 advance what I am going to charge. But I am not going to
17 -- I am not going to treat this Allen charge like we do a
18 jury charge, getting impute from both sides. I am not
19 going to do that.

20 MR. SHAFFER: Thank you, Your Honor. And, Your
21 Honor, I am not trying to argue with you if I make
22 objections to it. I think I need to make specific
23 objections if I find specific parts violate the law.

24 THE COURT: I think you will feel pretty comfortable
25 with it, Mr. Shaffer. Actually I need to go outside to my

1 car because I put -- because I put my briefcase up. So I
2 will be back in just a minute.

3 (Whereupon, a short break was taken.)

4 THE COURT: We are back on the record and initially I
5 stated that I was going to give them an Allen charge but
6 after further reflection I have decided not to. And the
7 basis for my decision not to give them the Allen charge,
8 because basically the Allen charge explains to them what
9 they need to try to do in order to reach a unanimous
10 verdict. And presumably they have already done that to
11 some extent if, in fact, they have reached a unanimous
12 verdict as to the other two charges. So I felt like I
13 would just be, and I use the term, preaching to the choir,
14 by telling them that because evidently to some extent they
15 already know that. But we will first confirm without
16 knowing what the verdict is, if they have reached a
17 unanimous verdict on the other two charges. I am going to
18 tell the Bailiffs to bring the jury out, tell the Foreman
19 to bring his verdict form but for nobody to see it. And
20 then if, in fact, the verdict form has been completed,
21 they have reached a unanimous verdict on the other two
22 charges then I will declare a mistrial on the carjacking
23 and then accept the verdict on the other two charges.
24 Okay.

25 BAILIFF: That's from the jury too.

1 THE COURT: Okay. All right. The note says
2 agreement reached on murder and weapon charge. I will
3 just get them to confirm that when I bring them out. That
4 is what it says. Y'all want to see this. Y'all are good.
5 Okay. Still just get them to bring the verdict form with
6 them, nobody see it and we will get them.

7 (Whereupon, Court's Exhibit 9 and 10 were marked for
8 identification only.)

9 THE COURT: You know what, hold them up just a
10 minute.

11 BAILIFF: Yes, sir.

12 THE COURT: Hold them up, Lee. I just need to tell
13 the family members, yes, close that. If, in fact, I do
14 receive a verdict from the jury now, I know we have got
15 family members. I know this is a very emotional case for
16 everybody. But when the verdict is announced, if you feel
17 like you are not going to be able to contain your
18 emotions, I certainly understand. But I can't have you in
19 the courtroom. So if you feel like that may be a problem
20 then I am going to ask that you leave at this time. Okay.
21 Okay, now.

22 (Whereupon, the jury came into open court with the
23 verdict at approximately 9:01 p.m.)

24 THE COURT: Okay, let the record reflect the jury is
25 back in. Mr. Foreman, I have got two notes from you. The

1 first one was an indication that you were split on the
2 carjacking charge. And then a second note that you have
3 an agreement or you have reached an agreement on the
4 murder and the weapons charge. Is that correct?

5 FOREMAN: (Nods in the affirmative.)

6 THE COURT: Okay. Mr. Foreman indicated yes by
7 nodding his head. Without telling me what your verdict
8 is, is your verdict unanimous among all 12 of you on the
9 murder charge and the weapons charge?

10 FOREMAN: Yes sir, Your Honor, it is.

11 THE COURT: Okay. Would you hand the verdict form to
12 Mr. Funderburk.

13 (Whereupon, the Foreman handed the verdict form to
14 the Bailiff. The Bailiff handed the verdict form to
15 the Court.)

16 THE COURT: All right, Madam Clerk, would you publish
17 the verdict on the first two charges, please.

18 CLERK OF COURT: Yes, sir. The State of South
19 Carolina versus Mark Anthony Hailey. Indictment
20 2019-GS-24-1076 for murder. 2019-GS-24-1077 for
21 possession of a weapon during the commission of a violent
22 crime. 2019-GS-24-1078, carjacking.

23 As to indictment number 2019-GS-24-1076 which charges
24 the Defendant murder. We, the jury, find the Defendant
25 guilty.

1 As to indictment number 2019-GS-24-1077 which charges
2 the Defendant with possession of a weapon during the
3 commission of a violent crime. We, the jury, find the
4 Defendant guilty.

5 Ladies and gentlemen of the jury, if this was your
6 verdict and remains your verdict please signify by raising
7 your right hand.

8 (Whereupon, all jurors raised their hands.)

9 THE COURT: Let the record reflect that 12 hands were
10 raised. Ladies and gentlemen, this has been a very long
11 trial and I know all 12 of you would agree with me on
12 that. We never know for sure how long trials will last.
13 But I want to thank you for, your verdict means nothing to
14 me but what means, what is very important to me is that
15 and everybody can take their seat. What is important to
16 me is that you performed your duties conscientiously,
17 efficiently and you have done that. You have been an
18 absolute great jury. I mentioned to you the other day and
19 I thanked you, hopefully I did, that you were prompt
20 coming in after lunch breaks, in the mornings. I mean you
21 showed up on time. I don't think anybody came late. And
22 one job of a Judge during a trial is to keep their eye on
23 the jury. And I have done that. And with a little hiccup
24 early on all of you have been very attentive and alert.
25 And that is what you needed to do so you could

1 collectively, during your deliberations, have a real good
2 memory of everything that went on. So I appreciate your
3 jury service. Tough, tough, it is not easy, I know that,
4 it is tough and you spent a lot of time back in that jury
5 room. So it wasn't easy for you, I know. But I hope you
6 have found this to be a good experience and that you have
7 learned some things. Some things that you maybe didn't
8 know and that maybe you would like to, down the road, show
9 up in another, whether it is this courtroom or another
10 courtroom and serve on another criminal case or even a
11 civil case. What I would like to do is, and I know it is
12 late and I don't want to keep you any longer than I have
13 to but I just want to chat with you back in the jury room
14 for just a minute, not to discuss the case but I just want
15 to get a little feedback from you as far as the process,
16 the precautions, the safety plan, the things that we did
17 to try to keep everybody safe, I would like some feedback
18 if you can give me some, positive and negative. And I
19 have done that with the other two trials that I have done
20 since we started back with jury trials in the pandemic.
21 And I would like to do that with you. And, again, I am
22 not going to keep you any longer then just to give me an
23 opportunity to talk with you. So if you will go back to
24 the jury room, I am going to talk with the lawyers for
25 just a minute and then I will be back there. If you don't

1 mind waiting on me I will very much appreciate it.

2 (Whereupon, the jury was excused from open court at
3 approximately 9:08 p.m.)

4 MR. SHAFFER: Your Honor, we request that the jury be
5 polled. One of the jurors is crying.

6 THE COURT: Okay.

7 MR. SHAFFER: So we would ask for individual polling
8 of the jury.

9 THE COURT: Oh, okay. I apologize. I always ask
10 that, for some reason I had in my mind, let me talk with
11 the jury. So bring the jury back out.

12 (Whereupon, the jury came into open court at
13 approximately 9:10 p.m.)

14 THE COURT: Ladies and gentlemen, I failed to get the
15 Clerk to ask you individually if this is your verdict as
16 to both charges. So when they get ready they are going to
17 call out your name. I am ready if you are ready.

18 CLERK OF COURT: Marcus Lee. Is this your verdict?

19 MR. LEE: It is.

20 CLERK OF COURT: Is it still your verdict?

21 MR. LEE: It is.

22 CLERK OF COURT: Diana Cobb. Is this your verdict?

23 MS. COBB: Yes.

24 CLERK OF COURT: Is it still your verdict?

25 MS. COBB: Yes.

1 CLERK OF COURT: Jernelle Jackson-Daniel. Is this
2 your verdict?

3 MS. JACKSON-DANIEL: Yes.

4 CLERK OF COURT: Is it still your verdict?

5 MS. JACKSON-DANIEL: Yes.

6 CLERK OF COURT: Darlene Johnson. Is this your
7 verdict?

8 MS. JOHNSON: Yes.

9 CLERK OF COURT: Is it still your verdict?

10 MS. JOHNSON: Yes.

11 CLERK OF COURT: Marcus Lee?

12 THE COURT: You just --

13 CLERK OF COURT: I am sorry, I apologize. We didn't
14 mark you. Wallace Lewis. Is this your verdict?

15 MR. LEWIS: Yes.

16 CLERK OF COURT: Is it still your verdict?

17 MR. LEWIS: Yes.

18 CLERK OF COURT: Alexis McGrath. Is this your
19 verdict?

20 MS. MCGRATH: Yes.

21 CLERK OF COURT: Is it still your verdict?

22 MS. MCGRATH: Yes.

23 CLERK OF COURT: Diane Miller. Is this your verdict?

24 MS. MILLER: Yes.

25 CLERK OF COURT: Is it still your verdict?

1 MS. MILLER: Yes.

2 CLERK OF COURT: Janay Moore. Is this your verdict?

3 MS. MOORE: Yes.

4 CLERK OF COURT: Is it still your verdict?

5 MS. MOORE: Yes.

6 CLERK OF COURT: Lisa Morgan. Is this your verdict?

7 MS. MORGAN: Yes.

8 CLERK OF COURT: Is it still your verdict?

9 MS. MORGAN: Yes.

10 CLERK OF COURT: Leonard Owen. Is this your verdict?

11 MR. OWEN: Yes.

12 CLERK OF COURT: Is it still your verdict?

13 MR. OWEN: Yes.

14 CLERK OF COURT: Lisa Ronan. Is this your verdict?

15 MS. RONAN: Yes.

16 CLERK OF COURT: Is it still your verdict?

17 MS. RONAN: Yes.

18 CLERK OF COURT: James Weeks. Is this your verdict?

19 MR. WEEKS: Yes.

20 CLERK OF COURT: Is this still your verdict?

21 MR. WEEKS: Yes.

22 THE COURT: Okay. All twelve responded in the

23 affirmative. Now, ladies and gentlemen, go back to the

24 jury room. Thank you.

25 (Whereupon, the jury was excused from open court.)

1 THE COURT: For the record I am declaring a mistrial
2 in connection with the carjacking charge. Now, it is
3 9:15, does anybody have a strong objection to delaying
4 sentencing until the first thing in the morning? It is
5 late, I am going to have to go back, I want to talk with
6 them. I know we have got family members but they are
7 already here at 9:15, I figure they will be around in the
8 morning, go early if we have to.

9 MR. BROWN: I think the family, our position would
10 be, they have been traveling, if we can do it tonight. If
11 not we can make --

12 THE COURT: How much, just one of you speak for the
13 whole family. How much imposition would it be on you
14 folks to hang around one more evening and come first thing
15 in the morning.

16 FAMILY MEMBER: It wouldn't be a problem, sir.

17 THE COURT: You are okay?

18 FAMILY MEMBER: Yes, sir.

19 THE COURT: Okay. Thank you for your cooperation.
20 Now, your family, they are all local. Well, I know the
21 lady in the back who testified, she is from the lower part
22 of the State. But is it a big objection?

23 MS. MCNEILL: No, sir.

24 THE COURT: Okay. Well, let's reconvene at 9:15 in
25 the morning, is that good enough?

1 MS. MCNEILL: Yes, sir.

2 THE COURT: All right, thank you for that, thank you
3 for that. Okay, we will see everybody at 9:15 in the
4 morning.

5 (Whereupon, the trial will resume the next morning at
6 9:15 a.m.)

7 September 24, 2021

8 THE COURT: We are on the record this morning. This
9 is the sentencing phase in the case of State of South
10 Carolina versus Mark Anthony Hailey, Jr. I will allow the
11 State to --

12 MR. SHAFFER: Your Honor, before we begin sentencing,
13 I think it would be appropriate, we were going to move for
14 a new trial based on several different things.

15 THE COURT: Okay.

16 MR. SHAFFER: You want me to put that on the record
17 or wait until after sentencing?

18 THE COURT: You can wait under after sentencing or if
19 you want to take your full ten days to formulate your
20 ideas for the new trial, I will give you that.

21 MR. SHAFFER: And, Your Honor, I had initially
22 thought that I was going to do that. However, I do not
23 think so, I think that the Court may decide you want to
24 take it under consideration. But I am prepared to argue
25 it today.

1 THE COURT: Okay. I will allow the State to present
2 first anybody, any information wants -- I mean the State
3 wants to provide the Court considering sentencing and then
4 I will turn it over to the Defense.

5 MR. BROWN: Yes, sir. Judge, it has been brought out
6 by Mr. Hailey's record, the only thing on his record is
7 2010, miscellaneous criminal offense down in Charleston.
8 And then also possession of marijuana charge, I believe
9 that was down in Beaufort. Other than that he doesn't
10 have any other kind of record. Judge, the family has been
11 here the entire time. We worked with them and met with
12 them over the last 18 months several times, come into our
13 office. We have learned a lot about Marty George. The
14 family has provided a number of photographs of Marty. I
15 don't think you have seen him --

16 THE COURT: Right, sure.

17 MR. BROWN: -- other than what you have seen in the
18 pictures in this trial. So they would like for you to see
19 who Marty George was. And also Marty's niece, Valerie
20 Butler, would like to speak to the Court. She has a
21 prepared statement and I think she is going to be the only
22 one speaking for the family.

23 THE COURT: You want to show the pictures to the
24 Defense and then hand them to me and then I will be glad
25 to hear from that lady.

1 (Whereupon, the Defense looks at some photographs.)

2 MR. BROWN: Judge, in attendance this whole time,
3 Marty's mother, sister, son, nephews, two sons, niece and
4 other family here. And pretty much the whole family every
5 time we have met has been there to discuss this case and
6 Marty's life. Again, this is Valerie Butler, Marty's
7 niece.

8 THE COURT: Very good. Madam Clerk, will you swear
9 Ms. Butler in, please.

10 VALERIE BUTLER, being
11 first duly sworn, testified as follows:

12 THE COURT: Okay. Yes ma'am, Ms. Butler, will be
13 glad to hear from you.

14 MS. BUTLER: My name is Valerie Butler, my mom's name
15 is Tammy Butler, she worded most of this. I am Marty's
16 sister. I just want you to know just a few things before
17 I go into anything else. My brother, Marty, was the
18 world. He wasn't no where near perfect but was everything
19 to me. And anything I ever needed from my brother he was
20 always there for me and my mom. He has been in a lot of
21 trouble in the past but he was very close to his family.
22 It is really killing me inside to know that I will never
23 be able to see you or talk to him ever again. He wouldn't
24 be able to see the things that my kids achieved in life
25 and the rest of your family. But now I have lost my

1 brother, my mom lost her son and I know it is a hurt
2 inside that we cannot get rid of. The only thing we can
3 do is put it all in God's hands. I really feel for your
4 family, as long as they have to go through this long road
5 of pain from what happened on March 6th, 2019. It hurt
6 both families that morning and I know I will never forget
7 that morning when my mom came and woke me up and told me
8 Greenwood County called and this is what I said to my mom.
9 Well, I told Marty if he had to get himself in trouble
10 again, I am not going to help him. This time he would
11 have to sit and think about what he has done. That is
12 when my mom said, no, Tammy, wake up, your brother has
13 been found dead. I jumped up shaking, just wanting it to
14 have a horrible nightmare. After that all of my phone
15 calls started ringing and my mom was not in any shape to
16 talk to these people. I was hurting so bad, I had no
17 choice but to put all of my feelings and my hurt and
18 wanting to scream to the side and to talk to all of these
19 people that I have never met before so my mom didn't have
20 to do anything but grieve her son that no mother should
21 ever have to do. We are suppose to bury our parents, not
22 them burying their children. On March 6th, 2019
23 everything went upside down, not just for my family but
24 your's as well. And I don't really know what happened on
25 that morning. The only ones that know is God, you and

1 Marty, my brother. Honestly, it hurts me to see anything
2 happen to people like this, meaning with this type of
3 situation but I want you to know that for myself I have
4 been giving this trial and all of this to go over to God.
5 So I want you to know, this is something that I will never
6 be able to forget and seeing my brother for the first time
7 and the last time, the way he was and thrown out like a
8 piece of trash on the side of the road when there could
9 have been many other things that could have happened. But
10 I have to say thank you for going to your mom's and
11 letting someone know. And I am so thankful for your mom
12 that called the authorities to get help and my brother was
13 found. So I want you know that I have prayed so much
14 about this and I do forgive you but I know it will be
15 something I will never be able to forget. I already miss
16 seeing my brother and talking to him and having him around
17 to make me laugh and seeing my mom's face light up when he
18 would come over and spend time with us. Now all I see is
19 pain from my mom for what had happened to him. Well,
20 there is so much more I would like to say but that would
21 be for another time. God bless you and your sweet family
22 and may God always be with y'all.

23 Also, a couple of words from his son from memory was,
24 I know, I never got to be able to meet him and I probably
25 never will. It is something that I will never forget,

1 forgive or forget but I do forgive.

2 THE COURT: Thank you very much, ma'am.

3 MR. BROWN: Judge, just to be clear, that letter was
4 written by Tammy Butler, Valerie's mother, Tammy is
5 Marty's sister.

6 THE COURT: Right. Okay. Thank you very much.

7 MR. BROWN: Judge, regarding sentencing, you have
8 heard all the facts on this case. We trust your decision
9 on this case.

10 THE COURT: Very good. Thank you, Solicitor. Mr.
11 Shaffer, Ms. McNeill, will be glad to hear from your side.

12 MR. SHAFFER: Your Honor, I guess first what I would
13 like to say is, I apologize to the family. This must have
14 been a hard trial to go through for them, for Mr. George's
15 family. About a week ago I sent a text message to the
16 Prosecutors in this case saying that I lost my objectivity
17 and I apologize if I am being a butt, basically. So and I
18 apologize to the Court for that as well. This is a case,
19 I have only had a few like this where I truly believe that
20 my client does not deserve what he is getting after a
21 trial. And this is one of them. What didn't really come
22 out necessarily is that Mark has sort of been consistent
23 as to what happened, even before he would have known about
24 this stuff, before discovery was provided, before anyone
25 looked inside the phone he was consistent with what

1 happened in this, that this happened. There is no way he
2 would have known about that bathroom comment but for that.
3 And I am not saying it is an excuse, I am just saying that
4 he has been consistent this entire time. He is a good
5 person, he is odd, he believes in a lot of things I don't
6 believe in but he is a legitimately good person. I don't
7 think that there is ever a situation where this would
8 arise again. Obviously, the Court has to give him at
9 least 30 years, I mean I understand that. We are asking
10 for the minimum sentence. There is, you know, he is not
11 going to get paroled. He is going to be, you know, 62 I
12 think, 61 at the time he gets out if he gets a 30 year
13 sentence. One of the things that like is an issue is his
14 health. Dr. Salas, I talked to her this morning. She
15 even said, you know, he is probably not going to survive a
16 30 year sentence anyway based off of various medical
17 conditions that have nothing to do with the case. But,
18 Your Honor, one of things I ask you to consider is that,
19 to consider giving him at least a reasonable hope of
20 getting out. It is very out of character for him,
21 anything, any shooting like this. You know, he let go
22 until they are 30 and then shoot someone if they are
23 violent people. You know, they don't go without getting
24 arrested. They get arrested before then, you know. This
25 isn't a situation where he was, you know, gang member who

1 was out there running around shooting somebody, you know.
2 We just ask that you consider the minimum sentence based
3 off of his record. One of the things I really like about
4 Federal Court more than State Court, one of the only
5 things I like about Federal Court is that, in Federal
6 Court they have a statute that lays out factors that you
7 must consider and one of those factors is medical. But,
8 you know, the other factors is of the seriousness which
9 obviously it is a serious crime. One of the other factors
10 is deterrence, you know, and protecting the public. I
11 don't think you have to worry about protecting the public.
12 If he gets a 30 year sentence he gets out at 62, 61,
13 somewhere around there, he is not going to go out there
14 and kill someone, you know. So we just ask that you
15 consider that, this isn't a trial that, you know, there
16 was no severance of responsibility. He has been
17 absolutely torn apart about this incident ever since it
18 happened. Thank you.

19 THE COURT: Thank you, Mr. Shaffer. Any of the
20 family members want to address the Court. They certainly
21 don't have to but I will give them the floor if they wish.

22 MS. MCNEILL: Yes, sir. Ms. Darlene is going to
23 speak on behalf of the entire family. She is the only
24 one.

25 THE COURT: Okay, you can stand right next to Ms.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Court of Appeals Appellate Case No. 2020-001276

THE STATE,

Petitioner,

v.

MARK ANTHONY HAILEY, JR.,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, South Carolina 29649
(864) 942-8800

ATTORNEYS FOR PETITIONER

LARA MARY CAUDY

S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

INDEX

INDEX i

RECORD ON APPEAL ii

 Index iii

 Transcript 1

FINAL BRIEF OF APPELLANT970

FINAL BRIEF OF RESPONDENT1001

COURT OF APPEALS OPINION (2024-UP-074).....1038

PETITION FOR REHEARING.....1042

RETURN TO PETITION FOR REHEARING1046

ORDER DENYING PETITION FOR REHEARING1054

1 McNeill and I need to have you sworn in. Madam Clerk.

2 DARLENE HOWARD, being
3 first duly sworn, testified as follows:

4 THE COURT: Would you state your name, please.

5 MS. HOWARD: Darlene Howard.

6 THE COURT: Howard?

7 MS. HOWARD: Howard.

8 THE COURT: I will be glad to hear from you, Ms.
9 Howard.

10 MS. HOWARD: Yes, sir. I am Mr. Hailey's aunt.
11 Excuse me. On behalf of the Hailey family, to the George
12 family, I am so sorry. We have all talked and I thank you
13 guys for forgiving my nephew. He is not a bad guy. I
14 hate this happened. God and him and George knows what
15 happened. I am so sorry this happened and hope you guys
16 hear it from the heart and -- I love you. You just be
17 strong, I know you. And I thank you, Judge, allowing me
18 to speak. And again, to the family, I love you and be
19 strong. And I thank you all for forgiving him.

20 THE COURT: Thank you, Ma'am.

21 MS. MCNEILL: And, Judge, just briefly, I would like
22 to address the Court.

23 THE COURT: Sure.

24 MS. MCNEILL: Your Honor, I came on this case
25 relatively late in the game. The rest of my office had

1 conflicts with sitting second chair with Tristan. So,
2 kind of the agreement was, he would help me try Latavious
3 Elmore and I would help him try Mark Hailey. As Your
4 Honor knows, Tristan and I have been trying two cases
5 within six weeks in front of Your Honor, both murder
6 cases, both very lengthy trials, they are not easy. I
7 didn't know Mark really until recently. I will say that
8 my observations of him, I have grown to really care about
9 him as a person. His family are lovely people and I would
10 also like the Court to be aware of some observations that
11 I have made and maybe Your Honor has made them too since
12 you have been around us throughout these past nine days or
13 so. Yesterday it was kind of surreal and I engaged in
14 this as well. While we were waiting on the verdict from
15 the jury, you know, everybody kind of went back to being
16 social and talking to each other, some people were
17 laughing in this courtroom and I engaged in some of that
18 as well and I was also working on another matter as Your
19 Honor knows. Mark sat beside me that entire time and read
20 his Bible and cried and was praying. That is what he did.
21 And I just found it so surreal and I mentioned something
22 to Mr. Shaffer and I said, you know, look at everybody in
23 this courtroom, just laughing and going on about their
24 business. Well, this man waits on the verdict that will
25 determine the rest of his life. And all he did was sit in

1 this chair and pray and read his Bible and occasionally
2 ask me for a cup of coffee. And that is all he did. I am
3 not a particularly overly religious person and Mark does
4 believe things that are, you know, a little outside of my
5 comfort zone, out of my realm. He is different. But
6 different doesn't make him a bad person, it makes him
7 unique and I feel like my life professionally has been
8 enriched from being able to have the honor of representing
9 him and getting to know him through my representation of
10 him. Myself, Mr. Shaffer and our Investigator, Mr. Powers
11 have been going back into this little room every day as
12 Your Honor is well aware, with Mr. Hailey. And what we
13 have been doing back there, other than occasionally
14 talking about the case, is we have been engaged in group
15 prayers on a daily basis. Sometimes a couple of times a
16 day. It is always led by Mark, always. And his prayers
17 have impacted me and influenced me in the way he speaks
18 and the way that he guides the prayers. I appreciate that
19 from him. I would like Your Honor to consider the fact
20 that he was also unshackled and uncuffed yesterday while
21 waiting on his verdict and while everybody was going about
22 their business. Not a single person in this room
23 displayed that they were in fear around Mr. Hailey, going
24 to the danger, protecting society in your sentencing,
25 Judge. I think that is important to consider, that no one

1 in this room felt uncomfortable with him uncuffed,
2 unshackled, occasionally walking to the bathroom. We have
3 all just been going about our business. Thank you.

4 THE COURT: Thank you very much. I know he has been
5 in jail since the very beginning. How many -- have you
6 counted up the days?

7 MS. MCNEILL: 568 days today.

8 THE COURT: 568?

9 MS. MCNEILL: Yes, sir.

10 MR. SHAFFER: Your Honor, can Mr. Hailey speak?

11 THE COURT: Sure.

12 MS. MCNEILL: And, Judge, I will say that he asked us
13 yesterday during waiting for the verdict if it would be
14 okay with Your Honor to address the family, no matter what
15 the outcome.

16 THE COURT: Sure, I don't have a problem with it and
17 I trust that the George family does not have a problem
18 with it.

19 MR. HAILEY: Good morning. I want y'all to know I
20 have great heaviness, continued sorrow in my heart for
21 your loved one, Marty Anthony George. I want y'all to
22 know that I pray every day for y'all's comfort and for
23 y'all's forgiveness on my behalf. May God continue to
24 bless y'all.

25 THE COURT: These types of cases are so tragic in so

1 many ways. Here we have a loss of a loved one from the
2 George family. We also have a loss on the Hailey family.
3 And, you know, it doesn't matter how much time I give,
4 whether it is the minimum of 30 or if I give life without
5 parole, the tragic loss is still there and there is
6 nothing I can do to satisfy that loss, absolutely nothing.
7 I appreciate the devotion that both families have shown in
8 this case. I have tried a lot of murder cases over the
9 years and other types of cases where there is nobody here
10 in support of the victim, in support of the Defendant.
11 But I have got families, and apparently some great
12 families who have been here every single day and I
13 appreciate that. It is quite evident, Mr. Hailey, that
14 you have strong faith and I appreciate that very much and
15 that strong faith, while it is not going to be easy in
16 prison, but your faith is going to help you, it is going
17 to help you. And the fact that you have been influential
18 in Ms. McNeill's life over these last nine days, that is
19 pretty strong, that is pretty strong. I wish I could fix
20 everything and everybody could go back to where they were
21 on March 5th of 2019, I can't do it, I wish I could, I
22 can't do it.

23 Mr. Hailey, the sentence of the Court is, you be
24 committed to the State Department of Corrections for a
25 period of 35 years, concurrent five year sentence on the

1 weapons charge. I will give you credit for 568 days.

2 Good luck to you. Good luck to the families.

3 Okay, Mr. Shaffer, you indicated at the outset that
4 you wanted to put, on the record, a motion for new trial
5 and the grounds?

6 MR. SHAFFER: Yes, Your Honor. The motion for a new
7 trial, based off of the directed verdict grounds, also the
8 request for the involuntary manslaughter. And, Your
9 Honor, also related to the, what we respectively submitted
10 to error related to the, to Dr. Salas' testimony, we think
11 that -- the Solicitor elicited testimony that goes to the
12 third prong of self-defense. I think that what we had put
13 on the record in that proffer, outside the presence of the
14 jury, goes to that, directly responds to that. And I
15 think there would be -- profitable, allowed us to redirect
16 pursuant to Rule 611(d) and Rule 704. Also we think that
17 rises to the level of a due process violation for us not
18 to be able to respond to the Solicitor bringing that out
19 on cross. Thank you.

20 THE COURT: Thank you very much. I think we have
21 fully fleshed all of these issues out, gave as much
22 consideration as I possibly could. And I am going to
23 stick with my original rulings and consequently, Mr.
24 Shaffer, your motion for a new trial is respectfully
25 denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SHAFFER: Thank you, Your Honor.

THE COURT: We are adjourned.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

tshaffer@8thcircuitpublicdefender.org



From: tshaffer@8thcircuitpublicdefender.org
Sent: Wednesday, September 23, 2020 9:18 AM
To: 'Yates Brown'; 'Hocker, Donald B. Law Clerk (Madison Hoffman)'
Cc: 'Chelsea McNeill'; 'Anna Sumner'; 'Hocker, Donald B.'
Subject: RE: State v. Hailey - Jury Charge and Verdict Form

We request the following language for accident:

AN ACT MAY BE EXCUSED ON THE GROUND OF ACCIDENT IF IT IS SHOWN THAT THE ACT WAS UNINTENTIONAL, THAT THE DEFENDANT WAS ACTING LAWFULLY, AND THAT REASONABLE CARE WAS USED BY THE DEFENDANT.

FOR EXAMPLE, IF A PERSON IS LAWFULLY ARMED IN SELF DEFENSE, AND THE GUN ACCIDENTALLY DISCHARGES, THE DEFENSE OF ACCIDENT WOULD APPLY.

THE BURDEN IS ON THE STATE TO PROVE BEYOND A REASONABLE DOUBT THAT ACT WAS NOT AN ACCIDENT BUT WAS CAUSED BY THE NEGLIGENCE ON THE PART OF THE DEFENDANT IOR BY UNLAWFUL ACTIVITY BY THE DEFENDANT.

We request the following language on good character:

THE DEFENDANT HAS PRESENTED EVIDENCE OF HIS GOOD REPUTATION AND CHARACTER TO SHOW THAT IT WOULD BE INCONSISTENT WITH THE DEFENDANT COMMITTING THE CRIME. THE WEIGHT YOU GIVE TO THAT TESTIMONY, LIKE ALL OTHER TESTIMONY IN THE CASE, IS FOR YOU TO DECIDE IN YOUR GOOD JUDGMENT. YOU MAY CONSIDER TESTIMONY OF THE DEFENDANT'S GOOD CHARACTER ALONG WITH ALL THE OTHER EVIDENCE IN DECIDING WHETHER OR NOT THE DEFENDANT COMMITTED THE CRIME.

From: tshaffer@8thcircuitpublicdefender.org <tshaffer@8thcircuitpublicdefender.org>
Sent: Wednesday, September 23, 2020 9:07 AM
To: 'Yates Brown' <ybrown@greenwoodsc.gov>; 'Hocker, Donald B. Law Clerk (Madison Hoffman)' <dhockerlc@sccourts.org>
Cc: 'Chelsea McNeill' <cmcneill@8thcircuitpublicdefender.org>; 'Anna Sumner' <asumner@greenwoodsc.gov>; 'Hocker, Donald B.' <dhockerj@sccourts.org>
Subject: RE: State v. Hailey - Jury Charge and Verdict Form

We object to the State's requested language.

Additionally, we submit that the Court include the following charges: Involuntary manslaughter, Accident, and a modified good character evidence charge.

Attached is a memorandum which we would submit in support of the involuntary manslaughter instruction. We ask that it be made a court's exhibit.

From: Yates Brown <ybrown@greenwoodsc.gov>
Sent: Tuesday, September 22, 2020 8:04 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Chelsea McNeill <cmcneill@8thcircuitpublicdefender.org>; Tristan Shaffer <tshaffer@8thcircuitpublicdefender.org>; Anna Sumner <asumner@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>
Subject: Re: State v. Hailey - Jury Charge and Verdict Form

Judge Hocker,

The State requests the definition of Malice as is seen in Ralph King Anderson's Request to Charge Book.

Malice is defined as being hatred or ill-will. Malice, in its legal sense, does not necessarily import ill will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief. Malice is the wrongful intent to injure another person. It indicates a wicked or depraved spirit intent on doing wrong. Malice is a legal term implying wickedness and excluding a just cause or excuse. It is the doing of a wrongful act intentionally and without just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it.

In addition, we request a jury instruction regarding voluntary intoxication. There has been a good bit of testimony regarding Mr. Hailey being under the influence of drugs during this trial and believe it is necessary.

Voluntary intoxication is not an excuse for or a defense to a crime, regardless of whether the crime is one involving general or specific intent. This rule also extends to the voluntary ingestion of drugs. A person who voluntarily ingests alcohol or drugs and thereby becomes intoxicated is no less responsible for his acts while in such condition. If one voluntarily drinks intoxicating liquors, wine or beer or ingests drugs and becomes intoxicated to whatever degree, and if while in that condition commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility.

Thank you,

Yates

On Tue, Sep 22, 2020 at 5:56 PM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

Good evening,

-
Please see the two attached documents for tomorrow's informal charge conference with Judge Hocker.

-
Best,

-
Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

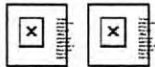
-
~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

-  
C. Yates Brown, Jr.  
Deputy Solicitor  
Eighth Judicial Circuit Solicitor's Office  
P.O. Box 516  
Greenwood, SC 29648-0516  
Phone: (864) 942-8824  
Fax: (864) 942-8830

CONFIDENTIALITY NOTICE

*This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution or copying of this information is strictly prohibited. If you received this transmission in error, please notify this office immediately by telephone and return the original documents to us at the above address via the United States Postal Service.*

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF GENERAL SESSIONS |
|                          | ) | FOR THE EIGHTH JUDICIAL CIRCUIT  |
| COUNTY OF GREENWOOD      | ) | Case No.                         |
|                          | ) |                                  |
|                          | ) |                                  |
| STATE OF SOUTH CAROLINA, | ) | MEMORANDUM OF LAW IN SUPPORT OF  |
|                          | ) | REQUEST FOR INVOLUNTARY          |
|                          | ) | MANSLAUGHTER INSTRUCTION         |
|                          | ) |                                  |
|                          | ) |                                  |
| vs.                      | ) |                                  |
|                          | ) |                                  |
| MARK HAILEY,             | ) |                                  |
|                          | ) |                                  |
| Defendant.               | ) |                                  |



Defendant respectfully request that the Court instruct the jury on the lesser-included defense of Involuntary Manslaughter.

STATEMENT OF LAW

The evidence presented at trial determines the law to be charged, and a trial court commits reversible error in failing to give a requested charge on an issue raised by the evidence. *See State v. Knoten*, 347 S.C. 296, 302 (2001). In determining whether to charge the lesser included offense of manslaughter the court must view the evidence in the light most favorable to the defendant. *Id.* Declining to charge the lesser included offense is warranted when it very clearly appear[s] that . . . no evidence whatsoever [exists] tending to reduce the crime from murder to manslaughter. *State v. Gibson*, 390 S.C. 347, 355-356 (Ct. App. 2011).

“[T]he now codified common law offense of involuntary manslaughter is defined in broad terms, covering unintentional killings from both unlawful conduct that does not naturally tend to place another in danger of death or serious bodily harm and lawful conduct that recklessly places another in danger of harm. *State v. Sams*, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). "Involuntary manslaughter is defined as the unintentional killing of another without

malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others."; *State v. Greene*, 423 S.C. 263, 281 (2018) (citing S.C. Code Ann. § 16-3-60 (2015)).

#### ANALYSIS

##### **A. Mr. Hailey is entitled to an instruction of Involuntary Manslaughter under the First Definition.**

Mr. Hailey is entitled to an instruction on involuntary manslaughter where evidence was presented that during his encounter with the decedent, Because there is at least some evidence in the record that Mr. Hailey unintentionally killed Mr. Hailey while engaged in an unlawful act not tending to cause death or great bodily injury.

In the 911 call as well as other testimony elicited by the State, evidence was presented to the jury that Mr. Hailey accidentally shot decedent while in a state that would be considered public disorderly conduct.

Public disorderly conduct is defined as the following:

(A) A person who is: (1) found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducts himself in a disorderly or boisterous manner; (2) uses obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church; or (3) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharges any gun, pistol, or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, is guilty of a misdemeanor and, upon conviction, must be fined

not more than one hundred dollars or be imprisoned for not more than thirty days. However, conditional discharge may be granted by the court in accordance with the provisions of this section upon approval by the circuit solicitor.

S.C. Code § 16-17-530 (A). Public Disorderly conduct applies to passengers in a vehicle. *See State v. Pittman*, 342 S.C. 545, 551, 537 S.E.2d 563, 567 (Ct. App. 2000) (“If a defendant is grossly intoxicated while riding in an automobile on a public highway, he is guilty of a violation of § 16-17-530.”). Public disorderly conduct is not an offense “tending to cause death or great bodily injury.”

The fact that there is evidence that Mr. Hailey was engaged in disorderly conduct coupled with the evidence concerning accident means that there is evidence in the record which would support the lesser included offense. *See State v. Crosby*, 355 S.C. 47, 53, 584 S.E.2d 110, 112 (2003) (“The effect of the Court of Appeals' holding is that if there is any evidence a shooting was intentional, all evidence from which any other inference is may be drawn is negated. This is not the law of this state.”).

**B. Alternatively, Mr. Hailey is entitled to an instruction on involuntary manslaughter base on the second definition.**

Mr. Hailey is entitled to an instruction on involuntary manslaughter where evidence was presented that during his encounter with the decedent, Mr. Hailey: (1) lawfully armed himself; (2) negligently handled the firearm, that is while intoxicated.

*Wigington v. State*, 413 S.C. 578, 588 (Ct. App. 2015), is applicable to the present case. Wigington was entitled to an involuntary manslaughter where evidence existed that he acted negligently in handling a firearm that caused another's death. *Id.* "One guilty of only ordinary negligence in handling a pistol, which results in the death of a bystander, may be convicted of

involuntary manslaughter.” *State v. Dixon*, 181 S.C. 1, 5 (1936). Our Courts have long held that a criminal defendant is entitled to an involuntary manslaughter instruction when there exists evidence that the negligent operation of a dangerous instrument. *See State v. Caldwell*, 231 S.C. 184, 189 (1957). *State v. Addis*, 257 S.C. 482, 490 (1972); *State v. Quick*, 168 S.C. 76, 80; *State v. Cribb*, 310 S.C. 518, 523 (1992).

A plethora of evidence has been introduced that Mr. Hailey lawfully armed himself during the encounter with the decedent. Moreover, the State introduced testimony that Mr. Hailey’s conduct in shooting the decedent was accidental and influenced by his consumption of methamphetamine. Certainly, the jury may reasonably find that Mr. Hailey’s conduct in arming himself while high, was negligent. *See State v. Pittman*, 373 S.C. 527, 571 (2008) (“Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating”).

Significantly, the testimony in question concerning Mr. Hailey’s alleged intoxication was presented over Defense Counsel’s objection during the State’s case-in-chief. Any objection from the State to an involuntary manslaughter instruction would be inappropriate. In prior trials, the State has often maneuvered to introduce otherwise inadmissible and harmful evidence based upon a defense attorney’s strategic decisions through the ubiquitous “opening the door” doctrine. *See State v. Williams*, 430 S.C. 136, 152 (2020).

#### CONCLUSION

Mr. Hailey is entitled to an involuntary manslaughter instruction.

s/ Tristan Shaffer  
Tristan Shaffer  
Attorney for Defendant

September 23, 2020

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2019

Indictment #2019GS24-1076

THE STATE

vs.

MARK ANTHONY HAILEY, JR.

INDICTMENT FOR

Murder

SC Code: § 16-03-0910

CDR: 0116

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

WITNESSES

*Ronny Powell*  
Greenwood County Sheriff's Department

WARRANT NUMBER

2019A2410200297

TRUE BILL

*Julie Nichols*

Foreman of the Grand Jury

Date: *9-27-19*

VERDICT

*GUilty*

*[Signature]*

Foreman

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

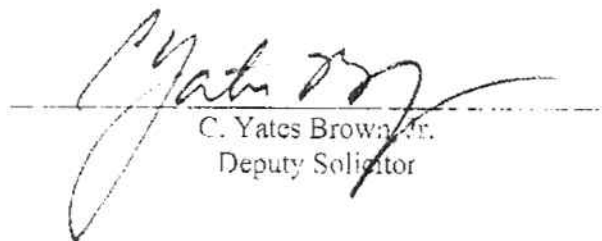
COUNTY OF GREENWOOD

Murder  
§16-03-0010

At a Court of General Sessions, convened on the 27th day of September, 2019, the Grand Jurors of Greenwood County present upon their oath:

That Mark Anthony Hailey Jr., on or about March 6, 2019 in Greenwood County, willfully, feloniously, and with malice aforethought <sup>did</sup> kill one Marty Anthony George by means of shooting a firearm and that the said Marty Anthony George did die in Greenwood County as a proximate result thereof on or about ~~on or about~~ March 6, 2019 in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



C. Yates Brown, Jr.  
Deputy Solicitor

WITNESSES

*Ronny Powell*  
Greenwood County Sheriff's Department

WARRANT NUMBER

2019A2410200298

TRUE BILL

*Julie Nelder*

Foreman of the Grand Jury

Date: *9-27-19*

VERDICT

*GUILTY*

*Paul R. ...*

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2019

Indictment #2019GS24-1077

THE STATE

vs.

MARK ANTHONY HAILEY, JR.

INDICTMENT FOR

Possession Of A Weapon During The

Commission Of A Violent Crime

SC Code. § 16-23-0490

CDR: 0549

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

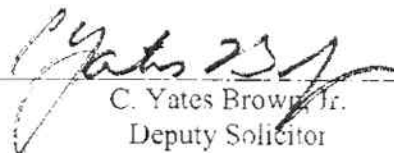
INDICTMENT FOR

Possession Of A Weapon During The  
Commission Of A Violent Crime  
§16-23-0490

At a Court of General Sessions, convened on the 27th day of September, 2019, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Mark Anthony Hailey Jr., did on or about March 6, 2019, in Greenwood County, South Carolina, while committing the violent crime of murder, possess a firearm. All in violation of 16-23-0490, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



C. Yates Brown Jr.  
Deputy Solicitor

COUNTY OF GREENWOOD

STATE VS.

MARK ANTHONY HAILEY, JR.

INDICTMENT/CASE#: 2019GS24-1076  
A/W: 2019A2410200297  
Date of Offense: 03/06/2019  
S.C. Code §: 16-03-0010  
CDR Code #: 0116

AKA: \_\_\_\_\_  
Race: Black Sex: M Age: 34  
DOB: 1986 SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Ninety Six, SC 29666  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEADS

TO: Murder; 30 years - Life

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

*[Signature]* 78607  
C. Yates Brown, Jr., Deputy Solicitor SC Bar # Defendant Attorney for Defendant 77565 SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 35 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 Service 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 State  
Department of Corrections. Credit 568 Days

The Defendant is to be placed on 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: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_

Attend Voc Rehab. Or Job Corp. \_\_\_\_\_

May serve W/it 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: *[Signature]*

Judge Code: 2167

Sentence Date: 9/24/20

Clerk of Court/Deputy Clerk: *[Signature]*

Court Reporter: *[Signature]*

COUNTY OF GREENWOOD

STATE VS.

MARK ANTHONY HAILEY, JR.

AKA: \_\_\_\_\_  
Race: Black Sex: M Age: 34  
DOB: 986 SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Ninety Six, SC 29666  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

INDICTMENT/CASE#: 2019GS24-1077  
A/W: 2019A2410200298  
Date of Offense: 03/06/2019  
S.C. Code § 16-23-0490  
CDR Code #: 0549

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime ; 5 YRS

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

The charge is  As indicted.  Lesser Included Offense.  Defendant Waives Presentment to Grand Jury \_\_\_\_\_ (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST

[Signature] 78607 \_\_\_\_\_ 77565  
C. Yates Brown, Jr., Deputy 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 5 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 Service standard conditions of probation, which  
are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 2019-65-24-1076

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 State  
Department of Corrections. Credit 568 Days

The Defendant is to be placed on 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

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 \$ 25

Proviso (Public Det/Prob) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$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) \$ \$ \_\_\_\_\_

TOTAL \$ 128.75

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: [Signature]

Judge Code: 2197

Sentence Date: 9/24/20

Clerk of Court/Deputy Clerk: Christi Cepokend  
Court Reporter: Jay Hebert

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

s/ Lara M. Caudy

Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of March, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MARK ANTHONY HAILEY, JR.,

APPELLANT.

APPELLATE CASE NO. 2020-001276

---

CERTIFICATE OF SERVICE

---

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the a copy of the Record on Appeal in the above referenced case has been served on Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Mark Anthony Hailey, #384088, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 17th day of March, 2022.

s/ Lara M. Caudy  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MARK ANTHONY HAILEY, JR.,

APPELLANT.

APPELLATE CASE NO. 2020-001276

---

FINAL BRIEF OF APPELLANT

---

LARA M. CAUDY  
Appellate Defender

TAYLOR D. GILLIAM  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEYS FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

ARGUMENT

1. The trial judge erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon, when the charge was supported by the evidence and was crucial to the jury’s understanding of the law on self-defense. ....4

2. The trial judge erred by refusing to charge the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge, specifically there was evidence Appellant (1) unintentionally killed the decedent while engaged in an unlawful act not tending to cause death or great bodily harm and (2) lawfully armed himself in self-defense and then accidentally discharged the firearm striking the decedent. ....12

3. The trial judge erred by refusing to allow Appellant to question Dr. Amanda Salas on redirect examination concerning her opinion that an intervening cause led to the shooting on the basis that the subject matter of the questioning was not responsive to the state’s cross-examination of the expert witness, particularly where this evidence was crucial to counter the state’s theory of the case. ....19

CONCLUSION.....25

## TABLE OF AUTHORITIES

### Cases

|                                                                              |              |
|------------------------------------------------------------------------------|--------------|
| <u>State v. Addis</u> , 257 S.C. 482, 186 S.E.2d 415 (1972).....             | 17           |
| <u>State v. Beam</u> , 336 S.C. 45, 518 S.E.2d 297 (Ct. App. 1999) .....     | 22           |
| <u>State v. Brayboy</u> , 387 S.C. 174, 691 S.E.2d 482 (Ct. App. 2010).....  | 18           |
| <u>State v. Burkhardt</u> , 350 S.C. 252, 565 S.E.2d 298 (2002) .....        | 7            |
| <u>State v. Burris</u> , 334 S.C. 256, 513 S.E.2d 104 (1999) .....           | 18           |
| <u>State v. Cabrera-Pena</u> , 361 S.C. 372 , 605 S.E.2d 522 (2004).....     | 14           |
| <u>State v. Caldwell</u> , 231 S.C. 184, 98 S.E.2d 259 (1957).....           | 17           |
| <u>State v. Cole</u> , 338 S.C. 97, 525 S.E.2d 511 (2000).....               | 6, 14        |
| <u>State v. Cribb</u> , 310 S.C. 518, 426 S.E.2d 306 (1992) .....            | 17           |
| <u>State v. Davis</u> , 282 S.C. 45, 317 S.E.2d 452 (1984).....              | 7, 8         |
| <u>State v. Day</u> , 341 S.C. 410, 535 S.E.2d 431 (2000).....               | 7, 8, 10, 11 |
| <u>State v. Drafts</u> , 288 S.C. 30, 340 S.E.2d 784 (1986) .....            | 14           |
| <u>State v. Fuller</u> , 297 S.C. 440, 377 S.E.2d 328 (1989).....            | 7, 8, 11     |
| <u>State v. Hendrix</u> , 270 S.C. 653, 244 S.E.2d 503 (1978) .....          | passim       |
| <u>State v. Hill</u> , 315 S.C. 260, 433 S.E.2d 848 (1993) .....             | 13           |
| <u>State v. Jackson</u> , 227 S.C. 271, 87 S.E.2d 681 (1955).....            | 8            |
| <u>State v. Light</u> , 378 S.C. 641, 664 S.E.2d 465 (2008).....             | 17           |
| <u>State v. Mattison</u> , 388 S.C. 469, 697 S.E.2d 578 (2010) .....         | 6            |
| <u>State v. Mitchell</u> , 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012)..... | 22           |
| <u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997).....           | passim       |
| <u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007).....           | 14, 16       |

|                                                                               |          |
|-------------------------------------------------------------------------------|----------|
| <u>State v. Quick</u> , 168 S.C. 76, 167 S.E. 19 (1932).....                  | 17       |
| <u>State v. Rash</u> , 182 S.C. 42, 188 S.E. 435 (1936) .....                 | 4, 9, 11 |
| <u>State v. Rivera</u> , 389 S.C. 399, 699 S.E.2d 157 (2010).....             | 17       |
| <u>State v. Sams</u> , 410 S.C. 303, 764 S.E.2d 511 (2014).....               | 13, 14   |
| <u>State v. Smith</u> , 391 S.C. 408, 706 S.E.2d 12 (2011).....               | 14       |
| <u>State v. Stroman</u> , 281 S.C. 508, 316 S.E.2d 395 (1984).....            | 21, 22   |
| <u>State v. Tyner</u> , 273 S.C. 646, 258 S.E.2d 559 (1979).....              | 21       |
| <u>State v. Williams</u> , 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012).....  | 6        |
| <u>Tisdale v. State</u> , 378 S.C. 122, 662 S.E.2d 410 (2008).....            | 17       |
| <u>Wigington v. State</u> , 413 S.C. 578, 776 S.E.2d 407 (Ct. App. 2015)..... | 17, 18   |
| <br><b>Statutes</b>                                                           |          |
| S.C. Code Ann. § 16-17-530(A) .....                                           | 16       |
| S.C. Code Ann. § 16-3-60 (2003).....                                          | 14       |
| <br><b>Rules</b>                                                              |          |
| Rule 611(d), SCRE .....                                                       | 21       |

## STATEMENT OF ISSUES ON APPEAL

1.

Did the trial judge err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense?

2.

Did the trial judge err by refusing to charge the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge, specifically there was evidence Appellant (1) unintentionally killed the decedent while engaged in an unlawful act not tending to cause death or great bodily harm and (2) lawfully armed himself in self-defense and then accidentally discharged the firearm striking the decedent?

3.

Did the trial judge err by refusing to allow Appellant to question Dr. Amanda Salas on redirect examination concerning her opinion that an intervening cause led to the shooting on the basis that the subject matter of the questioning was not responsive to the state's cross-examination of the expert witness, particularly where this evidence was crucial to counter the state's theory of the case?

## STATEMENT OF THE CASE

A Greenwood County Grand Jury indicted Appellant on September 27, 2019, for murder, carjacking, and possession of a weapon during the commission of a violent crime. R. 962-965. On March 4, 2020, a pretrial hearing was held on Appellant's motion for immunity pursuant to the Protection of Persons and Property Act. R. 1. Yates Brown represented the state, and Tristan Shaffer represented Appellant. R. 1. In the middle of the hearing, Appellant invoked his Fifth Amendment right to remain silent and withdrew his motion. R. 109, l. 12 – 110, l. 13.

Appellant's case was called to trial on September 11, 2020, before the Honorable Donald B. Hocker, and a jury. R. 111. Yates Brown and Anna Sumner represented the state. R. 111. Tristan Shaffer and Chelsea McNeill represented Appellant. R. 111.

On September 23, 2019, the jury found Appellant guilty of murder and possession of a weapon during the commission of a violent crime. R. 932, l. 18 – 933, l. 8. It could not reach a unanimous verdict on carjacking and the judge declared a mistrial as to that offense. R. 931, l. 24 – 932, l. 5; R. 938, ll. 1-2. Appellant was sentenced to thirty-five years for murder and five years concurrent for the weapons offense. R. 951, l. 23 – 952, l. 1.

This appeal follows.

## **STATEMENT OF FACTS**

The state alleged Appellant shot and killed Marty George as the pair drove down Warner Road, a dark secluded area in Ninety Six. Appellant admitted to shooting George, but maintained he acted in self-defense after George ignored Appellant's repeated pleas to turn the car around, suddenly stopped the vehicle in the middle of the road, pulled a gun, waived it in Appellant's face, and demanded Appellant return whatever he had allegedly stolen from George's bathroom earlier that night. Appellant, in fear for his life, shot George once in the head after George became distracted by a noise or light coming from his phone. R. 796, l. 14 – 813, l. 9.

## ARGUMENT

1.

The trial judge erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense.

### **Relevant Facts**

Appellant requested the trial judge tailor the self-defense instruction to reflect the evidence presented. Specifically, Appellant requested a charge on the concept that a person does not have to wait before acting in self-defense. Initially, defense counsel discussed the language from State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936): “He [the defendant] doesn’t have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.” Id. at 42, 188 S.E. at 438; See R. 877, ll. 9-17. When the trial judge asked for clarification as to what Appellant wanted charged, defense counsel stated, “[O]nce a Defendant has a right to act in self-defense he is not required to wait until the adversary and him are on equal terms in order to fire a weapon.” R. 877, l. 22 – 878, l. 3.

In support of his request, Appellant cited to State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936), as mentioned, and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). R. 878, l. 4 – 879, l. 2. Counsel quoted the language from Hendrix, which is more concise than the language found in Rash: “Once the appellant’s right to fire in self-defense arose he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon.” R. 878, ll. 18-25; See

Hendrix, 270 S.C. at 660-661, 244 S.E.2d at 506. Counsel emphasized that the judge may “like to go into that language [from Hendrix] instead [of the language from Rash] because it is a little bit more concise.” R. 878, l. 18 – 879, l. 2.

The state’s only objection to the charge was the timing of the request. Appellant made the request after the deputy solicitor had finished his closing argument. R. 879, ll. 11-15. The judge found Appellant had not “waived his right” to request additional instructions even if the timing of the request may have been “unfair” to the solicitor. R. 880, ll. 4-15.

After defense counsel completed his closing argument and the deputy solicitor argued in reply, the judge denied Appellant’s request to charge. R. 908, ll. 7-11. The judge did not provide any reasoning for his refusal to charge the additional language.

The trial judge charged the jury on self-defense as follows:

[T]he Defendant has raised the defense of self-defense. Self-defense is a complete defense and, if it is established, you must find the Defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the Defendant’s guilt after considering all the evidence, including the evidence of self-defense, then you must find the Defendant not guilty. On the other hand, if you have no reasonable doubt of the Defendant’s guilt after considering all the evidence, including the evidence of self-defense then you must find the Defendant guilty. The elements of self-defense are as follows, and, again, the Defendant has no burden to prove self-defense, but the burden is on the State to disprove self-defense beyond a reasonable doubt.

And there are four elements. The first is without fault. First, the Defendant must be without fault in bringing on the difficulty. If the Defendant’s conduct was the type which was reasonably calculated to and did provoke a deadly assault, the Defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. The second element is imminent danger. The second element of self-defense is that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant actually believed he was in imminent danger of death or serious bodily injury. The third element is reasonableness. If the Defendant was actually in imminent danger it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the Defendant believed he was in imminent danger of death or serious bodily injury it must be shown that a reasonably prudent person of ordinary firmness and courage

would have had the same belief. In deciding whether the Defendant actually was, or believed he was, in imminent danger of death or serious body injury you should consider all the facts and circumstances surrounding the case and the crimes including the physical condition and characteristics of the Defendant and the deceased. And the last element of self-defense is no other way to avoid the danger. The final elements of self-defense is that the Defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the Defendant did in this particular instance. An individual [h]as no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would increase.

R. 919, l. 11 – 921, l. 8.

Appellant renewed his request to charge after the judge finished instructing the jury. R. 925, ll. 6-7.

### **Standard of Review**

“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608 (Ct. App. 2012) (quoting State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)) (internal quotation marks omitted). “The law to be charged must be determined from the evidence presented at trial.” Id. (quoting State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000)) (internal quotation marks omitted); See Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should “consider the court’s jury charge as a whole in light of the evidence and issues presented at trial”).

“When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” Id. at 314, 733 S.E.2d at 608-609 (citing Cole, 338 S.C. at 101, 525 S.E.2d at 512-513). “If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the [circuit court’s] refusal to

do so is reversible error.” Id. at 314, 733 S.E.2d at 609 (quoting State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000)) (alteration in original).

## **Discussion**

The trial judge erred by refusing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant as required pursuant to State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Specifically, the judge erred by failing to charge the jury that Appellant was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon before he acted. This charge was supported by the evidence and was crucial to the jury’s understanding of the law on self-defense.

In State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984), our Supreme Court suggested a standard self-defense instruction. However, in State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Court made clear that it did not intend Davis to be the exclusive self-defense charge. State v. Burkhardt, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002). Instead, “a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant.” State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). “A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant.” Id. (citing Fuller, 297 S.C. 440, 377 S.E.2d 328).

In State v. Day, our Supreme Court held the trial judge’s failure to charge the specific elements of self-defense that were applicable to Day’s theory constituted reversible error. Day, 341 S.C. at 418, 535 S.E.2d at 435. The Court found the trial judge’s instruction was incomplete because it failed to include a charge indicating: (1) Day had a right to judge the conduct of the decedent more harshly than otherwise because of the decedent’s drug consumption, and (2) the

jury could consider prior instances of violence or unprovoked aggression by the decedent in determining whether Day had a reasonable belief of imminent danger. Id. Part of Day’s defense was his argument that the decedent had previously pulled a gun on him and that the decedent was in a “drug induced paranoia” the day of the incident. Id. Consequently, the Court held the jury charge, which only included the standard self-defense instruction as outlined by our Supreme Court in Davis along a the charge on the right to act on appearances, was incomplete because the trial judge failed to charge on the decedent’s substance abuse or his prior acts of violence. Id. Ultimately, the Court reversed Day’s convictions and remanded for a new trial.

In State v. Nichols, 325 S.C. 111, 116-117, 481 S.E.2d 118, 121 (1997), the defendant argued the trial judge’s instructions on the law of self-defense were inadequate under State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), where the judge instructed the jury solely on the common law elements of self-defense. Nichols objected to the charge and requested additional instructions on: (1) the right to act on appearances; (2) relevance of prior difficulties; and (3) that a person does not have to wait before acting in self-defense. Id. at 117, 481 S.E.2d at 121. Nichols contended the trial judge’s refusal to give further instructions was reversible error. Our Supreme Court agreed. Id.

The Court emphasized that the charge suggested in Davis was not intended to be the exclusive charge for self-defense and that trial courts have been instructed to consider the facts and circumstances of the case at hand to fashion a proper charge. Id. (citing Fuller, 297 S.C. at 443, 377 S.E.2d at 330). The Court held Nichols was entitled to a charge on the right to act on appearances because Nichols testified he thought he had seen a shiny object in the deceased’s hand. Id. (citing State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955)). The Court also found the evidence showed there had been prior difficulties between Nichols and the deceased including an

instance where the deceased pointed a rifle at Nichols. Consequently, the Court concluded Nichols was entitled to a charge on the relevance of prior difficulties. Id. (citing State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) (prior bad blood, intoxication, and prior threats by deceased were relevant to defendant’s reasonable apprehension of bodily harm)). Further, the Court held Nichols was entitled to a charge that he did not have to wait before acting in self-defense since Nichols testified he thought he saw a gun in the deceased’s hand and did not wait for the deceased to fire or aim at him. Id. (citing State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936)). Accordingly, the Supreme Court reversed Nichols conviction and remanded for a new trial. Id. at 118, 481 S.E.2d at 122.

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), our Supreme Court held Hendrix was entitled to a directed verdict since he was acting in self-defense as a matter of law when he shot the decedent. Id. at 661-662, 244 S.E.2d at 507. Hendrix was celebrating Labor Day with his family at his property on the shore of Lake Murray. Id. at 655, 244 S.E.2d at 504. Evidence established that “ill feelings characterized the relationship” between Hendrix and the decedent. Id. The decedent had confronted Hendrix earlier in the day and warned “they were going to have to fight to settle” the matter. Id. Hendrix was standing next to his truck, which was parked on his land, when the decedent arrived at the property, stopped his vehicle in the road, jumped out, and advanced toward Hendrix. Id. at 656, 244 S.E.2d at 505. Hendrix reached into the cab of his truck, pulled out a shotgun, leveled it at the decedent, and told him three times to back off. Id. The decedent immediately turned around, walked back to his truck, reached into the cab, drew out his own shotgun, and walked straight back to where Hendrix was standing. Id. A neighbor of the decedent observed the commotion and approached the scene. Id. at 657, 244 S.E.2d at 505. When she saw the two men facing each other with shotguns, she screamed the decedent’s name. Id. The

decedent turned his head in the direction of the scream. Id. As the decedent turned, Hendrix began firing. Id. He fired four times in rapid succession, killing the decedent. Id.

The Court determined Hendrix was not at fault in bringing on the difficulty since he armed himself on his own land in a legal manner after he was threatened. Id. at 659, 244 S.E.2d at 506. The Court further found the second and third elements of self-defense were established since the evidence showed Hendrix was actually in imminent danger of losing his life. Id. at 659-660, 244 S.E.2d at 506. Having no duty to retreat because he was on his own property and being without fault in bringing on the fatal confrontation, the Court held Hendrix was warranted in reacting to the situation with force. Id. at 660, 244 S.E.2d at 507. In so holding, and relevant to this case, the Court emphasized, “Once [Hendrix’s] right to fire in self-defense arose, he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon.” Id. at 660-661, 244 S.E.2d at 507. This is significant since the evidence showed Hendrix shot the decedent when he was distracted by his neighbor’s scream.

In this case, as in Day and Nichols, the trial judge erred by refusing to instruct the jury on the specific element of self-defense requested by Appellant since it was applicable to Appellant’s account of what occurred. Appellant testified that after driving two miles the wrong way down Warner Road and repeatedly ignoring Appellant’s advice to turn around, the decedent pulled a gun, waived it in Appellant’s face, and demanded Appellant return whatever he had allegedly stolen from the decedent’s bathroom. R. 806, l. 19 – 808, l. 18. The decedent then became distracted by a noise or light from his phone and briefly placed the gun in his lap. R. 811, ll. 1-7; R. 831, ll. 2-11. As the decedent began to raise the gun up again, Appellant shot him. R. 831, ll. 12-13; R. 833, l. 25 – 834, l. 4. Based on this testimony, the instruction from Rash and Hendrix, that once the right to fire in self-defense arose, Appellant was not required to wait until his

adversary was on equal terms or until he fired or aimed his weapon, should have been charged to the jury as it was applicable to Appellant's account of what occurred.

Before waiting for the decedent to aim the pistol at him again and perhaps fire, Appellant shot him in self-defense. Consequently, there was evidence to support the requested instruction. As our Supreme Court stated in Day, "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). Since the trial judge failed to charge an important element of self-defense relevant to Appellant's account of what occurred, respectfully, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

The trial judge erred by refusing to charge the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge, specifically there was evidence Appellant (1) unintentionally killed the decedent while engaged in an unlawful act not tending to cause death or great bodily harm and (2) lawfully armed himself in self-defense and then accidentally discharged the firearm striking the decedent.

### **Relevant Facts**

During an in chambers charge conference and via email, Appellant requested the trial judge charge the jury on the lesser included offense of involuntary manslaughter. R. 851, l. 16 – 852, l. 11; R. 954-957 (Court’s Exhibit No. 4 – Request to Charge Email). Appellant submitted a memorandum in support of his request, which was marked as Court’s Exhibit No. 5. R. 958-961 (Court’s Exhibit No. 5 – Request to Charge Memorandum). On the record, defense counsel indicated he would rely on this memorandum in support of his argument. R. 853, ll. 17-20.

In his memorandum, Appellant argued he was entitled to an instruction on involuntary manslaughter pursuant to both definitions of the offense. R. 959-961 (Court’s Exhibit No. 5 – Request to Charge Memorandum at 2-4). He asserted there was evidence presented that Appellant unintentionally killed the decedent while engaged in an unlawful act not tending to cause death or great bodily injury. R. 959 (Court’s Exhibit No. 5 – Request to Charge Memorandum at 2). More specifically, Appellant maintained there was evidence he “accidentally shot the decedent while in a state that would be considered public disorderly conduct,” which “is not an offense ‘tending to cause death or great bodily injury.’” R. 959-960 (Court’s Exhibit No. 5 – Request to Charge Memorandum at 2-3). Because there was evidence Appellant was “engaged in disorderly conduct coupled with evidence concerning accident,” Appellant concluded there was evidence in the record

to support a charge on the lesser included offense pursuant to the first definition. R. 960 (Court's Exhibit No. 5 – Request to Charge Memorandum at 3).

Alternatively, Appellant argued there was evidence Appellant lawfully armed himself in self-defense during the encounter with the decedent and then negligently handled the firearm while under the influence. R. 960-961 (Court's Exhibit No. 5 – Request to Charge Memorandum at 3-4). He emphasized the evidence presented by the state that Appellant's conduct was accidental and influenced by his use of methamphetamine. R. 961 (Court's Exhibit No. 5 – Request to Charge Memorandum at 4). Consequently, Appellant asserted there was evidence in the record to support a charge on involuntary manslaughter pursuant to the second definition of the offense. R. 960-961 (Court's Exhibit No. 5 – Request to Charge Memorandum at 3-4).

The trial judge ultimately refused to charge involuntary manslaughter based on his determination that the facts of the case do “not fit into what involuntary manslaughter is.” R. 852, ll. 10-13. He asserted, “The cases that allowed an involuntary manslaughter charge all deal with the facts like struggle, accidental shootings, things of that nature. So I don't believe the case law supports an involuntary manslaughter [instruction], notwithstanding the very creative memorandum that the Defense offered, I am declining that.” R. 852, ll. 11-19. However, the judge did charge the jury on accident pursuant to Appellant's request. R. 852, ll. 6-11; R. 921, ll. 9-18.

### **Standard of Review**

“The law to be charged to the jury is determined by the evidence presented at trial.” State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014) (quoting State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)) (internal quotation marks omitted). “The trial court is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. Id. (citing State v. Drafts, 288

S.C. 30, 340 S.E.2d 784 (1986)). “To warrant the court in eliminating the offense of manslaughter it should clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011) (quoting State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 168 (2007)) (internal quotation marks omitted). “In determining whether the evidence requires a charge on a lesser included offense, the [appellate court] must view the facts in the light most favorable to the defendant.” Sams, 410 S.C. at 308, 764 S.E.2d at 513 (quoting State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)) (internal quotation marks omitted).

### **Discussion**

The trial judge erred by refusing to charge the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge. In the light most favorable to Appellant, there was evidence Appellant (1) unintentionally killed the decedent while he was engaged in an unlawful act not naturally tending to cause death or great bodily harm; and (2) lawfully armed himself in self-defense and then accidentally discharged the firearm striking the decedent.

Involuntary manslaughter is defined as: (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Smith, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011) (citing State v. Cabrera-Pena, 361 S.C. 372, 380-381, 605 S.E.2d 522, 526 (2004)); See S.C. Code Ann. § 16-3-60 (2003) (stating a person charged with involuntary manslaughter may be convicted only upon a showing of criminal negligence, “defined as the reckless disregard of the safety of others”).

There was evidence to support an involuntary manslaughter instruction pursuant to the first definition of the offense. Again, the first definition is the unintentional killing of another without malice while engaged in an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm. There was evidence presented during the 911 call made by Appellant's mother, Loretta Hailey, on the morning of the shooting that the act was an accident and that Appellant was under the influence of drugs when the killing occurred on Warner Road.

During her conversation with the 911 dispatcher shortly after Appellant arrived home, Ms. Hailey exclaimed, "I think there's been an accident. My son [Appellant] says an accident has happened . . . I think he's done something, you know, real bad." See State Exhibit No. 149 (911 Call Disc). She further asserted, "He [Appellant] said he was with a friend of his and the gun went off." See State Exhibit No. 149 (911 Call Disc). Ms. Hailey also said she thought Appellant was "on something," suggesting he was under the influence, and that he was crying and "walking back and forth." See State Exhibit No. 149 (911 Call Disc). She later emphasized, "He said it was a mistake . . . an accident is what he said." See State Exhibit No. 149 (911 Call Disc).

When Deputy Bonetti arrived at Appellant's house several minutes later, Ms. Hailey told Bonetti that Appellant "told me the gun went off." See State's Exhibit No. 2 (Thumb Drive – Bonetti Body Camera). When Deputy Young arrived at the residence shortly thereafter, Ms. Hailey told Young, "He [Appellant] came to me about thirty to thirty-five minutes ago and said he done something bad. He said it was an accident. . . . And he said he thinks he shot somebody." See State's Exhibit No. 2 (Thumb Drive – Bonetti Body Camera). She further stated, "He [Appellant] said he done something. . . . A gun went off. . . . He was hysterical like he is now." See State's Exhibit No. 2 (Thumb Drive – Bonetti Body Camera).

During Ms. Hailey’s testimony before the jury, the deputy solicitor also elicited from Hailey what Appellant told her that morning. Ms. Hailey asserted, “He [Appellant] just said he shot somebody and it was an accident.” R. 221, ll. 8-24. Therefore, there was plenty of evidence presented that the killing was unintentional and without malice.<sup>1</sup>

In addition to the evidence that Appellant unintentionally killed the decedent, there was also evidence Appellant shot the decedent while engaged in conduct that would constitute public disorderly conduct, which is a misdemeanor, pursuant to S.C. Code Ann. § 16-17-530(A). Public disorderly conduct is defined as:

(A) A person who is: (1) found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducts himself in a disorderly or boisterous manner; (2) uses obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church; or (3) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharges any gun, pistol, or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, is guilty of a misdemeanor . . .

S.C. Code Ann. § 16-17-530. Public disorderly conduct applies to passengers in a vehicle. See State v. Pittman, 342 S.C. 545, 551, 537 S.E.2d 563, 567 (Ct. App. 2000) (“If a defendant is grossly intoxicated while riding in an automobile on a public highway, he is guilty of a violation of § 16-17-530.”).

The state presented significant evidence that Appellant was under the influence when he shot the decedent on Warner Road and that Appellant had ingested illicit substances in the hours prior to the shooting, including marijuana and methamphetamine. Given the evidence that Appellant unintentionally or accidentally shot the decedent while the pair was stopped on Warner Road and that Appellant was under the influence of methamphetamine or some other illegal

---

<sup>1</sup> Notably, the trial judge charged the jury on accident presumably finding there was evidence to support the charge. See R. 921, ll. 9-18.

substance while a passenger in the decedent's vehicle, which would constitute public disorderly conduct, there was sufficient evidence to support an involuntary manslaughter charge under the first definition of the offense. The trial judge's failure to charge this lesser included offense is reversal error.

Moreover, there was evidence to support an involuntary manslaughter instruction pursuant to the second definition of the offense. Again, the second definition is the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. Appellant was entitled to an involuntary manslaughter instruction since there was evidence that during the encounter with the decedent, Appellant lawfully armed himself in self-defense and negligently handled the firearm, that is while intoxicated.

Our courts have long held that a criminal defendant is entitled to an involuntary manslaughter instruction when there exists evidence of the negligent operation of a dangerous instrument. See State v. Caldwell, 231 S.C. 184, 189, 98 S.E.2d 259, 262 (1957); State v. Addis, 257 S.C. 482, 489-490, 186 S.E.2d 415, 418 (1972); State v. Quick, 168 S.C. 76, 167 S.E. 19 (1932); State v. Cribb, 310 S.C. 518, 523, 426 S.E.2d 306, 309 (1992). Our courts have further held that an instruction on involuntary manslaughter is proper when the evidence shows the defendant was lawfully armed in self-defense at the time of the shooting and the defendant recklessly handled the loaded gun. See Wigington v. State, 413 S.C. 578, 588, 776 S.E.2d 407, 412 (Ct. App. 2015); State v. Rivera, 389 S.C. 399, 404-405, 699 S.E.2d 157, 159-160 (2010); State v. Light, 378 S.C. 641, 648-649, 664 S.E.2d 465, 468-469 (2008); Tisdale v. State, 378 S.C. 122, 125-126, 662 S.E.2d 410, 412 (2008); State v. Brayboy, 387 S.C. 174, 180-182, 691 S.E.2d 482, 485-486 (Ct. App. 2010); State v. Burris, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

In Wigington v. State, 413 S.C. 578, 587, 776 S.E.2d 407, 411 (Ct. App. 2015), this Court held Wigington was entitled to an involuntary manslaughter instruction under the second definition of the offense. Wigington testified that he did not intend to kill his son. Id. He maintained the gun went off during a struggle with his son, that he did not mean to pull the trigger, and that his son had not done anything to make Wigington want to shoot him. Id. Moreover, this Court determined there was evidence Wigington lawfully armed himself in self-defense and then negligently handled the loaded gun at the time of his son's death. Id. at 588-589, 776 S.E.2d at 412. Accordingly, this Court held Wigington's trial counsel was ineffective for failing to request a jury instruction on the lesser included offense, and that Wiginton was prejudiced by trial counsel's deficient performance because had counsel requested the charge, Wiginton would have been entitled to an involuntary manslaughter instruction. Id. 589, 776 S.E.2d at 412.

In this case, Appellant was entitled to an instruction on involuntary manslaughter where evidence was presented that the killing was unintentional and where Appellant lawfully armed himself in self-defense and then accidentally discharged the firearm striking the decedent.

3.

The trial judge erred by refusing to allow Appellant to question Dr. Amanda Salas on redirect examination concerning her opinion that an intervening cause led to the shooting on the basis that the subject matter of the questioning was not responsive to the state's cross-examination of the expert witness, particularly where this evidence was crucial to counter the state's theory of the case.

### **Relevant Facts**

Dr. Amanda Salas, who was qualified as an expert in general psychiatry, forensic psychiatry, and addiction, met with Appellant at the detention center two weeks after his arrest. R. 701, l. 24 – 702, l. 4. Dr. Salas was a board-certified psychiatrist. R. 696, l. 18 – 697, l. 10. She had previously been qualified in various areas of psychiatry: general, forensic, and child adolescent psychiatry. R. 697, ll. 4-11. She was qualified as an expert without objection. R. 698, ll. 9-15. As part of her duties, she made rounds at the hospital and assessed, evaluated, diagnosed, and treated patients. R. 699, l. 9 – 700, l. 5.

For Appellant's case, she met with him at the jail two weeks after he was arrested and interviewed him:

And I interviewed him and at that time my consideration for what was going on was very broad. It included a primary psychotic element such as dispreidia; schizo affective disorder; a mood disorder that could have some psychosis such as bipolar disorder, substance induced disorder. Lower down on my list of consideration is what I really think was going on which is acute stress disorder.

R. 702, ll. 2-10.

On cross-examination, the state questioned Dr. Salas regarding Appellant's thoughts and actions on the night in question:

Q: Dr. Salas, again, you mentioned that Mr. Hailey could have distorted views or what he is seeing or what he is going through in his head is really not grounded in reality. Is that correct?

A: It is distorted that it is not mainstream beliefs, yes.

Q: Okay. And with that, generally speaking, in your opinion some of these beliefs based on his personality, would a reasonably prudent person of ordinary firmness and courage have entertained the same idea?

A: No. So for example, with the fence post. I would not have found significance in meaning between fence post on one side of the road standing up and down, holding a meaning for me as I am driving down a dirt road and they are leaning to the other side. But that doesn't really matter to me. But what it doesn't mean that if you come up here and punch me in the face do I think that has anything to do with thinking that I have been attacked and now being attacked, being a paranoid basis. No, there is some things that you would have that is very congruent with what everybody else is seeing. But the issue is that I might think, well I should have interpreted those fence posts to mean something was getting ready to happen. I should have read nature better than what I did.

R. 748, l. 14 – 749 l. 12.

During defense counsel's redirect examination of Dr. Salas, the deputy solicitor objected and a bench conference occurred. R. 752, l. 20 – 753, l. 8. After the state completed its recross examination, the bench conference discussion was placed on the record. R. 760, l. 12 – 762, l. 25.

Defense counsel "wanted her to finish the question about the events that led up to it, that the Solicitor cut her off from." Id. The other question defense counsel hoped to ask dealt with whether Dr. Salas believed "that the fence post led [Appellant] to commit this offense." Id. The trial judge stated that he did not want Dr. Salas to vouch for Appellant's credibility. R. 761, ll. 3-14. The deputy solicitor also contended that the proposed testimony exceeded the scope of his cross-examination. R. 761, ll. 15 – 23. The trial judge agreed to hear proffered testimony. R. 761, l. 24 – 762, l. 7.

During her proffered testimony, Dr. Salas shared her notes regarding Appellant's recollections from the night of the shooting. R. 765, l. 10 – 768, l. 2. Specifically regarding the leaning fence posts, she plainly testified that they did not contribute to the shooting. R. 767, ll. 2-5.

The deputy solicitor opposed defense counsel's attempt to get the above information before the jury. R. 769, ll. 11-15. In response, defense counsel noted how each of the questions he hoped to ask Dr. Salas in front of the jury dealt with expert opinions. R. 769, l. 24 – 770, l. 3. The trial judge indicated his belief that the proposed testimony was non-responsive to the deputy solicitor's cross-examination. R. 770, ll. 4-17. As a result, he denied defense counsel's request. R. 770, ll. 4-17.

### **Standard of Review**

The scope of questions permitted on redirect examination rests in the sound discretion of the trial court. State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984); See also State v. Tyner, 273 S.C. 646, 654, 258 S.E.2d 559, 563 (1979) (extent of redirect examination is subject to trial court's discretion); State v. Nichols, 325 S.C. 111, 121, 481 S.E.2d 118, 123 (1997) (the scope of redirect examination rests in the discretion of the trial court).

### **Discussion**

Rule 611(d), SCRE, states that a “witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.” Testimony in the form of an opinion or inference otherwise admissible is not objectionable because

it embraces an ultimate issue to be decided by the trier of fact. State v. Mitchell, 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012).

In State v. Beam, 336 S.C. 45, 518 S.E.2d 297 (Ct. App. 1999), the appellant contended he was unfairly denied the opportunity to conduct cross-examination. This Court noted “when a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incomplete or irrelevant had it been offered earlier. Id. at 52, 518 S.E.2d at 301; see also State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984).

In Beam, this Court analyzed the questions asked by Beam’s counsel and held that the state was free on redirect to expand upon the testimony elicited:

Once Beam’s counsel questioned [an expert witness] about the existence of the switch point test, its superiority over visual inspection in the detection of counterfeit videos, and whether the State should have been required to perform the test on the seized videotapes, the State was free on redirect to ask whether the test could be performed. Beam’s counsel’s questions directly attacked the expert’s testimony that the seized videos were counterfeit. The State asked [the expert witness] to perform the test, in part, to rehabilitate him.

Id. at 53, 518 S.E.2d at 301.

In State v. Nichols, 325 S.C. 11, 481 S.E.2d 118 (1997), the South Carolina Supreme Court decided a similar case in an identical fashion. In Nichols, the appellant alleged the trial court erred in allowing the state to question a witness on redirect examination about a relationship. Id. at 121, 481 S.E.2d at 123. The South Carolina Supreme Court found no error in the trial judge’s decision. Id.

In the case at hand, defense counsel was seeking to ask questions responsive to the state’s cross-examination of Dr. Salas. The trial judge’s ruling, that the proffered testimony was not responsive to the state’s cross-examination, was an error:

But I am trying to figure out [how] the last two [are] responsive to what was brought out in cross. I don’t think it necessarily vouches on the believability of what Mark

says what happened. I don't think that but I am trying to figure out how that is in response to what was brought out in cross. So I am going to deny two and three.

R. 770, ll. 4-17. Items two and three, as mentioned above, were remarks about the leaning fence posts and an intervening cause. R. 766, l. 20 – 770, l. 3.

The deputy solicitor weaponized the testimony he elicited during cross-examination of Dr. Salas:

This whole diagnosis of acute distress disorder. What did the doctor say[?] It happens after the event, after the event. Mark was experiencing some of this before the event. That is the reason why he left that morning, talking to his aunt, talking with Stella, talking with Joey, talking with Joni? Why? What is the common denominator[?] He told you. He was seeing things, things that weren't really happening, he was seeing them.

R. 874, ll. 13-21. The proffered testimony spoke directly to this argument, which is why defense counsel moved for a mistrial. R. 881, l. 20 – 885, l. 19. The mistrial motion was denied. R. 885, ll. 16-19.

The state's cross-examination included multiple references to a "reasonable prudent person of ordinary firmness." R. 747, l. 23 – 751, l. 11. The deputy solicitor questioned whether "a reasonably prudent person of ordinary firmness and courage" entertained the same distorted views as Appellant. R. 748, l. 14 – 749, l. 14. Dr. Salas spoke about the leaning fence posts in her reply:

So for example, with the fence post. I would not have found significance in meaning between fence post[s] on one side of the road standing up and down, holding a meaning for me as I am driving down a dirt road and they are leaning on the other side. But that doesn't really matter to me. ... But the issue is that I might think, well, I should have interpreted those fence post[s] to mean something was getting ready to happen. I should have read nature better than what I did.

R. 748, l. 24 – 749, l. 12.

In response, the proffered testimony included a direct question-and-answer series wherein Dr. Salas responded in the negative when asked if the fence post leaning contributed to the shooting. R. 767, ll. 2-5.

Appellant should have been allowed to question Dr. Salas about the leaning fence posts and a potential intervening cause on redirect. The error by the trial judge in refusing to allow defense counsel to elicit a response from the Appellant's own expert resulted in prejudice which manifested itself in the state's closing arguments. As a result, this Court should reverse Appellant's convictions and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully Submitted,

s/ Lara M. Caudy

LARA M. CAUDY

Appellate Defender

TAYLOR D. GILLIAM

Appellate Defender

ATTORNEYS FOR APPELLANT

This 6th day of April, 2022

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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.”

s/ Lara M. Caudy\_\_\_\_\_

Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

This 6th day of April, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MARK ANTHONY HAILEY, JR.,

APPELLANT.

APPELLATE CASE NO. 2020-001276

---

CERTIFICATE OF SERVICE

---

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 6th day of April, 2022.

s/ Lara M. Caudy  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT