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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XAVIER M. POLITE,

APPELLANT

APPELLATE CASE NO. 2023-001026

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1 big drum part that was on there.

2 Q. Okay. Let me have that too, let's see
3 marked as State's 160, the .50 round drum
4 magazine?

5 A. Yes.

6 Q. You saw this also, and this would go --

7 A. Yeah.

8 Q. -- essentially, like that?

9 A. Yes, ma'am.

10 Q. Okay. Describe your swabbing process
11 of this weapon.

12 A. It's kind of like the Q-tip we talked
13 about of the cheek --

14 Q. Uh-huh.

15 A. -- but, you know, you swabbed the
16 areas, just rub it on there --

17 Q. Okay.

18 A. -- and it collects any kind of skin
19 cells, or anything left behind that would have
20 DNA on it.

21 Q. Okay. And just for -- the drum is
22 172279, okay. So I'm gonna hand you now what
23 has been marked as State's 170 and 171.

24 Do you recognize those items?

25 A. Yes.

1 Q. And what are those?

2 A. Those are DNA swabs collected from
3 this.

4 Q. From the Draco?

5 A. From the drum and Draco.

6 Q. The Draco ends in 272, and the drum
7 ends in 279?

8 A. Yes, ma'am.

9 Q. Okay, and those are swabs you collected
10 on these items?

11 A. Yes, ma'am.

12 Q. And aside from collecting them, placing
13 them in that bag and sealing them, did you alter
14 them, manipulate them or change them in any way?

15 A. No, ma'am, we put them in these
16 envelopes, seal it up, sign it and eventually
17 submit it to our DNA lab.

18 Q. Okay.

19 (Court Reporter marks State's Exhibit
20 Number 170, as attached hereto.)

21 (Court Reporter marks State's Exhibit
22 Number 171, as attached hereto.)

23 MS. JONES: Your Honor, at this time the
24 State moves 170 and 171 into evidence.

25 THE COURT: Any objection?

1 MS. TOLLEY: We would renew our previous
2 objection --

3 THE COURT: Yes, ma'am.

4 MS. TOLLEY: -- as discussed earlier.

5 THE COURT: Yes, ma'am, thank you. I'm
6 gonna admit it, subject to the objection.

7 MS. JONES: Thank you Judge.

8 (State's Exhibit 170 - 171 admitted into
9 evidence.)

10 BY MS. JONES:

11 Q. Now, all of these need to have,
12 essentially, samples from a person to compare
13 them to; isn't that what the lab requires?

14 A. Not always, but yes. When you have
15 subjects arrested in a case, then, yes, you want
16 a one-to-one comparison.

17 Q. Okay, and do you tell the lab who you
18 would like these compared to?

19 A. I provide these samples too later on.

20 Q. Okay.

21 A. Yes.

22 Q. So were the samples of Josh Washington
23 and David Glover submitted to the lab for
24 analysis against these swabs?

25 A. Yes, so they're buccal swabs that were

1 collected on-scene, and were submitted as DNA
2 evidence, as well.

3 Q. Okay. I'm now gonna hand you State's
4 179, 180. Do you recognize these items?

5 A. Yeah, these are buccal swabs. First
6 one is a buccal swab of Channon Preston, and
7 this other one is a buccal swab of Xavier
8 Polite.

9 Q. And you personally collected both of
10 those samples from them?

11 A. Yes, ma'am. We did.

12 Q. Okay, and they -- we have their
13 samples, and you placed their samples in those
14 bags?

15 A. Yes, ma'am.

16 Q. And sealed them?

17 A. Yes, ma'am.

18 Q. And, again, did not alter, manipulate
19 or change them in any way?

20 A. No. We put them in the bag, seal it,
21 sign it and give it to our DNA lab.

22 (Court Reporter marks State's Exhibit
23 Number 179, as attached hereto.)

24 (Court Reporter marks State's Exhibit
25 Number 180, as attached hereto.)

1 MS. JONES: Your Honor, at this time the
2 State moves 179 and 180 into evidence.

3 THE COURT: Any objection to 179 and 180?

4 MS. TOLLEY: Previous objection.

5 THE COURT: All right, I'm going to admit
6 it.

7 Hold on, Ms. Tolley, that would be your
8 previous objection; is that right?

9 MS. TOLLEY: Yes, sir.

10 THE COURT: Okay, go ahead.

11 (State's Exhibit 179 - 180 admitted into
12 evidence.)

13 BY MS. JONES:

14 Q. Okay, sorry, Investigator Duncan. So
15 all those swabs, the Sheriff's Office, you-all
16 collect swabs for forensic testing, right?

17 A. Yes, ma'am.

18 Q. And those particular swabs would go,
19 you said, to the DNA lab?

20 A. Yes.

21 Q. There's other types of forensic testing
22 out there, isn't there?

23 A. Yes, ma'am.

24 Q. You can send the casings, or the guns,
25 or whatnot to the SLED lab, can't you?

1 A. Yes, ma'am.

2 Q. And what is SLED lab?

3 A. So I think what you're referring to is
4 a SLED firearm lab. SLED is the South Carolina
5 Law Enforcement Division. We don't have our own
6 firearms lab here. I don't know of anybody in
7 the state who has one, other than SLED.

8 So we submit the casings or firearms to
9 them, they do comparisons back and forth, to see
10 if a certain gun shot certain bullets, anything
11 they can look at along those lines.

12 Q. Okay, and that was done in this case?

13 A. Yes, ma'am.

14 Q. You talked a little bit earlier about
15 GSR.

16 A. Yes.

17 Q. What is GSR?

18 A. GSR stands for gunshot residue, and
19 that's the -- do you remember on the video with
20 Xavier Polite at his house, all it is, is,
21 basically, you know, we dab it on your hand, and
22 it collects any particles that were fired from
23 the gun. You know, those particles will have,
24 you know, certain characteristics that the, you
25 know, firearm expels, and when it goes to the

1 lab, they can see that under a microscope.

2 Q. We were about to watch that interview,
3 but what did Mr. Polite tell you about firing a
4 gun?

5 A. Well, originally, on the side of the
6 road they said they fired a gun before in the
7 yard. And if you've done that, you know,
8 there's a certain time period, you know, he said
9 this was, you know, I asked him I believe, "Was
10 it in the last 24 hours?" He said, "No."
11 Because what your body has is skin cells on it,
12 and they -- you drop skin cells all the time,
13 and you regrow cells, so --

14 MS. TOLLEY: Objection. He is alleging he
15 is an expert.

16 THE COURT: Any objection?

17 MS. TOLLEY: I don't think he's an expert
18 in testifying in this area.

19 THE COURT: I'm going to sustain that
20 objection and ask the jury to disregard that.

21 BY MS. JONES:

22 Q. Just what specifically did Xavier
23 Polite tell you about shooting a gun on November
24 18th of 2020?

25 A. On the side of the road he did not

1 shoot a gun at all, he said.

2 Q. Okay, how about in the interview at
3 BCSO Investigations?

4 A. Originally, the guy shooting a gun over
5 and over, and then, eventually, admitted
6 shooting a gun.

7 Q. Where?

8 A. At [REDACTED] Stonewood.

9 Q. Would a GSR test tell us anything
10 different from that statement?

11 A. No, ma'am.

12 Q. Now, we talked about these guns, and we
13 talked about how you swabbed all these casings,
14 you swabbed all these guns. Where's Steven
15 Glover's gun?

16 A. To my knowledge, we can't prove that he
17 had a gun.

18 Q. Okay. Was a gun found in his car?

19 A. No, ma'am.

20 Q. Was a gun found on him?

21 A. No.

22 Q. Was a gun found around him?

23 A. No, ma'am.

24 Q. No gun of Steven Glover at all?

25 A. No, ma'am.

1 Q. Any evidence that he was holding a gun
2 that day?

3 A. No. The only guns that we know of are
4 the guns that Mr. Polite had, the gun that Mr.
5 Channon Preston, and the gun that Corey
6 Singleton had and ran away with, and then we had
7 additional guns that we found at [REDACTED] Eddings
8 Point too.

9 MS. JONES: Beg the Court's indulgence.

10 THE COURT: Uh-huh. Yes, ma'am.

11 MS. JONES: Judge, if we can move back to
12 State's 164.

13 THE COURT: Yes, ma'am.

14 (Court Reporter marks State's Exhibit
15 Number 164, as attached hereto.)

16 MS. JONES: Your Honor, I would move to
17 admit State's 164, this is the recorded
18 interview of Mr. Polite at the Investigations
19 office.

20 THE COURT: All right, Ms. Tolley?

21 MS. TOLLEY: With our previous --

22 THE COURT: Previous objection?

23 MS. TOLLEY: -- objection.

24 THE COURT: Yes, ma'am. All right.

25 Admitted subject to previous objections, yes,

1 ma'am.

2 MS. JONES: Thank you.

3 (State's Exhibit 164 admitted into
4 evidence.)

5 BY MS. JONES:

6 Q. And just to backtrack a little bit, so
7 this interview happened, you-all went on-scene
8 at Eddings Point straight to Investigations?

9 A. Yes, ma'am.

10 Q. And that's where you -- and who else
11 was in the room with you?

12 A. Master Sergeant Draisen was also in the
13 room with me.

14 Q. And Mr. Polite?

15 A. Yes.

16 Q. And that's where you-all proceeded to
17 interview Mr. Polite?

18 A. Correct.

19 Q. Okay, and that's what this recording is
20 about to show us?

21 A. Correct.

22 MS. JONES: Permission to publish?

23 THE COURT: Yes, ma'am.

24 MS. JONES: Thank you. It's 27 minutes.

25 THE COURT: All right, thank you.

1 (Video being played for the jury.)

2

3 BY MS. JONES:

4 Q. What is Master Sergeant Draisen showing
5 Xavier Polite?

6 A. He showed him a printout of the video
7 still that shows him outside the van.

8 Q. Would that be State's 100?

9 A. Yes, ma'am.

10 (Video being played for the jury.)

11 MS. TOLLEY: Your Honor --

12 THE COURT: Yes, ma'am.

13 MS. TOLLEY: -- I think we need to
14 approach.

15 THE COURT: All right.

16 (Bench conference).

17 THE COURT: All right, ladies and
18 gentlemen, what I'm gonna do is, I'm gonna send
19 you to lunch, and I ask you to be back here at 2
20 o'clock. If you would please not talk about the
21 -- I'd ask that you please not talk about the
22 case and see you back at 2:00. Thank you very
23 much.

24 (Jury exits the courtroom.)

25 BAILIFF: The jury's cleared, Your Honor.

1 THE COURT: All right.

2 Ms. Tolley, you said you need to approach
3 while they were playing the video. Let me hear
4 you on that, yes, ma'am.

5 MS. TOLLEY: Thank you, Your Honor. So the
6 portion of the video that was played, that was
7 previously agreed that it would not be played,
8 and that portion included statements, "I feel
9 like I've been in prison for the last three
10 years," and --

11 THE COURT: That was the portion that was
12 agreed not to be played.

13 MS. TOLLEY: That's correct.

14 THE COURT: Yes, ma'am.

15 MS. TOLLEY: And that has now been played.

16 THE COURT: Portions of it have been.

17 MS. TOLLEY: Portions of it have been.

18 THE COURT: Yes, ma'am.

19 MS. TOLLEY: And we think now that the jury
20 has heard that. There's nothing that we can do
21 to try to unring that bell, and we would be
22 moving for a mistrial, at this time.

23 THE COURT: Well, let me ask you this, has
24 he been in prison for three years, or for any
25 amount of time?

1 MS. TOLLEY: No, sir.

2 THE COURT: Okay, well, just ask the
3 officer to file a stipulation that he hasn't
4 been in prison.

5 MS. TOLLEY: No, sir.

6 THE COURT: Why couldn't we do that? What
7 would be the harm there?

8 MS. TOLLEY: That would --

9 THE COURT: I mean he, basically, he's --
10 if the jury literally believes -- I mean the
11 reality of it is, you're sort of going into
12 life experiences is what I would say he was sort
13 of talking about, when he goes on and says that
14 it's like, "I feel like I've been in prison for
15 three years," if I remember the statement
16 correctly,

17 I'm so many years old, and I've had deaths
18 in my family, or, you know, I've -- words to
19 that effect, is what I remember that being. And
20 so I will have to say, when I heard it, I never
21 thought that that meant that he had actually
22 been in prison for three years, I think he was
23 saying he felt like he'd been in prison for
24 three years.

25 Now, I think the jury -- maybe they could

1 infer that, that means he's been in prison for
2 three years. Let me hear from the State.

3 MS. JONES: Judge, I didn't interpret it
4 that way, until she brought that up, again, very
5 recently. This, again, was provided to her --
6 well, two-and-a-half years ago.

7 THE COURT: Well, no, no, one person, Ms.
8 Tolley, one person speaks at a time, and when
9 she finishes -- I don't cut you off, I'll let
10 you say everything you want, don't interrupt the
11 other person who's speaking, as a common
12 courtesy. Go ahead.

13 MS. JONES: Thank you. There are multiple
14 statements in this interview about how he has a
15 clean record, he's never been in trouble.
16 Investigator Duncan acknowledges that, and he
17 agrees with that.

18 There's going to be zero evidence that he
19 has ever been in trouble. I don't think that
20 he's mumbling enough, to where it could be
21 interpreted as, "I've been in prison for the
22 past three years."

23 If that's a concern, I could certainly ask
24 Investigator Duncan to clear that up, as I've
25 been doing with stopping and starting. I'm

1 happy to ask him. He's never -- or just
2 clarify, he's never been in trouble before, has
3 he? He's never been to jail, been in prison,
4 has he? I'm happy to clear that up. It was
5 inadvertent. There have been multiple requests
6 for redactions, I have agreed on those
7 redactions, because, honestly, it's
8 inconsequential to what the meat and potatoes of
9 this video is.

10 Judge, we're sorry, we -- I in no way,
11 shape or form meant for this to be an issue at
12 all, but I don't think it warrants a mistrial.
13 I think that there were other instances, where
14 perhaps I could have asked for a mistrial, and I
15 didn't. I don't think that something like this
16 that could be cured so easily warrants a
17 mistrial.

18 THE COURT: And I'll give you the last
19 word, Ms. Tolley, whatever else you want to tell
20 me, ma'am.

21 MS. TOLLEY: I just don't think it can be
22 cured that easily. It's something that can't be
23 unheard by the jury, and it just -- it's just so
24 prejudicial that it can't be cured with a simple
25 instruction, or by further examination of the

1 officer.

2 THE COURT: All right, let's go to lunch.
3 I'll see everybody back here -- what did I say,
4 2 o'clock?

5 COURT REPORTER: Yes, sir.

6 THE COURT: I'll see everybody back here
7 about five to 2:00.

8 (Luncheon recess.)

9

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PROCEEDINGS CONTINUED - AFTERNOON SESSION

WEDNESDAY, JUNE 14, 2023

BEAUFORT, SOUTH CAROLINA

(The following proceedings were held in open court. All parties were present.)

BAILIFF: All rise, this Court is back in session.

THE COURT: All right, thank you, you can be seated. All right. All right, Ms. Tolley, I've considered your motion for a mistrial. I think that was your motion, correct?

MS. TOLLEY: That's correct, Judge.

THE COURT: All right. I'm gonna deny your motion, and I'm going to explain why I'm denying your motion.

I don't believe there is anything sinister or surreptitious about the playing of the video, and, specifically, the parts where the Defendant indicated that he had -- or feels like he's been in jail, I think is what he said, for three

1 years, and that was going to be taken out.

2 And what -- that wasn't taken out, and what
3 my recollection when it was played was, that he
4 feels like he's been in jail for three years.
5 What I would say is, that while there was an
6 agreement to remove that, I think now I've got
7 to look at, basically, the prejudice to the
8 Defendant, if any; and if there is, in fact, any
9 prejudice to the Defendant, I think I would have
10 to then go and decide whether or not it could be
11 cured via some type of instruction, if there was
12 prejudice, would that be the best way to cure
13 it, and then if that instruction would be
14 sufficient to, as Ms. Tolley stated, un-ring the
15 bell?

16 What I would say is that I think that if
17 Mr. Polite had been in prison for some period of
18 time and there was an agreement to keep that
19 out, and then that information had been
20 presented to the jury.

21 I think we're looking at a different
22 situation that somebody, a) hasn't been in
23 prison, and, quite frankly, has said he feels,
24 as I recollect, like he's been in prison.
25 Because amongst other things, there are numerous

1 ways that this matter can be broached to correct
2 this inadvertent language that was included on
3 the tape.

4 I think that I can be corrected, because
5 you can't have a witness go back and lie on the
6 stand, but, certainly, a witness can be asked,
7 "I want to clarify he's never been," I don't
8 know, "if he's ever served any time in jail or
9 prison."

10 I think that clearly can un-ring the bell.
11 I can instruct the jury that he's never spent
12 any time in jail or prison. And, again, I don't
13 think he stated that he spent time, I think he
14 said he felt like, or feels like. And so I just
15 think that if there was any prejudice at all,
16 honestly, I don't know that there has been,
17 other than there was an agreement to keep it
18 out.

19 I guess the fact that part of it's now come
20 in, you know, is there prejudice? -- and I just
21 don't know that there is. I don't even know
22 that there needs to be a cure to instruction,
23 however, I am willing to allow there to be some
24 type of cure to instruction, either from me, or
25 through the witness, because, clearly, this

1 gentleman has no record, and to that extent,
2 quite frankly, he's on the tape, he said that
3 several times, and I don't think anybody is
4 contending that he did.

5 So with that having been said, that's going
6 to be my ruling, that's my justifications for
7 it.

8 Now, as it relates to bringing this matter,
9 you know, or correcting this matter, you know, I
10 don't mind telling the jury that he has not been
11 -- he's never been in prison, and he's never --
12 I don't know, has he ever been arrested? I
13 don't know, I have no idea.

14 MS. JONES: Not as an adult, Your Honor.

15 THE COURT: Okay, I mean I can -- I mean I
16 think that if I can say that, or we can have the
17 witness she has no record, he's never been in
18 prison, because I think that's a truthful
19 statement, never been in jail, never been in
20 prison, if that's what - whichever way you want
21 it.

22 Now, what I would do is, and if you don't
23 want to do this, then that's fine. I
24 understand, and I think you stated your motion
25 for the record, and I think you stated that

1 sufficiently. Obviously, you disagree with my
2 ruling, or I assume you do, and so to that
3 extent, what I would say is this, I would give
4 you this option.

5 My position is that this option does not
6 impede your underlying disagreement with my
7 decision, okay, but I would instruct them any
8 way you might want me to, completely reserving
9 your rights, as it relates to my decision.

10 In other words, me asking you this, in my
11 opinion, is in no way having you abandon your
12 underlying disagreement with my decision.

13 If you don't want to decide, then I'm going
14 to decide, but I'm going to do it, I would think
15 one of two ways would be the way to do it. So
16 if you'all want to caucus for a minute, or, Ms.
17 Tolley, you may argue no, or whatever you want
18 me to do.

19 I mean I've already -- I haven't done what
20 you wanted me to do was to grant a mistrial, I
21 understand that; but now for me moving forward
22 is, how to -- if you even want me to now move an
23 un-ring a bell, or how you propose for me to do
24 that.

25 And if you say, "Judge, I don't think it

1 can be done, and I don't want to state
2 anything," that's up to you, then that's fine,
3 I'm just gonna make a decision and do it; but,
4 basically, I'm probably gonna do it one of two
5 ways.

6 I'm either gonna tell them, "Folks, there
7 was some conversation on the video where the
8 Defendant said, 'I feel like I've been in
9 prison,' he's never been in prison, he's never
10 been in jail. I just want to make that clear;"
11 or I may decide to just let the Solicitor to ask
12 the Officer, 'Has he ever been in prison? Has
13 he ever been in jail?" And I think the answer
14 to that is no.

15 Let me ask, do you have any objection to my
16 ruling? I figure you don't.

17 MS. JONES: No, and I have no position on
18 the curative instruction, sir, however Your
19 Honor decides.

20 THE COURT: Would there be any other way to
21 provide a curative instruction to the jury that
22 the State might suggest? Not that you need to
23 have one.

24 MS. JONES: I think a stipulation would be
25 the third option, but she's already expressed

1 her disinterest in that, so --

2 THE COURT: Yeah, we could have the parties
3 stipulate, and we could have stipulated the
4 facts that I could read now, and read again
5 during jury instructions, so that's another way
6 that I could do it.

7 MS. TOLLEY: Judge, I don't know that we
8 necessarily have a preference, but probably the
9 way that would call the least amount of
10 attention to it would be, if the Solicitor asked
11 the Officer during questioning, as she had
12 started to do.

13 And if we need to do a stipulation after
14 that, then that would probably work.

15 THE COURT: I think that's fine, I would
16 not have an objection to her asking the Officer.
17 And then also later, if you want, enter a
18 stipulation that the parties agree that he has
19 not been arrested --

20 MS. JONES: Okay.

21 THE COURT: -- or ever in prison, and I'm
22 certainly willing to do that, if you'all could
23 arrive at that. If you want to do that at a
24 later time, then you let me know you'all could
25 probably arrive at that language together; if

1 not, I'll write something, but in the meantime,
2 I would have to ask you to ask the witness
3 whether Mr. Polite has ever been incarcerated --

4 MS. JONES: All right.

5 THE COURT: -- and/or jail.

6 MS. TOLLEY: And I wonder --

7 THE COURT: Yes, ma'am.

8 MS. TOLLEY: -- Now that they've heard that
9 part, whether or not it's worth them hearing his
10 explanation afterwards. Like he says, "I'm not
11 in prison -- I feel like I've been in prison,"
12 and then he proceeds to explain.

13 So I'm just thinking out loud, Judge. If
14 were gonna un-ring the bell, I think we're --

15 THE COURT: Well, so -- all right. So what
16 do you want, you know, I'll be honest --

17 MS. TOLLEY: Uh-huh.

18 THE COURT: -- I have been around the block
19 with this statement, I mean around the block,
20 and it's -- what is it that you -- because this
21 statement what is it now that you think ought to
22 be come out? You tell me.

23 I mean I -- you tell me what you want.

24 MS. TOLLEY: I don't think anything else
25 should come out. I was just saying that,

1 because they've heard the part of that, "I feel
2 like I've been in prison," that what came after
3 that might provide some form of explanation at
4 this point.

5 THE COURT: Oh, well, that -- okay. That
6 would -- I never understood all of that to come
7 out. I only understood the sentence to come
8 out.

9 MS. TOLLEY: Uh-huh.

10 THE COURT: He went on a two-minute or so
11 tangent --

12 MS. TOLLEY: Right.

13 THE COURT: -- about his life experiences.

14 MS. TOLLEY: Right.

15 THE COURT: Okay?

16 MS. TOLLEY: I think some of it was taken
17 out.

18 THE COURT: So do we take out his summary
19 of his life experiences?

20 MS. JONES: No, and I'm sorry for speaking
21 to Mr. Hightower while you were speaking, but I
22 was clarifying that, no, the only thing that was
23 redacted, which has now been officially redacted
24 is, "I feel like I've been in prison the last
25 three years," followed by Investigator Duncan

1 saying, "I know you feel like you've been in
2 prison."

3 THE COURT: That's been taken out?

4 MS. JONES: That's been taken out, but his
5 lifestyle before, or his life before, is that
6 still in? That is still in.

7 THE COURT: All right, so, Ms. Tolley,
8 that's what you want in, or I'm asking.

9 MS. TOLLEY: Well, it's not that we want it
10 in, but that's acceptable, Judge, thank you.

11 THE COURT: Well, Ms. Tolley, you
12 understand the fact that -- you could be
13 objecting to any number of things -- .

14 MS. TOLLEY: Right.

15 THE COURT: -- in this statement, I gave
16 you that opportunity, and you have only objected
17 on a few things.

18 MS. TOLLEY: That's correct.

19 THE COURT: You understand that?

20 MS. TOLLEY: That's correct.

21 THE COURT: All right.

22 MS. TOLLEY: Uh-huh.

23 THE COURT: So I guess what I'm asking, and
24 I understand you don't want it at all, because
25 you think the statement was given -- you don't

1 think, you know, it was under duress and those
2 types of things, correct?

3 MS. TOLLEY: That's correct.

4 THE COURT: All right, so my question is,
5 do you want the rest of the -- basically, sort
6 of the life story, for lack of better words, but
7 like you do want that in?

8 MS. TOLLEY: Yes, sir.

9 THE COURT: And so the only thing that's
10 been taken out is -- let's play it, to make sure
11 that we're good with that, okay?

12 MS. JONES: Okay.

13 THE COURT: All right. Well, as good as we
14 can be, okay, Ms. Tolley?

15 (Video being played for the Court.)

16 THE COURT: All right, let's stop it right
17 there. So that, basically, as it relates to --
18 everything else I think you've already heard, so
19 we've taken out the prison aspect of it; is that
20 correct?

21 MS. JONES: Yes, sir.

22 THE COURT: And then you've heard -- where
23 it started, basically, is where the prison came
24 out, and he started going into talking about not
25 having fun, having it rough, and these types of

1 things.

2 I understand you don't want it in at all,
3 but you understand I'm allowing you to remove
4 things that you don't want in.

5 So is there anything else that you want
6 out, reserving your right, ma'am, that you don't
7 want any of it in?

8 MS. TOLLEY: No, Your Honor.

9 THE COURT: Okay, great. So then what
10 we'll do is, we'll bring the jury back in, and
11 put the witness back on the stand, and then
12 we'll go and proceed from there, okay?

13 MS. JONES: Do you want me to ask the
14 question about prison?

15 THE COURT: Well, I mean -- yeah, I mean I
16 think that's where -- I think Ms. Tolley didn't
17 take the position, or I think she -- no, she did
18 take the position not waiving her rights, that
19 she wanted you to ask that question.

20 So do you want her to ask it immediately,
21 or to merge into it? I mean I would think that
22 she -- I tell you, you just go out there, and
23 tell them that he -- ask him if he's ever been
24 in prison --

25 MS. JONES: Okay.

1 THE COURT: -- and he's going to end up
2 saying -- I think he's gonna end up saying
3 whatever his response is to that. I'm assuming
4 he's gonna say something along, to my knowledge
5 he's never been arrested, he's never been in
6 jail, he's never been in prison.

7 MS. TOLLEY: Okay, however she wants to do
8 it.

9 THE COURT: That's how we'll do it.

10 MS. TOLLEY: Okay.

11 THE COURT: Okay? All right, that sounds
12 good. Let's get the -- anything else before we
13 bring the jury in from the State?

14 MS. JONES: No, sir.

15 THE COURT: Defense?

16 MS. TOLLEY: None, Your Honor.

17 THE COURT: All right, let's get the jury.

18 MS. JONES: Can Investigator Duncan get
19 back to the witness stand?

20 THE COURT: Yes, ma'am.

21 MS. JONES: And, Judge, just for your
22 information, there's about ten minutes left of
23 the video.

24 THE COURT: All right, thank you.

25 Did we take out the other part? There was

1 two parts?

2 MS. JONES: Yes, of his response --

3 THE COURT: Okay.

4 MS. JONES: -- yes. Yes.

5 (Jury enters the courtroom.)

6 BAILIFF: All present, Your Honor.

7 THE COURT: All right, ladies and
8 gentlemen, thank you very much, I hope you had a
9 good lunch. We're ready to continue with our
10 direct examination of the investigator. Yes,
11 ma'am, go ahead.

12 MS. JONES: Thank you, Judge.

13 THE COURT: Uh-huh.

14 **

15 **DIRECT EXAMINATION CONTINUES**

16 BY MS. JONES:

17 Q. Investigator Duncan, has Xavier Polite
18 ever been in prison or incarcerated?

19 A. To my knowledge, no, he's never been in
20 jail before.

21 Q. Thank you. If we can continue back
22 with State's 164, please.

23 (Video being played for the jury.)

24 BY MS. JONES:

25 Q. We just heard Xavier Polite say that he

1 thinks the guns were registered to either him or
2 his mom. Who are those guns registered to?

3 A. I believe both guns are registered to
4 Steven Glover.

5 Q. Okay. What evidence do you have that
6 Steven Glover had a gun that day?

7 A. Zero.

8 Q. You were in here yesterday when
9 Investigator Tunis testified about some cell
10 phones?

11 A. Yes, ma'am.

12 Q. You collected multiple cell phones from
13 that -- or you didn't, but the Beaufort County
14 Sheriff's Department collected multiple cell
15 phones from [REDACTED] Eddings Point, didn't they?

16 A. Yes, ma'am.

17 Q. Some of those they could get into, and
18 some couldn't?

19 A. Right.

20 Q. But BCSO was able to get into Channon
21 Preston's phone, right?

22 A. Yes, ma'am.

23 MS. JONES: Can we see photo 127?

24 BY MS. JONES:

25 Q. And State's 127 that is depicting what

1 is in evidence bag 154 that was previously
2 admitted?

3 A. Yes, ma'am.

4 Q. And the contents of that cell phone
5 were extracted by Investigator Tunis and placed
6 on this thumb drive, State's 183; is that right?

7 A. Yes, ma'am.

8 Q. And as your duty of the lead
9 investigator, did you review that extraction
10 report?

11 A. I did.

12 Q. And were you able to determine who that
13 phone actually belonged to?

14 A. Yes, it belonged to Channon Preston.

15 Q. And was that done through some -- well,
16 one way through some user account names?

17 A. I don't recall.

18 Q. Okay. How were you able to identify
19 this was Channon's phone?

20 A. First, it's got the picture of the
21 background of it.

22 Q. Okay.

23 A. It's in his bedroom, and then also on
24 the downloaded summary report from the
25 extraction it has his name on there.

1 Q. Okay. You said that the report had his
2 name on it?

3 A. Uh-huh.

4 Q. I'm gonna show you what has been marked
5 as State's 156. So you reviewed this phone
6 extraction?

7 A. Yes, ma'am.

8 Q. And from that, different documents
9 could be printed or collected from this
10 extraction?

11 A. Yes, ma'am.

12 Q. And what you're looking at right now,
13 is that one of those documents?

14 A. Yes, ma'am.

15 Q. What is that?

16 A. This is a Cellebrite report, the
17 extraction report from the software we use.

18 Q. Okay, and does it have different user
19 account names on there?

20 A. Yes, it's got a username of
21 Channon.Preston85@icloud.com.

22 Q. And when you were going through the
23 extraction on this day that's on the thumb
24 drive, that's State's 183, did you -- was that
25 report contained within this thumb drive?

1 A. Yes, ma'am.

2 MS. JONES: And, Your Honor, at this time
3 the State moves --

4 BY MS. JONES:

5 Q. Is this a fair and accurate copy of the
6 Cellebrite report from that extraction?

7 A. Yes, ma'am.

8 Q. Has it been altered or manipulated?

9 A. No.

10 Q. All right.

11 (Court Reporter marks State's Exhibit
12 Number 156, as attached hereto.)

13 MS. JONES: Your Honor, at this time the
14 State moves 156 into evidence.

15 THE COURT: Subject to your previous
16 objection?

17 MS. TOLLEY: That's correct, Judge.

18 THE COURT: All right, yes, ma'am.

19 MS. JONES: Thank you, Your Honor.

20 THE COURT: So moved.

21 (State's Exhibit 156 admitted into
22 evidence.)

23 MS. JONES: Okay. If we could just see 156
24 really quick? Okay.

25 BY MS. JONES:

1 Q. But on this extraction report it has
2 the name Channon Preston on it?

3 A. Yes.

4 Q. Okay.

5 A. Sorry.

6 Q. That's okay.

7 A. Thank you.

8 Q. That's okay. This phone does it also
9 contain photos and videos?

10 A. Yes.

11 Q. And as you're investigating this case
12 and going through this report, did you go
13 through those?

14 A. I did.

15 Q. And did you locate some that -- one in
16 particular that appear relevant to what we're
17 here for today?

18 A. Yes, ma'am.

19 Q. And did you review that video?

20 A. I did.

21 Q. And were you able to identify two
22 people in that video?

23 A. Yes, ma'am.

24 Q. And were they people you were familiar
25 with?

1 A. Yeah, the video of Channon Preston and
2 David Blake --

3 Q. Okay.

4 A. -- five days before the incident
5 happened.

6 Q. Were you able to tell where they were
7 when the video was taken at?

8 A. They were inside the Toyota minivan.

9 Q. All right. And I'm gonna hand you
10 State's 201. Do you recognize that item?

11 A. Yes, ma'am.

12 Q. Okay, what is that?

13 A. It's a portion of that extraction of
14 the report, a summary of it.

15 Q. And is that a fair and accurate copy of
16 the extraction report, that portion?

17 A. Yes, ma'am.

18 Q. Does it appear to have been altered or
19 manipulated?

20 A. No, ma'am.

21 Q. And does that second page have specific
22 details about a specific video photo?

23 A. Yes, ma'am.

24 Q. Okay.

25 (Court Reporter marks State's Exhibit

1 Number 201, as attached hereto.)

2 MS. JONES: Your Honor, at this time the
3 State moves 201 into evidence.

4 THE COURT: Ms. Tolley?

5 MS. TOLLEY: Subject to our previous
6 objection, Your Honor.

7 THE COURT: All right, yes, ma'am, subject
8 to prior objection, it's entered into evidence.

9 MS. JONES: Thank you, Judge.

10 (State's Exhibit 201 admitted into
11 evidence.)

12 BY MS. JONES:

13 Q. And based on the extraction report, the
14 video that you viewed was captured when?

15 A. On 11/13 of 2020.

16 Q. You reviewed that video?

17 A. Yes, ma'am.

18 Q. And you were able to identify two
19 people in it?

20 A. Yes, ma'am.

21 Q. Were some still photographs collected
22 from that video?

23 A. Yes.

24 Q. I'm now gonna show you what's been
25 marked as State's 186. Do you recognize that?

1 A. I do.

2 Q. And what is State's 186?

3 A. This is a screenshot of Channon
4 Preston's lap. So he was driving the Toyota
5 minivan, and he had a Taurus teal handgun on
6 his --

7 Q. And is --

8 A. -- lap between his legs.

9 Q. And is that a fair and accurate
10 depiction of Channon Preston's lap in that
11 video?

12 A. Yes, ma'am.

13 Q. And has that screenshot been altered or
14 manipulated, or changed in any way?

15 A. The screenshot of that video.

16 Q. And I said screenshot, it's a still.

17 A. A still picture.

18 Q. Okay. And that is a video -- a still
19 photo video that you collected, or you found
20 within the extraction of that cell phone listed?

21 A. Yes, ma'am.

22 Q. So it's on the thumb drive 183?

23 A. Yes.

24 (Court Reporter marks State's Exhibit
25 Number 186, as attached hereto.)

1 MS. JONES: At this time, the State moves
2 186 into evidence.

3 THE COURT: All right, Ms. Tolley?

4 MS. TOLLEY: With our previous objection,
5 Your Honor.

6 THE COURT: Yes, ma'am.

7 MS. JONES: Thank you.

8 THE COURT: Subject to her objection.

9 BY MS. JONES:

10 Q. And who lap are we looking at?

11 A. That's Channon Preston's lap.

12 Q. Where does it appear he is again?

13 A. He's in the driver's seat of the Toyota
14 minivan.

15 Q. Was another still taken from that
16 video?

17 A. Yes, ma'am.

18 Q. And did you -- well, I'll had it to you
19 right now, I'm gonna hand you State's 185.

20 Do you recognize that?

21 A. I do.

22 Q. And what is that a still of?

23 A. This still is of Xavier Polite holding
24 the Draco while he is smiling.

25 Q. When was that video created?

1 A. This was five days before the shooting
2 incident happened.

3 Q. And is that a fair and accurate still
4 from that video?

5 A. Yes, ma'am.

6 Q. Has it been altered, or manipulated, or
7 changed in any way?

8 A. No, ma'am.

9 Q. And is the still taken from the thumb
10 drive in 183?

11 A. Yes.

12 (Court Reporter marks State's Exhibit
13 Number 185, as attached hereto.)

14 MS. JONES: Your Honor, at this time, the
15 State moves 185 into evidence.

16 THE COURT: Objection, Ms. Tolley?

17 MS. TOLLEY: Just our same objection, Your
18 Honor.

19 THE COURT: Yes, ma'am.

20 MS. JONES: Thank you, Judge.

21 THE COURT: So admitted.

22 MS. JONES: Thank you, and permission to
23 publish 185?

24 THE COURT: Yes, ma'am.

25 BY MS. JONES:

1 Q. Who is that in that photograph?

2 A. That's Xavier Polite.

3 Q. And what does he appear to be holding?

4 A. That's the Draco rifle.

5 MS. JONES: I be the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 BY MS. JONES:

8 Q. Investigator Duncan, I have no further
9 questions for you. If you could answer anything
10 that defense may have.

11 A. Yes, ma'am.

12 THE COURT: All right, counsel, cross-
13 examination?

14 MS. TOLLEY: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 **

17 **CROSS-EXAMINATION**

18 BY MS. TOLLEY:

19 Q. How are you doing, Officer Duncan?

20 A. I'm doing well, thank you.

21 Q. Good. So you had an opportunity to
22 interview Mr. Polite, as you've testified to,
23 correct?

24 A. Yes, ma'am.

25 Q. And during that interview, you told him

1 that cameras don't always show everything; is
2 that correct?

3 A. That's correct.

4 Q. And you also told him, "I know you were
5 just looking to buy some weed;" did you tell him
6 that?

7 A. Yeah, we explained that earlier,
8 sometimes we sort of give him an out, basically,
9 say, you know, give him a reason for being
10 there, so, yes, "I know you went there to buy
11 some weed."

12 Q. And you also told him, "I know you
13 never intended to shoot anyone;" did you tell
14 him that?

15 A. Once again, the same deal, you know,
16 we're giving him a reason to keep talking to me,
17 try to downplay it a little bit. "I know you
18 didn't mean to kill or shoot anybody."

19 Q. And you also told him, "I know you'all
20 didn't have a plan to kill anybody;" did you
21 tell him that?

22 A. Once again, the same thing, you know,
23 as I already indicated. Yes, I did say that.

24 Q. So you say that's part of lying to him
25 is basically part of your technique that you

1 learned?

2 A. Yeah, unfortunately, we have to lie to
3 people sometimes to get the truth out.

4 Q. Okay. And did they also teach you that
5 you should yell at people the way you did at the
6 end of that video, blaming him for everything;
7 is that also something they taught you?

8 A. I mean sometimes it comes to that.
9 That's a very emotional situation, where someone
10 has died, and we're dealing with the Defendant
11 right there, he could care less, he just wanted
12 to go to sleep.

13 Q. Uh-huh. You told him during the
14 interview, you lied about the fact that he could
15 be identified on the video; did you lie about
16 that too?

17 A. Yes, ma'am.

18 Q. During the course of the interview, I
19 believe Xavier said, "I was just protecting
20 myself;" is that correct?

21 A. Yeah, after we went through everything,
22 and gave him the out of, you know, a self-
23 defense route, and that's when he said, "I was
24 protecting myself."

25 Q. Okay, and it's common for people's

1 stories to develop as they process; isn't that
2 correct?

3 A. Sometimes, yes, ma'am.

4 Q. In fact, you're trained about that,
5 that's why you talk to people more than one
6 time?

7 A. Yeah, I talk to people numerous times,
8 yes, ma'am.

9 Q. Okay. And so it would be unusual for
10 him to expound on his story as he spoke to you?

11 A. No, I mean just, for instance, same
12 thing with -- like with Mr. Singleton, you know,
13 he told the officers at the scene there, "I
14 don't know who did it," but then he told the 911
15 operator, "Glizzy did it," I think. You know,
16 stories developed as you said.

17 Q. Yeah. He said that Corey said he
18 didn't know who did it multiple times. I think
19 the initial 911 call there was a report that
20 Glizzy did it; is that right?

21 A. Yeah, he said Glizzy did it on the 911
22 call, and then also in the interview with
23 Officer Abell.

24 Q. Well, during the interview with Officer
25 Driscoll he said, "I don't know who did it;" is

1 that right?

2 A. Yeah, and like I said that's the very
3 first initial officer on-scene at the shooting.
4 And, honestly, in my line of work it is
5 frustrating to the patrol officers, you know,
6 where they have the uniform on, they will not
7 cooperate, you know Patrol gets frustrated a lot
8 of times that people will answer our questions a
9 little bit easier than they answer theirs on-
10 scene. It's just that we're able to get to that
11 cooperative level a little bit easier.

12 Q. Okay. The fact is, he said to Officer
13 Driscoll, to Officer Ahrens and Officer Abell
14 that he didn't know who did it?

15 A. Yeah, I think we've made that clear.

16 Q. Okay. Speaking of Corey, Corey's phone
17 was never taken, was it?

18 A. No, ma'am.

19 Q. Okay. And some of the phones were
20 extracted, but Corey's was never extracted?

21 A. No, ma'am.

22 Q. Okay. And as far as you know, Corey
23 was never patted down or searched or anything?

24 A. I assume he was patted down and
25 searched.

1 Q. Well, you were in the courtroom during
2 most of the testimony, and I think it was
3 Officer Abell who testified that he didn't pat
4 him down, and that no other officer patted him
5 down during the course of the investigation that
6 he recalls?

7 A. Well, I cannot testify that I saw him
8 patted down, I wasn't at the scene.

9 Q. Okay. If someone had patted him down,
10 that would be in the police reports?

11 A. Possible, or likely, yes, ma'am.

12 Q. Okay. And Corey's gun was never sent
13 to SLED or investigation, like some of the other
14 weapons that were recovered?

15 A. No, we didn't have information about
16 Corey's gun.

17 Q. Okay. But wouldn't it be good police
18 work to take the gun -- you already took the
19 swabs of the gun, but to send it to SLED along
20 with everything else to have it investigated?

21 A. It wouldn't have added anything else to
22 the investigation at that point.

23 Q. Okay. Isn't it true that Corey is also
24 the only one who got a lawyer at that point --

25 A. Well --

1 Q. -- on the same day of the incident?

2 A. At the same day of the incident? Well,
3 I don't know when Channon or Xavier got a
4 lawyer, because that same day after we brought
5 him to the jail that that went on, but, yes,
6 Corey was spoken to with his lawyer present,
7 which he has a right to.

8 Q. Uh-huh. And, in fact, it was Officer
9 Draisen who called his lawyer; do you recall
10 that?

11 A. I think that'd be a question better
12 suited for him, because I don't know the answer
13 to that.

14 Q. But you're the case officer, and if
15 there's a record of that, you would be aware of
16 it?

17 A. I wouldn't deny or affirm it, I don't
18 know one way or the other --

19 Q. Okay.

20 A. - I think that is a better question for
21 Officer Draisen.

22 Q. Okay. So if he said Officer Draisen
23 knew who his lawyer was, it's because -- I'm
24 gonna approach the Judge before I ask this
25 question.

1 THE COURT: Yeah, come on up.

2 (Bench conference.)

3 BY MS. TOLLEY:

4 Q. So we were talking about the fact that
5 Corey had a lawyer; is that correct?

6 A. Yes, ma'am.

7 Q. And that the reason that you guys knew
8 who his lawyer was is, because you had had prior
9 dealings with him?

10 A. I don't know the reason he got a
11 lawyer. Like I said, everybody's got a right to
12 have a lawyer, but I don't know -- I highly
13 doubt he had a lawyer on retainer.

14 Q. Well, Draisen had him on speed dial,
15 and he came right over.

16 A. Well, what I'm getting at is, I don't
17 know if he told Investigator Draisen who his
18 lawyer was or not, I don't know --

19 Q. No.

20 A. -- the answer.

21 Q. So Draisen called him, and his lawyer
22 came over, and the reason that you knew that he
23 had a lawyer, and who his lawyer was is, because
24 he had been arrested before, and Draisen knew
25 who his lawyer was?

1 A. Once again, that'd be a better question
2 for him. I don't know what he knew.

3 Q. In fact, he had been arrested multiple
4 times.

5 A. I don't know if he's been arrested
6 multiple times.

7 Q. If I were to show you his arrest
8 record, would that refresh your recollection?

9 THE COURT: I'll allow that.

10 MS. JONES: Okay. If I could see it first,
11 Judge.

12 THE COURT: Sure.

13 BY MS. TOLLEY:

14 Q. It looks like he's been arrested on
15 March 11th of --

16 THE COURT: Hold on.

17 MS. JONES: judge --

18 THE COURT: Okay, I sustain that, it's an
19 improper use of the document. You can approach
20 and hand him the document.

21 MS. JONES: Thank you.

22 THE COURT: And allow him to briefly review
23 the document.

24 MS. JONES: Judge, while he's reviewing
25 that, may we approach?

1 THE COURT: Sure. Ms. Tolley, come on up.
2 (Bench conference.)

3 THE COURT: Sir, have you had an
4 opportunity to review that?

5 WITNESS: I have.

6 THE COURT: Okay, so, Ms. Tolley, why don't
7 you rephrase or re-ask your question.

8 BY MS. TOLLEY:

9 Q. Okay, so having reviewed it, do you see
10 where it says he's been arrested on multiple
11 occasions?

12 A. Just to clarify, this isn't like a
13 criminal history that I've seen before.

14 Q. Okay.

15 THE COURT: How about handing him the
16 public -- do you have the public index?

17 MS. TOLLEY: Uh-huh.

18 THE COURT: How about just handing him the
19 public index, allow him to look at that.

20 MS. TOLLEY: Okay.

21 THE COURT: And if you could just look at
22 that, sir, take your time, and when you're
23 finished you just let me know, okay?

24 WITNESS: Okay, thank you, sir. Okay.

25 THE COURT: All right.

1 Ms. Tolley, do you want to ask him --

2 BY MS. TOLLEY:

3 Q. Having reviewed those documents, does
4 it appear that he's been arrested multiple
5 times?

6 A. Yeah, I see some traffic stuff in here,
7 and some other more serious charges in here.

8 Q. Possession of a weapon is one of them?

9 A. I didn't see that.

10 Q. Right.

11 A. I'm not sure. I didn't see it.

12 Q. He was also being investigated for a
13 murder charge; is that correct?

14 MS. JONES: Objection.

15 THE COURT: I will sustain that objection.
16 The jury will disregard that last question.
17 Thank you.

18 MS. JONES: Judge, can we approach?

19 THE COURT: Sure.

20 (Bench conference.)

21 THE COURT: Folks, I'm gonna need you to go
22 back to your jury room, and I'll get you back in
23 here as soon as I can. Thank you. Please don't
24 talk about the case.

25 (Jury exits the courtroom.)

1 BAILIFF: The jury's cleared, Your Honor.

2 THE COURT: All right, Solicitor, yes,
3 ma'am.

4 MS. JONES: Judge, I'm not really sure how
5 we cure that. Ms. Tolley has now gone against
6 your explicit orders twice. She has implied --
7 or not implied, she has stated to the jury two
8 times that Steven Glover, in so many words, was
9 a gangbanger after she was told not to.

10 THE COURT: Well, hold on, she did what
11 about -- what about the gangbanger? I'm sorry?

12 MS. JONES: She's mentioned that after she
13 was told not to, that he was in a gang. That
14 the CAD report referenced him being in a gang.
15 The first time she did it without us knowing, I
16 objected, you sustained it, and she did it again
17 with Investigator Snider.

18 We had a sidebar conference, where she
19 mentioned she was gonna bring up specifics about
20 a murder investigation. You very clearly said,
21 "No, that isn't appropriate," and she did it
22 anyways. Judge, I don't want to have to ask for
23 a mistrial, but she has attacked the credibility
24 and the character of my two victims, who cannot
25 answer for that now.

1 It is inappropriate. I think a mistrial is
2 the only remedy for this, and I don't know how
3 we move on, when somebody's explicitly told not
4 to do something, and they do it anyways.

5 THE COURT: All right, Ms. Tolley, let me
6 hear from you.

7 MS. TOLLEY: Thank you, Your Honor. I
8 believe he opened the door when he responded to
9 the question by explaining what the charges were
10 that he saw, I did not intend to ask him about
11 the specific charges, that was not my intent.

12 THE COURT: It wasn't your intent until
13 you're saying he opened the door?

14 MS. TOLLEY: That's correct.

15 THE COURT: Yes, ma'am. All right, let's
16 take a break for a few minutes.

17 (Recess.)

18 BAILIFF: All right.

19 THE COURT: All right, thank you, you can
20 be seated. All right. All right, Solicitor,
21 I'm going to deny your motion for a mistrial.
22 You know, while I think that - I certainly
23 understand your concern, but I don't think this
24 rises to some type of manifest injustice on the
25 part of this matter.

1 And I believe that - I truly believe that
2 this jury, when I tell them to disregard that
3 statement, I truly believe that this jury will.
4 I just don't see this as being something that's
5 gonna merit that. Now, what I will say is this,
6 he's indicated that he's been arrested. Beyond
7 that, we're not going into that anymore. I'm
8 telling you right now you're not gonna ask him
9 anymore. You're also not going to be able to
10 argue or bring up again the fact that this
11 gentlemen was -- may have been under
12 investigation for murder, okay? I don't think
13 that's appropriate to get into whether someone
14 may have been under investigation, I think was
15 the question.

16 We're not getting into that. I'm not
17 allowing that. And I'm going to instruct the
18 jury to disregard the last statement, and let's
19 move on, okay? And move on means you move on,
20 Ms. Tolley. We're not getting in -- you've
21 asked and you got what you wanted about the
22 arrest. Nothing more from this witness
23 concerning those issues, concerning any
24 reputation, other arrests, concerning this. Do
25 you understand that?

1 MS. TOLLEY: I'm clear on that, Your Honor.

2 THE COURT: Excellent. All right, so we'll
3 bring the jury in. I'll instruct them to
4 disregard the last matter, it was not
5 appropriate, and we're gonna continue with
6 cross-examination, all right?

7 MS. JONES: Thank you, Judge.

8 THE COURT: Good.

9 MS. TOLLEY: While we are out, can I ask
10 you about one other thing? There are some - I
11 think Steven Glover has also -

12 THE COURT: Ms. Tolley, the jury's getting
13 ready to come in here, and now you want to come
14 on up, because I don't want you to be talking
15 when the jury's walking in and then possibly
16 hear it. Did you not hear me?

17 Tell the jury to stay out. Somebody go
18 tell the jury to stay out.

19 MS. TOLLEY: It's - this -- well, it's -
20 before I --

21 THE COURT: Well, ma'am, just please wait,
22 I'm taking some time, chill out.

23 (Recess.)

24 BAILIFF: All rise.

25 THE COURT: Thank you, you can be seated.

1 All right, Ms. Tolley, I know there were some
2 other matters that you wanted to bring up before
3 we brought the jury in.

4 MS. TOLLEY: Steven Glover also has a prior
5 record, and that was something that I was going
6 to possibly ask the officer about as well.

7 THE COURT: No, ma'am, I'm not going to
8 allow you to, I'm gonna deny that motion.

9 MS. TOLLEY: Okay, thank you.

10 THE COURT: On that I'll deny that. All
11 right, anything else?

12 MS. JONES: no, sir.

13 THE COURT: Ms. Tolley?

14 MS. TOLLEY: nothing, Judge.

15 THE COURT: All right, let's go ahead and
16 get the jury in, thank you.

17 BAILIFF: Your Honor, the jury's entering
18 the courtroom, sir.

19 THE COURT: All right, thank you.

20 (Jury enters the courtroom.)

21 BAILIFF: All present, sir.

22 THE COURT: All right, thank you. Mr.
23 Foreman, ladies and gentlemen of the jury, when
24 we started you down the hall and sent you back,
25 I didn't say Simon says, and so as a result -

1 and you'all may not be old enough to remember
2 Simons says, I don't know, but I didn't say
3 Simon says, when they took off to get you, and
4 I've got to always say Simon says.

5 I apologize for that, for stopping you in
6 mid-flight in the hallway, but I think we're
7 back, and we're ready to go. I do want to tell
8 you this, ladies and gentlemen, I'm going to
9 instruct you at this time, the last question
10 that was asked by the Defendant, I'm asking you
11 to disregard - by the Defendant's counsel, I'm
12 instructing you to disregard that question, and
13 any response, if there was one, to that
14 question, okay?

15 That matter is not appropriate, it's not
16 for your consideration. And what that means is,
17 you are not to bring that up or discuss it when
18 you deliberate the case at the end of the trial,
19 okay? Thank you so much. Ms. Tolley,
20 certainly, you can continue, yes, ma'am.

21 MS. TOLLEY: Judge, thank you.

22 BY MS. TOLLEY:

23 Q. So as the case officer you're
24 responsible for the entire case; is that
25 correct?

1 A. Yes, ma'am.

2 Q. Okay, and so as the case investigator,
3 you know that there was a surveillance video
4 involved in this case; is that correct?

5 A. Yes, ma'am.

6 Q. Okay, and that I think it was a Blink
7 system; is that correct?

8 A. Yes, ma'am.

9 Q. And Amazon sort of manages the Blink
10 system?

11 A. It's the parent company, yes.

12 Q. Okay, and did your office subpoena the
13 Amazon records for the videos of that day?

14 A. No, ma'am, we sent a search warrant.

15 Q. Oh, you sent a search warrant.

16 A. It wouldn't have been that day; it was
17 later on.

18 Q. Okay, and was there a response to the
19 search warrant?

20 A. Yes.

21 Q. And was the response that -

22 MS. JONES: Your Honor, objection. She's
23 about to read into the record hearsay
24 statements.

25 THE COURT: All right, counsel approach.

1 (Bench conference.)

2 BY MS. TOLLEY:

3 Q. As a result of that search warrant, you
4 didn't receive anything back from Amazon; is
5 that correct?

6 A. No, ma'am.

7 Q. No videos related to the incident; is
8 that correct?

9 A. That is correct.

10 Q. You testified that -- as the case
11 officer through the course of your
12 investigation, you had an opportunity to review
13 some of the reports in the case the other
14 officers' reports and things; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. And having reviewed everything,
17 did it come to your attention that Steven Glover
18 sometimes carries a gun?

19 A. Yes, ma'am.

20 Q. A Glock?

21 THE COURT: Are you objecting to that?

22 MS. JONES: Yes, I'm objecting.

23 THE COURT: I'm objecting to any further
24 questions concerning that, go ahead, move on.

25 MS. TOLLEY: Okay.

1 BY MS. TOLLEY:

2 Q. I'm gonna show you what's been marked
3 as State's Exhibit Number 100. Do you recognize
4 it?

5 A. Yes, ma'am, this is a picture of that
6 minivan.

7 Q. Okay, and on that photograph is the
8 driver's side and passenger side door of the
9 Nissan open?

10 A. It is.

11 Q. All right. Thank you.

12 MS. TOLLEY: I beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 MS. TOLLEY: All right, that's it, Judge,
15 thank you.

16 THE COURT: All right, thank you. Anything
17 else?

18 MS. JONES: Very briefly.

19 THE COURT: Yes, ma'am.

20 **

21 **REDIRECT EXAMINATION**

22 BY MS. JONES:

23 Q. Corey's gun, that Ruger that we've been
24 talking about, that Ruger .9mm, that was
25 actually sent to SLED for firearms testing,

1 right?

2 A. Yes, ma'am.

3 Q. You just didn't have it analyzed for
4 DNA?

5 A. Correct.

6 Q. Okay. And, again, what evidence do you
7 have that Steven had a gun on him that day?

8 A. Zero.

9 MS. JONES: No further questions.

10 THE COURT: All right, anything else, Ms.
11 Tolley?

12 MS. TOLLEY: Nothing, Your Honor, thank
13 you.

14 THE COURT: All right, thank you so much.
15 Yes, sir.

16 MS. JONES: The State calls Corporal
17 Cushman.

18 THE COURT: Okay.

19 **

20 **ZACHARIAH CUSHMAN,**
21 being first duly sworn, testified as follows:

22 THE COURT: Your witness, yes, ma'am.

23 MS. JONES: Thank you, Judge.

24

25

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DIRECT EXAMINATION

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BY MS. JONES:

Q. Good afternoon, Sergeant Cushman?

A. Yes, ma'am.

Q. I demoted you; I called you Corporal when I called your name, my apologies. Sergeant Cushman, you work for the Sheriff's Office?

A. I do.

Q. And what do you at the Sheriff's Office?

A. I'm an investigator for Criminal Investigations on the south side.

Q. On the south side, so that's not this part of Beaufort County, is it?

A. No, ma'am, it's primarily Bluffton, Hilton Head, Okatie.

Q. But did you assist in some ways with the investigation that we're here for today?

A. Yes, I did.

Q. So back in November of 2020 you were working with the Sheriff's Office?

A. Yes, I was.

Q. And did you have an opportunity to attend the autopsy of Steven Glover?

A. Yes, I did.

1 Q. And as a result of that autopsy, in
2 attending that autopsy, did you collect various
3 items from that autopsy?

4 A. I did.

5 Q. Such as various bullet projectiles and
6 jackets and fragments and whatnot?

7 A. Yes, ma'am.

8 Q. I'm gonna show you what's been marked
9 as State's 195.

10 Do you recognize those items?

11 A. Yes, ma'am.

12 Q. And what are those?

13 A. These are the bullet fragments that
14 were collected at the autopsy of Corey
15 Singleton.

16 Q. And aside from collecting those from
17 pathology when he received his autopsy, did you
18 do anything else with those?

19 A. I returned back to Beaufort County with
20 the items and submitted them into evidence.

21 Q. You're talking about Beaufort County,
22 but where did the autopsy take place?

23 A. It took place in Charleston, South
24 Carolina.

25 Q. At the Medical University?

1 A. Yes, ma'am.

2 Q. Did you alter or manipulate those items
3 in any way?

4 A. No, ma'am.

5 (Court Reporter marks State's Exhibit
6 Number 195, as attached hereto.)

7 MS. JONES: your Honor, at this time the
8 State moves 195 into evidence.

9 THE COURT: All right, yes, ma'am, any
10 objection?

11 MS. TOLLEY: No, Your Honor, thank you.

12 THE COURT: All right, admitted without
13 objection.

14 (State's Exhibit 195 admitted into
15 evidence.)

16 MS. JONES: Thank you, Judge.

17 BY MS. JONES:

18 Q. Sergeant Cushman, I have no further
19 questions for you. Thank you.

20 THE COURT: Questions, Ms. Tolley?

21 MS. TOLLEY: Nothing, Your Honor, thank
22 you.

23 THE COURT: All right, thank you. Sir,
24 thank you so much for being here today, you can
25 be excused.

1 MS. JONES: The State calls Chad Smith.

2 * * *

3 CHAD SMITH

4 being first duly sworn, testified as
5 follows:

6 THE COURT: Yes, ma'am.

7 MS. JONES: Thank you, Judge.

8 **

9 DIRECT EXAMINATION

10 BY MS. JONES:

11 Q. Is it Agent Smith?

12 A. Agent's fine.

13 Q. Where do you work?

14 A. I'm employed with the South Carolina
15 Law Enforcement Division, which is commonly
16 known as SLED.

17 Q. And what do you do with SLED?

18 A. I work in the Firearms Department at
19 SLED's Forensic Services Laboratory in Columbia.
20 I'm a forensic scientist and firearm examiner.

21 Q. Did you have to receive some
22 specialized training and education to become a
23 firearms examiner?

24 A. Yes, ma'am.

25 Q. And could you tell me a little bit

1 about that?

2 A. Well, I attended Clemson University,
3 where I earned a Bachelor of Science degree in
4 biological sciences. Then after graduating I
5 worked for Clemson for several years before
6 coming onboard with SLED. When I started my
7 training in the Firearms Department at SLED,
8 lasting three to five years, and is supervised
9 by a Court qualified examiner in the Firearms
10 Department, and it consisted of reading and
11 studying practical examinations and tests during
12 that time. I also attended various classes and
13 seminars, toured several firearms-manufacturing
14 facilities.

15 Later in my training I helped other
16 examiners prepare their case work, and at the
17 end of the training program I received a
18 comprehensive, multi-part examination, which I
19 successfully completed, and then I began
20 receiving my own case work.

21 Q. Have you ever testified in Court
22 before?

23 A. Yes, ma'am.

24 Q. And have you ever been qualified as an
25 expert?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. JONES: Your Honor, at this time the
4 State moves Agent Chad Smith in as an expert in
5 firearms and tool markings.

6 THE COURT: Any objection?

7 MS. TOLLEY: Nothing, Your Honor.

8 THE COURT: All right, firearm and what?

9 MS. JONES: Tool markings.

10 THE COURT: All right, ladies and
11 gentlemen, normally, a person cannot give
12 opinion testimony. Normally, when a person
13 testifies as to what they saw, heard, smelled,
14 whatever the case may be, however, there is an
15 exception when someone is qualified because of
16 education or experience.

17 In that case they are permitted to give
18 their opinion in certain areas if the Court
19 qualifies them that way. Ladies and gentlemen,
20 I will qualify that this witness is an expert in
21 firearms and tool markings, and as such, he can
22 give expert opinion in this area. Now, I want
23 you to know that the fact that - that does not
24 mean that you must accept the opinions, but it
25 is evidence for you to use any way you see fit.

1 Thank you, go ahead.

2 MS. JONES: Thank you, Judge.

3 BY MS. JONES:

4 Q. Did you have an opportunity to analyze
5 various items for the case we're here for today?

6 A. Yes, ma'am.

7 Q. And there was actually a number of
8 items.

9 A. Correct.

10 Q. Okay. I'm gonna show you, and all of
11 this has already been admitted, State's 70
12 through 92, and ask if you recognize those
13 items.

14 A. Yes, ma'am, these are some of the items
15 I received for examination.

16 Q. Okay, and are those all .9mm shell
17 casings - cases?

18 A. Yes, ma'am, here's the .99mm luger
19 caliber cartridge cases.

20 Q. And were you asked to analyze those
21 against some firearms that were also provided?

22 A. Yes, ma'am, I was asked to examine
23 those cartridge cases, compare them with each
24 other, and the firearms that were recovered.

25 Q. I'll take that bag from you.

1 In order to test it against a firearm
2 though, you do something called a test fire,
3 right?

4 A. Yes, ma'am.

5 Q. Okay, tell me about that.

6 A. So if we get an item of evidence, such
7 as a bullet or cartridge case, those are two
8 separate things. A bullet is a projectile, so
9 that travels out of the barrel, where the
10 cartridge case is basically left in the
11 container, but the cartridge is still fired, and
12 it's extracted with a semi-automatic pistol, but
13 - so we're -- we can compare cartridge cases
14 with each other, cartridge cases with test fired
15 cartridge cases with the real firearm to compare
16 it to.

17 And what we do is, we have what's called a
18 comparison microscope, and if you think about
19 it, it's two microscopes connected by an optical
20 bridge system, you look into it, and we look for
21 microscopic markings that are created by the
22 firearm during firing.

23 Basically, there are scratches on the
24 cartridge cases, whatever you have, and that's
25 created by the firearm. These are individual

1 markings that we're looking for, but we have to
2 compare, again, if we've got a gun, we can test
3 fire that firearm and shoot it through a water
4 tank is how we do it.

5 The water slows down the projectile, the
6 bullet to a safe speed, so it's easily
7 recovered, and the cartridge case is just
8 extracted and ejected out of the firearm during
9 the operation into a separate bag area, so we
10 can collect it and compare those specimens with
11 each other, and then try to determine if the
12 submitted evidence was fired by a particular
13 firearm.

14 Q. To try to see if any of these guns
15 fired any of these shell casings?

16 A. Correct.

17 Q. Okay. And you had some test fires in
18 this case?

19 A. Yes, ma'am.

20 MS. JONES: Permission to approach?

21 THE COURT: Yes, ma'am.

22 BY MS. JONES:

23 Q. I'm gonna hand you State's 196, 197 and
24 198. Do you recognize those items?

25 A. Yes, ma'am, these are the test

1 specimens inside these envelopes. So these
2 would be the test bullets fired by these
3 particular firearms that were submitted when I
4 test fired them.

5 Q. And those are the test fires you did,
6 and then compared these shell casings to?

7 A. Yes, ma'am.

8 (Court Reporter marks State's Exhibit
9 Number 196, as attached hereto.)

10 (Court Reporter marks State's Exhibit
11 Number 197, as attached hereto.)

12 (Court Reporter marks State's Exhibit
13 Number 198, as attached hereto.)

14 MS. JONES: Your Honor, at this time, the
15 State moves 196, 197 and 198 into evidence.

16 THE COURT: Any objection?

17 MS. TOLLEY: No, sir.

18 THE COURT: All right, admitted without
19 objection, yes, ma'am.

20 MS. JONES: Thank you.

21 THE COURT: Thank you.

22 (State's Exhibits 196 - 198 admitted into
23 evidence.)

24 BY MS. JONES:

25 Q. And regarding State's 196, what gun was

1 that a test fire from?

2 A. This Exhibit 196 would be test
3 specimens that is from the SLED Lab, item number
4 21, which is a Ruger .9mm pistol, a .9mm caliber
5 pistol.

6 Q. Previously identified as State's 196?

7 A. Yes, ma'am, that's the container.

8 Q. Okay. How about State's 197?

9 A. This would be shell casing from a .9mm
10 Ruger caliber pistol. It's my item number 23.

11 Q. Okay. Consistent with State's 161?

12 A. Yes, ma'am.

13 Q. All right. And, finally, 198, what gun
14 was that taken from?

15 A. This would be my lab number item 23.
16 It is a - just for simplicity's sake, we just
17 call it the Draco, a pistol.

18 Q. Okay. Consistent with 159 from the
19 State's -- we've got lots of numbers over here,
20 State's 159. This would be what you call the
21 Draco pistol?

22 A. Yes, ma'am.

23 Q. Okay. You called it a pistol, is it
24 not a rifle?

25 A. It's not a rifle. It is large, but it

1 doesn't have a stock on it, a butt stock, so
2 it's actually a pistol.

3 Q. Okay. So you were asked to compare
4 some items from autopsy to these firearms,
5 correct?

6 A. Yes -- yes, ma'am.

7 Q. Okay.

8 A. With some projectiles or fragments that
9 were recovered.

10 Q. I'm gonna hand you State's 195
11 previously admitted. Were you able to come to
12 any conclusions with those items?

13 A. Most of these are just pieces and parts
14 of bullets. You've got what's called a jacketed
15 bullet, which is a typical type of bullet we
16 see. It's got a core, which is made up of soft
17 material, usually lead, and an outer material is
18 a harder metal sort of alloy, like brass or
19 copper alloy, that's called a jacket.

20 So sometimes when I get an object, a bullet
21 fragment, you know, it's the core, it's the
22 jacket or whatever. There was one I submitted,
23 it was an intact bullet, everything else was
24 just pieces parts, but I was able to make some
25 determination of those items.

1 Q. And how about - let's look at your
2 items 51 and 53, and 61 and 63.

3 A. Okay.

4 Q. Well, how about this, what conclusions
5 were you able to make?

6 A. Well, the pieces part, I really can't
7 say a whole lot. The cores against the interior
8 to get an idea of what caliber it could be.
9 It's not a definitive caliber, that they sort of
10 fall under the umbrella of what we call .38
11 caliber, a nominal .38.

12 So that could include like a .9mm luger or
13 a .38 Special -- all the things like that. The
14 only -- again, the only intact bullet, which
15 would be my item 52, I was able to determine it
16 was most consistent with a .9mm luger, and
17 that's the only one that I could say is
18 consistent with a particular caliber.

19 Q. Which is the same caliber of shell
20 casings?

21 A. Correct, it'd be consistent with having
22 come from one of those cartridge cases.

23 Q. Okay. Now, getting into State's 70
24 through 92, you were able to make some
25 conclusions from all those shell casings,

1 weren't you?

2 A. Yes, ma'am.

3 Q. Okay, let's start with Corey
4 Singleton's Ruger .9mm. What conclusions were
5 you able to draw from this?

6 A. That is the Ruger?

7 Q. Yes.

8 A. So I was able to determine - again, I
9 was looking at all of these cartridge cases,
10 compared them with each other to try to separate
11 them out into groups, based on the markings I'm
12 looking at.

13 And then when I test fired the firearms, I
14 compare those test fires with those cartridge
15 cases against those particular guns fired with
16 any of those cartridge cases.

17 So in the case of the Ruger pistol, I was
18 able to determine that seven of the cartridge
19 cases that were submitted that were fired by
20 that particular gun, so I was able to identify
21 seven cartridge cases to that firearm. There
22 was one cartridge case that was being conclusive
23 with that firearm.

24 It was also inconclusive with that firearm.
25 It was also inconclusive with another firearm,

1 but I couldn't, again, determine if the seven of
2 them were fired by the Ruger pistol.

3 Q. And do you have -- were you able to
4 have any indication on there of what these items
5 were? Were they marked by a placard, or are you
6 able to determine which casings matched the
7 Ruger?

8 A. I was able to determine that, based on
9 the packaging -- again, when we get items
10 submitted to the laboratory, a lot of times the
11 items will have descriptions attached to them,
12 like a marker number, or a specific location
13 where a piece of item was recovered.

14 Again, I did not recover the item, I was
15 not at the crime scene, or anything, so I can
16 only go by with what was either on the
17 submission documents, or on packaging itself, as
18 to where an item was recovered. In this
19 instance, a lot of the items did not have
20 descriptions attached to their, or, excuse me,
21 location attached to the descriptions and the
22 paperwork, but they did have descriptions on
23 their packaging, so I included that in my
24 report, so investigators, or whoever would read
25 the report could consider, or piece together

1 where the items were from. So, again, these
2 cartridge cases did have a placard identifying a
3 number or letter attached to it, which I
4 included in the report.

5 Q. Okay, and what placards would those be?

6 A. Which item is it? I'm sorry.

7 Q. I'm sorry, the ones matching your 21.1.

8 A. So they would be from placard 9BXW,
9 small placard 4, small placard 3, then small
10 placard 2, so, again, that's what it would say
11 on the packaging.

12 Q. Okay. You said small placard 2, 3 and
13 4?

14 A. Yes, ma'am.

15 Q. Let's move onto the Taurus.

16 A. The Taurus pistol, again, I test fired
17 these guns, prepared the cartridge cases that
18 were recovered, and I test fired them.

19 Compare those with the evidence cartridge
20 cases. Was able to determine that five
21 cartridge cases that were submitted match back
22 to that particular gun. There was one cartridge
23 case that was inconclusive. It was the same
24 cartridge case that was inconclusive with the
25 Ruger pistol, but five of those cartridge cases

1 did come from the Taurus pistol.

2 Q. And what were those placards?

3 A. That would be placard 1LO, there's one
4 that says, listed on top of rear windshield of
5 Toyota minivan. And the last one is listed as
6 placard 8.

7 Q. So you were able to determine that the
8 shell casings, labeled in your report under
9 those placards, were ejected from this Taurus
10 handgun?

11 A. Right, they were fired by that
12 particular firearm.

13 Q. Okay. Now, if we can move onto the
14 Draco.

15 A. The Draco pistol was able to determine
16 there were 13 cartridge cases that were fired by
17 that firearm.

18 Q. Okay. And I hate to do it, but I'm
19 gonna ask you again --

20 A. That's fine.

21 Q. -- the placard, the letters.

22 A. The placard M.

23 Q. Okay.

24 A. Placard F, H, E were two cartridge
25 cases that were recovered by placard E. Placard

1 I, again, two cartridge cases that were found at
2 placard I. C, D, G and A.

3 Q. So you were able to determine that
4 those 13 shell casings, previously identified as
5 being collected from [REDACTED] Stonewood, were fired by
6 this Draco?

7 A. Yes, ma'am, it was fired by that
8 particular gun.

9 Q. Okay. And the really only conclusion
10 you could make from the autopsy evidence was,
11 the bullet was consistent with having come from
12 a .9mm luger gun?

13 A. Yes, ma'am. Again, I tried to compare
14 on this autopsy as best I could to the firearms,
15 but the pieces that I could so something with
16 were inconclusive with all firearms.

17 So I can't narrow down a specific gun that
18 could have fired the projectile, but the one
19 bullet I could say it was a .9mm.

20 Q. Okay, but these cases are a match?

21 A. Yes, ma'am.

22 Q. Okay. I have no further questions for
23 you, Agent Smith, if you could answer any that
24 defense may have.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

Q. Good afternoon, Agent Smith, how are you?

Q. My name is Seth Paulk, and I'm working with Juan Tolley, representing Mr. Polite. Are there certain firearms that don't eject cases?

A. Well, there are. Revolvers, for instance, are not designed to extract and eject cartridge cases on their own. You have to manually get those cartridge cases out of a revolver. There are single action, or not single action, but single shot type firearms that you have to load a cartridge in at a time, and it'll remove it; but semi-automatic is designed to extract and eject a cartridge case, if it's in working order, every time it's fired leaves a shell casing.

Q. So if there was a firearm that was fired in this incident, and there's not a casing for it, would that be consistent with it being a revolver, or some other firearm that doesn't

1 eject the shell?

2 A. If a cartridge case is not found, is
3 that what you're --

4 Q. If there's an allegation that there's
5 another weapon, but there's no cartridge for
6 that other weapon, could it be that it was a
7 revolver, or some other type of firearm that did
8 not fire -- that did not eject the cartridge?

9 A. I guess that's possible, or people pick
10 up cartridge cases. You know, cartridge cases
11 are kicked into various locations.

12 They're round and lightweight, so they can
13 bounce all over the place, get hidden behind
14 things so I guess it's possible that just
15 because you don't have evidence of a cartridge
16 case, that it could be -- I know it could fire
17 something that the cartridge case is not
18 recovered.

19 Q. Thank you, sir. And you touched on
20 something just a second ago that I also wanted
21 to hit on. Cartridge cases are not predictable
22 when they're fired from semi-automatic weapons.
23 Do they all land in neat little piles, if
24 they're fired one at a time from the same
25 position, or like you said just a second ago,

1 they kind of go every which way?

2 A. No, sir, it's not a pattern. And
3 actually we don't even do sort of a pattern
4 analysis, due to the many variables. Again, as
5 soon as a cartridge case is ejected out of a
6 gun, you know, sometimes it travels farther than
7 others, or the direction it can travel changes,
8 depending on how you hold that firearm, the
9 direction of an ejected cartridge case can
10 change.

11 It can hit an object, it can bounce off,
12 and, again, depending on the surface that it
13 lands on, it can roll, or, you know, go into
14 places, so it's not a hard, fast sort of
15 determination of where the cartridge case could
16 end up.

17 Q. Okay. And excuse the confusion I may
18 have; you have tested the bullet fragments of
19 the bullets that were from the autopsy; is that
20 correct?

21 A. Correct.

22 Q. Okay. And you stated that those
23 results were inconclusive, you could not
24 determine which firearm the lethal projectiles
25 came from?

1 A. Yes. So, again, most of the items I
2 received from autopsy were just parts of
3 bullets, nothing that was substantial, except
4 for the one that was the attack bullet.

5 So a lot of times we really can't do a
6 whole lot, if we just get pieces. And the
7 pieces that had markings on it that I could try
8 to do something with, again, were inconclusive
9 with the Ruger .9mm pistols that were submitted.

10 Q. Okay. Now, I'm not sure if this piece
11 of evidence was submitted to you or not. There
12 was a live .357 round that was found on-the-
13 scene, was that submitted for any sort of
14 examination to you?

15 A. There was a 350 -- it was listed as
16 being a .357 Sig live round. I did not do any
17 sort of examination on that live cartridge.
18 Typically, we don't do exams -- there's not a
19 whole lot you can get, you know.

20 If we get a cartridge, an unfired cartridge
21 to look at, basically, all we can say is it's
22 the correct caliber for use of that particular
23 cartridge, and there's really not a whole lot we
24 can do just with that fire cartridge.

25 Q. Certainly. What are some common

1 calibers of revolvers?

2 A. The common calibers? There's .38
3 Special, .357 Magnum, you get to the .44s,
4 Magnum, 22, .22 calibers. There are some .9mm
5 luger caliber revolvers. So those are the
6 typical cartridge casings that we see.

7 Q. You mentioned the .357 is a pretty
8 typical caliber for --

9 A. Yes.

10 Q. -- a revolver; is there any reason for
11 that?

12 A. The .357 was designed -- the .357
13 Magnum. It started out as a .38 Special, then
14 they designed another cartridge that was more
15 powerful, a .357 Magnum.

16 So the .357 Magnum is designed for a
17 revolver. There are some semi-automatic pistols
18 that can fire .357 Magnum cartridges, not a
19 whole lot, but typically it's a revolver
20 cartridge.

21 Q. Okay.

22 MS. PAULK: A moment of the Court's
23 indulgence, sir?

24 THE COURT: Yes, sir.

25 MR. PAULK: No further questions, Your

1 Honor.

2 THE COURT: All right.

3 MR. PAULK: thank you, Mr. Smith.

4 THE COURT: Any redirect?

5 MS. JONES: One question.

6 THE COURT: Yes, ma'am.

7 **

8 **REDIRECT EXAMINATION**

9 BY MS. JONES:

10 Q. Agent Smith, do Glocks make revolvers?

11 A. No, ma'am.

12 MS. JONES: No further questions.

13 THE COURT: All right, anything else, Mr.

14 Paulk?

15 MR. PAULK: No, Your Honor.

16 THE COURT: All right, thank you. Thank
17 you, sir. Any objection to him being excused?

18 MS. JONES: No, sir.

19 MS. TOLLEY: None, Your Honor.

20 THE COURT: All right, great, have a great
21 day, sir.

22 WITNESS: Thank you, Your Honor.

23 MS. JONES: The State calls Tim French.

24 * * *

25

1 **TIMOTHY FRENCH,**

2 being first duly sworn, testified as
3 follows:

4 **

5 **DIRECT EXAMINATION**

6 BY MS. JONES:

7 Q. Good afternoon, Analyst French. Are
8 you an officer or a civilian employee?

9 A. I'm a Deputy Sheriff.

10 Q. Perfect. Why did I call you that?
11 What do you do?

12 A. I'm a Deputy Sheriff for Beaufort
13 County Sheriff's Office. My job title is DNA
14 Analyst in the Forensics Services Laboratory.

15 Q. And what does that mean?

16 A. Analyze the DNA of evidence that comes
17 through the crime lab.

18 Q. And did you have to receive specialized
19 education and training to achieve this position?

20 A. I did.

21 Q. And can you tell me a little bit about
22 that?

23 A. My -- I've got a Bachelor of Science
24 degree, a major in biology, minors in chemistry
25 and math. And since working in forensics, I've

1 got specific training for firearms related --
2 biological training at the FBI Academy in
3 Quantico, Virginia, and that portion was
4 conventional forensics biology. A course in
5 blood stain analysis system at the Serological
6 Institute in San Francisco, and advanced DNA
7 training at Marshall University.

8 Q. And have you ever testified in Court
9 before?

10 A. I have.

11 Q. And have you been qualified as an
12 expert?

13 A. Yes.

14 MS. JONES: Your Honor, at this time the
15 State moves in Tim French as an expert in DNA.

16 MS. TOLLEY: Without objection, Your Honor.

17 THE COURT: All right, ladies and
18 gentlemen, I'm gonna qualify this witness as an
19 expert in DNA, so he can give opinion testimony
20 in this matter. Thank you.

21 MS. JONES: Thank you, Judge.

22 BY MS. JONES:

23 Q. Were you asked to analyze various items
24 for the case we're here for today?

25 A. Yes.

1 Q. And I'm gonna hand you some of these
2 items that have previously been admitted. You
3 were given some buccal swabs, weren't you/

4 A. Yes, I was.

5 Q. And what is a buccal swab?

6 A. A buccal swab is a swab of the buccal
7 cells that are on the inside of your cheek, and
8 we use that for obtaining a DNA profile from an
9 individual, and we use that to compare to the
10 evidence.

11 Q. All right, and you were given four
12 buccal swabs in State's 169, State's 103,
13 State's 180 and State's 179.

14 Do you recognize those items?

15 A. Yes, I do.

16 Q. And who were those buccal swabs from?

17 A. One is from Joshua Washington, one from
18 David Glover, one from Channon Preston, and one
19 from Xavier Polite.

20 Q. So those contained samples of their
21 DNA?

22 A. Yes.

23 Q. Okay. And you were asked to analyze
24 those against different swabs from different
25 items?

1 A. That's correct.

2 Q. Okay. Tell me about the process of
3 doing that.

4 A. The comparison or DNA analysis?

5 Q. Let's start in general.

6 A. Okay. What we do is, if we're given a
7 swab of an item, or if we're given an item, we
8 can actually swab it in the laboratory, and what
9 you're trying to do is get DNA from that, in an
10 attempt to get the DNA from the person who
11 actually touched the item.

12 You can also do that with biological
13 fluids, if there's blood, or semen, or saliva,
14 or something like that there.

15 In a lot of cases, it's just what they call
16 touch DNA. So we either take that item swabbed,
17 or we use a swab that was collected in the
18 field, and we digest the cells that are on that
19 swab that releases the DNA.

20 We then quantitate the DNA, see how much is
21 there, if there's enough to amplify, we amplify
22 it, and obtain a profile DNA.

23 Q. Now, I want to talk to you about touch
24 DNA. Touch DNA is, for example, if I touch this
25 bar right here, could I potentially leave my DNA

1 behind?

2 A. Yes.

3 Q. Does everybody leave DNA behind them?

4 A. To some degree. Some people leave more
5 than others, but it's about impossible to touch
6 something and not leave any DNA.

7 Q. Okay, would there be any reasons why
8 there's no DNA there?

9 A. Correct.

10 Q. Okay. Now, you were asked to analyze
11 some swabs from a van; is that correct?

12 A. Yes.

13 Q. Okay. I'm gonna hand you what has been
14 admitted as State's 149, and do you recognize
15 that item?

16 A. Yes, I do.

17 Q. And are those the swabs from the
18 minivan that you analyzed?

19 A. Yes.

20 Q. Okay. And regarding the swabs from the
21 minivan, those were from a few different areas
22 of the van, correct?

23 A. Yes.

24 Q. Okay. Let's go to swabs from the van.

25 The steering wheel, who is indicated as a

1 match to that?

2 A. The swab of the steering wheel is
3 actually the steering wheel and the gear shift.

4 Q. Okay.

5 A. And on that I get a match to Channon
6 Preston, which was 625 septillion times more
7 likely than a coincidental match to an unrelated
8 individual. And then based on the fact that I
9 had a match for that person, I reanalyzed it,
10 and after assuming Channon Preston is a known
11 contributor, comparisons were very conclusive
12 that we could not rule him out as a suspect.

13 Q. Okay. You gave us a number, what does
14 that number indicate?

15 A. That's just saying it's a match.

16 Q. How about your item 23, inside and
17 outside driver door handle?

18 A. On that I had a match to Channon
19 Preston, which was 32 quadrillion times more
20 likely than a coincidental match to an unrelated
21 individual.

22 Q. How about your item 24, the driver's
23 side door side headrest and back rest?

24 A. On that swab I had a match to Channon
25 Preston, which was 580 billion times more likely

1 than a coincidental match to an unrelated
2 individual and was excluded as a contributor to
3 that mixture.

4 Q. Okay. Let's move onto the passenger
5 side door handle.

6 A. That was number 25, passenger side door
7 handle inside and outside. A match to Xavier
8 Polite was 2 quadrillion times more likely than
9 a coincidental match to an unrelated individual,
10 and a match to Channon Preston is 265 million
11 times more likely than a coincidental match to
12 an unrelated individual.

13 Q. So you were able to match Xavier
14 Polite's DNA to the passenger side door handle?

15 A. Yes.

16 Q. Inside and out?

17 A. Yeah.

18 Q. How about your item 26, the passenger
19 seat headrest?

20 A. On that swab a match to Xavier Polite
21 is 201 quintillion times more likely than a
22 coincidental match to an unrelated individual.
23 And a match to Channon Preston is 847 million
24 times more likely than a coincidental match to
25 an unrelated individual.

1 Q. So, again, you matched Xavier Polite's
2 DNA to that passenger side headrest?

3 A. Yes.

4 Q. Okay. Now, I want to move onto State's
5 -- you were also asked to analyze multiple swabs
6 of shell casings, they were labeled by their
7 property numbers, and were contained in State's
8 173, 174, 175, 176, 177 and 178. Okay, I'm
9 sorry, I can take those back from you. And I
10 think -- is it easier for you, if I refer to
11 your item numbers?

12 A. Yes.

13 Q. Okay, I've got lots of numbers rolling
14 around here. If we can go to some of the swabs
15 of the casings, it looks like your item 9, 10
16 and 11. What were your findings on those?

17 A. On the 9, 10 and 11 there was no DNA
18 recovered.

19 Q. Okay. Does that seem to have been
20 pretty common with shell casings in your
21 experience?

22 A. Yes.

23 Q. Okay.

24 A. It's not uncommon at all.

25 Q. Now I'm going to go to State's 172, and

1 this is identified as State's 172, DNA swabs
2 from property number 172273, previously
3 identified as the Taurus, the Tiffany blue
4 Taurus, okay?

5 What were your findings your item 2, or, my
6 apologies, your item 4, the grip trigger area?

7 A. On that swab I had a match to Xaiver
8 Polite, which was two trillion times more likely
9 than a coincidental match to an unrelated
10 individual, and a match to Channon Preston,
11 which was 300 septillion times more likely than
12 a coincidental match to an unrelated individual.

13 Q. And how about your item 5, the slide?

14 A. On the slide a match to Channon Preston
15 was 108 quadrillion times more likely than a
16 coincidental match to an unrelated individual,
17 and Xavier Polite was excluded as a contributor
18 to that mixture.

19 Q. Okay, and let's go to State's 170 and
20 171, property numbers were 170 is 172272, and
21 171 is 172279.

22 Do you recognize those items?

23 A. Yes, I do.

24 Q. And what are those items?

25 A. The first one is swabs from the grip

1 and trigger and the top of the slide foregrip.

2 And the second is just a swab of property.

3 Q. Okay, what was that property number?

4 A. 172279.

5 Q. 279, previously testified.

6 Let's start with that last one, what were
7 your findings regarding the DNA swabs for the
8 50-round magazine.

9 A. A match to Xavier Polite is 563
10 quadrillion times more likely than a
11 coincidental match to an unrelated individual.
12 And a match to Channon Preston is 59,500 times
13 more likely than a coincidental match to an
14 unrelated individual.

15 And because that result is less than our
16 threshold, we have to also give a false/positive
17 read, if it falls into that range. And a
18 false/positive would occur, if a someone who did
19 not put their DNA there would have the same
20 match for 59,500 or more. And the chance that
21 that false/positive for this comparison is more
22 than 335,000.

23 Q. And that's the only, out of all these
24 swabs, that's the only one you've got to do the
25 false/positive for, right?

1 A. Yes.

2 Q. Okay. I now want to get into the other
3 -- what do you have back there, the swabs of
4 property number 172272.

5 A. Correct.

6 Q. And what were your findings regarding
7 the swabs of what was previously identified as a
8 Draco gun?

9 A. The swab of the grip and trigger, a
10 match to Xavier Polite is four quintillion times
11 more likely than a coincidental match to an
12 unrelated individual. Based on that, I then
13 reanalyzed it, assuming Xavier Polite was a
14 known contributor.

15 And after assuming he was the contributor,
16 a match to Channon Preston is 13 billion times
17 more likely than a coincidental match to an
18 unrelated individual.

19 Q. Okay. Are there any other?

20 A. There's one more, the slide and
21 foregrip.

22 Q. Okay.

23 A. And on that a match to Xavier Polite
24 was three billion times more likely than a
25 coincidental match to an unrelated individual,

1 and a match to Channon Preston is 33 billion
2 times more likely than a coincidental match to
3 an unrelated individual.

4 Q. Okay. So you were able to successfully
5 match Xavier Polite's DNA from these swabs?

6 A. Yes.

7 Q. Okay. You also have buccal swabs up
8 there from David Glover and Josh Washington,
9 didn't you?

10 A. Yes.

11 Q. Regarding the swabs of those guns, what
12 were your findings regarding them and the swabs
13 of those guns?

14 A. They were both excluded from buccal
15 swabs.

16 Q. Thank you.

17 MS. JONES: I have no further questions,
18 thank you.

19 THE COURT: Counsel?

20 MR. PAULK: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 MR. PAULK: May it please the Court?

23 THE COURT: Sure.

24 **

25

CROSS-EXAMINATION

BY MR. PAULK:

Q. Good afternoon, Agent French, how are you?

A. Good, how are you?

Q. I'm well. You stated a moment ago that, generally, on shell casings you don't expect to find much DNA; is that correct?

A. I don't really expect ever to find any, but we don't get results from shell casings.

Q. Certainly. And is that because, you know, when a bullet fires, it's a mini-explosion, DNA is exposed to heat, and, presumably, in the heat, correct?

A. Well, that's part of it. I think the size of it also has a lot to do with it.

Q. Okay.

A. It's a very, very small surface.

Q. Sure. How about live rounds? Would those be different?

A. We've done those as well, and you really won't get much better results from those.

Q. Sure.

A. It's just a really small surface.

Q. I understand, but as you stated

1 earlier, some people leave behind more DNA than
2 others, so would it be possible if you did have
3 a live round, and it was tested, to get DNA from
4 that live round?

5 A. It's possible, sure.

6 Q. Did you examine any live rounds during
7 this investigation?

8 A. Yes, see a lot of the things that I
9 examined down here.

10 Q. I understand. Could I direct you to
11 property number 172191?

12 A. I do see a swab for that.

13 Q. And, sir, I'm showing that it was
14 actually the whole round, not a swab of that.

15 A. Okay, well, I did not receive a live
16 round.

17 MR. PAULK: Your Honor, permission to
18 approach?

19 THE COURT: Uh-huh, yes, sir.

20 BY MR. PAULK:

21 Q. And, Mr. French, or Deputy French,
22 excuse me, would it refresh your recollection,
23 if I were to give you a forensic examination
24 request form?

25 A. Sure.

1 Q. Would you mind taking a look at that
2 for me? So what is a forensic examination
3 request form?

4 A. That is where an investigator and
5 officer list evidence to indicate to examine.

6 Q. Okay. So in this case, this forensic
7 examination form requesting one, does it show
8 that a live round was requested to be tested?

9 A. Yes.

10 Q. And was it tested?

11 A. No.

12 Q. Okay, it was not? Do you know why it
13 was --

14 A. We triage a lot of the evidence that
15 comes in, to try to test anything that will give
16 us the most probative information without
17 wasting a lot of time.

18 Q. Certainly, I understand that. Is that
19 another way of saying that you'all, at this
20 point in time, didn't think that the .357 live
21 round was important enough to test?

22 A. That's one way of putting it, yeah.

23 Q. But if it had been tested, it's
24 possible that DNA could have come back from it?

25 A. It's possible.

1 MR. PAULK: No further questions, Your
2 Honor.

3 THE COURT: All right, anything else,
4 Solicitor?

5 MS. JONES: No, sir.

6 THE COURT: All right, thank you very much.
7 And he can be excused?

8 MS. JONES: Yes, sir.

9 THE COURT: All right, thank you very much,
10 sir. The State calls Dr. Erin Presnell.

11 * * *

12 SUSAN PRESNELL, M.D.

13 being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. JONES:

16 Q. Good afternoon, Dr. Presnell.

17 A. Hey.

18 Q. How are you?

19 A. I'm good.

20 Q. Where do you work?

21 A. I'm a Forensic Pathologist down at UMC
22 Medical University of South Carolina, in
23 Charleston.

24 Q. And what does a forensic pathologist
25 do?

1 A. What a forensic pathologist does is
2 it's a specialty of pathology. Pathology is a
3 study of disease, so forensic pathology is an
4 extension of that, where we're not just looking
5 at a piece of tissue of a biopsy, we're looking
6 at an entire body of someone that's deceased.

7 We are evaluating for disease, but we also
8 evaluate for trauma. And, ultimately, along
9 that process, of course, we conduct autopsies,
10 and, ultimately, we're determining the manner of
11 death.

12 Q. And did you have to receive specialized
13 education and training to achieve the role of a
14 forensic pathologist?

15 A. Yes, so to become a forensic
16 pathologist, I went to college. After college I
17 went to medical school. After medical school I
18 took pathology in a field of specialty, and that
19 training was called pathology residency, that
20 was five years. And then after that, there's
21 subspecialties that are in there.

22 And along the course of this training,
23 which is 14 years from high school, I, of
24 course, have got to be licensed to practice
25 medicine exam in South Carolina, and I'm Board

1 Certified in general pathology and forensic
2 pathology.

3 Q. Have you ever testified in Court
4 before?

5 A. Yes.

6 Q. And have you ever been qualified as an
7 expert?

8 A. An expert in forensic pathology.

9 MS. JONES: Your Honor, at this time the
10 State moves Dr. Presnell in as an expert in
11 forensic pathology.

12 THE COURT: Any objection, Ms. Tolley.

13 MS. TOLLEY: None, Your Honor.

14 THE COURT: All right, ladies and
15 gentlemen, I'm gonna find that the Doctor is, in
16 fact, an expert in the field of forensic
17 pathology, and as a result, can give opinion
18 testimony. Go right ahead, Solicitor.

19 MS. JONES: Thank you, Judge.

20 BY MS. JONES:

21 Q. Dr. Presnell, did you perform the
22 autopsy on Steven Glover?

23 A. I did on November 21st, 2022.

24 Q. And did you observe some injuries to
25 Mr. Glover?

1 A. Yes, he -- Mr. Glover had seven gunshot
2 wounds to his body.

3 Q. Would it assist your testimony to have
4 a diagram to go through these wounds?

5 A. It would

6 Q. Okay.

7 MS. JONES: Judge, may I ask the witness to
8 step off of the stand?

9 THE COURT: Yes, ma'am.

10 Ms. Tolley, if you need to move around to
11 see anything, feel free to go ahead and do
12 whatever you need to do, okay?

13 MS. TOLLEY: Thank you.

14 THE COURT: Yes, ma'am.

15 BY MS. JONES:

16 Q. Dr. Presnell, if you could tell us what
17 injuries you located on Mr. Glover in that
18 autopsy?

19 A. Yes. There were seven gunshot wounds.
20 I'm going to just kind of go through them one-
21 by-one, but first I wanted to make a comment
22 that that is the right side of his body, and
23 this is the right side of his body, and the two
24 sides right here on the left.

25 Because I'm gonna put things on two

1 different sides to it, so it almost looks like
2 it's opposite sides, but everything is on -- all
3 these -- all seven gunshot wounds are on the
4 right side of the body, and they're all going
5 from his right to his left.

6 Now, the other thing is that all these
7 gunshot wounds go into the body, into the torso,
8 and so there's a lot of different criss-crossing
9 pathways. So what I'm gonna do is go through
10 the gunshot wounds, and then go through what
11 they hit.

12 Q. And you can't time order them, can you?

13 A. No, the autopsy's not gonna tell me
14 which one came first.

15 Q. Okay.

16 A. All right, so we have one gunshot wound
17 to the head, and it's right above the right
18 eyebrow. We have a gunshot wound to the right
19 chest, so a little bit above the nipple area.
20 We have a gunshot wound that is to the right
21 arm, but actually goes through the arm and then
22 back into the chest, so it went through the
23 right arm out, and then back in. So this is
24 one, two, three on the front side of the body.

25 These are going in, kind of from his front

1 to the back. Then we also have the gunshot
2 wound on his right side here. One up higher,
3 one a little bit more over here, and one right
4 here.

5 So we have the four gunshot wounds, again,
6 it's on the right side, so one, two, three,
7 four, five, six, seven, so like I said coming in
8 from the right. In addition to that, there are
9 a couple -- some shrapnel injuries.

10 There's a couple on his right arm, and
11 around the torso, but the gunshot wounds, like I
12 said, they're coming in from his right going to
13 his left.

14 This one from the head actually goes
15 through the bone, the forehead bone right here,
16 through the eye, down through the neck, and also
17 into the torso, so all these are going into his
18 body.

19 So when they go into the body, they hit
20 both the right and left lung multiple times,
21 there's multiple bullets seen on that. Multiple
22 bullets hit the heart. It also hit the liver
23 multiple times, the gallbladder, which is right
24 next to the liver, the pancreas, which is right
25 behind the stomach, and the right hip.

1 One of these gunshot wounds actually exits
2 like right there, and the rest of them -- the
3 rest of the bullets are retained inside, which
4 is what we recovered at autopsy.

5 Q. All right. And is this a fair and
6 accurate representation of the location of the
7 wounds of Mr. Glover?

8 A. Yes. It's not as pretty, to make this
9 a little more simpler, but, yes, that's the
10 general layout on his body.

11 Q. Okay.

12 (Court Reporter marks State's Exhibit
13 Number 182, as attached hereto.)

14 MS. JONES: Your Honor, at this time the
15 State moves 182 into evidence.

16 THE COURT: Any objection?

17 MS. TOLLEY: None, Your Honor.

18 THE COURT: All right, admitted without
19 objection.

20 (State's Exhibit 182 admitted into
21 evidence.)

22 BY MS. JONES:

23 Q. Before we get into the injuries caused
24 by these wounds, did you also have a chance to
25 do some x-rays of Mr. Glover?

1 A. Yes. So one of the things that we do
2 when we have -- when we're doing autopsies for
3 gunshot wounds is the x-rays, and the main
4 purpose of x-rays of somebody who's been shot,
5 is so we can find the bullets; so, yes, we x-
6 rayed him in multiple planes.

7 Q. I'm gonna show you State's 181, is that
8 a fair and accurate depiction of the x-rays of
9 Mr. Glover?

10 A. Yes, this is -- so what you're gonna
11 see is the x-rays kind of taken individually,
12 and then I tried to piece them together.

13 Q. All right, and that's a fair and
14 accurate depiction of the x-rays?

15 A. Yes.

16 (Court Reporter marks State's Exhibit
17 Number 181, as attached hereto.)

18 MS. JONES: Your Honor, at this time the
19 State moves 181 into evidence.

20 THE COURT: Any objection?

21 MS. TOLLEY: Without objection, Your Honor.

22 THE COURT: All right, 181 admitted without
23 objection. Thank you.

24 (State's Exhibit 181 admitted into
25 evidence.)

1 BY MS. JONES:

2 Q. Okay, if we could now go through the
3 injuries caused by these different gunshot
4 wounds.

5 A. Okay. Well, I kind of mentioned it.
6 One side is the bullets all entered into the
7 torso. They hit the right and left lungs
8 multiple times. They hit the heart multiple
9 times, the liver multiple times, the pancreas,
10 gallbladder, and the kidney.

11 We also had like 400 milliliters of blood
12 on one side of the chest cavity, 500 milliliters
13 of blood in the other chest cavity.

14 Q. You said you collected some items from
15 Mr. Glover.

16 Would these be seen depicted in this x-ray?

17 A. Yes, so this x-ray, there's his chest,
18 there's his backbone, these are his hip bones
19 right here, and, obviously, these are ribs.

20 The two R's and the L are just markers for
21 us, to make sure we're looking at the right side
22 of the x-rays, but these other white objects
23 here are the bullets that we recovered at
24 autopsy.

25 Also, like I said, you can see a little bit

1 of a shrapnel injury. It's a little harder to
2 see some of the jacket fragments, but they're in
3 there as well.

4 Q. I'm gonna show you what's been admitted
5 as State's 195. Are those the projectiles and
6 jackets and the fragments you recovered from Mr.
7 Glover?

8 A. Well, I've seen a number of
9 projectiles, and they're accompanied by the
10 types of envelopes we use at autopsy as well as
11 the autopsy sticker with his name and his
12 autopsy number to be transferred back over to
13 the investigator.

14 Q. Okay. If you can return to the stand,
15 Dr. Presnell?

16 Dr. Presnell, what was Steven Glover's
17 cause of death?

18 A. Well, his cause of death, I couldn't
19 pick out any one gunshot wound, I just had
20 multiple gunshot wounds to, you know, his head,
21 his torso, and his arm.

22 Q. Dr. Presnell, what was his manner of
23 death?

24 A. His manner of death is classified as
25 homicide, which means death at the hands of

1 another.

2 Q. I have no further questions for you at
3 this time. Thank you, Dr. Presnell.

4 THE COURT: All right, cross-examination?

5 MS. TOLLEY: We don't have any questions,
6 Your Honor, thank you.

7 THE COURT: All right. Thank you so much,
8 Doctor, appreciate you making a trip down.

9 WITNESS: Thank you, Your Honor.

10 THE COURT: Have a safe trip back, yes,
11 ma'am.

12 MS. JONES: May we approach, Judge?

13 THE COURT: Yes, ma'am.

14 (Bench conference.)

15 THE COURT: Ladies and gentlemen, now is
16 gonna be a good time for me to go ahead and send
17 you home. There's a matter of law that I've got
18 to take up outside of your presence, and so that
19 may take a few moments, and given the hour, I
20 think this is a good breaking point.

21 What I would ask you to do is, if you could
22 be back here at 10 o'clock tomorrow, 10 o'clock,
23 not 9:30. I think there's a couple other things
24 we're gonna need to work on in the morning, so,
25 hopefully, we can get a quick start, and out the

1 gate, and on time, and continue to move forward.

2 I would ask that you, please, do not talk
3 about this case. Do not conduct any research on
4 this case, and I look forward to seeing you
5 tomorrow morning at 10 o'clock, Mr. Foreman,
6 ladies and gentlemen, thank you very much for
7 your attention today.

8 (Jury exits the courtroom.)

9 BAILIFF: The jury's cleared, Your Honor.

10 THE COURT: All right, thank you. Let's
11 take five minutes, and then we'll come back and
12 deal with the issues concerning the call, okay?

13 MS. JONES: Do I need to authenticate it,
14 Judge, or can I just play it? I wasn't gonna
15 have the jail over here to authenticate it, or
16 do I need to? He's on standby.

17 THE COURT: You know -- all right, I think
18 for the hearing today, we don't have to have
19 him, okay, for the hearing today. Certainly, if
20 we get into Court --

21 MS. JONES: Absolutely.

22 THE COURT: -- he'd have to be here to
23 authenticate the call, but there may not be -- I
24 wouldn't hear arguments on this.

25 (Recess.)

1 THE COURT: His mother, okay. And so what
2 is it -- is there something specifically in the
3 call that the State is trying to zero in on?

4 MS. JONES: There are three parts of the
5 call that I'm asking for the Court to admit.
6 The first portion -- and I say the call is to
7 his mother, two people are on the other end of
8 the call, it's his mother and then a young male,
9 who I'm not sure who that is, but they go back
10 and forth on the phone call with Mr. Polite, one
11 call though. The beginning portion of the call
12 he says, "I'm sorry, I'm sorry, I'm sorry."
13 He's apologizing to his mother.

14 He says, "I know you're angry with me."
15 Midway through the call he says, "I ain't
16 worried, we're trying this as self-defense."
17 Towards the end portion of the call, he says --
18 I can't remember exactly what he says before it,
19 but he says something to the effect of, "Man,
20 it's okay, I did this shit."

21 And those are the three portions that I
22 think are relevant to the case we're here. I
23 think it shows consciousness of guilt, and I
24 think it should be admissible.

25 THE COURT: So let me ask you this, what's

1 you're playing, is that the entire call?

2 MS. JONES: No, sir. I have those
3 portions. I do have the beginning portion of
4 the phone call, where it says, "This call is
5 subject to monitoring," and then it goes into
6 those three separate parts of the call.

7 THE COURT: And so how long would those
8 three parts be that you believe are applicable
9 in this matter? Approximately, I don't --

10 MS. JONES: Six minutes, but that also
11 includes the warning.

12 THE COURT: I understand. And let me ask
13 you this, the entire phone call would be how
14 long?

15 MS. JONES: Ten or 11 minutes.

16 THE COURT: All right, what I want to do,
17 Solicitor, is I want to play the entire phone
18 call right now, okay?

19 MS. JONES: Okay.

20 THE COURT: I want to play the entire phone
21 call right now. I want to hear -- this is an
22 important matter, and as a result, I think it's
23 important for me to hear the entire phone call,
24 so that I can look at it and consider how to
25 best analyze this matter.

1 So, Ms. Tolley, what I'm gonna do right
2 now, I'm gonna give you an opportunity to speak
3 concerning this matter, but, certainly, I think
4 right now there's nothing wrong with playing the
5 phone call, and allowing me to listen to it, and
6 then you can certainly go, and I'm happy to
7 entertain your argument, as it relates to the
8 call, why some, all, or none of it should be
9 admitted, okay?

10 MS. TOLLEY: Thank you, Judge.

11 THE COURT: Yes, ma'am. All right.

12 (Audio being played for the Court.)

13 THE COURT: All right. So, Solicitor,
14 right now what is your argument, as to why this
15 call should be -- or at least some portion of
16 the call be admitted?

17 MS. JONES: Judge, I think that the
18 portions that I noted, the "Mom, I know you're
19 mad at me," him looking for Channon's mother's
20 contact information, asking him to reach out to
21 her on Facebook, as well -- well, first, those
22 two were consciousness of guilt.

23 I think that both of those can be
24 interpreted as, I know you're mad at me ...
25 because I did this. I need Channon's number --

1 Channon's mama's number, because that's who I
2 was with during my -- during the murder I just
3 committed." Moving on, we're trying this as
4 self-defense.

5 He doesn't say, "I was defending myself."
6 He doesn't say, "I was acting in self-defense,"
7 or "I had to do it." I think that they have
8 shown maybe some they're trying to get into some
9 elements that he was acting in self-defense, and
10 I think that that goes to the self-defense
11 argument. Going onto, "I know everybody mad
12 with me," I think that also is consciousness of
13 guilt. "I know everyone's mad at me because I'm
14 in here, because I did this."

15 Going onto more importantly, he becomes
16 upset, when he starts talking to the young man
17 on the other end of the line. He says, "I don't
18 know how long I'll be in here now; I don't know
19 how long I'll be in here." He seems upset, he
20 seems crying, like he's crying.

21 That the other caller actually says, "Man,
22 stop all that crying." And he says, "I know, I
23 know, I ain't mad, I did this." And he
24 confesses, he said, "I did it." I think right
25 there is a confession that the jury is allowed

1 to hear, and it's relevant, because while I
2 don't know what their defense is, I've seen some
3 remarks towards self-defense, and then some
4 towards, "It wasn't me."

5 So this is a statement totally in --
6 totally going against the it wasn't me defense,
7 Judge. I think they're all relevant. I think
8 that res gestae it goes towards the full picture
9 that I can present to the jury. This was made
10 right after he was arrested, so there's no
11 prejudice that they are going to know that he
12 was in jail for some extended period of time,
13 because it does date and time it on November
14 18th, 2020, and I think it's roughly 4 o'clock
15 in the afternoon --

16 THE COURT: All right.

17 MS. JONES: -- first part. But regardless,
18 it's the night he was arrested. He's been
19 charged with murder; he's been charged with
20 attempted murder. They can assume that he spent
21 at least one night in jail, so I don't think
22 that that gives the rise to any unduly
23 prejudicial information, because it is a
24 jailhouse call.

25 Judge, I can go into my legal argument, but

1 I think I need to hear why she thinks --

2 THE COURT: Well, let me ask you this, I'm
3 assuming that because this was a jail call, and
4 that he was advised, or given notice that this
5 case -- that this phone call was being
6 monitored, you'd also argue that that gives rise
7 to allowing this to be entered?

8 MS. JONES: Yes. I don't think that he has
9 any reasonable expectation of privacy under our
10 United States Constitution or under our South
11 Carolina Constitution. I think that objectively
12 society's not willing to extend that to jail
13 phone calls. He's speaking in an open room in
14 front of other inmates. It's not a confidential
15 communication. Subjectively, he's told on that
16 phone call, "You are being recorded, it's
17 subject to monitoring and recorded." By
18 continuing with the phone call, he's essentially
19 consenting to it being recorded.

20 THE COURT: All right.

21 MS. JONES: And I do have a couple cases I
22 would like to pass up, Judge.

23 THE COURT: Okay.

24 MS. JONES: State v. Hammond, as well as
25 State v. Frank, United States Court of Appeals

1 in State v. Hammond, as well as United States
2 Court of Appeals for the Fourth Circuit. I have
3 another one, Judge, but I'm gonna have to look
4 at my notes to see where I have that in this
5 bunch.

6 THE COURT: Okay.

7 MS. JONES: Judge, there's not a lot of
8 South Carolina State law on this issue, because
9 I think it's just such a -- there's no
10 reasonable expectation of privacy. We know for
11 a fact there's no reasonable expectation of
12 privacy in inmate's jail cells. Warrantless
13 searches of their jail cells, according to --
14 that's why I printed this. Bell case, Supreme
15 Court, as well as Hudson v. Palmer, United
16 States Supreme Court, no reasonable expectation
17 of privacy. They can do warrantless searches of
18 their cells. This is a communication given in
19 an open setting, multiple people can overhear
20 what he's saying. He's told he's being
21 recorded, he still continues with the
22 conversation, and he then gives incriminating
23 statements. And I think that under our Rules of
24 Evidence, it comes in through the business
25 record, but then if we want to talk about

1 hearsay, it comes in as a statement under the
2 hearsay exceptions. I think it comes in two-
3 fold that way.

4 THE COURT: All right.

5 MS. JONES: I would pretty much just be
6 reiterating what that -- what I've been saying.
7 Judge, I'm not sure if they're gonna get into
8 that they think that the initial interception of
9 the call was problematic. I will tell you that
10 Dillon Hightower works in conjunction -- he's
11 certified law enforcement. He works in
12 conjunction with all the local law enforcement
13 agencies, as well as the Beaufort County
14 Detention Center, monitoring these phone calls.
15 Phone calls made right after-the-fact, after
16 somebody has been arrested can produce copious
17 amounts of useful information. Not necessarily
18 useful for later down the line, at prosecution
19 at trial, but useful for safety of the jail,
20 useful for the safety of the witnesses, useful
21 for the safety of victims. We had a victim who
22 survived this shooting, and we don't know if
23 there's an ongoing threat to him, and sometimes
24 those ongoing threats can be detected in these
25 jail phone calls, and they have been, and

1 people's lives have been saved by listening to
2 these jail phone calls. I think that the
3 initial interception is proper. We have --
4 again, there's not a lot of State law on this.
5 Federally, we will get the wiretapping statute,
6 can we intercept that communication essentially?
7 There's a couple of exceptions to the
8 wiretapping statute that allows the
9 interception, law enforcement exception and
10 consent. I think both apply here. I think we
11 have the law enforcement exception; these are
12 monitored for the safety of not only the jail,
13 but people on the outside as well. And then
14 consent, he clearly consents. You hear the
15 recording, the disclaimer at the beginning of
16 the call. It's a disclaimer at the beginning of
17 every phone call, and that's a consent by
18 continuing with the call.

19 THE COURT: All right. Counsel, I'm happy
20 to hear from you, I want to hear from both of
21 you.

22 MR. PAULK: Thank you, Your Honor, may it
23 please the Court? United States v. Hammond is
24 immediately distinguishable from our case,
25 because this deals with a gentleman who is in

1 prison. Once you're in prison you certainly
2 lose certain constitutional rights, however,
3 pretrial detainment's only purpose is not for
4 punishment, it's not for stripping to take
5 inmates' rights away. The purpose for pretrial
6 detainment is only to ensure his presence at
7 trial.

8 He has not lost a single constitutional
9 right. He has not lost any of his First
10 Amendment rights, or any of his rights against
11 search and -- unwarrantless search and seizure,
12 which brings us to the first issue, that we
13 don't know how this came to be in their
14 possession. We're not sure if it was subject to
15 a subpoena, or a search warrant, or if the
16 Solicitor's Office just gets to listen to
17 everyone's jail phone calls. And I think that
18 that is certainly an issue.

19 THE COURT: Well, let's assume they just
20 get to listen to everybody's jail calls?

21 MR. PAULK: If they just get to listen to
22 everybody's jail calls --

23 THE COURT: I'm not saying that's --

24 MR. PAULK: I'm not saying that's the case
25 either.

1 THE COURT: Let's just assume, because to
2 me on the pendulum, you kind of --

3 MR. PAULK: Certainly.

4 THE COURT: -- I think that was way over
5 here.

6 MR. PAULK: Certainly.

7 THE COURT: So let's just go right there.

8 MR. PAULK: If that's the case, they get to
9 listen to everybody's, well, the search and
10 seizure rights that are afforded to us under the
11 Constitution are violated, because there's no
12 due process. I mean we're protected from
13 warrantless searches and seizures, if --

14 THE COURT: What about when he's given a
15 warning?

16 MR. PAULK: Well, Your Honor --

17 THE COURT: It's flat right out telling
18 him, "Hey --

19 MR. PAULK: The Ellison case --

20 THE COURT: -- we're monitoring you."

21 MR. PAULK: The Ellison case is exactly on
22 point for that.

23 THE COURT: All right.

24 MR. PAULK: The Ellison case says --

25 THE COURT: Where's that case?

1 MR. PAULK: That when appellant was
2 processed in the jail, he -- we gave you'all a
3 copy previously. I'm not sure if I have another
4 copy.

5 THE COURT: Is that the packet of
6 information?

7 MR. PAULK: It was in the packet; it was on
8 the very back of that packet. It was one of the
9 two separate cases that were not in the chunky
10 packet.

11 THE COURT: Uh-huh.

12 MR. PAULK: Basically, Ellison says that
13 this particular inmate was in jail in pretrial
14 detention, and it is a 1976 case, so it is
15 referring specifically to mail and to letters,
16 however, the comment that was made is, that the
17 use of mails is almost as much a part of free
18 speech as the right to use our tongues. In
19 today's day and age I would say that the right
20 to phones, the right to speak freely, and to
21 work with other people to work on your case; but
22 if we're gonna be talking specifically about him
23 knowing that the call was recorded, this case
24 says that, you know, this gentleman, Mr.
25 Ellison, signed a card authorizing jail

1 officials to read his mail. And the State tries
2 to claim that this is a waiver of all of his
3 constitutional rights. Now, they actually had
4 somebody who had testified, this is on appeal,
5 and the gentlemen who testified, I believe, was
6 actually the Attorney General, and he testified
7 that he didn't know what would happen if an
8 inmate did not sign that card. What would
9 happen if an inmate did not agree to that
10 process? There's no precedent for it, that just
11 doesn't happen. People want to be able to send
12 letters, people want to be able to make phone
13 calls, they're going to agree to that, so that
14 their First Amendment rights are not curtailed.
15 I'll slow it down a little bit for you, excuse
16 me, I'm sorry.

17 THE COURT: All right, go ahead.

18 MR. PAULK: Your Honor, this case goes onto
19 say that all inmates are required to do this,
20 sign the card, and it's accomplished during the
21 booking process. You know, just because BCSO is
22 warning Mr. Polite whenever he makes a phone
23 call that it's being recorded, that's not the
24 same as the Solicitor's Office making that
25 statement.

1 It's not the same as him receiving Miranda
2 rights before he makes that statement. There's
3 no constitutional waiver of his First Amendment
4 rights, or his First Amendment benefits of
5 search and seizure. If the State relies upon
6 consent to search, then it has the burden of
7 proving the voluntariness of that consent.

8 Here it's not voluntary. Any time you make
9 a phone call, if you want to have any
10 communication with anyone outside of the Court,
11 you have to agree to this, there is no
12 voluntariness, it's mandatory. The Court went
13 onto say that if we were to hold the appellant
14 consented to waive his constitutional rights in
15 this instance, by signing the card, then
16 adoption of consent would be effectively
17 emasculated. And, Your Honor, with regard to
18 Mr. Polite, as I said before, he was in pretrial
19 confinement.

20 THE COURT: All right.

21 MR. PAULK: The Court continues to go on
22 and says what they particularly found disturbing
23 in the context of this case, was that the
24 accused was not bailable, and he was somewhat
25 disadvantaged in preparing for trial.

1 It defeats the facts in support of his
2 defense. He necessarily must rely on persons
3 outside of the jail.

4 This is the exact same situation that we
5 have here. I understand that this is the night
6 that he was brought in, but Mr. Polite has been
7 in jail since this arrest. He has not made
8 bail, he has not been out, as far as I know.
9 Please someone correct me if I'm wrong.
10 However, for him to be able to make any
11 communications that are in furtherance of his
12 defense, or in furtherance of garnering
13 witnesses for his defense, certainly, he would
14 have to be allowed to make phone calls, that we
15 would not want to be monitored. Now, I
16 understand that certain phone numbers are listed
17 in the jail as privileged, and some of those
18 phone numbers are not recorded, but I'm not sure
19 if there's a computer that does that, or if it's
20 done manually.

21 We don't know how that process works. We
22 don't know what happens at the jail. The test
23 the Court brought up in Ellison was a two-prong
24 test for censorship of these letters. And it
25 basically says that they invalidated

1 indiscriminate censorship of prison mail.
2 Censorship was only justified if there's the
3 satisfaction of the two-prong test.

4 First, the regulation or practice in
5 question must further an important or
6 substantial governmental interest, unrelated to
7 the suppression of the expression. Second,
8 First Amendment freedoms must be no greater
9 limited than is necessary or essential to that
10 particular governmental interest. Here I don't
11 think there is a governmental interest, Your
12 Honor. I think that this is an investigative
13 interest. We don't know how the phone call came
14 to be in the hands of the Solicitor's Office, if
15 it was not via subpoena and not via a search
16 warrant, then certainly it was a warrantless
17 search, and violates Mr. Polite's constitutional
18 rights, and should not be allowed to be used
19 against him.

20 In the alternative, they could have gotten
21 this information, if there was exigent
22 circumstance. Perhaps as Ms. Mary Jones said,
23 there could have been some ongoing threat to Mr.
24 Singleton's life, if that was the case, but that
25 has not been shown. It has not been shown that

1 anyone attempted to harm him. It has not been
2 shown that anyone was doing anything.

3 There is no exigent circumstance, and
4 there's not been any testimony about exigent
5 circumstances that would circumvent the warrant
6 requirement in this case. The Court goes onto
7 say that nonetheless to allow an independent
8 prosecution team the right to indiscriminately
9 inspect letters written by the accused is to
10 hack at the roots of any defense.

11 Your Honor, just replace the word letters
12 with phone calls, and we understand exactly why
13 the Court wrote this opinion. To
14 indiscriminately inspect all phone calls made by
15 Mr. Polite, with no regard for jailhouse safety
16 or exigent circumstances, and merely for
17 investigative purposes would be to hack at the
18 roots of his defense.

19 The Court goes onto paraphrase Justice
20 Black, freedom to communicate privately with
21 associates to develop a possible defense is
22 important to a fair trial, as the heart is to
23 the human body. And, Your Honor, I did
24 shepardize, or whatever you do on caselaw to
25 ensure that this is still good law has not been

1 overturned, it has not been altered in any way,
2 it has been distinguished a couple of times, and
3 is distinguishable, because in our case and in
4 this case, the Defendant was in pretrial
5 detention, and was being held without bail.

6 And the other cases that have departed from
7 this reasoning, there is almost certainly a
8 person who is in prison and has had his rights
9 curtailed for that reason. The Hammond case,
10 specifically, is a prison case. I was attempted
11 to look over U.S. v. Frank. This case deals
12 with a constitutional wiretapping statute, and
13 there were many recorded phone calls before this
14 gentleman, Mr. Frank, or I guess Mr. Boone, ever
15 got into pretrial detention. he had been
16 wiretapped for some time. Much of this ruling
17 is about that.

18 There are -- I believe there's one or two
19 recorded phone calls from the jail, and, Your
20 Honor, if I'm wrong, I'm happy for the Solicitor
21 to correct me, I was only briefly able to review
22 this before making this argument, but from what
23 I'm looking at, we have a separate situation
24 than the case law that the Solicitor has
25 provided you here, and all we have to do is

1 switch out the word phone call for the word
2 mail.

3 THE COURT: What about State v. White? Are
4 you familiar with State v. White?

5 MR. PAULK: I do not believe I am.

6 THE COURT: Court of Appeals, August 17th,
7 2022? I mean the facts of the case are that the
8 officers arrested White hours after the
9 shooting, pretty similar to what we've got here.
10 From the Detention Center, like here, White
11 called his girlfriend, their conversation was
12 recorded. And then the Court goes onto then say
13 that portions of that conversation could be
14 included or excluded for particular reasons.
15 And, in fact, I think in this -- is this the
16 case, Carlos, where actually the -- State v.
17 White, where it was excluded, because the Judge
18 refused to listen to it? In King it was
19 excluded, but it seems to me in State v. White
20 we've got substantially similar types of
21 situations.

22 MS. JONES: But the holding supports my
23 argument.

24 THE COURT: Really?

25 MS. JONES: Judge, I would like, when

1 appropriate, to be able to distinguish Ellison.

2 THE COURT: All right.

3 MR. PAULK: Ellison?

4 THE COURT: Hold on, let me get these --
5 let me make sure I get these cases over to you,
6 or this case. And, you know, my understanding
7 when I read White, I mean this very case came up
8 in a trial two weeks ago, that's why I can say
9 what about it, because I just remembered we just
10 had this issue.

11 You know, it says, "That we find the
12 recorded conversation through the White and
13 Aldridge was relevant to show consciousness of
14 guilt. The evidence that is relevant is
15 admissible, unless it's excluded by the United
16 States Constitution and the South Carolina
17 Constitution, South Carolina Statutes, and any
18 rule of evidence.

19 I mean the evidence is relevant when it has
20 any tendency to make the existence of any fact
21 that is of consequent to the determination of
22 the action more probable or less probable
23 according to the evidence. Let's see, the
24 evidence is admissible if logically relevant to
25 establish a material fact or element. And in

1 that case, it was admitted.

2 I don't even know that it's circumstantial
3 in this case, because the conversation tended to
4 prove that White was conscious that he shot the
5 victim, and believed that he caused the victim's
6 death, and we find the conversation was
7 logically related as to whether White was guilty
8 of the victim's murder. I think that there are
9 tremendous substantial -- I'm tongue-tied here
10 at 5:30, there's tremendous similarities between
11 the White case and our case. And it goes onto
12 basically say this is a gatekeeping matter, as
13 to the evidence. And I'm just gonna be honest,
14 I look at this case and I think the facts are
15 somewhat on point. It does make reference to
16 King, in King, a recorded conversation. I'm not
17 sure if it was a jail conversation, but a
18 recorded conversation was excluded.

19 THE COURT: I'll tell you that's one of the
20 reasons I listened to the entire tape today --

21 MR. PAULK: Yes, sir.

22 THE COURT: -- is because I wanted to do
23 that. I'm gonna tell you, I think based upon
24 right here what I've seen in this case, State v.
25 White, which is a relatively new law, and who

1 knows, it's a Court of Appeals case.

2 MR. PAULK: And, Your Honor, that's what I
3 was about to point out is, a copy of it that I'm
4 looking at on Ms. Tolley's laptop, down at the
5 bottom it says, "This opinion has no
6 precedential value and should not be cited or
7 relied on as precedent in any proceeding."

8 THE COURT: Well --

9 MR. PAULK: And I understand you're allowed
10 to rely on whatever you would like to rely on as
11 the Judge, but I would also like to be heard on
12 the consciousness of guilt argument.

13 And I'll just tell you, I think that based
14 upon that 2022 case, I don't know if the Supreme
15 Court's taking it up or not, but I think that
16 for now that is precedent that I can consider.

17 MR. PAULK: Certainly.

18 THE COURT: And is, in fact, the precedent
19 that I would consider, but as a result of that,
20 I've heard the arguments.

21 MR. PAULK: Okay.

22 THE COURT: I don't need to get into the
23 constitutional issues, because I think that
24 those are addressed in that case, and I think
25 that case is the law of South Carolina, so I'm

1 gonna follow that.

2 MR. PAULK: your Honor, may I be allowed to
3 get into the consciousness --

4 THE COURT: I'll let you put it on the
5 record, yes, sir.

6 MR. PAULK: Thank you, Your Honor.
7 Regarding the confession, the alleged confession
8 or consciousness of guilt, or whatever the State
9 purports that this shows, if I get arrested and
10 call my mama, I know that she's gonna be mad at
11 me too, even if I didn't do it.

12 THE court: Now, we're gonna get to that,
13 okay? We're gonna get to some -- now, my point
14 is that I believe that the call is admissible,
15 but to that extent, I think there's certain
16 parts of the call that would be admissible, and
17 certain parts that would not. I mean the fact
18 that there's hearsay.

19 The fact that there's all sorts of stuff in
20 there that, for instance, I would deem at that
21 point unduly prejudicial, in certain points of
22 the call -- certain parts of this call may be
23 more prejudicial than probative and are
24 substantially more prejudicial than probative.
25 And so the fact that the call comes in, I'm not

1 ruling that the call comes in in its entirety.

2 MR. PAULK: Yeas, sir.

3 THE COURT: I will tell you I have -- the
4 fact that he says, "I don't know how long I'm
5 gonna be in here," I'm not gonna let that in. I
6 don't think that -- that -- that's just an
7 opinion he's giving, he doesn't know, a bond
8 hearing hasn't been made.

9 That -- and I don't think -- I disagree
10 with the State, I don't think that adds anything
11 to the meat of the case, and so when it said
12 that "I don't know how long I'm gonna be in
13 here," that I'm not gonna allow in.

14 THE COURT: Okay. I think that the -- I'm
15 going to exclude the comments about his mama
16 being mad at him. I don't think that --
17 everybody's got a mama is gonna know that if
18 you're in jail for any reason, your mama's gonna
19 be mad at you.

20 I just -- I'm not gonna allow that, because
21 I don't -- I think that -- I don't -- I think
22 there's almost no probative value in that
23 statement. "Getting Channon," I'm not gonna
24 allow that. Self-defense, absolutely, where it
25 says, basically, we -- I'm not sure, but it says

1 something.

2 Solicitor, the information you want on, are
3 we turning to self-defense?

4 MS. JONES: Yes, sir.

5 THE COURT: Yes, ma'am. I think that's
6 relative. I think it's probative. I think it
7 could show consciousness of guilt, admission
8 that he shot him, which, you know, we've kind of
9 been all over the place.

10 "Everybody mad at me," I would allow. I
11 think that is different than mama being made at
12 me. I think that "Everybody mad at me," I
13 believe that - that's relevant. There was some
14 language -- and I'm sorry I'm keeping you'all
15 long, but I think I'm gonna go ahead and make my
16 ruling, so we'll be able to start clear tomorrow
17 morning, so to the Court staff and Kymberlee,
18 I'm sorry about that.

19 COURT REPORTER: That's okay.

20 THE COURT: "I ain't mad though I did this
21 shit," that's coming in. And that's number -- I
22 don't know, that's identified here as 67 on this
23 as the last page, and I guess that's -- I think
24 the language.

25 And I've got written down here what the

1 Solicitor said, "I'm not mad," or words to that
2 effect, or "I'm mad 'cause I did this shit." Is
3 that it, Solicitor? I think those were the -- I
4 only have about five things you wanted in, and
5 I'm keeping out, one, the first one about the
6 mama. Obviously, the funny numbers and the
7 ringing in the recording, and it's being
8 monitored comes in.

9 I think he's gonna notice that he was being
10 monitored. "Mom's mad at me," I don't think
11 that should be in, I don't think that -- calling
12 Channon Preston's mother, or contacting her on
13 Facebook, I'm not gonna let that in. The self-
14 defense, "We're trying this on self-defense. I
15 know everybody's mad at me," I don't -- I'm
16 keeping out the, "I don't know how long I'm
17 gonna be in here, man."

18 And I'm gonna let in the, "I ain't mad at
19 it though, I did this shit," or words to that
20 effect, at that locale.

21 MS. JONES: I just want to find those
22 numbers on here, just so I can make sure we're
23 on the same page. I'm looking for the, "I know
24 everyone's mad at me."

25 MR. PAULK: It's number 25, Mary Jones.

1 I think I wrote it down wrong; I think the
2 quote was number 40, "Yeah, I'm in here though.

3 THE COURT: Hold on. All right, number 40?

4 MS. JONES: Yes, sir.

5 THE COURT: All right, number 40, hold on.
6 You know, when I was going through here, I
7 didn't write down -- let's see, I didn't recall
8 writing that down as one of the matters, but I
9 think that that - well, Mr. Paulk, let me hear
10 you on 40.

11 Have you got 40 in front of you?

12 MR. PAULK: I do, Your Honor. In my
13 personal opinion, Your Honor, I believe that
14 this is Mr. Polite lamenting the fact that he
15 was hanging out with the wrong people, and that
16 he has put himself in a position to be in jail.
17 I don't think that this is consciousness of
18 guilt.

19 I'm not sure that it's him saying that,
20 "I'm mad, because I did this," or, "I'm mad
21 because I'm in here." I think that it's him
22 saying, "I'm mad, because people were telling me
23 not to hang out with Channon Preston, that I
24 could get wrapped up in something bad, or be put
25 in a tough situation," and he didn't listen.

1 THE COURT: All right, I'm gonna let that
2 in. I think it's relevant, I think it goes
3 towards consciousness of guilt, and the other
4 arguments that the Solicitor gave as it relates
5 to these matters.

6 MS. JONE: Okay, Judge, just for
7 clarification, so we don't have anymore mishaps,
8 number 40 --

9 THE COURT: That's not right we've got a
10 mishap. I'll go out and chill out, don't worry,
11 okay?

12 MS. JONES: Judge, I'm tired, I don't --

13 THE COURT: You're in the club, come on.

14 MS. JONES: At least I don't have to drive
15 an hour though after this, so 40 comes in, 42
16 comes in, and 67 comes in. I have a question
17 about 67, and that's where he says, "I am mad
18 though I did this shit." What about the
19 response from the mother in the background?

20 THE COURT: I'm not letting the mom --

21 MS. JONES: Okay.

22 THE COURT: I'm not letting the mama's
23 testimony -- if you want it in, you can have it,
24 but I'm not --

25 MR. PAULK: No, thank you.

1 THE COURT: -- letting anything the mama
2 says in.

3 MS. JONES: Okay, that's fine with us.

4 MR. PAULK: Your Honor --

5 THE COURT: We had one last week where the
6 mama was basically celebrated on a phone call,
7 and I'm not letting what the mama says in, no.

8 MS. JONES: Okay.

9 MR. PAULK: May I state my objections for
10 the record?

11 THE COURT: You can.

12 MR. PAULK: Thank you, Your Honor. We
13 would object to the majority of these coming in
14 under the argument they are not consciousness of
15 guilt. "I did this," means I put myself in this
16 position I got arrested, it does not mean that I
17 however did commit the murder that I'm hereby
18 charged with. Number -- what are our numbers
19 again?

20 MS. TOLLEY: 40.

21 MR. PAULK: Number 40, Your Honor, you
22 heard my arguments on that. Number --

23 MS. TOLLEY: 42.

24 MR. PAULK: -- 42, Your Honor, Mr. Polite's
25 never -- as we've been over a litany, he hasn't

1 been arrested before, isn't familiar with legal
2 terms.

3 I believe that the first time that he heard
4 of self-defense was likely whenever Investigator
5 Duncan was like, "Is it self-defense?" If a cop
6 is asking you, "Is it self-defense, because
7 that's what you should say," perhaps he thinks
8 that that is his best route, and he's letting
9 his mom know what the cop told him to do.

10 I'm not prepared to say that that is
11 consciousness of guilt. There again, this is
12 just for my objection. I understand that you've
13 already made a ruling.

14 THE COURT: Yes, sir.

15 MR. PAULK: And I believe that 67 was the
16 first one that I touched on.

17 THE COURT: All right.

18 MR. PAULK: Thank you, Your Honor.

19 THE COURT: All right, so what I'm gonna do
20 is, tomorrow morning I'm gonna have this
21 available so we can all listen to it, because I
22 imagine it's just gonna be a few seconds, a
23 short snippet that you'll have somebody from the
24 jail come, and be able to testify that's a
25 portion of that call. And so assuming it can be

1 properly authenticated, then I would let in
2 those portions of it.

3 MR. PAULK: Your Honor, may we elicit
4 testimony tomorrow before this is entered from
5 Officer Maxwell, as to how the call came to be,
6 and to the primary purpose of the retention of
7 the call?

8 THE COURT: I'll think about that.

9 MR. PAULK: Okay.

10 THE COURT: I may allow you to do that.

11 MR. PAULK: Thank you, Your Honor.

12 THE COURT: Okay? I may allow you to do
13 that, to better protect the record.

14 MS. JONES: He's here now.

15 THE COURT: Well, I'm not gonna do that
16 right now.

17 MS. JONES: Okay.

18 THE COURT: It's quarter to 6:00, okay?
19 Thank you, Kymberlee, for staying late.

20 All right, so what about this? Is there
21 some other thing I'm supposed to be deciding?

22 MS. JONES: That's all.

23 THE COURT: What about the jail call, did
24 he call somebody?

25 MS. JONES: This --

1 THE COURT: Did I --

2 MR. PAULK: This is it.

3 MS. JONES: This is it.

4 THE COURT: This was last night? There was
5 something that night, did we decide that?

6 MS. JONES: That was the juror.

7 MR. PAULK: That was the juror issue this
8 morning, we decided it wasn't an issue.

9 THE COURT: Oh okay.

10 MS. JONES: That was -- yes. This is all
11 the State's evidence that needs to be ruled on.

12 THE COURT: All right, and so if we don't
13 need to rule on anything else, you anticipate
14 finishing up your case tomorrow, right,
15 Solicitor? We don't need to do -- is there
16 anything else we need to do?

17 MS. JONES: I'm finished with regard to the
18 jail phone call.

19 THE COURT: Thank you, all right. So we're
20 good?

21 MR. PAULK: Thank you, Your Honor.

22 THE COURT: I have made my rulings, but
23 anything else we need to take up tonight before
24 we leave?

25 MS. TOLLEY: Nothing, Your Honor.

1 THE COURT: And so are you driving an hour
2 also, Ms. Tolley?

3 MS. TOLLEY: I am.

4 THE COURT: Okay, well --

5 MS. TOLLEY: Oh, I'm sorry.

6 THE COURT: You've got an hour still to go
7 back, and more than likely do some work on this
8 case tonight.

9 Was there not -- hold on one second. Was
10 there not an issue about the jail call, about
11 him trying to get his mom to contact somebody on
12 Facebook?

13 MS. TOLLEY: That was one of the messages.

14 THE COURT: That was one of the messages to
15 the young lady?

16 MS. JONES: No, that was in this phone
17 call. He asked mom to reach out to Anita Baker
18 on Facebook.

19 THE COURT: Did I make a ruling on that?

20 MR. PAULK: You did, Your Honor.

21 MS. JONES: You said it wasn't coming in.

22 THE COURT: I remember that, all right.

23 MS. JONES: I should have said you said it
24 was coming in.

25 THE COURT: Okay, all right, I'm sorry, I

1 just couldn't remember, and I'm sorry about
2 that.

3 All right, jury charges will be submitted
4 to Carlos, Carlos will look at them, and he'll
5 have them to me in the morning, so I can take a
6 glance at them, and we'll go from there. Thank
7 you.

8 MR. PAULK: Thank you, Judge.

9 MS. TOLLEY: Thank you, Judge.

10 MS. JONES: Thank you.

11 (At 6:04 p.m. the proceedings were
12 continued until the following day without
13 interruption.)

14 **

15 END OF VOLUME III

16

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CERTIFICATE OF REPORTER*******

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 14th Day of June, 2023.

I do further certify that I am neither related, counsel, or interest to any party hereto. .

This, the 2nd day of January, 2024.

Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF BEAUFORT	2020GS-07-02185, -086, -2312

-----)	
State of South Carolina)	
Plaintiff,)	
vs.)	TRANSCRIPT OF JURY TRIAL
	VOLUME IV
XAVIER M. POLITE,)	PAGES 649 - 864
Defendant.)	
-----)	

June 15, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable Robert J. Bonds, Judge Presiding

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1 **PROCEEDINGS CONTINUED - MORNING SESSION**

2 *******

3 **THURSDAY, JUNE 15, 2023**

4 **BEAUFORT, SOUTH CAROLINA**

5 *******

6 (The following proceedings were held in
7 open court. All parties were present.)

8 THE COURT: So, have you been you been able
9 to make the edits requested and in a format that
10 can be presented?

11 So, let me ask you, yes, sir?

12 MR. PAULK: Your Honor, the edits honestly
13 sound worse than the entire phone call put in
14 altogether.

15 THE COURT: Well, and that sadly surprised
16 me, because we had this same situation that came
17 up two weeks ago.

18 MR. PAULK: Right.

19 THE COURT: Is that there was, what I
20 consider to be a lot of admissible hearsay that
21 they wanted out, and it had to be edited, and
22 when the information was removed, it actually
23 sounded what some could say worse than when all
24 the impermissible hearsay was in.

25 All right, first, let's go ahead and play

1 it, let me listen to it.

2 (Audio being played for the Court.)

3 THE COURT: All right, let me hear from
4 you.

5 MR. PAULK: Your Honor, under the rule we
6 believe -- we think that more context should be
7 added to the call, if the whole thing's not
8 going to be kept out. We believe the jury
9 should have context, you know, in what situation
10 these remarks were made. We believe that some
11 more context would help clear things up and
12 would stop confusion or undue prejudice to the
13 Defendant.

14 And, additionally, Your Honor, I understand
15 you've already made your ruling.

16 THE COURT: Well, I've made my ruling, as
17 to what I believe is admissible.

18 MR. PAULK: Sir...

19 THE COURT: Yes, sir.

20 MR. PAULK: Sir, my only argument would be
21 that in State v. White they never argued that it
22 was constitutionally invalid. State v. White
23 was only a 403 argument. There were three
24 different arguments they made in State v. White,
25 none of which were that it was constitutionally

1 invalid, so that issue was not preserved for
2 appeal, so that's not something that they were
3 deciding there. We have raised that issue.
4 Still, I understand the difference in the
5 Court's ruling.

6 THE COURT: All right. I think it passes
7 constitutional muster, based on the case law
8 that's been presented to me, and, again, I'm
9 gonna stick with my ruling. Now, as it relates
10 to the document or the recording, I mean I think
11 certainly you'd be entitled, if you wanted, I
12 think you could certainly tell the jury, or we
13 could tell the jury with this, that these are
14 excerpts from a particular conversation, or do
15 you want to play the tape in its entirety?

16 I mean, what I'm not gonna do is, get into
17 now at this point, having somebody -- okay,
18 let's put this sentence in, or that sentence
19 out, because that, number one, that's just not
20 gonna work.

21 So I think that we could inform the jury
22 whether the State does it, and ask it of the
23 witness, or I'll tell them that it's just parts
24 or pieces of a recorded conversation, assuming
25 they laid a foundation to get it in. I'll tell

1 them, or we'll play the entire -- or when I say
2 we will, I'm gonna give the Solicitor a chance
3 to respond, but -- or I submit that we go and
4 play the entire tape.

5 MR. PAULK: Certainly. May we have a
6 moment of conference, please?

7 THE COURT: Yes, sir. Yes, sir. Yes, sir.

8 MR. PAULK: Respectfully, the defense would
9 ask that the tape be played in its entirety.

10 THE COURT: Solicitor, what's your position
11 on that?

12 MS. JONES: Judge, I think that you made
13 your ruling yesterday. I would go to Rule 106,
14 any other portion of a writing or recording can
15 be -- the other party can request that it be
16 played, if it -- I can remember exactly the
17 words, the adverse party may require
18 introduction, if any other part, or any other
19 writing or recorded statement were sought in
20 fairness to be considered contemporaneously with
21 it.

22 Essentially, context, what puts these
23 statements, so that they're not taken out of
24 context, so they're not misrepresented to the
25 jury. I don't think how they are right now is

1 any misrepresentation to the jury. I would
2 prefer, Judge, an instruction or a question,
3 that this is actually just excerpts from a
4 recorded phone call, and not the call in its
5 entirety.

6 THE COURT: Well, Solicitor, I'm gonna
7 disagree with you. I think actually it
8 absolutely provides context. I mean isn't that
9 what you're saying? No? I think it adds
10 context absolutely. I mean to that extent, I
11 mean it's putting in the entire conversation,
12 and, certainly, humanizes the Defendant and the
13 conversation, and I think gives clearer -- it
14 makes clearer -- in my opinion, it's gonna be
15 clear to the jury the context in which these
16 statements were made.

17 It's going to give clearer context to -- as
18 to what was going through the Defendant's mind
19 when he made the statements, and perhaps even as
20 to why he made those statements, and it's kind
21 of up in the air. And I understand why you
22 think he made them, as evidence of guilt, I
23 understand that, and I think that's one way to
24 draw it; but I think that the reason these
25 matters were excluded was, because they didn't

1 want -- yesterday, is because the matters that I
2 took out were -- they didn't want the phone call
3 in at all yesterday when we talked about. And
4 you gave me several parts of the phone call that
5 you were seeking to introduce, I ruled, and
6 allowed several parts of that phone call to be
7 admitted, and several parts to kept out.

8 And at this point I do think that given the
9 benefit of this matter, I believe, to the
10 Defendant, and under Rule 106 I think it --
11 which, in fairness, would be considered
12 contemporaneously with it. These statements
13 were all contemporaneously made. I just feel
14 that fairness would dictate that the entire
15 document be included, particularly, in light of
16 the fact they want it in, and that's gonna be my
17 ruling.

18 MS. JONES: Okay, it's gonna take us a few
19 minutes to get a new disk.

20 THE COURT: That's fine, and I appreciate
21 your IP individual working with us on that, and
22 working with us this week, because I know that
23 y'all have made some changes on-the-fly, for
24 lack of better words, and so I appreciate that.

25 MR. PAULK: Thank you, Your Honor.

1 THE COURT: Yes, sir. All right, have
2 you'all -- let me ask you this, have you had a
3 chance to look at the verdict form?

4 MS. TOLLEY: Yes, sir.

5 MS. JONES: Yes.

6 THE COURT: All right, let's knock that
7 out, that's pretty easy. Tell me about any
8 problems with the verdict form that's been
9 presented, and make sure that you've looked at
10 it. Any problems with the verdict form from the
11 State?

12 MS. JONES: No, sir.

13 MS. TOLLEY: None, Your Honor.

14 THE COURT: From the defense?

15 MS. TOLLEY: None, Your Honor.

16 THE COURT: Okay, so we've got that taken
17 care of. Let me ask you this, take a minute
18 and, Ms. Tolley, you emailed Carlos I think last
19 night or this morning about some charges that
20 you wanted to be included?

21 MS. TOLLEY: That's correct, Judge.

22 THE COURT: And what charges were those?

23 MS. TOLLEY: I think self-defense,
24 voluntary manslaughter, that we'd request.

25 THE COURT: Okay. All right, yes, ma'am?

1 MS. JONES: I'll be objecting to voluntary
2 and self-defense. Mere presence is proper, but
3 I think the other two are improper. And I'm
4 happy to argue on those right now, Judge.

5 THE COURT: Yeah, go ahead and argue on
6 that.

7 MR. PAULK: Do you want me to go first,
8 Your Honor?

9 THE COURT: Yeah, I'll hear from her.

10 MR. PAULK: Thank you, Your Honor.

11 MS. JONES: Okay. Judge, regarding
12 voluntary manslaughter, again, voluntary
13 manslaughter is a reaction, essentially. It is
14 an act under the sudden heat of passion upon
15 sufficient legal provocation. You have to have
16 both, Judge.

17 And you cannot bring a gun to a drug deal
18 not anticipating something bad is going to
19 happen, so there's no surprise that those guns
20 had to be used. There's been no evidence
21 there's any heat of passion or provocation. It
22 could maybe be argued that by Xavier saying he
23 saw a Glock in Steven's hand, that could be his
24 provocation, however, there's no heat of
25 passion. And for voluntary manslaughter you

1 have got to have both, Judge. The State v.
2 Niles is a South Carolina Supreme Court case,
3 defendant could have planned to rob a drug
4 dealer, defendant was armed, the defendant
5 claimed self-defense, saying that they had shot
6 first.

7 South Carolina Supreme Court said no to
8 voluntary manslaughter. They said that the
9 scheme to rob the victim coupled with Niles'
10 decision to arrive at the scene armed with a
11 deadly weapon discount any claim that Niles, in
12 any way, acted in --

13 THE COURT: Is there a scheme to rob
14 somebody in this case?

15 MS. JONES: Is it -- sorry?

16 MR. PAULK: No, Your Honor.

17 THE COURT: Is there a scheme to rob
18 somebody? I hadn't heard a lick of evidence
19 about that.

20 MS. JONES: Well, in the video you can see
21 Mr. Preston rifling through the victim's car.
22 Just because he wasn't charged with armed
23 robbery, I don't think that takes away the fact
24 that Channon Preston was looking through a dead
25 man's car to take items out of it.

1 THE COURT: Channon Preston was looking
2 through the dead man's car?

3 MS. TOLLEY: I know that he was near the
4 car, I --

5 THE COURT: Where --

6 MS. TOLLEY: -- don't know that there
7 was --

8 THE COURT: There was somebody -- in the
9 video it showed that?

10 MS. JONES: In the video before he says,
11 "Hey, man, why you ain't get him," --

12 THE COURT: Yes.

13 MS. JONES: -- he comes out of the car to
14 say that. He has opened the passenger side
15 door, and if you look at the video, both
16 passenger side doors are closed. The next clip
17 shows Corey Singleton running, and Channon
18 Preston say to Xavier Polite, "Hey, man, why you
19 ain't get him?" Xavier says, "I ran out, I ran
20 out." And before Channon says that he is in the
21 victim's car, pulls his body and head out of the
22 car to say that. There's no other reason for
23 him to be rifling through that car than to steal
24 something.

25 THE COURT: All right, when he said, "Why

1 didn't you get him," "I ran out," they were both
2 by the minivan when they said that, right?

3 MS. JONES: Channon Preston was by the
4 victim's car.

5 THE COURT: We'll play that tape again,
6 because I sure don't remember that.

7 MR. PAULK: And, Your Honor, respectfully,
8 there's more than one reason to open up a car
9 door during a gunfight. One might open up a
10 door --

11 THE COURT: Well --

12 MR. PAULK: -- to take cover --

13 THE COURT: Well, hold on.

14 MR. PAULK: -- during --

15 THE COURT: Hold on, hold on, let me just
16 go -- let him go ahead with that. I'll -- what
17 else, Solicitor?

18 MS. JONES: I think that that would
19 preclude the voluntary manslaughter. The fact
20 of bringing a gun to a drug deal is an overt
21 act, where that person bringing the gun believes
22 that he's going to have to use it. Voluntary
23 manslaughter is heat of passion. You don't know
24 that you're gonna have to -- you don't
25 understand, you don't know, you don't think that

1 what you're about to get into is gonna rise to
2 the level of you having to hurt or shoot
3 somebody. So, you are bringing a gun to a drug
4 deal, an armed gun to a drug deal, you're only
5 bringing that for one reason, because you
6 anticipate something bad is going to happen.
7 You anticipate that you're going to use it. The
8 anticipation the complete opposite of sudden
9 heat of passion.

10 THE COURT: So, any time you carry a gun --
11 would your argument -- could your argument be
12 extended to any time you carry a gun, you assume
13 something bad's gonna happen?

14 MS. JONES: To a drug deal, yes. Not
15 anytime, but to a drug deal, absolutely.
16 There's an absolute correlation between guns and
17 drugs and violence, and I think this case right
18 here shows it's a culmination with the death of
19 Steven Glover.

20 THE COURT: Let me hear you on that.

21 MR. PAULK: Your Honor, I think you're spot
22 on, I think that the Solicitor's reasoning
23 carries over to any time that a gun is being
24 carried, you're expecting to have to use it, and
25 that's just not true. That's just not the case.

1 Certainly, there's evidence that these gentlemen
2 had ridden in that Toyota at least five days
3 before this event, with no intention of robbing
4 anyone. There was no one that was shot. There
5 was no one that was robbed. Just the mere fact
6 that they were carrying that gun doesn't mean
7 that they were expecting to have to shoot
8 somebody.

9 THE COURRT: All right.

10 MR. PAULK: You're allowed to arm yourself
11 in self-defense, even if you don't have a
12 concealed carry permit, even if you don't have
13 any of those things, the law allows you to arm
14 yourself in self-defense, if it would have been
15 available for you to do so. Even if you're a
16 felon that's not supposed to be in possession of
17 a firearm, it's not the case here, however, just
18 to illustrate how far the law goes to say that,
19 if you were allowed to arm yourself at the time
20 that the difficulty arises, then you can do
21 that.

22 Now, furthermore, I'd like to touch back on
23 the fact that she's stating that there's this
24 scheme to rob. You're absolutely right, Your
25 Honor, you have heard absolutely zero testimony

1 about a scheme to rob. There has been nothing
2 showing that either of these gentlemen ever
3 planned to rob anybody. They had money with
4 them when they went to go buy marijuana. That's
5 evident because of the money that was found in
6 the house at [REDACTED] Eddings Point. The jar of
7 marijuana is still on the ground, it was never
8 taken from anyone.

9 There are pills on the ground. Certainly,
10 if they were going -- seeking to steal this
11 man's marijuana, they would have taken it with
12 them. The Solicitor has the jar of marijuana
13 right here in evidence for us. Your Honor,
14 there is nothing showing any scheme, any common
15 plan, any sort of anything that these two
16 gentlemen entered into.

17 And it's certainly our contention that
18 there was some other precipitating event that
19 was not captured on surveillance footage that
20 caused this incident to happen. The act of them
21 going to buy marijuana in and of itself was not
22 a -- the death of Steven Glover was not a likely
23 or possible consequence of just going to buy
24 marijuana.

25 THE COURT: All right.

1 MR. PAULK: Something else happened.

2 THE COURT: All right, so what else -- what
3 other issues concerning what they want on the
4 jury charges?

5 MS. JONES: I also oppose self-defense,
6 Judge.

7 THE COURT: Let me hear from you on that.

8 MS. PAULK: Your Honor, I believe that
9 during the interview that was entered in through
10 Investigator Duncan, Mr. Polite stated, "That
11 they shot, Channon shot, I shot."

12 Someone else shot first, someone else
13 caused this difficulty, he's in the middle of
14 this difficulty, shots are fired, shots are
15 ringing out. An ordinary man of prudent,
16 firmness and courage would have reacted in the
17 same way, if he were in that situation.

18 THE COURT: All right. Solicitor, why not
19 self-defense?

20 MS. JONES: It's precluded from State v.
21 Williams, Judge, and I have that. And Williams
22 has cited that based -- essentially, State v.
23 Williams states that -- I don't want to misstate
24 it. That case involves a defendant and a
25 codefendant who met up with the victim for --

1 THE COURT: Hold on.

2 MS. JONES: -- the purpose of purchasing
3 high-grade marijuana. When Williams agreed to
4 participate in the drug deal, he made the
5 conscious choice to bring a loaded firearm with
6 him.

7 The defendant and co-defendant waited for
8 victim in the same mobile home park where
9 defendant was living. Victim arrived, they
10 entered the backseat of the victim's car and
11 began the drug deal. They handed the defendant
12 the marijuana, they weighed it and, essentially,
13 a shootout ensued. .

14 The Trial Court properly refused to charge
15 self-defense. The Supreme Court of South
16 Carolina said it properly refused to charge
17 self-defense. Williams' act of intentionally
18 bringing a loaded, unlawfully possessed pistol
19 to an illegal drug transaction was a violation
20 of law that was reasonably calculated to produce
21 the violence. Williams' act bars his right to
22 assert self-defense as an excuse for a homicide.
23 Intentionally bringing a loaded, unlawfully
24 possessed pistol to an illegal marijuana
25 transaction is in violation of the law, and that

1 is exactly what we have here.

2 He brought a loaded, illegally possessed
3 firearm to a marijuana deal, that was exactly
4 what happened in the Williams case, and I think
5 it's spot on. They were there to purchase
6 marijuana. He says that they were there to
7 purchase marijuana, to get the green. He tells
8 Duncan, "We pulled up, you know what I'm saying,
9 to get the green and all that." He said the man
10 had a gun, or something like that. It was
11 something. He said something about the man had
12 a gun, "and then all I knew was something popped
13 up, and I was just like, 'I don't know what to
14 do."

15 So, he is admitting that he is there for a
16 marijuana deal, and something popped up, and he
17 shot, he shot following Channon's shots as well.
18 Following the reasoning of Williams here, which I
19 think is very much parallel to the facts that we
20 have in the case today, he fails to establish
21 that he is without fault. How can you be
22 without fault, if you bring a loaded firearm,
23 especially one that looks like the one that he
24 was bringing that day to a drug deal, that is
25 the fault.

1 This would not have happened but for him
2 bringing that loaded -- but for him and Channon
3 Preston bring those firearms.

4 THE COURT: If you show up, are you -- to a
5 marijuana deal, and you have a gun with you,
6 this case would prohibit you from ever being
7 able to claim self-defense, if you got into a
8 shootout?

9 MS. JONES: This one says illegally
10 possessed.

11 THE COURT: Now, hold on; an illegally
12 possessed gun?

13 MS. JONES: Yes, it specifies --

14 THE COURT: Now, these guns are legal or
15 illegal?

16 MS. JONES: This case says that he was
17 illegally possessing that firearm.

18 THE COURT: Do we have -- they weren't
19 illegally possessed at a firearm in this case.

20 MS. JONES: Well, he didn't have a
21 concealed weapons permit.

22 THE COURT: Yeah, but --

23 MR. PAULK: Your Honor, you're supposed to
24 conceal --

25 THE COURT: Whoa, whoa, whoa.

1 MR. PAULK: Yes, sir.

2 THE COURT: Mr. Paulk, I mean I'm gonna
3 give you plenty of time to talk --

4 MR. PAULK: Certainly, Your Honor.

5 THE COURT: -- but not right now. Why
6 would you talk over her?

7 MR. PAULK: I understand.

8 THE COURT: So, you're saying that you show
9 up, and you have a concealed weapons permit, and
10 have the gun in your pocket, then -- and you
11 show up at a marijuana deal, then you could use
12 the weapon in self-defense?

13 MS. JONES: I don't know if I'm saying that
14 either. I'm just going off of what Williams
15 says. Williams says --

16 THE COURT: Well, all right, I'll look at
17 the case. I'll have to look at the case. What
18 else?

19 MR. PAULK: Well, Your Honor, may I respond
20 to Williams?

21 THE COURT: Briefly.

22 MR. PAULK: That Draco is not a concealed
23 weapon. Where is it supposed to be concealed?
24 It can't fit in the glovebox; it can't fit in
25 the center console. Technically, it may be a

1 pistol per manufacturer, that is not a pistol,
2 Your Honor, that is not subject to unlawful
3 carry of a pistol, it's not subject to the
4 concealed weapons permit regulation, that is a
5 rifle.

6 THE COURT: Well, I don't know, we've heard
7 testimony from the SLED expert that it was a
8 pistol, because it didn't have a stock. And so,
9 I guess the question then -- and maybe there's
10 an issue what is a pistol, and what is a rifle.
11 Well, because, obviously, if it is a rifle -- if
12 it was a rifle, then he would be legally
13 possessing the rifle at that time, right?

14 MR. PAULK: Your Honor --

15 THE COURT: Hold -- I meant if it was a
16 rifle that he'd be legal possessing it.

17 MS. JONES: I guess under the unlawful
18 carrying, this --

19 THE COURT: But that's the example you
20 gave.

21 MS. JONES: But this isn't -- this is a
22 pistol; the expert himself said it was a pistol.

23 THE COURT: Well, yeah -- well, he did say
24 that. All right.

25 MR. PAULK: Furthermore, Your Honor,

1 there's no contention that this weapon was ever
2 concealed. That is the illegal portion of
3 unlawful carrying of a pistol. If it is in a
4 motor vehicle, it's supposed to be in the
5 glovebox or the center console. If it is
6 concealed somewhere on your person, then it is
7 concealed. There are plenty of people who have
8 pistols in the home that are in the nightstand
9 that are somewhere else, they're not unlawfully
10 possessing those pistols.

11 There's been no testimony that this pistol
12 was unlawfully possessed, or that Mr. Polite was
13 in violation of carrying, or prohibited from
14 carrying any sort of firearm.

15 THE COURT: Yeah, but aren't there limits?
16 I mean the law has changed in some states
17 recently. I mean if you don't have a concealed
18 weapon permit, you can't just walk around with
19 an open pistol, at least not at this time, this
20 was 2020. You can't just walk around with a
21 pistol in your hand, I don't believe.

22 MR. PAULK: I'm not familiar with South
23 Carolina open carries laws --

24 THE COURT: Well, I mean the open carry law
25 really started -- I mean that's new.

1 MR. PAULK: Correct.

2 THE COURT: This happened in -- well,
3 whenever this happened, in '20.

4 MR. PAULK: '20, Your Honor.

5 THE COURT: So, in '20 I guess the question
6 is, and I'm just trying to think --

7 MR. PAULK: Certainly.

8 THE COURT: -- and, you know, I didn't
9 anticipate when I was coming down this morning
10 from Walterboro, I wasn't thinking about or
11 researching --

12 MR. PAULK: Your Honor, it's our contention
13 that the pistol possessed by Xavier Polite was
14 entirely lawful. Certainly, the law supports --
15 there is case law to support --

16 THE COURT: Pistol or rifle?

17 MR. PAULK: Pistol or rifle. A firearm
18 possessed by Mr. Polite was lawfully possessed.
19 There's case law to support that when a
20 difficulty arises, if you are allowed to -- if
21 you would be allowed to arm yourself, even if
22 you are prohibited from carrying a firearm, then
23 at the time that that difficulty arises, you are
24 allowed to arm yourself.

25 I certainly understand that the Williams

1 case is stating that this was -- in the Williams
2 case there was an illegally possessed firearm.
3 We do not have an illegally possessed firearm --

4 THE COURT: All right.

5 MR. PAULK: -- in this instance.

6 THE COURT: All right, yes, ma'am.

7 MS. JONES: Just briefly, Judge.

8 THE COURT: Sure.

9 MS. JONES: Actually, stepping aside from
10 concealed weapons permit, federal law prohibits
11 bringing a loaded gun to a drug deal, and it is
12 United States Code 9-24-C1A. And it says, "Any
13 person who, during in relation to a drug crime,
14 uses or carries a firearm to do any furtherance
15 of any such crime, possesses a firearm, shall be
16 sentenced to a term of imprisonment not less
17 than five years."

18 There's a violation of law right there that
19 he is illegally possessing a gun during a drug
20 transaction, which is exactly parallel to what
21 Williams says, and self-defense is not applied.

22 THE COURT: All right. What about any
23 objection to the charge they're requesting?

24 MR. PAULK: Your Honor, we would absolutely
25 be requesting that not given an accomplice

1 liability charge, I think that you hit the nail
2 on the head yourself earlier, there's been no
3 testimony of a common scheme or a plan. The
4 only common scheme or plan was to go buy
5 marijuana.

6 THE COURT: Well, I think there's a common
7 scheme or plan. I think there's a, you know, I
8 think I'm -- if there's -- I don't know how
9 strong it is, but when they're running back to
10 the car, and they said, "Hey, man, why didn't
11 you shoot him?" As in why didn't you finish the
12 job, I'm not saying that, but --

13 MR. PAULK: Sure.

14 THE COURT: -- it could be -- "It's cause I
15 ran out." And that was -- stood out so fast,
16 that some might think, or I think that could be
17 evidence that there was a plan to go rob and/or
18 kill this individual, and that statement and the
19 response I think clearly gives some evidence of
20 a possible conspiracy, and that's the problem
21 you've got right there.

22 Because otherwise, there's not a whole lot,
23 but I think that may be enough right there, the
24 whole -- let me hear from the Solicitor on this.

25 MS. JONES: They -- there's also evidence,

1 Judge, that they came together, that they went
2 to the home first, then they left, because they
3 said that there was a police officer at the head
4 of the road, and then they came back. And when
5 they came out of the car, both of them had guns
6 in their hands.

7 I think that is enough right there, coupled
8 with the comment you just said, to show that
9 they did have a common link, a common plan or
10 scheme. And I don't have to show and express
11 agreement. I think it'd be inferred -- can be
12 inferred from the evidence.

13 THE COURT: Anything else?

14 MS. JONES: Your Honor, every bit of case
15 law that I've seen has shown an express
16 agreement or has shown things in the past. In
17 one case, they bought shoes multiple times and
18 sold them at the flea market. And they tried to
19 say, "Well, I didn't know I was doing that."
20 And then in Madison, the same thing.

21 In every spec of case law, and, certainly
22 in the instance where the gentleman is trying to
23 retrieve his TV, and I can't remember the --
24 State v. Harry, the gentleman's trying to
25 retrieve his TV, he's two miles from the

1 perpetrator's house, who has his TV, he instead
2 drives 16 miles to go pick up a buddy who he
3 knows has a gun, and then they go back, and then
4 they go to get the TV.

5 That is a natural -- the resulting death
6 was a natural probable cause of his actions.
7 The decision to go purchase marijuana was not a
8 natural -- this man's death was not a natural
9 problem caused of these gentlemen deciding to go
10 purchase marijuana. I think there was something
11 else that I wanted to say that has just flicked
12 away.

13 THE COURT: Well, I will tell you I'm going
14 to allow it. I'll be honest, out of the
15 decisions that I've had this morning, that one I
16 think is perhaps a clearer -- it's clearer, and
17 I'm able to make that right now. I'm going to
18 allow it.

19 MR. PAULK: Yes, sir.

20 THE COURT: And I base it upon what the
21 Solicitor says, as what I call the evidence that
22 they presented that is -- I think could rise to
23 direct, but certainly is strong circumstantial
24 evidence; but I think she's right, it could rise
25 to some evidence on direct, but I really think

1 the comment that they made at the end, I mean I
2 think that that alone is enough of what could be
3 direct evidence of the crime.

4 MR. PAULK: And, Your Honor, that was the
5 comment that I was going to comment on.

6 THE COURT: Yes, sir.

7 MR. PAULK: There were 17 rounds in that
8 50-round drum magazine, whenever officers were
9 recovering it from [REDACTED] Eddings Point. The
10 gentleman shooting the Draco was not out.
11 Perhaps he was saying that he was out, because
12 he did not want to shoot anyone. I don't think
13 that it's necessarily evidence.

14 THE COURT: I think that's a great argument
15 for you to make.

16 MR. PAULK: Certainly.

17 THE COURT: I think that's -- well, that
18 could be an argument made. I can't give legal
19 advice anymore --

20 MR. PAULK: Certainly.

21 THE COURT: So I can still -- it's hard
22 after 30 years, but that certainly - Jean Toal
23 tells us it takes a long time to be able to --
24 you've got to be on the bench a long time to
25 squeeze the lawyer out of you. Someone told me

1 that recently when I saw her at a law school
2 graduation for my son, but I think that that is
3 certainly fertile ground for closing, any
4 statements that you might want to make. I don't
5 need to hear any -- unless you want to put
6 something else on the record for it, which is
7 fine, but I've pretty much made my mind up on
8 that one.

9 MR. PAULK: Certainly, Judge.

10 THE COURT: Anything else you want to put
11 on the record, as it relates to that argument?
12 I'm not -- I don't want to cut you off.

13 THE COURT: As it relates to accomplice
14 liability, no, Your Honor, it's -- there was no
15 common scheme or plan. The actions that they
16 did chose -- choose to undertake, the death of
17 Steven Glover was not a probable result of those
18 actions.

19 I believe I've already stated all this for
20 the record, so I'll sit down.

21 THE COURT: Okay, thank you very much.

22 MR. PAULK: Thank you, Judge.

23 THE COURT: All right. Normally, what I
24 like to do is to have -- well, both of you'all
25 have tried cases in front of me, and so I like

1 to have a charge conference, where basically I
2 go and hand it to you, and go, "Do you have a
3 problem with this?" "No." "No."

4 And we move forward, and that way there's a
5 real clear record as to what's going on with the
6 charges. And, obviously, there'll be some
7 charges that you object to coming in or not.
8 I'm not ready to do that right now, it's 10
9 o'clock. We've got some interesting arguments
10 with the charges; we've got the verdict form.
11 Do we have the disk ready?

12 MS. JONES: No, Judge, because he had
13 pulled up the surveillance video to show you.

14 THE COURT: Oh. Yeah, well, let me see
15 that surveillance video really quick.

16 MS. JONES: Let's just run through this
17 real quick.

18 THE COURT: Yeah, do you have time for me
19 to watch the --

20 MS. JONES: Sure.

21 THE COURT: -- video surveillance? I don't
22 want to -- unless you mind. If you want to go
23 right now, you can, he'll be here to watch it.
24 I'm just gonna watch the video surveillance.

25 MS. TOLLEY: I'll wait, Judge.

1 (Video being played for the Court.)

2 THE COURT: All right, play it one more
3 time for me, please?

4 (Video being played for the Court.)

5 THE COURT: All right. All right, it does
6 appear to show -- I guess that's the Defendant,
7 no?

8 MS. JONES: That would be Channon Preston,
9 Your Honor.

10 THE COURT: That's Mr. Preston? It does
11 show Mr. Preston appearing to exit the vehicle,
12 not that that's the be all, that ends all the
13 argument, but it does -- it refreshes my memory
14 as it relates to that. Let's take a break.
15 Let's see if we can work on that, and then we'll
16 get the jury in here, and go with that, and then
17 see where we go from there, okay?

18 MS. JONES: Thank you Judge.

19 (BREAK)

20 PROCEEDINGS CONTINUED

21 **

22 THE COURT: I have already read that
23 through twice since it has been back there.

24 MS. JONES: Your Honor, we have the witness
25 present. We would ask to proffer his testimony

1 before he takes the stand.

2 THE COURT: I will let you proffer it right
3 now.

4 JEFFREY M. MAXWELL,
5 being first duly sworn testified as
6 follows:

7 * * *

8 VOIR DIRE EXAMINATION BY MS JONES

9 BY MS. JONES:

10 Q State your name for the record.

11 A Jeffrey Maxwell.

12 Q Where do you work?

13 A Beaufort County Detention Center.

14 Q What do you do at the detention center?

15 A I am in a position called intel
16 officer.

17 Q What does that mean?

18 A Monitor phone calls, the videos from
19 visitations and the inmate phone calls.

20 Q That is part of your duties in your
21 position?

22 A Yes.

23 Q What do you do for secured intel? Do
24 you monitor inmates' phone calls when they come
25 into the facility?

1 A Yes.

2 Q Are the calls recorded?

3 A Yes.

4 Q. Just how are they identifiable to each
5 inmate?

6 A. When they first come into the facility
7 and booked in, they are enrolled in our third-
8 party company that we use, which is IC
9 Solutions. They'll -- each person is issued a
10 PIN number, then they'll enroll in the system
11 using their voice, to where they'll have to say
12 United States or their name, and then once they
13 get enrolled then they can make calls.

14 Q. So, each call the inmate makes they put
15 their PIN number in?

16 A. Yes, ma'am.

17 Q. So, they can be tracked back to that
18 particular inmate?

19 A. Yes.

20 Q. Do you -- and you said you monitor
21 these calls?

22 A. Yes, ma'am.

23 Q. If you find calls of interest, what do
24 you do with those?

25 A. I will make a note in the system. That

1 way I can find it later. If there's a threat to
2 the public, I'll notify whatever agency brought
3 that person in.

4 Q. And are you working in conjunction with
5 other law enforcement agencies in the County?

6 A. The system is set up, and our policy
7 and procedures are that investigators and the
8 Solicitor's Office have access to these as well.

9 Q. Did you come across a phone call that
10 inmate, Xavier Polite, made on November 18th of
11 2020?

12 A. Yes, I reviewed that call the next day.

13 Q. Okay. And when you reviewed that call,
14 so that would have been on the 19th?

15 A. Yes, ma'am.

16 Q. What did you do after you reviewed that
17 call?

18 A. I made a note in the system, and also
19 in the system I saw the Sheriff's Office had
20 already listened to it, so that's all it does.

21 Q. You can see the order of who listens to
22 the calls?

23 A. Yes, ma'am.

24 Q. So, who was the first one to listen to
25 that call?

1 A. The first one was me, and then I went
2 back and listened to it, and Pam Brown.

3 Q. And is she with Beaufort County
4 Sheriff's Office?

5 A. Yes, ma'am.

6 Q. At a later date did you get a subpoena
7 from my office for that phone call?

8 A. Yes, I got a subpoena February 2nd.

9 Q. And pursuant to that subpoena, did you
10 provide that jail phone call?

11 A. Yes.

12 Q. And that was a fair and accurate jail
13 phone call that you had heard November 19th?

14 A. Yes.

15 Q. Are inmates advised that their calls
16 are recorded?

17 A. They are told when they come in, and
18 when they enroll, and each time they get on the
19 phone they're told that the calls are monitored
20 and recorded.

21 Q. Are there any sort of signs in place
22 around the Detention Center indicating that?

23 A. Yes.

24 Q. So, they're verbally told, but then
25 there's also visual reminders?

1 A. Yes.

2 Q. And actually, during these phone calls,
3 other inmates can hear the conversations?

4 A. Yeah, they're in a dayroom setting.

5 Q. Okay. What did you call it?

6 A. It's a dayroom. It's a public setting,
7 they're not enclosed or nothing like a phone
8 booth.

9 Q. Okay, it's not private?

10 A. No.

11 Q. And these calls are made, are they kept
12 in the ordinary course of business of the jail?

13 MS. JONES: Judge, I don't think I have any
14 more questions.

15 THE COURT: All right, thank you.

16 Mr. Paulk?

17 **

18 VOIR DIRE EXAMINATION BY MR. PAULK

19 BY MR. PAULK:

20 Q. You stated just a moment ago that the
21 Sheriff's Office had already listened to the
22 call before you had; is that correct?

23 A. Yeah, they listened to them on the
24 19th.

25 Q. Okay, and was that before you listened

1 to it? Because you said you listened to it the
2 next day, correct?

3 A. Yes, sir.

4 Q. Also, the 19th?

5 A. Yeah, uh-huh.

6 Q. And that they listened to it first,
7 correct?

8 A. I believe so, yeah.

9 Q. Okay, and you said that the Solicitor's
10 Office and the Sheriff's Office has unfettered
11 access to these calls, correct?

12 A. Yes, sir.

13 Q. You were not served with a search
14 warrant to get this call, correct? You were
15 served with a subpoena?

16 A. I believe so, yes.

17 Q. Okay. What was the security purpose
18 for listening to Mr. Polite's call?

19 A. If anybody comes in with violent
20 charges, or anything like that, I'll look and
21 see who all came in that morning, who all came
22 in the previous day, and then I will look and
23 see if there's any security issues, public
24 threats, stuff like that. If they come to jail
25 and say, "You know, I'm going after this

1 person," whatever, it's a threat to the public,
2 so that's why I listen to the calls.

3 Q. Certainly. So in Mr. Polite's case
4 were there any threat to the public, or any
5 threat to any individuals?

6 A. No.

7 Q. Okay. And you testified just a moment
8 ago that the first person who actually listened
9 to this call was somebody from BCSO, correct?

10 A. Yeah.

11 Q. Okay.

12 MR. PAULK: Your Honor, I don't have any
13 further questions, but I do believe we have an
14 argument.

15 THE COURT: All right, anything else?

16 MS. JONES: No, sir.

17 THE COURT: All right, thank you, sir, you
18 can step down.

19 WITNESS: All right.

20 THE COURT: Yes, sir.

21 MR. PAULK: Your Honor, the first person --
22 the first people who listened to this call were
23 from BCSO Investigations, not for security
24 purposes of the jail. They received this call
25 through subpoena, not through a search warrant,

1 in contradiction of Mr. Polite's Fourth
2 Amendment search and seizure rights. Your
3 Honor, the call as we've heard the Solicitor's
4 Office and the Sheriff's Office have unfettered
5 access to listen to any of the calls that they
6 want to without having to get a subpoena,
7 without having to get a search warrant. I think
8 that we've got all of the same factors that are
9 present in Ellison that showed that this was not
10 for security purposes, it was not for a genuine
11 governmental interest, it was for the purpose of
12 investigation. And as Ellison said, to allow
13 the prosecution unfettered access to all of an
14 inmate's communications is to hack at the roots
15 of any defendants. And, Your Honor, that's
16 exactly what Mr. Maxwell has testified to.

17 THE COURT: Okay.

18 MR. PAULK: And for those reasons I would
19 ask that you keep this call out in its entirety.

20 THE COURT: All right, Solicitor?

21 MS. JONES: Judge, I think BCSO listening
22 to the call falls squarely under the law
23 enforcement exception. I'll argue again that I
24 think that he gave consent when he agreed to
25 make the phone call, and continue with the phone

1 call, and we're very much distinguishable from
2 the case that the defense is citing. That case,
3 again, is from 1976 and deals with letters.
4 Letters are a much more personal form of
5 communication than jail phone calls. Letters
6 are also person-to-person. They're written in
7 private. They're intended for the one
8 recipient.

9 These jail phone calls are made in a
10 dayroom, day space, where there's other inmates
11 all over the place that could be hearing what he
12 is saying. There is no privacy whatsoever. So
13 once he opens up that communication to the third
14 party, it's open, it's public. We have no
15 details. The Court is very clear, there's no
16 details in the record surrounding the waiver in
17 the Ellison case. It's just void of any details
18 regarding the waiver. We don't know what it
19 looks like. It's a waiver card, we don't even
20 know what it said. This case we hear the
21 waiver, we hear the consent given on the waiver.
22 Maxwell also testified that there are signs up
23 in the jail that indicate they're being
24 recorded. We have consent on every single phone
25 call. That's a consent one-time given.

1 I think that is distinguishable. I think
2 that letters and phone calls are two entirely
3 different things. I think that there's no
4 reasonable expectation of privacy under the
5 Fourth Amendment, by the State's Constitution,
6 our South Carolina Constitution.

7 THE COURT: All right. Being there's a lot
8 of issues surrounding this matter, I don't know
9 if it's going to be resolved today, as it
10 relates to this particular issue. What I will
11 say is that Mr. Maxwell -- Officer Maxwell went
12 through in detail the process that's used, how
13 it's assigned to a particular phone number, or a
14 PIN that's assigned to a particular individual.
15 He testified that the Defendant would have been
16 told, or routine practices are to tell them that
17 there be -- that the phone calls are being
18 recorded.

19 He testified that when they enroll in the
20 program, apparently, I assume that means the
21 phone calls, they're told that the calls are
22 being recorded subject to monitoring, when he
23 signs up for the program.

24 He testified that each time that he uses
25 the phone, he's told via a recording, and that

1 also there are signs around the phones informing
2 the individual, that they are subject to being
3 monitored or recorded.

4 The phone calls were made in a dayroom, and
5 in fact during the call itself you could hear
6 other inmates and/or -- other individuals. I
7 don't know if they're inmates, detention
8 workers, police officers who may have been
9 checking, I don't know, but I know that there
10 were other people in the background, because in
11 fact he asked for a PIN from somebody, who
12 either was standing or sitting very near to him,
13 so they could write the number down. There's
14 also multiple people on the phone line that he
15 was talking to.

16 I think at least more than one there. I
17 just don't think that in this case, given all of
18 that information. Also, he did, and I
19 understand that Beaufort County Sheriff's Office
20 did apparently listen to it first, but he
21 himself testified the next morning he came in,
22 and as a matter of practice, he listens to
23 recordings, for anybody who comes in with any
24 violent offense for, amongst other things, to
25 see if they make a threat to the public.

1 And while he didn't say he made a threat to
2 the public, he did say that he listens to those
3 calls for, amongst other things, jail security
4 and safety, and he indicated that as a result of
5 that call, he flagged the call. I'm not exactly
6 sure why he flagged it, but he did indicate that
7 he flagged the call.

8 I think when I take all of those things
9 into consideration, I think that the phone call
10 is admissible. I don't think it's going to
11 violate his Fourth Amendment rights, so I think
12 that -- I think it's also distinguishable from
13 the case back in 1976, or whenever that -- I
14 forget the name of the case.

15 MR. PAULK: Ellison.

16 THE COURT: Ellison, there was a card that
17 was given. I don't know if that card was given
18 once, or every time they wrote a letter, but I
19 also would agree with the Solicitor that writing
20 a letter, while that's almost a lost art in
21 today's society, I do agree with you there, Mr.
22 Paulk, with letter writing could be considered
23 the phone calls of the day.

24 We don't see people writing letters like
25 they used to, but I would also say that I agree

1 with the Solicitor, that letters are far more
2 personal, and are directed in a one-on-one --
3 they're usually directed in a more direct and
4 one-on-one fashion, than a phone call made in
5 this environment.

6 For that reason, I will respectfully make a
7 note, and I'll have it for the record. Who
8 knows what might happen with this particular
9 issue? I certainly understand your concern, but
10 I think for right now all of South Carolina
11 allows these calls to come in, and in this case,
12 I don't think it's violating his Fourth
13 Amendment rights, and that'll be my ruling.

14 MR. PAULK: Thank you, Your Honor, yes,
15 sir.

16 THE COURT: All right, so anything else
17 before we bring the jury in?

18 MS. JONES: No, we're ready, Judge.

19 MS. TOLLEY: Nothing, Your Honor.

20 THE COURT: Okay, the tape -- the video's
21 ready?

22 MS. JONES: Yes, sir.

23 THE COURT: Are you sure?

24 MS. JONES: Yes, sir.

25 THE COURT: The guy's a pro, I'm just

1 asking.

2 MS. JONES: I understand.

3 THE COURT: Make a list and check that
4 twice, let's get the jury in here.

5 BAILIFF: Your Honor, the jury's entering
6 the courtroom.

7 THE COURT: Mr. Foreman, ladies and
8 gentlemen, good morning.

9 JURORS: Good morning.

10 THE COURT: And the State I believe is
11 ready to proceed with this case. Solicitor?

12 MS. JONES: Yes, thank you, Judge. The
13 State calls Jeffrey Maxwell.

14 THE COURT: Okay.

15 **JEFFREY MAXWELL**

16 **being first duly sworn, testified as follows:**

17 THE COURT: Your witness, yes, ma'am.

18 MS. JONES: Thank you, Judge.

19 **

20 **DIRECT EXAMINATION**

21 BY MS. JONES:

22 Q. Good morning, Officer Maxwell, where do
23 you work?

24 A. At the Beaufort County Detention
25 Center.

1 Q. And what do you do at the Detention
2 Center?

3 A. I'm in a position called the Intel
4 Officer.

5 Q. What does that mean?

6 A. That means I listen to the inmate phone
7 calls, their video visitation.

8 Q. Are inmate phone calls recorded?

9 A. Yes, ma'am.

10 Q. And are the inmates told that their
11 calls are recorded?

12 A. Yes, ma'am.

13 Q. Tell me a little bit about that.

14 A. When they first come in the facility,
15 they are enrolled in a phone system, where
16 they've got to use voice verification, and
17 they're also given a PIN number. And once
18 they're enrolled, they're told that the calls
19 are monitored and recorded. And then each time
20 they get on the phone it also tells them each
21 time that the calls are being recorded.

22 Q. And are there also signs reiterating
23 that warning them?

24 A. Yes, ma'am, it's also in their inmate
25 handbook as well.

1 Q. Why are these warnings put in place?

2 A. For security purposes for the facility.

3 Q. Is that part of your normal duties day-
4 to-day? .

5 A. Yes, ma'am.

6 Q. Tell me about that. Do you review them
7 every morning?

8 A. Each morning when I come in, I'll see
9 who all came in the previous day and that night,
10 if there's any violent charges, or anything like
11 that. That they're the ones I'll listen to make
12 sure there's no threat to the public, or a
13 threat at the facility.

14 Q. And if you find a call that piques your
15 interest, what do you do with it?

16 A. There's a way I can make a note in the
17 system on that call, to where it can be found
18 easier later.

19 Q. And are -- these recorded phone calls,
20 are they kept in the ordinary business of the
21 Beaufort County Detention Center?

22 A. Yes, ma'am.

23 Q. Did you receive a subpoena from my
24 office for a particular phone call?

25 A. Yes, ma'am.

1 Q. Do you remember the date of that phone
2 call?

3 A. The phone call was made on November
4 18th, 2020.

5 Q. And who was the inmate you reviewed for
6 that phone call?

7 A. Xavier Polite.

8 MS. JONES: Permission to approach?

9 THE COURT: Yes, ma'am.

10 BY MS. JONES:

11 Q. I'm gonna hand you what has been marked
12 as State's 187.

13 Do you recognize that item?

14 A. Yes, ma'am.

15 Q. And what is that?

16 A. That's the CD of the phone call.

17 Q. And did you have an opportunity to
18 review this phone call?

19 A. Yes, ma'am.

20 Q. And is it a fair and accurate recording
21 of the phone call you flagged from November
22 18th, 2020?

23 A. Yes, ma'am.

24 Q. And has it been altered or manipulated
25 in any way?

1 A. No, ma'am.

2 (Court Reporter marks State's Exhibit
3 Number 187, as attached hereto.)

4 MS. JONES: Your Honor, at this time, the
5 State moves 187 into evidence.

6 THE COURT: Counsel?

7 MS. TOLLEY: Without objection.

8 THE COURT: All right.

9 MR. PAULK: Subject to previous objection,
10 Your Honor.

11 THE COURT: Okay, admitted subject to the
12 previous objection.

13 (State's Exhibit 187 entered into
14 evidence.)

15 MS. JONES: Thank you, Judge, permission to
16 publish?

17 THE COURT: Yes, ma'am.

18 (Audio being played for the jury.)

19 MS. JONES: Thank you, I have no further
20 questions for this witness.

21 THE COURT: Counsel, cross-examination?

22 MR. PAULK: None, Your Honor.

23 THE COURT: All right, thank you so much.

24 Sir, thank you so much. He can be released from
25 his subpoena?

1 MS. JONES: Yes, sir.

2 THE COURT: All right, have a great day.
3 All right, Solicitor, you can call your next
4 witness.

5 MS. JONES: Judge, at this time the State
6 rests.

7 **

8 **STATE RESTS**

9 THE COURT: All right. Ladies and
10 gentlemen, the State has rested, and as a result
11 of that, there's going to be some motions that
12 I'm going to take up before we continue, and so
13 I'm gonna ask you to go back to your jury room.
14 I do not believe these motions will take long.
15 I wouldn't tell you that, if I didn't -- but I
16 don't think they're going to take that long,
17 okay, so I'm telling you that, but I need to
18 take this up outside of your presence. Go back
19 in the jury room. We'll try to get you back in
20 here. Don't talk about the case, thank you.

21 (Jury exits the courtroom.)

22 THE BAILIFF: The jury's clear, Your Honor.

23 THE COURT: All right, have a seat. I told
24 the jury the motions wouldn't take that long. I
25 don't want anybody to think that that means that

1 I'm not -- have as much time as you need to
2 argue motions, okay? So take all the time you
3 need to argue motions. So at this time let me
4 hear from the defense, any motions?

5 MS. TOLLEY: Thank you, Your Honor, may it
6 please the Court?

7 THE COURT: Yes, ma'am.

8 MS. TOLLEY: At this time, we believe that
9 the evidence presented in the case, that the
10 State has not moved or presented sufficient
11 evidence for moving forward in this case. We
12 believe that there was little or no evidence
13 presented to show that there was any intent on
14 the part of Xavier Polite to either murder or
15 attempt to murder anyone in this particular
16 case.

17 There was certainly no testimony to
18 indicate that there was any possession, or
19 whether to commit a violent crime. The only
20 testimony that has been presented is that Mr.
21 Xavier Polite and Channon Preston went to buy
22 marijuana and things went terribly wrong.
23 There's no evidence of intent to go there to
24 kill anybody, or attempt to kill anybody, or
25 possess the weapon during the commission of a

1 violent crime.

2 It's that Corey Singleton, who is the
3 alleged victim of the attested murder, was not
4 even injured. Xavier's statement was introduced
5 into evidence by Investigator Duncan, and his
6 statement is that they were -- went there to buy
7 the marijuana.

8 Channon said someone had a gun, they shot -
9 - Channon shot, and I shot. And in a situation
10 like that, there was certainly no intent to
11 commit a crime of -- certainly not murder, and
12 certainly not attempted murder, and certainly
13 not in possession of a weapon during the
14 commission of a violent crime.

15 THE COURT: All right, thank you very much.
16 Solicitor, yes, ma'am?

17 MS. JONE: Thank you, Judge. Respectfully,
18 I disagree. As you know, intent doesn't have to
19 exist in the mind for a period of time. Xavier
20 Polite and his codefendant went armed, two
21 weapons, both loaded with bullets to a drug
22 dealer.

23 They got out of the van holding both of
24 those weapons and unleashed fury off at Corey
25 Singleton and Steven Glover, resulting in the

1 death of Steven Glover. His statement is less
2 than credible. He gave multiple renditions of
3 what happened that afternoon. I think that
4 there is ample direct, as well as circumstantial
5 evidence that he is guilty of all three of the
6 indictments, and I think there's enough to go to
7 the jury.

8 THE COURT: All right. With all due
9 respect I'm gonna deny your motion. I think
10 that there is, at this point, as you're aware,
11 I'm looking at the existence of evidence, and I
12 think that while perhaps there's not a whole lot
13 of direct, I think there certainly is some. I
14 think there's circumstantial evidence, and I
15 think that there is sufficient evidence in this
16 matter to move forward.

17 And so for those reasons, and the argument
18 the Solicitor made, as it relates and what she
19 enumerated concerning the evidence, I believe
20 for those reasons it would be appropriate for
21 this matter to move forward at this stage, and
22 for me to respectfully deny your motion.

23 MS. TOLLEY: Your Honor, at this time, we
24 would also renew our previous objections,
25 specifically, our request that the 911 calls not

1 be admitted into evidence.

2 That the statements of Corey Singleton not
3 be admitted into evidence. That the video
4 surveillance not be admitted into evidence.
5 That I guess the photos from the telephone of
6 Channon Preston not be admitted into evidence.

7 And we would renew our motions based on all
8 of our previous arguments, and the search
9 warrant at 152 Eddings Point Road.

10 THE COURT: All right, and I think
11 certainly having done that, you have protected
12 yourself on the record. Let me hear from you.
13 Anything you want to add that, Solicitor?

14 MS. JONES: I would just renew my previous
15 argument.

16 THE COURT: And what I will do is, I would
17 basically -- rather than restate all the reasons
18 that I gave prior, I believe that I will just
19 incorporate all of the information, and all of
20 my discussion concerning my rulings on those
21 matters, and will reiterate that at this time.
22 And as a result, will respectfully deny that
23 matter, but I would acknowledge the fact that
24 you renewed those motions at this time, yes,
25 ma'am.

1 MS. TOLLEY: Thank you, Judge.

2 THE COURT: Sure. Anything else?

3 MS. TOLLEY: No, Your Honor.

4 THE COURT: All right, anything else from
5 the State?

6 MS. JONES: No, sir.

7 THE COURT: All right, let me ask you this,
8 would not be an appropriate time for me to
9 advise your client of his rights, concerning
10 whether or not to testify?

11 MS. TOLLEY: Yes, sir.

12 THE COURT: All right, certainly.

13 **

14 XAVIER M. POLITE,

15 Being duly sworn testified as follows:

16 **

17 EXAMINATION BY THE COURT

18 BY THE COURT:

19 Q. Mr. Polite, would you stand up for me,
20 sir? Let me ask you this, could you raise your
21 right hand? Sir, do you swear to tell the
22 truth, the whole truth and nothing but the truth
23 so help you God?

24 A. Yes, sir.

25 Q. All right, thank you, Mr. Polite, you

1 can put your hand down. Hold on, continue to
2 stand for me, if you don't mind.

3 A. Okay.

4 Q. This won't take a whole lot of time,
5 but I've got some very important things that I
6 want to go over with you at this time. Now,
7 Mr. Polite, at this time, sir, I'm going to
8 explain to you your rights. If you don't
9 understand anything I say, Mr. Polite, please
10 let me know, and if you want me to explain
11 anything in more detail, again, please let me
12 know; do you understand that, Mr. Polite?

13 A. Yes, sir.

14 Q. Thank you. All right, Mr. Polite,
15 we've now reached the stage in the trial, where
16 you may present your defense. You have the
17 right to claim the protections, Mr. Polite,
18 given to you by the Fifth Amendment to the
19 Constitution of the United States.

20 This amendment, in part, reads, "No
21 person," Mr. Polite, "shall be compelled in any
22 criminal case to be a witness against himself."
23 This means, sir, that you cannot be required to
24 testify in this case. You have the right to
25 testify, Mr. Polite, on your own behalf,

1 however, no one, sir, can make you testify.
2 This is a personal right, and no one can waive
3 this right except you; do you understand that,
4 Mr. Polite?

5 A. Yes, sir.

6 Q. Thank you. Mr. Polite, if you decide
7 to testify, you will be subject to the same
8 rules that govern other witnesses, and you may
9 be examined, Mr. Polite, and cross-examined on
10 any relevant issue in the case.

11 In addition, sir, if you have any
12 convictions involving dishonesty or false
13 statement, or for crimes punishable by
14 imprisonment for more than one year, and the
15 Court determines that the probative value of
16 admitting this evidence outweighs its
17 prejudicial effect to you, the Solicitor, sir,
18 will be able to introduce your record to attack
19 your credibility; do you understand that, Mr.
20 Polite?

21 A. Yes, sir.

22 Q. Now, Mr. Polite, if you decide to
23 testify, this decision, sir, on your part, must
24 be freely, voluntarily and intelligently made
25 with knowledge of the protections given to you

1 by the Fifth Amendment, sir, and the consequence
2 of your decision to testify; do you understand
3 that, Mr. Polite?

4 A. Yes, sir.

5 Q. All right. If you decide not to
6 testify, sir, I will instruct the jurors that
7 they cannot give the fact that you did not
8 testify any consideration whatsoever, and that
9 there's to be absolutely no prejudice to you,
10 Mr. Polite, because you did not testify.

11 Sir, it is left entirely up to you whether
12 or not you testify. You may talk with your
13 attorney, your family and friends, or anyone
14 else, but the final decision, Mr. Polite, will
15 be left entirely up to you; do you understand
16 that?

17 A. Yes, sir.

18 Q. Mr. Polite, do you understand what I've
19 explained to you?

20 A. Yes, sir.

21 Q. Do you have any questions, Mr. Polite,
22 about what I've explained to you, sir?

23 A. No, Your Honor.

24 Q. All right. And, Mr. Polite, have you
25 discussed with your lawyer whether you should or

1 should not testify, sir? Have you discussed
2 that with your lawyers?

3 A. Yes, sir.

4 Q. Okay. And so let me ask you this, do
5 you need any additional time with your lawyers
6 to discuss this particular issue?

7 A. Yes, sir.

8 Q. You would like to talk with them?

9 A. Yes, sir.

10 Q. All right. Let me ask you this, can he
11 meet with them in that room right there?

12 THE DEPUTY: Yes, sir.

13 THE COURT: But he --

14 THE DEPUTY: He can sit right here.

15 THE COURT: No, but he needs to talk -- he
16 needs to be with his lawyers and talk with them
17 about this issue.

18 Okay? All right, so however you want,
19 that's fine. He needs somewhere where the three
20 of them can talk.

21 MR. PAULK: Thank you, Judge.

22 THE COURT: Okay, yes, sir. All right,
23 we'll be at ease for about five minutes.

24 (RECESS)

25

PROCEEDINGS CONTINUED

MS. JONES: I do have one concern, Judge.

1 I understand Mr. Polite will be testifying. I
2 don't know who else Ms. Tolley plans on calling
3 this afternoon, this morning, as her case
4 unfolds. I am under the impression that she has
5 subpoenaed a Dispatch supervisor, who was not on
6 the original witness list.

7 She also has subpoenas and records from
8 Dispatch, it looks like a script for a 911
9 operator, and then CAD abbreviation codes, I
10 guess is what you would call it, Judge. I am
11 concerned that she's trying to step back into
12 the CAD report area, which we have already been
13 down that rabbit hole numerous times.

14 THE COURT: Uh-huh. Well, we'll deal with
15 that, if that becomes an issue.

16 MS. JONES: Okay.

17 THE COURT: Whether or not she's gonna call
18 anybody else related to that. That sounds fine,
19 all right? Let's go ahead and get the jury back
20 in. Counsel approach.

21 (Bench conference.)

22 BAILIFF: Your Honor, the jury's entering
23 the courtroom.

24 THE COURT: Thank you.

25 BAILIFF: All present.

1 THE COURT: All right, thank you, Mr.
2 Foreman, ladies and gentlemen of the jury, we're
3 ready to continue with the trial of this case.
4 Counsel, call your first witness.

5 MS. TOLLEY: Thank you.

6 MR. PAULK: Your Honor, the State calls
7 Xavier Polite.

8 THE COURT: All right, come around, Mr.
9 Polite.

10 * * *

11 XAVIER POLITE

12 being first duly sworn, testified as
13 follows:

14 **

15 DIRECT EXAMINATION

16 BY MR. PAULK:

17 Q. Good morning, Xavier.

18 A. Good morning.

19 Q. Where are you from?

20 A. Beaufort.

21 THE COURT: Okay, speak up a little bit. I
22 want to make sure they hear you, and my Court
23 Reporter hears you. Thank you, sir.

24 BY WITNESS:

25 A. Beaufort.

1 Q. So, Mr. Xavier, this lady right here is
2 taking down everything you say, and we also want
3 to make sure that the jury gets a chance to hear
4 you, okay?

5 A. Yeah.

6 Q. So we just want you to speak up and
7 speak clearly, sir.

8 A. Okay.

9 Q. But now where are you from?

10 A. Beaufort.

11 Q. And did you grow up in Beaufort?

12 A. Yes, sir.

13 Q. Have you lived here your whole life in
14 Beaufort?

15 A. I have.

16 Q. Have you ever lived anywhere else?

17 A. I have.

18 Q. And where was that?

19 A. Georgia.

20 Q. How long did you live in Georgia?

21 A. Three and a half years.

22 Q. Who were you living with when you lived
23 in Georgia?

24 A. My mother.

25 Q. So when did you move back to Beaufort

1 County?

2 A. I would say the beginning of February,
3 the beginning of March.

4 Q. Of what year?

5 A. 2020.

6 Q. And what brought you back to Beaufort?

7 A. My mother just wanted to take a chance
8 and she wanted to -- I would say recapture our
9 roots, because she wanted to enjoy Beaufort one
10 last time.

11 Q. Okay. What kind of work did you do,
12 sir?

13 A. Construction, cleaning, cooking,
14 maintenance.

15 Q. You sound like a jack of all trades.
16 What was the most recent job that you had?

17 A. Cooking.

18 Q. Okay, and where was that at?

19 A. Previously beforehand it was Foolish
20 Frog, and after that it was IHOP.

21 Q. Okay.

22 THE COURT: Hold on one second. Can
23 everybody hear him? My jurors, you all can hear
24 him? Okay, good, go right ahead.

25 BY MR. PAULK:

1 Q. Just try and speak up just a little bit
2 more. I want to make sure everybody hears this
3 okay?

4 A. All right.

5 Q. Now, where's Foolish Frog at?

6 A. It's on St. Helena.

7 Q. Okay, and what about the IHOP that you
8 were working at?

9 A. It's in Beaufort.

10 Q. Okay. Did you have the occasion to
11 meet a man named Channon Preston?

12 A. I had.

13 Q. How did you meet?

14 A. I met him through Foolish Frog, we both
15 worked.

16 Q. Okay. How long had you known Channon?

17 A. I would say at least three months.

18 Q. Okay. And you -- how did you meet?

19 A. Through work.

20 Q. Were you'all friends?

21 A. Uh-uh, acquaintances.

22 Q. Could you elaborate on that a little
23 bit more?

24 A. I honestly didn't know him from a can
25 of paint, so I honestly just -- we were just

1 coworkers, so it was the night we was off, got
2 off at the same time, and I asked him where
3 could I buy marijuana, and he said -- well,
4 basically, he just showed me where he buys
5 marijuana from, and it was an after work thing.

6 Q. Okay. Before working at the Foolish
7 Frog, did you know Channon?

8 A. Uh-uh.

9 Q. No?

10 COURT REPORTER: Did you --

11 BY WITNESS:

12 A. No, sir.

13 THE COURT: Thank you.

14 BY MR. PAULK:

15 Q. Thank you. And just for the Court
16 Reporter --

17 A. Uh-huh.

18 Q. -- try to say yes, sir, no, sir --

19 A. Gotcha.

20 Q. -- yes, ma'am, no, ma'am, because head
21 nods don't translate when typing it, okay?

22 A. Yes, sir.

23 Q. All right. When you stated that you
24 didn't know Channon very well, could you kind of
25 expand on that?

1 A. There's not really much to say. I mean
2 I met him through work. It was a late night,
3 and he introduced me to somebody that he buy
4 weed from, and I -- honestly, it was just an
5 everything thing after that, there's really not
6 much to say.

7 Q. Sure. So where were you living at when
8 you lived in Beaufort?

9 A. Parkview Apartments.

10 Q. And where's that at?

11 A. Kind of behind the jail.

12 Q. Okay. And who were you living with
13 then?

14 A. I was staying with a girlfriend at the
15 time.

16 Q. Okay. Let's kind of move forward a
17 little bit. We all know why we're here today,
18 so let's talk about the day of November 18th.

19 A. Okay.

20 Q. Just go ahead and start from the
21 beginning of your day, sir.

22 A. I woke up and I had a little incident
23 with rodents, and they had -- that just put the
24 icing on the cake for my morning activities, and
25 after I took care of my wound I went to sleep.

1 I woke up later on --

2 Q. Let me stop you for just one second.
3 Where were you sleeping at? Where were you
4 staying at?

5 A. Oh, I wasn't staying there, but I
6 stayed the night previously at Channon's home at
7 [REDACTED] Eddings Point Road, because it was his
8 birthday, it was his birthday week, and I stayed
9 -- I ended up staying from the 15th to the 18th.

10 Q. Okay. So let's get back to where you
11 were, I didn't mean to interrupt. You woke up
12 and you had some issue with some rats, then you
13 were gonna continue on.

14 So what happened next?

15 A. I went to sleep, woke up at least from
16 between 10:00, 11:00 in the morning, and I saw
17 Channon, and I asked him if we was gonna buy
18 some weed today, and he said, "Yeah." And I
19 asked him if we were going to the same person,
20 he said, "No."

21 So I told him to show me somebody that, you
22 know, somebody else that he know, and he
23 eventually came back at least ten minutes after,
24 and said he found somebody.

25 Q. Why didn't you'all want to buy weed

1 from the person that you normally do?

2 A. We owed him a decent amount of money,
3 and we didn't want to go to him with extra
4 money, knowing that we already owe him.

5 Q. Okay. So you'all decided to buy some
6 weed, and then what happened?

7 A. We went to [REDACTED] Stonewood Road, and as we
8 went there we saw -- Channon saw the police at
9 the head of the road, and he said, "Man, I ain't
10 -- I'm not gonna do it again. I'm not gonna go
11 and buy the weed this time," because he went to
12 jail previously for -- well, from my assumption
13 he went to jail previously for getting pulled
14 over and having weed.

15 Q. Okay. So you'all decided not to buy
16 weed, because you saw the cop, and then what
17 happened?

18 A. We left. We -- well, we -- well,
19 initially, we pulled up into the driveway at [REDACTED]
20 Stonewood Road, and he told -- I believe either
21 Steven or Corey, and he told them that -- or
22 basically what he told me that he got arrested
23 for weed, and he didn't want it to happen again,
24 so we just left.

25 Q. Okay. Then what happened?

1 A. On the way out we took a different
2 direction on the way out, we was heading back to
3 Eddings Point, and he saw -- well, we saw the
4 officer driving out, and he was like, "Oh, we
5 should go buy weed now." And I honestly told
6 him, "It's up to you."

7 Q. Okay. So what happened next?

8 A. We pulled back up at [REDACTED] Stonewood in
9 the driveway, and I got out to go knock on the
10 door, because I saw the car door open, but it
11 was running, and I didn't see anybody outside.

12 Q. Okay. What happened next?

13 A. Channon got out of the car, and yelled
14 at me, and told me that the man had a gun. I
15 don't know which man he was pertaining to, but
16 as I looked to my left, I saw a barrel pointed
17 in my direction, so I dropped down behind the
18 Nissan, and I head a few shots ring out. And
19 then I heard responding shots coming from behind
20 me where I left.

21 Q. Uh-huh.

22 A. And he --

23 Q. So hold on for just one second. Did
24 you see anybody in the yard whenever you got out
25 of the van?

1 A. Not to my recollection.

2 Q. Okay. Where were you at whenever
3 Channon yelled that someone had a gun?

4 A. I was halfway between the front seat of
5 the Nissan and backseat, so I was sort of in the
6 middle.

7 Q. Okay. So you get out of the car. Did
8 you get out of the car to go knock on the door?

9 A. Uh-huh.

10 Q. And while you were walking --

11 COURT REPORTER: Is that yes?

12 BY WITNESS:

13 A. Yes, ma'am, I apologize.

14 Q. While you were walking to the door,
15 could you pick up from there and explain to the
16 jury what happened?

17 A. I honestly didn't remember the day,
18 because everything happened so fast, but as I
19 reviewed the evidence --

20 Q. Uh-huh.

21 A. -- that I received in my discovery, I
22 saw that the dude named Corey was already
23 walking out. I never remembered that, but as I
24 saw it I assume as I made my way halfway to the
25 front porch, Channon got in the car, yelled that

1 the dude had a gun.

2 I didn't know which dude he was pertaining
3 to, so as I looked, I saw the barrel of a gun
4 and I just dropped, and I heard shots coming
5 from my left side, and then the responding -- a
6 response coming from behind me while I left
7 Channon.

8 Q. So was your left side towards the
9 house, or was your left side behind you?

10 A. My left side was where the Nissan was.
11 The house in the front of me, on the left side
12 was where the Nissan was.

13 Q. Okay. And then what happened?

14 A. After I heard the response coming from
15 behind me, the shots were still going off, so I
16 took the initiative, not knowing what to do, me
17 being scared, I've never been in a situation
18 like this ever in my life. I took the
19 initiative and responded, shooting myself.

20 Q. Okay. What happened after that?

21 A. Me and Channon got in the car, and we
22 left.

23 Q. And where'd y'all go afterwards?

24 A. We went to Eddings Point.

25 Q. And when you got to Eddings Point what

1 happened?

2 A. His cousin -- his supposed cousin,
3 yeah, David --

4 Q. Uh-huh.

5 A. -- he was there waiting in his Nissan.
6 And I think it was a Honda, I believe I'm not --

7 Q. In his car, whatever it was.

8 A. Okay, well, he was waiting in his car,
9 and we all got in his car, and he said he wanted
10 to buy weed himself. So we initially took off
11 and went to Foolish Frog, where the seller was
12 at.

13 Q. Okay. What happened after that?

14 A. Channon said he wanted something to
15 drink, so we stopped at Parker's.

16 Q. Where'd you'all go after Parker's?

17 A. Stonewood Road.

18 Q. Okay, at any time before you'all went
19 to buy weed, was there a plan to rob or kill
20 anybody at [REDACTED] Stonewood?

21 A. No, sir.

22 Q. Did Channon ever tell you that he was
23 gonna shoot or kill anybody at [REDACTED] Stonewood?

24 A. No, sir:

25 Q. Did you get out of the van with the

1 intent to shoot or kill anybody at [REDACTED] Stonewood?

2 A. No, sir.

3 Q. Did you have some money that was at
4 Eddings Point?

5 A. Yes, sir.

6 Q. About how much money did you have?

7 A. At least a hundred and some change.

8 Q. Okay. Did you take some of that money
9 with you to go buy weed that day?

10 A. I did.

11 Q. Okay.

12 MR. PAULK: A moment of the Court's
13 indulgence.

14 THE COURT: Yes, sir.

15 BY WITNESS:

16 A. Thank you.

17 Q. Xavier, did you speak with an
18 Investigator Duncan in this case --

19 A. I did.

20 Q. -- after you got arrested?

21 A. Yes.

22 Q. Okay, and did you tell Investigator
23 Duncan that someone else shot, and then Channon
24 shot, and then you shot?

25 A. Yes.

1 Q. Okay. Now, a few minutes ago, whenever
2 Court started this morning, we heard a jail
3 phone call.

4 A. Uh-huh.

5 THE COURT: Yes?

6 BY WITNESS:

7 A. Yes, I apologize.

8 THE COURT: That's all right.

9 BY MR. PAULK:

10 Q. And there was some statements made in
11 that jail phone call. At the beginning of it
12 you said, "Mama, I'm sorry." Why did you say
13 that?

14 A. Because me knowing my mother the way
15 she is, she didn't raise me to get in trouble.
16 She -- every day she tells me, "Don't get in
17 trouble, don't let anybody else get you in
18 trouble, be good."

19 Q. Were you saying sorry because you did
20 something wrong, or were you saying sorry
21 because you got arrested?

22 A. No, I was beating her to the punch.
23 She usually gives me lectures every time I get
24 in trouble, so I was beating her to the punch,
25 and letting her know, "I apologize, this is not

1 my intention, I didn't do anything malice, it's
2 not my -- I put myself in this position and
3 being -- hanging around the wrong person.

4 Q. Okay. Now you said that she does this
5 whenever you get in trouble.

6 Have you ever been arrested before?

7 A. No, sir.

8 Q. Have you ever been in trouble before
9 like this?

10 A. No, sir.

11 Q. Okay. So when you say get in trouble,
12 what'd you mean?

13 A. I mean like she's telling me don't go
14 in the refrigerator and touch her stuff. If I
15 go and touch it, it'll be -- she's telling me to
16 leave the house, to go play basketball, leave
17 the house and play basketball that day.

18 Q. Okay, not criminal activity though/

19 A. No.

20 Q. Not that kind of trouble?

21 A. No, sir.

22 Q. Okay. So when you're apologizing on
23 that jail call, and you're saying that you're
24 sorry, could you just explain to the jury what
25 you're apologizing for?

1 A. I'm sorry, meaning I'm sorry for
2 allowing myself to be caught in something that I
3 wasn't supposed to. I'm sorry for hanging
4 around the wrong person, where I was going, that
5 this person was involved in this kind of
6 activity. I'm sorry for not taking heed to
7 everybody, going, "I'm sorry and I love you."

8 Q. Now, you say taking heed to everybody's
9 warning. I don't want you to tell me anything
10 that anybody else says --

11 A. I gotcha.

12 Q. -- because that's hearsay, and we're
13 not here to get into that sort of a thing.

14 A. Okay.

15 Q. But did you ever ask Channon about any
16 of the things that he might be involved in?

17 A. I did.

18 Q. And what was his response?

19 MS. JONES: Your Honor, I would object to
20 that.

21 THE COURT: I'm gonna sustain that
22 objection.

23 MR. PAULK: Thank you, Your Honor.

24 BY MR. PAULK:

25 Q. You didn't know Channon very well; is

1 that right?

2 A. No, sir.

3 Q. Okay. So why were you still hanging
4 out with Channon, if you were -- if there were
5 people that thought he was a bad person, and a
6 bad influence on you?

7 A. The response he gave me --

8 Q. We can't get into the responses.

9 A. I'm not like giving you the response.

10 Q. Okay.

11 A. I'm just saying the response he gave me
12 led me to believe in it.

13 Q. Okay. I understand that. Now, on the
14 jail phone call there's a portion towards the
15 end of it --

16 A. Uh-huh.

17 Q. -- and you say something about, "I'm
18 not mad, I ain't did this;" is that what you
19 said?

20 A. No, "I did this."

21 Q. What do you mean, "I did this?"

22 A. Not I did it, or I did what I'm in here
23 for, I did this as I put myself in this
24 position. I did this as in I hang around the
25 wrong person when I was told not to, and now me

1 being in jail, I think I put myself in this
2 position.

3 Q. I understand. During your interview
4 with Investigator Duncan, you also talk about
5 how it doesn't matter what you tell them, that
6 you're a black man, that you're gonna be going
7 to jail, could you explain that a little bit?

8 A. I really don't pay attention to the
9 world, and what the world has going on besides
10 my little circle, but the things that I did pay
11 attention to, I see black men going to jail
12 regardless of if they're innocent or not.

13 And regardless if they tell the truth or
14 not, nine times out of ten are found guilty.
15 And I just -- it just weighed on me, just
16 weighed on me as I sat in the investigation
17 office.

18 Q. Okay. Did you think that the
19 investigators were listening to what you had to
20 say?

21 A. No, sir.

22 Q. Did you think that they were going to
23 believe you, regardless of what you said?

24 A. No, sir.

25 Q. Is that why you were upset in that

1 interview?

2 A. Yes, sir.

3 MR. PAULK: A moment of the Court's
4 indulgence?

5 THE COURT: Yes, sir.

6 MR. PAULK: Your Honor, I have no further
7 questions.

8 THE COURT: All right, thank you. Cross-
9 examine, Solicitor?

10 MS. JONES: Yes, thank you.

11 THE COURT: Yes, ma'am.

12 **CROSS-EXAMINATION**

13 BY MS. JONES:

14 Q. Good morning, Mr. Polite.

15 A. Good morning.

16 Q. How are you doing this morning?

17 A. I'm all right.

18 Q. Good. Mr. Polite, how old are you?

19 A. I am 22.

20 Q. 22, so back in 2020 you were --

21 A. 20.

22 Q. -- 19 in '20?

23 A. Uh-huh.

24 Q. All right.

25 COURT REPORTER: Yes?

1 BY WITNESS:

2 A. Yes, I apologize.

3 Q. So you're pretty young, aren't you?

4 A. Yes, ma'am.

5 Q. And you got caught up in a scary
6 situation, didn't you?

7 A. Yes, ma'am.

8 Q. Because as you just testified, you were
9 hanging out with the wrong crowd.

10 A. Yes, ma'am.

11 Q. Now, you said you had a rough life?

12 A. Uh-huh, I did.

13 Q. And you felt like you just hadn't had
14 any fun for some portion of your life?

15 A. Yeah, the life I lived in Georgia I was
16 in a relationship, and the female was clingy,
17 and she didn't let me have any fun. She didn't
18 let me leave the house, unless it was to go to
19 work, and every time I tried to visit my family
20 she would follow me, and she would tell me she
21 needed me at the house.

22 And when I got back to the house, she
23 didn't honestly need me. She just wanted me to
24 be up under her.

25 Q. She was possessive?

1 A. She was indeed.

2 Q. She wanted you all the time?

3 A. Yes, she did.

4 Q. So is that why you moved to South
5 Carolina with your mama?

6 A. Yes, ma'am.

7 Q. But on November 18th of 2020 you
8 weren't living with mom, were you?

9 A. No, ma'am.

10 Q. You were living with -- is this a
11 different girlfriend?

12 A. Yes, it is.

13 Q. Okay. Did you meet that girl here in
14 Beaufort?

15 A. I knew her previously. We were high
16 school lovers, and when I came back, she jumped
17 on the boat, and was like --

18 Q. You'all just --

19 A. -- "We're together now."

20 Q. You'all just rekindled that romance?

21 A. Yes, ma'am.

22 Q. Okay. And you said you didn't know
23 Channon Preston very well, that you'all had met
24 at the Foolish Frog, right?

25 A. Yes, ma'am.

1 Q. And how long do you think you had known
2 him?

3 A. At least three months.

4 Q. Is that about how long you had been
5 working at Foolish Frog?

6 A. No, I was working at least seven. I'd
7 say at the end of that seven I met him. I met
8 him three months before November.

9 Q. Okay, but you told Investigator Duncan
10 that you'all were actually family, and that was
11 your cousin, didn't you?

12 A. Later on.

13 Q. Okay. And we talked -- you just told
14 us what -- I don't know if this is maybe story
15 number four or five or six that you just gave us
16 on the stand a couple seconds ago. What number
17 story would that be that you just testified to
18 right now?

19 A. Meaning?

20 Q. How many versions have you given to the
21 police and to this Court, as to what happened on
22 November 18th?

23 A. From my recollection, one.

24 Q. Oh, okay, did you see your interview
25 that we played up here?

1 A. Uh-huh.

2 Q. And is --

3 COURT REPROTER: Yes?

4 THE COURT: Yes?

5 BY WITNESS:

6 A. Yes, ma'am.

7 Q. And you actually -- you lied to this
8 man, didn't you?

9 A. Yes, I did.

10 Q. And you told him, "I wasn't there."

11 A. Yes, I did.

12 Q. And you told him, "I had nothing to do
13 with it."

14 A. Yes, I did.

15 Q. And you said, "I was going to buy weed,
16 but I was buying weed from the opposite side of
17 where the shooting was --

18 A. Uh-huh.

19 COURT REPORTER: Yes?

20 BY WITNESS:

21 A. Yes, ma'am.

22 Q. But then you said, "I wasn't anywhere
23 near the shooting." Yes?

24 A. Yes, ma'am.

25 Q. But then you said that you knew where

1 the shooting was.

2 A. Yes, ma'am.

3 Q. So all those you were lying and lying
4 and lying?

5 A. Yes, ma'am.

6 Q. Okay, and you said -- you're talking
7 about riding in whatever car you rode in that
8 day, and you said, "We were in the Honda, we
9 were in that brown or tan Honda;" didn't you say
10 that?

11 A. Yes, ma'am.

12 Q. And then without even being prompted,
13 without even seeing this photograph of the
14 still-shot of the surveillance, and I think the
15 photos are in here, you said, "As a matter of
16 fact, we weren't even in that van that day,
17 because his mama said she didn't have enough
18 gas, so we didn't even ride in that van."

19 A. Yes, ma'am.

20 Q. Because you knew you were in that van
21 when you killed Steven Glover, didn't you?

22 A. I did not kill anybody ma'am.

23 Q. Okay, you were in the van, weren't you?

24 A. Yes, ma'am.

25 Q. And you knew that they knew that, they

1 just hadn't told you that yet.

2 A. They could tell me anything.

3 Q. They could tell you anything?

4 A. They could tell me anything.

5 Q. Okay, but you felt the need to just
6 make it known, "I was not in that white van?"

7 A. Yes, ma'am.

8 Q. Okay, that was a lie. So you've lied a
9 dozen or so times now to the police?

10 A. And in return they did what?

11 Q. No, no, you, yourself, lied to the
12 police --

13 A. Uh-huh.

14 Q. -- now where we are in the series of
15 events --

16 A. I what?

17 Q. You have now lied to them about a dozen
18 or so times?

19 A. Yes, ma'am.

20 Q. Okay. And you said, "I don't even like
21 being around stuff like that. I mean shooting
22 isn't my forte."

23 A. It's not.

24 Q. Is that a common thing for you to say,
25 shooting isn't my forte?

1 A. Well, I just said shooting people was
2 not my forte. Anybody can go in their backyard
3 and shoot a gun.

4 Q. Okay, okay. And then you said, "I'm
5 scared of guns."

6 A. Uh-huh.

7 Q. You said that?

8 A. Yes, ma'am.

9 Q. You're not scared of guns, are you?

10 A. I am.

11 MS. JONES: Can I see that photo?

12 BY MS. JONES:

13 Q. I'm gonna hand you State's 185. Is
14 that you?

15 A. Yeah, it is.

16 Q. And you seem to be cheezing real big,
17 don't you?

18 A. I guess.

19 Q. You're not -- you're smiling in that
20 picture, aren't you?

21 A. It's not a smile.

22 Q. That's not a smile?

23 A. It's not a smile.

24 MS. JONES: Can we see it, please?

25 BY MS. JONES:

1 Q. That's not a smile?

2 A. I could show you a smile.

3 Q. Please.

4 A. That kind of smile.

5 Q. Pretty similar.

6 A. No.

7 Q. And you're smiling, because you're
8 holding this. Isn't this the gun you're holding
9 in that picture?

10 A. Yes, ma'am.

11 Q. Because this is your gun, isn't it?

12 A. No, ma'am.

13 Q. Well, you look pretty possessive of it,
14 don't you?

15 A. Looks can be deceiving.

16 Q. Oh, looks can be deceiving.

17 A. Yes, they can.

18 Q. We're gonna get back to that. So this
19 is a person who's fearing guns?

20 A. Yes, ma'am.

21 Q. Okay. A person scared of guns who
22 fired 13 -- at least times?

23 A. Yes, ma'am.

24 Q. Okay. Now, you said you put yourself
25 in this position, because you were hanging

1 around the wrong crowd?

2 A. Yes, ma'am.

3 Q. Well, you put yourself in this position
4 because you wanted to be there, didn't you?

5 A. Meaning?

6 Q. You wanted to buy marijuana --

7 A. Uh-huh.

8 Q. -- and you wanted to go --

9 THE COURT: Yes?

10 BY WITNESS:

11 A. I apologize.

12 Q. Drink your water, we're good. You
13 wanted to buy marijuana?

14 A. Yes, I did.

15 Q. And you went there with that gun?

16 A. Yes, I did.

17 Q. Loaded?

18 A. Yes, I did.

19 Q. It didn't have your 50-round mag on it
20 yet, did you?

21 A. I don't recall.

22 Q. Okay, because you ran out, didn't you?
23 Did you run out of bullets that afternoon?

24 A. No, ma'am.

25 Q. But you admit to being there, right?

1 Let's just get this --

2 A. Yes, ma'am.

3 Q. -- straight.

4 A. Yes, ma'am.

5 Q. Okay. And that's not you on the video
6 that says, "I ran out, I ran out?"

7 A. If you can clearly see me, then you
8 should know.

9 Q. Well, you were there, I wasn't, so is
10 that you saying, "I ran out, I ran out?"

11 A. Yes, ma'am.

12 Q. Okay. Because you didn't yet have your
13 50-round drum on, you put that on after you went
14 in the house, didn't you?

15 A. Do you know that for sure?

16 Q. I'm asking you.

17 A. The 50-round was on.

18 Q. Okay, but, again, you're scared of
19 guns?

20 A. Yes, ma'am.

21 Q. Now, this investigator right here, he
22 mentioned self-defense before you do, doesn't
23 he?

24 A. Yes, he does.

25 Q. And he says, "Tell me, was he there?"

1 Did he pull a gun on you'all? Was he trying to
2 rob you'all? Did he have a beef with Channon?
3 What was it?" And what did you say?

4 A. I have no recollection.

5 Q. You said, "I wasn't there."

6 A. Okay.

7 Q. Okay. So he gives you that out, but do
8 you take it?

9 A. No, ma'am.

10 Q. No. So then he says it again, he says,
11 "Tell me, man, this is your time. Weren't you
12 just -- were you just protecting yourself?" And
13 what do you say?

14 A. I was.

15 Q. Okay, so now we're at lie maybe 17, 18,
16 roughly?

17 A. You asked me what I said, I said I was.

18 Q. Okay. I'll take that, okay. So you
19 said you were protecting yourself, because
20 Channon said that man had a gun?

21 A. Yes, ma'am.

22 Q. And when you're talking to Investigator
23 Duncan, you tell him that you'all are in the van
24 holding up, when Channon tells you this?

25 MR. PAULK: Objection, Your Honor, that's a

1 mischaracterization of this.

2 THE COURT: I'm gonna overrule that, I will
3 let the jury decide whether it is or isn't. Go
4 ahead.

5 MS. JONES: thank you, Judge.

6 BY MS. JONES:

7 Q. Isn't that when you tell Officer Duncan
8 that Channon tells you that?

9 A. Can you repeat the question?

10 Q. Sure. In the interview with
11 Investigator Duncan, you tell him when you'all
12 are pulling up to [REDACTED] Stonewood, Channon says,
13 "Something's off, something's off, this one's
14 different, that man got a gun."

15 A. Something's off?

16 THE COURT: Do you want to renew your
17 objection?

18 MR. PAULK: Objection, Your Honor.

19 THE COURT: All right, then that's fine I'm
20 gonna overrule, go ahead.

21 BY WITNESS:

22 A. Something off as?

23 Q. I'm not sure, I wasn't part of that
24 conversation, Mr. Polite you were.

25 A. I don't recall him every saying

1 something off.

2 Q. Okay.

3 A. I remember him saying, "Something
4 popped off," but I don't remember him saying or
5 hearing somebody say, "Something's off."

6 Q. Okay. Let's see --

7 MS. JONES: I beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 BY MS. JONES:

10 Q. Okay, "He said -- like he said he was
11 on something different, like, he was on
12 something different by him," this is what
13 Channon is telling you about the man at [REDACTED]
14 Stonewood, who we later learn is Steven Glover.

15 A. I don't recall saying that.

16 Q. Okay, well, we can play the video
17 again. And then you say, "And then when we
18 pulled up, you know what I'm saying, to get the
19 green and all that, he said the man had a gun on
20 him, or something like that.

21 It was something -- he said something
22 about the man had a gun."

23 A. Yes, I was out of the car at that time.

24 Q. But you said it was when you'all pulled
25 up.

1 A. Yeah, out of the car.

2 Q. Okay. You didn't tell Duncan you were
3 out of the car. Did you tell Duncan you were
4 out of the car?

5 A. I believe I did.

6 Q. Okay. Well, your interview speaks for
7 itself. Then you say that, "Well, actually, you
8 know what?" They're not buying this yet. You
9 say, "Actually, I saw the gun with my own eyes.
10 I saw that gun."

11 Do you remember saying that?

12 A. Yes, ma'am.

13 Q. You said it was a Glock. And you just
14 testified that the barrel was pointed right at
15 you.

16 A. I mean from my recollection; I really
17 don't know guns. That was an assumption.

18 Q. Okay.

19 MS. JONES: Can I see a photo of the car,
20 please?

21 They're all in evidence, yes. All right.

22 BY MS. JONES:

23 Q. Okay, 158, you saw the Glock, you came
24 up on the passenger side. You said you came up
25 on the passenger side. You saw the car -- the

1 van pull up on the passenger side -- rear
2 passenger side. You saw a Glock through those
3 tinted windows?

4 A. I assumed.

5 Q. You saw a gun through those tinted
6 windows that are both up?

7 A. He was out of the car at that time.

8 Q. Steven Glover was out of the car?

9 A. I'm saying.

10 Q. Mr. Polite, I don't want you to assume,
11 I want you to tell me, if you remember, was
12 Steven Polite -- was Steven Glover out of the
13 car?

14 A. I don't know.

15 Q. Okay. So you don't know if -- you
16 don't know where you were when Channon said,
17 "That man had a gun." You don't know if it was
18 a Glock.

19 THE COURT: Hold on, a minute, you've asked
20 a question, give him an opportunity to answer
21 it, Solicitor.

22 BY MS. JONES:

23 Q. So you can't remember exactly where you
24 were when Channon said, "That man has a gun?"

25 A. No, I remember where I was.

1 Q. Okay, but that's different than what
2 you told Duncan.

3 A. I can't recall the interview.

4 Q. Okay. And you said that you saw the
5 Glock in that car pointed at you.

6 A. That was my assumption of what the gun
7 was.

8 Q. Okay. I mean you've been around guns,
9 haven't you?

10 A. Not all my life.

11 Q. Well, Channon had this one on him that
12 day, didn't he?

13 A. He did indeed.

14 Q. And you know that's not a revolver, is
15 it?

16 A. Of course.

17 Q. You know that's not a revolver, because
18 you know what a revolver looks like, don't you?

19 A. Yes, ma'am.

20 Q. It's like an old-timey kind of cowboy
21 gun?

22 A. I had my fair share of video games.

23 Q. Okay. So you do know guns.

24 A. Not really.

25 Q. Okay.

1 A. The basics.

2 Q. So you and Channon, and Channon's
3 mama's white man go to Steven Glover's house to
4 buy marijuana?

5 A. Yes.

6 Q. You go carrying this with a 50 drum
7 magazine?

8 A. Yes, ma'am.

9 Q. Channon goes carrying this the teal
10 Taurus, doesn't he?

11 A. Yes, ma'am.

12 Q. Okay. And you already owe a drug
13 dealer money, don't you?

14 A. Yes, ma'am.

15 Q. Okay. In your experience with
16 purchasing marijuana, do you know drug dealers
17 to have cash on them?

18 A. Not all of them.

19 Q. Well, sometimes. If I wanted to buy
20 some marijuana and I needed change, they can
21 give me --

22 MR. PAULK: Objection, Your Honor,
23 speculation.

24 THE COURT: I'll sustain that objection.

25 MS. JONES: Okay.

1 BY MS. JONES:

2 Q. But you've purchased marijuana with
3 cash in the past?

4 A. I have.

5 Q. So then in turn that drug dealer would
6 then have your cash on him?

7 A. Of course.

8 Q. Okay. And, again, you're carrying that
9 Draco?

10 A. Yes.

11 Q. So you and Channon, you'all go there,
12 guns loaded to the drug deal?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. JONES: Can we see the surveillance
16 video, please? We'll get back to the
17 surveillance video.

18 BY MS. JONES:

19 Q. That surveillance video you've see it
20 multiple times today, or this week, haven't you?

21 A. Yes, ma'am.

22 Q. Okay. So you've had a good opportunity
23 to review it?

24 A. Yes, ma'am.

25 Q. So the first clip that we see, we see

1 Corey Singleton walking down the stairs?

2 A. Yes, ma'am.

3 Q. And you and Channon pulling up,
4 correct?

5 A. Yes, ma'am.

6 Q. And the next we see is Channon coming
7 out from Steven Glover's car.

8 A. Uh-huh.

9 THE COURT: Yes?

10 BY WITNESS:

11 A. Yes, my apologies.

12 THE COURT: Well, I'm not telling you how
13 to answer, just that you answer out loud
14 however --

15 BY WITNESS:

16 A. I know, I apologize. Yes.

17 Q. Okay. Because he's rifling through it,
18 isn't he? He's looking for something, isn't he?

19 A. I mean I wouldn't know.

20 Q. Okay. You'all didn't get the
21 marijuana, did you?

22 A. No, we didn't.

23 Q. Okay. Because you'all were there to
24 buy this, weren't you?

25 A. Not all of it.

1 Q. Not all of it? Just a little bit of
2 it?

3 A. A decent amount.

4 Q. Okay, I'm not sure, what's a decent
5 amount?

6 A. Two, three grams.

7 Q. But when Channon's rifling around in
8 that car he doesn't find this, does he?

9 A. Uh-uh.

10 MR. PAULK: Objection, Your Honor,
11 speculation.

12 THE COURT: I will sustain that.

13 MS. JONES: Okay.

14 BY MS. JONES:

15 Q. Did you go home with it -- with this
16 marijuana that day?

17 A. Yes, ma'am.

18 MS. JONES: If we could play the
19 surveillance?

20 (Video being played for the jury.)

21 BY MS. JONES:

22 Q. Okay, who's that walking down the front
23 steps?

24 MR. PAULK: Objection, speculation.

25 THE COURT: If he knows, he can answer that

1 question.

2 BY WITNESS:

3 A. Oh.

4 THE COURT: Go ahead, answer it. .

5 BY WITNESS:

6 A. I would assume that's Corey.

7 Q. Okay. And who's in that white van?

8 A. Me and Channon.

9 Q. And Steven Glover's in the front seat
10 of his Nissan at that time, isn't he?

11 MR. PAULK: Objections, speculation.

12 THE COURT: I'll overrule that.

13 BY WITNESS:

14 A. I don't recall.

15 Q. Okay.

16 MS. JONES: Would you play it? Okay. No,
17 play it.

18 (Video being played for the jury.)

19 MS. JONES: Pause it.

20 BY MS. JONES:

21 Q. You had every intent to kill Corey
22 Singleton that day, didn't you?

23 A. No, ma'am.

24 Q. "Hey, man, why you ain't get him?" And
25 what did you respond?

1 A. "I ran."

2 Q. Okay.

3 MS. JONES: Keep going, please.

4 (Video being played for the jury.)

5 MS. JONES: Pause it.

6 BY MS. JONES:

7 Q. Did you'all forget something in
8 Steven's car?

9 A. I don't recall. I don't -- I don't
10 recall us ever taking anything.

11 Q. Do you know why the van has stopped
12 after Steven's lying dead in the dirt?

13 A. I don't know.

14 Q. Okay.

15 MS. JONES: Keep going.

16 (Video being played for the jury.)

17 MS. JONES: Okay.

18 BY MS. JONES:

19 Q. Mr. Polite, I asked you at the
20 beginning of this questioning if you were
21 scared, didn't I?

22 A. Yes, ma'am.

23 Q. But we just heard that jail phone call,
24 and don't you say, "I ain't scared, I did this
25 shit."

1 A. Now, ma'am, I would do that to be brave
2 for my mother. I am the oldest son, so,
3 therefore, I have to be strong for my family.

4 MS. JONES: I have no further questions,
5 Judge.

6 MR. PAULK: A brief redirect, Your Honor.

7 THE COURT: Yes, sir.

8 ***

9 REDIRECT EXAMINATION

10 BY MR. PAULK:

11 Q. You heard all the evidence that's been
12 presented this week, haven't you, Mr. Polite?

13 A. Yes, I have.

14 Q. So you heard that there were 17 rounds
15 found in that 50-round drum, correct?

16 A. Yes, sir.

17 Q. Yet, you told Channon that you were
18 out. Why did you tell him that you were out?

19 A. It's a lie. I came up with the
20 quickest lie I could.

21 Q. Why would you lie about that?

22 A. I didn't want to keep shooting.

23 Q. Why didn't you want to keep shooting?

24 A. I had no intention to harm anyone.

25 Q. How many times did you give interviews

1 with the police?

2 A. From my recollection, the once in the
3 Investigation Office.

4 Q. Did you speak with police on the side
5 of the road at Eddings Point?

6 A. Oh, yes, of course.

7 Q. Okay. And did you -- and you spoke
8 with police then about something, correct?

9 A. Uh-huh. Yes, sir.

10 Q. Okay. So after I reminded you that you
11 spoke with police then, how many times did you
12 speak with police about this incident?

13 A. I didn't really recall. I didn't
14 really frame the incident up. I spoke --

15 Q. How many times did you speak with them?

16 A. At least twice.

17 Q. Okay. You heard Investigator Duncan
18 testify this week, that sometimes they interview
19 people multiple times, because it takes time for
20 people to process things after traumatic events.
21 Did you hear him testify to that?

22 A. Yes, sir.

23 MS. JONES: Judge, can we approach?

24 THE COURT: Yes.

25 (Bench conference.)

1 BY MR. PAULK:

2 Q. Well, Mr. Duncan was explaining that in
3 relation to Mr. Corey Singleton, is that your
4 understanding?

5 A. Say it again?

6 Q. Whenever Duncan was saying that
7 sometimes people remember things later after
8 traumatic events --

9 A. Yes, sir.

10 Q. -- he was saying that in reference to
11 Mr. Singleton; is that your understanding of the
12 testimony?

13 A. Yes, sir.

14 Q. Do you think that you should be
15 afforded that same benefit?

16 A. Yes, sir.

17 MR. PAULK: A moment of the Court's
18 indulgence.

19 THE COURT: Yes.

20 BY MR. PAULK:

21 Q. Did you know the people that you were
22 going to buy weed from that day?

23 A. No, sir.

24 Q. Did you even know their names before
25 you got there?

1 A. No, sir.

2 Q. When did you find out what their names
3 were?

4 A. I believe Channon told me I think
5 probably during or after.

6 Q. Okay. The picture that the Solicitor
7 shared with you of the Draco, can you explain
8 that?

9 A. We was on the way to IHOP. Really it
10 was for show, I didn't -- I saw him about to
11 record, and me, from what I have seen on videos
12 and music videos, people carry these kinds of
13 weapons on them. I was fascinated by it, so I
14 grabbed it, and held it up for the camera.

15 Q. You just thought it was something that
16 was cool?

17 A. Of course.

18 Q. Whenever you and Channon went to buy
19 weed that day, did you make the conscious
20 decision to put that gun in the car before you
21 went to go buy weed?

22 A. No, sir.

23 Q. Where was the gun at before you'all
24 went to go by weed?

25 A. I believe it was already in there.

25

CROSS-EXAMINATION

BY MS. JONES:

Q. Mr. Polite, you just testified that you are, in fact, a liar, aren't you?

A. I have lied.

Q. All right.

MS. JONES: I have nothing else, thank you.

THE COURT: No redirect?

MR. PAULK: No redirect, Your Honor.

THE COURT: Mr. Polite, thank you very much, sir, you can stand down. All right, are you all ready to call your next witness?

MS. TOLLEY: Your Honor, the defense rests.

MR. PAULK: That's correct.

THE COURT: Okay. All right, ladies and gentlemen, the defense has rested, and so at this time I will tell you that there are some matters that I'm gonna have to take up outside of your presence.

Where we would go from here is, that I would anticipate that all the evidence that's now been presented in this case, you are not to talk about the case. I am gonna ask that you go to lunch, and when you come back what I expect what most probably happen is that we will have

1 closing arguments, and then I will give you my
2 charge on the law, and then you can go to the
3 jury room, where you can deliberate and talk
4 about the case, okay?

5 So for right now I'm gonna ask you to go
6 ahead and go to lunch. I will also tell you
7 that I'm gonna ask you to come back -- so I'm
8 gonna ask you to come back at 2 o'clock. I know
9 that's a longer lunch, I apologize for that, but
10 what we've got to do - and there's some other
11 matters I've got to attend to that have nothing
12 to do with this case, that I've got to get done.
13 I see people shaking their head at me in the
14 back, and so I've got to get that done, and I've
15 got some work here I need to get done, so I'm
16 gonna ask you to come back at 2 o'clock.

17 Then you will hear closing arguments at
18 that time, and then my charges on the law, and
19 have this case this afternoon to begin your
20 deliberations, okay? Thank you. Don't talk
21 about the case.

22 (Jury exits the courtroom.)

23 BAILIFF: The jury's cleared, your Honor.

24 THE COURT: All right, thank you. Motions?

25 MS. TOLLEY: We would make a motion for a

1 directed verdict at this time, based on all of
2 the -- everything that we've previously stated.
3 In addition, now we've heard the testimony of
4 Xavier Polite, and his testimony is that he went
5 there with his friend, they had no intention of
6 shooting anybody.

7 They didn't go there with any plan to kill
8 anybody, or attempt to kill anybody, or possess
9 a weapon to commit a crime -- or during the
10 commission of a crime.

11 He testified, in fact, that the gun was
12 already in the car. There was a photo of him
13 with the gun previously that they had taken a
14 picture. We have seen videos of people with
15 guns and videos. His testimony was that once
16 they got there, things went terribly wrong.

17 Channon said somebody had a gun, somebody
18 shot, Channon shot, and he shot. Consistent
19 statement, consistent with what he told Officer
20 Duncan. We believe it to be credible, and that
21 that should be given some consideration. That
22 the story or the account is actually very
23 similar to what Corey Singleton said, with the
24 exception of the fact that Mr. Polite says that
25 they started the shooting.

1 We believe that that is sufficient evidence
2 to grant a directed verdict, given all of those
3 circumstances. There was also no blood in the
4 car, Your Honor, so there's no evidence that
5 Steven Glover was in the car during the time of
6 the shooting.

7 In fact, his body was found on the outside
8 of the car, laying with his back up with the
9 drugs beside him. The physical evidence for
10 what Mr. Polite is saying is so for those
11 reasons, in addition, we believe that verdict
12 should be directed.

13 THE COURT: All right, I appreciate you
14 renewing all of your prior objections, and for
15 the same reasons that I've given earlier, I will
16 give it now, as it relates to my ruling. You
17 know, one of the things that I think sums it up
18 best is that you believe your client's testimony
19 could be credible, and as a result there are
20 more things that become more consistent, or at
21 least you indicated the evidence may be more
22 consistent, and to that extent I think that it's
23 the jury's job to decide and evaluate its
24 credibility, and to make a finding of the fact,
25 as it relates to these matters.

1 So for those reasons I'm gonna respectfully
2 deny your motion and thank you very much.

3 MS. TOLLEY: Thank you, Your Honor.

4 THE COURT: Anything from the State?

5 MS. JONES: No, sir.

6 THE COURT: All right.

7 THE COURT: All right, well, let's do this,
8 let's plan on meeting back here say around 1:30,
9 and I will have Carlos send you something, and
10 I'll let you know what my thoughts are
11 concerning the outstanding matters. I think one
12 was voluntary manslaughter, and the other was
13 self-defense, and we'll go from there, okay?

14 What I'm gonna do is, I'm gonna send you
15 the self-defense charge, and the hand of
16 one/hand of all, and those are the two charges
17 that we have a question about? Voluntary
18 manslaughter, excuse me. So what I'm gonna do
19 is, I'm gonna have him email to you'all those
20 two charges. We've got those now, correct?
21 We're going to email those to you. I've not
22 made a decision whether to charge or not charge
23 those matters, but what I want to do is, since
24 it relates to the charge itself, if I decide to
25 charge, I want to have the opportunity to review

1 the charge, because there may or may not be
2 something that you'all want to say. You may
3 agree or not agree with my decision, but to that
4 extent, as it relates to the charge itself, if
5 it was gonna come in, I want to make sure that
6 there's not a problem, or at least you've had an
7 opportunity to review it, and put on the record
8 what your issue would be, okay?

9 MR. PAULK: Thank you, Judge. The only
10 thing that we would ask from the defense is,
11 that if the self-defense charge is gonna be sent
12 and potentially be given, we would also ask for
13 the charge and the right to act on appearances,
14 and the right to shoot until the danger had
15 ceased.

16 THE COURT: That's in the charge?

17 MR. PAULK: That's in the charge.

18 THE COURT: Okay, perfect, that's in the
19 charge. All right. So we'll be back around
20 1:30 -- excuse me, we'll be back around 1:30,
21 I'll see you'all at 1 o'clock.

22 MS. JONES: Thank you, Your Honor.

23 (Luncheon recess.)
24
25

1 **PROCEEDINGS CONTINUED - AFTERNOON SESSION**

2 ***

3 (The following proceedings were held in
4 open court. All parties were present.)

5 THE COURT: All right, let's go ahead and
6 get your client out here, and talk for a few
7 minutes about the jury charges.

8 **

9 **CHARGE CONFERENCE**

10 THE DEPUTY: Yes, Judge. We're bringing
11 him now, Judge.

12 THE COURT: Okay. All right, a couple of
13 things, I've had an opportunity to think about
14 the charges as it relates to voluntary
15 manslaughter and self-defense.

16 As it relates to voluntary manslaughter, I
17 am not going to charge that. State v. Niles,
18 412SC515, really very similar -- somewhat
19 similar circumstances involving a marijuana, or
20 it looks like a drug deal gone bad, but now
21 stands with the proper position that Niles' own
22 testimony was not established, and he was
23 overtaken by someone in the heat of passion,
24 such that he had an uncontrollable impulse to be
25 violent.

1 In this case, Niles goes onto state,
2 "Voluntary manslaughter by definition requires
3 for a criminal intent to do harm to another."

4 What I would say is, the defendant
5 testified on the stand he said he didn't have
6 any intent to harm the victim. Those were his
7 words that he used.

8 And so for those reasons, I do not believe
9 that a voluntary manslaughter charge is
10 appropriate in this case. I do believe,
11 however, that a self-defense charge is
12 appropriate in this case. I believe that based
13 upon the testimony that has been presented in
14 this matter, that the self-defense charge is
15 appropriate, and I will allow a self-defense
16 charge in this case to go to the jury.

17 I think that the evidence in this case
18 merits that charge. How much weight the jury's
19 gonna give that charge, I don't know, but I
20 think that the testimony in this matter -- I
21 know there was a case involving whether they
22 were lawfully or unlawfully carrying the pistol,
23 and I really feel that's starting to split
24 hairs, when I look at the testimony that's been
25 presented.

1 And I think there's been sufficient
2 testimony for the jury to consider.

3 So those two matters I think have been
4 ruled on. Now, were there any other matters? I
5 don't think there were any other matters I was
6 going to be citing during lunch, as to include
7 or exclude. Anything from the State?

8 From the defense?

9 MR. PAULK: Mere presence.

10 THE COURT: Mere presence, I'm gonna charge
11 that.

12 MS. JONES: No objection.

13 THE COURT: She said she didn't have an
14 objection to that. I'm gonna charge mere
15 presence.

16 And other than that, I don't think there
17 were any other matters that I was gonna discuss
18 concerning additional charges of what was gonna
19 be in or out; is that correct?

20 MR. PAULK: I believe that's correct, Your
21 Honor.

22 THE COURT: All right. And so what I'd
23 like to do is -- you'all should have a packet,
24 or you may have the actual -- maybe you have it
25 electronically, but as you know what I like to

1 do is, I like to go through the charge, and to
2 have you tell me yea or nah on the charge. I'll
3 then make a decision whether I'm going to
4 include it or modify it, and depending on what I
5 do, if you need to make an objection for the
6 record, I certainly understand.

7 MR. PAULK: Your Honor, would this be an
8 appropriate time to object to the exclusion of
9 voluntary manslaughter charge?

10 THE COURT: That's fine, and I'll let you
11 also whatever you want to say, as it relates to
12 my decision to include self-defense. Go ahead
13 yes, sir.

14 MR. PAULK: Thank you, Your Honor. I
15 believe that this case is distinguishable, State
16 v. Niles, for the simple act that Niles himself
17 actually testified at that trial, that he was
18 not going to buy two grams of marijuana, as in
19 this case, he was going to buy a whole pound,
20 worth upwards of \$10,000.

21 Additionally, he testified that the victim
22 that had the -- well, he testified that his
23 phone call to set up this purchase had a dual
24 purpose. The second purpose being the victim
25 owed him \$5,000, as payment for other drug

1 transactions. I believe that that wholly
2 separates and differentiates Niles from the
3 situation that we are in, where these two
4 gentlemen were going to purchase 15 to \$20 worth
5 of marijuana versus several thousand dollars.

6 And the victims in this case, the alleged
7 victims in this case, the decedents, did not owe
8 Mr. Polite or Mr. Preston any money, whereas
9 Niles owed the victim \$5,000 to him, Mr. Niles.

10 I certainly think that differentiates it
11 and takes it outside of Niles, but I understand
12 your ruling, and I'm stating that for the
13 record.

14 THE COURT: Yes, sir, I appreciate that.
15 Yes, ma'am?

16 MS. JONES: Your Honor, just for self-
17 defense, I would just reiterate that I think the
18 Williams case is on point. I think that it
19 parallels the facts we are here for today, and I
20 think that self-defense is an inappropriate
21 charge; however, I respect the Court's ruling.

22 THE COURT: All right, I made note for the
23 record, thank you very much. All right, so
24 would you please turn to -- okay, I think Carlos
25 has taken out pages 31 through 33, and so we'll

1 get to there. I've got page one, a jury charge,
2 introduction to the charge, pages one and two.
3 Any objection to pages one and two from the
4 State?

5 MS. JONES: No, Your Honor.

6 THE COURT: From the defense?

7 MS. TOLLEY: None from the defense, Your
8 Honor.

9 THE COURT: On page three, and, again, I
10 don't read the headings, that just makes us to
11 go through here. Page three, charge, arrest and
12 indictment, not evidence. Any objection from
13 the State?

14 MS. JONES: No, sir.

15 THE COURT: From defense?

16 MS. TOLLEY: None from the defense, Your
17 Honor.

18 THE COURT: All right, page four I've got
19 multiple charges. Any objection from the State?

20 MS. JONES: No, sir.

21 THE COURT: From the defense?

22 MS. TOLLEY: None from the defense, Your
23 Honor.

24 THE COURT: Page five and six, I've got
25 duties of the Judge. Is there any objection to

1 the instruction on duties of the Judge on page
2 five and six from the State?

3 MS. JONES: No, sir.

4 THE COURT: Defense?

5 MS. TOLLEY: None from the defense, Your
6 Honor.

7 THE COURT: All right, page seven and
8 eight, folks, you see credibility of the
9 witnesses. Any objection from the State on the
10 credibility of the witness charge?

11 MS. JONES: No, sir.

12 THE COURT: Any objection from the defense?

13 MS. TOLLEY: None, Your Honor, no.

14 THE COURT: All right, numbers eight and
15 nine, expert witnesses, any objection from the
16 State?

17 MS. JONES: No, Your Honor.

18 THE COURT: Any objection from the defense?

19 MS. TOLLEY: None, Your Honor.

20 THE COURT: All right, page 11 and 12, it's
21 the presumption of innocence charge. Any
22 objection from the State?

23 MS. JONES: None, Judge.

24 THE COURT: Defense?

25 MS. TOLLEY: None, Your Honor?

1 THE COURT: Page 13 and 14 would be the
2 reasonable doubt charge. Any objection from the
3 State:

4 MS. JONES: No, sir.

5 THE COURT: Defense?

6 MS. TOLLEY: None, sir.

7 THE COURT: All right, page 15 and 16
8 receive my direct and circumstantial evidence
9 charge. Any objections to this charge from the
10 State?

11 MS. JONES: No, sir.

12 THE COURT: From the defense?

13 MS. TOLLEY: None from the defense, Your
14 Honor.

15 THE COURT: All right, page 17 and 18,
16 folks, I've got an attempt charge.

17 Any objection from the State?

18 MS. JONES: No, sir.

19 THE COURT: Defense?

20 MS. TOLLEY: None, Your Honor.

21 THE COURT: All right, page 19 and 20 I
22 have an identification charge.

23 Any objection from the State?

24 MS. JONES: No, sir.

25 THE COURT: Defense?

1 MS. TOLLEY: None, Your Honor.

2 THE COURT: All right, 21 is out, there's
3 no need for that.

4 All right, page 22, murder. Any objection
5 on 22 and 23, as it relates to my murder charge?

6 MS. JONES: No, sir, not from the State?

7 THE COURT: Defense?

8 MS. TOLLEY: No, Your Honor.

9 THE COURT: All right, page 24, 25 and 26
10 is what I pose as an attempted murder charge.

11 Is there any objection to this charge from
12 the State?

13 MS. JONES: No, sir.

14 THE COURT: Defense?

15 MS. TOLLEY: Not from the defense.

16 THE COURT: Page 27 and 28, I've got
17 possession of a weapon during the commission of
18 a violent crime, and let me ask you, any
19 objection from the State?

20 MS. JONES: No, sir.

21 THE COURT: Defense?

22 MS. TOLLEY: None, Your Honor.

23 THE COURT: All right, on page 29 and 30
24 I've got a hand of one charge.

25 Any objection to my hand of one charge from

1 the State?

2 MS. JONES: No, sir.

3 THE COURT: And defense I think you've got
4 an objection to this --

5 MR. PAULK: Yes, Your Honor.

6 THE COURT: -- charge? I know you have an
7 objection to this charge being included. Beyond
8 that, is there anything specific about the
9 charge?

10 MR. PAULK: Actually, I think that I see
11 the problem of the natural consequence of the
12 accident, in pursuance of the common design
13 language, I think that's what we would want
14 included, if you are so inclined to give the
15 charge, Your Honor.

16 THE COURT: All right, well, I'm going to
17 give the charge, and I note your objection for
18 the record.

19 MR. PAULK: Thank you, Judge.

20 THE COURT: Sure. All right, on page 34,
21 35, 36, 37, 38 and 39 I have a self-defense
22 charge. Let me ask you, Solicitor, I understand
23 that you're objecting to the self-defense
24 charge, correct?

25 MS. JONES: Yes, sir.

1 THE COURT: Beyond that, as to the contents
2 of the charges is there any further objection --
3 yes, sir, as it relates to the language in the
4 charge -- hold on one second, my Clerk is --
5 hold on one second.

6 All right, Solicitor, as it relates to the
7 self-defense charge, I know you don't want it
8 in, is there anything in particular that -- I
9 understand it doesn't apply, but I'm asking is
10 there anything else as to the charge itself that
11 you find not appropriate? I'm not asking you to
12 give up your right to object; do you understand
13 what I'm asking you, ma'am?

14 MS. JONES: I do. No, what is included in
15 the charge is the appropriate self-defense
16 charge.

17 THE COURT: I am tempted to take out, on
18 page 39, the next to the last paragraph, in
19 determining whether the Defendant had a right to
20 use force in self-defense, the assailant's
21 appearance, his impairment from consumption of
22 alcohol or drugs may be relevant.

23 I don't know that there was any testimony
24 to that, as it relates to the assailant.

25 MR. PAULK: I would agree with that, Your

1 Honor, and I think it may cause confusion for
2 the jury.

3 THE COURT: I plan on taking that out.
4 Have you got any objection? I know you object
5 to the charge --

6 MS. JONES: Right.

7 THE COURT: -- but with taking that
8 paragraph out, any objection from the State?

9 MS. JONES: No, I think it should be taken
10 out as well.

11 THE COURT: All right, I'm gonna take that
12 out, and I think there's no objection from the
13 defense, obviously, and it covers everything you
14 want in the charge?

15 MR. PAULK: It does, Your Honor.

16 THE COURT: I've got a charge on -- hold on
17 one second.

18 On page 40 I've got a jury present charge,
19 any objection from the State?

20 MS. JONES: No, sir.

21 THE COURT: Defense?

22 MS. TOLLEY: None, Your Honor.

23 THE COURT: And then on page 41, 42, 43,
24 page 44.

25 Any objection to my conclusion from the

1 State

2 MS. JONES: No, sir.

3 THE COURT: From the defense?

4 MS. TOLLEY: None, Your Honor.

5 THE COURT: All right, now you also, folks,
6 you've got an opportunity to look at the verdict
7 form. I have a verdict form that we're gonna
8 give the jury in my hands.

9 If you'all want to come take a look at it,
10 I'm gonna make certain that this is the verdict
11 form that I'm gonna give them, and that you'all
12 don't have an objection to that verdict form.

13 MS. JONES: Your Honor it's just the
14 spelling, I see Corey doesn't have an E in
15 it. THE COURT: That's fine, we'll fix
16 that spelling in it right now, all right?

17 MS. JONES: Thank you.

18 THE COURT: No problem. Is that it?
19 Otherwise it meets with your approval?

20 MS. JONES: Yes, sir.

21 THE COURT: So we're gonna include E, C-O-
22 R-E-Y?

23 MS. JONES: Yes, sir.

24 THE COURT: All right, we'll do that right
25 now. Carlos will make copies, and then I want

1 you to look at it again.

2 Now, while he's doing that what I will tell
3 you is this, there is -- some folks what the
4 jury charge to go back to the jury, other folks
5 do not want the jury charge to go back to the
6 jury.

7 I default to old-school, if both parties
8 want the jury charge to go back with the jury, I
9 will let them take it back. If one party does
10 not, then we won't let them.

11 Unless there's agreement, I default to old-
12 school, which will be not to send the jury
13 charge back with the jury. What's the State's
14 position on sending the jury charge back to the
15 jury? Please state your position. What about
16 it, whatever you'll want to do.

17 MS. TOLLEY: I think we'd prefer not to
18 have it go back.

19 THE COURT: All right, that's fine, then
20 they will not go back. All right, in regard to
21 the charge, some Judges are going and are
22 allowing the charge to take place prior to
23 closing argument, some do not.

24 I default to old-school, unless there's a
25 unanimous decision as it relates to that.

1 Does the State prefer to go forward with
2 arguments and then charge, or would the State
3 prefer to go and have the Judge charge the law
4 and then close?

5 MS. JONES: Arguments and then charge.

6 THE COURT: All right, arguments?

7 MS. JONES: Closing arguments and then the
8 charge.

9 THE COURT: Then charge, all right. What
10 about it?

11 MS. TOLLEY: I'm okay with it.

12 THE COURT: All right, then we'll do it
13 that way, that's no problem. All right, is this
14 all in order? Okay.

15 Are there any other -- okay, let's see,
16 you've got that correction? Do you'all want to
17 come take a look? Let's make sure one more
18 time.

19 MR. PAULK: Thank you, Judge.

20 THE COURT: All right, so the jury charge
21 that I'm gonna hand to them is suitable and
22 acceptable to the State?

23 MS. JONES: The verdict form, yes, sir.

24 THE COURT: The verdict form, thank you
25 very much, and likewise, defense?

1 MR. PAULK: Yes, Judge.

2 THE COURT: All right, I want everybody to
3 know once we start, I want the doors closed for
4 arguments and charge. I don't want anybody
5 leaving or coming in during arguments and
6 charge.

7 So, obviously, you're welcome to stay, but
8 I need everybody to stay put once we get
9 started, because I don't -- I want the jury to
10 have maximum attention to the lawyers in this
11 case and to the Court when we read the charges.

12 Is there anything else that we need to take
13 up before we would, you know, take a break?
14 We're actually early for the first time this
15 week.

16 Is there anything we need to take up from
17 the State before we would then come back and
18 bring the jury in?

19 MS. JONES: Just order of closing, Judge, I
20 believe since she put up a case, she would close
21 first, and then I would close second.

22 THE COURT: I mean what's your position on
23 that? I would have thought that you would open.

24 MS. JONES: And I'm happy to go twice, if
25 they want me to talk twice to the jury.

1 THE COURT: I would think you would also be
2 happy to get the last word.

3 MS. JONES: I'm happy, Your Honor. I'll
4 start, and I'll close in full, and then reply
5 when they're done.

6 THE COURT: All right.

7 MS. JONES: Okay.

8 THE COURT: I mean I think that's the law,
9 so --

10 MS. JONES: I think it waives my initial
11 closing.

12 THE COURT: What's that?

13 MS. JONES: I believe they could waive my
14 first closing, but I am more than happy to go
15 twice, Judge.

16 MS. TOLLEY: That's fine.

17 THE COURT: Well, you know, no good deed
18 goes unpunished.

19 MS. JONES: It's weird, I know.

20 THE COURT: All right, so then you'all will
21 speak first, and then she would close; is that
22 correct?

23 MS. TOLLEY: That's correct.

24 THE COURT: All right, so defense, you're
25 going to address the jury when they come in, and

1 then we'll have the Solicitor finish; is that
2 right?

3 I mean I'm not questioning, I just want to
4 make'sure we've got it down, so that when the
5 jury comes in, we don't have a question about
6 what we're doing.

7 Is that what you want to do, Ms. Tolley?
8 Do you'all want to caucus?

9 MR. PAULK: Like I said, I'm just second
10 chair, Your Honor.

11 THE COURT: Okay.

12 MR. PAULK: I did not mean to make that
13 decision myself.

14 THE COURT: Okay.

15 MS. TOLLEY: That's fine, Your Honor.

16 THE COURT: You're good with the opening?

17 MS. TOLLEY: Yes, sir.

18 THE COURT: Okay, great.

19 MS. TOLLEY: Okay.

20 THE COURT: So he goes once, and you go
21 once, all right. And so Mr. Paulk, you go and
22 then she goes.

23 MR. PAULK: Yes, Your Honor.

24 THE COURT: All right, fine. All right, I
25 just want to let you'all know -- you probably

1 both know this, usually what I'll do is, at a
2 portion I will walk down and stand in front of
3 the jury, and point to the jury verdict form,
4 because sometimes I think that makes it easier,
5 because they can see what it is they would need
6 to do, as it relates to filling the form out.

7 All right, we'll be at ease for about five
8 minutes, and then we'll come back and begin the
9 conclusion.

10 MS. JONES: Thank you, Judge.

11 THE COURT: Yes, ma'am.

12 (RECESS)

13 THE COURT: All right, is there anything
14 from the State before we bring the jury in?

15 MS. JONES: No, sir, but now I am going
16 first.

17 THE COURT: That is my understanding; is
18 that correct, Ms. Tolley?

19 MS. TOLLEY: Yes, sir.

20 THE COURT: All right, great, no problem.
21 And I will say that I've been informed that the
22 doors they want to keep those doors open,
23 because it's still been warm in here, but I've
24 told them I do not want people walking back and
25 forth across that hallway while we're having the

1 closing arguments and my charge on the law.
2 Anything from the defense before we bring the
3 jury in?

4 MS. TOLLEY: Nothing, Your Honor.

5 THE COURT: Okay, great, thank you very
6 much. All right, let's get the jury, please.

7 BAILIFF: Your Honor, the jury's entering
8 the courtroom.

9 THE COURT: All right, come on in. All
10 right. Thank you.

11 All right, ladies and gentlemen, I know you
12 were probably back there taking bets over how
13 long I was going to keep you waiting, okay? For
14 those of you who were on the shorter end of the
15 stick were the winners. I want to let you know
16 something, within the past two or three minutes,
17 we started having some leaking issues, and one
18 of the tiles it looks like it could be bowed a
19 little bit.

20 I think -- can we move that table forward
21 or even past it a little bit more, and so not
22 knowing how long maintenance could take to get
23 here to remove the tile, I think we're gonna go
24 ahead and try to proceed, but I wanted to let
25 you know that, that's what's going on.

1 So if you hear some dripping, we've got a
2 couple trashcans there that are trying to catch
3 the water, okay?

4 We don't have these problems in the
5 Colleton County Courthouse, I don't know what it
6 is, okay? We've got a flat roof, I don't know,
7 but in any event, I want to give you that heads-
8 up before we begin.

9 All right, is the State ready to proceed?

10 MS. JONES: Yes.

11 THE COURT: Defense?

12 MS. TOLLEY: Yes, Your Honor.

13 THE COURT: All right, Madam Solicitor --
14 hold on one second, I'm sorry.

15 All right, ladies and gentlemen, while
16 telling you about that, I forgot to tell you
17 this, and I want to let you know.

18 I want you to know, ladies and gentlemen,
19 that the parties have presented their evidence
20 in this case, and it's now time for the
21 attorneys to make their closing arguments. The
22 arguments of the attorneys, folks, are not
23 evidence, okay?

24 They are -- their statements and arguments
25 are meant to help you understand what the

1 evidence is and apply the law to the evidence.
2 You should disregard my remark, statement, or
3 argument, which is not supported by the evidence
4 presented during the trial, or the law that I
5 will explain to you after their arguments, okay?
6 Thank you. Solicitor?

7 MS. JONES: Thank you, Your Honor. May it
8 please the Court?

9 THE COURT: Yes, ma'am.

10 **

11 **CLOSING ARGUMENT BY MS. JONES**

12 **

13 MS. JONES: Guns, drugs and murder. I told you
14 when I first spoke with you that is why we are here
15 this week. The dark part of Beaufort County exists,
16 and now you've been there.

17 On November 18th Steven Glover was
18 murdered, and he was murdered by a man named Channon
19 Preston holding the Tiffany blue Taurus, and that
20 man over there, Xavier Polite, with Xavier Polite
21 holding his Draco.

22 This isn't anything but cold-blooded
23 murder. So how do we know this?

24 (Video being played for the jury).

25 MS. JONES: Around 1 o'clock in the

1 afternoon of November 18th, Corey Singleton goes
2 running for his life. He has just stared down
3 these two guns, shooting at least 20, 30 bullets
4 that day. He runs. He is terrified. He can't
5 catch his breath, and you hear his faint voice
6 in the background of that 911 call, telling
7 Cynthia, "They call him Glizzy, they call him
8 Glizzy, it's a white van."

9 He says Nissan, but he later says Nissan or
10 Toyota. And we later learned that it is a
11 Toyota van. Corey is scared. Corey is scared
12 for his life, when he goes to Ms. Stewart's
13 home. And he's still scared for his life when
14 he talks to Deputy Driscoll on-the-scene.

15 (Video being played for the jury.)

16 MS. JONES: That is the man who was shot,
17 he was terrified. He was just ambushed in his
18 front yard. That's not a man who started
19 anything that day, that was a man who was
20 attacked in his front yard. That's a man who
21 ran for his life, and, unfortunately, that's
22 also the man that the dark part of Beaufort
23 County claimed the life of last summer.

24 No, Corey wasn't here to tell you what
25 happened that day, but he did speak from the

1 grave. He was able to tell Beaufort County
2 Sheriff's Office, a white van and Glizzy. This
3 is Glizzy. This is Channon Preston. This is
4 the man that was holding the Taurus on November
5 18th. He's also the man who was with Xavier
6 Polite when they killed Steven Glover, and when
7 they tried to kill Corey Singleton.

8 You heard from both Investigators Jen
9 Snider and Tom Duncan with the Beaufort County
10 Sheriff's Office that they know Glizzy. They
11 know that his mama drives a white van, and they
12 also know that he lives at [REDACTED] Eddings Point
13 Road.

14 So they go to [REDACTED] Eddings Point Road, and
15 lo and behold what do they find? They find the
16 white van that just drove the two murders to [REDACTED]
17 Stonewood. They head to [REDACTED] Eddings Point Road
18 at the same time the other members of BCSO are
19 at [REDACTED] Stonewood. They are painstakingly going
20 through what Xavier Polite and Channon Preston
21 left behind. The shell casings are from the
22 Draco, 13 of them from the Draco. That man
23 finally admitted that he didn't want to, but
24 finally admitted he was holding.

25 All those yellow placards were bullets.

1 These are what was left of the bullets that
2 ripped through Steven Glover's body that day.
3 The bullets that tried to rip through Corey's as
4 he ran for his life. This is what they leave
5 behind.

6 Steven Glover's Nissan Maxima was riddled
7 with bullet holes, completely taken over by
8 bullet holes that day all over. They go to
9 Eddings Point that day, they sure do, and they
10 find the man that Corey Singleton identified as
11 Glizzy.

12 They find Glizzy, and although Xavier
13 Polite didn't want to be found that day,
14 although he didn't want to come out of that
15 house, although he stayed inside 152 Eddings
16 Point Road as long as he could, they find him
17 there, and they pull him out after everybody
18 else has already cleared the house.

19 Xavier Polite, the man that Steven Glover
20 had told you was the only person that was with
21 Channon, when they pulled up in their cars at
22 the same time. Let's start with this white van
23 again.

24 (Video being played for the jury.)

25 MS. JONES: What did they find in this

1 white van that proved that this blood is a
2 murder? They find the drum magazine box.

3 The .9mm drum magazine box, the very same
4 drum magazine that fits on this very same Draco.
5 They find these .9mm bullets. .9mm bullets are
6 what ripped through Steven's body that day.

7 They find the head covering that Channon
8 Preston is wearing when he is shooting his
9 Taurus at Steven Glover right there in the car
10 seat.

11 They find a .9mm magazine right in the
12 middle of the console. And they also find
13 Channon Preston and Xavier Polite. And where is
14 Xavier Polite sitting? Inside the van. He was
15 a passenger in that van. He didn't want to tell
16 you that, so then he said, "Maybe it was me.

17 Can you see that that's my face in that
18 video?" That was him. And finally they found
19 the shell casing on the windshield wiper blade
20 in the back of the van. This casing that Chad
21 Smith told you was fired from this gun. It's
22 not only that they leave all those shell casings
23 at 70 Stonewood, after they ambushed Steven and
24 Corey, they conveniently brought one gun with
25 them. This Taurus that matched four shell

1 casings on-the-scene.

2 My thumbtacks don't seem to be sharp
3 enough, but these shell casings came from the
4 Taurus, and this is where they were located in
5 relation to Steven's car. If you remember that
6 van came from this direction, and stopped right
7 about here.

8 So that takes us back inside to [REDACTED] Eddings
9 Point Road. What else do they find? They find
10 boxes, boxes and boxes of ammunition consistent
11 with the shell casings that killed Steven
12 Glover.

13 They believe they find the guns, and they
14 find these two guns hidden in Anita ;s room
15 right where Xavier Polite said they would be.
16 He didn't want to.

17 He said, "Go look in Anita's room," he
18 didn't say where they were, even though he did
19 say he hid them in there, right there together.
20 Chad Smith told us about the casings that
21 matched that Taurus, but more importantly, he
22 told us about the ones that matched the Draco,
23 all of them, all 13 of them, everyone of these,
24 that bullet that flew straight towards Steven
25 Glover and Corey Singleton, killing Steven, and

1 trying to kill Corey.

2 You remember Steven was shot seven times
3 that day. Those extra two bullets had to come
4 from somewhere, and we know they absolutely
5 didn't come from that Taurus.

6 So what about Corey's gun? Corey had a gun
7 that day. Corey absolutely had a gun that day.
8 Corey had this .9mm Ruger, that he's not pulling
9 to threaten to threaten Channon and Xavier, as
10 they pull into his driveway.

11 No, he pulls this to defend himself,
12 because the only person defending himself that
13 day was Corey Singleton. Corey shot back.
14 Corey didn't start this, Corey shot back.

15 Because if you remember the casings that
16 matched his gun, where were they found? They
17 were found on the other side of the Nissan
18 Maxima, consistent with somebody dropping down,
19 taking cover and firing back.

20 Three of those shell casings were found
21 underneath that Nissan. How else would they get
22 there but for Corey firing under the car back to
23 attack at Channon Preston and at Xavier Polite?
24 He shot back, he absolutely did, and he had
25 every right to. This was an ambush.

1 Polite and Preston come on to Corey's
2 house. Corey's walking down the steps, and once
3 he sees their guns, and they start shooting, he
4 drops behind the car and fires back. And if you
5 have any doubt in your mind that they not only
6 wanted Steven dead, but they wanted Corey dead
7 too, well, in their own words from that day.

8 (Video being played for the jury.)

9 MS. JONES: "Hey, man, why you didn't get
10 him?" "I ran out, I ran out." Who is the
11 person saying, "I ran out, I ran out?" You
12 heard his voice on that witness stand, you heard
13 his voice in that interview, you heard his voice
14 on that jail call, that is Xavier Polite.
15 Xavier Polite ran out, didn't have his new shiny
16 drum magazine stuck into this gun yet, he wasn't
17 that prepared, he ran out; but he sure as hell
18 went back to that car and put it in his gun
19 before he finished what he was sent there to do
20 that day.

21 Because when they find this gun at Eddings
22 Point, it's in there. And this lie about Steven
23 Glover having a gun, Investigator Duncan got on
24 that stand and told you, "There is zero evidence
25 that Steven had a gun that day." There's no

1 shell casings, there's no gun, there's nothing.
2 There wasn't a gun in the car, there wasn't a
3 gun on his dead body, there was nothing, no gun.

4 So this statement of that man saying, "That
5 man pointed a Glock at me, I was staring at the
6 barrel of a Glock, I saw his Glock with my own
7 two eyes," that's a lie.

8 But then the defense wants to talk to Chad
9 Smith about revolvers, to get us thinking, well,
10 maybe it was a revolver that Steven had that
11 day. Again, no gun, no evidence of any gun. I
12 know the person that says Steven had a gun is a
13 liar. But Chad Smith completely blew that one
14 out of the water, when he said, "Glocks aren't
15 like revolvers."

16 Xavier had to tell you, "Well, I'm scared
17 of guns. I don't know guns. I'm scared of
18 them. I don't know --" he kind of came up off
19 of that. Steven was a bullseye and a target
20 that day. He was helpless, was unarmed and he
21 was ambushed. And I want you to remember what
22 Dr. Presnell said. All seven of Steven's
23 gunshot wounds were to the right side of his
24 body, and what is that consistent with? That is
25 consistent while he's seated, helpless in the

1 driver's seat of his car, while that man and his
2 co-defendant pull up in that minivan, jumped
3 out, guns drawn, and they ambush him.

4 Every single wound is right here. Sure,
5 he's found outside of his car, because when he's
6 first struck, he tried to get away. He opens
7 his door and tried to get away and he can't, and
8 he dies in the dirt in his cousin's front yard.
9 He wasn't out of the car, he wasn't trying to
10 get out of the car when he was shot, he was in
11 the car, a helpless sitting duck, when that
12 happened to him.

13 Let's talk about Xavier Polite, some of the
14 things he has done. He's already said, "I ran
15 out, I ran out," so we know he had the intent to
16 kill. We know he had an intent to leave no
17 witness behind, but what did he tell the police?
18 He lies. He lies over and over and over.

19 So many lies that when he got up on that
20 witness stand, he couldn't even keep them
21 straight.

22 He tried to go with a totally different
23 story today and doesn't even keep that straight.
24 He said, "I had nothing to do with this. I
25 wasn't there. I don't know what you're talking

1 about."

2 (Video being played for the jury.)

3 MS. JONES: Killing people is not my forte.
4 "I had nothing to do with this," not, "I had to
5 do this, I was in a fight for my life, it was me
6 or him," no.

7 (Video being played for the jury.)

8 MS. JONES: Then his lies are gonna catch
9 up with him because he says they were in the
10 Honda, and then he remembers, we were actually
11 in the van that day, but I'm gonna go ahead and
12 tell them, as a matter of fact, we weren't even
13 in that area that day.

14 (Video being played for the jury.)

15 MS. JONES: What is it? He can't keep up
16 with his own lies, because up until this point,
17 he doesn't know that the Sheriff's Office knows
18 anything about a white van, but he's just making
19 sure they know, "I wasn't in the van that day."
20 Listen with me to his lies.

21 (Video being played for the jury.)

22 MS. JONES: Where was the shooting? But
23 earlier he had already said, "Our marijuana
24 dealer lived on the opposite side from where the
25 shooting was."

1 (Video being played for the jury.)

2 MS. JONES: He didn't know where the
3 shooting was yet, but he knew, because he was
4 one of the shooters. And then he goes on to say
5 that -- I mean how could Xavier be involved in
6 the shooting? He doesn't even like guns.

7 (Video being played for the jury.)

8 MS. JONES: Well, I think this photo begs
9 to differ. That is not a photo of somebody who
10 doesn't like guns. That's a photo of somebody
11 showing off their trophy, look what I have, look
12 how bad I am, look what I have. He's not
13 scared, he's thrilled. Scared of guns? Five
14 days after this picture is taken, five, even
15 though if you recall when he got on that stand,
16 or three days, this is five days earlier.

17 Five days, fires all of these bullets, all
18 of these casings out of that gun into Steven
19 Glover. Those are lies though, and Investigator
20 Duncan tries to give him an out. "Did he rip
21 you off? Was this self-defense? Are you
22 protecting yourself?"

23 Xavier's response, "I wasn't even caught up
24 in this. I can't believe I, I, I," Xavier cares
25 about Xavier, nobody else. He's not the victim

1 in the case, Steven Glover is, and Corey
2 Singleton is.

3 So to try to get him to start telling the
4 truth, they show him the still of the
5 surveillance. This is him; he was at best back
6 and forth on this witness stand, saying whoever
7 it was, "I don't know if you can," he didn't say
8 that was him, but he also said he was there.

9 You can't have it both ways. You can't
10 have, "I wasn't there, but I was defending
11 myself," it doesn't work that way. He's caught,
12 he knows he's caught, and what does he do? "Let
13 me see what other evidence you have. Show me.
14 the rest of it.

15 What else you got?" It's the same thing he
16 did to me when I was questioning him this
17 morning. It doesn't work that way, Mr. Polite.
18 He knows his original lies didn't work, so he
19 comes up with more.

20 (Video being played for the jury).

21 MS. JONES: "I was just protecting myself."
22 Well, if he was actually protecting himself, why
23 didn't he say that initially, when Investigator
24 Duncan asked him. If a police officer is
25 saying, "Hey, man, I get it, you were protecting

1 yourself, was this self-defense? Tell me."

2 "No, man, I wasn't there. I didn't have
3 anything to do with this. I don't know."

4 Well, now he's there, and now it's self-
5 defense, so which one is it Mr. Polite? He then
6 tries to explain how this was actually self-
7 defense.

8 (Video being played for the jury.)

9 MS. JONES: "When we pulled up, Channon
10 says that man had a gun."

11 But he got on the stand and says, "No, no,
12 I was already out of the van, I was by the
13 Nissan Maxima, in between two passenger doors,
14 and that's when it started, that's when Channon
15 said that man had a gun." So which is it?
16 Truth is easier to remember, lies you forget.

17 He then goes onto say, "Where's the guy in
18 the front seat?" And he said a Glock. He says
19 Clock at least three times.

20 (Video being played for the jury.)

21 MS. JONES: He then says, "There's a guy in
22 the front seat of that Nissan, he has a Glock.
23 That Glock, I don't know what kind of Glock it
24 was though, 'cause I'd seen with my own eyes, it
25 was pointed in my direction."

1 He says Glock three times, but then today
2 he gets on the stand, and doesn't know anything
3 about guns. There is zero chance whatsoever
4 that even if he didn't, even if Steven Glover
5 had a gun on him that day, they could see it.
6 Go back to the picture of the car.

7 Those windows are up and tinted. There is
8 no way they saw what he said they saw, because
9 it didn't happen. Steven was unarmed as he sat
10 in his car, but he felt the need to clarify just
11 because.

12 (Video being played for the jury.)

13 MS. JONES: Pull up the photo. What
14 window's down? They came up on the passenger
15 side of that car, what window's down? Those
16 windows are up, you see the bullet holes in
17 them. There was no windows down.

18 Then he says, "A shot popped off, Channon
19 shot, I shot, we left, we left."

20 (Video being played for the jury.)

21 MS. JONES: But we know that's also a lie,
22 they didn't just leave. They then rifled
23 through the dead man's car. And if you
24 remember, he got on the stand and told you that
25 he had.

1 (Video being played for the jury.)

2 MS. JONES: He got on that stand and told
3 you that the reason he went to make this deal is
4 they go there with real drug dealer money.
5 Since they had got that money, that girl, that
6 guy, whoever that is, what are they looking for
7 in this car?

8 Why are they in this car rifling around,
9 and why does the van stop again? And I asked
10 him that. And I said, "Did you pay with cash
11 for your marijuana?"

12 He said, "Yeah, I did." The Judge is going
13 to charge you on the law of self-defense, and I
14 have repeatedly said this is not self-defense.
15 None of this is self-defense.

16 Self-defense is a very specific law in
17 South Carolina, and it has four parts to it. In
18 order to claim self-defense, and win on a self-
19 defense theory, you've got to have all four in
20 your favor.

21 The first one, without fault in bringing on
22 the difficulty. The Judge is going to tell you
23 this. If I misstate anything that the Judge
24 says later, go with what he says, but prong one,
25 without fault in bringing on the difficulty.

1 How is going to get this with this in your hand
2 no fault in bringing on the difficulty? The
3 difficulty that day was created by this gun.

4 The difficulty that day was created by
5 Xavier Polite. He didn't only help with the
6 difficulty; he brought it on. And self-defense
7 says you cannot have any fault in the
8 difficulty.

9 Here's the fault right here. No self-
10 defense. He's gonna tell you that self-defense
11 also says that you had to be in imminent danger
12 of losing your life and sustaining serious
13 bodily injury, that's number, or if you weren't
14 in actual danger, that a reasonable person would
15 have had to have believed that they were in that
16 danger.

17 He fails on both of those also, because,
18 again, he pulls up with his buddy, who they had
19 already planned this together, hey, you bring
20 your gun, I'm gonna bring mine, we're gonna get
21 what we can get, okay?

22 Here's the difficulty right here. And what
23 person holding this is gonna have any fear?
24 None. He wasn't in danger that day, Steven
25 didn't have a gun on him. He wasn't in danger,

1 and he didn't think he was in danger. He was
2 the one bringing the danger that day.

3 And then no means to retreat, number four.
4 No possible way to avoid the danger. Well, he
5 told you on this witness stand that he was out
6 of the car when the shooting started. Again,
7 that that is credibility, but after the shooting
8 starts, he then goes to the van and gets the
9 Draco, same van, leaves.

10 Don't take a gun to a drug deal in the
11 first place. He could have avoided the
12 difficulty. And he told you on that jail phone
13 call.

14 (Audio being played for the jury.)

15 MS. JONES: "Man, we're trying to shoot in
16 self-defense," not I was acting in self-defense,
17 I was protecting myself. It was me or him. If
18 I didn't carry my gun, if I didn't shoot that
19 day, I'd be the one dead in the dirt, that's now
20 what he says.

21 He says, "Trying to shoot in self-defense."
22 It's not self-defense in no way, shape or form,
23 showing up with this gun to purchase this
24 marijuana self-defense. They went there to take
25 from Steven Glover, and that's what they did

1 after he was dead. Xavier Polite with his
2 friend, Channon Preston, made a plan that day,
3 they acted together.

4 The Judge is gonna tell you South Carolina
5 has a theory, that the hand of one is the hand
6 of all. When two people join together for a
7 criminal purpose, what one does, the other is
8 just as guilty; but do you know what we know
9 from Xaiver Polite? That at least two of the
10 bullets that came from his gun ripped through
11 Steven's body that day.

12 MS. PAULK: Judge, Your Honor,
13 mischaracterization.

14 THE COURT: I'm going to overrule that. Go
15 ahead.

16 MS. JONES: Thank you. He was shot seven
17 times, we know that he fired four, where are the
18 other ones? He fired five, my apologies.

19 Where are the other ones? Where did they
20 come from? They came from the other gun
21 pointing at Steven Glover. The other gun in the
22 hands of Xavier Polite, this gun. This isn't
23 self-defense. In no way, shape or form this is
24 self-defense. This was an ambush. I don't know
25 what they were after that day. I don't know,

1 was it this? I don't know if it was this.

2 (Video being played for the jury.)

3 MS. JONES: I don't know if it was this.

4 They're looking for something in that car, and
5 when the van starts to leave and it stops again,
6 Steven Glover is dead in the dirt, as Channon
7 Preston starts going through.

8 What's he looking for? Whatever it is, we
9 will never know. Xavier got up on that stand
10 and told you from the stand he was scared.
11 Well, Xavier's not scared, he ain't mad because
12 he did the shooting.

13 (Video being played for the jury.)

14 MS. JONES: Guns, drugs and motive. It all
15 came to a head on November 18th of 2020, but it
16 didn't have to, and the reason it did is sitting
17 at that table right there, Xavier Polite.

18 Xavier Polite is guilty of the murder of
19 Steven Glover, he's guilty of trying to kill
20 Corey Single, and he's guilty of possession of a
21 weapon during the commission of a violent crime.
22 He's guilty. Thank you, Judge.

23 THE COURT: Counsel approach.

24 (Bench conference.)

25 THE COURT: All right, counsel?

1 MS. TOLLEY: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 **

4 CLOSING ARGUMENT BY MS. TOLLEY

5 **

6 MS. TOLLEY: Good afternoon, how are you
7 doing? This is not an ambush. This is a case
8 without substance. This is a case of survival.
9 It's a case of shoot or get shot, that's what
10 this is about, not my client, Xavier Polite, who
11 likes to smoke marijuana. You might not like
12 that, some people do it. It's legal in some
13 places.

14 He and his friend went to get marijuana
15 that day, they weren't trying to do anything
16 else. Things went terribly wrong. He got
17 there, his friend said, "That guy's got a gun."

18 He's never been in this situation before,
19 he's never been arrested, he doesn't know what
20 to do. You hear him say in his interviews, "I
21 don't know how this happened." He said they
22 pulled up, he got out of the car to go towards
23 the door, "A shop popped off, Channon shot, I
24 shot. It was either shoot or be shot."

25 I started at the beginning of this trial,

1 where I told you that after all the evidence was
2 presented, and all the witnesses had testified
3 that I would be asking you to give my client the
4 benefit of the doubt, and that's what I'm doing
5 today, that's what I'm doing right now. Why
6 should you give him the benefit of the doubt?
7 There's several things.

8 Let's start with the surveillance video.
9 Now, they've played the surveillance video a
10 number of times, but there's so much about the
11 surveillance video that's just not right.
12 Started with Corey Singleton giving them the one
13 video clip from his phone, while he's out there
14 on the scene.

15 He's got his phone, he's looking through
16 it, can pick the one that he wants to send and
17 sent it. He doesn't send the other four clips
18 until after he has a conversation with his
19 lawyer. He picks out a few more and sends
20 those.

21 So there's four video clips, but you see
22 one continuous video that was put together by
23 the Solicitor's Office. We don't know what
24 order they're supposed to be in, we're not sure
25 whether they've been manipulated by Corey, but

1 they're definitely manipulated by the
2 Solicitor's Office, because they've put them
3 altogether, and we're not sure about the order.

4 So I'm not sure about how it plays, but the
5 most important thing about the video is that it
6 doesn't show the actual shooting. It shows what
7 appears to be the aftermath of the shooting.
8 And one of the important things to take note of
9 in the video is that the car doors on the
10 Nissan, both the passenger door and the driver's
11 side door, at the end of that video are open.
12 When the police arrive on-scene, the doors
13 close.

14 The question is, what happened during that
15 interim? Corey says he ran to Ms. Stewart's
16 house. What did he do? Did he come back and
17 manipulate the crime scene? Did he get Steven's
18 gun somewhere? And there does seem to be some
19 question about whether or not Steven had a gun.
20 Steven was selling drugs.

21 Steven had a gun. The only question is,
22 where is that gun? There's some question about
23 where he was -- where was Steven Glover? Was he
24 in the car? Was he outside when the shooting
25 started? Xavier said at first, he thought he

1 was in the car, but then he was out of the car
2 and shooting. And that sort of fits with what
3 the physical evidence looks like. Steven's
4 outside of the car, laying on his back next to
5 the car. Like how would he get out of the car
6 falling in this position if he was shot when he
7 was in the car?

8 There's no blood in the car. There's no
9 reason to think he was shot in the car. This
10 was not an ambush. They went there to get
11 marijuana, and that was it. There was no plans.
12 They didn't plan on shooting anyone.

13 Xavier testified that he didn't mean to
14 harm anyone. So the guns were already in the
15 car. He showed -- you saw the photo of him in
16 the car with the gun smiling. He said it was
17 the first day that they were, you know, just
18 taking a picture, because he was fascinated by
19 the gun.

20 They didn't go there to shoot anyone. The
21 only thing they talked about was going to get
22 the marijuana, and that was it. Reasonable
23 doubt, all of this is reasonable doubt. There
24 was no plan.

25 There was talk about the interviews, and

1 about Xavier maybe lying during the interview.
2 Well, he gave two short interviews with the
3 police. It seems like they were about 30
4 minutes or less each. Officer Duncan testified
5 about the fact that people process, people's
6 stories develop, and they process, and that's
7 why they sometimes talk to them more than one
8 time.

9 He eventually tells the police that he was
10 there and what happened, and the evidence seems
11 to support that. He says "Channon shot, a shot
12 popped off, Channon shot, I shot."

13 Let's talk about lying, they're first
14 talking about liars. Officer Duncan says he
15 lied to Xavier during the interview, but that's
16 part of his technique, so that's his technique.
17 Let's talk about Corey Singleton. Corey
18 Singleton initially said it was Glizzy, and
19 three times after that lied at least about the
20 fact that whether or not he knew who it was who
21 was involved in this, but he never said he knew
22 my client, reasonable doubt.

23 The firearms expert he testified. He
24 testified that the gun still had 17 rounds left
25 in it that Xavier had. Xavier says -- there was

1 talk about on the video where he says, "I ran
2 out, I ran out." Xavier says, "I didn't want to
3 shoot him. I didn't want to shoot anymore.
4 That there were more bullets, but I didn't want
5 to shoot anymore."

6 The firearms expert says, "Some guns don't
7 eject shell casings, like a revolver, and that
8 revolvers commonly chambered in .357s. You also
9 heard from Mr. French, that while a .357 round
10 was submitted to him for DNA testing, he didn't
11 think it was important enough to test it, and
12 never tested it, so we'll never know if Steven
13 Glover's DNA was on that round.

14 The other experts who testified about the
15 gunshot residue -- all of those things are nice
16 scientific tools, so they don't tell us anything
17 more than what we already know. And what does
18 Xavier said, he says, "I was there, I did have a
19 gun, and I did shoot," and that's of course what
20 they said.

21 He says, "A shot popped off, Channon shot,
22 I shot." There was -- they played you this jail
23 call, where he supposedly said, "I did this, I
24 did this shit."

25 He explained that to them. He said, "I was

1 just talking to my mom, I was trying to be
2 brave. I'm the oldest son. I put myself in
3 this situation. I didn't listen to people who
4 told me I should have stayed away from Channon,
5 I put myself in this situation," but there was
6 no plans, there was no agreement between them to
7 go and shoot.

8 How many times do you give him the benefit
9 of the doubt? We don't have Corey Singleton
10 here, we don't have Steven Glover here, so we
11 can't cross-examine him. We can't ask him
12 questions. We can't judge their credibility,
13 because they're not here; but we have Xavier
14 here and he testified, and he told you how it
15 went, and the evidence seems to support that.

16 We're asking you to give him the benefit of
17 the doubt. The video, the lack of
18 investigation, no blood inside the car, all of
19 these things are reasonable doubt, and I'm going
20 to ask you to give my client the benefit of that
21 doubt and find him not guilty. Thank you.

22 THE COURT: All right, thank you, Ms.
23 Tolley.

24 Solicitor, rebuttal?

25 MS. JONES: Briefly.

1 THE COURT: Yes, ma'am, please.

2 **

3 FINAL CLOSING ARGUMENT BY MS. JONES

4 **

5 MS. JONES: Survival. shot or be shot, the
6 only person that can claim that that day was
7 Corey Singleton. He's the only person that shot
8 back, that was shooting for his life, that was
9 shooting for his survival.

10 Again, Corey's not here today, because he
11 died of a drug overdose. He's not here to take
12 you back to November 18th, but the surveillance
13 video took you back. Surveillance video that as
14 soon as he talks to the first person from
15 Beaufort County he can talk to, Deputy Driscoll,
16 he says, "Hey, man, I've got surveillance, I've
17 got surveillance."

18 If he's going to manipulate or alter or
19 change the surveillance video, why wouldn't he
20 offer it up immediately like that? He didn't do
21 that, and when was he supposed to do that? When
22 he's running for his life, trying to get the
23 phone on when he's frantic? Running to Ms.
24 Stewart's house shot?

25 No, when he's sitting in the dirt talking

1 to Driscoll about the surveillance? No. The
2 surveillance video wasn't manipulated, it's just
3 what was available. It's what we had. And, no,
4 the State didn't put it in some arbitrary order.
5 Draisen from the Beaufort County Sheriff's
6 Office told you those videos came with time
7 stamps, and that's the order of the timestamps.
8 Use your common sense.

9 You sit on this jury today, you did not
10 check your common sense when you came through
11 that door, use your common sense, what makes
12 sense? Xaiver Polite is a Good Samaritan who
13 just chose to stop shooting. That's the first
14 time I've heard that lie, but you know what?
15 The only person saying Xavier Polite acted in
16 self-defense is him.

17 And you know what else? He's a liar. He's
18 a liar, and he's a murderer, and he's the only
19 person saying self-defense, and you can't trust
20 a liar.

21 THE COURT: All right, thank you very much.
22 Mr. Foreman and ladies and gentlemen of the
23 jury, we've been going not quite, or right at an
24 hour. My charge on the law will probably take
25 20, 25 minutes, and so what I'd like to do is,

1 take a brief break, so everybody can walk back,
2 maybe use the restroom, stretch, so when you
3 come back in, I can then provide you with my
4 charge on the law.

5 I will also provide you the jury verdict
6 form, step down and go over that with you very
7 briefly here in the courtroom, and at that time,
8 I'll have you go back to the jury room, and a
9 few moments later I will have you go ahead and
10 begin deliberation on the case; but for right
11 now go stretch, take a brief break, and do not
12 talk about the case. Thank you very much.

13 (Jury exits the courtroom.)

14 BAILIFF: The jury's cleared, Your Honor.

15 THE COURT: All right, thank you. We'll be
16 at east for about ten minutes.

17 (RECESS)

18 **

19 **JURY CHARGE**

20 BAILIFF: All rise, Court's back in
21 session.

22 THE COURT: All right, thank you, be
23 seated. All right, anything from the State
24 before we get the jury in here?

25 MS. JONES: No, sir.

1 THE COURT: Defense?

2 MS. TOLLEY: Nothing, Your Honor.

3 THE COURT: All right, let's get the jury.

4 BAILIFF: Your Honor, the jury's entering
5 the courtroom.

6 THE COURT: All right, thank you.

7 BAILIFF: The jury's seated, Your Honor.

8 THE COURT: All right, thank you very much.
9 All right, ladies and gentlemen, you've heard
10 all the evidence in the case, you've heard the
11 closing arguments of the attorneys, and now it
12 is my duty as Trial Judge, under the
13 Constitution of this State to charge and
14 instruct you on the applicable law of the case.
15 I want you to know it's your duty, as jurors, to
16 accept and apply the law, as I will now state it
17 to you.

18 Furthermore, it's your exclusive duty to
19 decide all issues of fact of in this case, and
20 determine the effect, value, and weight of the
21 evidence. Both the State and the Defendant have
22 the right to expect that you'll carefully
23 consider and evaluate the evidence, and apply
24 the law of the case to it, so that in the end
25 both the State of South Carolina and the

1 Defendant receive a fair and impartial trial.

2 I want you to understand, ladies and
3 gentlemen, that when I use the word Defendant,
4 I'm referring to Xavier Polite. Furthermore,
5 it's important to understand that the State of
6 South Carolina charges the Defendant with the
7 offenses known as murder, attempted murder, and
8 possession of a weapon during the commission of
9 a violent crime, and to these charges, the
10 Defendant has entered a plea of not guilty.

11 The plea of not guilty, folks, places the
12 burden of proof on the State to prove guilt of
13 the Defendant to you, the jury, beyond a
14 reasonable doubt.

15 Now, I want to remind you, and we talked
16 about this earlier in the week, I want to remind
17 you the fact that the Defendant was arrested,
18 charged and indicted in the case is not evidence
19 in the case, and cannot be considered by you, as
20 evidence of guilt in this case, nor does it
21 create any presumption or inference of guilt.
22 The indictment, again, folks, is simply the
23 formal written instrument, which contains a
24 charge made against the Defendant, it's the
25 formal document, which this case is brought into

1 Court.

2 Now, ladies and gentlemen, I want you to
3 know the indictments in this case, allege
4 several different offenses that the Defendant's
5 charged with. One would be murder, a second
6 would be attempted murder, and the third would
7 be possession of a weapon during a violent
8 crime.

9 Each indictment, ladies and gentlemen, is a
10 separate and distinct offense, and you must
11 decide each indictment separately on the
12 evidence and the law applicable to it,
13 uninfluenced by your decision as to any other
14 indictment.

15 Now, I want you to know, and we've talked
16 about this a little bit, during the trial you
17 and I have had separate duties to perform. As
18 Trial Judge, it's my responsibility to preside
19 over the trial, and I also had the duty to rule
20 upon the admissibility of the evidence offered
21 during the process.

22 In that regard, you are to consider only
23 the competent evidence before you, and you,
24 ladies and gentlemen, are to disregard from your
25 mind any testimony ordered stricken from the

1 record of this case during the progress of the
2 trial, and you are to consider only the
3 testimony which has been presented from this
4 witness stand, together with any exhibits
5 admitted into evidence of this case, any
6 stipulations of counsel that were made into the
7 record, if there were any.

8 Now, furthermore, you've got to understand
9 I had the additional duty to charge you on the
10 law that's applicable to the case, and in that
11 regard, folks, I am the sole judge of the law of
12 this case, and it's your duty to accept and to
13 follow the law, as I state it to you. Now, if
14 you've got any preconceived ideas or notions, as
15 to what the law is, or what the law ought to be,
16 and it doesn't agree with what I tell you the
17 law is, you're obligated under your oath -- you
18 have all taken an oath, ladies and gentlemen,
19 and you're obligated under your oath to abandon
20 these preconceptions, because you are sworn to
21 accept the law precisely as I state it to you.

22 Now, ladies and gentlemen, in this trial
23 you are the sole and exclusive judges of the
24 facts, we talked about that, and I'm the judge
25 of the law. I do not want you to infer that I

1 have any opinion about the facts in this case
2 from anything that I might have said, during the
3 course of this trial, in ruling upon the
4 admissibility of evidence or otherwise, or from
5 anything that I say during the course of this
6 charge to you.

7 In this regard, the law does not allow me
8 or permit me to have an opinion about the facts.
9 As jurors, it's your duty alone to determine the
10 effect, the value, the weight of the evidence
11 presented during the course of the trial.

12 Now, in determining what the facts are, you
13 must be the judge of the credibility, which
14 simply means the believability of the witnesses,
15 and the value or weight to be given to their
16 testimony. You alone must decide the force and
17 effect of the testimony, and in making that
18 decision, there are a lot of things, folks, that
19 you may and should take into consideration, such
20 as, the appearance and the manner of the witness
21 on the stand, the characteristic often referred
22 to as the demeanor of the witness.

23 Was the witness forthright or hesitant?
24 Was the witness' testimony consistent, or did it
25 contain discrepancies? What was the ability of

1 the witness to know the facts about which she
2 testified, or he testified? Did the Defendant,
3 or witness, excuse me, have a cause or a reason
4 to be biased and prejudiced in favor of the
5 testimony he or she gave? Was the testimony of
6 the witness corroborated, or made stronger by
7 other testimony and evidence, or was it made
8 weaker or impeached by such other testimony and
9 evidence?

10 You've got to understand, as jurors, folks,
11 understand you have the right to believe a small
12 portion of a witness' testimony, and disregard
13 the larger portion, or vice versa. And you may
14 believe all of a witness' testimony or none.
15 You may believe the testimony of a single
16 witness against that of many witnesses, or the
17 other way around. In exercising your mental
18 processes in attempting to decide the verdict,
19 the law simply requires that you use and
20 exercise your good judgement, your common sense,
21 your sense of logic and reason, and your
22 experiences in life.

23 You apply these attributes to the evidence,
24 and apply the law, as I state it to you, and,
25 thus, you arrive at a verdict.

1 Now, I want to remind you, and we talked
2 about this, rules of evidence ordinarily do not
3 permit a witness to testify to opinions or
4 conclusions. An exception to this rule exists
5 for witnesses we call expert witnesses. An
6 expert witness, who by education and experience
7 has become an expert in some art, science,
8 profession or calling, may state an opinion as
9 to a relevant material matter, in which the
10 witness claims to be an expert, and may also
11 state the reasons for that opinion.

12 Now, I want you to know you should consider
13 an expert opinion received in evidence in this
14 case like any other piece of evidence. Give it
15 the weight you think it deserves, folks. If you
16 decide that the opinion of an expert's not based
17 on the sufficient education and/or experience,
18 or you conclude that the reasons given in
19 support of the opinion are not sound, or that
20 the opinion is outweighed by other evidence, you
21 may disregard that opinion in its entirety.

22 An expert's testimony is to be given no
23 greater weight than that of any other witness,
24 simply because the witness is an expert.
25 Further, you're not required to accept an

1 expert's opinion, even though it's not
2 contradicted.

3 Now, I want you to know, it's vital to
4 understand that the Defendant is presumed, under
5 the law, to be innocent of these charges. I
6 want to read that statement back to you again.
7 It is vital to understand that the Defendant is
8 presumed, under the law, to be innocent of these
9 charges. The Defendant has no obligation to
10 prove his innocence. It's a fundamental rule of
11 our law that a Defendant, irrespective of the
12 seriousness of the charges against him is always
13 presumed innocent of the crimes for which he is
14 charged, unless and until his guilt has been
15 proven by evidence that satisfies you, the jury,
16 beyond a reasonable doubt. The presumption of
17 innocence is not a mere legal theory, or a legal
18 phrase.

19 The presumption of innocence, ladies and
20 gentlemen, is very important, and you need to
21 understand that this presumption accompanies the
22 Defendant from the time of his arrest and
23 appearance in this Court and continues with the
24 Defendant, even after you retire to the jury
25 room to deliberate. In other words, the

1 Defendant receives the benefit, folks, of the
2 presumption of innocence until the very end of
3 this trial, when you, the jury, will deliberate
4 upon the evidence, and decide whether the State
5 has proven his guilt beyond a reasonable doubt.
6 What's a reasonable doubt?

7 Ladies and gentlemen, a reasonable doubt in
8 the law, what is it? A reasonable doubt is the
9 kind of doubt that would cause a reasonable
10 person to hesitate to act. Proof beyond a
11 reasonable doubt is proof that leaves you firmly
12 convinced of the Defendant's guilt.

13 Now, there are few things in this world
14 that we know with absolute certainty. So even
15 in criminal cases, the law does not require
16 proof that overcomes every possible doubt.
17 However, if based upon your consideration of the
18 evidence, you're firmly convinced that the
19 Defendant is guilty of the crimes charged, you
20 must find him guilty. If on the other hand, you
21 think there's a real possibility that he's not
22 guilty, you must give him the benefit of the
23 doubt and find him not guilty.

24 Jurors, please understand that reasonable
25 doubt may arise from evidence which has been

1 presented in the case, or from lack of evidence
2 in the case. It's your responsibility to
3 determine whether or not reasonable doubt, as to
4 the guilt of -- excuse me, it's your
5 responsibility to determine whether or not
6 reasonable doubt exists as to the guilt of this
7 Defendant.

8 I charge you that the Defendant is entitled
9 to every reasonable doubt arising in the whole
10 case. If upon any issues of fact essential to
11 conviction and a verdict of guilty, you have a
12 reasonable doubt as to how that issue should be
13 resolved, it would be your duty to resolve that
14 reasonable doubt in favor of the Defendant.

15 Thus, in summary, it's important to
16 understand that a Defendant is not required to
17 prove his innocence, instead the State is
18 required by law to prove every essential element
19 of the offense charged against the Defendant, by
20 evidence which satisfies you, ladies and
21 gentlemen, of his guilty beyond a reasonable
22 doubt. Only then can you convict the Defendant
23 and find him guilty.

24 Now, I want you to know that there's
25 generally two types of evidence, which are

1 presented during trial. Direct evidence and
2 circumstantial evidence. Ladies and gentlemen,
3 direct evidence directly proves the existence of
4 a fact, and does not require deduction.
5 Circumstantial evidence, on the other hand, is
6 evidence, proof of a chain of facts and
7 circumstances indicating the existence of a
8 fact.

9 Crimes may be proven by circumstantial
10 evidence. The law makes no distinction between
11 the weight or value given to either direct or
12 circumstantial evidence; however, to the extent
13 the State relies on circumstantial evidence, I
14 want you to know the circumstances must be
15 consistent with each other, and when taken
16 together point conclusively to the guilt of the
17 accused beyond a reasonable doubt. If the
18 circumstances merely portray the Defendant's
19 behavior as suspicious, then the proof has
20 failed.

21 The State has the burden of proving the
22 Defendant guilty beyond a reasonable doubt.
23 This burden rests with the State, regardless of
24 whether the State relies on direct or
25 circumstantial evidence, or some combination of

1 the two.

2 Now, I want you to know that in order to
3 establish criminal liability, criminal intent is
4 required. For example, the mental state
5 required to be proven by the State for a
6 particular crime might be purpose, intent,
7 knowledge, recklessness or criminal negligence.
8 Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is
10 always a matter that must be determined by the
11 jury from the circumstances surrounding the
12 situation.

13 There is no way to prove intent to a
14 mathematical certainty. There's no way that
15 medical science can dissect a person's brain and
16 determine what that person had in mind. So the
17 law says, folks, that criminal intent may be
18 shown from the circumstances shown to have
19 existed. This is how you make a determination
20 of whether or not the element requiring intent
21 was present. If not, it is not necessary to
22 establish intent, ladies and gentlemen, by
23 direct and positive evidence, but intent may be
24 established in the same way any other fact, by
25 taking into consideration the acts of the

1 parties, and all the facts and circumstances in
2 the case.

3 So remember criminal intent is a mental
4 state, a conscious wrongdoing, and ladies and
5 gentlemen, it's up to you to determine what the
6 Defendant intended to do, based on the
7 circumstances shown to exist. Criminal intent
8 can arise from action or a failure to act. It
9 may arise from negligence, recklessness, or an
10 indifference to duty, to consequences that is
11 considered by law to be the equivalent of
12 criminal intent.

13 Now, I want you to know that at issue in
14 this case is the identification of the Defendant
15 as the person who committed the crime charged.
16 The State has the burden of proving identity
17 beyond a reasonable doubt. You must be
18 satisfied beyond a reasonable doubt of the
19 accuracy of the identification of the Defendant
20 before you may convict a Defendant.

21 Identification testimony is an expression
22 or belief of impressions by a witness. You must
23 determine the accuracy of the identification of
24 the Defendant. You must consider the
25 believability of each identification witness in

1 the same way the same way as you would any other
2 witness. You may consider whether the witness
3 had an adequate opportunity to observe the
4 offender at the time of the offense.

5 This will be affected by things like how
6 long or short a time was available, how far or
7 close the witness was, the lighting conditions,
8 whether the witness had a chance to see or know
9 the person in the past.

10 Once again, I want to instruct you, ladies
11 and gentlemen, the burden of proof on the State
12 is that every element of the crime charged, and
13 this specifically includes the burden of proving
14 beyond a reasonable doubt the identity of the
15 Defendant, as the person who committed the
16 crime. If after examining testimony, you have a
17 reasonable doubt as to the accuracy of the
18 identification, you must find the Defendant not
19 guilty.

20 Now, I want you to know, folks, the
21 Defendant is charged with murder. The State
22 must prove beyond a reasonable doubt that the
23 Defendant killed another person with malice
24 forethought. Malice is hatred, ill-will, or
25 hostility towards another person. It's the

1 intentional doing of a wrongful act without just
2 cause, or excuse, and with an intent to inflict
3 an injury, or under circumstances that the law
4 will infer an evil intent. Malice aforethought
5 does not require that malice exists for any
6 particular time before the act is committed, but
7 malice must exist in the mind of the Defendant
8 just before and at the time the act is
9 committed.

10 Therefore, there must be a combination of
11 the previous evil intent and the act. Now,
12 folks, malice aforethought may be expressed or
13 inferred. These terms express and infer do not
14 mean different kinds of malice, but merely the
15 manner in which malice may be shown to exist,
16 either by direct or by inference from the facts,
17 or the circumstances which are proved. Express
18 malice is shown when a person speaks words which
19 express hatred or ill-will for another, or when
20 the person prepared beforehand to do the act,
21 which was later accomplished.

22 For example, lying in wait for a person, or
23 any other acts of preparation going to show that
24 the deed was within the Defendant's mind would
25 be expressed malice. Express malice may be

1 inferred from conduct showing a total disregard
2 for human life.

3 Now, I want you to know that the Defendant
4 is also charged with attempted murder. In order
5 to prove the crime, the State must prove the
6 Defendant acted with the specific intent to kill
7 another person, and the Defendant attempted to
8 kill another person with malice aforethought
9 either express or implied. Malice is hatred,
10 ill-will, or hostility toward another person.
11 It is the intentional doing of a wrongful act
12 without just cause or excuse, and with an intent
13 to inflict an injury, it is an evil intent.
14 Malice is a wrongful intent to injure another
15 person. It indicates a wicked or depraved
16 spirit, intent on doing wrong.

17 Malice is a legal term, implying wickedness
18 and excluding a just cause or excuse. The term
19 malice indicates a foreign purpose and design to
20 do a wrongful act, under the circumstances that
21 exclude any legal right to do it. Malice
22 aforethought does not require that the malice
23 exists for any particular time before the act is
24 committed, but malice must exist in the mind of
25 the Defendant just before and at the time the

1 act is committed.

2 Therefore, there must be a combination of
3 the previous evil of intent and the act. Now, I
4 want you to know that malice aforethought,
5 again, may be expressed or implied. These terms
6 expressed or implied do not mean different kinds
7 of malice, but merely the manner in which malice
8 may be shown to exist, either by direct evidence
9 or by circumstantial evidence from the facts and
10 circumstances which are presented in the case.

11 Express malice, again, is when someone
12 speaks words, or expresses hatred or will-will
13 for another, or when the person prepared
14 beforehand to do the act, which was later
15 accomplished, again, such as lying in wait for a
16 person, or any other acts in preparation going
17 to show that the deed was within the Defendant's
18 mind would be expressed malice. Malice may be
19 shown from conduct showing a total disregard for
20 human life.

21 Specific intent to kill is an element of
22 attempted murder. Intent means intending the
23 result which actually occurred, not accidentally
24 or involuntarily. Intent may be shown by acts
25 and conduct of the Defendant, and under the

1 circumstances from which you may naturally and
2 reasonably infer intent. Evidence of the
3 character of the act, the character of the
4 instrument used, the manner in which it was
5 used, the purpose to be accomplished, and the
6 resulting wounds or injuries may be considered
7 in determining the intent with which the act was
8 committed.

9 Intent may also be inferred when it's
10 demonstrated that the Defendant voluntarily and
11 willfully commits an act, the natural tendency
12 of which is to destroy another's life. Finally,
13 I want you to know that the Defendant is also
14 charged with possession of a weapon during the
15 commission of a violent crime.

16 The State must prove beyond a reasonable
17 doubt that the Defendant was in possession of a
18 firearm, or visually displayed what appeared to
19 be a firearm during the commission of a violent
20 crime. A firearm means a machine gun, automatic
21 rifle, pistol, or any weapon which is designed
22 to, or may readily be converted to expel a
23 projectile.

24 In order to find the Defendant guilty of
25 possession of a weapon during the commission of

1 a violent crime, you must first find the
2 Defendant guilty of a violent crime. Ladies and
3 gentlemen, I further charge you that murder
4 and/or attempted murder are considered violent
5 crimes. The State must prove beyond a
6 reasonable doubt that the weapon furthered,
7 advanced, or helped in the commission of the
8 crime.

9 Now, I want you to know that if two or more
10 are combined together to commit an unlawful act,
11 and the execution of that criminal act, a
12 homicide is committed by one of the actors, as a
13 probable or natural consequence of the act done,
14 in pursuance of the common design all present
15 participated in the unlawful undertaking, are as
16 guilty as the one who committed the fatal act.
17 The common purpose may not have been to kill and
18 murder, but if it was unlawful, as for instance,
19 to break in and steal, and in the execution of
20 this common purpose, a homicide is committed by
21 one as a probable or natural consequence of the
22 acts done, in pursuance of the common design,
23 then all present participating in the unlawful
24 common design are as guilty as the slayer.

25 The act of one is the act of all. If a

1 crime is committed by two or more persons who
2 are acting together in the commission of a
3 crime, then the act of one is the act of both.

4 Now, the Defendant has raised a defense of
5 self-defense to the murder and attempted murder
6 charges. Self-defense is a complete
7 justification for murder and attempted murder
8 and negates the existence of malice in each
9 charge. Thus, you must find the Defendant is
10 not guilty of murder and attempted murder,
11 unless the State proves beyond a reasonable
12 doubt that any of the following or elements of
13 self-defense did not exist in this case.

14 The four elements are as follows: First,
15 the Defendant must be without fault in bringing
16 on the difficulty. Second, the Defendant must
17 have actually believed he was in imminent danger
18 of losing his life, or sustaining serious bodily
19 injury, or he was actually in such imminent
20 danger. Third, if his defense is based upon his
21 belief of imminent danger, a reasonably prudent
22 man of ordinary firmness and courage would have
23 entertained the same belief. If the Defendant
24 actually was in imminent danger, or the
25 circumstances were such, as would warrant a man

1 of ordinary prudence and firmness and courage to
2 strike the fatal blow, in order to save himself
3 from serious bodily injury or losing his life.
4 And, finally, the Defendant had no other
5 probable means of avoiding the danger, or losing
6 his own life, or sustaining serious bodily
7 injury, and to act as he did in this particular
8 instance.

9 Now, folks, if you have a reasonable doubt
10 as to the Defendant's guilt, after considering
11 all the evidence, including the evidence of
12 self-defense, then you must find the Defendant
13 not guilty. On the other hand, if you have no
14 reasonable doubt as to Defendant's guilt,
15 considering all evidence, including the evidence
16 of self-defense, then you must find the
17 Defendant guilty.

18 A defendant is presumed to be innocent
19 until proven guilty beyond a reasonable doubt.
20 And, again, if you have any reasonable doubt as
21 to whether the State has shown that the
22 Defendant did not act properly in self-defense,
23 then you must find the Defendant not guilty.

24 If the other requirements for the right to
25 use deadly force in self-defense are satisfied,

1 a defendant need not retreat, in order to avoid
2 the need for deadly force, if it is not
3 possible, or did not reasonably appear possible
4 to retreat without danger of being killed or
5 suffering serious bodily injury. If a defendant
6 is in imminent danger, or if defendant believes
7 that he is imminent danger of death, or
8 receiving bodily harm, it is reasonable, the
9 defendant need not wait until the actual attack
10 or injury, or until force is used by the
11 assailant before exercising the right to use
12 deadly force of self-defense.

13 In other words, the defendant need not wait
14 until the assailant gets the drop on, in order
15 to be entitled to use force and self-defense.
16 And then, additionally, once the right to fire
17 and self-defense arises, the defendant is not
18 required to wait until its adversary is on equal
19 terms, or until he has fired or aimed his weapon
20 to fire.

21 In determining whether a defendant, ladies
22 and gentlemen, has acted properly in self-
23 defense, it's sufficient that he believed he was
24 in imminent danger. A defendant need not
25 actually be in such danger, because people are

1 entitled to act on appearances. A defendant's
2 act properly using force or self-defense, if
3 under the circumstances as they appear to him,
4 he believed that he was in such danger, and a
5 reasonably prudent person of ordinary firmness
6 and courage in the same situation, and with the
7 Defendant's characteristics would have
8 entertained the same belief.

9 And in the consideration of whether self-
10 defense is applicable, ladies and gentlemen, you
11 should try as near as you can to put yourself in
12 the defendant's situation at the time he fired
13 the shot. You should consider the circumstances
14 by which he was surrounded, and take into
15 consideration the person that he was dealing,
16 and all the facts surrounding him, as you obtain
17 the same from the testimony, and as similar as
18 you can, view the situation from the Defendant's
19 standpoint, unless the State shows a person of
20 ordinary reason, coolness and prudence would not
21 have acted as the Defendant did under the
22 circumstances that surrounded him at the time
23 the shot was fired, then you should find the
24 Defendant not guilty.

25 In determining whether the Defendant had a

1 right to use force and self-defense, the
2 reputation of an assailant as a violent person
3 may be relevant to whether there was a need for
4 force, to whether the Defendant had reason to
5 believe there was a need of force, and to
6 whether deadly force was really necessary.

7 It may also be relevant to whether the
8 Defendant's assailant's actions were necessary
9 and could act more quickly. One of the elements
10 of self-defense is that the Defendant must have
11 actually believed he was in imminent danger of
12 losing his life, or sustaining serious bodily
13 injury, or he was in such imminent danger.

14 In determining whether the Defendant had a
15 reasonable belief of such imminent danger, or
16 whether the Defendant actually was in such
17 imminent danger, you may consider prior
18 instances of violence, or unprovoked aggression
19 by the assailant involved. When a person is
20 justified in firing the first shot, he is
21 justified in continuing to shoot until it is
22 apparent that the danger to his life and body
23 has ceased.

24 Mere presence at the scene is not
25 sufficient to prove someone guilty of a crime.

1 A defendant's presence where a crime is being
2 committed, or mere association with a person who
3 commits a crime does not make a Defendant an
4 accomplice or an aider or embedder of the person
5 committing this crime. The burden, folks, is on
6 the State to prove every element of the crime
7 charged.

8 If you find, after reviewing all the
9 evidence that the State has proved that the
10 Defendant was present at the scene of the crime,
11 and that they have not proved beyond a
12 reasonable doubt any other element in the crime,
13 then you must find the Defendant not guilty. .
14 The law is that proof of merely being at the
15 scene of the crime is not sufficient to find
16 someone guilty.

17 We're almost ready, all right?

18 Ladies and gentlemen, I want you to clearly
19 understand that you are not partisans, you are
20 not advocates for the State of South Carolina or
21 the Defendant in this matter. It's your duty,
22 by your joint deliberations, to determine the
23 facts in this case, giving to the Defendant the
24 benefit of every reasonable doubt on each and
25 every issue. Then to the facts, which you

1 determine to be true, you should take and apply
2 the law, which has been given to you by this
3 Court, and, thus, arrive at a verdict in this
4 case.

5 Thus, when you have accomplished these
6 responsibilities, you will have satisfied your
7 oath, as jurors, folks, and you will have
8 discharged your duty to this Court. Once you
9 retire to the jury room, the Bailiff will give
10 the verdict form, or actually give it to the
11 Foreperson.

12 When you, the jury, arrive at a verdict, as
13 to the offenses charged in this case, the
14 Foreperson will select the verdict, as to that
15 offense on the verdict form. If the State has
16 failed to prove guilt of the Defendant beyond a
17 reasonable doubt, your verdict will be not
18 guilty. Likewise, if the State has proven the
19 guilt of the Defendant beyond a reasonable
20 doubt, your verdict will be guilty.

21 Once a decision has been made, the
22 Foreperson will check whichever choice is the
23 verdict of the jury as to the offenses charged.
24 The verdict that you render in this case must be
25 the verdict of each and every juror. It must be

1 your unanimous verdict. All 12 jurors must
2 agree on the verdict, which you authorized the
3 Foreperson to write,

4 Now, ladies and gentlemen, I want you to
5 further understand that the order and the
6 choices of the verdict, or how they appear on
7 the verdict form is not suggestive of any
8 verdict on the part of this Court. The verdict
9 in this case is to be determined by you, the
10 jury, not the Court.

11 Furthermore, ladies and gentlemen, please
12 understand that even though I will give the
13 verdict form to the Foreperson, it is not the
14 Foreperson's verdict alone. It is the verdict
15 of all 12 of you, and, again, I emphasize your
16 verdict must be unanimous.

17 You must consider the instructions that
18 I've given you, as a whole, and not follow some,
19 and disregard others. Now, I'm gonna ask you to
20 retire to the jury room in just a few moments,
21 but do not begin your deliberations until you're
22 told to do so.

23 The law requires now that I consult with
24 the attorneys, to make sure that I haven't left
25 anything out of these instructions, and after

1 I've checked with them, ladies and gentlemen,
2 the attorneys -- the Bailiff will then bring the
3 verdict form and the evidence into the jury
4 room, and at that time will instruct you to
5 begin your deliberations.

6 Also, I want you to know, if you have any
7 questions that arise during your deliberations,
8 they must be put in writing and sent to me by
9 the Bailiff. The Court Bailiff will be placed
10 outside the jury room door during your
11 deliberations, and if you've got a question now,
12 I just would like the Foreperson to write down
13 what that question is, give it to the Bailiff,
14 he'll bring it to me.

15 Now, it's very important, if you have a
16 question, do not ever put down a place in
17 writing any type of breakdown, you'all have
18 taken a preliminary vote, or whatever the case
19 may be. I don't want any breakdown, as to what
20 the numbers are, yea, or nah, or whatever the
21 situation may be.

22 The only thing I want, if you have a
23 question, on that piece of paper is the question
24 itself, okay? Once you've reached your verdict,
25 please knock on the door, and ask the Bailiff to

1 advise the Court that you've reached a verdict,
2 and we will return you to the courtroom as
3 promptly as possible.

4 Now, I want to -- before I discharge you to
5 the jury room, let me step down here. All
6 right, this is the verdict form that I've handed
7 to the Foreperson, and, basically, right here,
8 "We, the jury, in the above-captioned case, on
9 the charge of murder of Steven Glover, we find
10 the Defendant, Xavier Polite," the Foreperson
11 will check one, "not guilty, guilty."

12 And, again, don't take any suggestion that
13 not guilty is not guilty, I've got to put it
14 down one way or the other, so that's what I've
15 done.

16 Number two, "We, the jury, in the above
17 captioned case of the charge of attempted murder
18 of Corey Singleton, find the Defendant, Xavier
19 Polite, guilty or not guilty," okay? Now, right
20 here, in the event that you answer not guilty to
21 questions one and two, question three must be
22 not guilty, okay? Here is question three, "We,
23 the jury, in the above-captioned case on the
24 charge of possession of a weapon during the
25 commission of a violent crime, find the

1 Defendant, Xavier Polite," the Foreperson will
2 check one, not guilty or guilty.

3 And then the Foreperson would sign his name
4 right here, okay? So that's the form that
5 you're gonna get, they're gonna bring that back
6 in just a few moments. So at this time, folks,
7 what I'd like you to do, is if you would retire
8 to the jury room, but please do not begin
9 discussing the case until the Bailiff tells you
10 to do so, okay?

11 And that he'll be in there in just a few
12 moments. Thank you.

13 (Jury exits the courtroom.)

14 BAILIFF: The jury's cleared, Your Honor.

15 THE COURT: All right, any concerns or
16 corrections from the State as it relates to the
17 charges that I read to the jury?

18 MS. JONES: No, sir.

19 THE COURT: From the defense?

20 MR. PAULK: Subject to prior objection.

21 THE COURT: Otherwise no objections?

22 MR. PAULK: Correct, Your Honor.

23 THE COURT: All right. And as it relates
24 to the verdict form, any objection to the
25 instruction that I provided the jury on the

1 verdict form from the State?

2 MS. JONES: No, sir.

3 THE COURT: From the defense?

4 MR. PAULK: No, Your Honor.

5 THE COURT: All right, then what I'd like
6 to do -- did I understand that -- yes, okay.

7 What I'd like to do is this, I would like
8 for you'all to look at the evidence that's going
9 to go back to the jury, agree as to what is to
10 go back, and then I will have the Bailiff take
11 the evidence back, along with the verdict form.

12 So I would like you'all to look and make
13 sure that everything that's going back is, in
14 fact, what's supposed to be going back, okay?

15 BAILIFF: Excuse me, Your Honor, and what
16 time would you like to address the alternate
17 jurors?

18 THE COURT: I'm gonna do that in just one
19 second.

20 BAILIFF: Okay.

21 THE COURT: You'all go ahead and do that.

22 (RECESS)

23 BAILIFF: Order.

24 THE COURT: All right, so has everyone gone
25 through the exhibits with the court reporter?

1 Are these going back to the jury,
2 Solicitor?

3 MS. JONES: Yes, sir.

4 THE COURT: Defense?

5 MS. TOLLEY: Yes, sir.

6 THE COURT: All right, so we're not sending
7 the bullets back, but we're sending guns back;
8 is that correct?

9 MS. JONES: Correct.

10 THE COURT: All right, and we've got the
11 verdict form?

12 BAILIFF: Yes, sir.

13 THE COURT: So I think at this point we'd
14 be bringing them back into the courtroom, and
15 thank them and discharge them, that's what I
16 understand the statute to provide in this case.
17 Your understanding?

18 MS. JONES: Yes, sir.

19 THE COURT: That's what you want me to do?

20 MS. JONES: Yes, sir.

21 THE COURT: Defense?

22 MS. TOLLEY: Yes, sir.

23 THE COURT: All right, let's do that.

24 BAILIFF: Yes, your Honor.

25 THE COURT: Tell them to go ahead and start

2 All right, we'll be at ease in this case.

5 ******

7 BAILIFF: All rise.

10 The jury asked for a self-defense in
11 writing. I'm inclined to give that to them in
12 writing, but if I'm gonna give it to them in
13 writing, I think the safest course of action is
14 giving the entire charge.

15 And so what I plan on doing is giving them
16 the entire charge that I read, which includes
17 the self-defense, minus the one paragraph that I
18 marked out, that we all agreed was not
19 applicable, so I'm gonna give them my entire
20 charge.

21 I would assume that they would then look
22 through it, and find the self-defense portion,
23 all right? Any objection from the State?

24 MS. JONES: No objection from the State.

25 THE COURT: Any objection from the defense?

1 MR. PAULK: Yes, Your Honor.

2 THE COURT: Okay, go ahead.

3 MR. PAULK: We think that they've only
4 asked for the self-defense portion. Certainly,
5 the Court quite frequently, as you stated, gives
6 just portions of the charge, and so the entire
7 charge, I think it would be appropriate just to
8 give the self-defense portion --

9 THE COURT: All right.

10 MR. PAULK: -- but I understand your
11 ruling, just --

12 THE COURT: Yeah, I understand that, but
13 given the fact that -- a lot of times in my
14 experience has been they'll say they want to
15 hear it; and also given the fact that this
16 charge is probably the longest charge I have
17 given.

18 And as a result of that, the fact that they
19 asked for it in writing, I'm gonna hand them my
20 entire charge, but I note your objection for the
21 record.

22 MR. PAULK: Thank you, Your Honor.

23 THE COURT: All right, we'll be at ease.

24 (Court stood in recess while the jury
25 deliberated upon its verdict.)

* *

So if you can't control your emotions, then I am going to tell you that you'all need to leave. In the meantime, I don't want anybody else coming in while I'm addressing the jury, or

1 while we receive the verdict, all right?

2 Anything before we bring the jury in from
3 the State?

4 MS. JONES: No, sir.

5 THE COURT: Defense?

6 MR. PAULK: No, Your Honor.

7 THE COURT: All right.

8 (Jury enters courtroom.)

9 BAILIFF: Yes, your Honor. Your Honor, the
10 jury's entering the courtroom. All seated, sir.

11 THE COURT: All right, Mr. Foreman, I
12 understand the jury's reached a verdict?

13 FOREMAN: Yes, sir.

14 THE COURT: If you could hand that verdict
15 to the Bailiff, and if the Bailiff could then
16 hand that verdict to me, please. Thank you,
17 sir.

18 All right, Madam Clerk, I'd like for you to
19 publish the verdict. Defendant, if you'll
20 please stand.

21 CLERK: The State of South Carolina, County
22 of Beaufort, State of South Carolina versus
23 Xavier M. Polite, the Defendant, we, the jury,
24 in the above-captioned case on the charge of
25 murder of Steven Glover find the Defendant,

1 Xavier Polite, guilty.

2 We, the jury, in the above-captioned case
3 on the charge of attempted murder of Corey
4 Singleton find the Defendant, Xavier Polite,
5 guilty.

6 We, the jury, in the above-captioned case
7 on the charge of the possession of a weapon
8 during the commission of a violent crime find
9 the Defendant, Xavier Polite, guilty.

10 THE COURT: All right, thank you. You'all
11 can be seated. And that's signed by the
12 Foreman?

13 CLERK: Yes, sir.

14 THE COURT: And dated today's date?

15 CLERK: Dated today's date.

16 THE COURT: thank you very much. All
17 right, let me ask before we discharge the jury,
18 any motions from the State?

19 MS. JONES: No, sir.

20 THE COURT: Any motions from the Defendant?

21 MR. PAULK: Your Honor, we would ask that
22 the Clerk of Court poll the jury.

23 THE COURT: Yes, sir, I think that'd be
24 appropriate, no problem. Madam Clerk, would you
25 please poll the jury, please?

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POLLING OF THE JURY

CLERK: Juror 88, is this your verdict?

JUROR 88: Yes.

CLERK: Is this still your verdict?

JUROR 88: Yes.

CLERK: Juror 69, is this your verdict?

JUROR 69? Yes.

CLERK: Is this still your verdict?

JUROR 69: Yes.

CLERK: Juror 231, is this your verdict?

JUROR 231: Yds.

CLERK: Is this still your verdict?

JUROR 231: Yes.

CLERK: Juro 236, is this your verdict?

JUROR 236: Yes.

CLERK: Is this still your verdict?

JUROR 236: Yes.

CLERK: Juror 22, is this your verdict?

JUROR 22: Yes.

CLERK: Is this still your verdict?

JUROR 22: Yes.

CLERK: Juror 134, is this your verdict?

JUROR 134: Yes.

CLERK: Is this still your verdict?

1 JUROR 134: yes.

2 CLERK: Juror 289, is this your verdict?

3 JUROR 289: Yes.

4 CLERK: Is this still your verdict?

5 JUROR 289: Yes.

6 CLERK: Juror 42, is this your verdict?

7 JUROR 42: Yes, ma'am.

8 CLERK: Is this still your verdict?

9 JUROR 42: Yes, ma'am.

10 CLERK: Juror 99, is this your verdict?

11 JUROR 99: Yes.

12 CLERK: Is this still your verdict?

13 JUROR 99: Yes.

14 CLERK: Juror 230 -- I'm sorry, 324, is
15 this your verdict?

16 JUROR 230: Yes.

17 CLERK: Is this still your verdict?

18 JUROR 230: Yes.

19 CLERK: Juror 308, is this your verdict?

20 JUROR 308: Yes.

21 CLERK: Is this still your verdict?

22 JUROR 308: Yes.

23 CLERK: And juror 187, is this your
24 verdict?

25 JUROR 187: Yes.

1 CLERK: Is this still your verdict?

2 JUROR 187: Yes.

3 THE COURT: Thank you, Madam Clerk.

4 All right, any other motions before I
5 discharge the jury from the defense?

6 MR. PAULK: No, Your Honor.

7 THE COURT: The State?

8 MS. JONES: No, sir.

9 THE COURT: Thank you. Thank you for
10 giving up -- giving your County this week, for
11 listening. I will tell you I've had to stop
12 Court, because I have had jurors falling asleep,
13 I have had jurors snoring, that didn't happen
14 this week.

15 I appreciate the attention that you gave to
16 this case. I hope it's been a good experience.
17 It's never a good experience being here, it's
18 never a good experience, a lot of other places
19 everybody would rather have been, but I hope you
20 learned something.

21 hope you understand that we deal with
22 important matters here, and I just appreciate
23 you coming and participating, honoring your
24 summons, and serving, quite frankly, your County
25 and your fellow citizens, because that's what

1 you're here to do.

2 And, folks, I want to let you know now that
3 you're good for three years, you're home free,
4 but, of course, that doesn't include Federal
5 Court, Magistrate's Court or City Court. Any of
6 those three can still get you, but you're done
7 in Circuit Court for the next three years. I
8 also want to let you know that what's going to
9 happen next is, there's gonna be some brief
10 motions that are made, and then I expect that we
11 will go directly into sentencing, okay?

12 Now, you are free to go. If you would like
13 to stick around and to continue to observe, you
14 can do so, and I also will make certain when you
15 are leaving, whether you leave now or whether
16 you leave later, that you get to your car
17 without any problem or incident, not that I
18 think that's gonna happen, but I want to let you
19 know that we've got folks here.

20 And so if you want to stay and watch and
21 listen, feel free to. If you're ready to get
22 out of here and get something to eat, or have a
23 great date tonight, I don't know, but if you
24 want to leave you can, but I want to thank you
25 again. Talk about the case, guess what? You

1 can talk about the case now, okay?

2 So all week long I've been telling you,
3 "Don't talk about the case." Well, you can talk
4 about the case to whoever you want now. If
5 somebody approaches you and they want to talk to
6 you about the case, and you want to talk to
7 them, sure, no problem. If they approach you
8 and you don't want to talk to them, you just
9 tell them you don't want to talk about it.

10 If they bother you, you let the Clerk know,
11 you call the Sheriff's Department, they will let
12 me know. I promise you that person will not
13 bother you again, if they get that call, okay?
14 They know where to get ahold of me 24/7, and I
15 promise you that person will not bother you
16 again.

17 So, again I thank you for your service.
18 The Bailiff's gonna escort you out this door,
19 where you can then leave to go to your car, and
20 they'll make sure you get there without any
21 problem.

22 And also if you want to stay, then if you
23 can just escort those who want to stay, just
24 bring them right back around.

25 BAILIFF: Yes, Your Honor.

1 THE COURT: We're gonna take about four or
2 five minutes, and then we'll come back and go
3 straight into motions, and then straight into
4 sentencing, okay?

5

6 First, my foreperson. I need my
7 foreperson. You've got a couple extra duties,
8 you've got to sign the back of these indictments
9 for me, okay? Thank you so much.

10 So you'all are free to go, if you want to
11 stay, they'll walk you around. Thank you very
12 much.

13 (RECESS)

14 BAILIFF: The jury's cleared, Your Honor.

15 THE COURT: We will take just a few moments
16 to use the bathroom, stretch your legs, and also
17 give the jurors an opportunity to leave and
18 those who might want to stay and observe to come
19 on around.

20 So we'll be at ease for probably five
21 minutes, okay?

22 (RECESS)

23

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25

1 PROCEEDINGS CONTINUED

2 **

3 BAILIFF: All rise.

4 THE COURT: All right, let's hear motions.

5 MR. PAULK: Your Honor, we would renew our
6 motion for a directed verdict, and we would also
7 make a motion for JNOV.8 Certainly, there was ample evidence that
9 the jury could have considered this case, and we
10 simply believe that we did prove the elements of
11 self-defense without fault in bringing on the
12 difficulty.13 Primarily, that he did nothing to cause the
14 approximate cause of this incident to occur,
15 without fault bringing on the difficulty.16 Secondly, Your Honor, that a reasonable person
17 of ordinary courage and firmness would have made
18 the same decision as the Defendant in this case,
19 Your Honor.20 When shots were fired upon him, he fired
21 back. He did nothing to create this. Your
22 Honor, third, and I'm skipping, but third the
23 duty to retreat, Your Honor.24 There was testimony that there were bullets
25 flying. There was testimony that certainly

1 could have led the jury to believe and should
2 have led the jury to believe that there was no
3 option for Mr. Polite to retreat.

4 There was nothing that he could have done
5 to retreat, to render himself safe at that
6 point, Your Honor. And I understand that I'm
7 missing one of the elements of self-defense, and
8 I just can't think of it.

9 Your Honor, the element that I missed is
10 that the Defendant believed that he was in
11 imminent danger of losing his life. There's
12 testimony from the Defendant that he saw a gun
13 pointed in his direction, heard a shot fired
14 from in front of him.

15 Certainly, whenever someone is shooting,
16 and recently saw a gun pointed at you, I believe
17 that there is actual imminent danger of losing
18 your life, and I believe we proved that element
19 as well, Your Honor.

20 That would be the substance of our motion
21 for judgment notwithstanding the verdict. We
22 would also renew all of our prior objections and
23 prior motions that were made throughout the
24 course of the trial, Your Honor.

25 THE COURT: All right, any response?

1 MS. JONES: Judge, I think the jury got it
2 right. I think Mr. Polite's testimony was less
3 than credible, and I think that they had ample
4 evidence to support the guilty verdicts.

5 THE COURT: Respectfully, sir, I'm gonna
6 deny your motion. I believe that the evidence
7 in this case that went to the jury was
8 sufficient for the jury to reach the decision
9 that they did. I think there was enough
10 evidence for them to do that. And, you know,
11 it's -- I will also say that it is obvious that
12 the jury took their job seriously and
13 deliberated this case over a period of time.
14 Then they mentally and physically come to a
15 decision.

16 There were questions that were asked in
17 this case. They were asked the questions that
18 were poignant, and so I think they reasonably
19 came to their decision, and I think the evidence
20 was there for them to do that, so I respectfully
21 will deny those motions.

22 MR. PAULK: Yes, sir.

23 THE COURT: My understanding is none of my
24 jurors remained; is that correct? They all
25 left?

1 BAILIFF: Your Honor, all of them left,
2 Judge.

3 THE COURT: All right, as it relates to
4 sentencing, I'm gonna tell you, I hate to do
5 this, but I'm not going to sentence tonight. I
6 want to do the sentencing in the morning.

7 Is there a reason we can't do sentencing
8 tomorrow morning?

9 MS. JONES: I don't -- that's fine, Your
10 Honor.

11 THE COURT: Is that all right?

12 MR. PAULK: that's fine.

13 THE COURT: It's just that it's 6:30, we've
14 worked until 6:30 or 7:00 last night, almost
15 7:00. I just don't feel that -- I want to give
16 deliberate and careful consideration to this
17 matter.

18 I want to think some about it tonight, and
19 I want to receive that information tomorrow, or
20 make that decision tomorrow, and that's in
21 fairness to both the victim and victim's family.
22 And in fairness to Mr. Polite, I think that I'm
23 gonna need some additional time on it.

24 I'm not comfortable receiving that
25 information tonight at 6:30, all right. So,

1 we'll be -- this will be the first matter that
2 we take up tomorrow morning at 9:30.

3 All right, so this will be the first thing
4 we do tomorrow at 9:30. Thank you very much.
5 We'll readjourn at 9:30 in the morning.

6 MS. JONES: Thank you, Judge.

7 (At 5:40 the proceedings were continued
8 until the following day without interruption.)

9 **

10 END OF VOLUME IV

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CERTIFICATE OF REPORTER*******

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 15th Day of June, 2023.

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

This, the 2nd day of January, 2024.

Kymberlee M. Williams, CSR/RPR

-----)
State of South Carolina))
)
Plaintiff,)
vs.) TRANSCRIPT OF JURY TRIAL
) VOLUME V
) PAGES 865 - 874
XAVIER M. POLITE,)
)
Defendant.)

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
Post Office Box 8091
Beaufort, South Carolina 29903

A P P E A R A N C E S**Appearing for The State of South Carolina:**

Mary Jones, Esq.
14th Circuit Solicitor's Office
102 Ribaut Road
Beaufort, South Carolina 29902

Appearing For the Defendant:

Juan Tolley, Esquire
Deputy Public Defender
Fourteenth Circuit Public Defender's Office
P.O. Box 545
Beaufort, South Carolina 29901

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EXHIBIT LIST
(NONE OFFERED)

1 **SENTENCING HEARING**

2 ***

3 **FRIDAY, JUNE 16, 2023**

4 **BEAUFORT, SOUTH CAROLINA**

5 ***

6 (The following proceedings were held in
7 open court. All parties were present.)

8 BAILIFF: All rise.

9 THE COURT: Thank you, you can be seated.

10 MR. PAULK: Your Honor, Mr. Polite has
11 stepped into the restroom for a moment, just for
12 your note.

13 THE COURT: Okay, I want to say what a
14 tragic situation this is that brings us together
15 today. The love of family, your loss, and your
16 lives will forever change as a result of this.

17 And to the Polite family I would say, to a
18 certain extent, some of the same things, a young
19 man, a son is now facing decades behind bars.
20 And I've said it before, and I'll say it again,
21 when I took this job, I never realized or
22 envisioned how many times I would be saying I'm
23 sorry to the families.

24 I've represented when I was in private
25 practice, people who had lost loved ones, but

1 it's just not the same in this situation. And
2 to both families I'm sorry for the situation
3 that you find yourselves in. You know, what
4 went on that day, we can't dissect somebody's
5 brain, that's what my jury charge says, to know
6 exactly what the intent was. In this case, the
7 State's burden was not to eliminate every doubt,
8 they just had to prove their case beyond a
9 reasonable doubt, and I believe that they did
10 that, and the jury believes that they did that.

11 That's the burden of proof that they have
12 to reach, and it's a high burden, and the jury
13 believed that they reached that verdict. And so
14 now I'm going to pass the sentencing of Mr.
15 Polite.

16 Now, when I sentence him, I will tell you
17 that I am not in any way or in any fashion bound
18 by what Judge Price sentenced Mr. Preston to. I
19 understand he sentenced Mr. Preston.

20 Mr. Preston was convicted, and he sentenced
21 him to 37 years, but in looking at this matter,
22 I think that it's certainly something I can take
23 into consideration. And while I'm not bound by
24 it, I certainly can look at, examine, and
25 consider the sentence that he gave to the co-

1 defendant. What do I know? I know that Mr.
2 Preston and/or his mom were perhaps the
3 registered owners of the guns. That it was Mr.
4 Preston's mom that -- or family that owned the
5 van that Mr. Preston was driving on the day of
6 this incident.

7 I know that Mr. Preston was the one who
8 knew these individuals, because, in fact, the
9 gentleman knew Mr. Preston, but did not know Mr.
10 Polite, that's how I recollect this evidence, he
11 did not know Mr. Polite.

12 When I take those matters into
13 consideration, I will have to say that I don't
14 feel that Mr. Polite's actions were
15 substantially different from the actions of Mr.
16 Preston. The Solicitor's case, the State's case
17 was built around the fact that these gentlemen
18 were, for lack of better words, acting in tandem
19 from A to Z. And so when I look at and consider
20 the case, when I look at culpability, when I
21 look at the factors that gave rise to this
22 matter, while I do believe in this case that Mr.
23 Preston -- ring leader is probably a bad word, I
24 haven't thought about what that word is.

25 It'll take me ten minutes just to find out

1 what the proper word is that I would use, but I
2 just don't have it on the tip of my tongue, but
3 I believe that Mr. Preston may have been the --
4 perhaps a more motivating factor for what ended
5 up happening that morning; but I will tell you
6 despite the fact that I believe that he may have
7 been the ring leader, I don't believe that given
8 that fact in this case it relieves Mr. Polite of
9 any culpability, and to that extent I believe
10 that the appropriate sentence -- there's never
11 -- all I'm tasked with is giving what I believe
12 to be the appropriate sentence, and it's never
13 fair, there's nothing fair about this, but I
14 believe I'm charged with giving what I believe
15 to be the appropriate sentence.

16 And in this case, given all the factors
17 that I've evaluated that have been presented to
18 me by both defense and by the State, having
19 heard the evidence in this case, having heard
20 the statements of the families, and after the
21 review of the documents in this case, I believe
22 the appropriate sentence is to assign a sentence
23 of 37 years, running everything concurrently.
24 And so what I'm going to do now is, I'm gonna go
25 ahead and pass judgment on that sentence, but I

1 wanted to let you know why and how I arrived at
2 that sentence. I want you to know this is my
3 sentence, this is not Judge Price's sentence,
4 it's my sentence.

5 So let me go ahead, if you want to stand,
6 I'm gonna go ahead and read these to you right
7 now. All right, in case number 2020-GS-07-
8 02185, that's the State of South Carolina v.
9 Xavier Polite, sir, on the charge of murder I'm
10 going to sentence you to the South Carolina
11 Department of Corrections for a period of 37
12 years.

13 I'm gonna run all these charges concurrent,
14 sir, and I'm gonna give you credit for any time
15 that you have served.

16 In case number 2020-GS-07-02312, that's the
17 State of South Carolina v. Xavier Polite, with
18 the charge of attempted murder, sir, I'm going
19 to sentence you to the South Carolina Department
20 of Corrections for a period of 30 years, and I'm
21 running all of these charges concurrent, and,
22 again, I'm gonna give you credit for all of your
23 time served.

24 And then, finally, Mr. Polite, in 2020-GS-
25 07-02186, sir, that's possession of a weapon

1 during a violent crime, sir, I'm going to
2 sentence you to the State Department of
3 Corrections for a period of five years, again,
4 I'm running all charges concurrent, and I'm
5 gonna give you credit for all of your time
6 served. Thank you. Anything further from the
7 State concerning this matter?

8 MS. JONES: No, sir.

9 THE COURT: Anything from the defense?

10 MR. PAULK: No, Your Honor.

11 THE COURT: All right, thank you very much.

12 MS. TOLLEY: Thank you, Judge.

13 (At 10:26 a.m. the hearing was concluded.)

14 ***

15 END OF VOLUME V

16 END OF TRANSCRIPT

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* * *

This, the 2nd day of January 2024.

Kymberlee M. Williams, CSR/RPR

WITNESSES

Beaufort County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2020A0710200597

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: NOV 04 2021

VERDICT

Guilty

[Signature]

Foreperson of Petit Jury

Date: 6/15/23

INDICT

DUCKET NO. 2020GS0702186

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2021

THE STATE

vs.

XAVIER MAOSHI POLITE

Indictment For

**Possession of Weapon During
Violent Crime**

SC Code: 16-23-490

CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

875

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

INDICTMENT

2020GS0702186

At a Court of General Sessions, convened on November 4, 2021, the Grand Jurors of Beaufort County present upon their oath:

Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about November 18, 2020, the Defendant, XAVIER MAOSHI POLITE, did possess a firearm, visibly displayed what appeared to be a firearm, during the commission of a violent crime, to wit: Murder and/or Attempted Murder and XAVIER MAOSHI POLITE was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Beaufort County Sheriff's Office

DOCKET NO: 2020GS0702312

The State of South Carolina
County of Beaufort

877
After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

November Term 2021

I _____
hereby appear in my own proper
person and plead guilty to the within
indictment or to

ARREST WARRANT NUMBER

2020A0710400353

THE STATE

vs.

XAVIER MAOSHI POLITE

ACTION OF GRAND JURY

True Bill

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

Foreperson of Grand Jury

Date: NOV 04 2021

Defendant

VERDICT

Guilty

Witness:

Foreperson of Petit Jury

Date: 6/15/23

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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INDICTMENT

2020GS0702312

At a Court of General Sessions, convened on November 4, 2021, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about November 18, 2020, the Defendant, XAVIER MAOSHI POLITE, did, with intent to kill and with malice aforethought, attempt to willfully kill Cory Singleton, to wit: by shooting at Cory Singleton, all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Beaufort County Sheriff's Office

DOCKET NO. 2020GS0702185

The State of South Carolina
County of Beaufort

879
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

November Term 2021

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2020A0710200596

THE STATE

vs.

XAVIER MAOSHI POLITE

ACTION OF GRAND JURY

True Bill

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

Foreperson of Grand Jury

Date: NOV 04 2021

Defendant

VERDICT

Guilty

Witness:

Foreperson of Petit Jury

Date: 6/15/23

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

INDICTMENT

2020GS0702185

At a Court of General Sessions, convened on November 4, 2021, the Grand Jurors of Beaufort County present upon their oath:

Murder

That in Beaufort County, South Carolina, on or about November 18, 2020, the Defendant, XAVIER MAOSHI POLITE did, with malice aforethought, kill Steven Glover and Steven Glover did die as a proximate result of XAVIER MAOSHI POLITE's actions, to wit: The Defendant did fire a gun towards the Victim and the Victim did die as a result of gunshot wounds, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

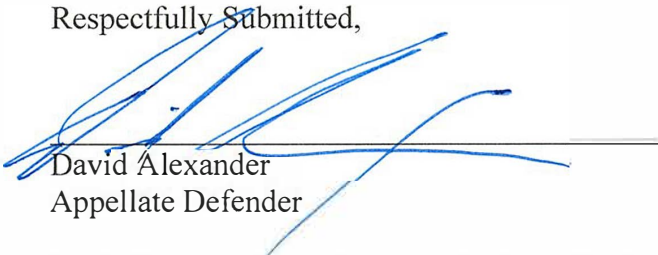
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 26 2024

SC Court of Appeals


David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of July, 2024.

RECEIVED

Jul 26 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XAVIER M. POLITE,

APPELLANT

APPELLATE CASE NO. 2023-001026

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of July, 2024.



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT