

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTIN DIXON,

APPELLANT

APPELLATE CASE NO. 2023-000597

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	Case No.: 2020GS4001501,
	)	2020GS4001502
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
Martin Dixon,	)	
	)	
Defendant.	)	April 3, 2023
	)	

TRANSCRIPT OF TRIAL - DAY 1 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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1 P R O C E E D I N G S

2 **THE COURT:** Alrighty.

3 What do we have now?

4 **MS. ZMROCZEK:** So, Judge, I don't know if we
5 want to do the competency issue before or after we
6 select jury. So that was the one thing. I do
7 have his reports to hand up if -- if the Court
8 would like to look at them at some point.

9 **THE COURT:** All right.

10 **Who do we have there? Who are you?**

11 **MS. ZMROCZEK:** This is Mr. --

12 **THE DEFENDANT:** Martin Dixon.

13 **THE COURT:** Martin Dixon?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right.

16 **MS. ZMROCZEK:** And then the only other issue
17 I think before we select the jury, Judge, is I do
18 have an issue with one of the indictments. And so
19 I do want to address that before.

20 **THE COURT:** Okay. What's the problem with
21 the indictment?

22 **MS. ZMROCZEK:** So it's the indictment for
23 arson third. Your Honor, I believe you have a
24 copy of it up there.

25 **THE COURT:** I do.

Motions

1 **MS. ZMROCZEK:** So it reads the following:
2 That Martin Dixon did in Richland County on or
3 about August 7, 2019, willfully and maliciously
4 cause an explosion, set fire to, burn, or cause a
5 burning which resulted in damages, to wit, the
6 defendant did willfully and unlawfully set fire to
7 a blank belonging to Antrone Dubose.

8 **THE COURT:** And -- and what is the problem
9 with it?

10 **MS. ZMROCZEK:** Well, Your Honor, it fails to
11 identify what the grand jury considered as far as
12 what was willfully and unlawfully set fire to; and
13 therefore, fails in its notice. So we would move
14 to quash that indictment. Just that one, not the
15 others.

16 **THE COURT:** Okay. That's arson third. How
17 many indictments do we have?

18 **MR. SCOTT:** Three.

19 **MS. ZMROCZEK:** Three.

20 **THE COURT:** All right.

21 Mr. Scott.

22 **MR. SCOTT:** Well, I was thinking I might move
23 to amend it. But then the common thought of arson
24 is she only gets five strikes. So I might just
25 forgo calling that indictment, just proceed with

1 the kidnapping and the attempted murder. It is
2 attempted murder a 10-strike? I don't -- I don't
3 show it listed in the statute.

4 **THE COURT:** Murder is 10, not attempted
5 murder.

6 **MS. ZMROCZEK:** Five.

7 **THE COURT:** Five strikes.

8 **MR. SCOTT:** Okay. We'll forgo calling that
9 arson indictment. I will just call -- we'll
10 proceed with the kidnapping and attempted murder.

11 **THE COURT:** So do you want me to rule on it?
12 They're not calling it.

13 **MS. ZMROCZEK:** If they are not calling it. I
14 just didn't want it to be read to the jury and
15 then argue it. And then, it -- you know.

16 **THE COURT:** Understand.
17 Let's go to the competency issue.

18 **MS. ZMROCZEK:** And, Your Honor, just so --
19 just for your knowledge, he is still on a mental
20 health hold at the jail as well, even though he
21 has been -- so I'm -- I was appointed to this case
22 after a few different lawyers. So I actually did
23 not participate in having him evaluated for
24 competency or criminal responsibility. That was
25 done prior to my appointment. But I did receive

Competency Hearing

1 copies of the two -- the two reports that -- that
2 I handed up. I believe the -- the state has a
3 copy of the criminal responsibility one. I don't
4 know that they have one of the -- or whichever one
5 the one. The one that's not ex parte (inaudible).

6 **THE COURT:** So, Mr. Dixon, if you will stand,
7 and we're going to swear you in.

8 **THE CLERK:** Raise your right hand, please.

9 Do you swear to tell the truth, the whole
10 truth, and nothing but the truth so help you God?

11 **THE DEFENDANT:** Yes.

12 **THE CLERK:** Thank you.

13 **THE COURT:** So tell me your name?

14 **THE DEFENDANT:** Martin Dixon.

15 **THE COURT:** And Mr. Dixon, how old are you?

16 **THE DEFENDANT:** 53 years old.

17 **THE COURT:** What's your date of birth?

18 **THE DEFENDANT:** [REDACTED].

19 **THE COURT:** All right.

20 And you are from Columbia?

21 **THE DEFENDANT:** No.

22 **THE COURT:** Where are you from?

23 **THE DEFENDANT:** I was living in Charleston.

24 **THE COURT:** And what are you doing in
25 Columbia?

1 **THE DEFENDANT:** I just came through; rode
2 through.

3 **THE COURT:** You live in Charleston?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** And what's your address?

6 **THE DEFENDANT:** Oh, God. [REDACTED] Sugar Hill
7 Road.

8 **THE COURT:** Including --

9 **THE DEFENDANT:** On the end of Orangeburg
10 County and the end of Charleston. Holly Hill. I
11 don't know if you're familiar with Holly Hill.

12 **THE COURT:** Is that Orangeburg or Charleston
13 or Berkeley?

14 **THE DEFENDANT:** I'm not sure.

15 **THE COURT:** How long did you live out there?

16 **THE DEFENDANT:** About 10 years now.

17 **THE COURT:** Where were you born? What town?

18 **THE DEFENDANT:** New York.

19 **THE COURT:** And when did you come down here?

20 **THE DEFENDANT:** Probably about 15 years ago.

21 **THE COURT:** And do you have some kind of
22 mental problem?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** What kind of problem do you have?

25 **THE DEFENDANT:** They diagnosed me with

Competency Hearing

1 several different things. I'm on medication right
2 now.

3 **THE COURT:** Have you been in a lot of
4 different mental hospitals?

5 **THE DEFENDANT:** All my life.

6 **THE COURT:** And --

7 **THE DEFENDANT:** I've been to the one down
8 here, Three Rivers.

9 **THE COURT:** Have you ever had a jury trial
10 before?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Do you know what you are charged
13 with now, what kind of crimes you're charged with?

14 **THE DEFENDANT:** Not really. They tell me
15 arson, attempted murder.

16 **THE COURT:** Yeah. You have those two. And
17 then what is the third one?

18 **THE DEFENDANT:** Kidnapping.

19 **THE COURT:** And how do you plan to plead to
20 those charges?

21 **THE DEFENDANT:** Not guilty.

22 **THE COURT:** And you want to a jury trial?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Had you had a chance to explain
25 your side of the story to your lawyer?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** And you think you're ready to
3 have a trial?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** You think you understand what's
6 going on and what you're getting ready to do?

7 **THE DEFENDANT:** Yes, have court.

8 **THE COURT:** So we're going to -- you see
9 those seats over there, the right seats?

10 **THE DEFENDANT:** (No audible response.)

11 **THE COURT:** You know who's going to sit over
12 there, right?

13 **THE DEFENDANT:** Do I sit over there?

14 **THE COURT:** No. I said: Do you know who is
15 going to be sitting over there in those chairs?

16 **THE DEFENDANT:** I never -- I never been in a
17 court before.

18 **THE COURT:** You never been in a court? You
19 have a criminal record?

20 **THE DEFENDANT:** No. I don't have -- I don't
21 have anything.

22 **THE COURT:** This is your first time around?

23 **THE DEFENDANT:** I mean, I was young, years
24 ago.

25 **THE COURT:** How old are you now?

Competency Hearing

1 **THE DEFENDANT:** I'm 53.

2 **THE COURT:** The last 30 years, you've never
3 been to court and had to see a judge?

4 **THE DEFENDANT:** I've been on a lot of
5 medication, Judge. They got me on Zoloft and a
6 whole bunch of other stuff. I can't even --

7 **THE COURT:** Well, do you think you have
8 enough competency to have a jury trial?

9 **THE DEFENDANT:** I guess, if I get off this
10 medication.

11 **THE COURT:** Let me see what the doctor says.
12 That you are aware of the charges against you and
13 you were able to name the charges. You report
14 that your charges are serious and estimate you
15 could receive up to 75 years in prison if you were
16 convicted of those charges. Did you know that?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** Who explained that to you?

19 **THE DEFENDANT:** My attorney.

20 **THE COURT:** All right.

21 When asked where that figure came from, he
22 said, "I looked it up." You looked it up too?

23 The doctor said when he asked you where'd you
24 get 75 years from, you told him you looked it up.

25 **THE DEFENDANT:** No.

1 **THE COURT:** He says you were able to state
2 his attorney's name. Who's your lawyer? What's
3 her name?

4 **THE DEFENDANT:** Aimee.

5 **THE COURT:** Okay.

6 He says he had only spoken with his attorney
7 on two occasions in two years.

8 **MS. ZMROCZEK:** That -- that was prior to me.

9 **THE DEFENDANT:** That wasn't -- that wasn't
10 her.

11 **THE COURT:** Oh. How many times have you
12 talked with your new lawyer Aimee?

13 **THE DEFENDANT:** As far as on the phone?

14 **THE COURT:** How long -- how many times have
15 you talked to her, Aimee?

16 **THE DEFENDANT:** In person or?

17 **THE COURT:** In person; on the phone?

18 **THE DEFENDANT:** Several times.

19 **THE COURT:** Many times?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** All right.

22 And you did not have a bond?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** And you know the purpose of the
25 attorney -- what the attorney's job is?

Competency Hearing

1 **THE DEFENDANT:** I guess to figure out that
2 case. I don't know.

3 **THE COURT:** Try to help you out? How about
4 the prosecutor at the table over there?

5 **THE DEFENDANT:** I don't know.

6 **THE COURT:** Do you know why they're here?

7 **THE DEFENDANT:** I don't know.

8 **THE COURT:** They're trying to get -- they're
9 trying to get you proven guilty.

10 **THE DEFENDANT:** Uh-huh.

11 **THE COURT:** They're on the other side.
12 They're trying to prove that you're guilty. Did
13 you know that?

14 **THE DEFENDANT:** I --

15 **THE COURT:** Does it matter to you?

16 **THE DEFENDANT:** It matters. I just -- I
17 don't know them.

18 **THE COURT:** I know that you didn't know them.
19 But, I mean, why did you think they were here?

20 **THE DEFENDANT:** I don't know.

21 **THE COURT:** He states he has received his
22 motion for discovery and he's aware of some of the
23 evidence against you. Do you know what -- you
24 know what evidence they've got against you?

25 **THE DEFENDANT:** Not really.

1 **THE COURT:** He states he can tell his
2 attorney everything he remembers about the
3 allegations against him. You can do that? You
4 can tell your -- your lawyer all about what you
5 did and what you didn't do? Have you done that?

6 **MS. ZMROCZEK:** You have to say "yes" or "no."

7 **THE DEFENDANT:** Yes. Yes, Your Honor.

8 **THE COURT:** Now this says that you understand
9 the role of the solicitor. You know what a
10 solicitor is, don't you?

11 **THE DEFENDANT:** No, Your Honor.

12 **THE COURT:** The prosecutor.

13 **THE DEFENDANT:** I don't know.

14 **THE COURT:** You don't know about a
15 prosecutor?

16 **THE DEFENDANT:** No, Your Honor.

17 **THE COURT:** Well, they're here to -- you told
18 the doctor here that the solicitor is there to
19 convict you. He states that the solicitor is
20 seeking justice and want to lock you up and take
21 you away from society.

22 **THE DEFENDANT:** The doctor -- doctor never
23 talked to me.

24 **THE COURT:** That's what the doctor said that
25 you said.

Competency Hearing

1 **THE DEFENDANT:** No, Your Honor.

2 **THE COURT:** Well, do you understand that
3 that's what the solicitor's job is?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** What's the job of the judge?
6 What's my job?

7 **THE DEFENDANT:** I guess to find me guilty or
8 not guilty.

9 **THE COURT:** That's up to the jury. He says
10 the judge's job is to make a decision on whether
11 or not to go along with the solicitor or go along
12 with my lawyer. He states that if he were to
13 find -- he states that if he were to be found not
14 guilty, the judge would release him. And if found
15 guilty, the judge will decide his prison sentence.
16 You understand that?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** All right.

19 So if you got found guilty, where would you
20 want to go -- if you got found not guilty, where
21 would you want to go?

22 **THE DEFENDANT:** Home.

23 **THE COURT:** If you got found guilty, where do
24 you think you're going?

25 **THE DEFENDANT:** Prison.

1 **THE COURT:** All right.

2 And who's going to make that decision?

3 **THE DEFENDANT:** You and them, I guess.

4 **THE COURT:** Who's going to decide whether you
5 go home or go to prison if the jury finds you
6 guilty?

7 **THE DEFENDANT:** I guess you.

8 **THE COURT:** All right.

9 Do you know how many jurors -- jury people
10 we're going to put in those seats over there?

11 **THE DEFENDANT:** No, Your Honor.

12 **THE COURT:** We're going to put 14 over there.
13 Only 12 of them can decide. We're going to pick
14 14 and have two extras.

15 Do you understand that?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** Now are you pleading "guilty" or
18 "not guilty"?

19 **THE DEFENDANT:** Not guilty.

20 **THE COURT:** So as far as you are concerned,
21 you're not guilty?

22 **THE DEFENDANT:** Not guilty, Your Honor.

23 **THE COURT:** And you know you are not guilty?

24 **THE DEFENDANT:** I know I'm not guilty.

25 **THE COURT:** Well, but they believe that

Competency Hearing

1 you're guilty. The prosecutor believes that

2 you're guilty. Did you know that?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** And they plan to put some witness

5 up -- witnesses on the witness stand over there to

6 try to prove to the jury that you're guilty. Did

7 you know that?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** And that's the purpose of a

10 trial. You're aware of that, right?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Now they might have made you a

13 plea offer. Did they make you a plea offer --

14 plea bargain?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** And did you turn it down?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** What was the plea -- plea bargain

19 offer they made to you?

20 **THE DEFENDANT:** Twelve, I think.

21 **THE COURT:** Twelve years?

22 **THE DEFENDANT:** I think so.

23 **THE COURT:** And you didn't want to do 12

24 years?

25 **THE DEFENDANT:** No, Your Honor.

1 **THE COURT:** How many do you want to do?

2 **THE DEFENDANT:** Zero.

3 **THE COURT:** You don't want to do any, huh?

4 That means you've got this sense, right?

5 **THE DEFENDANT:** Yeah. I guess.

6 **THE COURT:** Pretty good sense. So if
7 somebody is lying on you on the witness stand,
8 what would you do? If somebody was on the witness
9 stand and they started lying, what would you do?

10 **THE DEFENDANT:** Nothing I can do, I guess.

11 **THE COURT:** What are you going to do with
12 your attorney? I mean, what -- what would you
13 want your attorney to do?

14 **THE DEFENDANT:** Show -- show them that they
15 lying.

16 **THE COURT:** Pretty good answer.

17 You understand you can't just jump up and
18 start hollering or anything. You've got to be
19 quiet?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** You know that much?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** All right.

24 Let's see. Well, this doctor, his name is
25 Ronald -- Richard L. Frierson, MD. He's a

Competency Hearing

1 Professor of Psychiatry at the University of South
2 Carolina School of Medicine. He says, "In
3 summary, Mr. Dixon has had prior legal experience
4 in the criminal justice system; and therefore,
5 would be presumed to have an understanding of
6 court proceedings."

7 But you said you haven't had any experience?

8 **THE DEFENDANT:** Well, I had experience, but I
9 don't remember how --

10 **THE COURT:** What kind of experience did you
11 have?

12 **THE DEFENDANT:** I was younger. And also I
13 had head injuries. So I don't -- it's a lot of
14 stuff I don't really remember. I had plastic
15 surgery. I had hemorrhaging in my head.

16 **THE COURT:** This doctor said you had a good
17 enough understanding in his opinion to -- to help
18 your attorney in defending -- in defending you,
19 that you had enough understanding to help the
20 attorney to assist you in defending -- in
21 defending you in this case. You agree with that?

22 **THE DEFENDANT:** What -- what do you mean,
23 Your Honor?

24 **THE COURT:** That you have enough
25 understanding about what's going on to help your

1 lawyer to defend you?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** All right.

4 So do you have any more information to
5 present on his case by the state or the defense?

6 **MS. ZMROCZEK:** No, Your Honor. I just -- I
7 just, you know, in order for PCR purposes, etc., I
8 wanted to make sure that the Court was aware that
9 he is currently on a mental hold status at the
10 jail and that he has had a long history, starting
11 back in New York for treatment at Bellevue through
12 treatment multiple times at Three Rivers here in
13 Columbia -- or West Columbia, I guess. And -- and
14 I just wanted to make sure.

15 I understand that regardless of what the
16 doctors say, it is certainly the Court's
17 determination of whether or not he's competent to
18 go forward. I just wanted to make sure that all
19 of that was properly argued and protected in this
20 case.

21 **THE COURT:** So do you believe that he's
22 competent to stand trial?

23 **MS. ZMROCZEK:** My concern, Your Honor, only
24 come with the challenges that if he were to
25 testify about his -- with his memory issues. And

Competency Hearing

1 so that, I think, would be a challenge. It's
2 something that I have to consider. I think that
3 would be probably revisited when we do the
4 colloquy again. And he and I are going to discuss
5 it some more. So those are my only hesitations,
6 Your Honor, is if he does testify, which he
7 certainly, you know, has the right to do, whether
8 or not his memory or his -- his other mental
9 health issues may affect his ability to testify.
10 So that's -- that's my only concern.

11 **THE COURT:** All right.

12 In -- well, in connection with his ability,
13 his capacity to conform, Dr. Frierson has the
14 opinion that -- that he had sufficient capacity to
15 conform his conduct with -- does he agree with
16 that or disagree with that?

17 **MS. ZMROCZEK:** I -- I wasn't there,
18 Your Honor, so I'm not sure. This is what I can
19 tell the Court, and I'm not trying to be cute.
20 Seriously, I'm trying to tell the Court that I had
21 discussions with him about the jury process, about
22 the plea process, about the trial process. I
23 think that he understands that part. If I may --

24 Is that correct?

25 **THE DEFENDANT:** Yes.

1 **MS. ZMROCZEK:** Okay. So I wanted to see.

2 So I do believe he understands the process.
3 Like I said, my only concerns would be if he were
4 to testify. And I think that that's probably
5 something that we don't need to address today.
6 Because, you know, we haven't even gotten to our
7 part of the case yet.

8 **THE COURT:** Well, I would make a finding of
9 his capacity to stand trial upon the issue of
10 his -- his -- the capacity to conform that can be
11 a jury issue if you are claiming not guilty by
12 reason of insanity or -- or some other defense.

13 **MS. ZMROCZEK:** Right.

14 **THE COURT:** Because that -- that's a -- can
15 be a jury question if you want the jury to
16 consider a finding of not guilty or not guilty by
17 reason of insanity or -- or guilty but mentally
18 ill, all the various options, or just plain
19 guilty.

20 **MS. ZMROCZEK:** I would prefer none of those,
21 Your Honor. I think that what we're -- what our
22 defense -- we're not necessarily putting forward
23 any affirmative mental health defenses at this
24 time.

25 **THE COURT:** All right.

Competency Hearing

1 Anything from the state?

2 MR. SCOTT: No, Your Honor. Do you care to
3 hear his criminal history? He has had significant
4 exposure to the court system.

5 THE COURT: What else is on his rap sheet?

6 MR. SCOTT: Going back to '92, he was
7 convicted of a disorderly conduct as well as
8 malicious injury to personal -- real property.
9 Got three years suspended to three years'
10 probation.

11 THE COURT: Was that here or in New York?

12 MR. SCOTT: That would be a state charge.
13 Orangeburg County.

14 THE COURT: You remember that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You pled guilty or had a trial?

17 THE DEFENDANT: I believe I pled "guilty."

18 THE COURT: All right.

19 MR. SCOTT: He was convicted in '95 assault
20 and battery high and aggravated nature. He got
21 six years suspended to three years and two years'
22 probation.

23 THE COURT: You remember that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Who did you assault?

1 **THE DEFENDANT:** Other person that I know.

2 **THE COURT:** Who is that?

3 **THE DEFENDANT:** It was -- it was a friend of
4 mine.

5 **THE COURT:** What's his name?

6 **THE DEFENDANT:** I don't --

7 **THE COURT:** Man or woman?

8 **THE DEFENDANT:** It was a man, I think.

9 **THE COURT:** Okay. What else he had?

10 **MR. SCOTT:** In 1997, St. Matthews Police
11 Department charged him with pointing and
12 presenting and a DUS. He was convicted of the
13 DUS. I show no disposition.

14 **THE COURT:** You've been in driving in
15 St. Matthews -- drunk -- drunk driving in
16 St. Matthews?

17 **THE DEFENDANT:** No, Your Honor. I never had
18 a drunk driving charge.

19 **MR. SCOTT:** Convicted of DUS, Your Honor.

20 **THE COURT:** You was driving under suspension?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** Whose car you driving?

23 **THE DEFENDANT:** Mine.

24 **THE COURT:** You have a driver's license?

25 **THE DEFENDANT:** I had one. It's suspended

Competency Hearing

1 because I didn't turn the tag in. I didn't know.

2 **THE COURT:** So you had a driver's license?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** How long had your driver's
5 license?

6 **THE DEFENDANT:** Long time. Long time.

7 **THE COURT:** So how could you get a driver's
8 license with the mental problems you were saying
9 since you were a baby?

10 **THE DEFENDANT:** I had different mental
11 problems. And I had an injury, a head injury,
12 which I had to get -- had to drain out fluids in
13 my head and stuff.

14 **THE COURT:** How old were you when you had
15 that happen, the injury?

16 **THE DEFENDANT:** I believe it was a few years
17 ago.

18 **THE COURT:** A few years ago?

19 **THE DEFENDANT:** Yeah.

20 **THE COURT:** Wasn't that long ago?

21 **THE DEFENDANT:** No.

22 **THE COURT:** All right.

23 What else do you have on him?

24 **MR. SCOTT:** Your Honor, he was convicted in
25 1998 of grand larceny, failure to stop for a blue

1 light. I show a sentence -- I believe that was
2 also out of St. Matthews. I show a sentence of --

3 **THE COURT:** What were you stealing in?

4 **THE DEFENDANT:** Excuse me?

5 **THE COURT:** What were you stealing in
6 St. Matthews?

7 **THE DEFENDANT:** I didn't steal anything,
8 Your Honor.

9 **THE COURT:** It says grand larceny?

10 **THE DEFENDANT:** I didn't steal anything.

11 **THE COURT:** Did you go to jail for it?

12 **THE DEFENDANT:** They stopped me, gave me a
13 fine. Then I went to jail for failure to stop
14 blue lights or something.

15 **THE COURT:** So you were still driving without
16 a -- under a suspended license?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** All right.

19 What else do you have on there?

20 **MR. SCOTT:** No, he actually -- he went to
21 prison on those two charges, three years suspended
22 to two years and one-year probation.

23 **THE COURT:** How many different times you been
24 to prison?

25 **THE DEFENDANT:** Once. Just one time, Your

Competency Hearing

1 Honor.

2 THE COURT: How many times you been in jail?

3 Twenty, 30, 40?

4 THE DEFENDANT: Oh, no.

5 THE COURT: Not that many?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Five or 10?

8 THE DEFENDANT: I'm going to say less than 10
9 times.

10 THE COURT: Less than 10 times.

11 All right.

12 MR. SCOTT: In '98, despite what he says, his
13 rap sheet shows he went to prison on the grand
14 larceny, failure to stop. After he was released,
15 he was convicted of a CDVHAN and assault of police
16 officer while resisting. He got 10 years on that.

17 THE COURT: CDVHAN. Was that on your
18 girlfriend or your --

19 THE DEFENDANT: Yeah. Yes, Your Honor.

20 THE COURT: What'd you do?

21 THE DEFENDANT: During -- during that time,
22 me and her, we were on drugs real bad during that
23 time.

24 THE COURT: What did you do to her? Choked
25 her? Hit her? Cut her?

1 **THE DEFENDANT:** No, no. It wasn't --

2 **THE COURT:** Smacked her?

3 **THE DEFENDANT:** No. Just grabbed her.

4 **THE COURT:** Grabbed her.

5 **THE DEFENDANT:** Yeah.

6 **THE COURT:** How much time did you get for
7 that?

8 **THE DEFENDANT:** I don't remember getting no
9 time for that.

10 **THE COURT:** The rap sheet said he got how
11 much time?

12 **MR. SCOTT:** Ten years suspended upon service
13 of two years and then five years' probation.

14 **THE COURT:** Two years?

15 **THE DEFENDANT:** Probation.

16 **THE COURT:** And five years' probation.
17 All right.

18 What else you got on him?

19 **MR. SCOTT:** 2007 in Berkeley County, he was
20 convicted of a simple assault and battery.

21 **THE COURT:** Berkeley County. I was telling
22 you that Holly Hill was right on the line there.

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Not Charleston County, but
25 Berkeley County.

Competency Hearing

1 **THE DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Who did you assault in Berkeley
3 County?

4 **THE DEFENDANT:** Some guy. He tried to rob
5 me.

6 **THE COURT:** He tried to rob you?

7 **THE DEFENDANT:** Yeah.

8 **THE COURT:** You were at a dope house or what?

9 **THE DEFENDANT:** No. On the street.

10 **THE COURT:** On the street in Holly Hill?

11 **THE DEFENDANT:** He asked me for some money.

12 I told him I didn't have it. He tried to take,
13 you know, the money from me.

14 **THE COURT:** They took him -- took him to jail
15 instead of you?

16 **THE DEFENDANT:** We got in a scuffle and the
17 police pulled up and they wouldn't listen.

18 **THE COURT:** They took you to jail?

19 **THE DEFENDANT:** They took both of us.

20 **THE COURT:** Both of y'all to jail.

21 All right.

22 **THE DEFENDANT:** They never convicted him for
23 robbing me.

24 **THE COURT:** Let's see what else you've got.

25 **MR. SCOTT:** Just one -- he just has one

1 subsequent arrest. In 2007, he was arrested for a
2 CDVHAN by the North Charleston Police Department.
3 That did end in a nonconviction.

4 **THE COURT:** It was in Charleston, North
5 Charleston?

6 **MR. SCOTT:** Yes, Your Honor.

7 **THE COURT:** Who were you fighting with then?

8 **THE DEFENDANT:** I don't even remember that,
9 Your Honor.

10 **THE COURT:** It's CDV. So it has to be
11 someone you lived with or had a baby with. You
12 have any children?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** So it must be a girlfriend or
15 boyfriend?

16 **THE DEFENDANT:** I don't remember that.

17 **THE COURT:** Somebody.

18 All right.

19 Well, you've been -- so the part that the
20 doctor says that you've been in enough court
21 system -- you've been in and out of court so many
22 times that you -- he believes you understand what
23 goes on in court. Do you agree with that?

24 **THE DEFENDANT:** No, Your Honor.

25 **THE COURT:** You don't think you --

Competency Hearing

1 **THE DEFENDANT:** Never been in a jury or
2 nothing like that. St. Matthews, Calhoun County
3 has a little small courtroom --

4 **THE COURT:** He's just saying that you've been
5 in court enough to understand what court is all
6 about?

7 **THE DEFENDANT:** Some.

8 **THE COURT:** Not that you've been through some
9 jury trials.

10 **THE DEFENDANT:** Yeah.

11 **THE COURT:** This going to be your first time
12 in a jury trial?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** And you want one?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** You didn't want one any of the
17 other times?

18 **THE DEFENDANT:** No, Your Honor.

19 **THE COURT:** Okay. All right.

20 And you have a right to have one.

21 **THE DEFENDANT:** Right.

22 **THE COURT:** That's why we're here. You think
23 you're ready to go?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** All right.

1 **MS. ZMROCZEK:** I think that covers
2 everything.

3 **THE COURT:** Okay. Very good.
4 I find him competent to stand trial.

5 **MS. ZMROCZEK:** You want to make this --

6 **THE COURT:** Yeah. I want to make this part
7 of the record.

8 **MS. ZMROCZEK:** And can we seal this?

9 **THE COURT:** Sealed, what says the state?

10 **MR. SCOTT:** I don't -- I don't really have
11 any one way or the other.

12 **MS. ZMROCZEK:** Just because it's got
13 statements in there, Your Honor, about his mental
14 health and also statements about the case.

15 **THE COURT:** Okay. It will be sealed.

16 **THE COURT REPORTER:** Court's exhibit?

17 **THE COURT:** It's a Court's exhibit, sealed
18 until further order of the Court.

19 (Court's Exhibit No. 1 is marked for
20 identification and sealed by the Court.)

21 **THE COURT:** So what else do we have before we
22 bring the jury in and pick them before lunch?

23 You're going to get dressed up on us?

24 **MS. ZMROCZEK:** He was cold, Your Honor.

25 **THE COURT:** Huh?

Competency Hearing

1 **MS. ZMROCZEK:** He was cold. He was
2 shivering. So I asked my clerk to bring him a
3 jacket.

4 **THE COURT:** Okay.

5 **MS. ZMROCZEK:** I think those are the only
6 things really that we have to do before we
7 pick the jury.

8 **THE COURT:** You're looking like a preacher
9 now.

10 Okay. Let's see if we can get a jury then.
11 Anything about the voir dire? Anything?
12 Anything special?

13 **MS. ZMROCZEK:** I was just handing to the
14 state, Your Honor. There's only two questions. I
15 don't object.

16 **THE CLERK:** You want me to go ahead and call
17 them?

18 **THE COURT:** Yeah. You can go ahead and call
19 them.

20 Anything about the defense's proposals?

21 **MR. SCOTT:** I don't see any, Your Honor. I'm
22 just perusing. I don't have any objection.

23 **THE COURT:** So as far as these, you're asking
24 are there anything about these allegations. You
25 want me to tell the jury all that he's accused of

1 doing or the solicitor?

2 **MS. ZMROCZEK:** I think if the Court wants to
3 read the two indictments, I --

4 **THE COURT:** Okay. Who is Antrone Dubose?

5 **MS. ZMROCZEK:** The alleged victim in this
6 case.

7 **THE COURT:** It's a man or woman?

8 **MS. ZMROCZEK:** Man.

9 **THE COURT:** Do you know someone named Antrone
10 Dubose?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Bring them on.

13 (The jury venire enters the courtroom.)

14 (Jury qualification and selection is held; not
15 transcribed.)

16 **THE COURT:** All right.

17 Ladies and gentlemen, you-all have been in
18 the jury -- to be in the jury. We're going to
19 break for lunch. We have another matter at
20 2 o'clock. And then we'll be ready to start this
21 case at 3 o'clock. So we are going to -- let's
22 say 2:45. 2:45. We're going to have you go to
23 the jury room, get acquainted, get some
24 instructions from the bailiff, and return at 2:45
25 to start the case.

Motions

1 Please do not discuss the case in any form or
2 fashion.

3 (The jury panel exits the courtroom at 1:09 p.m.)

4 **THE COURT:** Any matters before we break?

5 **MS. ZMROCZEK:** Do we want to do -- I
6 (inaudible) the pretrial list that I sent you,
7 Judge. Do you have a copy of it?

8 **THE COURT:** I don't know.

9 **MS. ZMROCZEK:** Okay. I'll go through it
10 because I'm going to actually withdraw some of
11 them.

12 Your Honor, in researching the motions to
13 dismiss, the charges for violation of speedy
14 trial, in looking at the -- and I just want to put
15 on the record why I'm doing it to protect,
16 Your Honor, the record.

17 Mr.-- Mr. Dixon had some conflicts with
18 several attorneys. I understand -- he's been in
19 jail for years. I understand his frustration. I
20 do feel like a lot of the attorney -- between
21 COVID and the attorney turnover, there's going to
22 probably be a lot of fact explanation, Your Honor.
23 So I just don't think that that carries much
24 weight at this time. So I will withdraw that
25 motion.

1 And Your Honor, I had the motion to dismiss
2 the discovery violations. As it turns out, they
3 didn't necessarily lose the information; they just
4 never tested it. So I think that that's right for
5 cross-examination. So I'm going to withdraw that
6 one as well.

7 I do need to -- have the state certified that
8 they have done a *Giglio* search as well as a *Riddle*
9 and turned over everything that has -- that
10 should've been turned over. We've gone back and
11 forth several times. And I know that recently
12 after it was supposed to be tried before I got
13 COVID, they did provide me some more information
14 with medical records I was seeking. But other
15 than that, I think he addressed they just don't
16 have --

17 And if I am speaking out of turn, just let me
18 know.

19 They just don't have the fingerprints, DNA,
20 any of that; is that correct?

21 **MR. SCOTT:** Yeah. We don't have any evidence
22 of DNA or -- what was the other one?

23 **MS. ZMROCZEK:** Fingerprints.

24 **MR. SCOTT:** Or fingerprints.

25 **THE COURT:** All right.

Motions

1 **MS. ZMROCZEK:** And then I think we went
2 through the -- and this may be something that we
3 need to think about to discuss before we come
4 back. But now that the -- I do have a motion to
5 suppress any testimony regarding charge allegation
6 against the defendant. And so I don't know where
7 that kind of -- I imagine that they're going to
8 put forth evidence of the arson. So I -- that may
9 be something we need to address, Your Honor.

10 Also, I had another -- which kind of falls in
11 line with that 404(b) *Lyle* evidence. But I think
12 as Mr. Scott went through the record, he hasn't
13 had anything since 2007. That's what I
14 understood. So I don't think there's any of that
15 information. So I think it would just be a
16 question about the arson testimony that they may
17 put forward.

18 **THE COURT:** Well, I mean, I don't know what
19 the facts are. What -- what is he accused of
20 doing?

21 **MS. ZMROCZEK:** So, Your Honor, I believe that
22 the state's theory is that they -- Mr. Dixon and a
23 codefendant put Mr. Dubose in the back of his car
24 in the cemetery and then attempted to -- to maybe
25 light it on fire. That was a failed attempt. It

1 didn't work.

2 **THE COURT:** So your motion is that they not
3 say that they attempted to set it on fire?

4 **MS. ZMROCZEK:** Right.

5 **THE COURT:** And the state's response to that?

6 **MR. SCOTT:** I can't really prove attempted
7 murder if I can't talk about what he attempted to
8 do to kill the man. So -- but that would be the
9 basis for the attempted murder charge, Your Honor.

10 **THE COURT:** Anything else on that issue?

11 **MS. ZMROCZEK:** No, Your Honor.

12 **THE COURT:** I deny the motion.

13 **MS. ZMROCZEK:** And then, Your Honor, I
14 don't -- so my client did give a statement. It's
15 my understanding that they are not going to move
16 it in at this time. So if that changes, I think
17 we would have to have a *Jackson v. Denno* hearing,
18 but I do not believe that we have to. There was an
19 identification made, but the victim knew my client
20 and the codefendant for years, is my
21 understanding. So I don't know that a lineup
22 would be appropriate. But I did say that if we
23 needed to do a *Biggers* hearing, I wanted to make
24 the Court aware of that. I understand that maybe
25 that they don't have the witnesses here today to

Motions

1 do that. But I just wanted to make sure that that
2 was brought to the Court's attention.

3 THE COURT: Okay.

4 MS. ZMROCZEK: I think the rest, Your Honor,
5 is just to deal with the jury -- once the evidence
6 comes out to the jury.

7 THE COURT: Okay.

8 Anything else then from the state?

9 MR. SCOTT: Nothing from the state,
10 Your Honor.

11 THE COURT: Okay. We'll -- we're supposed to
12 be here -- at 2 o'clock, I have another hearing.
13 2:45 for the jury.

14 MS. ZMROCZEK: And will we meet here at
15 2 o'clock as well?

16 THE COURT: Yes.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: All right.

19 We'll be in recess.

20 (A recess is taken.)

21 THE COURT: Are we ready for the jury?

22 MS. ZMROCZEK: Just two things, Your Honor.
23 One, we would ask to sequester the witnesses.

24 And secondly, Your Honor, the codefendant's
25 attorney is here. It's my understanding that the

1 codefendant is under subpoena but fully intends to
2 invoke her Fifth Amendment right. And so -- I
3 don't think that we do that in front of the jury.
4 She is extremely mentally ill, Your Honor. And
5 I'm told that -- the co-defendant's public
6 defender, Mr. Forney, that I would ask if the
7 Court could inquire if she needs to stay for the
8 duration of the trial since she does not intend to
9 testify or if that could be addressed ahead of
10 time.

11 **THE COURT:** Mr. Scott --

12 You want to sequester Mr. Forney or --

13 **MS. ZMROCZEK:** No, no. I'm certainly not
14 sequestering him. He's not a witness in the case.
15 But I -- I -- he just asked if I would ask if she
16 needed to remain under subpoena and be here all
17 week. She does not live here. She lives
18 in Charleston.

19 **THE COURT:** Where -- where is she?

20 **MR. WHITMIRE:** She's downstairs, Your Honor.

21 **THE COURT:** She's not here anyway.

22 **MS. ZMROCZEK:** She's here in the courthouse.

23 **MR. WHITMIRE:** She gave a statement to law
24 enforcement, Your Honor, implicating the
25 defendant. I intended to call her at trial.

1 Perhaps the Court may want to ask her her intent
2 outside the presence of the jury. Because
3 assuming she says, "I'm not playing along," I'm
4 saying, "We're setting you for trial next." So
5 I'd like that to be on the record. So we're here
6 in this same courtroom trying her case.

7 **THE COURT:** To me, that's a -- to me, that's
8 a side issue to this trial. We have a jury that I
9 told to come back at 2:45.

10 **MR. WHITMIRE:** I'm ready to go. This is
11 Mr. Forney -- this is his request through
12 Ms. Zmroczek.

13 **THE COURT:** Well, he's not in this trial. So
14 we're not going to deal with that.

15 **MS. ZMROCZEK:** Okay. Thank you, Your Honor.

16 **THE COURT:** Anything else?

17 **MR. SCOTT:** Nothing from the state. We're
18 ready to go, Your Honor.

19 **THE COURT:** Bring the jury.

20 **MR. SCOTT:** Judge, if I could just real
21 quick, I think we may have agreed -- stipulated to
22 these exhibits.

23 **MS. ZMROCZEK:** Just the pictures.

24 **MR. SCOTT:** Just the pictures, yes. We've
25 agreed to stipulate to State's 1 through 32.

1 **THE COURT:** Is that right?

2 **MS. ZMROCZEK:** That's correct, Your Honor.

3 **THE COURT:** Okay.

4 (State Exhibit Nos. 1 through 32 are marked for
5 identification and admitted into the record.)

6 (The jury enters the courtroom at 2:53 p.m.)

7 **THE BAILIFF:** The jury is seated, Your Honor.

8 **THE COURT:** All right.

9 Welcome back, ladies and gentlemen. If
10 you-all will stand to be sworn.

11 **THE CLERK:** Would you please raise your right
12 hand?

13 Do you swear or affirm that you shall well
14 and truly try and true deliverance make between
15 the State of South Carolina and the defendant at
16 bar whom you shall have and charge a true verdict
17 given according to the law and the evidence, so
18 help you God?

19 (The jurors respond.)

20 **THE CLERK:** Thank you. You can have a seat.

21 **THE COURT:** All right.

22 Ladies and gentlemen, you-all have been
23 selected and now sworn to be the jury in the trial
24 of this case. And after you are selected to hear
25 a case, you're not allowed to discuss the case at

Jury Instruction

1 all with each other or with anyone else. And
2 you're not allowed to do anything additional as
3 far as outside research. Anything that you will
4 need to know about this case shall be here in the
5 courtroom.

6 After hearing all of the witnesses,
7 testimony, and arguments of other lawyers, and
8 instructions of law, you will be asked to
9 deliberate and to decide whether the defendant is
10 guilty or not guilty of attempted murder and
11 kidnapping.

12 As I stated a little earlier, the defendant
13 is presumably not guilty. The state has the
14 burden of proving him guilty beyond a reasonable
15 doubt. And that is the purpose of a trial, to
16 determine if the state can meet that burden.

17 So your job as jurors is to sit, pay
18 attention, focus on the testimony and the
19 evidence. So that at the end of the case, you'll
20 be in a position to deliberate and to participate
21 in the deliberations concerning whether Mr. Dixon
22 is guilty or not guilty.

23 Later in the process, I will appoint one of
24 you to serve as foreperson of the jury. That
25 person will be the spokesperson for the jury.

1 They will have the responsibility of presiding
2 over the jury deliberations and completing the
3 verdict forms indicating the unanimous verdict of
4 the jury.

5 We now move to opening statements, first by
6 the state.

7 Mr. Whitmire.

8 **MR. WHITMIRE:** August 7, 2019,
9 then-41-year-old Antrone Dubose was struck in the
10 head with a tire iron, thrown into the trunk of
11 his own car, and driven by his two captors
12 throughout Columbia. He laid helpless, trapped in
13 the trunk in a panic as his two captors, Defendant
14 Martin Dixon and Mr. Dixon's female companion,
15 Michelle Jones, drove Antrone through the greater
16 area of Columbia finding ways to end his life.

17 The evidence and testimony of this trial will
18 show this is not a whodunit. Y'all will get a
19 chance to hear from Antrone. Antrone is from
20 Charleston. In the days leading up to this
21 incident, he drove to Columbia with his friend --
22 former friend, Martin Dixon and Ms. Jones. All
23 goes well until Mr. Dixon assaulted Antrone,
24 abducted him, and attempted to end his life.

25 Antrone will tell you-all about how Martin

Opening Statement by Mr. Whitmire

1 Dixon hit him in the head with a tire iron and
2 threw him in the trunk. Drove to the Elmwood
3 Cemetery in the darkness of night. Once they
4 arrived at the cemetery, his two captors got out
5 of the car and lit the gas can of Antrone's Lexis
6 on fire. However, the evidence will show the
7 Antrone made it. The fire never permeated the
8 trunk area compartment of the car.

9 You will get a chance to hear from Freddie
10 Free. He was the caretaker of the Elmwood
11 Cemetery. Mr. Free started his workday and he
12 noticed a Lexis with some burn damage on it. He
13 also noticed what appeared to be something moving
14 in the trunk of the car. He immediately notified
15 law enforcement and reportedly observed.

16 Y'all will also get to hear from Officer
17 Dwyer of the Columbia Police Department. He was
18 the first responder on the scene. He assessed the
19 situation. He was able to discover Antrone's body
20 lying in the trunk and placed in the back of the
21 car. He coordinated with the fire department to
22 have it removed through the Jaws of Life. He
23 remained on the scene, worked with investigations
24 to set a perimeter and process evidence.

25 Y'all hear from Crime Scene Investigator

1 Potash with the Columbia Police Department. He
2 photographed and documented the evidence at the
3 scene. He will tell you all about finding
4 paperwork belonging to the defendant Martin Dixon
5 in Antrone's car and Michelle Jones.

6 I keep talking about Michelle Jones. She's
7 the codefendant in this case. She's been charged
8 accordingly for her conduct. She will be
9 exercising the right to a jury trial at a later
10 date. But today, we are here for the trial of
11 Antrone Jones -- sorry -- of Martin Dixon.

12 You will also get to hear from lead
13 investigator Wayne Montgomery who ran point on
14 this case and put the evidence together. He
15 ultimately detained and arrested Defendant Martin
16 Dixon and Michelle Jones in Hickory, North
17 Carolina, sometime after this incident.

18 And at the end of this trial, we'll have
19 another chance to speak to y'all, to talk about
20 the law in this case, the law of attempted murder,
21 the law of kidnapping and how it applies to the
22 evidence you see from the witness stand and
23 testimony you hear from the witness stand. But
24 today is really not the day to do that.

25 However, I want to talk about this term

1 "beyond a reasonable doubt" or "proof beyond a
2 reasonable doubt." Because you're going to be
3 hearing a lot about that going forward. I will
4 tell you kind of what it is and what it isn't.
5 Proof beyond a reasonable doubt isn't proof beyond
6 all doubt. It isn't proof beyond any doubt.

7 I submit to you, ladies and gentlemen,
8 there's very few things in this world that we can
9 know with a hundred percent certainty. Proof
10 beyond a reasonable doubt is the type of proof
11 that leaves you firmly convinced of a defendant's
12 guilt.

13 Now before I sit down, I want to remind
14 you-all of this: This isn't *Court TV*. This isn't
15 *Law and Order*. This really happened approximately
16 five blocks and a little over a mile away from
17 this very courthouse in the Elmwood Cemetery right
18 off of 126.

19 At the end of this trial, we're going to ask
20 that y'all deliberate and find Martin Dixon guilty
21 of kidnapping and attempted murder. Thank you.

22 **THE COURT:** Ms. Zmroczek.

23 **MS. ZMROCZEK:** Thank you, Your Honor.

24 May it please the Court?

25 **THE COURT:** Yes, ma'am.

1 **MS. ZMROCZEK:** Counsel.

2 Good afternoon. Competent, credible evidence
3 is not what you're going to see in this case. Our
4 justice system is one of the most important areas
5 of -- of -- of why we're here in this country, of
6 why we are here and free, is because Mr. Dixon's
7 presumed innocent as -- as Judge Newman told you.
8 And he is presumed innocent all the way through
9 and including into that jury room until the state
10 has the burden to prove his guilt beyond a
11 reasonable doubt.

12 There is a reason that they mentioned beyond
13 a reasonable doubt in their opening. Because as
14 you sit here and you listen to the evidence in
15 this trial, you're going to be tasked with
16 answering that question. Is that what happened?
17 Has it been proved beyond a reasonable doubt? Did
18 the state take the time in this important case to
19 make sure that they just didn't make an arrest off
20 of what Mr. Dubose told them in the hospital
21 because he owed Ms. Jones \$400 that he didn't want
22 to pay or couldn't pay? And so he thought he
23 would just put it on his two friends.

24 Surely, the state took those fingerprints out
25 of the car and that blood and the DNA and so we

Opening Statement by Ms. Zmroczek

1 have all of that credible evidence to -- to
2 convict Mr. Dixon. That's the things that you
3 need to be looking for. You need to be looking
4 for not just one story, but when they're
5 questioned -- and ask did they consider anything
6 else.

7 You're going to hear from the fancy fire
8 department gentleman who comes up here and you're
9 going to hear from all of these witnesses. And
10 then you're going to ask yourself: Is there any
11 other thing that could have happened?

12 Sure, they arrested two people. Whose
13 fingerprints were on all of these items? Who
14 actually did this crime? Did anybody do this
15 crime? Did Mr. Dubose know he wasn't ever going
16 to pay his friend Michelle Jones back and make
17 sure that she wasn't going to get money and then
18 get arrested? These aren't unreasonable
19 questions.

20 The reason that your job is so important is
21 because you get to decide the facts and you get to
22 hold the state to that burden. It shouldn't be a
23 very long trial sadly because there's not a lot of
24 evidence.

25 Ladies and gentlemen, we did our

1 investigation of you through this morning and this
2 afternoon asking y'all questions this morning,
3 finding out where you work, seeing if you had
4 biases, seeing if there is a reason that you
5 wanted to -- to be on this jury or maybe shouldn't
6 be on this jury. You -- you heard some of your
7 former colleague say, "I don't think that I could
8 be fair." And so those people were set aside.

9 And just like our investigation in picking
10 14, and the ultimate 12 jurors that are going to
11 make the decision in this case, we're not asking
12 anything more than that of the Columbia Police
13 Department.

14 Ladies and gentlemen, I think you'll find at
15 the end of this case that there is not proof
16 beyond a reasonable doubt and you will be
17 confident in your verdict of not guilty. Thank
18 you.

19 **THE COURT:** Call your first witness.

20 **MR. SCOTT:** The state calls Freddie Free.

21 **THE BAILIFF:** Come forward and be sworn.
22 Come on down. Place your left hand on the Bible.
23 Raise your right. Face the clerk there.

24 **THE CLERK:** State your full name, please.

25 **THE WITNESS:** Freddie Douglas Free.

1 **THE CLERK:** Spell your last name, please.

2 **THE WITNESS:** F-r-e-e.

3 **THE CLERK:** Do you solemnly swear that the
4 testimony you're about to give in this case be the
5 truth, the whole truth and nothing but the truth
6 so help you God?

7 **THE WITNESS:** I do.

8 **THE CLERK:** You can have a seat right there.
9 Thank you.

10 **THE BAILIFF:** Watch your step up. Watch your
11 step up. Now what you need to do is talk loud
12 enough through that class where she can hear you
13 because she's got to take down everything you say.

14 **THE WITNESS:** All right.

15 **THE BAILIFF:** And loud enough for the judge
16 to hear you.

17 **THE WITNESS:** Okay.

18 **FREDDIE FREE**

19 having first been duly sworn, testifies as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. SCOTT:**

22 **Q** Mr. Free, do you remember August 7, 2019?

23 **A** I do.

24 **Q** You do? And what were you doing that
25 morning?

1 **A** We was down there to cut the grass at the
2 cemetery. We was down there the day before and was
3 going back the second day to finish up.

4 **Q** Okay. Is that -- is that what you do for a
5 living --

6 **A** Yes.

7 **Q** -- landscaping?

8 **A** It is.

9 **Q** And I've been calling the whole area Elmwood
10 Cemetery. But you told me something today. It's three
11 separate cemeteries --

12 **A** It is.

13 **Q** -- right there. And I guess if we're coming
14 down Elmwood towards 126, what would be the first
15 cemetery?

16 **A** The first cemetery is a Catholic cemetery.
17 And the second one is Elmwood Cemetery. And the last
18 one, which is very last, is Randolph Cemetery.

19 **Q** Okay. And then you keep -- if you keep
20 going, there's a river right down there?

21 **A** It's woods -- woods then a river.

22 **Q** Okay. On the morning of August 7, 2019, you
23 were performing landscape work on which one of those
24 three?

25 **A** Randolph.

Freddie Free - Direct Examination by Mr. Scott

1 Q Randolph. Okay. So the last one?

2 A Yes.

3 Q And again, if we're coming down Elmwood, how
4 do we get to Randolph Cemetery? Because Elmwood kind
5 of just runs into 126?

6 A Yes. If you go down Elmwood, just before you
7 go across the bridge, you have to bear to the right and
8 go beside the bridge. And that will run you into the
9 three cemeteries.

10 Q It's kind of a little hidden frontage road
11 down in there?

12 A Yes.

13 Q Okay. So that particular morning, August 7,
14 you remember the weather that particular day?

15 A It was hot.

16 Q Okay. As is common in Columbia in early
17 August?

18 A Yes.

19 Q And so you remember about what time you got
20 out there at the cemetery that morning?

21 A Around 8:30, between 8:30 and a quarter to
22 nine.

23 Q Okay. And what was your initial observation
24 when you get there?

25 A Well, when I was approaching the cemetery, I

1 can already see my brother, who has a long trailer,
2 that was already down to where the car was -- was
3 parked. And he has to go in that particular driveway.
4 And I could see my son walking around the car, looking
5 to see if anybody was in it.

6 But I went through the first driveway. And I
7 approached the first driveway from up the hill. And I
8 parked across from where the car was parked. And by
9 the time I got out of the car, I -- I decided to call
10 the 911 just to get the police down there because we
11 needed to get into the cemetery from that area.

12 Q Okay. So but what you're saying is there was
13 a car there that was blocking the road. You couldn't
14 get your equipment in. Is that what you're saying?

15 A That's correct.

16 Q And what do you remember about the car?

17 A It was just parked at the end of that
18 driveway, the second driveway. I -- I hadn't got close
19 enough to it to see anything that was wrong with it.
20 It was just a car parked there.

21 Q Okay. Let's see.

22 All right.

23 So this is State's No. 1. It's already been
24 admitted into evidence. Do you recognize what we are
25 looking at here?

1 **A** Yes. That's the Randolph Cemetery.

2 **Q** Okay. And here we are right now as we sit in
3 court somewhere back over here Downtown Columbia. This
4 would be looking from a bird's-eye view looking 126
5 towards downtown Columbia; is that right?

6 **A** Correct.

7 **Q** And approximately where was the car?

8 **A** The car was at the bottom. Right there.

9 **Q** This little curve right here?

10 **A** Yes.

11 **Q** So I think you said there were two entrances?

12 **A** That's the first entrance.

13 **Q** Is this the one you went in, the first one?

14 **A** That's -- that's the entrance that I went
15 into.

16 **Q** The way you described it, your brother is
17 trying to get in this entrance and then you can't get
18 past it because it's blocked?

19 **A** Correct.

20 **Q** The car's there. And so what else did you
21 observe about the car?

22 **A** That was basically it right there until I
23 got -- started walking towards the car. And I was
24 calling the 911 -- 911 operator just to get a police
25 down there to move the car. Because the first thing I

1 thought that the car might have been stolen.

2 Q Okay. But -- but -- so you go ahead and call
3 911?

4 A I call 911 and just tell her that it's a car
5 down here parked. I gave her a description of the car.
6 And as I was talking to her, she was asking me about
7 the car --

8 MS. ZMROCZEK: Objection, Your Honor.

9 THE COURT: Basis for the objection?

10 MS. ZMROCZEK: Hearsay.

11 THE COURT: What do you say, Mr. Scott?

12 MR. SCOTT: I don't think -- we're not
13 offering it for any truth of the matter asserted.
14 He's just talking about calling dispatch.

15 THE COURT: All right.

16 Overrule the objection.

17 BY MR. SCOTT:

18 Q So as you're talking with dispatch, what do
19 you observe with the car?

20 A When I was walking towards the car, I could
21 see that it was a burnt mark on the side of the car.
22 And that's when I told her that it looked like someone
23 had tried to set the car on fire. She said, "Well, is
24 it on fire?

25 I said, "Well, no, it's not on fire." I

1 said, "But it looked like someone had tried to set it
2 on fire."

3 And while I was talking to her, I thought I
4 saw the car shake one time.

5 Q Okay.

6 A And then I told her, I said, "I think I
7 saw -- I think I saw the car shake."

8 She said, "You sure?"

9 I said, "I'm pretty sure."

10 Q Okay. But you -- you didn't see anybody in
11 that car --

12 A No.

13 Q -- but you see it moving?

14 A No. No. Couldn't see anybody in the car.

15 Q What did that lead you to believe when you
16 couldn't see anybody in the car but you could see it
17 shaking?

18 A Say -- say it again?

19 Q What did that lead you to believe when you
20 couldn't see anybody in the car but you could see the
21 car moving?

22 A The first thing I thought it had to be
23 somebody in the -- inside the car or either in the
24 trunk of the car. That's the only thing I could think
25 of.

1 **Q** Show you State's No. 7. You can see that
2 picture up there that's got a seven on it?

3 **A** Yes.

4 **Q** Is that what you were talking about that you
5 observe the --

6 **A** That's correct.

7 **Q** Okay. And what's that other? Is it eight?
8 Is that the other one I handed you?

9 **A** Eight.

10 **Q** What does eight depict?

11 **A** That's the same burnt mark on the side of the
12 car where the gas tank is located.

13 **Q** Okay. So you -- you did call 911?

14 **A** I did call 911.

15 **Q** This is pre-marked State's No. 38. What is
16 this?

17 **A** That's a disk with my initials on it.

18 **Q** Okay. What does it contain?

19 **A** The 911 call.

20 **Q** Okay. Is that your voice on there,
21 describing what you observed on that particular
22 morning?

23 **A** It is. It is.

24 **MS. ZMROCEK:** No objection, Your Honor.

25 **THE COURT:** Is that admitted?

Freddie Free - Direct Examination by Mr. Scott

1 **MR. SCOTT:** State calls for State's No. 38
2 for admission, Your Honor.

3 (State's Exhibit No. 38 is admitted into the
4 record.)

5 (State's Exhibit No. 38 is played.)

6 **BY MR. SCOTT:**

7 **Q** All right.

8 This is the -- State's No. 3, is that the
9 black Lexus that you saw?

10 **A** It is.

11 **Q** And were the doors open like that when you
12 saw it?

13 **A** No.

14 **Q** No. Okay. Were you there when law
15 enforcement arrived --

16 **A** Yes.

17 **Q** -- and they were looking in the car?

18 **A** Yes.

19 **Q** And did you ever see how they were able to
20 get to the person that was in the trunk?

21 **A** They had to rip the trunk off.

22 **Q** They had to tear the trunk off?

23 **A** Yes.

24 **Q** And -- okay. You were just kind of watching
25 from a distance as they rescued the person?

1 A I was, yes.

2 Q Okay. All right.

3 That's pretty much your entire involvement,
4 isn't it?

5 A It is.

6 Q All right.

7 Just a hot day and a black car that was
8 blocking your pathway?

9 A Yeah.

10 Q And then, of course, you begin seeing it
11 shaking while you were speaking with law enforcement?

12 A Yes.

13 Q And I heard her ask can you -- are you able
14 to communicate with the person in the car?

15 A Uh-huh.

16 Q And I heard you on the 911 asking the person
17 inside the car if they needed help. Did you get any
18 answer?

19 A No answer.

20 Q Okay. No noises or anything?

21 A Nothing.

22 Q All right.

23 Mr. Free, answer any questions Ms. Zmroczek
24 has for you, please.

25 **CROSS-EXAMINATION**

Freddie Free - Cross-Examination by Ms. Zmroczek

1 BY MS. ZMROCZEK:

2 Q Good afternoon, Mr. Free.

3 A Good afternoon.

4 Q How are you doing?

5 A Good.

6 Q Good. You worked -- so you do ground

7 maintenance?

8 A Yes.

9 Q Okay. So you do that -- you don't just do
10 that exclusively for cemeteries, do you?

11 A No.

12 Q So you -- you go to different locations to do
13 that?

14 A Correct.

15 Q So you -- and one of your locations is --
16 is --

17 A The cemetery.

18 Q All three of them?

19 A No. Just Randolph.

20 Q Just the Randolph Cemetery. So -- and I know
21 that there -- you said -- this was -- I'm mentioning
22 Defendant's [sic] 1, that the vehicle was located back
23 here; is that correct?

24 A That's correct.

25 Q In order to get into Randolph Cemetery --

1 well, let me ask you this: How do you get into -- is
2 there one entrance into the main cemetery and then it
3 branches off to the three? How does that work?

4 A To all three cemeteries?

5 Q Yes.

6 A There's only one entrance that -- Frontage
7 Road, that comes all that way down.

8 Q So way down -- way down -- further away from
9 where you were --

10 A Right.

11 Q -- is where the main entrance is, right?

12 A Yes.

13 Q And so you have to go through that main
14 entrance to get to the other location?

15 A That's correct.

16 Q And how long have you been doing maintenance
17 at the cemetery?

18 A Twelve years.

19 Q Twelve years?

20 A Yes.

21 Q And how often do you go?

22 A Every two weeks.

23 Q Okay. So you hadn't been there two weeks
24 prior to this?

25 A We had been there two weeks prior to that,

1 yes.

2 Q Right. Right. Two weeks. Poorly-asked
3 question. Two weeks -- you hadn't been there since two
4 weeks prior to that date?

5 A No.

6 Q And so one of the things that you notice when
7 you are at the cemetery is, unfortunately, it's a
8 popular location for homeless people, is it not?

9 A It is.

10 Q They -- they leave their stuff there?

11 A They do.

12 Q They stay there?

13 A Oh, yes.

14 Q A lot of them, right?

15 A Well, not as many as it used to be.

16 Q Used to be a lot?

17 A Yes.

18 Q But they started to try to put cameras up and
19 patrol, right?

20 A I'm not sure about the cameras.

21 Q Okay?

22 A I'm not sure. But they do patrol.

23 Q They do patrol. Right? And -- and in fact,
24 I think there's a bridge like right under here that
25 also has a large homeless population as well; is that

1 right?

2 **A** Under the railroad tracks.

3 **Q** Right close to the cemetery, correct?

4 **A** Yes, that's correct.

5 **Q** In fact, I think that day, in addition to
6 seeing on the car, like right over to the side, there
7 were a bunch of stuff that didn't belong to the
8 cemetery, clothes, bag, trash, etc.?

9 **A** Yes.

10 **Q** And that's something that you see often?

11 **A** That's correct.

12 **Q** Okay. I believe those are all the questions
13 I had for you. Thank you very much.

14 **A** You're welcome.

15 **MR. SCOTT:** Nothing from the state,
16 Your Honor.

17 **THE COURT:** Thank you, Mr. Free.

18 **THE BAILIFF:** Watch your step down, sir.
19 Take your time and step down.

20 **THE COURT:** Next witness.

21 **MR. SCOTT:** Your Honor, the state calls
22 Joseph Dwyer.

23 **THE BAILIFF:** Come forward to be sworn,
24 please. Good afternoon. Place your left hand on
25 the Bible. Raise your right. Face the clerk for

1 me.

2 **THE CLERK:** State your full name, please.

3 **THE WITNESS:** Joseph Dwyer.

4 **THE CLERK:** Spell your last name, please.

5 **THE WITNESS:** D-w-y-e-r.

6 **THE CLERK:** Do you solemnly swear the
7 testimony you are about to give in this case will
8 be the truth, the whole truth, and nothing but the
9 truth so help you God?

10 **THE WITNESS:** I do.

11 **THE CLERK:** Thank you. Have a seat.

12 **JOSEPH DWYER**

13 having first been duly sworn, testifies as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. SCOTT:**

16 **Q** Okay. Officer Dwyer, where are you employed?

17 **A** City of Columbia Police Department.

18 **Q** Okay. How long have you worked there?

19 **A** Seven years, just a little bit over seven
20 years.

21 **Q** Okay. You remember August 7, 2019,
22 specifically that morning?

23 **A** I do.

24 **Q** Okay. And did you have an opportunity to
25 respond to a call at Randolph Cemetery?

1 **A** I did.

2 **Q** Okay. And what was the -- what was the call
3 for service? What was the reason for going?

4 **A** The call for service came out as a suspicious
5 vehicle or abandoned vehicle in the cemetery that
6 looked like it was on fire. We were -- I responded to
7 the Elmwood area.

8 **Q** All right.

9 So you got there relatively quick, I assume?

10 **A** Within minutes, yeah.

11 **Q** And what were your observations when you
12 got there? Did you speak with Freddie Free? Do you
13 remember a maintenance --

14 **A** Oh, yeah. He was doing the -- service in the
15 cemetery. I guess the field and beautification of the
16 cemetery.

17 **Q** Okay. And did he direct you to the
18 suspicious vehicle?

19 **A** I was -- I already observed the vehicle but
20 spoke with him briefly after I was around the vehicle
21 while we were conducting, I guess, police business.

22 **Q** Okay. And what were your observations as far
23 as the vehicle was concerned?

24 **A** When I first arrived on the scene, I observed
25 the vehicle was not involved -- it didn't have a fire

1 at the time, but it was freshly, I guess, attempted to.
2 Because the fuel tank had been ajar and there was
3 burned or charred material protruding from the gas
4 tank. And there was also charring that was running
5 down the side of the vehicle. I also observed charred
6 material in the backseat area of the vehicle.

7 Q Okay. Let me just show you a couple of
8 pictures here. This is State's No. 7. Is that what
9 you observed as far as the gas tank you're talking
10 about?

11 A It is.

12 Q And then, State's 8, that, too, is what you
13 observed?

14 A It is.

15 Q And what were you -- what was this object
16 here at the top of State's No. 8?

17 A It seemed to be at the time, I guess to my
18 recollection, it was charred material. Maybe cloth
19 material or paper.

20 Q Okay.

21 A It's hard to tell. When certain cloth or
22 fabric burns, it can have the same consistency as burnt
23 paper.

24 Q State's No. 10, is that just another angle of
25 the gas tank as you observed it?

1 **A** It is.

2 **Q** Okay. State's 11.

3 Okay. And then, you said you noticed some
4 charred material inside the vehicle as well?

5 **A** In the rear passenger compartment, yes.

6 **Q** I'm going to show you No. 12. Is that what
7 you're talking about? What is that?

8 **A** Looked like that was the charred material on
9 the backseat. It's remnants of paperlike material. It
10 could have been certain fabric.

11 **Q** Okay. State's No. 26, is that what you
12 observed?

13 **A** That is also more of the same.

14 **Q** State's No. 27 and 28?

15 **A** (Reviews document.)

16 **Q** Okay. You said -- what are we looking at?
17 This is what seat of the car?

18 **A** That would be the passenger compartment of
19 the vehicle. That would be towards the front.

20 **Q** Front passenger? And what are we looking at?
21 The floorboard of the front passenger?

22 **A** That would -- that would be some of the
23 charred material that was lit on fire and placed in the
24 vehicle.

25 **Q** Okay. Do you recall seeing this item here as

1 well?

2 A I did.

3 Q Did or did not?

4 A I -- I observed there being items in the
5 vehicle. I just, at the time, wasn't fully aware of
6 the relation to the vehicle itself.

7 Q Okay. Did you -- did you see that tire iron?

8 A I did, yeah.

9 Q Okay. What about this? Did you see this in
10 State's No. 5? Do you remember observing that?

11 A As far as this item, I -- I do not recall at
12 this time if I actually observed that in the moment or
13 on the scene.

14 Q Okay. This is State's No. 27. This is what
15 seat of the car?

16 A That's the driver's seat.

17 Q And what -- did you observe this?

18 A I did observe that.

19 Q And what was this? What was wrong with this?

20 A That is further wadded-up paper material,
21 charred wadded-up paper material. It was as if they
22 were attempting to wad it up and place it in the
23 vehicle.

24 Q Was it evidence to you that it had been --

25 A It -- it did. It -- I saw small -- small

1 marks of charring.

2 Q Okay. While you -- at what point did you
3 become aware that there was somebody in the trunk of
4 the vehicle?

5 A While I was investigating the vehicle itself
6 and seeing the odd circumstances of there being burned
7 material inside the vehicle, I also had the unfortunate
8 experience in the past with a very similar incident of
9 there being an individual placed in the trunk of a car.
10 So I was very aware of that circumstance being a
11 reality. With the material inside the -- I guess, the
12 interior of the vehicle, the compartments, in order to
13 ensure that there wasn't some situation of there being
14 somebody in the back, but I also observed what seemed
15 to be at the time some type of dried -- recently dried
16 fluid, I guess, would be consistent, or colorization of
17 possible blood or something like that.

18 I also could hear possibly something in the
19 interior of the trunk. But the trunk, I was unable to
20 actually open because of the electrical system being
21 out. But I did -- I guess all of those observed facts
22 at the time led me to believe there potentially could
23 have been a victim in a trunk of the car.

24 Q Explain again. Like did -- did -- a lot of
25 cars at the driver's seat just to the bottom of it is

Joseph Dwyer - Direct Examination by Mr. Scott

1 there's usually a latch to pop the trunk?

2 **A** Yeah. There would be a switch. Or usually,
3 it's an electrical switch that you can use to
4 deactivate the locking mechanism of the trunk to open
5 it. In this circumstance, it did not work.

6 **Q** Okay. So you were unable to get the --

7 **A** The trunk open, no.

8 **Q** -- trunk open?

9 **A** But I was able to look into the trunk, peer
10 into the trunk compartment through a cargo access port
11 in the rear seat area that's in between the two
12 passenger seats.

13 **Q** What did you observe?

14 **A** Once I opened the armrest and pulled down the
15 plastic -- it was fairly dark in there, but I was able
16 to use a flashlight to see. That's where I observed
17 what looked to be like a person in the trunk. But the
18 person was also still breathing and made several
19 noises, no actual articulable words, but groans and
20 moans when I called out to him to see if he was
21 conscious or aware of his surroundings.

22 **Q** Okay. Do you -- do you recall the
23 temperature that day or?

24 **A** I believe it was warm, fairly warm. Not
25 quite South Carolina summer temperature, but it was

1 fairly warm.

2 **Q** Okay. And you could see somebody in the --
3 from the back. So what -- what are you describing?
4 Like you could remove a panel from the backseat in
5 order to look into the trunk?

6 **A** So in a lot of sedans, I -- I believe more so
7 the older ones. I'm sure there are still some now. In
8 a lot of your sedans, you have the passenger to seats
9 and you've got a center console that actually can fold
10 down as an armrest. There's generally a plastic cargo
11 access port that's covered by a plastic piece that you
12 can pull down that will collapse on top of the armrest.
13 Usually, you'll see some type of, like, beverage holder
14 of something like that, or cup holder.

15 **Q** Okay. You said you called out to the person
16 and no verbal response.

17 **A** There was no -- no actual articulable verbal
18 response. There was this kind of groan.

19 **Q** Okay. But you were able to tell that the
20 person was still breathing?

21 **A** Yes, sir.

22 **Q** Okay. So what did you do next?

23 **A** At that time, EMS and Fire were notified to
24 respond. EMS responded first.

25 **Q** Okay. And how -- how'd y'all get into the

1 trunk eventually?

2 **A** EMS responded. That was -- in this
3 circumstance, got there first. We were unable to find
4 any type of items to try to pry the trunk open due to
5 the exigency of the circumstance.

6 However, when Fire responded. They were able
7 to do what would be considered a pop the trunk, I
8 guess, or extrication of the trunk area, remove the
9 trunk or the lid so that they could gain access.

10 **Q** Okay. Were you there when they were able to
11 gain access to the trunk?

12 **A** I -- I was still on scene in relevance to
13 perimeter while they were performing their duties.

14 **Q** This is State's No. 4. Were you able to see
15 the trunk after they pulled the lid off of it?

16 **A** I did. I guess to view after he was removed
17 to document the initial incident.

18 **Q** Okay. So this is what you observed inside
19 the trunk?

20 **A** I did.

21 **Q** I don't -- was there a lot of room in that
22 trunk with all the --

23 **A** There was not.

24 **Q** Okay. It looks like a spare tire being
25 stored in the trunk.

1 All right. And you saw the individual after
2 they pulled him out?

3 A I'm sorry. Could you repeat your question?

4 Q You saw the individual after they pulled him
5 out of the trunk?

6 A I got a glimpse of him, yes.

7 Q And I guess the ambulance takes him to the
8 hospital?

9 A Once he was extricated from the vehicle, he
10 was transported by EMS.

11 Q Do you know this man right here?

12 A I do.

13 Q Who is that?

14 A That is the victim of the incident.

15 Q That's the guy who ultimately was pulled out
16 of the car by the firefighters who used the Jaws of
17 Life?

18 A It -- it is, yes. He had longer hair at the
19 time, though.

20 Q Randolph Cemetery. What is that? Is that
21 the County of Richland?

22 A It's -- it's still in the city limits of
23 Columbia County, Richland. It's at the end of the
24 Elmwood corridor.

25 Q City of Columbia, but it's still within

1 Richland County, right?

2 A It is.

3 Q Okay. Hold on one second. Let me make sure.

4 Thanks, Officer Dwyer. Answer any questions

5 Ms. Zmroczek has for you, please.

6 A Sure.

7 **CROSS-EXAMINATION**

8 **BY MS. ZMROCZEK:**

9 Q Good afternoon.

10 A Good afternoon.

11 Q You said you worked -- you work currently for
12 the City of Columbia?

13 A I do.

14 Q And are you -- were you on patrol that day?
15 Was that your -- were -- are you part of the patrol
16 unit?

17 A Yeah. I'm on patrol, Bureau of Patrol
18 Operations for the North region.

19 Q Okay. And so you have a car? The city
20 provide you a car for that?

21 A Yes, ma'am.

22 Q And what kind of equipment do they have in
23 that car? Does it have dash cams?

24 A It does have dash cams and other recording
25 devices.

1 **Q** Okay. Did you record any -- anything that
2 day?

3 **A** I don't recall. I do believe I ran code.
4 But it's also possible I may misremember on that
5 certain aspect just because I was so close to it. I
6 may have just responded immediately. But if I did
7 utilize blue lights and camera, the camera would have
8 recorded, yes.

9 **Q** Okay. But you -- it -- it would have been
10 turned in, right?

11 **A** It's automatically uploaded in the system.

12 **Q** Right. And did you have a body-worn camera
13 on?

14 **A** Yes. There was body-worn camera at the time.

15 **Q** And was that uploaded as well?

16 **A** It should have been. When I say "should,"
17 most definitely, it's always uploaded within a certain
18 amount of time especially with so much time being
19 passed from down.

20 **Q** And -- and so -- yes, it automatically gets
21 uploaded, right?

22 **A** It's not automatic. It has to be manually
23 offloaded onto a dock.

24 **Q** Okay. And so do you know the reason why none
25 of those were ever turned over?

1 **A** We've made multiple changes to our body
2 camera systems and programming from now and then, and
3 also changes to our body camera systems and
4 programming. From now and then, also changes to our
5 reporting system and Coban systems altogether. There's
6 also issues with some of the UI interfaces with our
7 body camera system just due to the fact that Coban is
8 an aging system with its program issues like any other
9 computer, I think. So that's a possibility of what it
10 is. That's the experiences I've had in the past.

11 **Q** Okay. You -- you said you were so close.
12 Because that's really close to actual headquarters,
13 right?

14 **A** It's -- it's -- it's probably about a mile or
15 so from the actual police headquarters. I was at -- I
16 was actually at a light near the Elmwood corridor. So
17 I was within a mile.

18 **Q** And the -- sorry. Yeah, within a mile.
19 So when y'all get dispatched, that comes
20 through on your radio like we see on the TV, right?

21 **A** Yes. It comes through dispatch on the radio.

22 **Q** And they tell you the locations to go to?

23 **A** They do.

24 **Q** And when you patrol, do you patrol -- like do
25 you patrol -- are you, do you get the whole city or do

1 y'all break it down into little areas? How does that
2 work?

3 A So the organization of patrol is broken up
4 into regions, which are like precincts in most cities.
5 The region is then divided by patrol officers based on
6 staffing to deal with patrol areas that are assigned.
7 However, calls for service could be, you know --

8 Q Anybody can respond?

9 A -- dispatched by proximity --

10 Q Okay.

11 A -- instead of actual patrol area.

12 Q So was that -- that Elmwood area somewhere
13 where you're familiar with?

14 A Yes. I'm very familiar with Elmwood.

15 Q And you're familiar with that because you get
16 and a lot of calls around that area; is that correct?

17 A We do. It's also one of my first patrol
18 areas when I started with the --

19 Q And so sticks in your mind. And there are --
20 unfortunately, we have a large homeless population
21 downtown; is that correct?

22 A Yes. There is a large --

23 Q Especially in that area --

24 A -- population.

25 Q -- in that area of Elmwood?

1 **A** Yes.

2 **Q** And you get a lot of calls for service?

3 **A** Yes. North region actually gets lots of
4 calls for service, I guess throughout at this point.

5 **Q** Certainly. You -- you said that you could
6 tell there was an attempt -- maybe like an attempt to
7 set the car on fire. Was it hot? Was it smoking?

8 **A** I do not recall there being still active
9 smoke at the time. There may have been briefly like
10 when I first arrived. But the charring was definitely
11 fresh.

12 **Q** Okay. And you -- also you said that you
13 could see kind of -- when you went into the backseat,
14 you could see into the back into the trunk area?

15 **A** You can.

16 **Q** But that -- you didn't alter that. It was
17 like that already, right?

18 **A** I would have had to gain access to that. So
19 it was up initially.

20 **Q** Okay.

21 **A** I had to remove that, yes.

22 **Q** All right.

23 So you altered that just to see if there was
24 somebody in there?

25 **A** Yes.

1 Q And you also found a key, right?

2 A There was a key to the vehicle.

3 Q The key to the vehicle?

4 A Yes.

5 Q Was in the vehicle?

6 A Was still in the car, yes?

7 Q Okay. And you collected that, secured that?

8 A That was -- I tried to use that to open the
9 trunk initially. But that was secured through the
10 duration that I was there at the car.

11 Q Okay. And so you tried to -- to get it to
12 work and it just wouldn't?

13 A There is no -- not -- what I recall, there
14 was no -- I couldn't utilize any of the electrical
15 system of the car at the time.

16 Q Okay. But the key was with the vehicle?

17 A It was with the vehicle, yes.

18 Q You said that you noticed there was dried
19 liquid, you assumed it was dried blood?

20 A It had the consistency and color of --
21 potentially could have been dried blood, yes.

22 Q And that's something that you -- you -- as a
23 first responder, you're trained to look for clues or
24 for things to kind of point the investigative division
25 or the crime scene analyst to -- to pay attention to,

1 right?

2 A Yes. Also to observe if there -- if it is a
3 crime in any aspect or if it's just the car.

4 Q Because that can be important in a crime,
5 right?

6 A Yes.

7 Q And also I know that you said you tried to
8 use the button. But were you touching all aspects of
9 the car with your finger?

10 A No.

11 Q And why not?

12 A Even if there is a situation of exigency,
13 strive keep in mind or have an awareness of what it is
14 you're going to touch --

15 Q Because you want to --

16 A -- or how to touch to preserve the --

17 Q Because you want to preserve the --

18 A -- scene as much as possible, yes.

19 Q Right. You want to preserve the evidence,
20 right?

21 A Yes.

22 Q Especially in a car. Because a car is a --
23 is a good mechanism to get fingerprints off of, right?

24 A Yes, it can be.

25 Q Okay. And so you were very careful and

1 cognizant of that when you were touching the vehicle,
2 right?

3 A To what I recall, yes.

4 Q And it was 8:48 in the morning? It was
5 before 9 o'clock in the morning?

6 A Approximately.

7 Q Okay. And you -- so even though you don't
8 write down on your reports, when you -- when dispatch
9 says, "Hey, there's an incident at 300 Elmwood or at
10 the cemetery," what do you then do to tell dispatch
11 you're there?

12 A You would give your in-route response and
13 arrival response depending on the circumstance.
14 Sometimes you may leave out you have arrived just
15 because you might have to fight somebody immediately.
16 It just depends on the circumstance.

17 Q Right. And they -- the computer keeps track
18 of all of that. So you don't have to remember the
19 times, right?

20 A Correct.

21 Q If I told you it was before 9 a.m. according
22 to the cab report, you wouldn't have any reason to
23 dispute that?

24 A Not without looking at something in front of
25 me, no.

1 Q Okay. And then after the investigators and
2 just -- and EMS and Fire got there, you were cleared
3 from the scene?

4 A Once EMS response, Fire responds, the victim
5 was transported by EMS, we remain on the scene for the
6 duration of the -- investigatory aspect and collection
7 for perimeter and/or -- or you know, security at the
8 scene.

9 Q Okay. And one problem that I think we talked
10 about not just with the homeless people, but especially
11 in the cemetery, they have a lot of homeless people
12 that attend that area; is that correct?

13 A Certain times in the day. There may be some
14 of the past, yes.

15 Q Not -- typically -- not there in the morning
16 when it's bright daylight out?

17 A If there's any type of staff or personnel
18 that's present, they usually will refrain from entering
19 into the area because they know police are generally
20 called soon after.

21 Q Right. And then they'll have to leave,
22 correct?

23 A Correct.

24 Q But under the cover of night, it's certainly
25 easier for them to be there, right?

1 **A** It would be easier. However, there is a
2 pretty strong police presence patrol in that area just
3 because of the overpass. And then there's an area
4 nearby that's a homeless camp, as you will, or which --
5 whichever, I guess, term you would use. But it's a
6 kind of tent area where they sleep in the woods near
7 the river.

8 **Q** Okay. And in fact -- and they leave trash
9 and clothes. You saw some of that out there that day,
10 right?

11 **A** Not -- not in the immediate area of the
12 vehicle. Further -- there -- there are certain areas
13 that are dirty, I guess, because of the limitations of
14 the beautification of the area. But there -- there
15 wasn't -- not that I recall, a prevalent amount of
16 trash or debris around the car.

17 **Q** Okay. But you -- they had crime scene come
18 and take pictures of everything that was relevant,
19 right?

20 **A** Yes.

21 **Q** Okay. And that wasn't your job?

22 **A** No.

23 **Q** Okay. Perfect.

24 **A** I -- I stick up tape and stand at that.

25 **Q** Excellent. I think those are all the

1 questions I have for you. Thank you.

2 A Yep.

3 REDIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Do you remember where in the car that key fob
6 was?

7 A Say again the question.

8 Q The key fob that you talked about that was in
9 the car. Do you remember where it was in the car?

10 A I believe it -- if I can recall, it may have
11 been the driver area of the vehicle. I don't remember
12 specifically where it was observed.

13 Q Is this your report. Let me know if that
14 refreshes your memory.

15 A (Reviews document.)

16 This is my report. And I refer in the report
17 states that key fob was located between the seat and
18 door panel of the vehicle.

19 Q Okay. So --

20 A I did not recall that.

21 Q Was that the driver's seat?

22 A Yes. It would be the driver.

23 Q And so just to the left of the --

24 A Just to the left of the driver seat and the
25 door panel.

1 **Q** All right. And it was -- it was not
2 functioning?

3 **A** Not functioning.

4 **Q** Thank you, Officer Dwyer. I appreciate it.

5 **MS. ZMROCZEK:** Nothing further.

6 **THE COURT:** All right.

7 Thank you, sir.

8 **THE BAILIFF:** Watch your step down, sir.

9 **MR. SCOTT:** Officer -- or the state calls
10 Columbia Fire Department, Chris Ford.

11 **THE BAILIFF:** Come forward and be sworn, sir.
12 Place your left hand on the Bible, raise your
13 right, and face the clerk there.

14 **THE CLERK:** State your full name, please.

15 **THE WITNESS:** Christopher Carl Ford.

16 **THE CLERK:** Spell your last name, please.

17 **THE WITNESS:** Ford, F-o-r-d.

18 **THE CLERK:** You solemnly swear the testimony
19 you are about to give in this case will be the
20 truth, the whole truth, and nothing but the truth
21 so help you God?

22 **THE WITNESS:** Yes, ma'am.

23 **THE CLERK:** Have a seat right there. Thank
24 you.

25 **THE BAILIFF:** Watch your step up, sir. Step

1 up again. Okay.

2 **CHRISTOPHER FORD**

3 having first been duly sworn, testifies as follows:

4 **DIRECT EXAMINATION**

5 **BY MR. SCOTT:**

6 **Q** Mr. Ford, were you able to go to the Randolph
7 Cemetery on the morning of August 7, 2019?

8 **A** Yes, sir.

9 **Q** And what was the purpose of your agency
10 responding to that cemetery?

11 **A** We were called out for possible -- someone
12 trapped in the trunk of a car, for extrication
13 purposes.

14 **Q** And what were your observations when you
15 arrived on scene?

16 **A** It looked to be as if the vehicle was to be
17 set on fire. And CPD had suspicion that there possibly
18 was someone in the trunk of the car. As they probably
19 tried, we tried just to manually open it when we got
20 there. Failure to do so. So we had to use extrication
21 tools to actually open it.

22 **Q** What was the -- I'm still trying to figure.
23 What was the issue? The buttons weren't -- the latches
24 weren't functioning?

25 **A** I'm not sure. I would assume so. But we --

1 everything we tried from manual manipulation, it
2 wouldn't allow it to open. So we had to use
3 extrication tools.

4 Q Okay. This is State's 10 and State's 16.
5 What are we looking at there?

6 A Looks to be some type of burn matter on the
7 side of the car near the fuel tank with the trunk lid
8 removed.

9 And 16. The back door of the vehicle open in
10 16.

11 Also, in No. 10, it looks like a close-up of
12 the burn matter on the side of the fuel tank.

13 Q Okay. That's what you yourself observed?
14 The same pictures of the gas tank is what you yourself
15 observed?

16 A Yes, sir.

17 Q And State's No. 5, did you observed this?

18 A I don't know if I paid attention to it or not
19 at the time. I don't -- I don't recall, no, sir.

20 Q Okay. Tell me -- you said y'all had to use
21 extraction methods -- well, let me ask you this real
22 quick. Did you look inside the car? Did you observe
23 anything inside that you recall?

24 A Very briefly. I think predominantly I was
25 just one of the commanding officers on the scene. And

1 my guys were probably potentially looking for a way to
2 open the car before we put tools in the car. And we
3 were unsuccessful with that, so we chose to use
4 extrication tools.

5 MS. ZMROCZEK: Your Honor, I'm having a
6 little trouble hearing. I'm sorry.

7 THE WITNESS: I'm sorry. Can you hear me
8 better now?

9 MS. ZMROCZEK: Yes. Thank you.

10 THE WITNESS: I was just one of the
11 commanding officers on the scene. My guys were
12 looking for a way to manually open the trunk. And
13 we were not successful in that, so we chose to use
14 extrication tools.

15 BY MR. SCOTT:

16 Q Okay. State's 28?

17 A Yeah. Looks like burn paper in the floor of
18 the car.

19 Q Okay. That's on the interior of the car?

20 A Yes, sir.

21 Q And tell me what was the extraction methods
22 you used to obtain entry?

23 A We have a set of cutters and spreaders. One
24 obviously, as it says, it cuts, and one spreads just
25 like a set of big tweezers, if you will. So actually

1 gained a purchase point and were able to spread the
2 trunk far enough to be able to cut the trunk lid off of
3 the car.

4 Q And what was inside?

5 A Human; a man.

6 Q Okay. All right.

7 Well, that was pretty much your agency
8 involvement in the case to gain access to the trunk?

9 A Yes, sir.

10 Q And there was a person -- do you remember
11 whether he was conscious or not?

12 A He was -- seemed to be in and out of
13 consciousness, obviously in distress. He looked very
14 labored, very tired, obviously upset. But that was the
15 gist of my memory.

16 Q Okay. Thank you.

17 Please answer any questions Ms. Zmroczek has
18 for you.

19 **CROSS-EXAMINATION**

20 **BY MS. ZMROCZEK:**

21 Q Is it officer or?

22 A Captain.

23 Q Captain Ford. Sorry. So y'all do reports,
24 right?

25 A We do. Yes, ma'am. I was not the reporting

1 officer --

2 Q Okay.

3 A -- for this particular.

4 Q In fact, you weren't listed on the report at
5 all, were you?

6 A I think I was. Possibly -- I don't know if I
7 -- maybe my unit was listed on there, probably Ladder 7
8 was one of the units.

9 Q And that's fine. So it's not just one --
10 when a fire --

11 A It is not. We -- so depending on how the
12 call is coded, it gets a certain response. So we
13 received that call as an entrapment. So that dictates
14 an engine company, ladder company, rescue, and
15 battalion chief.

16 Q Okay. So you did not receive that call for
17 fire?

18 A We did not. It was a special request from
19 CPD initiall. And like I said, with suspicion -- from
20 what I can remember, suspicion of someone possibly
21 trapped in the trunk of a car.

22 Q Okay. And when you got there, do you recall
23 anything about asked -- being asked to investigate
24 about the fire?

25 A No, ma'am.

1 Q Certainly you have training and able to do
2 that, right?

3 A Absolutely.

4 Q You have arson investigators?

5 A No. We have somewhat of an understanding
6 background in arson. So we -- we know what signs and
7 stuff to look for. But we are not -- that is handled
8 by our fire marshal's office predominantly.

9 Q Okay. And you also said that basically
10 y'all's job was to -- to open the trunk?

11 A That's correct. Yes, ma'am.

12 Q A lot of times y'all do that in -- in
13 automobile accident as well?

14 A We do. A lot of times during the -- even --
15 not specifically, but a normal car fire, engine
16 companies will check all voided areas of the car just
17 to make for any type of extension of fire. And they
18 are trained to open the trunk regardless.

19 Q Okay. And had you tried -- did they tell you
20 that they had a key? Did you try to open the vehicle?

21 A I personally did not. Like I said, I was one
22 of the commanding officers. My guys looked for
23 multiple different ways to manually open the trunk.
24 And I was told that they were unsuccessful with doing
25 so. And just with the severity of the case and

1 potentially someone being trapped in the trunk, I
2 didn't want to wait any longer. So we decided to use
3 extrication tools, which was the fastest method.

4 Q Sure. And -- and in fact, you were able to
5 do that relatively quickly too, right?

6 A Yes, ma'am.

7 Q I think y'all on your reports, you keep
8 information such as what time you were dispatched?

9 A Yes, ma'am. Most of the time, it was time
10 stamped. Like I said, I was not the reporting officer
11 on this particular unit. I was especially a secondary
12 unit. But it was relatively quick, yes.

13 Q And -- and -- and even though you didn't do
14 the report, as the captain, this is -- this is
15 something that --

16 A Yes, that's --

17 Q -- a note goes on the report?

18 A Yes, that's correct. Yes, ma'am.

19 Q So if the report says arrival 9:14:11, that
20 would be in the morning?

21 A That's correct. Yes, ma'am.

22 Q And then if it says last unit cleared
23 9:33:09, what would that mean?

24 A That would still be in the a.m. That's 9:39
25 in the morning.

1 Q And last unit cleared means y'all were --

2 A That would be last --

3 Q Cleared and --

4 A That would be the last CFD unit, the last
5 that they needed assistance from us would be at 9:39.
6 Yes.

7 Q Thank you.

8 A Yes, ma'am.

9 Q I have no further questions.

10 A Yes, ma'am.

11 **REDIRECT EXAMINATION**

12 **BY MR. SCOTT:**

13 Q Okay. Well, did you observe -- did you
14 observe signs of arson?

15 A Did I observe? It looked to be yes, that
16 something was set on fire, yes. The one in, I guess,
17 Exhibit 15 or 16 where I seen the burn matter on the
18 car, it looked to be that someone potentially tried to
19 set the car on fire, yes.

20 Q Okay. And when you see State's 28, the burn
21 material that was in the floor in the interior --

22 A Right. Something obviously someone had set
23 that on fire as well.

24 Q And then you see the rag hanging out of the
25 gas tank?

1 A Right.

2 Q That was a sign of what?

3 A Of arson.

4 Q And so clearly, gasoline is an accelerant,
5 right?

6 A Right.

7 Q Do you know of any safety features that car
8 manufacturers may implement to keep --

9 A I am not an expert om whether it would or
10 wouldn't. I mean it's the trifecta. You need air,
11 fuel -- heat source, air, and an ignition source to be
12 able to create fire. Now, if it can't get one of the
13 three, then fire will not burn.

14 Q Okay. If it's not getting the proper amount
15 of oxygen --

16 A That's correct.

17 Q All right. Thank you.

18 MS. ZMROCZEK: Just very briefly on that.

19 **RECROSS EXAMINATION**

20 **BY MS. ZMROCZEK:**

21 Q So it wasn't referred to anyone to
22 investigate for arson?

23 A Not -- not for me, no.

24 Q And the car was not on fire?

25 A It -- when we arrived, it was not.

1 **Q** Thank you. That's all.

2 **THE COURT:** Thank you, sir.

3 **THE BAILIFF:** All right. Watch your step.

4 **THE COURT:** We'll give y'all a few minutes
5 break while we have the next witness come in. If
6 you'll go to the jury room for a few minutes.

7 Please do not discuss the case.

8 (The jury exits the courtroom at 3:56 p.m.)

9 **THE COURT:** We'll take five minutes or so.

10 (A recess is taken.)

11 **THE COURT:** Bring the jury.

12 (The jury enters the courtroom at 4:11 p.m.)

13 **THE BAILIFF:** The jury is seated, Your Honor.

14 **THE COURT:** All right. Very well.

15 Your next witness.

16 **MR. SCOTT:** Antrone Dubose.

17 **THE BAILIFF:** Come forward, sir, to be sworn.

18 Place your left hand on the Bible. Raise your
19 right. Face the clerk for me.

20 **THE CLERK:** Will you state your full name,
21 please?

22 **THE WITNESS:** Antrone Dubose.

23 **THE CLERK:** Would you spell your first name,
24 please.

25 **THE WITNESS:** A-n-t-r-o-n-e.

1 **THE CLERK:** Do you solemnly swear the
2 testimony you are about to give in this case to be
3 the truth, the whole truth, and nothing but the
4 truth so help you God?

5 **THE WITNESS:** I swear.

6 **THE CLERK:** Have a seat right there. Thank
7 you.

8 **THE BAILIFF:** Watch your step up, sir. Step
9 up there. And speak into that microphone where
10 everybody can hear you, okay?

11 **ANTRONE DUBOSE**

12 having first been duly sworn, testifies as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. SCOTT:**

15 **Q** Antrone, how old are you?

16 **A** 44.

17 **Q** And where --

18 **MS. ZMROCZEK:** Your Honor, I cannot hear.

19 **THE BAILIFF:** Speak into the microphone.

20 **BY MR. SCOTT:**

21 **Q** Speak up a little bit.

22 How old are you?

23 **A** 44.

24 **THE COURT:** It's about the same. Push up
25 some.

1 **THE BAILIFF:** Okay. Now speak into the
2 microphone. No. Don't rear back. Don't --
3 don't -- don't rear back from the mic. Stay into
4 the mic. Now say something.

5 **THE WITNESS:** Hello.

6 **BY MR. SCOTT:**

7 **Q** How old are you?

8 **A** 44.

9 **Q** Okay.

10 **THE BAILIFF:** You've got to stay up on the
11 mic.

12 **BY MR. SCOTT:**

13 **Q** Okay. Antrone, where are you from?

14 **A** Charleston.

15 **Q** You got to --

16 **A** Charleston.

17 **Q** Okay. Do you have a disability?

18 **A** Yes, sir.

19 **Q** What is your disability?

20 **A** I have to say it?

21 **MS. ZMROCZEK:** Your Honor, may we approach?
22 I've got a matter of law that I need to discuss
23 outside the presence of the jury.

24 **THE COURT:** Okay.

25 **MS. ZMROCZEK:** Or we can approach.

1 **THE COURT:** Okay.

2 (Sidebar conference is held off the record.)

3 **BY MS. ZMROCZEK:**

4 **Q** Speak up. You've got to speak louder than
5 you normally do. Are you comfortable just sharing --
6 what is your disability?

7 **A** I --

8 **Q** Did you -- did you graduate high school?

9 **A** Yes, I did.

10 **Q** Okay. And can you read and write?

11 **A** Yes, I do.

12 **Q** Okay. But you were special education all
13 through school; is that right?

14 **A** All through school. Yes, sir.

15 **Q** Okay. And do you receive a social security
16 check?

17 **A** Yes, sir.

18 **Q** And you get a check every month for your
19 disability?

20 **A** Yes, sir.

21 **Q** And are you employed?

22 **A** No, sir.

23 **Q** Have you ever been employed?

24 **A** Yes, sir.

25 **Q** What did you do when you were employed?

1 **A** At that time --

2 **MS. ZMROCZEK:** Your Honor, I can't -- I'm so
3 sorry. I just cannot hear when he's testifying.

4 **THE COURT:** Why don't you come and stand a
5 little closer?

6 **MS. ZMROCZEK:** Thank you.

7 **BY MR. SCOTT:**

8 **Q** Antrone, where did you work when you were
9 working?

10 **A** I was working at the car dealership.

11 **Q** A car dealership?

12 **A** Yes.

13 **Q** Okay. And where was that?

14 **A** In Charleston.

15 **Q** And what was your -- what was your job there?

16 **A** Overnight security.

17 **Q** Overnight security?

18 **A** Yeah.

19 **Q** Okay. You have -- you had a driver's license
20 at one point, did you not?

21 **A** I did.

22 **Q** Okay. And what kind of car did you have?

23 **A** I had a black Lexus.

24 **Q** A black Lexus. Okay. Do you remember what
25 year that was?

1 A '07.

2 Q Okay. It was a 2007 model black Lexus?

3 A Yes.

4 Q Okay. And how were you able to buy that car?

5 A Actually, my boss bought it for me.

6 Q It was given to you?

7 A My bossman, yes, sir.

8 Q The boss who ran the car dealership?

9 A Yes, sir.

10 Q Okay. And you were able to drive the car?

11 A Yes, sir.

12 Q Okay. When was the last time you worked?

13 A The last time I worked? I worked in 2020.

14 Q Say it again.

15 A I worked in 2020.

16 Q Okay. Is that the car dealership?

17 A (No audible response.)

18 Q Where was that?

19 A I worked at Ruby Tuesday. Then I came back

20 to Charleston and went -- went back to that car lot.

21 In 2020, and then I've been working at Burger King to.

22 Q Okay. Ruby Tuesday, the car --

23 A In Summerville.

24 Q -- dealership, and Burger King? Okay. And

25 do you have a learning disability?

1 **A** Yes, I do.

2 **Q** Okay. And I don't -- I don't mean to make
3 you uncomfortable.

4 Back in 2019, August 2019, where were you
5 living at the time?

6 **A** I was at the car dealership. But then, I got
7 let go.

8 **Q** Okay. Where were you living?

9 **A** I was sleeping inside my car.

10 **Q** Okay. You were largely homeless back in
11 2019?

12 **A** (No audible response.)

13 **Q** Okay. And how did you meet this man right
14 here?

15 **A** We was roommate before.

16 **Q** Okay. Y'all used to live together?

17 **A** Yes.

18 **Q** And where -- where did y'all live?

19 **A** On Ashley Phosphate in North Charleston.

20 **Q** Okay. And the two of you, were you friends
21 at that time?

22 **A** Yes.

23 **Q** Was it boyfriends together or just friends?

24 **A** Friends.

25 **Q** But you two lived in the same -- was it an

1 apartment or a house?

2 A Yes. Apartment.

3 Q Apartment. And that was in Charleston?

4 A Yes.

5 Q But at some point, y'all stopped living
6 together?

7 A Yes.

8 Q In August 2019, what was your relationship
9 with him at that time?

10 A We -- we became friends again.

11 Q You -- you became friends again. Is that
12 what you said?

13 A Yes.

14 Q I'm sorry?

15 A We became friends again.

16 Q Okay. What kind of things did you like to do
17 together? Was he -- was he homeless, too, at the time?
18 Or did he live somewhere?

19 A He live somewhere. He was staying up here in
20 Columbia.

21 Q He was staying up here in Columbia? Is that
22 right? What you said?

23 A I came -- I came -- I came up here and got
24 him and take him back down to Charleston.

25 Q All right.

1 How did you know to come up here to get him?

2 **A** He told me where he was going to be at.

3 **Q** Okay. So you drove up from Charleston?

4 **A** To Lexington, South Carolina.

5 **Q** Okay. And why -- why did he ask you to drive

6 him? Did he have a car at the time?

7 **A** He say he did, but I ain't seen it.

8 **Q** You never saw him with a car? And do you

9 remember why he asked you to take him from Columbia

10 back down to Charleston?

11 **A** No.

12 **Q** You don't remember why?

13 **A** I came -- I was leaving the car -- the

14 dealership and was going to -- was planning on moving

15 up here. Because my cousin had moved up here. So I

16 was going to move up this way and find me a place.

17 **Q** Okay. And what was it -- what the plan for

18 you and --

19 **A** Yes.

20 **Q** -- Martin Dixon --

21 **A** Yes.

22 **Q** -- to move -- let me ask the question.

23 Was the plan for you and Mar- --

24 **A** Yes. It was our plan.

25 **MS. ZMROCZEK:** Your Honor, he's answering

1 before he could even ask the question.

2 **BY MR. SCOTT:**

3 **Q** Sir, just let me just finish the question.

4 **A** Can you just repeat the question again
5 because --

6 **Q** Okay. Was the plan for you two to move in
7 together in Columbia?

8 **A** Yes, sir.

9 **Q** Okay. And who was going to pay for the --
10 the apartment or the house?

11 **A** We both was going to get a job.

12 **Q** You both were going to get a job. But you
13 had that SSI check coming in every month at the time?

14 **A** At that time, yeah, until mine got cut off.

15 **Q** Okay. And did -- what was Mr. Dixon's way of
16 making money? Do you know?

17 **A** No.

18 **Q** Okay. But did he say he had some money for
19 helping you guys get a place?

20 **A** Yeah.

21 **Q** Okay. Tell me about -- when it came time for
22 you and he to leave Charleston and come up here to look
23 for somewhere to live, tell me about how that came
24 together.

25 **A** We was talking about it.

1 Q You were talking about it?

2 A Yeah.

3 Q All right.

4 And then, how did -- how did talking about it
5 turn into action?

6 A We was planning on like coming up here anyway
7 and finding a place and making some phone calls. We
8 was leaving from North Charleston to come up here.

9 Q Okay. And what happened? Did the -- did the
10 plans change at some point?

11 A Yeah.

12 Q How did the plans change?

13 A When he met Ms. Jones and our plans just got
14 change up at the last minute.

15 Q Okay. He met Ms. Jones. Is that what you
16 said?

17 A (No audible response.)

18 Q And then what happened to y'all's plans?

19 A He said our plan was still going to go in
20 place, but she going to be included.

21 Q All right.

22 So the original plan was you and Martin Dixon
23 would get a place together. And then the plan change.
24 Now was it his idea to change the plan or were you on
25 board with it?

1 A No. That was his idea.

2 Q Okay. So he said now Michelle Jones is going
3 to move in with us too; is that correct?

4 A Yeah.

5 Q And now when it came time for y'all to leave
6 Charleston to come here, who all was it and who drove?

7 A Actually, on the way coming up, I drove. And
8 I got a flat tire.

9 Q All right.
10 You -- you were driving and you got a flat
11 tire?

12 A Yeah.

13 Q All right. How did you get the car running
14 again?

15 A Drove the car to -- to the nearest gas
16 station.

17 Q Okay. And -- and at some point, did
18 Mr. Dixon help get your car running?

19 A He just helped me just get out of the car to
20 the gas station off the -- of the interstate.

21 Q Antrone, you've got to speak up, man. You
22 got to be -- you've got speak clearly. She can't
23 understand you.

24 All right. You got a flat tire. And then,
25 what happened?

1 **A** They drive the car to the nearest gas station
2 off the interstate.

3 **Q** All right.

4 And you got the tire fixed?

5 **A** Yeah. And I called a tow truck to come and
6 tow the car to the nearest tire place.

7 **Q** To the nearest tire place. Okay. How many
8 tires did you put on the car at that point?

9 **A** At that point, two.

10 **Q** Two tires? Who paid for those?

11 **A** Not me.

12 **Q** Not you? Did Michelle Jones or did Martin
13 Dixon pay for them?

14 **A** Michelle did.

15 **Q** Michelle did? Okay. And were Michelle and
16 Martin Dixon boyfriend and girlfriend at the time?

17 **A** Yes.

18 **Q** Yes. Is that what you said? Is that what
19 you said, Antrone?

20 **A** Yes.

21 **Q** Okay. And who told her to -- to pay for the
22 tires for your car?

23 **A** He did.

24 **Q** Okay. After the tires get put on the car, do
25 y'all come on up to Columbia?

1 A Yes.

2 Q Okay. And did y'all look for any apartments
3 while you were here?

4 A No.

5 Q Okay. What did you do?

6 A Went to the hotel.

7 Q Okay. Hotel. Which hotel?

8 A Off of -- in Lexington.

9 Q Okay. Over in West Columbia.

10 A Yes.

11 Q Is that the OYO Hotel? Is that what it's
12 called?

13 A Yeah.

14 Q Okay. And who got the room?

15 A They did.

16 Q Who?

17 A They did.

18 Q They did? Okay. And did all three of y'all
19 sleep in the same room that night?

20 A Yes.

21 Q Okay. And then, what did y'all do after
22 that? What did y'all do while y'all were in town?

23 A Take her to Walmart. Brought her back.

24 A Chill. And then I made a hundred dollars.

25 Q All right.

1 Antrone --

2 **A** Take -- -- take a hundred dollars. I made a
3 hundred dollars by taking someone to the store.

4 **Q** You made a hundred dollars while you were
5 here?

6 **A** Yeah.

7 **Q** You are driving the car predominately while
8 you're here?

9 **A** Yes.

10 **Q** I heard you say something a minute ago about
11 going to Walmart?

12 **A** I took somebody else to Walmart. I took her
13 to Walmart so she could buy a phone, a cell phone for
14 both of them.

15 **Q** Michelle Jones had to --

16 **A** Yeah.

17 **Q** -- buy a phone?

18 Okay. Did y'all ever get around to looking
19 for an apartment?

20 **A** No.

21 **Q** No? What did y'all do?

22 **A** Stayed in that area and then left from --
23 left from up there Lexington, went back to Charleston.

24 **Q** Okay. What did you do in Charleston?

25 **A** He was trying to find that -- he was trying

1 to find that disability office, the Strom Thurmond
2 office.

3 Q Martin Dixon was?

4 A Yeah. I think he came back up here.

5 Q Okay. And -- and so he -- he thought that
6 the Strom Thurmond building was back in Charleston?

7 A Yeah.

8 Q So y'all went down there. And how did y'all
9 find out the Strom Thurmond building was in Columbia?

10 A He asked around.

11 Q Okay. So y'all come back to Columbia at that
12 point?

13 A Yeah.

14 Q All right. And what is -- what's the purpose
15 of going to the Social Security --

16 A I -- I have no clue.

17 Q All right.

18 That was just something Martin Dixon was
19 wanting to do?

20 A Yeah.

21 Q Okay. Was he paying you for driving him
22 around?

23 A No.

24 Q Okay. August 7, we're here because
25 somebody's found in the trunk of a car. How did we get

1 to that point? You see what I'm saying? How did we go
2 from looking for the Strom Thurmond building and an
3 apartment and ending up in the trunk of a car?

4 A I was in the trunk of my own car.

5 Q Okay. How -- how did you get to be in there?

6 A He told me in the trunk.

7 Q Wait a minute. You've got to speak up.

8 Okay?

9 A I said: He told me to get in the trunk.

10 Q Okay.

11 A He hit me above my left eye with the crowbar
12 and told me to get in the trunk.

13 Q Leading up to that, y'all are still in
14 Columbia and driving around. Did y'all go over to
15 Lexington Medical Center at some point?

16 A That's where we left from.

17 Q Say it again.

18 A I said that's where we was at. We was
19 hanging in the -- him and Ms. Jones was inside the --
20 inside walking around the hospital while I was outside,
21 sitting inside the car.

22 Q Okay. And can you help me figure -- how did
23 we get to where he's asking you to get in the trunk --
24 telling you to get in the trunk of your own car? Did
25 y'all have an argument?

1 **A** Yeah.

2 **Q** Say it again.

3 **A** Yes.

4 **Q** All right.

5 What was the argument over?

6 **A** Because I called my brother and told my
7 brother I was leaving to go back to Charleston.

8 **Q** Who is your brother?

9 **A** Dexter.

10 **Q** Okay. And did Martin Dixon want -- you were
11 his only ride at the time; is that right?

12 **A** I was his only ride. Yeah. At that time, I
13 was like saying I was leaving. I wanted to leave and
14 go back to Charleston. Because I was already making an
15 appointment to go see my doctor.

16 And he was like, "You can transfer it up
17 here."

18 I was like, "No. It's not that -- it's not
19 that easy."

20 **Q** And so --

21 **A** And -- and so he talking about, "I want my
22 money back."

23 I was like, "You know my -- my money just --
24 I was like my check just got cut off. I was out here
25 trying to hustle to find me something to do -- to make

1 money." I told him, "I was going to get the money, but
2 it won't be tonight."

3 Q Okay. So you say, "I'm ready to just get
4 back to Charleston." Why were you ready to -- the
5 doctor's appointment is what you just said?

6 A Yeah.

7 Q And were y'all making a lot of headway as far
8 as finding an apartment? Y'all having any success
9 finding an apartment?

10 A No.

11 Q And that's why you came to Columbia?

12 A I came -- my plan was to move up here anyway.
13 I was going to stay with my cousin for a while and then
14 branch off to get me an apartment.

15 Q What I'm saying is: You, Martin, Michelle
16 come to Columbia to look for an apartment. Doesn't
17 sound like y'all were looking at any apartments that
18 I've heard you say.

19 A No.

20 Q Were you just kind of running errands for
21 Michelle and Martin Dixon while y'all were here?

22 A Pretty much.

23 Q Okay. And they were making you drive them
24 around?

25 A Uh-huh.

1 Q Was that a "yes" or a "no"?

2 A Yes.

3 Q And you're saying at some point, "I'm going
4 back to Charleston." And you call your brother. Tell
5 us why calling your brother got Martin Dixon angry.

6 A Because my brother told me, "When he come
7 back -- when he come back by the car, call me and put
8 him on the phone." And I did that.

9 Q Okay. So you called your brother Dexter.
10 And -- and what did you tell your brother Dexter
11 that -- that led to him asking to speak to Martin?
12 What did you tell your brother?

13 A I told my brother I just didn't feel safe,
14 you know, being up here and sitting in this -- sitting
15 in the parking lot while they walking around in the
16 hospital.

17 Q You didn't feel safe?

18 A (No audible response.)

19 Q Okay. So you were ready to get on back to
20 Charleston. And was Martin Dixon letting you go back
21 to Charleston?

22 A He said he would let me go, but I just got to
23 give him his money back.

24 Q Okay. He said you can go, but you've got to
25 pay me back first?

1 **A** Yeah.

2 **Q** And how much did he say you owed him?

3 **A** \$400.

4 **Q** Did you have \$400?

5 **A** No.

6 **Q** Okay. How did he take it when you told him
7 you didn't have his money yet?

8 **A** He was angry.

9 **Q** Angry? Okay.

10 When your brother said put Martin Dixon on
11 the phone, were you able to put Martin Dixon on the
12 phone --

13 **A** Yes.

14 **Q** -- with your brother? How did that go?

15 **A** He turned around and say, "You made this area
16 hot now from the phone call."

17 I was like, "Bro, that's my brother. My
18 brother didn't say anything -- that if anybody hurt me,
19 he was going to" -- you know, the conversation that
20 they --

21 **MS. ZMROCZEK:** Your Honor, I think he is
22 saying -- excuse me, objection. I think that -- I
23 can't hear him even though I'm sitting 3 feet from
24 him.

25 **THE WITNESS:** Listen --

1 **MS. ZMROCZEK:** But I think he's saying what
2 his brother was saying. And if -- if that's what
3 he saying, then I would object to it. But again,
4 I can't hear and I am at the witness stand so.

5 **THE COURT:** Sustain the objection.

6 **BY MR. SCOTT:**

7 **Q** Now you were -- you were telling us what
8 Martin Dixon was saying after he got off the phone with
9 your brother. He said he was angry because you were
10 making the area hot. What does that mean?

11 **A** I asked him, I said, "Why you asked me -- why
12 I make this area hot for."

13 He said, "Because of the phone call you did."

14 I was like, "That's my brother. I always
15 keep my brother informed with what's going on. So when
16 I tell you that I wanted to go back to Charleston, I
17 was going to leave y'all up here and go back to
18 Charleston."

19 **Q** Okay. So he was angry that you called your
20 brother because he felt maybe he was going to get in
21 trouble or something for not letting you go back?

22 **A** Yeah.

23 **Q** And did -- did he eventually hang up on your
24 brother? Or how did that end?

25 **A** They hung up.

1 Q Say it again.

2 A Yeah, he hung up.

3 Q He hung up. That's what you said; is that
4 right?

5 A Yeah. Yeah.

6 Q Okay. So then he hangs up on your brother.
7 He -- does he continue -- I guess, is he yelling at
8 you? Is he -- how is he talking to you?

9 A Yeah. So he got in the car. They got in the
10 car and went down to the gas station and talked. And
11 then from there, he went to McDonald's and stand in the
12 parking lot and talk some more. And then, he take my
13 phone away from me. And I drove the car.. Drove it in
14 town. You know, drove it to the old building. Got out
15 and talked some more. He said nobody ain't going to
16 hear you scream and hit me above the left eye with the
17 crowbar.

18 Q All right.

19 Let me -- let me -- are you capable of
20 talking any louder than that? Or is that about as loud
21 as you can talk?

22 A I said: He drove my car behind the old
23 abandoned building. Told me to get out. And we argued
24 some more. And then he took the crowbar and hit me
25 above my eye.

1 Q Okay.

2 A And told me to get inside the trunk of the
3 car.

4 Q This was behind --

5 A The old abandoned building.

6 Q And that was in the city of Columbia?

7 A Yes.

8 Q It was? Do you remember the name of the
9 business?

10 A No.

11 Q You said it was abandoned?

12 And are you familiar with this area of
13 Columbia being from Charleston?

14 A I mean, the only time -- the last time I been
15 in Columbia was when my adopted sister was like living
16 up here. Other than that, I ain't been in Columbia in
17 a long time.

18 Q Okay.

19 A Up until then.

20 Q So you don't know where that building was
21 that y'all were behind when he told you that, but you
22 think it was downtown Columbia somewhere?

23 A Yeah.

24 Q Okay. And -- okay. Let me ask you
25 something. What is State's 39? What's that?

1 **A** It's a crowbar.

2 **Q** Okay. This what he hit you in the head with?

3 **A** Yes.

4 **Q** And what happened after he hit you in the
5 head with --

6 **MR. SCOTT:** The state offers State's 39 for
7 admission?

8 **MS. ZMROCZEK:** Without objection.

9 (State's Exhibit No. 39 is admitted into the
10 record.)

11 **THE WITNESS:** I started bleeding.

12 **BY MR. SCOTT:**

13 **Q** Okay. And what did you say after he hit you?

14 **A** I said, "I'm bleeding."

15 He said, "Get into the trunk of the car."

16 He told me -- he told Michelle whatever was
17 in the trunk to throw it out and get inside.

18 **Q** Okay. And -- and this was after he hit you
19 in the face with that crowbar?

20 **A** Yes.

21 **Q** He told you to get in the trunk. What did he
22 say? He said nobody will hear you scream?

23 **A** Yes.

24 **Q** And let me -- you're fairly -- do you know
25 about how much you weigh?

1 A About 262.

2 Q Okay. Is that a pretty cramped trunk in the
3 car? Did you fit in the trunk very easily?

4 A (No audible response.)

5 Q Say?

6 A No, not with the spare tire in the way.

7 Q Yeah. Okay. It was in there. Is that what
8 you said?

9 A Yes.

10 Q And that's State's No. 4. That's kind of
11 what's on the screen?

12 A Yes.

13 Q All of that stuff was in there and you had to
14 kind of climb in there with it?

15 A (No audible response.)

16 Q Is that right?

17 A Yes.

18 Q Okay. And do you remember the weather? Was
19 it warm out? Was it cool out? Do you remember? You
20 don't remember?

21 A (No audible response.)

22 Q What do you remember after you got forced
23 into the trunk of the car?

24 A After I got -- after I got forced in the car,
25 he broke the latch and slammed the trunk.

1 Q He broke the latch? What latch?

2 A The release latch.

3 Q Okay. You talking about the safety latch

4 inside the trunk?

5 A Yeah. To open it from the inside.

6 Q Okay. And he -- you said he broke it?

7 A Yeah.

8 Q How did he do that?

9 A With his hand.

10 Q With his hand?

11 A Yeah.

12 Q All right. Describe what happens after you

13 get in the trunk and he's broken that latch. Did you

14 try to get out?

15 A (No audible response.)

16 Q Antrone, did you try to get out?

17 A I tried to.

18 Q Were you able to?

19 A No.

20 Q Could you see anything in there?

21 A (No audible response.)

22 Q Antrone, could you see anything in the trunk?

23 A No.

24 Q Was it dark?

25 A It was dark. So the only thing I could lean

1 up against was the -- the tire.

2 Q Uh-huh.

3 A And then I was trying to break the light, the
4 tail light, tried to knock that off.

5 Q By kicking it or what?

6 A No. By loosening the wires.

7 Q Okay. Did any of that work?

8 A No.

9 Q Okay. What happens next? Did they drive the
10 car then?

11 A Yes.

12 Q What do you hear from the trunk of the car?

13 A (No audible response.)

14 Q Antrone, what did you hear while you were in
15 the trunk of the car?

16 A (No audible response.)

17 Q Antrone, did you hear my question?

18 A Yes.

19 Q What did you hear in the trunk of the car?

20 A Talking and driving the car on the side of
21 the -- on the curb and all of that. And they both got
22 out. And he said he was going to get out. "If you try
23 to get out, I'm going to slice your throat."

24 Q "If you try to get out, I'm going to slice
25 your throat"?

1 **A** Yes.

2 **Q** And then he continued driving after that?

3 **A** Yes.

4 **Q** What did you hear him saying?

5 **A** Said that he was going to drive the car to

6 the lake.

7 **Q** Said he was going to drive the car into the

8 lake?

9 **A** Yes.

10 **Q** Okay. And what else did he say about that?

11 **A** I guess he changed his mind. He said he

12 would just burn the car up while I -- while I'm in the

13 trunk.

14 **Q** Changed his -- all right.

15 So first he said, "I'm going to drive it in

16 the lake." And then he says what?

17 **A** He would burn the car.

18 **Q** "I'll burn the car"?

19 **A** Yeah.

20 **Q** What you remember -- anything else you

21 remember him saying?

22 **A** No.

23 **Q** No? All right.

24 What else do you remember? Did the car come

25 to a stop at some point?

1 A Yes.

2 Q Okay. What did you hear him talking about?

3 A I didn't hear him talking no more.

4 Q You didn't hear any talking?

5 A No.

6 Q Did you -- did he say anything about trying
7 to light the car on fire or anything else that you
8 remember hearing?

9 A At that minute, yeah.

10 Q Uh-huh.

11 A He told -- he told Ms. Jones that.

12 Q He told Ms. --

13 A And then I passed out.

14 Q Okay. He told Ms. Jones what?

15 A That he was going to light the car on fire.

16 Q Did -- did you ever -- did you ever become
17 aware that the car was on fire?

18 A No.

19 Q You just heard him talking about it?

20 A Yeah.

21 Q And at some point, how -- did you know they
22 had left?

23 A I didn't hear no movement. I didn't hear
24 nothing -- I didn't anybody talking around the car. I
25 was like -- I was like thought they probably left.

1 Q They probably left? What was it like in the
2 trunk of the car? I mean, do you remember whether it
3 was hot or anything like that?

4 A Yeah. It was hot in there.

5 Q Okay. Were you able to breathe freely? Or
6 what do you remember? Just describe it. Not a lot of
7 us have been locked in the trunk of the car. Will you
8 describe what else you remember about it?

9 A Hot, tired, my legs started to hurt. And
10 like -- and then, I was in and out of consciousness
11 breathing.

12 Q You did lose consciousness?

13 A Yeah.

14 Q You said your legs hurt? Why was that?

15 A Because I'm big. And the way my leg is in
16 the trunk of the car, I kind of -- like I was sitting
17 down. My leg was like this. I was trying to stretch
18 my leg out in that car, in the trunk of that car. It
19 didn't work.

20 Q You were cramped in there?

21 A Yeah.

22 Q What else did he say about setting the car on
23 fire with you in it?

24 A That was the other way of taking my life,
25 taking me out.

1 Q All because of \$400?

2 A Yeah.

3 Q And did you -- did you have any knowledge
4 that -- did you know of anything about paper being lit
5 on fire and thrown inside of the car?

6 A No.

7 Q Okay. Was anything said about lighting a rag
8 on fire in the gas tank?

9 A No.

10 Q You couldn't see anything from inside; is
11 that right?

12 A Yeah.

13 Q But you remember Martin Dixon saying he was
14 going to set the car on fire with you in it?

15 A Uh-huh.

16 Q Is that a "yes" or a "no"?

17 A Yes.

18 Q Okay. Let me show you State's 20, 29, and
19 30. Take a look at those real quick for me.

20 A (Reviews documents.)

21 Q Okay. Do you see it?

22 A Yes.

23 Q State's 18 and 19. Do you see those?

24 A (Reviews documents.)

25 Yes.

1 Q Why are Michelle Jones -- why is her medical
2 paperwork in your car? Can you tell the jury why that
3 stuff was in your car for Michelle Jones?

4 A Michelle.

5 Q Why was her medical paperwork in your car?

6 A (No audible response.)

7 Q Antrone, you've got the mic. Why was her
8 paperwork in your car?

9 A She had gotten her medical paperwork from
10 the -- from the hospital.

11 Q Okay. Why was Martin Dixon's letter in your
12 car?

13 A His belongings that he put inside the car.

14 Q Why is Martin Dixon's medical paperwork in
15 your car?

16 A That's -- that's where he had got -- he put
17 all of his -- they put all they stuff inside the car.

18 Q Okay. There's several -- several medical
19 documents of Martin Dixon's in your car; is that -- is
20 that right?

21 A Yes.

22 Q State's 19. Why is Martin Dixon's medication
23 in your car? Is it because he was in your car too?

24 A Yes.

25 Q Okay. And he was having you drive him all

1 over Columbia and Charleston?

2 A Yeah.

3 Q Okay. Have you ever seen him driving his own
4 car?

5 A No.

6 Q Did you feel like you were being taken
7 advantage of?

8 A In a way, yes.

9 Q Okay. Do you know how many times you lost
10 consciousness in the back of that car?

11 A No.

12 Q Okay. And who was it who said they were
13 going to drive the car in the lake?

14 A He did.

15 Q Who?

16 A He did.

17 Q Who is "he"?

18 A Martin.

19 Q Okay. And who was it that said you were
20 going to die in the car?

21 A He did.

22 Q Okay. Who was it that said they were going
23 to set fire to your car?

24 A He did.

25 Q And who -- whose belongings were in the car?

1 Where his belongings in that car?

2 A His and Ms. Jones.

3 Q Ms. Jones and Mr. Dixon's belongings were in
4 your car?

5 A Yes.

6 Q Okay. All right.

7 Do you see Martin Dixon here today?

8 A Yes.

9 Q Where is he?

10 A Sitting right there.

11 Q All right.

12 Describe what he's wearing or what he looks
13 like.

14 A (No audible response.)

15 Q Do you see him?

16 A Yes.

17 Q Okay.

18 A A blue -- blue jacket and a khaki pants.

19 Q Okay. Is he smiling right now at you? Is
20 that who you're talking about?

21 A He's sitting over there, but he's not
22 smiling.

23 Q All right. Anything else you remember about
24 that day? Did you think you were going to die in the
25 back of that car?

1 **A** Yes.

2 **Q** Okay. Anything else you remember about the
3 time you want to share with the jury?

4 **A** No.

5 **Q** No?

6 All right.

7 Answer any questions Ms. Zmroczek has for
8 you. Okay?

9 **MS. ZMROCZEK:** Your Honor.

10 **THE COURT:** Yes, sir -- yes, ma'am.

11 **MS. ZMROCZEK:** As far as scheduling, I don't
12 know what the Court's intentions are, but this
13 could take a while and it's going to require some
14 media.

15 **THE COURT:** Require some what?

16 **MS. ZMROCZEK:** Some impeachment with media.
17 He gave a statement.

18 **THE COURT:** Let's get started whatever it is.

19 **MS. ZMROCZEK:** Okay.

20 **CROSS-EXAMINATION**

21 **BY MS. ZMROCZEK:**

22 **Q** Mr. Dubose, you remember talking to the
23 police in the hospital?

24 **A** Yes.

25 **Q** Yes?

1 **A** Yes.

2 **Q** And who did you talk to in the hospital?

3 **A** To investigator.

4 **Q** This investigator right here?

5 **A** Yes.

6 **Q** The one wearing the red tie?

7 **A** Yes.

8 **Q** Okay. And you told him some things about

9 that -- about that day, right?

10 **A** (No audible response.)

11 **Q** I'm sorry?

12 **A** I did.

13 **Q** And you told him, you specifically told him

14 that the man that did all of this to you was missing a

15 finger; isn't that right?

16 **A** No. No.

17 **Q** You didn't -- you did not on August 9, 2019,

18 tell Investigator Montgomery that the person who did

19 this to you was missing a finger?

20 **A** No.

21 **Q** Nope? Okay.

22 And you're aware that that interview was

23 recorded, right?

24 **A** I was aware.

25 **Q** I'm sorry? You --

1 A I was aware.

2 Q Okay. And so as you are sitting here today,
3 you're telling this jury that you did not tell the
4 investigator that the person that did this to you was
5 missing a finger?

6 A No.

7 Q No? Okay.

8 I'm going to come back to that in a little
9 bit. So I want to talk a little bit about you being in
10 Columbia. So you had a phone?

11 A Yes, I did.

12 Q Okay. What was your phone number?

13 A I don't remember my number.

14 Q What kind of phone did you have? An LG
15 phone?

16 A Yes.

17 Q Yes? An LG phone, the same one that was
18 found in the vehicle?

19 A Yes.

20 Q Okay. That was your phone that was found in
21 the vehicle, right?

22 A Yes.

23 Q Okay. And sp that's the phone that you say
24 you called your brother on?

25 A Yes.

1 Q Okay. And what day was that?

2 A August 6.

3 Q August 6?

4 A That Tuesday night.

5 Q I'm sorry?

6 A That Tuesday night.

7 Q That Tuesday night. You called your brother

8 from that LG phone?

9 A Yes.

10 Q Okay. And so I want to talk about -- a

11 little bit about your time in Columbia. Because I

12 could -- it was hard for me to hear. You sound a

13 little bit more clear when I'm up here asking you

14 questions. So maybe we can go through some of that.

15 So when did you come up to Columbia?

16 A I came that -- I came that -- that Friday

17 morning.

18 Q That Friday morning?

19 A Yes.

20 Q Before the -- before the sixth?

21 A Yes.

22 Q Okay. And who came with you?

23 A Martin Dixon and Michelle Jones.

24 Q Martin Dixon and Michelle Jones. Now you

25 know them separately, right?

1 A Yes.

2 Q Because you know Michelle Jones. She's a
3 bigger lady, right? Right?

4 A Yes.

5 Q And you know her from Charleston?

6 A Yes.

7 Q And in fact, she had accused you of several
8 things while you were down in Charleston, right?

9 A Yes.

10 Q And that -- that made you mad, right?

11 A Yes.

12 Q She accused you of doing some not so nice
13 things, right?

14 A (No audible response.)

15 Q Right?

16 A Yes.

17 Q And Martin Dixon, you said, was your friend?

18 A Yes.

19 Q And he often helped you when you needed help?

20 A Yes.

21 Q In fact, it was Michelle who gave you the
22 \$400 for your car, right?

23 A No.

24 Q No? That was -- that was Mr. Dixon, right?

25 A No.

1 Q Because he was helping, right?

2 A He said he was going to help get the car
3 right the way it is to get back to Columbia. I have
4 not seen none of that money.

5 Q I'm -- I'm sorry. I didn't catch that.

6 A I have not seen none of that money. Can you
7 hear me now?

8 Q Now I hear you perfectly.

9 A Okay.

10 Q Thank you.

11 So you had not seen any of that money, right?

12 A No, I hadn't.

13 Q But -- but you do have a fixed car?

14 A She put thirty dollars' worth of gas in the
15 car, get the oil change, bought the tire for the car.
16 And then when the front tire had went flat, she paid
17 another amount of money to put that tire on the car for
18 us to get back -- get up here to Columbia, Lexington.
19 I have not seen none of that money.

20 Q Okay. When did all of that happen?

21 A Like that -- like the weekend before the
22 sixth.

23 Q So you were in Columbia in Lexington when all
24 of that happened?

25 A No. Coming from Charleston.

1 Q So if you came up on Friday to Columbia, it
2 was the weekend before that?

3 A It was on that Friday when we came up.

4 Q Okay. So she did all -- you said she did all
5 of these things for you in Charleston?

6 A Yes.

7 Q Okay. But -- and I'm confused. Was it her
8 or was it Mr. Dixon?

9 A Them two was talking.

10 Q I'm sorry?

11 A I said: Them two was talking.

12 Q Right. Those two were talking. But who
13 fixed your car?

14 A She put the tire on, she did the oil change,
15 and she gave me the money to put the gas in the car.

16 Q Right, she, Ms. Jones?

17 A Yes.

18 Q Not at the direction of Mr. Dixon; she just
19 did that?

20 A Yes.

21 Q Okay. So you come up to Columbia. And what
22 was your understanding as to why you came up to
23 Columbia the Friday before this Tuesday?

24 A We was going to go look for a place to rent
25 and find a job.

1 Q So you were going to look for a place to rent
2 and going to look for a job. And who is "we"?

3 A Just -- the plan was just me and him. And
4 then, she seen him and they (inaudible) and then things
5 just got changed around the last minute.

6 Q Right. Because it was just going to be you
7 and Martin, right?

8 A Yes.

9 Q Because y'all are friends?

10 A Yes.

11 Q And then Michelle, who has accused you of all
12 of the stuff throws herself into the situation, right?

13 A Yes.

14 Q And she messed up your plans?

15 A Yes.

16 Q And that made you mad?

17 A I already been mad.

18 Q I'm sorry. You were already mad. Why were
19 you already mad?

20 A Because she was not supposed to get my car.

21 Q Who was not supposed to get in your car?

22 A Michelle.

23 Q Why?

24 A Because I told him nobody get my car without
25 my permission.

1 Q Okay. So you were mad because Michelle was
2 in your car after she fixed it?

3 A No. Before. I was like don't nobody get my
4 car without my permission.

5 Q Okay. So when was she in your car without
6 your permission?

7 A When we was over by the supercenter down in
8 Charleston by the DSS office.

9 Q Okay. When was that?

10 A Like the end of July; like the last week,
11 July going over into August.

12 Q So July to August. So you've been festering,
13 you've been mad that she's been in your car since the
14 end of July?

15 A Yes.

16 Q Okay. And then she messes up your plans by
17 getting in the car to come up here to Columbia?

18 A Yes.

19 Q You didn't like that either, did you?

20 A No.

21 Q So you say that while you were up here, you
22 were giving other people rides in your car? That's how
23 you made money?

24 A I took -- I took this other dude and lady who
25 was staying at the hotel, took them to the store.

1 Q Because that's kind of what you do, right, is
2 you give rides to people and they either give you money
3 or they help you out by fixing your car?

4 A No.

5 Q No?

6 A I made a hundred dollars that day for taking
7 them, you know, to the stores.

8 Q They gave you a hundred dollars, these
9 people?

10 A Yes.

11 Q And who are these people?

12 A Someone that he know.

13 Q Okay. And -- and where did you meet them?

14 A At the hotel.

15 Q And there were two of them?

16 A Yes.

17 Q And when y'all went to the store, who was in
18 the car?

19 A Just the two people I took to the store.

20 Q So Martin wasn't -- wasn't ordering you
21 around the whole weekend, was he?

22 A No.

23 Q No? Okay.

24 Explain to me -- so you called your brother
25 on the sixth. What time was that?

1 A I don't remember.

2 Q You don't remember. Was it light or dark?

3 A It was night.

4 Q It was nighttime on the sixth. And you
5 called your brother from the LG phone that was in your
6 car?

7 A Yes.

8 Q And then -- and -- and you said that -- I
9 think I heard you say Martin said you can go back to
10 Charleston whenever, right?

11 A He told me I could leave and go back to
12 trusting.

13 Q Right. He told you you could leave?

14 A I would have to pay him his money back.

15 Q His money or her money?

16 A His money.

17 Q So did he give you extra money that I don't
18 know about?

19 A Like I said, the \$400 that he say that I owe
20 him, I don't know him \$400.

21 Q Right. Because he never gave you \$400?

22 A Exactly.

23 Q Right. So you didn't owe him any money. But
24 you owed Michelle money, didn't you?

25 A I didn't owe her money neither.

1 Q You didn't owe her money either?

2 A No.

3 Q So you didn't owe anybody money?

4 A I don't owe neither one of them money.

5 Q Okay. It was your car, right?

6 A My car.

7 Q Your car. Who's the owner of your car?

8 A I was the owner of my car.

9 Q Who's the controller of your car?

10 A Me.

11 Q Right. So you had a phone, you had a car,

12 and you were told -- for whatever reason, you said

13 Martin said you can go back to Charleston. So why

14 didn't you?

15 A He said I can leave to go back -- he was

16 letting me leave to go back to Charleston, but I would

17 have to pay him his \$400 first.

18 Q Okay. So then you call your brother. But

19 you don't know what time?

20 A No.

21 Q I'm sorry?

22 A No.

23 Q Okay. And then what happens after you call

24 your brother? You said you drove to a building? I

25 couldn't hear you very well.

1 A I said after me and my brother talk, while
2 they was still inside the hospital, he came outside --

3 Q Wait, wait, wait. Stop. He was still inside
4 the hospital. Is that what you said?

5 A At the time when I talked to my brother the
6 first time, he was still at the hospital.

7 Q Who "he"?

8 A Me, Ms. Jones, and Martin.

9 Q Okay. You, Mr. Jones, and Martin were at the
10 hospital when you -- when you called your brother the
11 first time?

12 A Yes.

13 Q Okay. And was that on August 6?

14 A Yes.

15 Q Okay. And that's that hospital paperwork
16 that we saw in there?

17 A Yes.

18 Q And so then -- and you called your brother
19 more than once?

20 A I called him that -- I -- I called him that
21 time.

22 Q But let me get this straight. You're at the
23 hospital with you, Michelle, and Martin, right? And
24 they are both being treated or who was being treated?

25 A I don't know. Because I went back -- I've

1 been outside.

2 Q What?

3 A I was outside sitting in my car.

4 Q You were outside sitting in your car?

5 A While they were inside.

6 Q While they were inside, right?

7 A Yes.

8 Q Okay. And then you left, didn't you?

9 A I went to the gas station.

10 Q Yeah. You left. Went to the gas station.

11 And then where did you go?

12 A Came back.

13 Q And?

14 A Sat in my car.

15 Q Sat in your car by yourself?

16 A Yeah. While they was still like -- like I
17 went to the gas station. Came back. Sat in a car.
18 Drove up. Stayed in the hospital parking lot. Drove
19 to the gas station. Well, he went to the gas station
20 store and bought some -- bought something, bought chips
21 or something from the gas station. Drove him back over
22 there by the door to the hospital. And I just sat in
23 the car.

24 Q Nothing stopping you from going back to
25 Charleston?

1 A No.

2 Q And you didn't have a place to live at this
3 time, right? You were -- you were homeless?

4 A Yes.

5 Q But you had your car?

6 A Yes.

7 Q Your stuff was in the car as well, right? It
8 wasn't just their stuff. That was your stuff in the
9 car, right?

10 A My stuff.

11 Q Your stuff?

12 A The only thing that was in my car was a --
13 like the information to the car. My bag and clothes
14 had got thrown out.

15 Q Your bag and clothes got thrown out? Where
16 was that?

17 A Behind -- behind the -- behind the -- the --
18 the old abandoned building that we went in.

19 Q Behind the building?

20 A Yes.

21 Q And that was behind the building that you say
22 that -- that you got hit in the head?

23 A Yes.

24 Q Okay. Now you remember in the hospital
25 telling Investigator Montgomery that Ms. Jones hit you

1 in the head?

2 A No.

3 Q Okay. You said it was Martin that hit you in
4 the head?

5 A Yes.

6 Q And it's your testimony that he hit you in a
7 head with -- this is State's 39, right?

8 A The crowbar, yes.

9 Q The -- the -- the crowbar?

10 A Yes.

11 Q Okay. What -- what side did he hit you with?

12 A Where you got your finger at.

13 Q Right here where I've got my finger?

14 A In the middle.

15 Q This round part?

16 A No.

17 Q This -- this -- the bent part?

18 A Yes.

19 Q Right there where I've got my finger? He hit
20 you in head?

21 A Yes. Above my eye. Yes.

22 Q Above the eye. And it started bleeding right
23 away, right?

24 A Yes.

25 Q Did you clean this crowbar?

1 A No.

2 Q What happened with the crowbar?

3 A I didn't clean it.

4 Q I'm sorry?

5 A I said I didn't clean it.

6 Q You didn't clean it?

7 A No.

8 Q Okay. And so the way I understand it now
9 is -- your clothes were tossed before or after you got
10 hit in the head?

11 A Before.

12 Q Okay.

13 A Because I just went and did laundry that
14 Sunday.

15 Q You just went to the laundry?

16 A Yeah.

17 Q Where was that?

18 A In Lexington somewhere.

19 Q You went and did the laundry by yourself too,
20 right?

21 A Yeah.

22 Q Okay. And so your story is they hit you --
23 or not they, that Martin hit you in the head with this
24 crowbar and then tells you to get in the trunk?

25 A Yes.

1 Q And how much did you weigh at this time?

2 A 262.

3 Q And how tall are you?

4 A Five seven.

5 Q Okay. And so you just get into the car?

6 A Yes, I was getting inside the trunk of the
7 car.

8 Q Now, you've been up to Columbia before.
9 You're familiar with where the homeless population
10 gathers, right, when they don't have a place to stay?

11 A I haven't been up to Columbia before.

12 Q Nope, never been?

13 A No.

14 Q Okay. So you climb into the car yourself?

15 A As I was getting in the trunk of the car,
16 Michelle pushed me.

17 Q I'm sorry? Michelle pushed you?

18 A Yeah.

19 Q Okay. And then what happened?

20 A As he was closing the trunk, he broke the
21 latch so I won't get out.

22 Q She did?

23 A He did.

24 Q All right.

25 So he broke the latch. How did he break the

1 latch? You said with his hand?

2 A Yes.

3 Q Explain to me where the latch was?

4 A Like in the middle when you open the trunk.
5 Right there in the middle.

6 Q Okay. And then it was dark. You said you
7 don't know -- oh, you said what did he say to you next
8 after that?

9 A Say it again.

10 Q What did he say after you got in the trunk
11 and you said he broke the latch? Did he shut it?

12 A Yes.

13 Q Okay. And then what happened?

14 A I don't remember.

15 Q I'm sorry?

16 A I don't remember.

17 Q You don't remember. Okay. What's the next
18 thing you do remember?

19 A I remember telling him to open the trunk and
20 let me out.

21 Q You still have your cell phone?

22 A No.

23 Q Okay. Where -- where is your phone?

24 A He took it.

25 Q The same phone that was found in the car?

1 **A** Yes.

2 **Q** Okay. I must have missed that part when you
3 told me he took it. When did he take it?

4 **A** He took it from me after he left the
5 hospital.

6 **Q** So you said the first time you talked to your
7 brother. How many times did you talk to your brother?

8 **A** I talked to my brother twice that night.

9 **Q** Okay. Go ahead. I'm sorry. I didn't mean
10 to cut you off.

11 **A** I said I talked to my brother twice that
12 night.

13 **Q** Okay. Twice that night. The first time you
14 said was when they were in the hospital?

15 **A** Yes.

16 **Q** Okay. So he didn't talk to Martin that time?

17 **A** No.

18 **Q** And you were telling your brother while
19 you're by yourself in your car that you want to go home
20 to Charleston?

21 **A** Yeah.

22 **Q** So you're in your car with your phone and the
23 keys and you're telling your brother you want to leave?

24 **A** Yes.

25 **Q** Why didn't you leave?

1 A (No audible response.)

2 Q You had a car, right?

3 A Yeah.

4 Q You had a phone?

5 A Yes.

6 Q And you had nobody around you. You did

7 leave. You went to the gas station, right?

8 A Their belongings was in my car.

9 Q Their belongings were in your car. And we
10 know that because that is how they were identified was
11 because of the stuff that was found in your car, right?

12 A Yes.

13 Q Because if you just say they're in your car,
14 there is no proof. But if their belongings are in your
15 car, then there's proof, right?

16 A Yes.

17 Q So that's helpful to you, right?

18 A Yes.

19 Q And so when is the second time you talked to
20 your brother?

21 A After he came -- after he come to the car and
22 I called my brother back. And my brother said put him
23 on the phone.

24 Q So let me ask you this: The first time you
25 talk to your brother and you said brother, I want to

1 leave --

2 A Yeah.

3 Q -- what did -- after talking with him, did
4 you feel like you couldn't leave?

5 A No.

6 Q Okay.

7 A My brother just told me --

8 Q What?

9 A My brother -- my brother just told me to
10 leave. So I told him, I said, they stuff is in my car.
11 If I leave -- my brother said just -- my brother was
12 telling me to go find them and tell them to come get
13 their stuff so you could leave.

14 Q Okay. So your brother told them to come get
15 their stuff?

16 A No. My brother told me.

17 Q Oh. So did you tell them to come get their
18 stuff?

19 A I told them -- I told them, "Y'all need to
20 get y'all stuff because I'm ready to go back to
21 Charleston."

22 Q When was that conversation?

23 A When he got to the car.

24 Q And was it just him or him and her?

25 A Just him.

1 Q I'm sorry?

2 A It was just him.

3 Q So he comes back to the car?

4 A Yes.

5 Q But then he goes back inside?

6 A Yes.

7 Q Okay. What time did they get out of the
8 hospital? And this is all the same night, right, the
9 night that you got driven to the building?

10 A Yes.

11 Q No doubt in your mind?

12 A No.

13 Q Okay. Talk to me about the Strom Thurmond
14 building. What was -- I heard you say Strom Thurmond
15 building, but then I couldn't hear what you said. What
16 where you saying when you said the Strom Thurmond
17 building? And we're talking about the one right here
18 in Columbia, right?

19 A Yes.

20 Q Right by the cemetery.

21 A He wanted to go there.

22 Q "He" who?

23 A Martin.

24 Q Okay. Why did he want to go to the Strom
25 Thurmond building?

1 **A** To get something changed on his check.

2 **Q** I'm sorry?

3 **A** To get something changed on this check.

4 **Q** Right. Because not only were you getting
5 disability checks, but Martin was getting his own
6 disability checks, right?

7 **A** Yes.

8 **Q** So he didn't need your disability checks. He
9 had his own --

10 **A** Yes.

11 **Q** -- right? And he needed to update his
12 address --

13 **A** Yes.

14 **Q** -- right?

15 **A** (No audible response.)

16 **Q** Isn't that right?

17 **A** Yes.

18 **Q** Because he had a place to live in Orangeburg,
19 right, because that's where he lived?

20 **A** Yes.

21 **Q** I'm sorry?

22 **A** Yes.

23 **Q** So he has a house in Orangeburg. He says
24 while we are in Columbia, I'm going to change my
25 address to make sure my checks keep coming, right?

1 A Yes.

2 Q And I want to talk about this hotel that
3 y'all stayed at, right, that Martin paid for, right?

4 A Yes.

5 Q Martin paid for the hotel and it was multiple
6 days, right?

7 A Yes.

8 Q And what day did you check out in relation to
9 all of this fight stuff happening?

10 A Check out Monday.

11 Q You checked out that Monday. So what did
12 y'all do that Monday, then?

13 A We drove back down to Charleston to try to
14 find that building and that office. But it wasn't
15 in Charleston. It wasn't in Charleston. So we drove
16 back up towards Lexington.

17 Q So you drove all the way to Charleston on
18 Monday?

19 A Uh-huh.

20 Q Where you wanted to be?

21 A Yes.

22 Q But then you turn around and drive back?

23 A Yes.

24 Q Was there a gun to your head?

25 A No.

1 Q Were you forced?

2 A No.

3 Q So when did you come back? What day did you
4 come back to Charleston -- to Columbia?

5 A That same day.

6 Q So you drove an hour-and-a-half down to
7 Charleston to turn around and come back an hour and
8 half?

9 A Yes.

10 Q Now did you tell your brother you had gone to
11 Charleston already?

12 A I told him -- me and my brother be talking.

13 Q You and your brother don't talk?

14 A We got that bond. We talk all the time.

15 Q Okay. All right.

16 So how does he know Martin?

17 A Because he talked to -- he talked to Martin
18 before.

19 Q He what?

20 A He talked to Martin before.

21 Q When was that?

22 A When we used to stay together.

23 Q And what year was that that you used to stay
24 together?

25 A 2016.

1 Q Right. 2016, right? Three years before
2 this?

3 A Yes.

4 Q And you stayed in Martin's apartment that he
5 paid for that he let you stay there, right?

6 A Yes.

7 Q And now, in 2019, three years later, you
8 liked -- you liked living with Martin, right?

9 A Not really, but yeah.

10 Q Yeah. Because he did lots of things for you,
11 right?

12 A Yes.

13 Q But Michelle messed that up, didn't she?

14 A Yes.

15 Q And you were mad about that; isn't that
16 right?

17 A Yeah.

18 Q So you -- how many days were you in the
19 hospital?

20 A Where?

21 Q One day, right?

22 A Where? That hospital? The big hospital?

23 Q Uh-huh.

24 A Wednesday, Thursday, Friday, Saturday,
25 Sunday, Monday. I got discharged that Tuesday.

1 Q Okay. And they treated you for a little cut
2 over your eye, right?

3 A Yeah.

4 Q And then you had some -- you had some medical
5 problems before all of this, right?

6 A Yeah.

7 Q And so that's why you stayed in the hospital,
8 because they were dealing with those medical problems,
9 right?

10 A Yeah.

11 Q I'm sorry?

12 A Yes.

13 Q Okay. Do you recall when you were back in
14 the hospital you -- you didn't tell Investigator
15 Montgomery that Martin hit -- so you told them Martin
16 hit you and not -- and not Ms. Jones?

17 A That's what I told him.

18 Q And that was on August 9, 2019?

19 A Yes.

20 Q So two days after this happened?

21 A Yes.

22 Q Okay. And did you tell him about -- did you
23 tell him all the places that you went to?

24 A Yes.

25 Q Okay. And you told him about the building

1 and getting your clothes thrown out?

2 A Yes.

3 Q And you said you knew the interview was
4 recorded, right?

5 A Yes.

6 Q So if I play you a portion of that tape about
7 you talking about you knew Martin had a missing finger,
8 would that refresh your recollection?

9 A No.

10 Q I'm sorry?

11 A No.

12 Q It wouldn't?

13 A No.

14 MS. ZMROCZEK: Okay. Beg the Court's
15 indulgence.

16 THE COURT: Ladies and gentlemen, I think
17 we're going to quit for the day and start back at
18 9:30 tomorrow morning. Please do not discuss the
19 case. See you-all at 9:30 tomorrow morning.
20 (The jury exits the courtroom at 5:23 p.m.)

21 THE COURT: So what are you about to do?

22 MS. ZMROCZEK: Oh, sorry. Your Honor, what I
23 planned on doing is just play -- I just needed to
24 find it. I wasn't aware that he was going to
25 testify to that, the portion of the testimony

1 where he -- the portion of his interview -- I'm
2 sorry. (inaudible). The portion of his interview
3 where he tells the investigator that the person
4 that did this was a missing a finger.

5 **THE COURT:** All right.

6 And any objection to that approach?

7 **MR. SCOTT:** I think she's got her laptop.

8 So I assume you're just going to go through
9 and show him that portion and have him either
10 endorse it or deny it?

11 **MS. ZMROCZEK:** Right. Well, I mean, so I
12 laid the time and place that the conversation
13 occurred. He's denying it. I said, "If I played
14 it for you, would it refresh your recollection?"

15 He said no. But I still think I have to play
16 it for him.

17 **THE COURT:** He said it's not going to refresh
18 his recollection.

19 **MS. ZMROCZEK:** I know. So I mean, I can do
20 one of two things. I can -- I mean, I can just
21 publish it through Montgomery when he testifies.
22 Because I think that I laid the foundation for
23 that, which if he's going to say that wasn't me,
24 then, you know. But he already said it wouldn't
25 refresh his recollection. But I think I laid the

1 foundation to be able to enter that as impeachment
2 evidence, that portion of it.

3 THE COURT: All right.

4 So it -- it was a good time to stop.

5 MS. ZMROCZEK: Yes.

6 THE COURT: So you can find it.

7 MS. ZMROCZEK: Yeah. I have to find it.
8 Yeah. The interview is -- is -- is very long. I
9 have to be able to find it. I just didn't want to
10 waste everybody's time.

11 THE COURT: Did you want to give him a
12 refresher today so that he'll be ready for
13 tomorrow? Or you'd rather just --

14 MS. ZMROCZEK: I'd rather just have him --

15 THE COURT: -- just hit him with it.

16 MS. ZMROCZEK: I'd rather do it in the
17 morning, Your Honor. I know they have his
18 statement.

19 THE COURT: Yeah.

20 MS. ZMROCZEK: So they can play it for him as
21 well.

22 THE COURT: Yeah. All right.

23 We'll pick it up in the morning, then.

24 Mr. -- tell me your name again.

25 THE WITNESS: Antrone.

1 **THE COURT:** Mr. Antrone, you're going to be
2 here at what time tomorrow?

3 **THE WITNESS:** 9:30.

4 **THE COURT:** All right.

5 You living nearby or you have a ride?

6 Y'all make sure he's here?

7 **THE BAILIFF:** Judge talking to you.

8 **THE COURT:** All right. Reconvene at 9:30
9 tomorrow morning.

10 **MS. ZMROCZEK:** Thank you, Your Honor.

11 (The Court recesses for the day.)
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CERTIFICATE

1
2 I, the undersigned, Teresa B. Johnson, Official
3 Court Reporter, do hereby certify that I transcribed
4 the electronic recording of the remote hearing in this
5 matter; and that the foregoing is a true transcript of
6 said electronic recording.

7 I do further certify that I am not a relative,
8 employee, attorney, or counsel of any of the parties
9 connected with the action, nor am I financially
10 interested in the action.

11
12 Dated: August 14, 2023

13
14 /s/Teresa B. Johnson

15 Teresa B. Johnson

16 Official Court Reporter
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	Case No.: 2020GS4001501,
	)	2020GS4001502
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
Martin Dixon,	)	
	)	
Defendant.	)	April 4, 2023
_____	)	

TRANSCRIPT OF TRIAL - DAY 2 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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

For Government:	Christopher Dale Scott, Esq. Senior Assistant Solicitor
	John Walter Whitmire, Esq. Assistant Solicitor

For Defendant:	Aimee J. Zmroczek, Esq. Attorney at Law

Recorded by:	Elizabeth Harris
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P R O C E E D I N G S

(Court is called to order on Tuesday, the 4th day
of April 2023, at 9:36 a.m.)

THE COURT: Come on back, Mr. Witness,
Antrone Dubose.

Mr. Dubose, why can't you talk into that mic
so we can hear you?

THE WITNESS: I can talk.

THE COURT: Talk up. You've got a mic THERE
and everything. You see me? When I start
talking, I talk into this mic so people can hear
me. You can hear that?

THE WITNESS: Yes, sir.

THE COURT: Yeah. You've got the jury over
there listening. They want to hear what you're
saying. I want to know what you're saying. And
everybody else want to know what you're saying.
So do a better job into speaking into that. All
right?

THE WITNESS: All right.

THE COURT: Good.

THE BAILIFF: Good morning. He don't have to
be sworn in again, do he? Come on.

THE COURT: He's already sworn in and
everything.

1 **THE BAILIFF:** Yes, sir.

2 Thank you, sir.

3 Yeah. Just sit up like that.

4 **THE COURT:** Anything before the jury comes
5 in?

6 **MS. ZMROCZEK:** Nothing further -- or nothing
7 from the defense.

8 **MR. SCOTT:** Nothing from the State, Your
9 Honor.

10 **THE COURT:** All right.

11 Let's bring them on, Madam Bailiff.

12 **THE BAILIFF:** Yes, sir.

13 (The jury enters the courtroom at 9:38 a.m.)

14 **THE BAILIFF:** The jury is seated, Your Honor.

15 **THE COURT:** All right.

16 Thank you.

17 Good morning. Welcome back.

18 Mr. Dubose is still under cross-examination.

19 Ms. Zmroczek, you may proceed.

20 **MS. ZMROCZEK:** Thank you, Your Honor. May it
21 please the Court.

22 **ANTRONE DUBOSE**

23 having first been duly sworn, testifies as follows:

24 **CROSS-EXAMINATION**

25 **BY MS. ZMROCZEK:**

1 Q It will make it less painful for everybody if
2 I don't cough.

3 Good morning, Mr. Dubose. I've got a few
4 more questions for you.

5 So as I understand your testimony under oath
6 yesterday, you testified that this all happened the
7 night of the -- after you left the hospital?

8 A Yes.

9 Q Okay. And you recall being in the hospital,
10 right?

11 A Yes.

12 Q Okay. And you recall telling -- well, let me
13 ask you this first. You had some items in the car as
14 well, correct?

15 A Yeah.

16 Q You had your medication?

17 A Yeah.

18 Q Okay. And they -- and they had a social
19 worker or work at the hospital come and go get that
20 medication out of the car and bring it to you, right?

21 A My blood thinner.

22 Q I'm sorry?

23 A My blood thinner.

24 Q Yeah, yeah. Your blood thinner, right?

25 And then you remember telling Ms. Jacobs when

1 she was talking about you on discharge, meaning when
2 they were discharging you from the hospital, that you
3 told her that you desired to go to the shelter in the
4 Columbia area?

5 A Yeah.

6 Q Okay. You told her that, right?

7 A (No audible response.)

8 Q Mr. Dubose, those are all of the questions I
9 have for you. Thank you.

10 THE COURT: Mr. Scott, anything else?

11 MR. SCOTT: Yes.

12 REDIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q When did you live with Mr. Dixon, Mr. Dubose?
15 Didn't y'all live in Summerville together at some
16 point?

17 A Summerville? No. He came and spent the
18 night --

19 THE COURT: What are you saying over there,
20 Mr. Dubose? Talk up.

21 THE WITNESS: I said: He came and spent the
22 night with me and my other friend in Summerville.

23 BY MR. SCOTT:

24 Q Okay. But where you live -- you lived with
25 him for -- at some point, right?

1 A Yes. When I went to Charleston.

2 Q Okay. And the idea when you came up here to
3 Columbia, was he telling you y'all were going to move
4 back in together up here somewhere?

5 A Yeah.

6 Q And at that time, you were living out of your
7 car; is that right?

8 A Yeah.

9 Q Okay. And what -- she was asking about the
10 hospital. What were you guys doing over at the
11 hospital before all of this went down?

12 A Since we ain't had no -- since the money ran
13 out for staying at the hotel, we went to the hospital
14 instead of hotel.

15 Q Hold on. I heard the money ran out for the
16 hotel. But she can't hear you. She's behind that
17 glass. You've got to say it louder.

18 A I said when the money ran out to get -- to
19 pay for the room again, we all went to chill out at
20 the -- at the -- over at the hospital.

21 Q Okay. You're talking about Lexington Medical
22 Center?

23 A Yeah.

24 Q And was that close to that OYO --

25 A Yes.

1 **Q** -- Hotel?

2 And who was the one who rented the room at
3 the OYO?

4 **A** They did.

5 **Q** "They" who?

6 **A** Him and Michelle.

7 **Q** Okay. Did you know Michelle Jones prior to
8 this?

9 **A** Yes.

10 **Q** Okay. And you already said you used to live
11 with Dixon. You said when y'all came up here, the
12 original plan was you and Dixon were going to find a
13 room together?

14 **A** Yes.

15 **Q** And then at the last minute, he changed the
16 plans and said Michelle was coming?

17 **A** Yes.

18 **Q** And why -- why did that -- why did you -- you
19 weren't for that, were you?

20 **A** No.

21 **Q** And why was that?

22 **A** Because I didn't like it. I already didn't
23 like her because she already done accused me of a lot
24 of stuff.

25 **Q** Okay. You didn't like her?

1 **A** No.

2 **Q** Okay. And again, did y'all ever go around --
3 the purpose of coming up here was to look for a house.
4 Did y'all ever go around and look for an apartment?

5 **A** No.

6 **Q** Was the plan y'all were going to stay at the
7 homeless shelter here?

8 **A** No.

9 **Q** Okay. Were you wanting to go look at some
10 houses to rent or apartments to rent?

11 **A** Yeah.

12 **Q** Okay. But it sounds like y'all were just
13 kind of riding around aimlessly around Columbia. Is
14 that fair to say?

15 **A** Yeah.

16 **Q** Okay. And you say at some point, you said
17 you wanted to go home. I just want you to explain --

18 **A** When he was -- when we went over to the
19 plastic Center, I was on my phone calling to make an
20 appointment to -- make an appointment to go see my
21 doctor back in Goose Creek. And then all of a sudden,
22 after I got off the phone with -- with my doctor, he
23 had told her to keep an eye on me. So he -- she told
24 him what I was planning on doing. And I told her, I
25 said, "I'm my own man. I'm a leave. I'm going to

1 leave y'all."

2 Q All right.

3 He told Michelle Jones to keep an eye on
4 you --

5 A Yeah.

6 Q -- is what you said? And she overheard you
7 talking to your doctor?

8 A Yeah.

9 Q And then what? They didn't want you leaving?

10 A No.

11 Q Well, what did Martin Dixon say when you saw
12 him -- said you needed to go to your doctor in Goose
13 Creek?

14 A I told him -- like I -- like I told him when
15 we got an argument, I told him, I said -- I said,
16 "I'm -- like, I'm going back down to Charleston.
17 Because I'm making an appointment to go see my doctor."

18 And his word was, "You can transfer doctor
19 and come up here."

20 And I'm like, "It's not like that."

21 Q Okay. And when -- when is the point when you
22 call your brother Dexter?

23 A When -- when him and Michelle was inside
24 Lexington Hospital.

25 Q Okay. You had to sneak away and try to call

1 him?

2 A I went back outside. I mean, I was already
3 sitting inside my car. So I just called my brother,
4 you know, and tell him what my plan is.

5 Q What was your plan?

6 A To head on back to Charleston.

7 Q You were just going to ditch them and leave
8 them here?

9 A Yeah. I was just going to tell them they
10 had -- he had to get their belongings; I had to go.

11 Q Okay. And at some point, you put Martin on
12 the phone with your brother Dexter?

13 A Yeah.

14 Q How did that go over?

15 A After -- my brother told me when he come
16 back, told us to call -- "Call me up and I'll talk to
17 him."

18 Q Okay. And did -- what I'm saying is, how did
19 that conversation go? You put Martin on the phone with
20 your brother Dexter?

21 A Yeah.

22 Q Was it a good conversation? Did they seem to
23 be getting along? What you remember about that?

24 A Oh, no. He stepped away from the car.

25 Q Okay. So you didn't hear their conversation?

1 **A** No.

2 **Q** Did -- did Mr. Dixon's attitude change when
3 he got off the phone with their brother?

4 **A** Yes.

5 **Q** How so?

6 **A** He was like he -- he got -- he got in the car
7 and said, "You done made this area hot by leaking that
8 phone call." I told him that's my brother. I'm
9 like --

10 **Q** "You're going to make this area hot"? Okay.
11 What does that mean? I don't understand. What were
12 y'all doing that he was worried about getting caught
13 doing?

14 **A** I don't -- I don't know what -- I don't know
15 what his plan was. I just called my brother and told
16 him I was going to tell them to get their belongings so
17 I could go back.

18 **Q** Okay. After the conversation with your
19 brother, who drove your car? You or Martin?

20 **A** Him.

21 **Q** Him?

22 **A** (No audible response.)

23 **Q** And is this when you go to the abandoned
24 building and the tire iron upside the head happens?

25 **A** Yeah.

1 Q Okay. And you said he's driving away after
2 he gets you in the trunk. And he was talking about
3 driving into the lake. That's the first thing you
4 remember hearing?

5 A Yeah.

6 Q Did you think he'd really do it or how did
7 you feel about that?

8 A No.

9 Q Were you scared?

10 A I was already scared when I was in the trunk
11 of the car but...

12 Q Okay. You weren't able to escape? Is that
13 your testimony?

14 A Yeah.

15 Q And at what point -- what else did he say
16 about driving into the lake that you remember?

17 A While he was driving my car, he just said
18 that. Then he changed his mind about driving the car
19 into the lake and taking -- driving it somewhere and
20 burning it while I was in the trunk of the car.

21 Q Do you remember what he said specifically
22 about burning the car up while you were in it?

23 A He said, "Since you love your car this much,
24 I'm going to burn you up in it."

25 Q "Since you love your car so much, I'm going

1 to burn you up in it"?

2 A Yeah.

3 Q And then you remember the car coming to a
4 stop and them discussing burning the car anymore? You
5 remember anything about that?

6 A No.

7 Q Okay. Did you ever -- okay. And you
8 couldn't see them when they were lighting stuff on
9 fire?

10 A No.

11 Q But you could just hear them talking about?

12 A Yeah.

13 Q Okay. Besides -- okay. So he -- besides
14 when he drives it to the cemetery and he's talking
15 about driving to the lake and burning the car up, had
16 he been driving the car anymore over the four or five
17 days y'all were in Columbia?

18 A No. Just that one time.

19 Q Okay. So usually, he was having you drive
20 him around to the different places?

21 A When we got to the hotel and parked the car.
22 And that -- that next day, I took some people that he
23 know to the store.

24 Q But you were driving for the most part over
25 those four or five days you were here?

1 **A** Yeah.

2 **Q** Okay. All right.

3 And now what was -- Michelle Jones, what was
4 her involvement? Was she helping him get you in the
5 trunk or what was she doing while he was telling you to
6 get in the trunk after he hit you?

7 **A** She helped him.

8 **Q** Huh?

9 **A** She helped him.

10 **Q** How so? Did she ever hit you or kick you or
11 anything?

12 **A** Yeah.

13 **Q** Explain that.

14 **A** When he told me to get in the trunk, I was
15 like, "Man, I'm not getting" -- I said to myself, "I'm
16 not getting in that trunk."

17 He was like, "Get in the trunk."

18 I said no.

19 And so she turned around and said, "Get in
20 the trunk."

21 "I'm not getting in the trunk."

22 So then after I get -- while I was getting in
23 the trunk, she kicked me.

24 **Q** She was kicking you?

25 **A** Yeah.

1 Q Was she saying anything else?

2 A No.

3 Q Why did you get in the trunk?

4 A He told me to.

5 Q Okay. What did you think would happen if you
6 didn't get in the trunk?

7 A If I didn't get in the trunk?

8 Q What did you think would happen if you did
9 not listen to his orders to get in the trunk?

10 A I mean, if I didn't take his orders of
11 getting in the trunk, he probably would've tried to
12 cause something and either stab me.

13 Q I guess that's my question. Were you afraid
14 what would happen if you didn't obey his orders?

15 A Yes.

16 Q You got in the trunk after he hit you in the
17 head with the tire iron?

18 A Yes.

19 Q Okay. Was it easy for you to fit into the
20 back of that trunk?

21 A No.

22 Q Okay. All right.

23 What -- what did you think while you were in
24 there? Did you think you were going to die? Did you
25 think everything was going to be okay? What did you

1 think while you were in that trunk?

2 A When I was in the trunk, I was like, "This is
3 it. Like I'm going to die anyway."

4 Q You said you were going to die?

5 A Yeah.

6 Q And then, the guy who hit you with the tire,
7 Martin Dixon, you see him here today?

8 A Yes, sir.

9 Q Where is he? Point to him?

10 A Right there. (Indicating.)

11 Q Talking about the man right here wearing
12 the -- sitting at the table?

13 A Yes, sir.

14 Q All right. Thank you, Antrone.

15 MS. ZMROCZEK: Just very briefly, Your Honor.

16 THE COURT: Yes, ma'am.

17 **RECROSS EXAMINATION**

18 **BY MS. ZMROCZEK:**

19 Q All right.

20 You had control of your car, right?

21 A Yes.

22 Q You had the keys, right?

23 A Yes.

24 Q You had the phone?

25 A Yes.

1 **Q** You called your brother. In fact, you left
2 the hospital. You left the hospital and called your
3 brother at the gas station, right?

4 **A** No. I called him while I was sitting --
5 sitting inside my car in the parking lot at the
6 hospital.

7 **Q** Okay. And you talk to your brother by -- you
8 called to him twice that night you testified yesterday,
9 right?

10 **A** Yes.

11 **Q** Okay. And you were in the car by yourself?

12 **A** Yes.

13 **MS. ZMROCZEK:** No further questions,

14 Your Honor.

15 **THE COURT:** You may step down, Mr. Dubose.

16 You may call your next witness.

17 **MR. SCOTT:** The state calls Dexter Dubose.

18 **THE BAILIFF:** Raise your right hand. Face
19 the clerk. Put you left hand on the Bible.

20 **THE CLERK:** State your full name, please.

21 **THE WITNESS:** Dexter James Dubose.

22 **THE CLERK:** You solemnly swear the testimony
23 you're about to give in this case will be the
24 truth, the whole truth, and nothing but the truth
25 so help you God?

1 **THE WITNESS:** Yes, ma'am.

2 **THE CLERK:** Have a seat right there.

3 **THE BAILIFF:** Watch your step.

4 **DEXTER DUBOSE**

5 having first been duly sworn, testifies as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. SCOTT:**

8 **Q** Good morning, Dexter.

9 **A** Good morning.

10 **Q** Where are you from?

11 **A** Charleston, South Carolina.

12 **Q** But you're living here in the Midlands now?

13 **A** Yes. I live in Columbia now.

14 **Q** What do you do?

15 **A** I am a union brick mason foreman.

16 **Q** Okay. And I understand you travel all over
17 the country really doing brick masonry work?

18 **A** Yes, sir.

19 **Q** How long have you been doing that?

20 **A** Brick mason or the union.

21 **Q** Well, brick masonry really.

22 **A** I've been a brick mason for 30 years, 32
23 years.

24 **Q** And before that, you were in the Marines; is
25 that right?

1 **A** I started brick mason, graduated from high
2 school, went to the Marine Corps, and came back to
3 doing brick mason.

4 **Q** Okay. You served in the Marines for five
5 years; is that right?

6 **A** Yes, sir.

7 **Q** Who is that, the black male on the front row
8 right here?

9 **A** Who? Antrone?

10 **Q** That's Antrone?

11 **A** That's -- that's my brother.

12 **Q** Okay.

13 **A** Younger brother.

14 **Q** Younger brother. And it's four of you boys
15 in your family?

16 **A** Yes, sir, on my mother side.

17 **Q** And how do you fall in line?

18 **A** I'm under the oldest. So I'm the second
19 oldest.

20 **Q** Second oldest. And Antrone comes after you?

21 **A** Yeah, he comes after me.

22 **Q** And y'all got one other younger brother?

23 **A** Yeah, the baby.

24 **Q** Okay. Tell me about growing up with Antrone.

25 Did he need a lot of assistance?

1 **MS. ZMROCZEK:** Your Honor, I would object to
2 relevance. The question was: Tell me about
3 growing up with Antrone. And I would object to
4 relevance to this trial.

5 **THE COURT:** All right.
6 Response?

7 **MR. SCOTT:** Response was just explaining
8 diminished capacity to some degree.

9 **THE COURT:** Can't hear you.

10 **MR. SCOTT:** Explaining just how Antrone
11 presents himself and really reliant on other
12 people and easily persuaded to do things.

13 **THE COURT:** Any response?

14 **MS. ZMROCZEK:** Your Honor, again, I just
15 don't see the relevance.

16 **THE COURT:** All right.
17 Overrule the objection.

18 **BY MR. SCOTT:**

19 **Q** Growing up with Antrone, did he require
20 assistance from you guys, your -- your family?

21 **A** Yes.

22 **Q** He testified earlier he had special education
23 going through school?

24 **A** Correct.

25 **Q** Okay. Have there been times you had to look

1 out for him?

2 A I was -- I was the main one fighting for him
3 all through high school.

4 Q Did he get picked on?

5 A Yes.

6 Q Okay. Ever have times when he was taken
7 advantage of to your knowledge?

8 A Yes.

9 Q Did that happen often?

10 A Yes. That's why he made me his power of
11 attorney when he got -- started getting checks. They
12 didn't want to put it in his name at first.

13 Q Okay. So you became his power of attorney?

14 A Correct.

15 Q And what is his disability? Is it --

16 A He had a head trauma when we was like -- I
17 got shot and he got hit in the back. It was probably
18 about eight years old.

19 Q Eight?

20 A So his mind is still eight years old. He
21 talks to my kids like they're the same age.

22 Q And how old are your kids?

23 A Now they're 11 and 12 now.

24 Q He is 44, but he communicates with your 11
25 and 12-year-old as of --

1 **A** Yeah. They played together.

2 **Q** And were you concerned when he started
3 getting his check that other people would divert it to
4 their own use?

5 **A** Yes.

6 **Q** Have you had to step in before to help him
7 out when people kind of used him a little bit?

8 **A** Yes. A couple of times. Because one time,
9 the gentleman that he was staying with in Summerville
10 was taking \$600 and he could only stay there for two
11 weeks.

12 **Q** \$600 to stay in an apartment?

13 **A** A trailer.

14 **Q** A trailer?

15 **A** Mobile home for two weeks. I stepped in.
16 And I was doing a job at First International
17 African-American Museum, Downtown Charleston. So I got
18 a place in the making and got his check turned back on.
19 And he came and stay with me and he didn't have to pay
20 anything.

21 **Q** Okay. And you -- are your parents still
22 living?

23 **A** No. Our mother got shot right in front of us
24 when we was -- well, I was 10 years old. So he was
25 about nine. Our mother got shot and killed.

1 Q This was in Charleston?

2 A Yes.

3 Q But you still have -- you still have family
4 living in North Charleston or Summerville area?

5 A Well, it was mostly in the country, St.
6 Stephens, Moncks Corner. We're in the country part,
7 not the city.

8 Q Have you at times tried to plead with Antrone
9 to go move back in with your family in Moncks Corner?

10 A Yeah. Go home. That's what I tell him all
11 the time. In Charleston, people pray on him all the
12 time. If he got 50 bucks in his pocket and you ask for
13 50 bucks, he's going to give you 50 bucks.

14 Q Okay.

15 A And then he's going to call me wanting money.

16 Q So people separate him from his money and
17 then he comes --

18 A Then he comes to me. And I have no choice
19 but to look out for my brother.

20 Q Okay. And you protective of him?

21 A Yes, sir.

22 Q And we already talked about your travel all
23 over, not only just the southeast, but you travel out
24 west, too, at times?

25 A Yeah. I done been as far west as Portland,

1 Oregon; Tacoma, Washington; Seattle, Washington;
2 California; Vegas. I've been to almost every state
3 almost.

4 Q Pretty sought after for your masonry?

5 A Yes. When I get called, I've got to go.

6 Q August 7, 2019, that's why we are here,
7 something happened to Antrone on that particular day.
8 Do you recall receiving a phone call from him the day
9 before, that would've been August 6, 2019?

10 A I think I was in -- I think I was in Florida
11 then. If I'm not mistaken, I think I was in Florida.

12 Q You had a project down there?

13 A In Florida, yeah.

14 Q Okay. And -- but you remember Antrone giving
15 you a call?

16 A Yeah. First, he called me when he was
17 getting ready to get a car. And I was like, "You going
18 to get a car? You got a license?"

19 MS. ZMROCZEK: Objection, Your Honor;
20 hearsay.

21 THE COURT: Objection sustained.

22 BY MR. SCOTT:

23 Q Did you -- did you -- did you know that he
24 had a car?

25 A He called me when he was about to get the

1 car.

2 MS. ZMROCZEK: Again, objection, Your Honor;
3 hearsay.

4 BY MR. SCOTT:

5 Q You can't talk about what he said?

6 A Okay.

7 Q What I want ask you is, at some point, did
8 you become aware that he had a black Lexus?

9 A Yes.

10 Q And you know about how long he had it at the
11 time this August 7 date comes?

12 A I'd give it probably about a couple of
13 months.

14 Q So he hadn't had it long?

15 A No.

16 Q Okay. But -- but you received a phone call
17 from him?

18 A Correct.

19 Q Do you remember that?

20 A Correct.

21 Q And without saying what he said, was -- were
22 you concerned by the nature of the phone call?

23 A Yes.

24 Q Okay. And -- but you were in Florida, so
25 there wasn't a lot you could help him with?

1 **A** Yeah. I was in Florida. I called my baby
2 brother right after I got off the phone with him.

3 **Q** But the phone call from Antrone concerned
4 you. Did -- did you ask him to put anybody else on the
5 phone?

6 **A** Yes, correct.

7 **Q** And who did he put on the phone?

8 **A** I'm not familiar with the gentleman's name,
9 but the gentleman got on the phone and asked about a
10 ride --

11 **MS. ZMROCZEK:** Your Honor --

12 **THE WITNESS:** -- from Charleston to Columbia.

13 **BY MR. SCOTT:**

14 **Q** Let me ask you this --

15 **MS. ZMROCZEK:** Okay.

16 **BY MR. SCOTT:**

17 **Q** -- do you recognize this guy right here?

18 **A** Yes.

19 **Q** Who is that?

20 **A** That's the gentleman who was staying in the
21 hotel with my brother and Summerville.

22 **Q** Okay. So did you know him to live with your
23 brother in Summerville at one point?

24 **A** At one point, in Summerville and a trailer.

25 **Q** Had you spoken with him before?

1 **A** Yeah. I seen him before; spoke with him.

2 **Q** Okay. When he was living with your brother?

3 **A** Yes, they were dealing. Yes, sir.

4 **Q** What do you call him? Do you remember his
5 name?

6 **A** Not close hand like that, no, sir.

7 **Q** When you got on the phone with the individual
8 who was with your brother, did you recognize his voice
9 to be this individual?

10 **A** It been a while since I heard his voice. But
11 he was basically saying, you know, how my brother owed
12 him money.

13 **Q** Okay.

14 **A** So I was like, How is that? My brother get a
15 check every -- every month.

16 **Q** Okay. What did you -- what did you, if
17 anything, did you tell this person on the phone?

18 **A** I told him, I said -- when he said about the
19 brother owing him money, and I said, "Give -- you need
20 to let my brother go."

21 He was like, "We'll see."

22 I was like, "You don't want me to come see
23 you. You don't want me to hunt you down. You
24 better -- you know what I'm saying? It's little
25 different for me or somebody else hunting you down."

1 Q Did you stress to him that he needed to let
2 your brother go back down to Charleston?

3 A Correct.

4 Q Okay. What was the tone of his voice? Did
5 he seem cooperative or was he --

6 A More like laughing; like brushing it off.

7 Q Okay. Was that frustrating to you?

8 A Correct. Yes.

9 Q Okay. And did he ever indicate that he was
10 going to let him go or was he still just asking about
11 the money that your brother owed him?

12 A He mention something about tires, that my
13 brother owed him some tires or something like that.
14 And then he hung up on me.

15 Q He hung up?

16 A I called back. No answer. That's when I
17 called my baby brother.

18 Q Okay. So after he hung up on you, you're
19 trying to call back and there was no answer?

20 A No answer.

21 Q And that's the extent of it?

22 A Yep. I called my baby brother. He's in
23 Charleston.

24 Q Okay. This guy here, is that the one you
25 were talking about that was charging Antrone the 600

1 bucks to live in the trailer for -- what was it? Two
2 weeks?

3 A Two weeks. He didn't even stay the whole
4 month.

5 Q Was it him?

6 A He does look familiar.

7 Q Okay. But you remember them living together?

8 A Correct.

9 Q All right.

10 Anything else you recall about that phone
11 call?

12 A Not too much. I mean, it was short and
13 brief. You know what I'm saying? When he hung up,
14 nobody answered back.

15 Q Okay. And it was later you found out the
16 Antrone was in the hospital?

17 A In the hospital.

18 Q Answer any questions Aimee has for you.

19 THE COURT: Ms. Zmroczek.

20 MS. ZMROCZEK: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q Mr. Dubose, right?

24 A Yes, ma'am.

25 Q You care about your brother, right?

1 A Yes, ma'am.

2 Q Called the police as soon as you got the
3 phone call you were so worried about him, right?

4 A I called my brother, baby brother.

5 Q You called your other brother?

6 A Yes.

7 Q But not the police. Where was your other
8 brother?

9 A In Charleston.

10 Q He was in Charleston?

11 A Yes.

12 Q So he had family in Charleston?

13 A Yes.

14 Q And he could function on his own, had his own
15 car?

16 A Who: My baby brother or Antrone?

17 Q Antrone.

18 A Yes.

19 Q Had his own car? Made his own decisions --

20 A Correct.

21 Q -- right? He was his own man, right?

22 A Correct.

23 Q All right.

24 I want to talk to you about this testimony
25 that you've given?

1 **A** Okay.

2 **Q** The first time anybody ever asked you about
3 this case, February 17, 2022, correct?

4 **A** Correct.

5 **Q** You met with Mr. Scott?

6 **A** Okay. Yes.

7 **Q** You met with Mr. Whitmire?

8 **A** Correct.

9 **Q** And you met with Mr. Ace, who I don't see in
10 here, who is an investigator with the -- the Richland
11 County Solicitor's Office, correct?

12 **A** Okay. Yes.

13 **Q** The first time you ever made a statement,
14 February 17, 2022, right? You -- what year was that
15 that you said that -- that he was renting a trailer in
16 Summerville for two weeks for \$600?

17 **A** Probably about 2017.

18 **Q** Okay.

19 **A** 2017, 2018, somewhere in that ballpark.

20 **Q** And how many times did you talk to your
21 brother that night?

22 **A** I talked to him before he left Charleston to
23 tell him nobody takes an Uber from Charleston to
24 Columbia. I said, "I told you don't do it."

25 **Q** Who was taking an Uber?

1 A Young man right there was taking an Uber from
2 Charleston to Columbia.

3 Q All right.

4 A And I told my brother don't do that even
5 though it was his friend.

6 Q Okay. So it's your testimony that on
7 August 6, they took in Uber?

8 A Well, he was supposed to been the Uber.

9 Q So he was a Uber driver?

10 A But not registered with Uber.

11 Q Okay. So when you talked to your brother, he
12 was in Charleston?

13 A Well, first time I talked to him, he was in
14 Charleston.

15 Q Okay. And then when was the next time you
16 talked to him?

17 A He was in Columbia.

18 Q And how many hours later, minutes?

19 A Not quite sure on that. But he was asking
20 me, like, was I still in Columbia? Was I home? That
21 was basically why he kept calling me, saying, "Are you
22 home?"

23 Q So you live --

24 A I'm in Columbia.

25 Q So you live in Columbia?

1 **A** Correct.

2 **Q** So any reason why your brother couldn't come
3 live with you?

4 **A** Yes. I've got eight kids.

5 **Q** You've got eight kids?

6 **A** Yes.

7 **Q** But if your brother came to you and said,
8 "I'm homeless. I need a place to stay," what would you
9 do?

10 **A** I would have to get him a place. That's no
11 problem.

12 **Q** You what?

13 **A** I can get him a place. There's no problem.
14 We've got places in the country.

15 **Q** Get him a place, no problem --

16 **A** Yes.

17 **Q** -- right?

18 **A** Correct.

19 **Q** What time was that last phone call you had
20 with him?

21 **A** The time of day?

22 **Q** Yes.

23 **A** It was evening, nighttime, evening time.

24 **Q** So he only called you and told you he was in
25 Columbia that last time?

1 **A** Yes.

2 **MS. ZMROCZEK:** Okay. No further questions,
3 Your Honor.

4 **REDIRECT EXAMINATION**

5 **BY MR. SCOTT:**

6 **Q** When he called you from -- when he was
7 Charleston, he was saying, "I'm having to go to
8 Columbia to take this guy to Columbia," is what you
9 testified to?

10 **A** Correct.

11 **Q** And you said that's a bad idea?

12 **A** Correct.

13 **Q** He said, "But the guy's my friend"?

14 **A** Correct.

15 **Q** And then the next time you hear from him,
16 he's saying, "They won't let me come home"?

17 **A** Yeah. "They won't let me come home for" --
18 he owed money for a tire.

19 **Q** And you're saying, "I told you so"?

20 **A** Yep.

21 **Q** Because that's what you warned him about and
22 it happened. Because you've seen him get used and
23 abused before?

24 **A** Yes.

25 **Q** Is he doing all right now? He's living in

1 Moncks Corner. Is that what I understand?

2 A Yes, he finally just took my advice and went
3 home back to our grandmother's house.

4 Q Okay. Have there been other times when he
5 was living in his car and other places that -- or
6 paying rent?

7 A Two weeks. You make enough money to pay for
8 a trailer by yourself. So you don't have to sit there
9 and rent from nobody else. You can go stay at an
10 Extended Stay with the money you have by yourself.

11 Q And on the particular day when he called in,
12 you just happened to be in Florida working on a project
13 whenever he's saying, "I need help here in Columbia"?

14 A Yes.

15 Q Otherwise, you would've come running?

16 A Yes. Because I don't call polices.

17 Q You don't call the police?

18 A Yeah. Marine Corps. I specialize
19 hand-to-hand combat. I don't call police. Never did.
20 Never had to.

21 Q All right.

22 But you called your younger brother to go
23 check on him?

24 A Yes, the other one I trained. He ain't
25 calling the police.

1 **Q** Where -- where in Charleston did y'all grow
2 up?

3 **A** Well, the city -- little town we grew up is
4 called MacBeth.

5 **MS. ZMROCZEK:** Your Honor, I would object.
6 This is outside the scope of redirect.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** Well, the area I grew up is
9 called MacBeth. It is all family-based. It was
10 like a bad area. You know what I'm saying? So
11 when you graduated from high school, you got to
12 get out of there. Because either you sell drugs,
13 you're going to be on drugs, or you're going to
14 get shot and killed.

15 So I moved from there to an area called
16 Lumakin [phonetic]. My other brother, he moved to
17 a place called Llewellyn. Which those are two bad
18 areas in Charleston, but it's better than where we
19 grew up at so...

20 **BY MR. SCOTT:**

21 **Q** So growing up, you were like you need to take
22 care of things yourself, you don't call the police?

23 **A** No.

24 **Q** All right.

25 I think that's it, Dexter. Appreciate it.

1 **A** No problem.

2 **MS. ZMROCZEK:** Just very briefly, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MS. ZMROCZEK:**

5 **Q** When you talked to your brother in
6 Charleston, did he tell you that -- that Ms. Jones had
7 paid to have his car fixed?

8 **A** No.

9 **Q** He didn't tell you that?

10 **A** No.

11 **Q** When your brother got out of the hospital,
12 did you find him a place to live here in Columbia where
13 you live?

14 **A** I wasn't here in Columbia.

15 **Q** You weren't here in Columbia?

16 **A** No. He didn't let me know he was in the
17 hospital. I found out he was in the hospital with my
18 baby brother.

19 **Q** You called the -- when you talked to them in
20 February 17, 2022, for the first time, did you tell
21 them what phone number he called from?

22 **A** No. I don't think I could remember a phone
23 number precisely from three years ago as much as he
24 changes his phone number.

25 **Q** He changed his phone number a lot, right?

1 **A** Yes. But I answer every phone call. So I
2 ain't dodging bill collectors or women, so I can answer
3 my phone.

4 **Q** And police never called you back in 2019 to
5 ask you what time these phone calls were?

6 **A** No. The police ain't called me.

7 **Q** They never called you actually, did they?

8 **A** The police?

9 **Q** Uh-huh.

10 **A** No, not that I recall.

11 **Q** Thank you. No further questions.

12 **A** All right.

13 **THE COURT:** Thank you, sir.

14 Mr. Dubose, you may step down.

15 **THE WITNESS:** Y'all have a blessed day.

16 **THE COURT:** Next witness.

17 **MR. SCOTT:** The state calls George Potash.

18 **THE COURT:** Just stand and get a little
19 stretch while we are waiting for the next person
20 to join us.

21 **THE CLERK:** Sir, could you stand right over
22 here?

23 **THE COURT:** Don't swear him in until we get
24 finished stretching.

25 **THE CLERK:** Okay.

1 (Pause in proceeding.)

2 **THE COURT:** Okay.

3 **THE BAILIFF:** Raise your right hand.

4 **THE CLERK:** State your full name, please.

5 **THE WITNESS:** George Daniel Potash.

6 **THE CLERK:** Could you spell your last name,
7 please?

8 **THE WITNESS:** P-o-t-a-s-h.

9 **THE CLERK:** Do you solemnly swear the
10 testimony you are about to give in this case will
11 be the truth, the whole truth, and nothing but the
12 truth so help you God?

13 **THE WITNESS:** I do.

14 **THE CLERK:** Thank you. Have a seat right up
15 there.

16 **THE BAILIFF:** Watch your step. Speak into
17 the microphone.

18 **GEORGE POTASH**

19 having first been duly sworn, testifies as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. SCOTT:**

22 **Q** Investigator Potash, you're with the City of
23 Columbia Police Department?

24 **A** Yes, I am.

25 **Q** August 7, 2019, did you respond to a crime

1 scene at 300 Elmwood Avenue?

2 A Yes, I did.

3 Q Okay. That's been testified as the Randolph
4 Cemetery. Does that sound familiar?

5 A Yes.

6 Q You know about what time you got there?

7 A My arrival time -- my notification time was
8 9:07. I got there about 9:28 in the morning.

9 Q And at that time, was the victim still on the
10 scene?

11 A No.

12 Q He had already been taken away?

13 A Yes.

14 Q What is your initial -- what are your
15 observations when you first get there?

16 A Basically when I arrived on the scene, I saw
17 a black Lexus parked in a back corner of a cemetery.
18 The trunk had been removed and was laying off to the
19 side.

20 Q Showing you State's 3 and 4. Is that what
21 you are talking about?

22 A Yes.

23 Q Here's the Lexus and here's the trunk after
24 the lid had been removed?

25 A Yes.

1 Q Okay.

2 A As I stated, the -- the victim was not there.
3 The crime scene tape was up. So they had already
4 secured the perimeter. And it was -- the temperature
5 was fairly hot that day. And it's clear skies, bright
6 sun.

7 Q Okay. Do you remember if it was a hot
8 morning? Do you remember that?

9 A Yes. It was fairly hot, yes. I had it
10 notated in my report.

11 Q Okay. All right.

12 Continue.

13 A From my -- from my initial observations, that
14 was pretty much it. There was no one in or around the
15 car at the time. As I stated, you know, the victim was
16 gone and the car was standing at that location.

17 At that point, myself and another crime scene
18 investigator, Watson, began searching the area and
19 taking photographs.

20 Q Okay. Do you have any -- there's been some
21 talk on cross-examination. Do you remember a bunch of
22 clothes or anything laying around on the ground outside
23 the car or debris of any -- did you --

24 A Well, the debris -- the debris seemed to be
25 mostly the trunk and the -- as I remember it, the trunk

1 and then there was some like what appeared to be part
2 of a gas cap and some burned cloth.

3 Q Okay. All right.

4 And where did you note -- notice the gas cap?

5 A It was laying on the ground near the vehicle.

6 Q This is State's No. 5. Is that what you're
7 talking about?

8 A Yes.

9 Q And as you -- you walk around, what else are
10 you -- what else are you seeing as far as the car is
11 concerned?

12 A Let me see. Well, the key fob was located on
13 top of the car. One of the patrol officers had placed
14 the key fob to the car on top of the vehicle.

15 Q Okay.

16 A And let's see. We did notice some reddish
17 stains on the rear bumper.

18 Q Okay.

19 A And, of course, there was a partially burned
20 or melted gray cloth that was located in the mouth of
21 the gas tank on the car.

22 Q Okay. Is this what you're talking about,
23 State's No. 8?

24 A Yes.

25 MR. SCOTT: Okay. Judge, I'm going to --

1 these have already been admitted, of course. But
2 I'm going to publish and go ahead and hand over 7,
3 8, 10, 11, and 16 to the jury.

4 **BY MR. SCOTT:**

5 **Q** Okay. So your main job in this case was to
6 document the crime scene as you saw as it was presented
7 to you?

8 **A** Yes. Yes.

9 **Q** Okay. Did you collect any other items that
10 you recall?

11 **A** What we did was in regard to the car, since
12 we wanted to take it back to 715 Bluff Road for
13 processing. Because the exterior surface of the car we
14 were concerned about lost possible evidence on the
15 exterior, so we did process the exterior of the car for
16 prints. And then we -- because the trunk lid had been
17 removed, we taped over the trunk area to prevent
18 anything from being blown out during transport.

19 **Q** Okay. Did any of the evidence -- did you
20 collect that gas cap?

21 **A** Yes, I did. In fact, let me see, at 1304
22 hours. So at 1304 hours, melted black plastic believed
23 to be a gas cap from vehicle found near the ground near
24 driver-side rear of the vehicle.

25 **Q** State's 40, is that -- you recognize that?

1 **A** This is an evidence envelope with my writing.
2 It's still sealed. And it's labeled No. 2, melted
3 black plastic, believed to be vehicle gas cap from
4 ground near driver-rear corner of vehicle, 1304 hours.

5 **Q** Okay. You can open that up.

6 **A** Yes. That's what I collected.

7 **Q** Okay. And that's how it appeared --

8 **A** Yes.

9 **Q** -- that day when you --

10 **A** Yes. In fact, the writing is the same as in
11 the photos until -- until one click.

12 **Q** All right.

13 But since then, on this particular occasion,
14 you were there to document the crime scene as it was by
15 the time you got there?

16 **A** Yes.

17 **Q** And then they hauled the car off while you
18 were there?

19 **A** Yes.

20 **Q** Okay. Thank you very much.

21 Answer any questions Ms. Zmroczek has for
22 you.

23 **MR. SCOTT:** Oh, did I admit that? Your
24 Honor, the state does offer -- he identified it --
25 State's No. 40 for admission into evidence.

1 **MS. ZMROCZEK:** Forty? Is that 40?

2 No objection, Your Honor.

3 **THE COURT:** It's admitted.

4 (State's Exhibit No. 40 is admitted into the
5 record.)

6 **CROSS-EXAMINATION**

7 **BY MS. ZMROCZEK:**

8 **Q** Good morning.

9 **A** Good morning.

10 **Q** You are a crime scene investigator, right?

11 **A** I am a patrolman assigned to the crime scene
12 investigations unit.

13 **Q** And what does that mean?

14 **A** That means I have received training in the
15 identification, documentation, and collection of
16 evidence as directed by the investigator at the scene.

17 **Q** And what kind of training did you receive
18 to -- to do that?

19 **A** I have received training from both private
20 vendors, training through the South Carolina IAI, which
21 is International Association for Identification, which
22 is a professional organization for crime scene, as well
23 as reading and training through the department itself.

24 **Q** And -- and you and I have been in this
25 position quite a few times. How long have you been

1 doing this?

2 **A** Unfortunately, about 10 years.

3 **Q** About 10 years. And what's the importance --
4 tell the jury what's the importance of a crime scene
5 investigator. Why is your job important?

6 **A** Basically it's to make sure that -- or to try
7 and collect as much evidence as possible in a way that
8 is usable at a later time for laboratory testing, which
9 we do not do. Anything that's laboratory tested would
10 be submitted to, like, the SLED lab of Richland County.

11 **Q** SLED. South Carolina --

12 **A** State Law Enforcement Division.

13 **Q** State Law Enforcement Division. Good lord.
14 So when you collect evidence and you need it tested,
15 Richland County has their own lab?

16 **A** Yes.

17 **Q** But Columbia doesn't have their own lab?

18 **A** Correct.

19 **Q** But you -- but there's no problem with you
20 sending any evidence you want, not you, whoever's the
21 lead investigator, right?

22 **A** Well, there are -- there are limitations on
23 evidence. They do -- SLED does limit the quantity of
24 evidence that we can submit per case as well as they
25 actually have limitations on the testing that they can

1 do. There's been times when we've had to submit
2 evidence to the FBI lab.

3 Q So -- so in addition to having SLED as a
4 resource, you can also submit to the FBI?

5 A Yes.

6 Q They do fingerprints?

7 A Yes.

8 Q Both SLED and the FBI?

9 A Yes. We also -- we also do fingerprints as
10 well.

11 Q Oh. You do fingerprints?

12 A We have -- we have an AFIS operator and we
13 have the ability to run latent prints through AFIS.

14 Q So there is no even need -- if it's
15 fingerprint evidence, there's no need to even have to
16 contact SLED, you could do that in-house?

17 A Yes.

18 Q Okay. And you -- so -- so part of your
19 duties as a crime scene investigator, the first thing
20 you want to do when you get to a scene is document,
21 right?

22 A Uh-huh. Yes.

23 Q Tell the jury what that means.

24 A Basically what we're doing is we're
25 documenting the -- the crime scene through written

1 description, through our reports, as well as through
2 photographs.

3 Q And in this case, would it surprise you to
4 know that -- well, I think you have it written down in
5 your report there on page 1. You took 170 photographs,
6 correct?

7 A Yes.

8 Q 170?

9 A Yes.

10 Q And you photograph things that -- because you
11 don't know whether they're going to be important or
12 not, right?

13 A Yes. We photograph pretty much everything
14 regardless of what it is.

15 Q And so I'm going to show you State's 17.
16 That's one of the photographs that you or the other --

17 A Yes.

18 Q -- crime scene investigator took?

19 A Yes.

20 Q Okay. And there were two of y'all that day?

21 A Yes.

22 Q Okay. So right off to this other side over
23 here right in the bushes, you recall taking photographs
24 of shoes and other items?

25 A Yes. They appeared to have been there for a

1 while.

2 Q Okay. There's a homeless population that --
3 that promulates --

4 A Yes.

5 Q -- in that area?

6 A Substantial.

7 Q Substantial.

8 Okay. You documented -- so -- so you write
9 reports -- explain to the jury how you kind of document
10 what you do and then -- and then put it all into your
11 report?

12 A Basically, we start off by photographing the
13 scene. Then we search the scene for anything that we
14 can find that pretty much relates to the information
15 we're provided by patrol investigations. And then we
16 transcribe that information into our report.

17 Q So are you taking notes and then you put it
18 into your report or you have a recorder? How does --
19 how does that work?

20 A Generally just note. Just rough-written
21 notes.

22 Q And -- and certainly the collection of
23 evidence can be important in identifying any possible
24 perpetrators, right?

25 A Yes.

1 Q And also, excluding any possible
2 perpetrators, right?

3 A Yes.

4 Q And you said y'all have your own fingerprint
5 lab?

6 A Yes.

7 Q And you took extensive fingerprints in
8 this -- in this case, right?

9 A Yes.

10 Q Let's start with L1. You took print from the
11 driver's-side rear quarter panel near the gas tank door
12 exterior?

13 A Yes.

14 Q So basically right where the gas tank is?

15 A Yes.

16 Q Right where someone would have to use their
17 hands to open it up and --

18 A Yes.

19 Q -- and do whatever they want to do. And that
20 was important because of the damage to that -- to that
21 side of the area, right?

22 A Yes. Specifically the -- the rag inserted
23 into the gas tank.

24 Q And I want to talk about kind of fingerprints
25 for a second. So if -- if you had an item -- sorry.

1 I can't see.

2 If you had an item such as a rag, how easy --
3 how easily can you get fingerprints off of a rag?

4 A Impossible.

5 Q Impossible, right?

6 A Under these circumstances, absolutely
7 impossible.

8 Q Okay. How -- what kind of surfaces are good
9 for getting fingerprints, for example, the car?

10 A Basically, when we're looking for
11 fingerprints, you want surfaces that are smooth without
12 a lot of texture, that are not contaminated with dirt
13 or chemicals. Basically, the ideal surface would be a
14 smooth pane of clean glass. And then everything goes
15 down from there.

16 Q But a car, pretty good surface, correct?

17 A A painted car surface without a lot of dirt
18 on it would be an ideal surface.

19 Q Okay. And so I want to keep going.

20 L2, prints from the driver's-side rear
21 corner. So you took -- there were several different
22 prints that you were able to lift, right?

23 A Yes, I lifted a number of prints.

24 Q Explain the lifting process. If I walked up
25 to a glass and had my thumb here, are you going to be

1 able to see that? What do you do to enhance that?

2 **A** Well, in order to search for a print, first
3 thing we would do is, in fact, use a flashlight, turn
4 it on, place it at an angle. And a print that's on a
5 smooth flat surface, you're generally going to be able
6 to see something to indicate that there's -- there's a
7 presence of some kind of a smear or even a print.

8 There's different -- different levels. You
9 can have what is called an impression, which is an
10 artifact left behind by a palm or a finger, a foot,
11 whatever, that doesn't have any ridge detail. That's
12 simply an impression.

13 What we refer to as a print is something that
14 would have substantial ridge detail that would allow us
15 to make an identification.

16 **Q** So when you go to lift prints, you want to
17 make sure you are lifting something that could be
18 usable, right?

19 **A** Yes. That's -- that's why we would search
20 using lights and visual searching before we started
21 dusting.

22 **Q** And so than you -- you do an additional
23 dusting, like tell the jury about what that is.

24 **A** Dusting is the use of a finely-ground powder.
25 It could be either a -- a magnetic -- a volcanic dust

1 which is nonmagnetic. And it's really, really fine
2 dust. Then they also make a version that is magnetic,
3 which is a ceramic-base material. But it is very,
4 very, very fine dust. And it settles onto the surface
5 and it sticks to the oils from the skin that are left
6 behind when somebody touches a surface.

7 And not everybody leaves fingerprints.
8 There's a substantial portion of the population that
9 does not secrete enough oils to leave prints. So the
10 presence of prints only indicates that a person was
11 there. The lack of fingerprints doesn't exclude people
12 because they may not even leave them.

13 Q Right. And so after you -- so in this case,
14 you dusted after you were able to identify some good
15 prints?

16 A Yes.

17 Q Okay. And then how do you get those prints
18 to evidence?

19 A What we will do is -- excuse me. Once we
20 dust the surface and we have a usable print, we would
21 apply clear plastic tape over the surface. And it's
22 usually a low tackiness so it can be peeled back off of
23 the surface easily without destroying the print. But
24 we place that tape over the print. We pull it back
25 from the surface and apply it to a clean white card.

1 And on the back of the card is information on the case
2 and the print, who lifted it, where they lifted it
3 from. But the print itself is protected on the bottom
4 by the -- by the paper card and on the top by the clear
5 plastic tape.

6 Q And so when you're talking about prints,
7 looking at the fingerprints, you have different little
8 patterns, right?

9 A Yeah. Basically, little designs. And
10 they've been determined to be statistically unique.

11 Q And -- and statistically unique to people,
12 right?

13 A Yes, yes, to individuals.

14 Q And that's how you help identify people?

15 A Yes.

16 Q And it's not just fingerprints. You can also
17 do palm prints as well, right?

18 A Yes.

19 Q So there -- these lines that are on our
20 fingers also carry through to our hands?

21 A Yes.

22 Q So if I touch and I'm holding on to
23 something, you would do the same --

24 A Correct.

25 Q -- process?

1 Okay. And when I say, like, L1 on page 2 of
2 your report, that was actually a print that you lifted
3 and put on a card and did all these things?

4 **A** Yes.

5 **Q** That was L1, L2. We went through
6 driver's-side rear quarter panel. Looks like L1 and L2
7 are two different prints --

8 **A** Yes.

9 **Q** -- right?

10 **A** Yes.

11 **Q** So there were multiple -- you can tell that
12 there were multiple prints?

13 **A** Yes.

14 **Q** Okay.

15 **A** I -- in fact, I believe, if I remember
16 correctly, I lifted nine prints and CSI Watson lifted
17 two.

18 **Q** So a total of 11 prints?

19 **A** Yes. If I --

20 **Q** Okay.

21 **A** -- if I remember correctly, yes.

22 **Q** Okay. And so -- so just yeah, really
23 quickly. L3, print from driver's-side rear panel above
24 rear driver's-side door exterior?

25 **A** Yes. Everything we took was on the exterior

1 of the vehicle. We did not enter the vehicle. We were
2 just trying to -- basically we were in a position where
3 we were going to have to transport the vehicle. And
4 the -- the method of transport is on the back of an
5 open tow truck. So if we were to simply put it on the
6 tow truck and ship it, the prints could be degraded
7 through friction, through dust in the air hitting it
8 and causing the print to be damaged?

9 Q So you wanted to do all of this --

10 A So we wanted to preserve the evidence -- we
11 wanted to preserve the best evidence possible.

12 Q Okay. And then, so L4, again, a different
13 print from the rear panel above the rear driver's-side
14 door?

15 A Yes.

16 Q L5, print from the driver's-side rear quarter
17 panel between that gas tank door and the rear driver's-
18 side door exterior?

19 A Yes.

20 Q Print from driver's-side rear door exterior?

21 A Yes. That is L6.

22 Q Print from rear quarter panel between gas
23 tank door and rear driver's-side door exterior?

24 A Yes. That's L7.

25 Q Okay. Print from the driver's-side rear

1 quarter panel, gas tank exterior?

2 A Yes, L8. And then, L9 was the print from the
3 driver's side of the rear windshield exterior.

4 Q Okay. And then, LP-1 and LP-2 were the two
5 that the other --

6 A CSI Watson.

7 Q -- other -- CSI Watson, but you have the
8 same --

9 A Yes. We consolidated the report.

10 Q Okay. And so those were from the
11 passenger's-side rear-door exterior and the
12 passenger's-side rear-door-window exterior?

13 A Yes.

14 Q And after you collected those, what did you
15 do with them?

16 A They were submitted to CSI Watson, who is our
17 latent print examiner --

18 Q Okay.

19 A -- to be entered into AFIS and examined.

20 Q Okay. Do you know if that was done?

21 A I do not know. I would expect so. But I do
22 not know.

23 Q Okay. All right.

24 Let's go back up to the top of your report.

25 You have B1 and B2?

1 **A** Uh-huh.

2 **Q** So in addition to -- you're not just trained
3 to collect fingerprints, you're trained to collect all
4 kinds of any potential evidence, right?

5 **A** Yes.

6 **Q** So what was -- tell the jury what B1 and B2
7 were.

8 **A** The way that I labeled my evidence is I use
9 numbers for physical objects that I'm going to collect.
10 For example, this was Item No. 2. That's the gas cap.
11 The L that I use in front of a number indicates latent,
12 which is a print. And then, I use B as biological. So
13 B1 is Biological Sample No. 1. B2 is Biological Sample
14 No. 2.

15 **Q** And you've been doing this for 10 years,
16 right?

17 **A** Yes.

18 **Q** And so you are trained to identify what could
19 potentially be blood.

20 **A** Yes. In this case, we used what's called
21 Hemastix. It's a technique that I was trained in by
22 the FBI evidence recovery team at an IAI conference.
23 What it is, is it's a small test strip that's used to
24 determine the presence of -- the presence of blood. It
25 does not differentiate between animal or human blood.

1 It is not an absolute. It is a field test. It simply
2 indicates the possible presence of blood and that we
3 should collect a sample to submit it to a lab.

4 Q What would the lab do? Why would you collect
5 a potential substance that would be blood?

6 A Well, the first thing they would do, of
7 course, is confirm whether or not it is blood, then
8 what type of blood, the wet bench work. And then, they
9 would submit it to the DNA lab to have a DNA analysis
10 conducted.

11 Q And DNA -- everybody has DNA, correct?

12 A Yes.

13 Q Everybody, except for identical twins, have
14 their own DNA structure?

15 A Yes.

16 Q So DNA is another way to help identify items
17 or persons that were potentially involved --

18 A Yes.

19 Q -- or at a crime scene?

20 A Yes.

21 Q Let me ask you about after they towed the
22 car, they executed an additional search warrant, right?

23 A Yes.

24 Q Were you involved in that as well?

25 A No, I was not.

1 Q Was that someone else?

2 A Yes.

3 Q So you said you did not go into the interior
4 of the car at the time because you wanted to take the
5 best evidence on the outside?

6 A Yes, because it's -- it's -- the exterior
7 evidence is what is considered transitory. It is
8 evidence that can be lost or damaged. And there is
9 a -- basically a timeframe on collection. In addition,
10 in this respect, we had -- especially like around the
11 gas tank and everything, the benzene fumes from, you
12 know, the gasoline. Gasoline fumes tend to have an
13 effect on fingerprints and DNA both where it degrades
14 them. So...

15 Q And then so you're familiar with cell phones?

16 A Yes.

17 Q And people use their fingers and hands --

18 A Yes.

19 Q -- on their cell phones, right? Is that
20 another potential source for fingerprint
21 identification?

22 A It can be. A lot of times with cell phones,
23 because you're not pushing and holding, you tend to put
24 your finger on and slide, a lot of what we think would
25 be a good print on a cell phone isn't. But yes, yeah.

1 It's a potential source.

2 Q And when you're sliding on the front, what
3 are you doing on the back?

4 A You could be holding it. You could either
5 hold it interdigitally, such as this. And for the most
6 part interdigital, there is no database for that.
7 Basically interdigital is -- is not logged. The thing
8 that we -- we database are palm prints and actually
9 fingerprint tips.

10 Q And when you dust for prints -- let me ask it
11 this way: Is there a way that you -- can you -- can
12 you get DNA from pants?

13 A You can.

14 Q So what -- if you were -- when you dust for
15 prints, does that kind of mess up any other biological
16 material?

17 A It can.

18 Q So --

19 A It's -- it's not a -- it's not a guarantee.
20 But the dust is yet another contaminant. In addition,
21 you have any surface material that's already on the
22 car, liked dirt and dust and stuff would be considered
23 a contaminant for DNA as well.

24 Q So sometimes before you test for
25 fingerprints, you swab something and then you can lift

1 the fingerprint, right?

2 **A** It's -- it's really a choice, right? If you
3 got a good print, the fingerprint database is much,
4 much larger than the DNA database. So when you have --
5 when you're put in a position where you have to make a
6 choice on should I lift the fingerprint or should I
7 take a swab, I would probably take the print first
8 because I have a better chance of identifying a person.

9 **Q** And that's the whole purpose of collecting --

10 **A** Yes.

11 **Q** -- is to identify?

12 **A** Yes.

13 **Q** And you submitted -- you and the other CSI
14 submitted 11 prints that you felt were usable --

15 **A** Yes.

16 **Q** -- in this case?

17 Thank you.

18 **MS. ZMROCZEK:** No further questions,
19 Your Honor.

20 **THE COURT:** Anything further?

21 **MR. SCOTT:** Nothing from the State.

22 **THE COURT:** Okay.

23 Thank you. You may step down.

24 **MR. SCOTT:** Judge, would now be a good time
25 for a morning break?

Court Discussion Regarding Co-Defendant

1 **THE COURT:** Yep. Absolutely.

2 Ladies and gentlemen, we'll take a break now.

3 Do not discuss the case.

4 (The jury exits the courtroom at 10:43 a.m.)

5 **THE COURT:** How many more witnesses are you
6 going to have, you think?

7 **MR. SCOTT:** I think -- well, what I'd like to
8 do if the Court would indulge is have the
9 codefendant just to have her invoke her Fifth, if
10 she intends to do that. It's obviously her
11 personal right to do.

12 **THE COURT:** All right.

13 We can do that.

14 You object to that, Ms. Zmroczek?

15 **MS. ZMROCZEK:** Not at all.

16 **THE COURT:** Mr. Forney?

17 **MR. FORNEY:** Your Honor, I do object. She is
18 mentally ill, low IQ and I think would struggle
19 with some of the questions.

20 **THE COURT:** I know how to handle those --
21 that kind of person. So we'll see what -- she
22 sounds about the same as everyone, except
23 Mr. Scott and Ms. Zmroczek. Bring her out and
24 see -- bring her up and let's see.

25 **MS. ZMROCZEK:** Occasionally Ms. Zmroczek.

1 Let's be honest.

2 **THE COURT:** Aside from that lady, how many
3 more do you think you have?

4 **MR. SCOTT:** Lead Investigator Montgomery. I
5 will probably wrap it up with him.

6 **THE COURT:** Ms. Zmroczek, be ready to go.
7 How many are you going to have?

8 **MS. ZMROCZEK:** One.

9 **THE COURT:** That means none, right?

10 **MS. ZMROCZEK:** No.

11 **THE COURT:** Maybe one.

12 **MS. ZMROCZEK:** Maybe one.

13 **THE COURT:** Okay. All right.

14 We will take 10 minutes. And then we'll talk
15 to Mr. Forney's client before we proceed if we can
16 get her to come up here.

17 (A recess is taken.)

18 **THE COURT:** Okay. So we're ready.

19 Where's the lady Ms. Jones and -- and the
20 lawyer?

21 It's amazing how they disappear as soon as
22 you -- they disappear as soon as you leave.
23 Anything to delay the process.

24 You have another witness ready to go?

25 **MR. SCOTT:** I do.

Court Discussion Regarding Co-Defendant

1 **THE COURT:** While we -- Ms. Jones is not
2 here.

3 You can bring the jury.

4 **THE BAILIFF:** Yes, sir.

5 **UNIDENTIFIED SPEAKER:** Ms. Jones is coming,
6 sir.

7 **THE COURT:** Pardon?

8 **UNIDENTIFIED SPEAKER:** Ms. Jones is coming.

9 **THE COURT:** Hello, Ms. Jones. Come stand
10 right here in front of me. Stand over here.

11 Mr. Forney, as well. Right there.

12 Swear Ms. Jones in.

13 **THE CLERK:** I'm going to swear you in. Would
14 you raise your right hand? State your name.

15 MS. JONES: Michelle Latoya Jones.

16 **THE CLERK:** Say it again.

17 MS. JONES: Michelle Latoya Jones.

18 **THE CLERK:** You swear to tell the truth, the
19 whole truth and nothing but the truth so help you
20 God?

21 MS. JONES: Yes.

22 **THE CLERK:** Thank you.

23 **THE COURT:** All right.

24 Ms. Jones, how are you doing today?

25 MS. JONES: I'm doing fine.

1 THE COURT: All right.

2 And where are you from?

3 MS. JONES: Charleston, South Carolina.

4 THE COURT: And how long have you -- who came
5 here to court with you today?

6 MS. JONES: My auntie.

7 THE COURT: And where is she from?

8 MS. JONES: She's from Charleston.

9 THE COURT: Did she come here from
10 Charleston?

11 MS. JONES: Uh-huh.

12 THE COURT: Do you live in Charleston now?

13 MS. JONES: Yes, sir.

14 THE COURT: And how old are you?

15 MS. JONES: Ever since I was a baby.

16 THE COURT: Yeah. Me too. But when were you
17 a baby? When were you born?

18 MS. JONES: I was born in Charleston, South
19 Carolina, MUSC.

20 THE COURT: On which day?

21 MS. JONES: 5/22/1985.

22 THE COURT: That makes you how old now?

23 MS. JONES: I am 37. On May -- on the 22nd,
24 I'll be 38.

25 THE COURT: Do you have any babies, children?

Court Discussion Regarding Co-Defendant

1 MS. JONES: Yes. I have three girls.

2 THE COURT: And who do they live with?

3 MS. JONES: They live with my people: my
4 family, my relatives.

5 THE COURT: Do you live here with them?

6 MS. JONES: No.

7 THE COURT: Do you live there by yourself or
8 with somebody else?

9 MS. JONES: No. My family taking care of
10 them. They got custody of them.

11 THE COURT: And who do you live with?

12 MS. JONES: I live with my Auntie Beverly.

13 THE COURT: Is she here today?

14 MS. JONES: Yes.

15 THE COURT: Which one -- which one is she?
16 That's your auntie, and her name is?

17 MS. JONES: Beverly Rivers.

18 THE COURT: Beverly Rivers. Rivers? You
19 said Rivers?

20 MS. JONES: Uh-huh.

21 THE COURT: Are you all from North
22 Charleston?

23 MS. JONES: Uh-huh. Yes, sir.

24 THE COURT: You ever attend Royal Baptist
25 Church?

1 MS. JONES: Yeah.

2 THE COURT: And how did I know that?

3 MS. JONES: I don't know.

4 THE COURT: I'm smart. I can just figure
5 things out.

6 Do you know Nelson Rivers?

7 MS. JONES: Yeah.

8 THE COURT: How do you know him?

9 MS. JONES: He's my boy cousin.

10 THE COURT: He's your what?

11 MS. JONES: Boy cousin.

12 THE COURT: What did she say?

13 MR. FORNEY: Her boy cousin.

14 THE COURT: Boy cousin.

15 All right.

16 He's the preacher at the church there, too,
17 isn't he?

18 MS. JONES: Yes.

19 THE COURT: So you're charged in this case
20 too? You -- they charged you with committing a
21 crime?

22 MS. JONES: Yes.

23 THE COURT: And Mr. Forney is your lawyer?

24 MS. JONES: Yes.

25 THE COURT: And the solicitor wanted me to

Court Discussion Regarding Co-Defendant

1 ask you whether or not you plan to testify in this
2 case.

3 MS. JONES: I plead the Fifth. No answer.

4 THE COURT: "I plead the Fifth. No answer."
5 How did you figure that out? -

6 MS. JONES: Because that's what God want me
7 to do.

8 THE COURT: That's what? That's what what?

9 MS. JONES: That's what God want me to do.

10 THE COURT: That's what God wants you to do?
11 I see.

12 All right.

13 And are you on any kind of medication now?

14 MS. JONES: Yes.

15 THE COURT: What -- what are you on?

16 MS. JONES: I'm on Depakote. I'm on
17 Lisinopril. I'm on Lisinopril, high blood
18 pressure medicine, Depakote. I'm on high --
19 Metformin.

20 THE COURT: I'm on some of that, too.
21 Metformin, that's a blood thinner?

22 MS. JONES: No. Metformin for diabetes.

23 THE COURT: Diabetes?

24 MS. JONES: Yeah.

25 THE COURT: Okay. That's right.

1 So you plan to plead the Fifth and -- and not
2 testify in this case. You're going to have your
3 own trial; is that right?

4 MS. JONES: Yes.

5 THE COURT: So have you ever been in a mental
6 institution or anything like that?

7 MS. JONES: Yes. I was in a mental
8 institution in Columbia a long time ago. Three
9 times, four times, five times.

10 THE COURT: So are you're pretty normal if
11 you take all that medicine?

12 MS. JONES: I tried every medication they
13 tried. They gave me everything. I tried
14 medication they prescribed for me. Didn't work.
15 It didn't at all. I tried every last one of them
16 ever since I was a little kid. It's just --

17 THE COURT: Well, it sounds like something's
18 working now.

19 MS. JONES: Yeah. The medication they
20 finally found was the right medication for me.

21 THE COURT: Which one do you think is
22 working?

23 MS. JONES: Depakote and I take Ativan.

24 THE COURT: All right.

25 So, Mr. Forney, did you request the -- any --

Court Discussion Regarding Co-Defendant

1 mental evaluation in this case?

2 MR. FORNEY: I did. And she was found
3 competent to be tried in 2020. But I don't agree
4 with those findings, and I want to have her
5 evaluated again.

6 THE COURT: Well, did -- did a judge make a
7 determination on her?

8 MR. FORNEY: No, they did not, Your Honor.

9 THE COURT: Did y'all present the report from
10 the DMH to a judge?

11 MR. FORNEY: I want to have her privately
12 evaluated before we do that.

13 THE COURT: That's not -- you didn't answer
14 my question.

15 Did you all present the report from DMH to
16 the judge to make the determination?

17 MR. FORNEY: At that point, no, sir, I
18 didn't.

19 THE COURT: Well, now, the judge orders that
20 a person be evaluated by the Department of Mental
21 Health and that a report be issued for the judge
22 to make a determination as to whether or not she
23 was competent or not. You can't make that
24 determination.

25 MR. FORNEY: Nor would I try to.

1 THE COURT: That's a judicial determination.
2 In order for the judge to make a determination,
3 the report must be presented to the judge that's
4 written by the mental health people. That's
5 exactly what we did with Mr. Dixon.

6 We did that yesterday, didn't we, Mr. Dixon?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: That's right. That's the way
9 it's supposed to be.

10 The lawyer can't decide, even though Ms.
11 Zmroczek would love to and Mr. Forney and all. A
12 judge has to make that decision. And it's amazing
13 to me, particularly here in Richland, how these
14 reports are received by the lawyers and just put
15 in a file some place when the order is made by the
16 judge.

17 In the case of Mr. Dixon, Judge Lee ordered
18 that he be evaluated. The statute says the judge
19 -- when a judge finds it necessary for the person
20 to be evaluated, to get evaluated. The report
21 comes back to the judge. The judge does a
22 hearing, even though around here you-all like to
23 get the judge to waive the hearing, and you-all
24 decide by consent. That's a judge's determination
25 as to competency or not. And that's what needs to

Court Discussion Regarding Co-Defendant

1 be done in this case.

2 Apparently, you said she was evaluated in
3 2020, but you think you want her to be privately
4 evaluated. That's for a judge to decide as well.
5 You can do it, but it doesn't control the process.

6 MR. FORNEY: Yes, Your Honor. And to
7 clarify, I just think with the amount of time
8 that's gone by since, it's -- well, it's a good
9 idea.

10 THE COURT: Well, it sounds like she's gotten
11 better.

12 You think you've gotten better or worse or
13 how do you stand?

14 MS. JONES: I've got better.

15 THE COURT: That's right. That's what I
16 think.

17 MR. FORNEY: I agree that she has, but she
18 also suffers from a low IQ.

19 THE COURT: Yeah.

20 MR. FORNEY: And does -- and needs a lot of
21 explaining to understand basic legal concepts.

22 THE COURT: Yeah. Well, the threshold for
23 capacity to stand trial is -- is that the word,
24 capacity? Is it?

25 MR. FORNEY: Competent.

1 THE COURT: Competency to stand trial, it's a
2 pretty low threshold.

3 MR. FORNEY: That's true.

4 THE COURT: As long as you can help the
5 lawyer out in preparing your defense and you
6 understand the charges against you, you know, then
7 you -- for the most part you're competent to stand
8 trial.

9 Well, Mr. Scott, so with this case, have you
10 made a plea offer to the young lady?

11 MR. SCOTT: I think I had a hand in helping
12 her make bond, and with the understanding that I
13 would be -- she's given a full confession that's
14 recorded. I --

15 MR. FORNEY: That's not my recollection, Your
16 Honor.

17 THE COURT: Well.

18 MR. SCOTT: Can I speak?

19 MR. FORNEY: Of course.

20 MR. SCOTT: She's given a recorded statement
21 to law enforcement implicating herself and the
22 involvement, speaking to things that she would
23 have no knowledge of. She was found in Hickory,
24 North Carolina, with the defendant and brought
25 back and interviewed, where she has implicated

Court Discussion Regarding Co-Defendant

1 herself along with the defendant.

2 It was always sort of my understanding that
3 she would be testifying as a state's witness and
4 then -- I don't know. This was scheduled
5 February 20 for trial, and maybe a week or two
6 beforehand Mr. Forney indicated that she would be
7 pleading the Fifth under his advisement. Now I
8 just want to make sure everybody is of the same
9 understanding that I will be moving to put her on
10 the trial docket as soon as possible. As you
11 know, it's a 2019 case and I'm trying my --

12 THE COURT: Well, these are very serious
13 charges. Like my man who's on trial here,
14 Mr. Dixon, he's facing up to 30 years for
15 attempted murder, up to 30 years for kidnapping,
16 and some -- any mandatory minimum on Dixon's
17 charge?

18 MR. SCOTT: I don't think so, Your Honor.

19 THE COURT: Yeah. But you can get up to 60
20 years in prison. How old are you now?

21 MS. JONES: 37.

22 THE DEFENDANT: 53.

23 THE COURT: 53.

24 You're 37.

25 So it's pretty easy to say, well, I'm not

1 guilty. I want to have me a jury trial. That's
2 fine if you get found not guilty. But if you get
3 found guilty, you're 53, you know, you might get a
4 life sentence, especially -- it sound like you're
5 not in too good a shape healthwise, and you have
6 health issues.

7 So it's easy for everyone to say I want a
8 jury trial, I'm not guilty, as if the jury is just
9 going to automatically find people not guilty, but
10 it depends on the evidence. And if you're found
11 guilty, you know, you have some serious
12 consequences.

13 And I'm talking more -- tell me that aunt's
14 name back there again, your aunt. What's her
15 name?

16 MR. FORNEY: It's Rivers, Your Honor.

17 MS. JONES: It's Rivers.

18 THE COURT: What's your aunt's name?

19 MS. JONES: Ms. Rivers, Beverly Rivers.

20 THE COURT: Beverly Rivers. I'm talking to
21 Ms. Beverly Rivers more than anyone else in here
22 today because, yeah, you can just say, "I want a
23 jury trial. I'm pleading the Fifth. I'm not
24 going to say anything." And when you have a jury
25 trial, you don't have to testify. You can take

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1 the Fifth, and Mr. Scott, he doesn't -- I mean, he
2 -- he would love to -- obviously he picked out the
3 guy he thinks is most guilty and put him on trial.
4 And you can want a trial but, you know, you -- you
5 might want to consider trying to figure out how to
6 get out of this jam that you're in.

7 I don't know what her degree of culpability
8 is. It's hard for me to believe that she would've
9 -- she would've beaten the man in the head and
10 forced him in the trunk and all that stuff.
11 Sounds like she was just the third wheel here.
12 I'm not sure what she did.

13 What is she accused of doing?

14 MR. SCOTT: Well, she was -- as Mr. Dubose
15 testified, she was active in beating him and
16 forcing him into the trunk.

17 THE COURT: She was -- she was out of control
18 as well?

19 MR. SCOTT: Judge, this is just, as I
20 previewed with -- with Gabbie, just an odd case --

21 **THE COURT:** Yeah.

22 **MR. SCOTT:** -- and just people who were kind
23 of doing bad things to vulnerable people.

24 THE COURT: Well, you can have all these
25 trials, and people can end up in prison for a long

1 period of time, or you can figure out a way that
2 you can try to get out of this. And, of course,
3 I'm not -- you know, I'll put a guy in prison a
4 lot faster than I'll put a woman in prison,
5 especially a woman that has three children.

6 And I'm not saying whatever should be an end
7 result. But it's so easy to say, "Well, I'm going
8 to take the Fifth. I'm not going to cooperate. I
9 want me a jury trial. I'm thinking this is just
10 going to go away." And then you have a jury
11 trial. If you get found guilty, then you have
12 some serious problems.

13 Ms. Beverly Rivers, and if she's got
14 problems, you've got problems. And so you-all
15 need to think hard. Who else do you have back
16 there with you, Ms. Rivers?

17 MS. RIVERS: My husband and my son.

18 THE COURT: Your husband and your?

19 MS. RIVERS: My son.

20 THE COURT: And your son. You-all come from
21 a prominent family. Y'all related to Nelson?

22 MS. RIVERS: His family is from (inaudible)
23 in Charleston, South Carolina.

24 THE COURT: Your husband is related to Nelson
25 Rivers?

Court Discussion Regarding Co-Defendant

1 MS. RIVERS: No.

2 THE COURT: Well, who's related to Nelson
3 Rivers?

4 MS. RIVERS: I don't know who she knows, but
5 we are not.

6 THE COURT: Okay. Well, Nelson Rivers is the
7 head of the -- was the head of the NAACP in
8 Columbia before he became a preacher. And then he
9 became a preacher. And he's the one who led the
10 march on the Capitol to take down the Confederate
11 flag. He was the head man that led that. And he
12 did so much speaking. Then he became a preacher.

13 And then he moved to Charleston, which is his
14 home. And he became the pastor of Royal Baptist
15 Church in North Charleston, which she said she
16 knew about.

17 Is that right?

18 So I might call Nelson and say, "Nelson, what
19 do you want me to do with your people?" If he's
20 your people. But none of y'all know him, sounds
21 like.

22 Except you.

23 MS. JONES: Yes.

24 THE COURT: I mean, I don't know. I'm just
25 giving you something to think about. Our hands

1 are full already, and whether she testifies or not
2 may not make a difference in this case, in Dixon's
3 case, but it might make a whole lot of difference
4 in your case, because it sounds like you're in a
5 lot of trouble too.

6 MR. FORNEY: Your Honor, if Mr. -- if
7 Mr. Scott wants to go on the record with a plea
8 offer, we'll entertain it.

9 THE COURT: Yeah. You know, whatever y'all
10 want to do. But this is a case from 2019. We've
11 got a jury out, and we've got all these people
12 here from Charleston. And if you all want to
13 figure out what to do -- Mr. Scott can't handle
14 two cases simultaneously. I mean, it seems as if
15 y'all would have been thinking on this already.
16 You know what I mean, Ms. Rivers -- Ms. Jones, you
17 know what I mean, right?

18 A lot of people who -- everyone loves to say,
19 well, this person's incompetent. They don't have
20 good sense. You know, all of us have in a lot of
21 ways the same amount of sense. You know, we all
22 have positives and negatives.

23 And just like Mr. -- Mr. Victim there,
24 Mr. Dubose, he has good sense, but you've got to
25 pull it out of him.

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1 Then Mr. Defendant here, Mr. Dixon, claimed
2 he didn't understand anything. He's got good
3 sense. So, y'all better figure these cases out
4 because Mr. Scott will go one after the other.
5 He'll call these cases, and either you're guilty
6 or not guilty. But if you're guilty, you know,
7 then the judge is ready to throw the hammer or do
8 whatever. But you're facing a lot of time.

9 So I want you to do some hard thinking there,
10 Ms. Beverly. Right, Beverly Rivers?

11 MS. RIVERS: Yes, sir. Well, since getting
12 her in my custody, she left off medication, but
13 she does take Risperdal and then Amitriptyline
14 also with that.

15 THE COURT: You help her. You help her
16 figure out the right thing to do in consultation
17 with your lawyer. But when all is said and done,
18 the lawyer will go home tonight.

19 MS. RIVERS: Yes, sir.

20 **THE COURT:** And your client may or may not go
21 home tonight, or whatever the case is heard. So
22 we're going to press on with this trial, and you
23 all figure out what you're going to do or want to
24 do. Because you know what the accusation is.

25 And then, Mr. Guy back here, Dubose --

1 Mr. Dubose, did she hit you? Stand up and talk.

2 MR. FORNEY: Your Honor, I object to this.

3 THE COURT: I'm talking to Mr. Dubose, not to
4 you.

5 Did she hit you, Mr. Dubose?

6 MR. DUBOSE: Yeah. She kicked me in the
7 trunk.

8 THE COURT: Sir?

9 MR. DUBOSE: Yeah.

10 MR. SCOTT: He said she kicked him into the
11 trunk.

12 THE COURT: So what are you objecting to?

13 MR. FORNEY: He's not under oath. He's
14 testifying.

15 THE COURT: I understand that. What does
16 that mean? No one is --

17 MR. FORNEY: This can be used in a
18 prosecu- --

19 THE COURT: -- under oath, rarely under oath
20 in a guilty plea other than the person who's
21 pleading guilty. That has nothing to do with what
22 I'm talking about.

23 That's what I'm saying. You know, you come
24 in with all the lawyering and end up lawyering so
25 much that your client is in prison, and you're

Court Discussion Regarding Co-Defendant

1 back home. You need to make some wise decisions
2 in dealing with representing these people. It's
3 not about the technicalities of this and the
4 technicalities of that. It's about the future of
5 these people who are being placed on trial and who
6 sometimes end up getting the short end of the
7 stick because of this over lawyering. That's the
8 way I see it.

9 MR. FORNEY: May I speak to that, Your Honor?

10 THE COURT: Yes, sir.

11 MR. FORNEY: Mr. Scott's made no plea offer.

12 THE COURT: All right.

13 MR. FORNEY: If he had -- if he had, I would
14 have relayed it. I never told him she was going
15 to testify against Mr. Dixon, never said that.

16 THE COURT: You never told him she was going
17 to do what?

18 MR. FORNEY: That she was going to testify
19 against Mr. Dixon, and he opposed --

20 THE COURT: She doesn't have to. She doesn't
21 have to testify. But you know, the whole notion
22 that the solicitor has to go around begging people
23 to cooperate -- sometimes the lawyer needs to be
24 begging the solicitor to let them cooperate for
25 the benefit of their own client.

1 MR. FORNEY: And there are oftentime --

2 THE COURT: You know this hearing we had
3 yesterday with the codefendant in Murdaugh who's
4 -- who's Ms. Zmroczek's client -- bond revoked,
5 facing 30 to 50 years in prison. And he's talking
6 with the state trying to figure out his own best
7 interest. Now he's out of jail, you know.
8 That's --

9 MS. ZMROCZEK: Not -- not yet, but will be.

10 THE COURT: That's the result of some good
11 lawyering by Ms. Zmroczek. You know, you can --
12 that's it. That's all we're going to do on this
13 case. We're going to continue with our jury
14 trial. I'm just speaking a word to the wise,
15 particularly Ms. Beverly.

16 You're in charge of this lady, right?

17 MS. RIVERS: Yes, sir.

18 THE COURT: All right.

19 That's why I'm saying I'm talking to you more
20 than anyone else and your husband and everybody
21 else, because you have to make family decisions on
22 these things.

23 And Mr. Forney has come and gone out and come
24 in and gone out, and now it's your turn to go out
25 and deal with your client and figure out what, if

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1 anything, y'all can do with this case because I
2 won't be the judge, chances are. I'm just here on
3 this case with Mr. Dixon at this time.

4 And it doesn't matter to me whether this lady
5 testifies or not. It doesn't matter to me whether
6 she has a jury trial or not. But my interest is
7 that these people who are being accused and who
8 come in with lawyers who try to do lawyer-y things
9 so much so in a lot of instances that their
10 clients get the short end of the stick. And I
11 don't want this lady here, Ms. Jones, to get the
12 short end of this stick unless she deserves to get
13 it. And that's all I'm going to say.

14 How about that, Ms. Beverly? How about that?

15 MS. RIVERS: Yes, sir. I agree with you.

16 THE COURT: You know what I'm talking about.

17 MS. RIVERS: It is challenging to have her in
18 my custody.

19 THE COURT: I know.

20 MS. RIVERS: But, yes, sir, I agree.

21 THE COURT: It's hard to have an adult person
22 who has some emotional shortcomings, just like
23 Mr. Dubose's brother who was on that stand
24 testifying, try to say all he had to say about the
25 victim Dubose's struggles and what the family has

1 gone through trying to keep control of these
2 people who were going to take an Uber from
3 Charleston to Columbia.

4 All right.

5 We're going to move on, Mr. Forney.

6 MR. FORNEY: Thank you, Your Honor.

7 THE COURT: Your client, you know, you-all
8 take it from there, but we're going to move on
9 with this trial. And we'll have -- you know, when
10 is -- when is her trial on the docket, Mr. --

11 MR. FORNEY: It's not scheduled.

12 THE COURT: Pardon?

13 MR. FORNEY: It's not scheduled.

14 THE COURT: Okay. Well, you know, Judge Hood
15 is ramrodding these cases. And Mr. Scott is
16 always ready. I've never heard him ask for a
17 continuance. He's always ready.

18 You can do this trial on how much notice?

19 MR. SCOTT: I can do it tomorrow if you tell
20 me to.

21 THE COURT: He can do it tomorrow. He can do
22 it next week. He can do it the week after.

23 MR. FORNEY: And I have two trials every
24 month for the next four months.

25 THE COURT: I know. You have two trials

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1 every month. And I'm going to -- I'm going to
2 monitor -- have my clerk monitor the schedule and
3 see how many of those trials you actually did
4 during, based on what you've just told me, you
5 have scheduled.

6 MR. FORNEY: Please do.

7 THE COURT: How many did you do in the last
8 month?

9 MR. FORNEY: In March, I did one.

10 THE COURT: All right.

11 In February?

12 MR. FORNEY: I didn't do any in February.

13 THE COURT: All right.

14 Well, good.

15 MR. FORNEY: Thank you, Your Honor.

16 THE COURT: The fact that you have a lot of
17 trials, you still have the -- owe the same
18 professional responsibility to this lady right
19 here.

20 MR. FORNEY: I'm just -- I only mentioned
21 that for scheduling purposes, Your Honor.

22 THE COURT: I understand. I give you a hard
23 time all the time. You understand that, too.

24 All right.

25 Y'all ready to proceed?

1 **MR. SCOTT:** We are, Your Honor.

2 **THE COURT:** All right.

3 Bring them on. When you get close to
4 retirement, you can just speak your mind on some
5 of these issues.

6 **MR. SCOTT:** I look forward to that.

7 (The jury enters the courtroom at 11:43 a.m.)

8 **THE COURT:** All right.

9 Thank you.

10 You may call your next witness.

11 **MR. SCOTT:** The state calls Wayne Montgomery.

12 **THE BAILIFF:** Raise your right hand.

13 **THE CLERK:** State your full name, please.

14 **THE WITNESS:** Wayne Hugh Montgomery.

15 **THE CLERK:** You swear to tell the truth, the
16 whole truth, and nothing but the truth so help you
17 God?

18 **THE WITNESS:** I do.

19 **THE CLERK:** Thank you.

20 **THE BAILIFF:** Watch your step.

21 **WAYNE MONTGOMERY**

22 having first been duly sworn, testifies as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. SCOTT:**

25 Q All right.

Wayne Montgomery - Direct Examination by Mr. Scott

1 Investigator Montgomery, you are an
2 investigator with the City of Columbia Police
3 Department?

4 **A** Yes, sir. At the time during this incident,
5 I was.

6 **Q** Okay. Oh, what do you do now?

7 **A** Currently, I am a sergeant.

8 **Q** Okay. And you're set to retire here soon; is
9 that correct?

10 **A** I'm anticipating next month.

11 **Q** Well, how long have you been with the police
12 department in Columbia?

13 **A** 22 years.

14 **Q** So that date, August 7, 2019, it's been
15 established that's when Mr. Dubose was taken out of the
16 trunk of a car. And did you get involved with the case
17 that same day?

18 **A** Yes. I received a call from my sergeant at
19 the time, Sergeant Moore, who told me there was an
20 incident at the 300 Elmwood, which was the cemetery
21 which this incident occurred. Then I, subsequently,
22 responded to the scene from there.

23 **Q** Okay. At that point, I guess Mr. Dubose had
24 already been taken to the hospital; is that right?

25 **A** Yes. The victim in the case was already

1 transported to the hospital getting some medical
2 treatment at the time.

3 Q Okay. So crime scene investigators on the
4 scene processing the car; is that correct?

5 A Yes. It was people taken -- crime scene
6 taken photographs. We had -- the area was already
7 roped off. Then I began canvassing for potential
8 witnesses and other things.

9 Q Were you able to find any witnesses who could
10 tell you anything about the circumstances?

11 A Not related to this incident. I spoke with
12 some people in the area. I think there was alluded
13 that there may have been people living in the area. So
14 I spoke to some people who had no knowledge of what
15 occurred, while we were there.

16 Q Okay. At some point, did you learn that the
17 victim, Mr. Dubose, was in the hospital?

18 A Yes.

19 Q And what did you do? Did you go to the
20 hospital?

21 A Yes. I traveled to the hospital and
22 interviewed Mr. Dubose while he was at -- in the
23 emergency room.

24 Q Okay. So you were able to speak with him?

25 A That's correct.

1 Q This has been introduced as State's 31. Is
2 that how Mr. Dubose appeared when you saw him?

3 A Yes. At the initial time I spoke with him,
4 that's how he looked.

5 Q Okay. And about how long were you able to
6 speak with him?

7 A Without knowing the exact time, I would
8 estimate 25 to 30 minutes initially, I would estimate.

9 Q Was he able to provide information about how
10 he came to be in the trunk of a car?

11 A Yes.

12 Q Okay. After speaking with him, did you have
13 suspects in mind that you might want to talk to?

14 A Yes. He identified the persons of interest
15 as he indicated that he knew them from --
16 both individually for a period of time. So it was not
17 an indication at the time that it was going to be a
18 misidentification of who he was talking about that was
19 responsible.

20 Q Okay. Was he ever hesitant or confused as to
21 who put him in the trunk of the car?

22 A He was not confused or hesitant to provide
23 that information to me when I initially spoke to him.

24 Q Did he ever give you any kind of conflicting
25 information of how he got into the back of a car that

1 attempted to be set on fire?

2 A No, he did not.

3 Q Okay. Did you -- did you issue arrest
4 warrants that day? Or when did you issue arrest
5 warrants?

6 A I think we -- it could have been that day,
7 without looking at the exact warrant to say what day we
8 swore them out. But based off -- we followed up a few
9 things that he indicated -- which also helped us to
10 identify one of the persons of interest in the case
11 also.

12 Q Okay. Who did you issue arrest warrants for?
13 Who are the people?

14 A The defendant here, Mr. Dixon and also
15 Ms. Jones.

16 Q Okay. That's Michelle Jones?

17 A That's correct.

18 Q And Martin Dixon?

19 A Martin Dixon and Michelle Jones.

20 Q Did you have any idea of their whereabouts at
21 the time?

22 A At the time, I did not.

23 Q Okay. So -- so what happens? If you can't
24 find the people, you issue arrest warrants. How did
25 they come to be found?

1 **A** We put out what is called a BOLO, for all
2 intents and purposes of be on the lookout. That
3 information is distributed to local law enforcement, or
4 even regional law enforcement, based on what we are
5 attempting to do.

6 They are placed in something called NCIC,
7 which is the National Crime Information Center. So if
8 an officer comes into contact with them, they will be
9 alerted that this person has a warrant and subsequently
10 they'll be detained.

11 **Q** Okay. After speaking with Mr. Dubose in the
12 hospital, did you have a reason to drive over to West
13 Columbia and go to a hotel?

14 **A** Yes.

15 **Q** And what was the hotel?

16 **A** It was -- OYO was the name of the hotel.
17 Some of the information -- information provided by the
18 victim was they stayed in a hotel prior. So I was able
19 to travel over to the hotel, canvassed the hotel and
20 attempt if were any people or witnesses that knew that
21 anyone stayed there and also obtained -- excuse me, a
22 receipt of the timeframe in which Mr. Dubose stayed in
23 that room and who rented the room that he indicated he
24 stayed in.

25 **Q** Okay. So Mr. Dubose said that they had been

1 staying at the OYO. So you went over there. You were
2 able to -- were you able to verify whether or not any
3 of the people of interest stayed there?

4 A Yes. It was a room rented by the defendant
5 in this case at the OYO, in which the victim and the --
6 this defendant as well as another codefendant had
7 stayed.

8 Q Okay. Say his name. Do you know his name?

9 A Yes. Mr. Martin Dixon.

10 Q All right. So the room was booked to a
11 Mr. Martin Dixon?

12 A Yes.

13 Q This is State's 41. Do you recognize that?

14 A This is the receipt which indicates the time
15 in which the room was booked under Martin Dixon.
16 Indicates that they paid cash. And this was
17 August 3rd -- August 1 through August 3 -- 4th,
18 actually, which they stayed in this hotel.

19 Q Okay. I'm looking at it. I'm seeing
20 August 1 through August 5.

21 A I'm seeing on the fourth, he paid another
22 cash. Then, he checked out on the fifth in the
23 morning.

24 Q He checked out on the fifth?

25 A Yes. That would indicate the last time he

1 paid cash was the fourth.

2 MR. SCOTT: Okay. Your Honor, the state
3 offers State's 41 for admission into evidence.

4 MS. ZMROCZEK: No objection, Your Honor.

5 THE COURT: Admitted.

6 (State Exhibit No. 41 is admitted into the
7 record.)

8 BY MR. SCOTT:

9 Q And did Mr. Dubose indicate after they ran
10 out of money for the hotel where they had been staying
11 and what they had been doing?

12 A Essentially living inside the vehicle. All
13 three of them were living inside the vehicle for --
14 that period of time and traveling within the vehicle.

15 Q Okay. Where did the investigation go from
16 there?

17 A Subsequently, we -- there is a search
18 warrant. All these things are being done sometimes
19 simultaneously, not just in chronological order. But
20 there was a search warrant done on the car, photographs
21 taken as had been previously testified to, and items
22 removed out of the vehicle.

23 Q Okay. And how -- how did he indicate that he
24 had come to have that wound over his left eye there?

25 A He indicated that he was struck by Mr. Martin

1 Dixon over the head with a crowbar that we, ultimately,
2 was able to identify from the execution of the search
3 warrant from inside of the car.

4 Q And that's State's No. 39?

5 A Yes, sir.

6 Q Okay. So what else happens in the meantime?
7 I guess Mr. Dubose has treatment in the hospital. He's
8 discharged. Where does the investigation go from
9 there?

10 A During this time, we also obtained a photo
11 lineup based off of the information that Mr. Dubose --

12 MS. ZMROCZEK: Your Honor, I believe we have
13 an issue.

14 THE COURT: What is the question?

15 MR. SCOTT: The question was -- let me
16 tighten up my question a little bit more. It was
17 a little open-ended.

18 BY MR. SCOTT:

19 Q You said he had already identified these
20 people as Martin Dixon and Michelle Jones, people he
21 had known for some time --

22 A That is correct.

23 Q -- and was familiar with?

24 Let me just, I guess, cut to the chase. When
25 was Michelle Jones and Martin Dixon picked up?

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1 **A** Ultimately, they were picked up
2 October 16, 2019, in Hickory, North Carolina.

3 **Q** Okay. Are you familiar -- do you have any
4 knowledge of any ties they have in Hickory, North
5 Carolina?

6 **A** I do not.

7 **Q** And then they were bought back down to
8 Columbia to speak with you?

9 **A** That is correct.

10 **Q** And were you able to speak with Michelle
11 Jones?

12 **A** Yes, sir. I was.

13 **Q** Okay. And did she admit her involvement --

14 **MS. ZMROCZEK:** Objection, Your Honor. I --
15 we have a matter of law we need to take up outside
16 the presence of the jury.

17 **THE COURT:** All right.

18 Ladies and gentlemen, if you'd go to the jury
19 room for a break. Please do not discuss the case.
20 (The jury exits the courtroom at 11:54 a.m.)

21 **THE COURT:** Yes, ma'am.

22 **MS. ZMROCZEK:** Your Honor, I would move for a
23 mistrial at this time. The reasons are the
24 following: You literally just spent 30 minutes
25 inquiring whether or not the codefendant was going

1 to testify and telling about what she needed to
2 do, blah, blah, blah. She advised the Court that
3 she was not going to testify. She -- you told her
4 to go think about it. Not five minutes into his
5 testimony, he asked the investigator: Did you
6 speak with Michelle Jones? Did she admit her
7 involvement?

8 Your Honor, that is absolutely improper. It
9 is a violation of *Bruton*; *Crawford*. And quite
10 honestly, it just flies in the face of the rules
11 of the Court. For Your Honor to -- to -- to love
12 and respect the rules as you do and -- and for
13 trial lawyers to get up here and just like you
14 said this case is 60 years. To try to backdoor in
15 that information is absolutely improper and I
16 demand a mistrial.

17 **THE COURT:** Okay. She demands a mistrial,
18 Mr. Scott.

19 **MR. SCOTT:** Judge, the way I've always
20 understood *Bruton* was the codefendants give
21 statements implicating one another. I asked did
22 she implicate herself or did she admit to the
23 involvement. I never asked him about what she
24 said about the man on trial. So I -- I think that
25 is a proper question, in my opinion. Just did she

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1 admit to her involvement?

2 I'm kind of -- I'm schooled enough to
3 understand not to ask him what she said about the
4 defendant. That's -- that's not my -- that's not
5 my --

6 **THE COURT:** You asked him did she admit her
7 involvement.

8 **MR. SCOTT:** Correct.

9 **THE COURT:** How does that violate whatever
10 rule you said?

11 **MS. ZMROCZEK:** Well, it violates the
12 confrontation clause, Your Honor. Because I don't
13 get to cross-examine on what she admitted her
14 involvement to be. That's an absolute Sixth
15 Amendment constitutional right under *Crawford* to
16 confront the witnesses against you. Their
17 evidence here comes from the very shaky testimony
18 of Mr. Dubose. And they're trying to, you know,
19 pad it with things that they're trying to
20 corroborate what he said.

21 And Your Honor, there are ways to do that.
22 You run phone records. You get cameras. You test
23 fingerprints. You get the DNA. You don't
24 backdoor in testimony of a witness I can't
25 cross-examine about what her testimony or about

1 what she admitted to.

2 **THE COURT:** What -- what question did you
3 just object to?

4 **MS. ZMROCZEK:** I objected to: Did she admit
5 her involvement?

6 **THE COURT:** And you objected?

7 **MS. ZMROCZEK:** Absolutely.

8 **THE COURT:** And you said you have a matter of
9 law?

10 **MS. ZMROCZEK:** Yes.

11 **THE COURT:** And he didn't answer the
12 question?

13 **MS. ZMROCZEK:** No.

14 **THE COURT:** Okay. So it's just a question
15 that the jury could disregard.

16 **MS. ZMROCZEK:** Okay. Then I would order that
17 stricken from the testimony and you order them
18 that they cannot consider that and I would ask
19 that this not be an area that I have to object to
20 again, Your Honor.

21 **THE COURT:** Okay. How about that, Mr. Scott?

22 **MR. SCOTT:** Your Honor, the Sixth Amendment
23 guarantees the right to confront one's accusers.
24 I'm not asking him to elicit any testimony where
25 she has accused him of anything.

1 **THE COURT:** Would that be hearsay?

2 **MR. SCOTT:** I would -- I would argue that
3 would be -- that would fall under 804(b)(3),
4 Your Honor. That's a statement against interest.

5 **THE COURT:** Of a nontestifying person.

6 **MR. SCOTT:** Correct. A declarant
7 unavailable. Hearsay has been determined. Some
8 cases, if Your Honor rules to be reliable when the
9 statement is so far against your own interest, be
10 it penal or pecuniary, it has indicia of
11 reliability. So I -- I think him just
12 acknowledging that she admitted to her presence
13 and involvement would fall under that hearsay
14 exception.

15 **MS. ZMROCZEK:** Your Honor, but, you know,
16 unfortunately, for the state, the Constitution
17 trumps the, you know, rules of hearsay. A
18 statement against interest is a statement so far
19 contrary to the declarant pecuniary or proprietary
20 interest so far (inaudible) the declarant to
21 criminal liability. But, Your Honor, this case is
22 based on testimony that I can't cross-examine what
23 she admitted to what her inconsistencies were,
24 what her state of mind was.

25 Your Honor, she -- she -- when she admitted

1 her testimony, you know what she also admitted?
2 That my client worked for NASA; that the victim
3 killed her cousin. She admitted a lot of things
4 that I can't go into because she's not available
5 for cross-examination. And -- and -- and it's
6 absolutely improper.

7 **THE COURT:** All right.

8 Well, I'm going to side with Ms. Zmroczek and
9 sustain the objection and tell the jury to
10 disregard that question.

11 **MS. ZMROCZEK:** And will you strike it from
12 the record as well?

13 **THE COURT:** No. Disregard, that's what I
14 mean.

15 **MS. ZMROCZEK:** Thank you.

16 **THE COURT:** Disregard.

17 All right.

18 Let's bring them back.

19 (The jury enters the courtroom at 12:01 p.m.)

20 **THE COURT:** Ladies and gentlemen, I sustain
21 the objection to the last question. You are to
22 disregard that last question.

23 You may proceed.

24 **BY MR. SCOTT:**

25 **Q** Okay. You attempted to interview Ms. Jones?

1 **A** Yes.

2 **Q** And did you later attempt to interview
3 Mr. Dixon?

4 **A** Yes.

5 **Q** After speaking with them, what were the
6 charges that you decided to file against them?

7 **A** Mr. Martin Dixon was charged with -- it was
8 attempted murder, the arson --

9 **MS. ZMROCZEK:** Your Honor, objection.

10 **THE COURT:** The question is: What the
11 defendant is charged with?

12 **MS. ZMROCZEK:** Correct.

13 **THE COURT:** And the basis for the objection?

14 **MS. ZMROCZEK:** Your Honor, based on the
15 state's response to my previous motion, I would
16 argue that that is an improper --

17 **THE COURT:** All right.

18 Mr. Scott, response?

19 **MR. SCOTT:** The question is what he had
20 charged him with at the time of speaking with him,
21 not what he's on trial for.

22 **THE COURT:** Overruled the objection.

23 **BY MR. SCOTT:**

24 **Q** Okay. So you charged Mr. Dixon with
25 attempted murder, arson?

1 **A** And kidnapping.

2 **Q** Kidnapping. Okay. And Ms. Jones was
3 discharged with what?

4 **A** Attempted murder, kidnapping, and arson.

5 **Q** Okay. So after your investigation, you
6 determined that both of them would face the same
7 charges?

8 **A** That's correct.

9 **Q** And Ms. Jones still is yet to have her day in
10 court. She will be tried next?

11 **A** Yes.

12 **Q** Okay. Okay. I think that's all the
13 questions I have for you, Investigator Montgomery.

14 **A** Yes.

15 **Q** Okay. Thank you.

16 Answer any questions Ms. Zmroczek has for
17 you.

18 **MS. ZMROCZEK:** May it please the Court?

19 **THE COURT:** Yes.

20 **CROSS-EXAMINATION**

21 **BY MS. ZMROCZEK:**

22 **Q** The last questions you were asked were after
23 speaking with Mr. Dixon, you charged him, right? That
24 was the question?

25 **A** He was officially served his warrants.

1 Q He was officially served his warrants because
2 tell the jury when you took out those warrants.

3 A On August 7, the --

4 Q August --

5 A -- date of the incident on which Mr. Dubose
6 was --

7 Q So --

8 A -- recovered from the vehicle trunk.

9 Q So August 7 after speaking with Mr. Dubose --

10 A Yes, ma'am.

11 Q -- right?

12 All right.

13 Mr. Montgomery -- Investigator Montgomery, I
14 want to talk to you about -- let's go back. Twenty-two
15 years as a police officer, right?

16 A 26.

17 Q 26?

18 A Yes, ma'am.

19 Q Twenty-six years as a -- a police officer.
20 Twenty-two as an investigator?

21 A No, ma'am. Twenty-two with the City of
22 Columbia.

23 Q Twenty-two with the City of Columbia. You go
24 to the Academy?

25 A Yes, ma'am.

1 Q You get training?

2 A Yes.

3 Q You -- you were told how to investigate?

4 A Yes.

5 Q They give you suggestions on things to do
6 to -- to help build the case against another person,
7 right?

8 A That is correct.

9 Q And you want to make sure that you do all of
10 those things, right?

11 A Yes.

12 Q Because when you're talking about somebody's
13 liberty, you want to make sure you're doing the right
14 thing?

15 A That is correct.

16 Q Doing your job?

17 A Yes, ma'am.

18 Q You want to be thorough, right?

19 A Yes.

20 Q You want to make sure that the information
21 that you have is accurate?

22 A Is that a question or a statement?

23 Q So what I said is: You want to make sure
24 that the information you have is accurate?

25 A Yes.

1 Q And you want to make sure that it's complete?

2 A Yes.

3 Q So when you swore out these warrants in front
4 of a magistrate on August 7, had you done a thorough
5 investigation?

6 A The -- the investigation was continuing --
7 continuous and ongoing. As indicated earlier, the
8 victim had a previous knowledge and relationship with
9 both defendants in this case. There was not an issue
10 of misidentification.

11 Q Right. He knew who they were, right?

12 A Yes.

13 Q I want to talk to you a little bit about
14 that. You write reports, right?

15 A That is correct.

16 Q You have a lot of cases, right?

17 A Most certainly.

18 Q You also take handwritten notes before you
19 write -- before you write your reports, correct?

20 A I have, yes, ma'am.

21 Q Okay. And you did that in this case?

22 A Yes.

23 Q And then you turned them over?

24 A For discovery, yes, ma'am.

25 Q For discovery, for evidence in the case,

1 correct?

2 A That's correct.

3 Q All right. So I want to talk about that for
4 a little bit. You met with Mr. Dubose in the hospital?

5 A It's one of the places I met with him.

6 Q Where else did you meet with him?

7 A I met with him at the Police Department.

8 Q Okay.

9 A He -- he came subsequently.

10 Q And you had some handwritten notes from those
11 meetings, right?

12 A Various contact, yes, ma'am.

13 Q And on one of those handwritten notes, since
14 I'm going to show it to you, I'm just going to mark it
15 for identification, okay?

16 A Yes, ma'am.

17 (Defense Exhibit No. 1 is marked for
18 identification.)

19 **BY MS. ZMROCZEK:**

20 Q I'm going to show you Defense 1 for ID just
21 to make sure that this is your handwriting?

22 A Yes, ma'am. This is.

23 Q Okay. And on that, you're taking those notes
24 realtime, correct?

25 A Yes, primarily.

1 Q You -- I'm sorry?

2 A Primarily. I can't say exactly, but most of
3 the time. Yes, ma'am.

4 Q Right. So if you and I are talking and then
5 I write it down or shortly thereafter, right?

6 A Yes, or shortly thereafter.

7 Q And then you use these notes and other
8 information in your brain to -- to -- to type an
9 official report, right?

10 A Yes, ma'am, at some time.

11 Q Okay. So we'll get to that later. But I
12 want to ask you about this handwritten note. "Martin
13 lost a finger." In quotes, right?

14 A That's what's on that paper.

15 Q Why did you put that on the paper?

16 A The victim, Mr. Dubose, indicated that Martin
17 had a loss finger or partially lost finger.

18 Q Okay. No chance of mistaken identity, right?

19 A That's -- yes.

20 Q Okay. And then, later on, you did a
21 three-page typed up kind of official report, right?

22 A Some case notes, yes, ma'am.

23 Q Case notes. You have those with you?

24 A Yes, ma'am.

25 Q Okay. And I'm referring to the top of page 3

1 of your official case notes --

2 A Yes, ma'am.

3 Q -- right?

4 Read that first sentence?

5 A Start where it says involved or actually
6 where actually period and then he?

7 Q The first sentence would be "he".

8 A Okay. "He also said that the male suspect
9 was either -- either missing a finger or partial part
10 of his finger was missing. Warrants obtained for the
11 listed subject."

12 Q Okay. Missing a finger or partially missing
13 a finger, right? That's how well he knows Mr. Dixon?

14 A That's what he indicated to me at the time.

15 Q That's what he indicated to you. And that's
16 what you based this whole case off of, right --

17 A No, ma'am.

18 Q -- is what he indicated to you. It's not?

19 A Not that he was missing a finger.

20 Q Of course. Right.

21 You based the case off of Mr. Dubose telling
22 you things?

23 A His identification of the defendant.

24 Q Right. So let's talk about that.

25 Mr. -- you put NCIC BOLO out. And Mr. Dixon

1 is in Hickory, North Carolina, right?

2 **A** He's ultimately found in Hickory, North
3 Carolina.

4 **Q** Right. He told you he wasn't even in South
5 Carolina, didn't he?

6 **A** Who is that, ma'am?

7 **Q** Mr. Dixon.

8 **A** I believe if he did say anything, he may have
9 said that during the time we spoke.

10 **Q** What did you do to investigate that?

11 **A** Whether he was in North Carolina?

12 **Q** That he wasn't even in South Carolina.

13 **A** He was -- he was in South Carolina. Well, I
14 have a receipt that he stayed at this particular
15 hotel --

16 **Q** Perfect. Let's --

17 **A** -- during the same time, as well as
18 statements from the victim in this case.

19 **Q** Okay. Let's talk about this receipt, State's
20 Exhibit 41. What are the dates on this receipt?

21 **A** The dates state that he paid cash on the
22 fourth, the third, and the first.

23 **Q** Right. So Mr. Dixon paid cash?

24 **A** Right.

25 **Q** 8/1, 8 --

1 **A** Sorry.

2 **Q** 8/1, 8/2, 8/3, 8/4, right?

3 **A** That is correct.

4 **Q** Checked out 8/5?

5 **A** Yes, ma'am. That would indicate that he did.

6 **Q** Something that's important when you are doing

7 investigation and your corroborating information is you

8 want to kind of look at a time line, right?

9 **A** That is correct.

10 **Q** That -- that -- that helps us know where we

11 are, where we're going, who's telling the truth, what

12 can be verified, right?

13 **A** That is correct.

14 **Q** So this receipt verifies that he was in a

15 hotel three days prior to August 7?

16 **A** Yes, ma'am.

17 **Q** But that he had checked out?

18 **A** Yes.

19 **Q** You also found information in the car -- I'm

20 going to show you State's Exhibit 20, right?

21 Hospital -- hospital information for Ms. Michelle

22 Jones, right?

23 **A** Yes, ma'am.

24 **Q** What is the date on that visit?

25 **A** Bear with me. My -- I'm getting a little

1 older. I can't see quite as good.

2 Q I have a flashlight, my phone flashlight, if
3 it will help you?

4 A This indicates August 5, 2019.

5 Q August 5, right?

6 A Yes, ma'am.

7 Q So what we have is Mr. Dixon and Ms. Jones,
8 August 5, at a hospital after they checked out of the
9 hotel, right?

10 A Yes, ma'am.

11 Q And so when you're trying to corroborate
12 information just like you did with the hotel receipt,
13 did you go to the -- to the -- to the hospital and get
14 any of their videos?

15 A No, ma'am. I did not.

16 Q They have video, right?

17 A At some places in the hospital, they do.

18 Q Are you familiar that Lexington Medical
19 Center is fully armed with video inside and out?

20 A They do have video.

21 Q Okay. But you didn't get it?

22 A I did not get video for that particular
23 visit.

24 Q Okay. 'Cause they also have video in the
25 parking lot, right?

1 A I do not know that.

2 Q Okay. You don't know. You didn't
3 investigate that?

4 A No, ma'am. I did not get video.

5 Q Okay. So if there were a video and
6 Mr. Dubose says that he is in the car by himself, you
7 would be able to verify that with the video, right? If
8 they had it?

9 A That's possible. Yes, ma'am.

10 Q But you didn't -- you didn't do that, right?

11 A No, ma'am. I did not.

12 Q But then, he tells you, he Mr. Dubose, tells
13 you that he goes to a gas station, right?

14 A At some point he indicates that they are
15 traveling together, spending the night inside the
16 vehicle also.

17 Q Spending inside -- spending the night where?

18 A Inside the car. They're living in the car,
19 essentially.

20 Q When did he tell you that?

21 A When I met him.

22 Q Okay. So he tells you that he was spending
23 the night in the car?

24 A He was living inside of his vehicle.

25 Q Okay. He also told you that he called his

1 brother from the hospital parking lot and said he
2 wanted to go to Charleston, right?

3 A I can't recall exactly, but I believe he may
4 have said that, yes, ma'am.

5 Q Okay. And so that's -- that's August 5,
6 right? That's what the hospital records said.

7 A This is when she was in the hospital.

8 Q Right. August 5?

9 A Yes. That's what that's --

10 Q Okay.

11 A -- indicating.

12 Q At what point did you call Dexter Dubose to
13 confirm that?

14 A I didn't spoke with Mr. Dubose.

15 Q Never spoke with him?

16 A Mr. Dexter Dubose, no, ma'am.

17 Q Never asked him, hey, you talked to Martin
18 Dixon, right? Did you ever ask him that?

19 A No. I spoke with the victim.

20 Q Right. Right. But you didn't corroborate
21 anything that he said?

22 A I didn't speak with his brother.

23 Q Okay. Didn't speak with his brother, so you
24 had no independent knowledge about if there was ever a
25 conversation with Mr. Dexter Dubose?

1 **A** No, ma'am.

2 **Q** Okay. In fact, as we've learned, Antrone
3 Dubose made two phone calls to his brother that night,
4 right?

5 **A** He was in contact with his family.

6 **Q** Okay. Cell phone found right there in the
7 console of the car?

8 **A** I'm sorry?

9 **Q** There was a cell phone found right in the
10 console of the car?

11 **A** There was a cell phone in the car.

12 **Q** Did you run any testing on that cell phone?

13 **A** No, ma'am.

14 **Q** Do any records?

15 **A** No, ma'am.

16 **Q** Verify any of that information?

17 **A** We did not do any search warrant on the
18 victim's cell phone.

19 **Q** You would agree with me had you done that, we
20 could say at 8/5 or 8/6 or 8/7 or never that these
21 phone calls were made, right?

22 **A** Yes. You could -- you could --

23 **Q** That's what phone records show?

24 **A** That is correct.

25 **Q** Are you familiar with how to subpoena phone

1 records?

2 A Yes, ma'am. I've done several.

3 Q Is it -- is it a difficult process?

4 A You just fill one out. No, ma'am. It's not.

5 Q Just fill out a search warrant, send it to
6 them, they send you the records right back, right?

7 A Not just right back. After a period of time.

8 Q After a period of time?

9 A Yes, ma'am.

10 Q Since August 7 when you got assigned this
11 case in 2019 have you gotten any phone records?

12 A No, ma'am. I did not.

13 Q Okay. I want to talk about some other notes
14 that you took.

15 (Defense Exhibit No. 2 is marked for
16 identification.)

17 BY MS. ZMROCZEK:

18 Q I'm going to show you Defendant's 2 for ID
19 and ask you if this is your handwriting?

20 A Yes, that is.

21 Q That's your handwriting?

22 A Yes, ma'am.

23 Q And tell the jury what that identifies?

24 A Indicates -- it says suspect number.

25 Q Suspect. Who -- who are we talking about?

1 **A** In this particular case, we're talking about
2 Mr. Martin Luther Dixon.

3 **Q** Mr. Martin Dixon. You even went as far as
4 not just to write his phone number down, but you even
5 went as far in your investigation to run an inquiry on
6 that number; is that correct?

7 (Defense Exhibit No. 3 is marked for
8 identification.)

9 **BY MS. ZMROCZEK:**

10 **Q** I'm going to hand you Defendant's 3 for ID
11 and see if you recognize that information?

12 **A** Yes, ma'am.

13 **Q** What is that?

14 **A** That is a provider inquiry. I wanted to
15 confirm the provider on this particular phone number.

16 **Q** And why would you want to confirm the
17 provider on a particular phone?

18 **A** I did that in order to provide that
19 information to our fugitive task force team to assist
20 in helping to locate --

21 **Q** Right.

22 **A** -- the defendant.

23 **Q** Because not only do phone records provide
24 call detail information, but they provide location
25 information, right?

1 **A** It can.

2 **Q** They can. They can provide historical
3 location information, right?

4 **A** They can.

5 **Q** Historical, meaning I ask you -- whatever
6 date I get to investigate this case, I can write this
7 company and say, "Hey. Can you give me the phone
8 records and including the location and geodata and all
9 of that stuff for certain time period," right?

10 **A** Yes, ma'am.

11 **Q** Because what that will do is that will place
12 a phone in a certain location, right?

13 **A** Yes, ma'am. It could.

14 **Q** And now, that information is sensitive. It's
15 only stored for a certain amount of time with those
16 companies, right?

17 **A** The companies that provide that information.

18 **Q** Right.

19 **A** Not all of them do.

20 **Q** Not all of them do.

21 **A** Not all of them.

22 **Q** But certainly the bigger companies do.
23 You've gotten those records before?

24 **A** I have in various cases. I can't say in
25 every case that they provide exact GPS location

1 information.

2 Q And this indicates, who was the cell phone
3 provider for that number?

4 A That one is Sprint.

5 Q Sprint for Mr. Dixon's phone?

6 A The number that we have, yes, ma'am.

7 Q Pretty -- pretty common company, right?

8 A My understanding, it is.

9 Q Did you -- did you get the fugitive task
10 force to ping the number to find where Mr. Dixon was?

11 A I provided that information to them and
12 allowed them to follow up with how they find any
13 suspect.

14 Q Okay. Well, did they?

15 A They attempted to locate off of their
16 information. And ultimately, they didn't have any
17 results.

18 Q Okay.

19 A He was found later.

20 Q Was that put in your notes at all?

21 A No, ma'am.

22 Q Okay.

23 A I provided all that information to them.

24 Q Okay. As the lead case investigator -- you
25 were the lead investigator in this case, right?

1 **A** Yes, ma'am.

2 **Q** Tell the jury about what some of your duties
3 are as the lead case investigator.

4 **A** Speak with victims, speak with potential
5 suspects, obtain information. Various, depending on
6 the situation. No cookie-cutter answers to exactly
7 what we do. Interview people, attempt to locate
8 people, various things.

9 **Q** Attempt to verify what people say?

10 **A** That's correct.

11 **Q** Attempt to corroborate that information?

12 **A** Yes, ma'am.

13 **Q** Because you certainly want -- wouldn't want
14 to arrest somebody just on someone's word, right?

15 **A** It depends on the circumstances. I just
16 stated there's no cookie-cutter answer to everything.
17 In this case, there was enough information to indicate
18 that this defendant was the individual responsible. He
19 was with the victim up until the incident occurred.

20 **Q** Okay. And the incident occurred the night of
21 August 6, right?

22 **A** He was found on the seventh.

23 **Q** He was found on the seventh, right?

24 **A** That's correct. The morning.

25 **Q** The morning of the seventh, around 8:45 to

1 9 a.m.?

2 A Yes, ma'am.

3 Q And the information that you had was it
4 happened the night before?

5 A The victim indicated he was in the trunk for
6 a period of time. It was hard for him to gauge time.
7 So it could've happened in the early morning hours, it
8 could have happened all night. He was unsure.

9 Q Okay. But when you talked to him and
10 certainly you sat here for his testimony, do you have
11 any knowledge that it wasn't the same night that they
12 left the -- the hospital?

13 A He indicated that it was not the same night
14 that they left the hospital, which would have been the
15 fifth.

16 Q He did -- so he didn't tell you that he
17 called his brother from the hospital parking lot and
18 said, "I want to go to Charleston"?

19 A He may have indicated that during our
20 interview.

21 Q Okay. So I want to get back to this
22 investigation. So you said some of your duties are to
23 interview people. You also have crime scene
24 investigators that work at your -- or in concert with
25 you, right, your team?

1 **A** Yes, ma'am.

2 **Q** Okay. So Mr. Potash, we heard from him,
3 right?

4 **A** Yes, ma'am.

5 **Q** And there was another investigator that was
6 out there with him that day, correct?

7 **A** I believe Ms. Watson. I believe.

8 **Q** And then you executed a search warrant on the
9 car. And that -- that's a whole another group of
10 investigators, right?

11 **A** Yes, ma'am.

12 **Q** And they turned all of the evidence into you
13 or into CPD but under your case file, right?

14 **A** Yes, ma'am.

15 **Q** And then you get to decide what to do with
16 it?

17 **A** That is correct.

18 **Q** Okay. So you have 11 fingerprints, 11
19 fingerprints, good fingerprints, that CSI Potash
20 collected. Tell the jury what you did with those
21 fingerprints.

22 **A** You indicated that they were good. I can't
23 make that assessment. In this case, with them living
24 inside the vehicle for a period of time, their
25 fingerprints or DNA is expected to be inside of the

1 vehicle or on the vehicle as well as their personal
2 effects that were also located inside of the vehicle at
3 the time that we executed the search warrant, which
4 also aided in identifying and corroborating what the
5 victim stated as far as who was inside of the car or
6 access to the vehicle.

7 Q All right.

8 Let me ask the question again. There were 11
9 fingerprints located outside of the vehicle in the
10 areas of the gas can, in the areas of the driver's
11 side, in the areas of the trunk that were collected by
12 CSI Potash, correct?

13 A You said a gas can?

14 Q Gas tank.

15 A Okay. I'm sorry. I thought you said --

16 Q I may have.

17 A Okay. Yes. There were fingerprints that
18 were collected on the vehicle, outside of the vehicle
19 at the time.

20 Q If someone tells you they weren't in South
21 Carolina, if you want to corroborate that they were and
22 that they touched that car and they touched the gas
23 side and they touched the driver's side door outside of
24 the vehicle, was there anything stopping you from
25 running those prints?

1 A No, there was not.

2 Q Did you do that?

3 A I did not.

4 Q When you interviewed or -- or at least served
5 the warrants on Mr. Dixon, what did you notice about
6 his fingers?

7 A I didn't --

8 Q All 10 were still there?

9 A I'm sorry. I didn't particularly look at his
10 fingers at the time.

11 Q You didn't? Okay. Have you had a chance or
12 an opportunity to inquire about that perhaps yesterday?

13 A Yes. I looked at his hand.

14 Q And what did you learn?

15 A It appeared as if he did not have a missing
16 finger.

17 Q All of his fingers are there?

18 A It appeared that way.

19 Q Uh-huh.

20 A I didn't look closely at his hand.

21 Q When someone tells you that they are struck
22 by an object and that object is collected, is there
23 anything stopping you from running scientific tests on
24 that object?

25 A No, ma'am.

1 Q Okay. So in this case, are you -- you were
2 able to view the vehicle yourself, right?

3 A Yes, ma'am.

4 Q You saw the copious amounts of dried blood on
5 the back of -- and that's just my word. You saw dried
6 blood on the back of the bumper on both sides of the
7 bumper, correct?

8 A It appeared that there was some evidence that
9 something occurred. When you say this amount of blood,
10 I don't recall that off the top of my head. I would
11 have to see that.

12 Q Okay.

13 A But I know there were swabs.

14 Q Not only were they swabbed, they were tested
15 with preliminary hematocrit test at the scene, right?
16 Which is a preliminary identifier of blood, correct?

17 A I did not -- I can't testify to that.

18 Q Okay. But if Investigator Potash testified
19 to that, you wouldn't contradict what he said, would
20 you?

21 A No.

22 Q Okay. Because he's the one that did the
23 collecting?

24 A Yes, he did that.

25 Q And he turned it in under your case number,

1 correct?

2 A That's right.

3 Q And you have access to all of that
4 information?

5 A Yes, ma'am.

6 Q In fact, it's your case. So you want to make
7 sure that you have all of the information, right?

8 A That is correct.

9 Q Didn't run any of -- any of those tests on --
10 on the -- any of the samples that were collected,
11 correct?

12 A No, ma'am.

13 Q And -- and like you said, there were numerous
14 samples of swabs from like the steering wheel, the
15 gearshift, all of those swabs were taken, right?

16 A They were collected in this case.

17 Q They were collected and not tested, right?

18 A That is correct.

19 Q Well, but the victim said they were all
20 living in the car. So I would expect their DNA to be
21 there, right?

22 A DNA and fingerprints. They were living
23 inside the vehicle for a period of time. Yes, ma'am.

24 Q But isn't the way to corroborate that to just
25 test it?

1 A That could be one way, yes, ma'am.

2 Q Okay. What's another way?

3 A The clothing, the items left inside of the
4 vehicle, statements of the victim that indicated they
5 were together.

6 Q Okay. So you just didn't test any of them?

7 A That's correct. I did not test them.

8 Q Okay. And this State's No. 39, you tested or
9 run any hematocrits for any blood on this item?

10 A No, ma'am. I did not test any of the items.

11 Q Okay. Let me ask you this: The -- the
12 laceration, the small laceration above Mr. Dubose's eye
13 here on 32, that was the injury that he suffered,
14 right?

15 A Yes. Yes, ma'am.

16 Q That was -- that was the injury, according to
17 him?

18 A That's correct.

19 Q Right. And 23 is a picture of the same item,
20 right?

21 A Yes, ma'am.

22 Q Any blood on that -- any testing or any blood
23 seen visually or suspected? Any fluids on that seat?

24 A There does not appear to be from that
25 photograph the appearance of any blood.

1 Q Let me ask you this: If I bent over right
2 now and smacked my head on -- on -- on this jury box,
3 is that -- is that a way that could give me a
4 laceration?

5 A Yes, ma'am. It could.

6 Q Okay. If I hit my head on a bumper, is that
7 a way to give me a laceration?

8 A That is a possibility.

9 Q Okay. It's a possibility, right?

10 A Yes.

11 Q Okay. You said there was information that
12 corroborated that they were in that car. Sure, at some
13 time, but not that night, right?

14 A Yes. The victim indicated they were living
15 in the car.

16 Q Right. Right. I understand that. But my
17 question is: The paperwork corroborates they were in
18 there August 5, right?

19 A That's one of the dates, yes, ma'am.

20 Q One of the days. And this paperwork, State's
21 29, that's another thing that you found in the car,
22 right?

23 A Yes, ma'am. This is a letter.

24 Q A letter? Who's that letter to?

25 A Mr. Martin Luther Dixon.

1 Q What's the date on that letter?

2 A May 20, 2019.

3 Q What's the address on that letter?

4 A To Mr. Dixon?

5 Q Yeah.

6 A [REDACTED] Boy Scout Road, Gaston, South

7 Carolina 29- --

8 Q Gaston, South Carolina?

9 A -- 053.

10 Q Just across the river, right?

11 A That's what this indicates, yes, ma'am.

12 Q Lexington County. So in this -- by all
13 indications, this letter would indicate that Mr. Dixon
14 was living at this address in May 2019 right?

15 A He received some sort of mail at that
16 address.

17 Q All right.

18 So did you go out to -- to -- to figure out
19 who this was?

20 A I provided that information to the fugitive
21 team.

22 Q Okay. Did the fugitive team provide you any
23 information on that?

24 A They did not directly give me any
25 information. As I gave them that information, I

1 allowed them to do their fugitive portion.

2 Q Okay. And that was just to find him, right?

3 A That is correct, yes, ma'am.

4 Q But if you're trying to verify whether he
5 lives in Charleston or whether he lives in Gaston as an
6 investigator, is that the fugitive responsibility --
7 fugitive team's responsibility or would that be you?

8 A That's a part of what we did in this case,
9 provided them with the information and attempt to make
10 contact with him.

11 Q But you -- you never made -- you never
12 attempted to ride out to Gaston to see who that was?

13 A I did not go myself to that address, no,
14 ma'am.

15 Q Did anybody?

16 A I won't -- I can't testify to that other than
17 I provided the information.

18 Q Okay. Because that would've been your notes,
19 right, if you received information about who lived
20 there or why he was receiving mail there?

21 A It could've been -- it could've been, yes,
22 ma'am.

23 Q You don't have anything in your report,
24 right?

25 A Not that indicates that, no, ma'am.

1 Q Okay. Let me ask you about this. You've had
2 to get a driver's license before?

3 A Me? Yes, ma'am. I have.

4 Q All right.

5 When you got your driver's license, did they
6 give you a test?

7 A Yes.

8 Q A written test?

9 A It's been some time ago. But I believe so,
10 yes, ma'am.

11 Q Okay. And a driving test to make sure you
12 were competent to be able to drive?

13 A Yes, ma'am.

14 Q Okay. And Investigator Montgomery, let's say
15 we had -- CPD has their own fingerprint lab, right?
16 Don't even have to send it to SLED, right?

17 A Theoretical.

18 Q CPD has their own fingerprint lab?

19 A We have -- we have the ability, yes.

20 Q Ability to -- to -- to run fingerprints,
21 right?

22 A Yes.

23 Q If during the course of your investigation
24 you ran those fingerprints right around the gas tank
25 and they came back to some other person, not Mr. Dixon,

1 what would that have done to your investigation?

2 **A** Someone could have touched the car at a
3 different period of time.

4 **Q** Right. Somebody could have touched that car.
5 Somebody could have gotten into a fight with Mr. Dubose
6 at the cemetery, right?

7 **A** No.

8 **Q** No? Nobody could've done that? Impossible?

9 **A** Not in this particular case, ma'am.

10 **Q** How -- how -- let me ask you this: How was
11 it that you can rule out every other possibility?

12 **A** The victim was pretty clear on who did this
13 to him.

14 **Q** The man with the missing or partially missing
15 finger?

16 **A** He indicated that, yes, ma'am.

17 **Q** He was very clear on that?

18 **A** He indicated that.

19 **Q** Not only -- not only are there phone records
20 to help locate people but the beauty of the City of
21 Columbia and Cary Shealy -- tell the jury who -- tell
22 the jurors who Cary Shealy is?

23 **A** Mr. Shealy is the owner of Statewide
24 Security. During this process, we obtained some video
25 in the area as closely as we possibly could to the

1 cemetery where the victim was found. There are also
2 multiple routes into where the cemetery is at based on
3 the video we did have. And if I'm not mistaken, it was
4 probably several hours of video. We did not observe
5 the vehicle enter in that particular camera view.
6 However, as I stated, there other ways to get into that
7 cemetery.

8 Q There are other ways to drive a car into that
9 cemetery?

10 A Based off of with the video we had access to,
11 yes, ma'am. It's not at the actual cemetery.

12 Q Right. We -- but there's only one way into
13 the cemetery and there are multiple ways to get to the
14 three different cemeteries located in there, right?

15 A No, ma'am. That's not correct.

16 Q Okay. Where are the other entries --

17 A There are other entries --

18 Q -- for a car?

19 A You can drive under the bridge. You can come
20 from Elmwood. You could also come from, I believe that
21 community was for Sloan School, or they used to call it
22 Sloan School. There also. So it's not just one way to
23 get into that cemetery. I don't know the exact streets
24 at the moment. So I don't want to be incorrect on
25 that.

1 Q Which is why when you asked Cary Shealy for
2 his cameras, you got cameras that went down Elmwood
3 from Bojangles and going down towards downtown, right?

4 A We had the sources of the video, the closest
5 that we could obtain.

6 Q Okay. You got them right close to the gas
7 station, right?

8 A We had the video -- I don't want to agree to
9 what you're asking me. The source that we provided
10 were the ones that we provided. You could be talking
11 about multiple locations.

12 Q Okay.

13 A I can't just agree to that.

14 Q You viewed the cameras that you -- that
15 you -- that you collected, right?

16 A Yes, ma'am.

17 Q And you turned those over?

18 A Yes, ma'am.

19 Q You would agree that it was August 6 through
20 August 8 with four different camera views, multiple
21 hours of video that you were provided?

22 A Yes, that we requested.

23 Q Never saw Martin Dixon walking away from the
24 cemetery?

25 A Not from that camera view.

1 Q Not from any of the camera views, right?

2 A Not from the camera -- four video camera
3 views that we requested that --

4 Q Never saw --

5 A -- was in the area.

6 Q And never saw Mr. Dixon driving a black
7 vehicle?

8 A Not from those camera views, no, ma'am.

9 Q Okay. What information did you follow-up on
10 about this building where the incident happened?

11 A From talking with the victim, he was never
12 able to tell us exactly where this building was. We
13 attempted to get a description. He was unable to
14 actually tell us, hey, this is where it occurred. We
15 searched West Columbia, looked for a spot. Ultimately,
16 we just knew where we found him, which was the incident
17 location --

18 Q Okay.

19 A -- where the incident -- where he was found.

20 Q What about the McDonald's that he told you
21 about? Do you remember him telling you about the
22 McDonald's?

23 A He talked about various locations. I -- I
24 don't want to say specifically.

25 Q Did you go to any gas stations? Didn't you

1 tell him you needed to know the color of the gas
2 station and he said it was a Pit right by the hospital?
3 Did you go to that gas station to verify any of that
4 information?

5 A We were looking for the locations may have
6 occurred.

7 Q Okay.

8 A So I went to various locations to attempt to
9 identify the building he was trying to talk about.

10 Q Okay. Let me -- let me ask the question a
11 little slower. He told you about a gas station, right,
12 where he and Mr. Dixon supposedly got out of the car
13 and were having conversation, right?

14 A He may have mentioned that, yes, ma'am.

15 Q May have mentioned that. That was after
16 leaving the hospital, right?

17 A He gave a chronological order of events. I
18 can't necessarily agree to what you're saying.

19 Q Okay.

20 A Ladies and gentlemen, he stated at multiple
21 locations that they went to. And to find the location
22 where he was initially assaulted, we were unable to
23 identify the actual building that he said where he was
24 assaulted and forced inside of the trunk -- I mean,
25 inside the vehicle. I'm sorry.

1 Q So but you do know that it was a Pit Gas
2 Station that at some point he was at with Mr. Dixon?

3 A He may have mentioned a specific gas station.
4 He may have.

5 Q And had you gotten that video from that gas
6 station, it could have shown Mr. Dubose driving off and
7 leaving Mr. Dixon and Ms. Jones at that gas station
8 stranded, couldn't it?

9 A It could have.

10 Q Right. And if you had gotten the phone
11 records, it could have shown Mr. Dixon calling his
12 friend in Hickory, North Carolina, because he was
13 stranded at the gas station where he was left by the
14 person that owned the vehicle, right? It could have
15 shown that?

16 A That's the theory that you're presenting.

17 Q It's a theory, right? It is not an alien
18 theory, it's a reasonable -- it's a reasonable theory,
19 right?

20 A No.

21 Q No. Not at all because that's not what the
22 victim said?

23 A That's not what happened in this case, ma'am.

24 Q Right. When were you told that Mr. Dixon
25 charged Mr. Dubose \$600 to stay in a trailer for two

1 weeks? When were you told that?

2 A I was not told that.

3 Q Never told that, right?

4 A No, ma'am.

5 Q Did you ever inquire or understand how
6 Mr. Dubose was driving around in a 2007 Lexis?

7 A I'm sorry? How did he purchase it?

8 Q Yeah.

9 A It wasn't relevant to the case how he -- what
10 vehicle he drives. He owns his vehicle.

11 Q All right.

12 What testing did you do on the vehicle to
13 corroborate that the trunk latch was broken?

14 A Did not test the vehicle.

15 Q We don't have any information about that, do
16 we? I lied. Other than from Mr. Dubose, we have no
17 independent information about that, right?

18 A That's correct.

19 Q Okay. You had the key to the -- to the
20 vehicle. It was inside the vehicle, right?

21 A It was a key fob, yes, ma'am.

22 Q Never did any testing on it?

23 A On the actual key.

24 Q Correct.

25 A No, ma'am.

1 Q Never did any investigation onto Mr. Dixon's
2 whereabouts prior to this time, whether he was living
3 in Columbia or Gaston or whether he was living in
4 Charleston? Didn't do any information into that?

5 A We had some addresses for him that, as I
6 indicated, was provided. There was an address in Holly
7 Hill. There was an address in Gaston. So there was
8 some information that was provided for the fugitive
9 team to attempt to locate him.

10 Q Right. But as far as following up, if
11 someone says they weren't even in North -- in South
12 Carolina, what did you do to follow up on that?

13 A I didn't have any information. He was in
14 South Carolina.

15 Q I understand you keep saying that. You
16 didn't see him, did you?

17 A No, ma'am.

18 Q Okay.

19 A I did not.

20 Q You collected phones from Ms. Jones and
21 Mr. Dixon when you arrested them, right?

22 A That is correct.

23 Q And didn't run any historical cell location
24 on those either?

25 A We did phone dumps on those phones. And it

1 was clearly apparent that Mr. Dixon had a phone that
2 was operated after the incident -- the date and time of
3 this incident, which I believe was September. And then
4 also the -- we ran a phone dump, I believe, on the
5 other defendant's phone also.

6 Q Okay. And nothing tying him to Mr. Dubose?

7 A Not at that time.

8 Q Who at any time?

9 A As I indicated, that was a different phone.
10 It was obvious that this phone was purchased or
11 obtained after the incident.

12 Q But we know the one in the car was not
13 because it was in the car. So it was clearly relevant
14 to this time period.

15 A That was the victim's phone.

16 Q Right.

17 A Yes, ma'am.

18 Q Okay. So all of the verifiable information,
19 and by independently verified, not -- not -- not -- I
20 want to exclude what came out of Mr. Dubose's mouth.
21 The information independent of what came out of
22 Mr. Dubose's mouth indicates that August 5, they're
23 checked out of a hotel and at a hospital, right?

24 A Yes, ma'am.

25 Q Nothing independent to verify that they were

1 even in the state of South Carolina after August 5?

2 **A** Independent of what the victim said.

3 **Q** Independent of what the victim said.

4 **A** I do not have anything else.

5 **Q** Okay. No further questions.

6 **THE COURT:** Any redirect?

7 **MR. SCOTT:** Quick matter of law, Your Honor.

8 Very brief. I mean, I can approach.

9 **THE COURT:** All right.

10 Let's stand for a moment.

11 (Sidebar conference is held off the record.)

12 **THE COURT:** We're going to break for -- have
13 y'all break for lunch. And I've found my
14 foreperson.

15 Mr. Tucker, you've been holding the
16 foreperson seat since we started. So you'll be
17 the foreperson, the spokesperson for the jury.

18 Please do not discuss the case. We're going
19 to break until 2:30. 2:30.

20 (The jury exits the courtroom at 12:47 p.m.)

21 **THE COURT:** All right.

22 Mr. Scott?

23 **MR. SCOTT:** Your Honor, the line of
24 questioning was repeated multiple times. One of
25 them to the investigator was: All of the

1 information that you responded to came solely from
2 the victim's own statement, that was all you had
3 to go by in placing anyone at the scene of the
4 crime?

5 One of the questions to be -- example was:
6 How can you be sure the victim didn't get in a
7 fight with another homeless person at the scene if
8 you only relied on the victim's account?

9 That very last question was something to the
10 extent of: All the information independent of the
11 victim was that they checked out of the hotel
12 August 5 and nothing independent of the victim's
13 account would put anyone at the scene of Elmwood
14 Cemetery during the crime in question? I would
15 imagine we could probably pull that up pretty
16 quickly.

17 But anyway, the -- I think that opens the
18 door for him to be able to explain, "No, I talked
19 with the codefendant and she put herself at the
20 scene." That in no way implicates the defendant.
21 So it steers clear of *Bruton*. It explains his
22 investigatory efforts. It explains his role as a
23 law enforcement agent in trying -- not shooting
24 from the hip, but actually gathering information.

25 And I think it's a little misguided for her

1 to hit him with that question knowing that he
2 can't say, "Well, as a matter of fact, Ms. Jones
3 says she was there. So I'm not independently
4 relying solely on the victim's account."

5 That was the line of questioning. She may
6 disagree with it. It was right there. I saw it
7 coming down the pipe. At any rate, I don't see it
8 as a -- I see it as a hearsay exception being able
9 to rely on a statement against her own penal
10 interest, putting herself at the scene. I don't
11 see it as a Sixth Amendment issue. It in no way
12 accuses the defendant of anything. I see it as
13 part of the investigation and how he took the
14 steps as an investigator he took in trying to
15 figure this case out.

16 **MS. ZMROCZEK:** Thank you, Your Honor.

17 **THE COURT:** Yes.

18 **MS. ZMROCZEK:** I was very careful when I
19 asked that question. I said
20 independently-verifiable information. I was very
21 qualified on that. I said I'm talking hospital
22 records, hotel records. I said independently
23 verifiable. I qualified the question the question
24 that I asked. Because I -- trust me, I've watched
25 six weeks of door opening. I'm very cognizant of

1 it, Your Honor. I'm very cognizant of it, which is
2 why I asked the question exactly the way I did.
3 Independently-verifiable information. We can have
4 the court reporter read it back. That's exactly
5 how I asked the question.

6 **THE COURT:** Mr. Scott?

7 **MR. SCOTT:** The assertion is that all he
8 did was rely on the victim's statement. That
9 simply is not true. That's absolutely not true.
10 That is the assertion she's made time and time
11 again that you solely relied on the victim
12 statement in proving that anyone was in town and
13 not in North Carolina.

14 **THE COURT:** All right.

15 Anything else?

16 **MS. ZMROCZEK:** Just, Your Honor, that I
17 clearly -- I mean, I clearly didn't say that
18 because I asked him about getting the hotel
19 receipt and finding the hospital receipts. I was
20 asking about independently-verifiable information.

21 **THE COURT:** The gist that I got from your
22 questioning is he relied solely on Mr. Dubose and
23 the victim in this case. He solely relied upon
24 what the victim told him in making this case.

25 **MS. ZMROCZEK:** But I didn't say that. I

1 understand that -- that the state wants to
2 insinuate that that's the implication. But in
3 fact, I even asked him about going to the hotel,
4 going to the -- getting cameras from Cary Shealy.
5 I was very clear.

6 **THE COURT:** That's what I got from the
7 testimony now. We can listen to the whole thing
8 again. But that's the impression I got. That's
9 the impression I think the jury would get that he
10 had nothing else known other than what Dubose told
11 him, and -- which is not correct because he also
12 has a codefendant who he did some things with as
13 well or he got corroborating information from or
14 at least interrogated them as part of his
15 investigation. So to exclude -- or to put him in
16 a straitjacket like that, I think is misleading
17 the jury.

18 **MS. ZMROCZEK:** And I -- and I understand --
19 and I appreciate the response. But just so the
20 record is clear, Your Honor, I never said that he
21 relied only upon that and, in fact, went through
22 all of the independently-verifiable information,
23 the cameras, the phone records that he didn't get,
24 the cameras, got hospital records, and the hotel
25 records. So clearly, I didn't say that he only

1 relied upon that.

2 **THE COURT:** Well, talking to Ms. Jones, is
3 that a form of independent verification?

4 **MS. ZMROCZEK:** No, Your Honor. Not that I --

5 **THE COURT:** Well --

6 **MS. ZMROCZEK:** It's not independent
7 verification -- it is not verified information.
8 It's information that could be subjected to cross
9 examination and should be subjected to --

10 **THE COURT:** Are we talking to -- he's an
11 investigator. He's been doing his job a long
12 time. He questions one -- questioned one
13 defendant and then questioned and independently
14 verified what one says versus the other and makes
15 his decisions. I think that --

16 **MS. ZMROCZEK:** So Your Honor, if he opened --
17 if that opens the door, then I think that opens
18 the door to everything that she told him.

19 **THE COURT:** Well, I don't know. I don't know
20 whether -- would I agree to that extent. I don't
21 know that.

22 But in your -- it's your line of
23 cross-examination. And you're trying to lock him
24 into that he's just going solely onto the
25 defendant's word, which is not the case according

1 to the state's version of things. That doesn't
2 necessarily mean that any and everything that
3 Ms. Jones told him is admissible. But it relates
4 to his investigation and how he came to that
5 decision and who he talked with, and you know.

6 **MS. ZMROCZEK:** Your Honor, I just want to be
7 clear. If they say so she acknowledged she was
8 there, then I -- you know, I think that opens the
9 door to and she said my client worked for NASA and
10 she said that he killed her cousin and she said he
11 did this and that.

12 **THE COURT:** I don't know. I don't know. I'm
13 just saying that usually when -- when lawyers
14 object, then they proceed as if they have that
15 part of the case locked down, so therefore they
16 can pursue that line of questioning as if -- as if
17 the witness cannot go into an area that the judge
18 previously ruled against.

19 If Ms. Harris had an instant transcript, I
20 could look at it and -- and read all of those
21 things. But I think that is the impression that I
22 got from your question. I agree with Mr. Scott
23 that you -- it would be unfair to prevent the
24 officer from talking about his investigation as it
25 relates to Ms. Jones and what he learned in

1 dealing with her, etc. I don't know how far you go
2 into that. But, in general, I agree with
3 Mr. Scott.

4 **MS. ZMROCZEK:** Your Honor, I respect your
5 ruling. I just want to reiterate that I said
6 independently-verifiable information, talking in
7 the context of the hotel records that he got and
8 the -- the medical records. Clearly, that's what
9 I was asking.

10 **THE COURT:** Clearly, that might've been your
11 intent, but you know, what appears to be clear is
12 not always that clear. So the line of questioning
13 on redirect that Mr. Scott is seeking to proceed
14 on, I'm going to allow that. And then you make
15 whatever objections and we'll take in whatever
16 direction you decide with the jury. Trying to go
17 as a result of having made those questions, proper
18 line of questions. So we're going to take a break
19 until 2:30.

20 And, officer, you cannot discuss your
21 testimony during the break.

22 **THE WITNESS:** Yes, sir.

23 (A recess is taken.)

24 **THE COURT:** Ms. Zmroczek, yes, ma'am. I
25 thought I was through ruling on your stuff.

1 **MS. ZMROCZEK:** You -- you were I'm sorry
2 what?

3 **THE COURT:** I thought I was through ruling on
4 your objection.

5 **MS. ZMROCZEK:** I -- I -- I believe that you
6 were, Your Honor. I did e-mail you some case law
7 because I really wanted to make sure that the
8 record was clear. I e-mailed it to your law
9 clerk. Sorry. You don't like e-mails.

10 **THE COURT:** What materials -- what did you
11 e-mail?

12 **MS. ZMROCZEK:** I e-mailed *State v. Simmons*,
13 which is a case that I tried in this very court
14 room actually. It is cite -- I cc'd the solicitor
15 as well, 430 SC 1, 841 S.E. 2d 845.

16 Your Honor, it's a case that I tried actually
17 that the Supreme Court ruled that we did not open
18 the door and that it was error. As well as *State*
19 *v. Jackson*, which I did not try, 410 SC 584. It's
20 a 2014 Supreme Court case. So Your Honor, I just
21 wanted to make sure that -- that the record was as
22 clear as it could be. Because I -- like I said,
23 I've had this issue overturned in this -- in this
24 very courtroom.

25 **THE COURT:** Well, let's look at *State v.*

Motions

1 *Simmons* and see what it's all about. Okay. He
2 was convicted of second degree sexual exploitation
3 of a minor. And the defendant did not open the
4 door to evidence of suspected child pornography,
5 contended the child pornography issue.
6 (inaudible) separate can of worms.

7 Michael Simmons was convicted of six counts
8 of sexual exploitation of a minor. He contends
9 this provision is unconstitutional over oral
10 argument. Additionally, he contends that the
11 trial judge erred in refusing to suppress
12 information gathered pursuant to the search
13 warrant and in finding defense counsel opened the
14 door to evidence of suspected child pornography
15 that (inaudible) the validity of the statute and
16 the validity of the search warrant. And they
17 reversed because the judge erred in saying they
18 opened the door.

19 Detective Kevin Murphy in the Berkeley County
20 Sheriff's office investigating this child
21 pornography and information in the computer
22 connected to account of Ron and Wendy Doiron --
23 Doiron who lived in Columbia with a teenage son,
24 two other children, joined the Army, finished Fort
25 Jackson. Stayed in Columbia.

1 Murphy contacted investigators with the
2 Columbia Police Department who got a search
3 warrant for the residence. In the search warrant,
4 they seized 20 electronic devices, including four
5 items found in his bedroom, including computer
6 hard drive.

7 John VanHouten, computer forensic examiner
8 investigated. He did not review each one in the
9 same manner that he employed a full examination on
10 devices found in the bedroom, including the
11 desktop, hard drive, etc. According to VanHouten,
12 a forensic preview essential to a surface-level
13 review, etc.

14 During his examination of the desktop, he was
15 unable to determine from the videos depicting the
16 pornography including the six videos Murphy traced
17 to that IP address. However, he was able to find
18 references to those videos which suggest that the
19 files previously had existed on the desktop. And
20 he found search terms associated with child
21 pornography in international search history. Did
22 a thorough examination and found videos in a
23 recycle bin.

24 Informed law enforcement they didn't know
25 anything about the images. And investigators

Motions

1 quickly focused on Simmons who denied downloading.
2 He did admit to file sharing. He used a file
3 sharing program to download music and videos,
4 which were the same type Murphy used.

5 He said he let other folks use his computer.
6 It wasn't password-protected. Doirons' teenage
7 son often used the computer to watch videos. The
8 son initially denied downloading illegal movies,
9 etc. And he said that the son used it. Charged
10 him with sexual exploitation of a minor, etc.

11 Direct examination, the state questioned
12 VanHouten about the investigation confirmed. He
13 examined all the devices listed in the search
14 warrant. The items were previewed further
15 examination. (inaudible) looking for.
16 (inaudible) photos, etc.

17 On cross-examination, he readily acknowledged
18 the investigation -- investigative officer he
19 readily acknowledged and investigative officer
20 directed him to focus on certain items.

21 Defense counsel characterized the devices as
22 focused, which consisted on those found in
23 Simmons' bedroom and examined unfocused, which
24 were other items seized in the home and subject to
25 only a preview. After defense counsel finished

1 cross-examining, the state asserted the door had
2 been opened to the introduction of the eight
3 videos found on the hard drive because defense
4 counsel's question implied that VanHouten did not
5 discover child pornography on any of the focused
6 items.

7 In response, defense counsel noted that the
8 solicitor had agreed off the record to not discuss
9 the external hard drive and he asked the same
10 question to the state, same question the state did
11 during direct, whether pornography was found. The
12 trial court agreed that the defense counsel
13 cross-examine, implied that he did not find any
14 videos of child pornography on the focus hard
15 drive, focus items. Further, the Court relied on
16 the fact that the (inaudible) was completed --
17 connected to computer. All right.

18 At the conclusion of the trial, they asked
19 for a jury charge on third-party guilt, which was
20 denied. He was convicted, got 10 years in prison.
21 Trial court erred in finding that they opened the
22 door, etc.

23 Simmons contend trial court erred in finding
24 the defense counsel open the door regarding the
25 eight videos on the external hard drive. The

1 state asserts the Court properly found defense
2 counsel opened the door by implying he did not
3 find anything on the focus items. The eight
4 videos of the suspected child pornography were
5 removed from the hard drive. (inaudible) party
6 that introduce inadmissible evidence in rebuttal
7 when the opponent places the fact at issue. The
8 jurisprudence of this state contends a plethora of
9 enlightened cases establishing and explicating the
10 proposition that a defendant opening the door to
11 what would otherwise be improper evidence.

12 Further, the defendant opens the door and the
13 solicitors invited response is appropriate so long
14 as it does not unfairly prejudice the defendant.
15 Accordingly, the solicitor's response must be
16 proportional -- proportional. We will not condone
17 a thinly-veiled attempt to show propensity above
18 way of the open-door policies -- open-door
19 doctrine. And they look at for abuse of
20 discretion.

21 Prior to trial, court granted a motion to
22 suppress eight videos. On cross-examination, the
23 trial counsel, who was where aware of the
24 possibility of opening the door, carefully
25 tailored his questions to track the State's direct

1 examination. Indeed, the questions regarding the
2 contents of the desktop were effectively
3 identical.

4 The defense counsel asked:

5 "And to be clear, this desktop, that he's
6 charged with and that we've been talking about and
7 that they were investigating, those were not
8 found, those were not found on that laptop?

9 "No."

10 Immediately thereafter, defense counsel
11 returned questioning VanHouton about each of the
12 nonfocused items, which only underwent a preview
13 examination. The theme of cross-examination was
14 that law enforcement examine -- investigated
15 Simmons to the exclusion of all other possible
16 perpetrators.

17 After finding the defendant opened the door,
18 the Court permitted the state to play all
19 eight-point graphic videos for the jury despite
20 the state noting during the pretrial motions that
21 it did not intend to publish them.

22 Even acknowledging our generous standard of
23 review in those situations, the defense counsel's
24 questions was not sufficient to permit the state
25 to introduce the previously excluded evidence in

1 rebuttal and the state had already elicited
2 testimony from VanHouten on direct that there was
3 no child pornography found on Simmons desktop.
4 Once the state received this response, defense
5 counsel was certainly entitled to drill down on
6 that factor during cross-examination. The trial
7 court ruling that defense counsel open -- same
8 questioning on cross open the door to excluded
9 evidence allowed them to what was prohibited from
10 doing directly. Therefore, an abuse of
11 discretion, we would reject the sequence of
12 questioning implied VanHouten had conducted a full
13 analysis, etc.

14 And we reject the state's response of plan
15 all the videos for the jury far exceeded the
16 proper scope, and therefore would be error. And
17 it cited Bowman v. State based on the fact that
18 the state responded proportionately when the
19 defense opened the door. We hold the judge abused
20 its discretion in ruling the door had been opened
21 to evidence found on the external hard drive. All
22 right.

23 We find constitutional and we reverse because
24 the trial judge erred in finding the ultimate door
25 to evidence of suspected child pornography and

1 demand for a retrial. And my good friend the
2 Chief Justice concurs in part, the sentencing
3 part. I would find defense counsel open the door
4 to introduction of the testimony regarding the
5 hard drive. The trial court properly refused to
6 instruct. So he affirmed -- I said my good
7 friend, Chief Justice. And the chief's opinion,
8 there's evidence in the record to support the
9 finding that defense counsel open the door.
10 Initially, I would emphasize that the state made
11 no reference to the external hard drive. In fact,
12 when questioned a VanHouten about the desktop, the
13 state carefully limited its questions by
14 repeatedly referring to the desktop as "this
15 device."

16 Defense counsel proceeded to ask him to list
17 each of the 20 items seized for examination.
18 Defense counsel pointedly questioned VanHouten
19 about his examination of the desktop. In
20 response, he testified no child pornography videos
21 were found anywhere on the desktop. While defense
22 counsel did not expressly refer to the hard drive.
23 The trial court was correct and allowing the state
24 to clarify this false impression on redirect.

25 All right.

Motions

1 Chief affirmed. Justice concurs with the
2 Chief. So we have (inaudible).

3 You said this is your case?

4 MS. ZMROCZEK: It was, Your Honor.

5 THE COURT: They refer to US opinion in
6 this --

7 MS. ZMROCZEK: I tried it with Mr. Banks.

8 THE COURT: Huh?

9 MS. ZMROCZEK: I tried it with Mr. Banks,
10 Robert Banks.

11 THE COURT: Okay. Banks the pornography
12 expert?

13 MS. ZMROCZEK: He's one of my best friends,
14 Your Honor.

15 Not to cut this issue short, but as you were
16 reading this decision, it was whispered to me that
17 the co-defendant may have changed her mind. So
18 this whole issue may be moot. I would still argue
19 that if they want to ask him about what she said,
20 I think that they can have the opportunity to
21 recall him after she testifies, which I may need
22 to do, too, as well to impeach her. So I -- I --
23 think we've delved into a whole different issue.
24 Just when I thought we were going to be done
25 today, Judge.

1 **THE COURT:** We have all week and next week
2 and the week after.

3 So Mr. Dale Scott, what do you say or Mr. --

4 **MR. WHITMIRE:** Whitmire.

5 **THE COURT:** Whitmire.

6 **MR. SCOTT:** Judge, it doesn't -- the only
7 similarities I see is the same defense attorney
8 and apparently it was the same courtroom. But it
9 looks like the prosecutor got hit in that one
10 because he kind of overstepped what the judge was
11 allowing.

12 Just following -- I read it briefly,
13 Your Honor, while I was listening to you read it
14 aloud. Looks like on direct, there was no
15 pornography on the desktop elicited by the
16 prosecutor. At some point, they ended up playing
17 eight videos on a hard drive after they agreed not
18 to do that. I am not seeking any such overkill in
19 this particular case. I've heard some dicta that
20 solicitor's reply must be proportionate.

21 So what we have here again, just to
22 reiterate, in the cross-examination it was rather
23 aggressively asserted, "Wayne Montgomery, the only
24 evidence you relied on was the victim's testimony
25 and his word alone. You didn't do anything else

Motions

1 to corroborate." That was asked multiple times.

2 I focus mostly on that last question:

3 "Independent of the victim statement to you, you
4 did no other research before you arrested --
5 before you drew the conclusion that he was guilty
6 of these charges and you asked for these
7 warrants."

8 Clearly, that's not the case. It's rather
9 unfair for her to assert that in front of a jury
10 and then be misguided. "Man, this Wayne
11 Montgomery who's been in law enforcement 26 years,
12 all he does is listen to one guy's recollection of
13 events and he willy-nilly issues arrest warrants."
14 That's not the case.

15 We have a codefendant who may or may not
16 testify tomorrow. I always believe it when I see
17 it. But she was interviewed rather extensively.
18 She talked about things that nobody who was absent
19 from the scene would know about. Okay? She --
20 she testifies to essentially what the victim
21 testified to.

22 My question would be proportionate to -- if
23 you call it door opening, I call it nongroup
24 issue. I say it's nonhearsay. Proportionate
25 redirect question would be: "You said you spoke

1 with Ms. Jones at some point. Did she admit to
2 being present at the scene? Does she admit
3 being -- her involvement in the crime?"

4 That would be it. I don't see that as
5 violating *Bruton*. I think that's about as clear
6 of an opening the door as I see on a regular
7 basis. She was flirting with it and flirting with
8 it. There was at least twice that -- that she
9 made that assertion, again, rather aggressively
10 that Investigator Montgomery stops when he hears
11 what he wants to hear and goes no further.

12 **THE COURT:** All right.

13 **MS. ZMROCZEK:** And Your Honor, just to
14 correct the facts, Mr. Montgomery and the arrest
15 warrant reflect that that's actually what
16 happened. The arrest warrant that I asked him on
17 8/7/2019. So the arrest warrant was solely based
18 on what the -- the victim testified to. 8/7/19.
19 He didn't -- he didn't interview Ms. Jones until
20 10/24/19.

21 So the question I asked was proper. After
22 speaking with the victim and only speaking with
23 the victim, you -- you issued arrest warrants?
24 That's not an improper question. I have the
25 arrest warrant right here where he looked at the

1 date and agreed with me.

2 **THE COURT:** I thought you asked him if he was
3 basing his case solely on --

4 **MS. ZMROCZEK:** I never asked that.

5 **MR. SCOTT:** The last question I wrote down --
6 and I clearly defer to the court reporter -- well,
7 I have to paraphrase, but it was: All the
8 information independent of Dubose statement to you
9 on August 5 when they checked out of the hotel,
10 nothing independent of the victim's statement that
11 you used to corroborate his version of events?
12 Clearly, that's inaccurate.

13 And again, I think my redirect would be
14 proportionate to the assertion and simply did
15 she -- she admit to being present on the scene and
16 she admit to her own involvement.

17 **THE COURT:** Well, my ruling of that: The
18 door is open. And -- and I did not rule the
19 extent to which -- as to each particular question
20 to be asked. So I think my ruling is
21 proportionatal. I think we're sort of dealing
22 with apples and oranges. Whenever the Court is
23 dealing these child pornography type of things and
24 different folks have -- different folks access to
25 computers in this particular case and trying to

1 pin it on one guy and someone else has access. I
2 mean, the court went through a kind of long
3 opinion to kind of nail down the basis for ruling.

4 And I don't think that's what we're dealing
5 with here. We're dealing with the investigation
6 of what the officer did. He indicated the
7 investigation was ongoing. And he completely
8 addressed also questioning and investigating
9 Ms. Jones. And, of course, the defense objected
10 to the witness even testifying that Ms. Jones was
11 arrested or charged, you know. So the officer is
12 not hamstrung with that.

13 My decision -- ruling is the same, this case
14 notwithstanding. I see how Ms. Zmroczek would
15 carefully craft a question based on her success in
16 this case. But every tub sits in its own garden.
17 This case is a different case.

18 **MS. ZMROCZEK:** And Your Honor, aside from the
19 ruling -- this has nothing to do with that.
20 Mr. Scott said the co-defendant may or may not
21 testify tomorrow is what I think he heard -- what
22 I think I heard him say.

23 **THE COURT:** I'll just stop you. I need all
24 of the solicitors on the next case. (inaudible).
25 I need to talk with all of them about going

1 forward with the jury on other cases this week.

2 MS. ZMROCZEK: And -- and -- and, Your Honor,
3 just separate and aside from that, I may reserve
4 the right to -- to need to recall the witness if
5 they do. Because if the codefendant testifies,
6 then I need to cross-examine her. And if she
7 denies saying something, I may need to bring him
8 back.

9 THE COURT: Whatever.

10 MS. ZMROCZEK: Okay.

11 THE COURT: Are y'all ready for the jury?

12 MR. SCOTT: We are, Your Honor.

13 MS. ZMROCZEK: Yes.

14 THE COURT: Bring the jury in.

15 (The jury enters the courtroom at 3:09 p.m.)

16 THE BAILIFF: The jury is seated, Judge.

17 THE COURT: All right.

18 Mr. Foreman, how is the jury doing?

19 THE JURY FOREPERSON: Doing well.

20 THE COURT: You are the spokesperson.

21 All right.

22 Continuing on. Redirect.

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Investigator Montgomery, is it safe to say

1 that all the parties in this case, at least when you
2 were investigating, were largely transient people?

3 A Yes.

4 Q Okay. And homeless from time to time?

5 A That's correct.

6 Q I think there was testimony at some point
7 earlier in cross-examination that the defendant may
8 have been connected with the town of Orangeburg? I
9 heard something about that. Did you hear that?

10 A He had a couple of different addresses. I
11 believe Holly Hill, South Carolina, if I'm not
12 mistaken.

13 Q And then the envelope found in the car was a
14 Gaston address?

15 A Yes, sir.

16 Q There's been some testimony that he lived in
17 Summerville at some point as well?

18 A Yes.

19 Q You ever found any connection between him and
20 Hickory, North Carolina?

21 A No, sir, I did not until he was in custody.

22 Q Did you ever discover what he did with the
23 phone he had at that time of this incident?

24 A No, sir. I did not.

25 Q So we don't know what ever happened to that

1 phone, do we?

2 A No, sir.

3 Q Cameras. Shealy cameras are very helpful
4 when they capture a crime, aren't they?

5 A Yes. Very much so.

6 Q But oftentimes due to whatever angle they
7 are, where they are placed, you may not get the crime
8 in question?

9 A Correct. That's -- in this case, it wasn't
10 in a position where it would have caught anything.

11 Q There were no cameras aimed out at the
12 cemetery?

13 A No, sir.

14 Q And at least when I remember looking at them,
15 they were along Elmwood, but not at Frontage Road that
16 goes down towards the cemetery. Is that your
17 recollection?

18 A Yes, sir.

19 Q In other words, if -- if I was able to get
20 down Elmwood and go down -- it wouldn't capture me
21 actually going into the cemetery?

22 A There -- yes. There's a couple of ways you
23 can go into the cemetery without being seen on that
24 camera.

25 Q There's one looking down Park Street. There

1 was one looking at Bojangles. But at least to my
2 knowledge, I never saw any y'all ever found that showed
3 the entrance to the cemetery?

4 **A** That's correct.

5 **MS. ZMROCZEK:** Objection to what the
6 solicitor saw.

7 **THE COURT:** Let me hear the question again.

8 **BY MR. SCOTT:**

9 **Q** Were there any cameras that were able to film
10 the entrance to the cemetery?

11 **A** No.

12 **Q** Okay. There's been -- there's been some talk
13 about fingerprints on the car and some -- some
14 assertion that if you found fingerprints that would've
15 shown that they were there on that particular day. Is
16 that how you understand fingerprint evidence to work?
17 Can you tell when somebody left the fingerprint?

18 **A** No, sir.

19 **Q** Okay. So if you look with her example and
20 you found my fingerprint on this Plexiglass. You
21 understand I make my living in this courtroom and I'm
22 here all the time. Would you be able to say for a fact
23 Dale Scott touched that particular Plexiglass on the
24 morning of Tuesday, April 4?

25 **A** No, sir. I could not tell exactly what date.

1 Q Same -- same with DNA. If you found
2 somebody's DNA on this -- by the way, would that be
3 unexpected to find my DNA, touch DNA, on that table
4 since I'm here all the time?

5 A Absolutely not.

6 Q Okay. Would it be unreasonable or unexpected
7 to find my fingerprints all of this courtroom?

8 A That would be expected.

9 Q Okay. What occurred to you when you began
10 finding personal belongings of Martin Dixon within the
11 car, within the Lexus, such as his medications, such as
12 his medical records, such as his mail?

13 A That, to me, corroborated that he was inside
14 the vehicle at various points in times as the victim
15 had indicated.

16 Q Okay. But just to be clear, if you -- let's
17 say you found one of his fingerprints on there. Could
18 you say they have the technology to say that
19 fingerprint was left there on April 7 or
20 August 7, 2019?

21 A No, sir.

22 Q No. You can't time a fingerprint or DNA
23 swab, correct?

24 A That's correct.

25 Q Just -- you mentioned earlier you spoke with

1 Michelle Jones after she was found in Hickory, North
2 Carolina; is that right?

3 A Yes.

4 Q Okay. And did she admit to being at the
5 scene of the crime when it happened?

6 A She did.

7 Q And did she tell you about her involvement?

8 A She implicated herself, yes, sir.

9 Q Thank you. That's all the questions I have
10 for you.

11 THE COURT: All right.

12 MS. ZMROCZEK: Thank you, Your Honor.

13 RECROSS EXAMINATION

14 BY MS. ZMROCZEK:

15 Q She admitted a lot of things to you, didn't
16 she?

17 A Yes, ma'am.

18 Q She admitted that Antrone Dubose killed
19 her -- her cousin, right?

20 MR. SCOTT: Well, objection to hearsay. This
21 is -- she's asking about direct statements by
22 the --

23 MS. ZMROCZEK: Your Honor, based on my
24 previous assertion, I will forgo this kind of
25 questioning as long as I can recall him if

1 necessary.

2 **THE COURT:** Okay.

3 **MS. ZMROCZEK:** And I can move on. I just
4 have a few more things.

5 **THE COURT:** All right.

6 **BY MS. ZMROCZEK:**

7 **Q** So can't time or date a fingerprint or DNA,
8 right?

9 **A** Yes, ma'am. That's correct.

10 **Q** So why do we use them?

11 **A** It's -- it's another tool that we use. It is
12 one of the tools.

13 **Q** Right. One of the tools that we use, right?

14 **A** Yes, ma'am.

15 **Q** To try to convict people?

16 **A** Not necessarily to convict people.

17 **Q** Because we can also use it to acquit people,
18 right?

19 **A** In some circumstances, it can be or could be.

20 **Q** Right. So if Mr. Dale Scott's fingerprints
21 are on here and we can't date them -- scratch that.
22 I'll move on to a different question.

23 You testified to -- sorry, on redirect
24 about -- sorry. I cannot read my handwriting.

25 You testified on redirect to the fact that

1 all parties in this case were transient?

2 A Yes.

3 Q Right?

4 A Yes, ma'am. I did.

5 Q And you can verify that at this time in
6 August, all parties were transient?

7 A Which time, ma'am?

8 Q I'm talking about the time right now of the
9 trial -- of the case, August 7. You -- you -- you
10 can -- you verified that all parties were transient?
11 They were all homeless?

12 A They were living inside the vehicle. They
13 were living in the hotel for a short period of time.
14 The said defendant had multiple addresses. So he was
15 definitely fluid on where he was staying.

16 Q Okay. Because you verified that he had
17 places to stay and was moving from place to place?

18 A It was information that -- that suggested
19 that, yes, ma'am.

20 Q There was information that suggested that you
21 did not follow up on. You just gave it to the fugitive
22 task force and said go find him?

23 A I provided that information, yes, ma'am.

24 MS. ZMROCZEK: Thank you.

25 Nothing further, Your Honor, at this time.

1 **THE COURT:** Thank you, sir. You may step
2 down.

3 **THE WITNESS:** Yes, ma'am. Thank you kindly.

4 **THE COURT:** And, ladies and gentlemen, I'm
5 going to excuse you for the remainder of today. I
6 need you back at 10 a.m. tomorrow morning.
7 10 a.m. tomorrow morning. Please do not discuss
8 the case.

9 (The jury exits the courtroom at 3:18 p.m.)

10 **THE COURT:** All right.

11 So what's the plan? Where do we go from here
12 with Mr. Dixon's case?

13 **MR. SCOTT:** I intend to spend the rest of my
14 afternoon speaking with Ms. Jones and her lawyer
15 and call her in the morning, God willing, Court
16 willing, and rest my case after that.

17 **THE COURT:** And if she decides to plea, we'll
18 do that at 9:30, if she decides to plea.

19 **MR. SCOTT:** Yes, sir.

20 **THE COURT:** If you call her.
21 Ms. Zmroczek.

22 **MS. ZMROCZEK:** I think there are some things
23 I need to research, Your Honor, 'cause here is my
24 concern: She wasn't going to testify and then she
25 goes in front of the Court where there's a pretty

1 heated exchange where the Court's saying how much
2 time she can get and she better think about it and
3 yelling at her lawyer. And I've got to figure out
4 how to -- because I'm certainly not trying to --
5 you know, I can't drag you into the case, but I've
6 got to figure out the way to protect my client's
7 rights and still --

8 **THE COURT:** Now, I didn't yell at her lawyer
9 now. You know, I'm behind this glass enclosure.
10 I have to speak so you can hear me.

11 **MS. ZMROCZEK:** Certainly. The tone of the
12 delivery was certainly out of frustration. And I
13 think you even said that you just frustrated
14 that -- that they clog up the system.

15 **THE COURT:** Understood.

16 Mr. Forney is a -- is a seasoned public
17 defender. He's -- he knows how to handle himself.
18 He's fine.

19 **MS. ZMROCZEK:** He absolutely does. I'm not
20 worried about him. I'm just worried about the
21 effect that it may or may not have on my client.
22 I just need to research that.

23 **THE COURT:** I understand. But she still have
24 to -- just like he tried to object to me talking
25 to the victim, he's not in this case. So you

1 likewise, you don't represent him. So -- I mean
2 her.

3 **MS. ZMROCZEK:** I definitely
4 don't represent --

5 **THE COURT:** You do your research and we'll
6 see where it goes.

7 **MS. ZMROCZEK:** I will, Your Honor.

8 **THE COURT:** There's a lot of frustration
9 particularly on a case like this where all of
10 these people, each one of them have their own
11 individual problems and issues. And you know, who
12 may not well understand what's going on here.

13 **MS. ZMROCZEK:** And -- and that's part of my
14 concern, Your Honor.

15 **THE COURT:** So far, the one with the most
16 common sense is your person who we had the hearing
17 on who you had some questions as to his
18 competence. But he seems to be far more competent
19 than any of the others.

20 **MS. ZMROCZEK:** And -- and that -- that's
21 something --

22 **THE COURT:** That doesn't mean that he'd make
23 the best decision either in this trial. Because
24 he's facing -- he's facing the same thing everyone
25 else's facing or at least his co-defendant.

1 What kind of plea offer did you make to --
2 make to this guy, Mr. Scott?

3 **MR. SCOTT:** You said 13. I recall 18 years
4 based on his record, based on the age of the
5 crime.

6 **THE COURT:** You know, the decision as to
7 sentence is up to the Court unless it's a
8 negotiated sentence. It's not up to the lawyers.

9 **MR. SCOTT:** Of course, this has no mandatory
10 minimum, Your Honor.

11 **THE COURT:** So you know --

12 **MS. ZMROCZEK:** And Your Honor, I'm in the
13 middle of a PCR right now that -- that discusses
14 that we're not allowed -- it's not proper to have
15 discussions about plea offers with the trial
16 judge. So I need to read that as well before
17 I step into another --

18 **THE COURT:** It's not proper to have --
19 discuss plea offers with the trial judge?

20 **MS. ZMROCZEK:** Jury trial. But again, I want
21 to read the cases. I don't want to --

22 **THE COURT:** When you find that, please send
23 it to me. I would love to read that as well.

24 **MS. ZMROCZEK:** I will. I will.

25 **THE COURT:** Because the latest cases even

1 before the beginning of trial, the judge discussed
2 the status of the case and made sure the defendant
3 wants a trial. I'm not -- I'm not suggesting at
4 all that he changed his mind and not want a trial.
5 I think that throughout the trial, it's not
6 uncommon for someone to evaluate where a case is
7 going and decide if they would try to -- see if I
8 can work this out. That's civil and criminal.

9 MS. ZMROCZEK: Someone -- someone PCR'd to
10 me. That's why -- that's the only reason I'm
11 researching at Your Honor. So I mean, you know --

12 THE COURT: Whatever you find on that before
13 or after this case, I would love to see it.

14 MS. ZMROCZEK: I will -- I will absolutely --
15 anything I send, I will send to your law clerk and
16 to the solicitor as well.

17 THE COURT: Just some of these cases are
18 tried that should not be tried. They need to --
19 because as I said, the person that gets the short
20 end of the stick quite often is the defendant. I
21 listened to the victim's testimony to the extent I
22 could make out what he was saying. We'll go with
23 what we have. And we'll take a break to see if
24 he's going to -- I mean, the lady, Ms. Jones,
25 pleading tomorrow; testifying tomorrow. Then,

1 we'll press on.

2 I am not trying to short-circuit anyone's
3 constitutional rights and end the trial. I'm just
4 making sure -- trying to make sure to the extent
5 possible that everyone is focused on the issues a
6 hand. Mr. Forney says that Mr. Scott never made a
7 plea offer. You're saying that there's a plea
8 offer of 18 years. I'm saying that whatever the
9 sentence is, it's up to the judge, unless it's a
10 negotiated sentence. So I make my own assessment
11 as to what occurred and what I think the sentence
12 should be.

13 And I think that in too many instances, the
14 prosecution and the defense tried to control the
15 sentence when the main issue is being -- is trying
16 to control the guilt or innocence and in proving
17 your case, not trying to -- but you know.

18 **MS. ZMROCZEK:** As I reminded the Court, I'm
19 like the third or fourth attorney that was
20 appointed on this case. So you know, I've been
21 through all of those -- all of those discussions
22 with Mr. Dixon ad nauseam.

23 **THE COURT:** When I started in prosecution --
24 and I was a defense lawyer and prosecutor, I had
25 defendants coming to me asking what should they

1 do. "My lawyer wants me to plead guilty. What
2 should I do?"

3 And I am the prosecutor. And I said, "Well,
4 you need to hold out. I might be able to get you
5 a better deal than that or whatever."

6 So times have changed, particularly with the
7 PCRs and everyone complaining about everyone else
8 and all of that type of stuff. So we're just
9 moving right along. We'll be through with this
10 case and Mr. Dixon will have his justice one way
11 or the other.

12 **MS. ZMROCZEK:** Since we have a little time
13 and he doesn't need to make his decision right
14 now, would the Court like to use -- I know it's --
15 they haven't rested yet. Would the Court like to
16 use just a little bit of time to --

17 **THE COURT:** Absolutely.

18 **MS. ZMROCZEK:** Thank you.

19 **THE COURT:** Mr. Dixon, let me talk to you
20 about whether you want to testify or not testify.

21 **THE CLERK:** Would you raise your right hand
22 please?

23 You solemnly swear that the answers you give
24 to the questions propounded by the Court will be
25 truth, the whole truth, and nothing but the truth

1 so help you God?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** All right.

4 Mr. Dixon, how are you doing today?

5 **THE DEFENDANT:** Doing okay.

6 **THE COURT:** All right.

7 Well, we've reached the stage in the trial or
8 we will soon reach the stage in the trial where
9 you would have the right to put up your defense.
10 And that means you would have the right to testify
11 or not testify. You understand that?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** So the Fourth Amendment to the
14 Constitution provides that no person can be
15 compelled to be a witness against themselves.
16 That means that you cannot be required to testify.

17 Do you understand?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** But you do have the right to
20 testify if you want to testify. Whether or not
21 you testify is a personal right and no one can
22 waive that right but you. In other words, you
23 must make a personal decision after conferring
24 with your lawyer as to whether you're going to
25 testify or not.

Court Remarks to Defendant

1 Do you understand?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** If you testify, the state will
4 have the right to offer into evidence -- possibly
5 have the right to offer into evidence certain
6 criminal convictions that I understand that you
7 have to impeach your credibility. We have not
8 reviewed those. We can go into or whatnot, but
9 you have a pretty long criminal record, right?

10 **THE DEFENDANT:** I guess, Your Honor.

11 **THE COURT:** You guess.

12 **MS. ZMROCZEK:** Your Honor, I don't believe
13 anything is admissible. His last conviction was
14 2007.

15 **THE COURT:** All right.

16 **MS. ZMROCZEK:** So that was -- that would be
17 over -- and certainly, Mr. Scott can disagree with
18 me. But 2007 appears to be his last conviction.
19 And there do not appear to be any crimes of
20 dishonesty amongst those convictions.

21 **THE COURT:** All right.

22 So you may be able to testify without the
23 jury knowing anything about you having a past
24 record. Of course, that may depend on how you
25 answer certain question as well. If Ms. Zmroczek

1 asks you if you ever been in trouble before and
2 you say no, then that may change things. You know
3 that?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** So have you talked with
6 Ms. Zmroczek as to whether or not you should
7 testify?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** You want to be able to talk with
10 her some more about it?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** And you have the right to talk
13 with your family, friends, lawyer, or whomever you
14 want to talk to. But the final analysis is up to
15 you as to whether or not you testify. Do you know
16 that?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** All right.

19 We'll come back tomorrow on that. Do you
20 have any -- any questions you want to ask me about
21 it?

22 **THE DEFENDANT:** No, Your Honor.

23 **THE COURT:** You understand what I was saying
24 -- asking?

25 **THE DEFENDANT:** Yes, Your Honor.

Requests for Charge

1 **THE COURT:** Okay. Well, we'll talk further
2 then.

3 Okay. So are we done now in this case for
4 the day?

5 **MR. SCOTT:** We are, Your Honor.

6 **MS. ZMROCZEK:** Your Honor, just a few more
7 things.

8 **THE COURT:** Yes.

9 **MS. ZMROCZEK:** I'm trying to preserve.

10 **THE COURT:** All right.

11 **MS. ZMROCZEK:** I did send a list of requested
12 jury charges. But I now may need to add to that.
13 I may need to add to that depending on what
14 happens tomorrow. And so -- but I did want for
15 the Court --

16 **THE COURT:** What kind of things have you sent
17 me?

18 **MS. ZMROCZEK:** I think it's pretty much the
19 standard things. However, I think the only things
20 I probably need to point out are the -- well,
21 three things. I asked for the *Logan*
22 circumstantial evidence charge, which I think we
23 asked for. The Court will certainly give it. I
24 think I asked for the more lengthy reasonable
25 doubt charge. And then, so the answer -- I put

1 attempted murder, which is obviously one of the
2 charges. But Your Honor, only because I tried so
3 many cases, I've had four different cases
4 overturned on attempted murder issues. And I
5 don't even know what the current charge is. So I
6 was sending out a help signal to some people that
7 are way smarter than I because I know there are
8 issues with malice, specific intent, things like
9 that. And so I -- now that I have little time
10 today, I'll -- I'll do -- I'll propose a more
11 specific attempted murder charge.

12 **THE COURT:** We have the perfect attempted
13 murder charge.

14 **MS. ZMROCZEK:** You do? Oh, can you e-mail it
15 to me? If I could see it, that would be
16 fantastic.

17 **THE COURT:** We'll send it to you.

18 **MS. ZMROCZEK:** Thank you.

19 But other than that, I think it's all pretty
20 much general stuff. I did put alibi in. But
21 that's just going to depend on the testimony,
22 if -- if my client testifies what testimony --
23 what evidence will be put forward on that.
24 Obviously, that's kind of up in the air depending
25 on once -- once all evidence is in front of the

Requests for Charge

1 jury.

2 THE COURT: I think we have the perfect one.
3 Hopefully, she can find it.

4 MS. ZMROCZEK: Okay. Good. I'm sure
5 you're -- cause I know you read all of these
6 cases. There have been several changes.

7 THE COURT: Well, the main thing is you have
8 a specific intent to kill.

9 MS. ZMROCZEK: A specific intent to kill.
10 And then there's the issue of the malice
11 definition in there. Because with -- with
12 *Burdette*, it can't be -- I mean, there's no deadly
13 weapon in this case. But the inferred malice
14 charge, I think, has to be crafted in a certain
15 way to not lessen the specific intent. And so I
16 think that's probably that the only issue that's
17 swirling in my --

18 THE COURT: You have to be concerned about
19 whether they find him guilty of kidnapping.

20 MS. ZMROCZEK: Right. Right. Well, yeah.

21 THE COURT: Of course, kidnapping used to be
22 mandatory life in prison. It is now 30 years.
23 That's something that this jury would be
24 interested in.

25 MS. ZMROCZEK: And -- and just in case I

1 forget, which I hope I don't forget --

2 **THE COURT:** Of course, you lock someone in
3 the trunk of the car and set the car on fire, they
4 may think that's attempted murder, too, if they
5 believe that he did that. I mean, I don't know.

6 **MS. ZMROCZEK:** So I think -- yeah, I think a
7 lot -- you know, some of the changes will just
8 depend on how the testimony bears out tomorrow.

9 **THE COURT:** All right.

10 **MS. ZMROCZEK:** And I -- I think I'm going to
11 sit down and shut up.

12 **THE COURT:** Good. Very good.

13 Any questions, Mr. Dixon?

14 **THE DEFENDANT:** No, Your Honor.

15 **THE COURT:** Okay. I'm going to -- how did he
16 go from being so fuzzy yesterday to being so
17 clearheaded today?

18 **MS. ZMROCZEK:** Lots of conversations,
19 Your Honor.

20 **THE COURT:** Okay. All right.

21 We'll get together tomorrow morning.

22 First, we're going to talk with the other
23 pending cases, so we'll know what to tell the
24 jury. So we're through with you-all.

25 (The Court recesses for the day.)

CERTIFICATE

1
2 I, the undersigned, Teresa B. Johnson, Official
3 Court Reporter, do hereby certify that I transcribed
4 the electronic recording of the remote hearing in this
5 matter; and that the foregoing is a true transcript of
6 said electronic recording.

7 I do further certify that I am not a relative,
8 employee, attorney, or counsel of any of the parties
9 connected with the action, nor am I financially
10 interested in the action.

11
12 Dated: August 17, 2023

13
14 /s/Teresa B. Johnson

15 Teresa B. Johnson

16 Official Court Reporter
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23
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25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	Case No.: 2020GS4001501,
	)	2020GS4001502
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
Martin Dixon,	)	
	)	
Defendant.	)	April 5, 2023

TRANSCRIPT OF TRIAL - DAY 3 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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

For Government: Christopher Dale Scott, Esq.
Senior Assistant Solicitor

John Walter Whitmire, Esq.
Assistant Solicitor

For Defendant: Aimee J. Zmroczek, Esq.
Attorney at Law

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P R O C E E D I N G S

(Court is called to order on Wednesday, the 5th day of April 2023, at 9:48 a.m.)

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Good morning, Your Honor.

THE COURT: Morning.

MS. ZMROCZEK: Your Honor, respectfully, as a result of some things that were placed on the record and in front of my client and after having conversation with my client, I -- I -- I respectfully need to make some motions --

THE COURT: Okay.

MS. ZMROCZEK: -- at this time. I will be referring to this transcript excerpt. I understand that Your Honor has a copy. But since I'll be referring to it, I would like to go ahead and mark it as a Court's exhibit.

THE COURT: Okay.

MS. ZMROCZEK: Thank you.

(Court Exhibit No. 3 is marked for identification.)

MS. ZMROCZEK: Thank you.

Your Honor, the first motion that I have this morning is a motion for a mistrial. Generally, where bias and prejudice of the trial judge is

Motion for Mistrial

1 claimed, the issue must be raised at the time when
2 the facts become known. And that's *State v.*
3 *Charron*, 351 S.C. 319, 569 S.E. 2d. 388, Court of
4 Appeals 2002. Generally, an alleged improper
5 remark by a trial judge must be considered in
6 context when determining whether it indicates
7 sufficient bias or prejudice to require his or her
8 disqualification. And that's *Shaw v. State*, 276
9 S.C. 190, 277 S.E. 2d. 140, 1981.

10 However, a defendant is entitled to a
11 mistrial where arguments by the trial judge
12 indicate a lack of neutrality and cannot be cured
13 by instruction, that's where the defendant's
14 testimony was referred to. Obviously, we're not
15 talking about the defendant's testimony at this
16 point. But any intimation by a judge in the
17 presence of the jury -- and although this was
18 outside the presence of the jury, it was in the
19 presence of my client --

20 **THE COURT:** Hold. That's a -- you reading
21 some law? Or you just kind of -- any -- read your
22 sentence again. You're given me a half of a
23 sentence and a lot of exceptions.

24 **MS. ZMROCZEK:** Yes, Your Honor. So -- and I
25 was just trying to write my notes down.

1 **THE COURT:** Oh. You're reading your notes.
2 You're not -- I mean, you're looking like you're
3 citing some law.

4 **MS. ZMROCZEK:** Right. Well, these are just
5 simply my notes, Your Honor --

6 **THE COURT:** Okay. All right.

7 **MS. ZMROCZEK:** -- as I make my argument.

8 **THE COURT:** Maybe start that last sentence
9 over.

10 **MS. ZMROCZEK:** Okay. Certainly.

11 I think I believe I said a defendant is
12 entitled to a mistrial where argument by the trial
13 judge indicates a lack of neutrality and cannot be
14 cured by instruction. Then the next sentence that
15 I said was likewise, any intimation by a judge in
16 the presence of a jury that a particular witness
17 has committed perjury is a reversible error. This
18 applies to whenever a judge indicates on the
19 facts.

20 And so, Your Honor, the problem that -- so
21 the mistrial motion is based on -- on several
22 comments that were made --

23 **THE COURT:** None of what you said thus far is
24 relevant to anything in this case.

25 **MS. ZMROCZEK:** So Your Honor, just to break

1 it down for you, not reading from my notes.
2 Yesterday, as we all know, when the co-defendant
3 was questioned by the Court asking if she was
4 going to testify --

5 **THE COURT:** Right.

6 **MS. ZMROCZEK:** -- at that point, she stated
7 that she intended to assert her Fifth Amendment
8 right. And contemporaneously, her -- her public
9 defender was expressing to the Court his concerns
10 about his competency -- her competency. I don't
11 know if that was actually a competency hearing
12 because I do not believe that you had any of her
13 evaluations in front of you.

14 **THE COURT:** It still hasn't been presented to
15 the Court.

16 **MS. ZMROCZEK:** Right. Which still hasn't
17 been presented to the Court. The things that were
18 concerning to my client, Your Honor, were with --
19 with regard simply to what he expressed to me
20 was -- was what he believed to be some bias and
21 some comments on the facts was beginning on page
22 8, Your Honor, of the -- of Court's Exhibit 3.
23 Actually, sorry. It's exhibit -- I had the draft,
24 Your Honor.

25 So beginning where -- on page 12, sorry

1 Your Honor, the Court begins to -- was talking to
2 the co-defendant and stating that anybody can have
3 a -- a jury trial. You might get a -- actually,
4 you were talking to my client, advising him that
5 he's 53; he might get a life sentence.

6 Your Honor, after speaking to him --

7 **THE COURT:** Wait a minute. Are you citing
8 the transcript?

9 **MS. ZMROCZEK:** Yes, Your Honor.

10 **THE COURT:** If you're going to recite the
11 transcript, then you need to tell me the book and
12 page number and let's look at the transcript.

13 **MS. ZMROCZEK:** Thank you, Your Honor.

14 Page --

15 **THE COURT:** Not book and page but --

16 **MS. ZMROCZEK:** Page 12 --

17 **THE COURT:** Page and line number. Page 12,
18 line what?

19 **MS. ZMROCZEK:** Two.

20 **THE COURT:** Two. All right.

21 "So it's pretty easy to say, 'Well, I'm not
22 guilty; I want to have me a jury trial.' That's
23 fine if you get found not guilty. But if you get
24 found guilty, you're 53, you know, you might get a
25 life sentence, especially as it sounds like you're

Motion for Mistrial

1 not in too good a shape healthwise and you have
2 health issues.

3 "So it's easy for everyone to say, 'I want a
4 jury trial. I'm not guilty,' as if the jury is
5 just going to automatically find people not
6 guilty, but it depends on the evidence. If you're
7 found guilty, you know, you've got some serious
8 consequences. And I'm talking more -- tell me
9 that aunt's name back there again, your aunt.
10 What's her name?"

11 So I'm not talking to this defendant, I'm
12 talking to the co-defendant.

13 **MS. ZMROCZEK:** Okay. And -- and Your Honor,
14 maybe I was confused. She's 37; he's 53. So that
15 may have been some of the confusion.

16 **THE COURT:** Of course, I even -- I might have
17 talked to him earlier. But I indicated that if
18 someone's 53 and gets a sentence of 30 years, 60
19 years, it's, in effect, a life sentence
20 considering the life expectancy of people who are
21 incarcerated. It could be tantamount to a life
22 sentence.

23 **MS. ZMROCZEK:** Certainly.

24 **THE COURT:** But if you're going to -- I
25 haven't heard your motion for a mistrial. You

1 referred to the record, but you have to accurately
2 cite whatever it is you're talking about.

3 **MS. ZMROCZEK:** Okay. And -- and -- and I'll
4 get there. So I think the easier thing to do,
5 Your Honor, is -- is to address the problematic --
6 what defense believes is problematic statements
7 with regard to the neutrality and an opinion on
8 the facts.

9 **THE COURT:** Okay.

10 **MS. ZMROCZEK:** So beginning on page 13,
11 Your Honor.

12 **THE COURT:** Page 13. All right.

13 **MS. ZMROCZEK:** Line 4.

14 **THE COURT:** So the state -- so whatever --
15 this is me talking. Beginning on page 12, line
16 19.

17 "I'm talking to Ms. Beverly Rivers more than
18 anyone else in here today. Because you can just
19 say, 'I want a jury trial. I'm pleading the
20 Fifth. I'm not going to say anything.' And when
21 you have a jury trial, you don't have to testify.
22 You can take the Fifth.

23 "And Mr. Scott he doesn't -- I mean, he would
24 love to -- obviously, he picked out the guy he
25 thinks is most guilty and he put him on trial.

1 "And you can want a trial, but you know, you
2 might want to consider trying to figure out how to
3 get out of this jam that you're in."

4 "Line 4: I don't know what her degree of
5 culpability is. It is hard for me to believe that
6 she would have beaten the man in the head and
7 forced him in the trunk and all of that stuff. It
8 sounds like she was just a third wheel here. I'm
9 not sure what she did. What is she accused of
10 doing?

11 "And Mr. Scott: She was -- as Mr. Dubose
12 testified, she was active in beating him and
13 forcing him into the trunk.

14 "So I said: She was out of control as well?

15 "Judge, this is just a preview as it was with
16 Gabbie. Just an odd case and just people who were
17 kind of doing bad things to vulnerable people."

18 All right.

19 **MS. ZMROCZEK:** And so, Your Honor, as far
20 as -- he feels that you stating that you don't
21 think that she could have been involved --

22 **THE COURT:** It's hard to believe that she --
23 that that lady standing before me could have
24 beaten a man and forced him into the trunk.

25 **MS. ZMROCZEK:** Right. And -- and -- and so

1 that would be the --

2 **THE COURT:** And that was clarified by
3 Mr. Scott saying that she was and by Mr. Victim
4 who said that she was beating him too.

5 **MS. ZMROCZEK:** Right.

6 **THE COURT:** All right.

7 **MS. ZMROCZEK:** So obviously his concern is
8 that the Court stating that your -- just what your
9 beliefs were about the facts. Because, like you
10 said, you would have a hard time believing it.
11 And then questioning the witness as to what she
12 did to him, Your Honor. Then --

13 **THE COURT:** You haven't given me anything.

14 **MS. ZMROCZEK:** Okay. Yes, Your Honor.
15 The -- so -- the bigger issue, Your Honor, is that
16 as she was ascertaining her Fifth Amendment right,
17 the Court then not only speaks to her, but then
18 speaks to her family, indicating that if she
19 doesn't cooperate with the government, that she is
20 going to get 60 years.

21 **THE COURT:** I didn't tell her that. I won't
22 be doing her trial. Her trial will not be before
23 me.

24 **MS. ZMROCZEK:** Right.

25 **THE COURT:** How can I tell her what her

1 sentence would be when I'm not her judge?

2 MS. ZMROCZEK: And throughout the --
3 throughout the -- throughout the colloquy, the
4 Court reminded her that even though you may not be
5 the judge, that if she does not cooperate, that
6 she would get 60 years.

7 THE COURT: No. That's -- that's --
8 you're -- you're putting a spin on there that
9 doesn't exist. I told her and I told your guy
10 that the sentence is up to me. The solicitor said
11 he recommended an 18-year sentence to your client.
12 I said the sentence would be up to me, not up to
13 the solicitor. I made that clear not only to this
14 defendant, but also to the co-defendant if she
15 pleads guilty. I don't care whether she pleads
16 guilty or not. I don't care if he pleads guilty
17 or not. It's not up to me. All the lawyers
18 citing about the judge not being neutral and
19 telling the jury this and all of that, you know,
20 that does not apply to this situation.

21 MS. ZMROCZEK: Okay. And then, Your Honor,
22 on page 13 beginning at line 15 to 20. So my --
23 my client asked me because as to really equal
24 protection issues, he said that after hearing
25 lines 15 through 20 that as he understands it from

1 what you stated on the record, that because he was
2 a man and didn't have children that he was going
3 to be in -- put -- end up in prison for a long
4 period of time.

5 **THE COURT:** Say that again now? Are you
6 reading something or are you just talking?

7 **MS. ZMROCZEK:** Yes, Your Honor. Page 13,
8 lines 15 through 20.

9 **THE COURT:** Page 13, lines 15 through 20.

10 "The Court: Well, if you have all of these
11 trials and people get end up in prison for a long
12 period of time or you can figure out -- figure out
13 a way that you can try to get out of this."

14 Again, I'm speaking to the lady, I imagine.

15 **MS. ZMROCZEK:** Your Honor, do you have the
16 draft copy or do you have the final copy?

17 **THE COURT:** I have what you handed me.

18 **MS. ZMROCZEK:** I'm sorry. This is the one
19 I'm referring to.

20 **THE COURT:** This says "excerpt." Line 13 --

21 **MS. ZMROCZEK:** Page 13 --

22 **THE COURT:** Page 13, line 15.

23 **MS. ZMROCZEK:** Line 15 through 20, yes,
24 Your Honor.

25 **THE COURT:** "Well, you can have all these

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1 trials and people can end up in prison for a long
2 period of time, or you can figure out a way that
3 you can try to get out of this."

4 I'm talking to the lady.

5 "Of course, I'm not -- I'll put a guy in
6 prison a lot faster than I will put a woman in
7 prison, especially a woman who has three
8 children."

9 MS. ZMROCZEK: Right.

10 THE COURT: That's my view of it, yes.

11 MS. ZMROCZEK: Yes, Your Honor.

12 THE COURT: "And I'm not saying whatever
13 should be the end result. But it is so easy to
14 say, 'Well, I'm going to plead the Fifth. I'm not
15 going to cooperate. I want me a jury trial. I'm
16 thinking this is going to just go away.' And then
17 you have a jury trial and if get found guilty,
18 then you have some serious problems.

19 "Ms. Beverly Rivers, and if -- if she's got
20 problems, you've got problems. And so you-all
21 need to think hard. What else do you have to
22 do -- let me see. What else do you have back
23 there -- who else do you have back there with you?

24 "Ms. Rivers: Her husband and her son."

25 All right. Go ahead.

1 **MS. ZMROCZEK:** Thank you.

2 Your Honor, so his concerns regarding
3 especially statements like that is that the way
4 that it was reflected was that you were
5 encouraging her to save herself and to -- and
6 encouraging her family to talk to her about saving
7 herself and -- and testifying for the state as a
8 way to encourage her to testify to the state.

9 **THE COURT:** I think that's a fair
10 interpretation that she needs to seriously
11 consider her own interests with regard to this
12 case. Whether, you know, I'm -- I'm certainly
13 not -- if a person is going to testify, that
14 doesn't intimate the person is going to not -- is
15 going to make up a lie. I mean, if she testifies
16 and -- I mean, the whole purpose of a trial is a
17 truth-seeking process.

18 She testifies. And you cross-examine her.
19 She tells the truth or she tells a lie. None of
20 that's up to me. And I don't care she testifies
21 or not testify. I'm speaking to her.

22 She comes up in the purpose of the hearing
23 that you requested, I believe. And then you had
24 Mr. Forney here as well that I conduct a hearing
25 outside of the presence of the jury to determine

Motion for Mistrial

1 whether or not she intends to assert her Fifth
2 Amendment. That's what we did.

3 So at that point, she has my attention, not
4 your guy. I'm talking to this co-defendant. And
5 she can testify or not testify. But she's facing
6 the same thing that your guy is facing: Up to 30
7 years for kidnapping and up to 30 years for
8 attempted murder.

9 **MS. ZMROCZEK:** She's actually facing an
10 additional 15 for the arson.

11 **THE COURT:** Okay.

12 **MS. ZMROCZEK:** Sorry.

13 **THE COURT:** Plus 15 for arson. She's facing
14 85 years. And she is the mother of three children
15 and a person with diminished mental capacity. And
16 her lady who was here with her is her caretaker.
17 And they need to give serious consideration to her
18 well-being.

19 As I said, the lawyer will go home.

20 **MS. ZMROCZEK:** And -- and -- and --

21 **THE COURT:** And she may or may not go home.
22 And I will not be doing her case. I'm -- this
23 is -- you know, this -- I'm doing this guy's case,
24 your guy, Dixon. I don't anticipate doing her
25 case. We're certainly not going to do it this

1 week.

2 **MS. ZMROCZEK:** (inaudible), Your Honor.

3 **THE COURT:** If I were to do a recusal, I
4 would recuse myself on her case. She's the person
5 I'm talking to. I could care less about your
6 client's view of it, of me having a conversation
7 with this lady.

8 **MS. ZMROCZEK:** I understand. And -- and --
9 and -- and understand I'm simply just trying to
10 place the concerns on the record, Your Honor.

11 When you -- on page 14, when you indicated
12 that you would -- you might call -- line 25, that
13 you might call Reverend Nelson Rivers who was also
14 the head of the NAACP and ask him what he wanted
15 to do with her, again, my client took that as an
16 impartiality to the co-defendant and encouraging
17 her to testify against him when she --

18 **THE COURT:** Of course, she said she didn't
19 know Nelson Rivers. And her -- and her -- none of
20 them know him. So their names are Rivers. And
21 they're from North Charleston. And he is the
22 pastor of the church in North Charleston.

23 **MS. ZMROCZEK:** And actually --

24 **THE COURT:** And the civil rights guy who led
25 the march to take the Confederate flag off of the

1 Capitol and a person who I respect.

2 MS. ZMROCZEK: But certainly, Your Honor --

3 THE COURT: And -- and if he was related to
4 them --

5 MS. ZMROCZEK: Well, on page --

6 THE COURT: -- I would love to have him tell
7 me something about that lady. But as it turns
8 out, they apparently don't know him. And they
9 might not be related. She said that he was
10 related to her. What she said?

11 MS. ZMROCZEK: Boy cousin, page 5, line 16.

12 THE COURT: He's related to her boy cousin.

13 MS. ZMROCZEK: Well, she said on page 5, line
14 16, "He's my boy cousin."

15 THE COURT: He's your boy cousin.

16 MS. ZMROCZEK: That's correct.

17 THE COURT: Whatever that means. Then she
18 said she didn't know him.

19 MS. ZMROCZEK: Right.

20 THE COURT: And her caretaker, her aunt,
21 doesn't know him.

22 MS. ZMROCZEK: Certainly. So Your Honor, so
23 just to establish the record and -- and protect my
24 client, based on --

25 THE COURT: The record is already

1 established.

2 MS. ZMROCZEK: Certainly.

3 THE COURT: You've gotten a copy of it.

4 MS. ZMROCZEK: And I meant to say to protect
5 it, that he just had some concerns about the way
6 that the hearing was conducted. He felt like the
7 Court was coercing her into testifying.

8 THE COURT: I'm encouraging her to give
9 serious consideration for her own well-being,
10 which she can testify or not testify. I don't
11 care. It's not up to me. I'm explaining to her
12 when she comes to court, she's charged with these
13 serious crimes. Her lawyer says that he -- in
14 effect, he hasn't had any discussions with the
15 solicitor regarding resolving the case. And the
16 solicitor says he had a confession from her.

17 MS. ZMROCZEK: Certainly. Your Honor --

18 THE COURT: You did say that, Mr. Scott,
19 didn't you?

20 MR. SCOTT: I sure did.

21 THE COURT: Yeah. The solicitor has a
22 confession from a co-defendant who is facing the
23 same charges and -- and she's going to take the
24 Fifth Amendment and not testify. She needs to
25 give serious consideration as to what impact that

Motion for Mistrial

1 will have on her case. And that's for her to
2 determine.

3 **MS. ZMROCZEK:** And I -- and I believe as
4 Mr. Forney was telling the Court that his, and
5 quite honestly, my interpretation of -- of the
6 confession is questionable, which obviously will
7 come out in trial. But you can only rely on what
8 is presented to you at the time.

9 But Your Honor, for those reasons, the
10 reasons of an apparent comment on the facts and --
11 and some bias, some perceived bias for the
12 co-defendant and encouraging her to testify,
13 Your Honor, those would be the reasons for the
14 mistrial request.

15 **THE COURT:** Bias -- favor of the co-
16 defendant --

17 **MS. ZMROCZEK:** Yes.

18 **THE COURT:** -- or that's your opinion?

19 **MS. ZMROCZEK:** In favor of encouraging her to
20 testify.

21 **THE COURT:** All right.

22 Mr. Scott?

23 **MR. SCOTT:** I always found it to be very
24 unbiased, very neutral, Your Honor. I think what
25 you did yesterday was 100 percent appropriate.

1 Everything you said was 100 percent accurate. I
2 hope she testifies; they hope she doesn't. We'll
3 see what happens.

4 **THE COURT:** Well, I deny the motion. The
5 record speaks for itself. I can understand that a
6 defendant who may not fully comprehend everything
7 may -- may have a feeling one way or the other.
8 But all of this has take -- took place out of the
9 presence of the jury. And I did what I thought
10 was appropriate in questioning that co-defendant
11 as to whether her decision on testifying or not
12 testifying.

13 It appeared pretty bizarre to me when she
14 comes and says "God told me to take the Fifth."
15 And considering her mental problems and
16 considering the fact that she was evaluated three
17 years ago and the -- and her lawyer has yet to
18 present that competency issue finding before the
19 Court, I can make my own determination as to her
20 competency and her understanding of everything,
21 including her right to testify or not testify and
22 her understanding of or her -- trying to get
23 through to her an understanding of what might
24 apply with regard to her own case. And I have to
25 speak to people at the level that they're at. And

Motion to Recuse

1 hopefully, I gave them something seriously to
2 consider.

3 **MS. ZMROCZEK:** Thank you.

4 And Your Honor, as I'm making these motions,
5 obviously I'm in a difficult position. But
6 certainly under my oath and requirement under
7 the --

8 **THE COURT:** What makes your position so
9 difficult?

10 **MS. ZMROCZEK:** Well, because, Your Honor, the
11 next motion that I have is my client has requested
12 that I ask the Court to recuse itself from his
13 trial. And the reason being that if she -- if the
14 co-defendant -- and this may be premature. But if
15 the co-defendant does testify, when I
16 cross-examine her, I'm going to have to ask her
17 what affect the comments of -- of the Court
18 encouraging her to think about it hard after she
19 had already asserted her right. For example, if
20 she testifies and I say, "As of yesterday, 18
21 hours ago, you had not intended" --

22 **THE COURT:** How would that help the jury to
23 determine whether she's guilty or not guilty?

24 **MS. ZMROCZEK:** Because it goes to the bias.

25 **THE COURT:** Whether he's guilty or not

1 guilty.

2 MS. ZMROCZEK: Well, because it would go to
3 the bias of her testimony, Your Honor, and her
4 motives for testifying one way or the other.

5 THE COURT: Okay. It will be an interesting
6 examination or cross-examination.

7 MS. ZMROCZEK: So what I fear will happen
8 is -- and again, I don't know what she says, but
9 did the Court tell you that you were, you know,
10 going to get -- that you could get --

11 THE COURT: You can ask her whatever you want
12 to ask her.

13 MS. ZMROCZEK: Certainly.

14 THE COURT: It's cross-examination.

15 MS. ZMROCZEK: The problem is that if she
16 denies that, then I would have to, then, call the
17 Court as a witness to say what he --

18 THE COURT: Well, that won't happen.

19 MS. ZMROCZEK: Right. I -- I understand,
20 which is -- which is why I had to again raise that
21 recusal motion at this time.

22 THE COURT: I deny the motion.

23 MS. ZMROCZEK: Thank you.

24 Your Honor, the next -- I think the next
25 motion deals with her competency. I think at this

Motion Regarding Competency

1 point, her competency needs to be addressed. I
2 have some -- obviously, I have some concerns about
3 her competency just from watching. I know you
4 haven't had the benefit of watching her interview
5 yet, which I fully intend to introduce at trial
6 and play for the jury when it becomes appropriate.

7 But -- but even yesterday, when you kept
8 asking her how old she was and she was saying she
9 was born and that she was born in the hospital
10 and -- and as you noted had some difficulty
11 understanding what you were asking her. So I
12 think that this time, we do need to address her
13 competency. In addition to my concerns --

14 **THE COURT:** Okay. Where is she?

15 **MS. ZMROCZEK:** I'm sorry?

16 **THE COURT:** Where is she?

17 **MS. ZMROCZEK:** Your Honor, I have no idea.

18 **THE COURT:** How can we address those if she's
19 not here?

20 **MS. ZMROCZEK:** I'm assuming she's in the hall
21 as all the other sequestered witnesses are,
22 Your Honor. I can go check. I don't have anybody
23 to run for me. I can certainly go and check.

24 **MR. SCOTT:** I think that's where
25 Investigator --

1 **MS. ZMROCZEK:** Okay. Thank you.

2 **THE COURT:** You keep talking. I just
3 wondered where is she.

4 **MS. ZMROCZEK:** Okay. So Your Honor -- so
5 Your Honor with the issues with her competency and
6 the statements that her own attorney made on the
7 record about his concerns for competency, I think
8 that, A, the Court needs to address her
9 competency --

10 **THE COURT:** Well, I did address her
11 competency. I will address it in greater detail
12 when the mental health evaluation is presented to
13 the Court.

14 **MS. ZMROCZEK:** Right. Right. And I
15 think that that --

16 **THE COURT:** Do you have a copy of it?

17 **MS. ZMROCZEK:** I don't have a copy of it. I
18 would like a copy of it. I think that I'm
19 entitled to it as well as any mental health
20 records that -- that -- that --

21 **THE COURT:** You're raising the issue. You
22 must -- have you tried to get a copy of it from
23 the state?

24 **MS. ZMROCZEK:** I have not from the state,
25 Your Honor. Actually, I have from the state. I

Motion Regarding Competency

1 don't think that they have a copy of it. Well,
2 I've asked for all of her statements, Your Honor.
3 But I have asked for -- for a copy of not only her
4 medical -- mental evaluation, but also her mental
5 records that are in the custody and control of
6 Mr. Forney. And he advised me --

7 **THE COURT:** You had him here all day
8 yesterday. Where is he now?

9 **MS. ZMROCZEK:** He's outside the courtroom,
10 Your Honor, would you like me to bring him in?

11 **THE COURT:** It's up to you. You're --
12 you're --

13 **MS. ZMROCZEK:** And he advised me that he was
14 not going to turn those over because of HIPAA
15 requirements. But I believe that those have been
16 waived yesterday. When the Court was speaking
17 again to Ms. Jones, you asked her if she ever been
18 in any mental institution. And she indicated that
19 she had been in one a long time ago, and then said
20 two, three, four, five. And obviously, I think
21 that that is grounds for, you know, potential
22 impeachment.

23 **THE COURT:** The threshold is not that -- on
24 her competency to stand trial, is that --

25 **MS. ZMROCZEK:** No, no.

1 **THE COURT:** You want me to make a
2 determination on her competency to stand trial --

3 **MS. ZMROCZEK:** No, Your Honor.

4 **THE COURT:** -- or her competency to be a
5 witness?

6 **MS. ZMROCZEK:** Competency to be a witness,
7 Your Honor.

8 **THE COURT:** Okay. All right.

9 Mr. Forney, where's your client?

10 **MR. FORNEY:** She's on her way in. She's
11 down -- she was downstairs.

12 **MS. ZMROCZEK:** And Your Honor, I believe
13 that -- as you know, Rule 601 of the South
14 Carolina Rules of Evidence that governs the
15 competency and disqualification as a witness.

16 **THE COURT:** What about it?

17 **MS. ZMROCZEK:** Well, Your Honor, under Rule
18 601(a), every person is competent to be a witness
19 except as otherwise provided by the statute or
20 Rules of Evidence.

21 The Court presumes the witness to be
22 competent because bias and other defects in the
23 witness testimony revealed primarily through
24 cross-examination affects the witness' credibility
25 and maybe waived by the factfinder. And that's

Motion Regarding Competency

1 *State v. Needs*, Southeast -- excuse me, South
2 Carolina 134.

3 Obviously, her attorney believes that she
4 still has competency issues. And after seeing her
5 inability to maybe -- to answer your questions
6 about how old she was, where she was from, we
7 would certainly ask that the Court at this time
8 inquire -- and again, I talked to the state just
9 this morning to ask if they had any additional
10 updated statements. They did provide me something
11 that she said that was different than -- than
12 that's in her interview. And so it's indication
13 to me that she does intend to testify. So I think
14 at this point, we probably need to establish if
15 she does or does not intend to testify. And if
16 she does --

17 **THE COURT:** Well, based on my colloquy with
18 her, I do not find that she's disqualified under
19 Rule 601. If you want to question her concerning
20 your view that she -- that she's incapable of
21 testifying and understanding the duty of a witness
22 to tell the truth and then that she's incapable of
23 expressing herself concerning matters before the
24 Court, you -- you have that leeway to ask for
25 those questions if you want to.

1 **MS. ZMROCZEK:** During cross-examination?

2 **THE COURT:** No. Right now.

3 **MS. ZMROCZEK:** Okay. Thank you, Your Honor.

4 **THE COURT:** You're the one who's interested.
5 I'm satisfied that she meets the test and that she
6 is qualified. Every witness is competent to
7 testify except as provided -- otherwise provided
8 by the rules.

9 I've talk with her. As I stated, each of
10 these people have some mental deficiencies. And
11 your client, who you profess to be incompetent, I
12 indicated has -- appears to be -- have a higher
13 competency level than the other two, including
14 Ms. -- Ms. Jones.

15 But Ms. Jones expressed herself sufficiently
16 to me such that I believe she can testify. If you
17 want to put anything else on the record and ask
18 her some questions --

19 **MS. ZMROCZEK:** I would, your Honor. And I
20 would call her.

21 **THE COURT:** Hello, Ms. Jones.

22 **MS. JONES:** Hi.

23 **THE COURT:** Hi. Come on down here.

24 **MS. JONES:** Yes, sir.

25 **THE CLERK:** Swear her in?

Motion Regarding Competency

1 **THE COURT:** Yeah, she wasn't sworn before.

2 **THE BAILIFF:** Place your left hand on the
3 Bible.

4 **THE COURT:** Do you have the --

5 **THE BAILIFF:** No, that's your right. That's
6 your right hand. Place your left hand on the
7 Bible and raise your right.

8 **THE COURT:** -- the competency evaluation? It
9 must be filed with the Court. As I said
10 yesterday, it must be presented to the judge. The
11 Judge ordered an evaluation, the Department of
12 Mental Health to do an evaluation and a copy of
13 the report must be presented to the Court. They
14 just -- they happen to mail them to the parties,
15 but it's incumbent upon the parties to present
16 those to the Court. And I need a copy of her
17 mental competency evaluation so I can make an
18 official determination on the record concerning
19 her competency to stand trial though she is not on
20 trial in this case.

21 Go ahead.

22 **THE BAILIFF:** Place your left hand on the
23 Bible, raise your right and face the clerk.

24 **THE CLERK:** State your full name please.

25 **THE WITNESS:** Michelle Latoya Jones.

1 **THE CLERK:** You swear you tell the truth, the
2 whole truth, and nothing but the truth, so help
3 you God?

4 **THE WITNESS:** Yes.

5 **THE CLERK:** Thank you.

6 Have a seat right up there.

7 **THE BAILIFF:** Watch a step up there.

8 **THE CLERK:** Speak into the microphone.

9 **THE BAILIFF:** Step up there. Step up there.
10 Please speak loudly in that microphone because the
11 judge (inaudible). The court reporter's got to
12 hear you. All right? Okay.

13 **MICHELLE JONES**

14 having first been duly sworn, testifies as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. ZMROCZEK:**

17 **Q** Good morning, Ms. Jones.

18 **A** Good morning.

19 **Q** I just have a few questions for you right
20 now, okay?

21 **A** Uh-huh.

22 **Q** Ms. Jones, do you understand that when you're
23 under oath, the importance of telling the truth?

24 **A** Yes.

25 **Q** Do you know the difference between the truth

1 and a lie?

2 A Yes.

3 Q And what happened if you don't tell the truth
4 while you're under oath?

5 A If you do not tell the truth, you go to jail.
6 And if you do tell the truth, you're not going to jail.
7 It's up to the judge if he decides to let you go or
8 not.

9 Q Okay. And so I want to ask you about the
10 events of August 7, 2019. Do you remember that day?

11 A Yes.

12 Q What type of medication were you on that day?

13 A I was on Depakote, Metformin, lisinopril,
14 Risperdal, and Ativan.

15 Q And -- and that -- you recall testifying
16 yesterday when the Court was asking you questions?

17 A Uh-huh.

18 Q You have to say "yes" or "no"?

19 A Yes.

20 Q Okay. Thank you.

21 And you listed those medications as what
22 you're taking today, right?

23 A Yes.

24 Q And you told the Court that you had been on a
25 bunch of medications before that?

1 A Yes.

2 Q But that they had finally gotten the right --

3 A The right one.

4 Q When did they get the right one?

5 A It's been a long time.

6 Q Okay.

7 A MUSC had to figure that out.

8 Q Okay.

9 A In Charleston.

10 Q You don't remember when they got -- they got
11 the right one?

12 A They finally -- they finally got the right
13 one when I was, like, in my twenties.

14 Q Okay. When you were in your twenties. So
15 since your twenties, you've been on all of those
16 medications?

17 A Uh-huh.

18 Q And you take them as prescribed all the time?

19 A Yes. Yes.

20 Q Okay. And so do you remember -- what do you
21 remember about August -- what do you remember right
22 before going to the cemetery? Where were you?

23 A In the cemetery, I was in the car.

24 Q Before you got to the cemetery, where were
25 you?

1 **A** Before I got to the cemetery?

2 **MR. SCOTT:** Your Honor, my only objection
3 would be this is a proffer to see if she is
4 competent as a witness.

5 Now, we're getting into the --

6 **THE COURT:** I -- I agree. This is beyond the
7 scope of making a Rule 601 determination.
8 Objection sustained.

9 **MS. ZMROCZEK:** Okay. Your Honor, I was
10 simply trying to see if she was able to perceive
11 the event with a substantial degree of accuracy,
12 remember it, and communicate about intelligently.

13 **THE COURT:** I understand what you're trying
14 to do. I sustain the objection.

15 **MS. ZMROCZEK:** Thank you, Your Honor.
16 I have no further questions.

17 **THE COURT:** Anything from the state?

18 **MR. SCOTT:** No, Your Honor.

19 **THE COURT:** All right. You can step down,
20 ma'am.

21 **MS. JONES:** Thank you.

22 (A recess is taken.)

23 **MS. ZMROCZEK:** (inaudible) so we don't have
24 to take a recess so I can review them and use them
25 as potential impeachment evidence that -- that are

1 in the possession of the -- Mr. Forney if he
2 turned over to me at this time.

3 THE COURT: So what do you want me to do?

4 MS. ZMROCZEK: I'm sorry?

5 THE COURT: What do you want me to do?

6 MS. ZMROCZEK: I have asked Mr. Forney. He
7 has indicated he will not turn them over unless
8 ordered to do so by the Court.

9 MR. FORNEY: That's correct, Your Honor.

10 THE COURT: Mr. Scott?

11 MR. SCOTT: I think she can cross-examine
12 Ms. Jones to the extent she needs to.

13 We're ready to proceed.

14 THE COURT: All right.

15 I will reserve ruling on that issue.

16 MR. SCOTT: Thank you, Judge.

17 THE COURT: Bring the jury in.

18 (The jury enters the courtroom at 10:59 a.m.)

19 THE BAILIFF: The jury's seated, Your Honor.

20 THE COURT: All right.

21 Good morning.

22 Sorry for the delay. We had some other
23 matters to address. We're now ready to proceed.

24 You may call your next witness.

25 MR. SCOTT: The state calls Michelle Jones.

1 **THE BAILIFF:** Come forward down here. Down
2 this way. Ma'am -- ma'am, come this way to be
3 sworn.

4 Place your left hand on the Bible, raise your
5 right, and face the clerk for me.

6 **THE CLERK:** State your full name, please.

7 **THE WITNESS:** Michelle Latoya Jones.

8 **THE CLERK:** You solemnly swear the testimony
9 you are about to give in this case will be the
10 truth, the whole truth, nothing but the truth so
11 help you --

12 **THE WITNESS:** Yes.

13 **THE CLERK:** -- God?

14 Thank you.

15 Have a seat right there.

16 **THE BAILIFF:** Step up. Step up.

17 **MICHELLE JONES**

18 having first been duly sworn, testifies as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. SCOTT:**

21 **Q** Good morning, Ms. Jones. How old are you?

22 **A** I am 37.

23 **Q** Okay. And you're from Charleston?

24 **A** Yes.

25 **Q** Okay. You know Antrone Dubose?

1 A Yes.

2 Q Are you related to him?

3 A Yes, boy cousins.

4 Q He's your cousin?

5 A Uh-huh.

6 Q Okay. And do you know Martin Dixon?

7 A Yes.

8 Q How do you know him?

9 A He is my boy cousin.

10 Q Did he use to be your boyfriend at some
11 point?

12 A Ex.

13 Q He's your ex-boyfriend?

14 A Uh-huh.

15 Q Okay.

16 A When I find out he was my cousin.

17 Q Okay. So he and you used to be
18 boyfriend/girlfriend and you found out you were
19 related?

20 A Yes.

21 Q Okay. You were on -- you were just asked
22 recently, but you're on some medications; is that
23 correct?

24 A Yes.

25 Q And what are you prescribed?

1 **A** I take Metformin, Ativan, Benzo, Depakote.

2 All that medication, I'm taking.

3 **Q** Okay. You are -- you have bipolar disorder?

4 **A** Yes.

5 **Q** And you've been --

6 **A** Schizophrenia.

7 **Q** -- diagnosed with schizophrenia. Okay. And
8 do you know what age you were diagnosed with
9 schizophrenia?

10 **A** No. Recently.

11 **Q** Okay. What about bipolar disorder?

12 **A** I had it all these years.

13 **Q** When you -- you were a little girl when you
14 were diagnosed?

15 **A** Yeah. I was born with it.

16 **Q** And then, you started taking medication as a
17 young girl?

18 **A** Every since I was a little girl.

19 **Q** And I understand you dropped out of school in
20 ninth grade; is that right?

21 **A** Yes. I dropped out of school in the ninth
22 grade to be with a boy.

23 **Q** Okay. And did you get your GED?

24 **A** Yeah. I had got my GED from Columbia.

25 **Q** Okay. So how long have you known Martin

1 Dixon?

2 A For a couple, a few months.

3 Q You've known him for a few months? What age
4 were you when you met him?

5 A I would say about three years.

6 Q No. How old were you when you met Martin?

7 A Oh, how old? I was like 34.

8 Q Okay. And you're 38 now?

9 A No.

10 Q I'm sorry?

11 A Thirty-seven.

12 Q Thirty-seven. Okay. I'm sorry. I gave you
13 an extra year.

14 So you -- you remember -- you know why we're
15 here today, right?

16 A Yes.

17 Q And we'd been talking all week about how
18 Antrone Dubose ended up in the trunk of his own car?

19 A Uh-huh.

20 Q Do you remember coming up from Charleston to
21 Columbia?

22 MS. ZMROCZEK: Your Honor, I would object to
23 the leading.

24 THE COURT: Don't lead the witness.

25 BY MR. SCOTT:

1 Q Do you remember coming up from Charleston to
2 Columbia?

3 A Yes.

4 Q Okay. And who was driving -- who was driving
5 when you came up?

6 A Anthony Dubose.

7 Q Okay. Now when you say "Anthony Dubose," is
8 that what you call Antrone Dubose?

9 A Yeah.

10 Q Is that -- you always call him Anthony?

11 A Uh-huh.

12 THE COURT: Ma'am, use your words. Yes or
13 no.

14 THE WITNESS: Yes.

15 BY MR. SCOTT:

16 Q So Anthony was driving. And did -- was
17 Martin Dixon with you too?

18 A Yes.

19 Q And where did y'all stay when you got to
20 Columbia?

21 A We went to Columbia and we ride around and we
22 stay in a hotel in Columbia and stayed in there. And
23 Martin wanted me to try some ice. And I told him no
24 and I didn't want none --

25 Q Okay.

1 A -- at all.

2 Q Wait -- wait one minute. What is ice?

3 A Ice mean -- is a sex drive.

4 Q Well, let me back up before we get there.

5 You checked into a hotel, you said?

6 A Uh-huh.

7 Q And who paid for the hotel?

8 A I did.

9 Q Whose name did y'all use to check in?

10 A I used my name.

11 Q You used your name to check into the hotel?

12 A Uh-huh.

13 Q Did you ever go to a hotel where you used

14 Martin Dixon's name?

15 A One time.

16 Q Okay. And who paid for that hotel?

17 A I did.

18 Q And who told you to pay for that hotel?

19 A I decided to pay for the hotel.

20 Q Okay. Were there times when Martin Dixon was

21 asking you for money to pay for things?

22 A He said he wanted to pay the hotel. I told

23 him I got it.

24 Q Okay. How do you get your money?

25 A I get it from Social Security. And I work

1 half time, part time at Church's Chicken.

2 Q Okay. Let me -- I think I need to back up
3 just a little bit. Was there a time when there was
4 something that went wrong with the car? Was there some
5 flat tire or something?

6 A Yes. I fixed all of that. I fixed
7 everything on the car.

8 Q You're talking about Anthony Dubose's car?

9 A Dubose car. I gave him money. Took it off
10 my card, gave him gas money, fixed everything on the
11 car and everything to get us up there.

12 Q Okay. And so that was on the way from
13 Charleston to Columbia?

14 A Yes.

15 Q And did -- did you ever tell Anthony he
16 needed to pay that money back to you?

17 A I asked him if he's going to pay me the money
18 back to me. And Martin said, "You have to pay this
19 girl money back. And if you don't pay this girl money
20 back, I have to beat you up."

21 Q Okay. And do you remember when that argument
22 happened? Do you remember where y'all were?

23 A It was like behind the building.

24 Q Okay. Do you remember anything about the
25 building?

1 A It's a alley.

2 Q Okay. And did -- did either one of them --
3 did a fight happen after that or what?

4 A Martin hit him.

5 Q Martin hit --

6 A And he boxed him.

7 Q Okay. Wait. Martin hit who?

8 A Martin hit Anthony.

9 Q Okay.

10 A And beat him up and boxed him and kicked him.

11 Q All right.

12 Did you kick --

13 A I watched it.

14 Q Okay. Did you kick or hit too?

15 A No. I watched it.

16 Q All right.

17 A I backed up.

18 Q Did you ever see Martin use anything besides
19 his hands to hit?

20 A He hit his fist and then he had a crowbar.

21 Q A crowbar?

22 A Uh-huh.

23 Q What color was the crowbar. Do you remember?

24 A Black.

25 Q And where did he hit Anthony with the

1 crowbar?

2 A Crowbar. This side. (Indicating).

3 Q You saw him hit him in the head with it?

4 A Uh-huh.

5 Q All right. And then what happened after he
6 hit Anthony Dubose with the crowbar?

7 A When he hit him with the crowbar, then he
8 told me -- he threatened me and said, "You better put
9 him in the trunk. If you don't, I'll kill you."

10 Q Okay. So then what happened?

11 A So I ain't had no choice but to put him in
12 the trunk.

13 Q How did you put him in the trunk?

14 A Me and Martin had to lift him up and put him
15 in the trunk.

16 Q Y'all -- okay. This is -- who -- who were
17 you putting in the trunk?

18 A Anthony.

19 Q Okay.

20 A I ain't had no choice. He threatened me.

21 Q And what was -- this was all because of the
22 money he owed you?

23 A Yeah. He -- he did it because -- Martin did
24 it -- he decided. And Anthony Dubose decided that
25 Anthony didn't wanted to be in the crew.

1 Q Okay. But did it have anything to do with
2 the money here?

3 A No. It didn't have to do with the money.

4 Q Okay.

5 A He said he wanted to get out of the gang.
6 That's all he said.

7 Q After -- did -- did anybody shut the trunk of
8 the car after Anthony -- Anthony Dubose was in it?

9 A Yes.

10 Q Who closed the trunk?

11 A I didn't close the trunk. He did.

12 Q Who's "he"?

13 A Martin Dixon did.

14 Q Okay. Did Anthony Dubose -- was he making
15 any noises while he was in the trunk?

16 A Yeah. And he pressed -- Martin drove it and
17 he press the brakes back and forth, back and forth.
18 And he swerved back and forth, back and forth. He
19 swerved to make him shut the noise up.

20 Q What was -- what kind of noise was --

21 A He was making a lot of noise.

22 Q He was --

23 A I was -- I was scared. I was scared in the
24 front seat.

25 Q Okay. And you said Martin was driving?

1 **A** Yes. He was driving. He was driving crazy.

2 **Q** When he was doing all of that, did you see
3 Antrone or Anthony Dubose making any noises from the
4 trunk?

5 **A** Yeah, he was. He was. That's why he pressed
6 the brakes back and forth, back and forth to make him
7 shut up.

8 **Q** What kind of noise was he making?

9 **A** "Help. Help. Somebody help me."

10 **Q** Okay.

11 **A** I can't help him if Martin won't let me help
12 him.

13 **Q** Okay.

14 **A** He'll kill me.

15 **Q** Okay. Where did Martin drive the car?

16 **A** Martin drove the car by a gravesite.

17 **Q** Had you ever been to that graveyard?

18 **A** No, that was my first time.

19 **Q** Describe -- tell me what you remember about
20 the gravesite.

21 **A** The gravesite is like a hill.

22 **Q** Okay. Describe that some more.

23 **A** It's like a tall hill, like a freeway.

24 **Q** A freeway on the side?

25 **A** Yeah. Like an interstate.

1 Q Okay. What else do you remember about the
2 graveyard once y'all got there?

3 A I saw two people was underneath the bridge.

4 Q Okay.

5 A They were walking by. Martin was still
6 driving the car. He said he was going to bury him
7 right there and underneath the ground. And I said,
8 "Martin, no, don't do that. You don't have to do that.
9 You go to the police --"

10 Q Okay.

11 A "And take him to the police." But he didn't.

12 Q Did he -- did he eventually stop the car?

13 A No. He didn't stop the car.

14 Q Okay.

15 A He stopped the car right after when we got to
16 the end of the hill.

17 Q And -- and is that in the graveyard?

18 A Uh-huh.

19 Q And then when he stopped the car in the
20 graveyard, you say at the bottom of the hill?

21 A Yes, the top of the hill.

22 Q Top of the hill. Once he stopped the car at
23 the top of the hill in the graveyard, what happened?

24 A First, he said he wanted -- first, he said he
25 wants to crash the car.

1 Q Where?

2 A Over the hill.

3 Q Okay.

4 A That's what Martin Dixon said.

5 Q What did he ultimately decide to do?

6 A And then he said -- I told him no, don't do
7 that because that's not right to do that, to mess that
8 boy car up or whatever. That's not cool.

9 Q All right.

10 Let me ask you, so once the car stopped, do
11 you or Martin get out of the car?

12 A He got out the car first.

13 Q Okay.

14 A He asked me do you know how to jump out of
15 the car.

16 Q Okay. Did you -- but did you -- when -- did
17 you eventually get out of the car after Martin Dixon
18 did?

19 A No. He got out first, then I got out.

20 Q All right. Martin Dixon got out of the car
21 and then you got out. And is Antrone Anthony Dubose
22 still in the trunk?

23 A Yeah.

24 Q All right. What ended up happening next?

25 A Anthony Dubose specifically said -- he was

1 screaming for help. Screaming for help. But Anthony
2 Dubose killed Tony Dickerson, even though he did, my
3 cousin. Y'all should know the truth.

4 Q No. What I'm asking you about is what did
5 Martin Dixon do after the two of y'all got out of the
6 car?

7 A When I got out of the car, Martin wanted to
8 light the car on fire. He said this is how if you
9 snitch on people like this.

10 Q All right.

11 He said he wanted to light the car on fire?

12 A Yes.

13 Q Did he do anything to try to light the car on
14 fire that you remember?

15 A Yes. He put the paper in the -- in the -- in
16 the tank.

17 Q Uh-huh.

18 A And then he had a lighter, and he lighted it
19 up.

20 Q All right.

21 Do you remember there being paper being lit
22 and thrown inside the car?

23 A Yep.

24 Q Who did that?

25 A Not me, Martin.

1 Q Okay. And did you see him do that?

2 A Yeah.

3 Q Okay. What -- was Mr. Dubose making any
4 noise from the trunk at that point?

5 A Uh-huh.

6 He was crying for help. I couldn't even do
7 nothing. Martin would kill me.

8 Q Okay. But you were there when -- when that
9 happened?

10 A Yeah, I was there. I watched it.

11 Q Where did you and Martin go after he tried to
12 set the car on fire?

13 A Martin -- we went to Ms. Clorine Darby mom
14 house.

15 Q Who's that?

16 A His mama house.

17 Q Okay. How did you get there?

18 A His mom picked us up from Columbia.

19 Q Okay. And she -- where does she live?

20 A She lives in Orangeburg, South Carolina.

21 Q Okay. Who called her to come pick you guys
22 up?

23 A Martin Dickerson. Because I told him that my
24 feet was hurting so bad.

25 Q Okay.

1 **A** I couldn't walk that long.

2 **Q** From walking, your feet were hurting?

3 **A** Swell up. And I went to the hospital.

4 **Q** So he had his mom come from Orangeburg to
5 pick you up. And she took you back to her house in
6 Orangeburg?

7 **A** Yeah.

8 **Q** Okay. Well, how did you end up in Hickory,
9 North Carolina, with Martin Dixon?

10 **A** He called a homeboy --

11 **Q** All right.

12 **A** -- his best friend.

13 **Q** Okay.

14 **A** When he called his best friend his homeboy
15 up, that's how we got there.

16 **Q** And did he tell -- why did he say he needed
17 to get to Hickory, North Carolina, with you?

18 **A** Because he said he had some mansion and he
19 was going to get this house from this old lady. And he
20 wanted to get this mansion house from this old lady.

21 **Q** All right.

22 Well, did -- I'm sorry. I didn't mean to
23 interrupt.

24 **A** He said he had a house and a mansion up there
25 with this old lady.

1 **Q** Did they end up being true?

2 **A** It wasn't true.

3 **Q** Okay. So instead of staying in the mansion,
4 where did y'all end up staying?

5 **A** We stayed in the hotel.

6 **Q** Who paid for that hotel?

7 **A** I did.

8 **Q** Okay. Who told you to pay for the hotel?

9 **A** I asked him -- well, Martin told me, "Do you
10 want me to pay for it?"

11 And I told him, "No, I'll pay for it."

12 **Q** Okay. And did he say anything about being
13 worried about Antrone Dubose?

14 **MS. ZMROCZEK:** Your Honor, again, I'm going
15 to object to leading.

16 **THE COURT:** Restate your question.

17 **BY MR. SCOTT:**

18 **Q** Did he say anything about being worried about
19 Antrone Dubose being in the car?

20 **A** Nope.

21 **Q** Did he say anything about being worried about
22 the police catching him?

23 **A** Nope.

24 **MS. ZMROCZEK:** Again, Your Honor, I'm going
25 to object to leading. I think he can ask her what

1 he said or what he didn't say.

2 **MR. SCOTT:** It's a yes-or-no question.

3 **THE COURT:** I sustain the objection.

4 **BY MR. SCOTT:**

5 **Q** What, if anything, did he say about police --
6 and worrying about police finding him?

7 **A** He -- he told me that we was gonna go in
8 jail. He said we're going to be eating jail food.

9 **Q** Okay.

10 **A** He said we going to be seeing your baby daddy
11 in jail working in the jailhouse.

12 **Q** All right.

13 And do you remember when the police came and
14 arrested you?

15 **A** Yeah.

16 **Q** And was in Hickory, North Carolina?

17 **A** Yeah.

18 **Q** All right.

19 And they brought you back to Columbia?

20 **A** Yeah.

21 **Q** Okay. Do you remember speaking with the
22 police?

23 **A** Yeah.

24 **Q** Okay. Did they ask you what happened to
25 Antrone Dubose?

1 A Yeah.

2 Q And did you tell them?

3 A Uh-huh.

4 Q And did you tell them the story you're
5 telling me today?

6 A Yeah.

7 Q All right. All right.

8 So -- so who hit Antrone in the head with the
9 crowbar thing?

10 A Martin Dickerson.

11 Q All right. And who is it that told him to
12 get in the trunk?

13 A Martin Dickerson.

14 Q And did you help get him into the trunk of
15 the car?

16 A He forced me to do that because of the fact
17 that he threatened me and said he was going to kill me.

18 Q Who drove the car down to the graveyard?

19 A Martin Dickerson, because I don't even know
20 how to drive.

21 Q You never had a driver's license, have you?

22 A Never had a permit.

23 Q Who tried to light the gas tank on fire?

24 A Martin Dickerson.

25 Q All right.

1 Did -- did he look -- who is this?

2 **A** That's Martin Dickerson.

3 **Q** He's changed his looks a little bit since the

4 last time you saw him?

5 **A** Uh-huh.

6 **Q** But that's him?

7 **A** Uh-huh.

8 **Q** That's the guy who put --

9 **A** Yeah.

10 **Q** All right. Answer any questions Ms. Zmroczek

11 has for you.

12 **THE COURT:** Ms. Zmroczek.

13 **MS. ZMROCZEK:** Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MS. ZMROCZEK:**

16 **Q** Good morning, Ms. Jones.

17 **A** Good morning.

18 **Q** I want to ask you probably a lot of

19 questions, okay?

20 **A** Uh-huh.

21 **Q** So I wanted to start with where -- where you

22 kind of left off.

23 Mr. Scott asked you if you told the police

24 the same story that you're telling this jury here

25 today. And what was your answer?

1 A It's the same thing.

2 Q Same thing, right?

3 A Yes.

4 Q And so you recall sitting with this man right
5 here on October 24, 2019, at about 1500 hours, about
6 3 o'clock? Do you remember that?

7 A Yeah.

8 Q And is that who you talked to?

9 A Yes.

10 Q Okay. And you told him -- your testimony is
11 that you told the police on that day that -- I'm just
12 going to start from the beginning of your testimony,
13 okay?

14 A Uh-huh.

15 Q And -- and -- and you tell me if you told the
16 police that that day and that's the same testimony,
17 okay?

18 A All right.

19 Q October 24, 2019, at around 3 p.m., you told
20 Investigator Montgomery that you dropped out of school
21 in ninth grade?

22 A Yes.

23 Q Okay. You told Investigator Montgomery on
24 that same date, same time, that you stayed in a hotel
25 in Columbia?

1 A Uh-huh.

2 Q Yes?

3 A Yes.

4 Q Okay. And what date are we talking about?

5 A I can't remember.

6 Q Okay. But you told Investigator Montgomery
7 that you stayed in a hotel and that you paid for it?

8 A Yes.

9 Q Okay. And then you told Investigator
10 Montgomery on that same date and same time that you
11 were using ice -- tell me -- maybe I didn't hear that
12 correctly. Tell me what you said about that.

13 A Well, basically Martin Dickerson asked me
14 that, "You want to try ice?" I told him no. I didn't
15 want ice. He said try it. You might like it. And I
16 said okay.

17 Q You told all of that to Investigator
18 Montgomery?

19 A Yes.

20 Q On October 24, 2019?

21 A Yes.

22 Q And then you -- you told him that you
23 worked -- that you fixed the car and gave Mr. Dubose
24 all of the money for the car, right?

25 A Yes, I did.

1 Q And when -- and you told him that you did
2 that -- when did you tell him that you did that?

3 A I did it all in one day when we went to
4 Columbia, all that.

5 Q Okay. So was the car fixed in Columbia or in
6 Charleston?

7 A Charleston.

8 Q Okay. And what -- and how many days before
9 you came up here was that?

10 A Two days.

11 Q Two days. And you told Investigator
12 Montgomery that?

13 A Yes.

14 Q Okay. And then you told Investigator
15 Montgomery that if you don't -- that -- that Mr. Dixon
16 said if you don't -- told to Mr. Dubose, if you don't
17 pay that girl behind the building or in an alley --

18 A Yeah.

19 Q That he needed to do that, right?

20 A Yeah.

21 Q And you also as you testified here today that
22 you told Investigator Montgomery that Martin hit him,
23 boxed them, and you watched?

24 A I watched it.

25 Q You watched it. And -- and you told him that

1 you did not kick him?

2 **A** No. I didn't kick him.

3 **Q** And then you told Investigator Montgomery
4 that he, Mr. Dixon, hit Mr. Dubose with a black
5 crowbar?

6 **A** Yes.

7 **Q** Okay. And you told Mr. Montgomery that when
8 Mr. Dixon hit Mr. Dubose with a crowbar, Mr. Dixon then
9 threatened you?

10 **A** Yes.

11 **Q** And you told Investigator Montgomery just
12 like you told this jury --

13 **A** Yes.

14 **Q** -- that he, Mr. Dixon, said, "I'm going to
15 kill you"?

16 **A** Yes.

17 **Q** And then you told Investigator Montgomery
18 that he, Mr. Dixon, closed the trunk?

19 **A** Yes.

20 **Q** And you told Investigator Montgomery just
21 like you told this jury today that he, Mr. Dixon, was
22 pressing the brakes back and forth?

23 **A** Yes.

24 **Q** And that -- you told Investigator Montgomery
25 that Mr. Dubose was yelling, "Help, help"?

1 **A** Yes. He was pressing the brakes back and
2 forth, back and forth to keep his mouth shut so nobody
3 would hear him. And that's what Martin Dickerson did.

4 **Q** Okay. And you told Investigator Montgomery
5 that that was the first time you'd ever been to that
6 cemetery?

7 **A** That's the first time I ever been there.

8 **Q** And that's what you told him just like you
9 told this jury today --

10 **A** Yeah.

11 **Q** -- right?

12 **A** Yes.

13 **Q** , And you told Investigator Montgomery that
14 Mr. Dixon said he was going to bury Mr. Dubose?

15 **A** Yes.

16 **Q** Okay. You told him that on October 24?

17 **A** Yes.

18 **Q** Again, 2019?

19 **A** Yes.

20 **Q** Okay. And then you told Investigator
21 Montgomery, like you told this jury today, that first
22 Mr. Dixon wanted to crash the car and you told him that
23 that's not right, that's not cool?

24 **A** Yes.

25 **Q** And then you also told Mr. -- Investigator

1 Montgomery on October 24, 2019, like you testified here
2 today that Mr. Dubose killed Tony?

3 **A** Yes. Anthony Dubose.

4 **Q** Okay. And you also told Investigator
5 Montgomery on October 24, 2019, around 3 p.m. that
6 Martin wanted to light the car on fire?

7 **A** Yes.

8 **Q** And that Martin put the paper in the tank?

9 **A** In the car, yes.

10 **Q** In the car and in the tank?

11 **A** The tank.

12 **Q** Okay. And you told Investigator Montgomery,
13 like you told this jury here today, that you didn't
14 have anything to do with that?

15 **A** Nothing to do with it. Because Martin had
16 all the ideas, all the ideas. He planned it.

17 **Q** He planned it?

18 **A** He planned it. Because he knew that Anthony
19 Dubose wanted to get out of the gang.

20 **Q** Get out of the gang. You told all of that to
21 Investigator Montgomery, right?

22 **A** Yeah.

23 **Q** And just like you testified to this jury
24 today, right?

25 **A** Yeah.

1 Q And also on October 24, 2019, you told
2 Investigator Montgomery that you were going to North
3 Carolina because Mr. Dixon had a mansion?

4 A That's what he said.

5 Q Right.

6 A From an old lady.

7 Q From an old lady. And that's what you
8 testified to today and that's what you told
9 Investigator Montgomery on October 24, 2019, at 3 p.m.,
10 right?

11 A Yeah. He said he was going to take me up
12 there.

13 Q Okay. Now, you also said that you paid for
14 the motel in Hickory, North Carolina, right?

15 A Yes.

16 Q And you told that to this jury today and you
17 told that to Investigator Montgomery on
18 October 24, 2019?

19 A Yes.

20 Q And you also, as you testified today, that
21 you told Investigator Montgomery that Mr. Dixon told
22 you that you were going to be in jail with your baby
23 daddy?

24 A Yes.

25 Q Okay. And --

1 **A** And he said we going to be eating jail food.

2 **Q** Eating jail food. And you told --

3 **A** He was making noodles and rice at his mama
4 house and said we was going to eat jail food.

5 **Q** Okay. And that's the testimony that you're
6 telling this jury is the truth today?

7 **A** Yes.

8 **Q** And that's the testimony that you told Mr. --
9 Investigator Montgomery on October 24 --

10 **A** Yes.

11 **Q** -- 2019?

12 **A** Yes.

13 **Q** Okay. I want ask you some questions about
14 that testimony that -- but that is the true and
15 accurate testimony, that's what you're testifying to
16 today?

17 **A** That is the truth. That's the truth.

18 **Q** Okay. I want to go back to October 20 --
19 well, before I go there, let me ask you this: You
20 remember what day of the week you came up to Columbia?

21 **A** No.

22 **Q** Okay. Do you remember how many days you were
23 in Columbia?

24 **A** Not really.

25 **Q** Okay. How many days did you stay in the

1 hotel that you paid for?

2 A About two or three nights.

3 Q Two or three nights. Okay. What did --

4 A Or more. And then a whole month.

5 Q I'm sorry?

6 A A month in Hickory.

7 Q Okay. A month in Hickory. But I asked about
8 Columbia.

9 A Columbia, only about two or three.

10 Q Okay. So two or three days, you're staying
11 in the hotel. And that was right before this happened?

12 A Yeah.

13 Q Okay. And when did you go to the hospital in
14 Columbia?

15 A This one -- Memorial, the one right up there
16 by -- the hospital up here.

17 Q Is that where you went?

18 A Not the Memorial, but the first one at the
19 corner.

20 Q The first one at the corner. Now, was that
21 here in Columbia?

22 A Yeah, Columbia. It was in Columbia.

23 Q It was in Columbia. No doubt in your mind?

24 A No doubt in my mind.

25 Q And when was that?

1 **A** I can't remember the date. But I know he
2 made me walked a long walk.

3 **Q** "He" who?

4 **A** Martin Dixon.

5 **Q** Martin Dixon made you walk to the hospital
6 here in Columbia?

7 **A** He made me walk a long walk, like walk around
8 the park. He said, "You got a few minutes to get to
9 the hospital."

10 **Q** Did he ever take you to the Lexington
11 Hospital?

12 **A** Yes, he took me to the Lexington Hospital.

13 **Q** When was that?

14 **A** That was -- I can't remember --

15 **Q** Okay.

16 **A** -- the date.

17 **Q** Let me ask it this way. You had a very clear
18 memory of what happened with the car on August 6 and
19 August 7, 2019, right?

20 **A** Yeah.

21 **Q** Okay. So -- so let's use that date as kind
22 of our reference point. Okay?

23 **A** Uh-huh.

24 **Q** So if -- if -- if that's the date that all of
25 this happened that Mr. Dixon hit Mr. Dubose with a

1 black crowbar --

2 A That's the same day that he got hitted with
3 the crowbar.

4 Q Okay. And -- and when did you go to the
5 hospital in relation to that date?

6 A That's the same day.

7 Q Went to the hospital the same day?

8 A In the morning.

9 Q In the morning.

10 Okay. Now, when did you and Mr. Dubose go to
11 Walmart to buy a phone?

12 A I bought a phone at Walmart.

13 Q With Mr. Dubose?

14 A In Columbia.

15 Q With Mr. Dubose?

16 A Yes.

17 Q Okay. And when was that?

18 A That was -- ooh, I can't remember that date.

19 Q Okay. Was it --

20 A It's been a long time.

21 Q Right. Right. But it's kind of important.

22 A I bought both of -- both me and Martin a
23 phone.

24 Q You bought two phones that day?

25 A Yes.

1 Q And was that before you went to the cemetery?

2 A That's before we went to the cemetery.

3 Q How many days before?

4 A That's like before we even did the crime --

5 Q Before --

6 A -- he did the crime.

7 Q Like how many days before you even did the

8 crime?

9 A Before he even went to the left way.

10 Q I'm sorry?

11 A Before even Martin Dixon went to the left

12 way.

13 Q Went to the where?

14 A The left way.

15 Q What's the "left way"?

16 A Bad.

17 Q I'm sorry?

18 A Bad.

19 Q I don't understand what you're saying?

20 A Being bad.

21 Q Oh, the left way. Being bad?

22 A Yes.

23 Q So was it a few days before?

24 A A couple of days.

25 Q Okay. So Ms. Jones, I want ask you a few

1 more questions about your charges. Okay?

2 A Uh-huh.

3 Q You're charged with attempted murder, right?

4 A Uh-huh.

5 Q And you understand that that carries a
6 potential penalty of up to 30 years in prison?

7 A Uh-huh.

8 Q You have to say "yes" --

9 THE COURT: Use words.

10 THE WITNESS: Yes. Yes.

11 BY MS. ZMROCZEK:

12 Q And you're also charged with kidnapping,
13 right?

14 A Yes.

15 Q You understand that kidnapping carries a
16 potential sentence of up to 30 years?

17 A Yes.

18 Q And you're also -- you are also charged with
19 arson --

20 A Yes.

21 Q -- third degree --

22 A Yes.

23 Q -- right? And that carries a potential
24 penalty of up to 15 years, right?

25 A Yes.

1 Q So 30 plus 30 plus 15 is 75?

2 A Years.

3 Q Right. That you could go to prison, right?

4 A Yes.

5 Q But you don't want to go to prison, do you?

6 A No, I don't. Because if I go to prison, I'll
7 get killed in prison.

8 Q You'll get killed in prison. You don't want
9 to go, right?

10 A I'm -- I'm just going to let you know.

11 Q Please.

12 A I'm going to let you know.

13 Q Okay.

14 A Marly Mar is Illuminati.

15 Q Uh-huh.

16 A And he is Illuminati. You know what
17 Illuminati means?

18 Q I do.

19 A Illuminati is a person that you make a
20 sacrifice to a person.

21 Q Okay.

22 A Once you kill somebody, you have to sacrifice
23 that person to order to be in the lead.

24 Q Okay.

25 A The music and everything in the Illuminati

1 and the music in the business industry.

2 Q Okay.

3 A So Martin was in the Illuminati. He was the
4 first Illuminati.

5 Q The first one?

6 A Yes.

7 Q Oh, wow. Okay.

8 A He's the only one that could change the
9 beats, the songs, everything, the lyrics, all that.

10 Q Okay.

11 A He's a rapper.

12 Q Okay.

13 A Martin made me as a rapper, too, to be in the
14 Illuminati. But I didn't want to be in it.

15 Q Okay.

16 A So --

17 Q Okay.

18 A -- he showed me things that I couldn't be
19 shown. One minute, he's nice; next minute, he's in a
20 different world.

21 Q Okay.

22 A But Martin Dickerson, sometimes he be nice
23 sometimes. But that night when he hit me, that night
24 was being abusive to me --

25 Q What night was that?

1 **A** That night when I was in Hickory.

2 **Q** Okay.

3 **A** He told me that I woke him up because I took
4 a shower. I took a shower. I took a shower. And I
5 saw him kissing a white girl. So I didn't pay any
6 attention. I let that go. He cheated on me. Because
7 he kissed a white girl behind my back.

8 **Q** And that made you mad, right?

9 **A** Yeah, it did. It did. It did. I was upset.
10 I was upset because I throw my whole entire heart on
11 him. I thought he was going to be a faithful person.

12 **Q** Now, let me ask you this: You said that he
13 was your boyfriend, right?

14 **A** Uh-huh.

15 **Q** And in fact, you told Investigator Montgomery
16 on October 24, 2019, that he was your fiancé, right?

17 **A** Yeah. He was my boyfriend and he is my
18 fiancé, but not no more.

19 **Q** Not no more. And then you said that -- that
20 you found out that you were related?

21 **A** I found out we was cousins through his --
22 his -- his step daddy.

23 **Q** Okay. So I want to ask you some questions
24 now, Ms. Jones, about -- I want to go back to October
25 24 when you were talking to Investigator Montgomery,

1 okay?

2 A Uh-huh.

3 Q So you remember him reading you your rights?

4 A Yes.

5 Q And you remember signing the paper?

6 A Yes.

7 Q And you signed it "XXX Browneye"?

8 A That's my stage name.

9 Q What -- what -- and -- and -- and -- what
10 kind of stage name? What do you need a stage name for?

11 A That's my singing name that Martin gave me.

12 Q Martin gave you that as your singing name?

13 A Yeah.

14 Q Okay. Do you recall October 24, 2019,
15 selling Investigator Montgomery that that was your
16 stripper name?

17 A Yes. That's my stripper name.

18 Q Okay.

19 A Yeah, and I'm a stripper on stage.

20 Q And then you also signed it "Queen B"?

21 A Queen B is me.

22 Q That's you?

23 A Yeah.

24 Q Okay. And so you signed your name and then
25 you signed XXX Browneye and then you signed Queen B?

1 A Yes. That's me.

2 Q So you have three names?

3 A Three names.

4 Q Okay.

5 And Ms. Jones, do you recall telling
6 investigator -- well, first of all, before we get back
7 there, you testified here today that -- that you never
8 had a driver's license, right?

9 A Nope.

10 Q Never had a driver's license?

11 A Nope, never did.

12 (Defense Exhibit No. 4 is marked for
13 identification.)

14 **BY MS. ZMROCZEK:**

15 Q Ms. Jones, I'm going to show you what's been
16 marked for identification purposes at this point,
17 Defense 4?

18 A Uh-huh.

19 Q And I just want you to look at it?

20 A Uh-huh.

21 Q Do you recognize that paper?

22 A Yeah.

23 Q Okay. What is that paper?

24 A That paper is my driver's license for --
25 three years' driver's license record.

1 **Q** Okay. And does that fairly and accurately
2 represent your driver's license information?

3 **A** Yes.

4 **MS. ZMROCZEK:** Your Honor, at this time, we
5 would move Defendant's 4 into evidence.

6 **MR. SCOTT:** No objection from the state,
7 Your Honor.

8 **THE COURT:** It's admitted.

9 (Defense Exhibit No. 4 is admitted into the
10 record.)

11 **BY MS. ZMROCZEK:**

12 **Q** So, Ms. Jones, and -- and -- and I'm just
13 trying to make sure that -- that -- that these young
14 people are able to -- to -- to take all of the facts
15 and -- and be able to come up with a decision, right?

16 **A** Yes.

17 **Q** And you understand that you're under oath?

18 **A** Yeah.

19 **Q** And you have to tell the truth?

20 **A** Yeah.

21 **Q** That's why you swore on the Bible and rose
22 your hand?

23 **A** Yeah.

24 **Q** So when you told Mr. Scott just a few minutes
25 ago that you never had a driver's license, was that the

1 truth or was that not the truth?

2 A I had an ID.

3 Q Okay. Does this say ID or does this say
4 driver's license?

5 A This says driver's license.

6 Q Okay. Do you sometimes get confused?

7 A That's weird.

8 Q Okay. So, Ms. Jones, and understand we're
9 just trying to get to the truth, right?

10 A Yeah.

11 Q But what's really the most important thing to
12 you is that you don't want to go to prison, right?

13 A No.

14 Q And so you didn't even want -- you didn't
15 even want to testify, did you?

16 A No, I didn't want to testify, because the
17 fact that I want him to go home.

18 Q You want what?

19 A I want Martin Dixon to go home and be free.

20 Q Let me ask you this, Ms. Jones: Why did you
21 change your mind about testifying?

22 A Well, basically I change my mind because I
23 have to tell the truth because God said I have to tell
24 the truth, to let it out and let it known. And I have
25 to let it -- let it be and let it sit as it is because

1 God said you have to tell the truth, nothing but the
2 truth, and it will set you free.

3 Q Okay. And so when you didn't want to testify
4 yesterday and then the Judge told you that --

5 MR. SCOTT: Your Honor, this question has
6 been asked and answered. She is talking about
7 what happened outside the presence of the jury.

8 THE COURT: I haven't heard the question.

9 BY MS. ZMROCZEK:

10 Q When you were told that you could get 60
11 years, did that change your mind about testifying?

12 A I didn't want to testify because the fact
13 that he might kill me.

14 Q Okay. So, Ms. Jones, I want to go back to
15 October 24, 2019, when you were sitting with
16 Mr. Montgomery for your interview, right?

17 A Uh-huh.

18 Q Sorry. You have to say "yes" or "no"?

19 A Yes.

20 Q Okay. So you were brought into a room?

21 A Uh-huh.

22 Q And you were handcuffed to a table?

23 A Yes.

24 Q Okay. You remember that?

25 A Yes. I was handcuffed to a table.

1 Q And you remember there being a video camera
2 in the room?

3 A Yes.

4 Q So you knew that it was being recorded?

5 A Yes.

6 Q Do you remember telling Investigator
7 Montgomery on October 24 that -- do you remember asking
8 if Marty was coming over or Molly was coming over?

9 A Yeah.

10 Q Okay. And who is "Molly"?

11 A Martin Dixon.

12 Q Okay. So you have a couple of different
13 names for him?

14 A Marly Mar.

15 Q Okay.

16 A It's a rap name.

17 Q It's a -- it's a rap name?

18 A Uh-huh.

19 Q Okay. And so when Mr. --

20 A That Marly Mar One.

21 Q Marly Mar One?

22 A Yeah.

23 Q So when Mr. -- when Investigator Montgomery
24 as to who your next of kin was, you remember telling
25 him it was Martin?

1 **A** Yeah, Marly Mar, that's Martin.

2 **Q** As your next of kin, right?

3 **A** Martin II is my next of kin is Ray Sean
4 Dickerson.

5 **Q** Okay.

6 **A** Ray Sean Cooper, I mean.

7 **Q** And then Investigator Montgomery asking you
8 if there was somebody you could call. And you said
9 Clorine Darby?

10 **A** Ms. Clorine Darby is my mother.

11 **Q** That's your mother?

12 **A** Well, godmother.

13 **Q** That's your godmother?

14 **A** Yes.

15 **Q** Okay. And what relation does she have to
16 Mr. Dixon?

17 **A** That's her son.

18 **Q** Okay.

19 **A** Her mother -- his mother.

20 **Q** Okay. And do you remember telling
21 Investigator Montgomery that you were a professional
22 singer?

23 **A** Yes.

24 **Q** Okay. And do you remember telling
25 Investigator Montgomery that you had a cell phone?

1 A Yes.

2 Q And you had a cell phone that -- the whole
3 time that you were in the car and all of this was
4 happening, right?

5 A Yes.

6 Q And you told him that Mr. Dixon had a cell
7 phone?

8 A Yes.

9 Q And you told him that Mr. Dubose had a cell
10 phone?

11 A Yes.

12 Q Okay. You remember telling Investigator
13 Montgomery in 2019, on October 24, that you were
14 related to a bunch of rappers in Charleston?

15 A Yes.

16 Q Okay. And then you remember telling
17 Investigator Montgomery in 2019 that you graduated from
18 Trident Tech?

19 A No. Not graduated. About to graduate at
20 Trident Tech. I had three more years.

21 Q You had -- you told --

22 A About to go on my fourth year.

23 Q So you told Investigator Montgomery that you
24 were about to go on your fourth year?

25 A Yeah.

1 Q Okay.

2 A At Trident Tech.

3 Q You sure you didn't tell him that you had

4 already graduated?

5 A No, I didn't tell him I was about to

6 graduate. I told him was going to finish up my third

7 year, going on my fourth year.

8 Q Okay.

9 A But I couldn't finish my fourth year because

10 I was with Martin Dixon. He told me not to --

11 Q And you told --

12 A -- finish school.

13 Q And it's your testimony today --

14 A He say -- he say that -- he say in order for

15 you to be a producer or a music position, being --

16 making music, he said it's different ways how you make

17 music and get your degree.

18 Q Okay. You remember telling Investigator

19 Montgomery that you graduated high school and got your

20 citizenship award?

21 A Yes. I got my citizenship award.

22 Q And that you had graduated high school?

23 A Yes.

24 Q Okay. You remember telling him that you

25 passed the test to be in the military and the only

1 thing that you had to do was lose weight?

2 A Yes, I did.

3 Q Okay. You remember telling Investigator
4 Montgomery on October 24, 2014, that Mr. Dixon --
5 Mr. Dixon --

6 A Uh-huh.

7 Q -- worked for the feds?

8 A Uh-huh.

9 Q I'm sorry?

10 A Uh-huh.

11 Q So you told him that?

12 A Yes.

13 Q Did Mr. Dixon work with the federal
14 government?

15 A Yes.

16 Q How so?

17 A Because this is how I heard, I heard it about
18 the grapevine. When I went to MUSC IOP in Charleston,
19 IOP say Mr. Martin is a police officer.

20 Q Okay.

21 A They told me.

22 Q Okay. Do you remember telling Investigator
23 Montgomery that Mr. Dixon worked for NASA?

24 A Not really. They didn't tell me that.

25 Q You don't remember telling Investigator

1 Montgomery that on October 24, 2019?

2 **A** Huh-uh.

3 **Q** Okay. Do you remember telling Investigator
4 Montgomery on October 24, 2019, that Ms. Clorine Darby
5 had a radio station?

6 **A** Yes, she do.

7 **Q** Okay. And do you remember telling
8 Investigator Montgomery on October 24, 2019, that
9 Mr. Dubose killed two people?

10 **A** Uh-huh.

11 **Q** Yes?

12 **A** Yes.

13 **Q** And do you remember telling Investigator
14 Montgomery that Mr. Dubose killed those two people in
15 Charleston?

16 **A** Yes, he did.

17 **Q** And you remember telling Investigator
18 Montgomery that he killed those two people in
19 Charleston by injecting them with drugs?

20 **A** Yes.

21 **Q** And you told Investigator Montgomery that he,
22 Mr. Dubose, tried to kill you?

23 **A** Yes.

24 **Q** And in fact, you said he was trying to
25 assassinate you?

1 A Yes.

2 Q Okay. You told Investigator Montgomery...

3 A Okay. Like, for example, they tried to
4 assassinate me just like as you ever heard of Psycho
5 Redemption [phonetic].

6 Q I have not.

7 A The officer?

8 Q I have not.

9 A Okay. Psycho Redemption officer, he works in
10 Columbia up here. And he died a long time ago. And
11 even though he died, but that's my boy cousin. But he
12 tell me his story, his story about when he was in the
13 gang and he died a long time ago for that. So if I
14 tell y'all everything that's going on with Martin and
15 if I tell y'all what's going on with Anthony Dubose,
16 they are a part of that gang group.

17 Q And -- and you told Investigator Montgomery
18 all of this in 2019?

19 A Yeah. And if you -- and if you tell it, you
20 gone.

21 Q Okay. Do you remember telling Investigator
22 Montgomery that you graduated from Trident Tech in
23 2018?

24 A Uh-huh.

25 Q Okay. Do you remember telling Investigator

1 Montgomery that -- that you go way back with
2 Mr. Dubose?

3 A Back in the day in school.

4 Q Okay. And that he was your blood cousin?

5 A Yeah. He was my blood cousin.

6 Q And that he killed --

7 A Anthony -- Anthony killed that black girl,
8 Tony Dickerson girlfriend. And Tony Dickinson was my
9 boy cousin. And Tony Dickinson asked me to stay with
10 him for a minute. And I stayed with him for a little
11 minute and lay in his bed because I didn't have no
12 place to sleep at. He say, "I'm a help" -- Tony
13 Dickerson had told me that, "I'll help you find an
14 apartment around this side." He was trying to help me
15 to find an apartment.

16 Q Do you remember telling Investigator
17 Montgomery that you paid all of this car stuff from
18 Mr. Dubose in 2018?

19 A Say that again.

20 Q Okay. Do you remember telling Investigator
21 Montgomery that you paid for all of Mr. Dubose's car
22 stuff in 2018?

23 A Yes. I paid all of his car stuff in 2018.

24 Q Okay. And you recall telling Investigator
25 Montgomery that -- in fact Investigator Montgomery

1 asked you what kind of car you paid to fix and what
2 kind of car Mr. Dubose had, right?

3 A Uh-huh.

4 Q You -- you remember that?

5 A Uh-huh.

6 Q And you remember telling Investigator
7 Montgomery that it was a gray car?

8 A I can't remember the car color right now
9 because I can't remember way back this and that. So I
10 can't remember what color it is. It could be gray. It
11 could be black. It could be this and that. But you
12 can't tell in the dark.

13 Q Right. But you remember telling Investigator
14 Montgomery that it was gray and then he, Investigator
15 Montgomery, corrected you and told you it was black?
16 You remember that?

17 A Yes. Told me it was black.

18 Q And then you were like, "Oh, yeah. It's
19 black"?

20 A It's black. Yeah.

21 Q Right. Because -- because that's what he
22 told you?

23 A Yes. Because I didn't have my glasses at
24 that time.

25 Q And then, you remember telling Investigator

1 Montgomery that it was a Honda -- a Honda LX 1500,
2 right?

3 A Yes.

4 Q And Investigator Montgomery said, "No, it was
5 a Lexus. He told you it was a Lexus, right?

6 A Yeah.

7 Q And then you said, "Oh, yeah. It was a
8 Lexus"?

9 A And I said, "Yeah, it was a Lexus."

10 Q So every time Investigator Montgomery would
11 correct you on a fact, you would just agree with him,
12 right?

13 A Yeah.

14 Q Because you listened to the police, right?

15 A Uh-huh.

16 Q And you don't want to go to prison, right?

17 A Right.

18 Q So you want to make sure you tell them what
19 they want to hear --

20 A Yes.

21 Q -- right?

22 A Yes.

23 Q That makes sense?

24 A Yeah.

25 Q And then, you remember him asking you about

1 coming up to Charleston and you remember telling him,
2 Mr. -- Investigator Montgomery that Mr. Dubose was
3 planning on assassinating you and Mr. Dixon?

4 A Yeah.

5 Q You remember telling him that?

6 A Yeah.

7 Q And you remember telling Investigator
8 Montgomery that -- that Mr. Dixon's brother was also
9 going to assassinate you and Mr. Dixon, right?

10 A Yeah.

11 Q You told him that, right?

12 A Yeah. I told him that.

13 Q Yeah. And then --

14 A I told him that.

15 Q And then do you remember telling him that --
16 when he -- so -- so then, he starts trying to ask you
17 some questions again, right?

18 A Yeah.

19 Q And he is the one, he Mr.-- Mr. Montgomery,
20 asked you if you stayed in a hotel in West Columbia,
21 right?

22 A Uh-huh.

23 Q And you told him, "No, sir, we're not in a
24 hotel"?

25 A Uh-huh.

1 Q Correct?

2 A Yeah.

3 Q So you told him you weren't in a hotel?

4 A Yeah.

5 Q Okay.

6 A Yeah.

7 Q Okay. But he said, "No, no. You were in a
8 hotel. Mr. Dixon registered in a hotel." And he told
9 you that?

10 A Yes.

11 Q And he told you that you did stay in a hotel?

12 A Yes.

13 Q And then he told you that Mr. Dixon paid for
14 it, right?

15 A No. Mr. Dickerson didn't pay for it. I paid
16 it out of my card.

17 Q You did?

18 A He put his ID on -- on the hotel.

19 Q Okay.

20 A But I've paid it out of my money.

21 Q Okay. But that's only after Investigator
22 Montgomery told you that he had already gotten the
23 receipt, but you didn't remember that on your own, did
24 you?

25 A No.

1 Q You only remembered it when Investigator
2 Montgomery told you about it?

3 A Yes.

4 Q Okay. And you remember Investigator
5 Montgomery, you telling him -- so he asked you what
6 happened, right?

7 A Uh-huh.

8 Q And you told him, you told Investigator
9 Montgomery that -- that he was trying to assassinate
10 you?

11 A Yes.

12 Q And then you told him that you were at the
13 graveyard visiting a gravesite?

14 A Yep.

15 Q Okay. You told that to Investigator
16 Montgomery. That -- that's why you were at the
17 graveyard?

18 A Yep.

19 Q And then, you told Investigator Montgomery
20 that you had -- you -- that we had to burn the car up.
21 We did this in order to protect ourselves. That's what
22 you told Investigator -- Investigator Montgomery, yes?

23 A Yes.

24 Q Okay. And then you said that Antrone was in
25 the trunk and that --

1 **A** He had a gun.

2 **Q** Oh, and that -- oh, you told him that too?

3 **A** Anthony Dubose had a gun. He was planning to

4 kill us.

5 **Q** Do you know this gentleman sitting right up

6 here?

7 **A** Yeah.

8 **Q** Who is that?

9 **A** Anthony Dubose.

10 **Q** Anthony Dubose had a gun?

11 **A** Yeah.

12 **Q** And you told that to Investigator Montgomery?

13 **A** Uh-huh.

14 **Q** You told him that night?

15 **A** No. I didn't tell him that night. But he had

16 a gun. He planned to kill both of us.

17 **Q** He was planning on it?

18 **A** He told us that.

19 **Q** He, not Mr. Dickerson, he Mr. Dubose was

20 planning on killing you?

21 **A** He told both -- he told me and Martin that

22 Anthony Dubose was going to kill us.

23 **Q** Okay. And then, you remember Investigator

24 Montgomery telling you that there were pieces of paper

25 burned up in the car, right?

1 A Uh-huh.

2 Q You didn't say that. He said that to you,
3 right?

4 A No.

5 Q No -- no what?

6 A No, like for example --

7 Q Uh-huh.

8 A Like, for example, I told Martin. Martin had
9 put a piece of paper inside the car. Basically, he did
10 that. He'd light the car on fire and that was it.

11 Q Okay. And -- and your testimony is that's
12 what you told Investigator Montgomery in 2019?

13 A Uh-huh.

14 Q And then you told Investigator Montgomery
15 that it was Antrone who drove to the alley, right?

16 A Yeah.

17 Q Okay. And you told Investigator Montgomery
18 that you lit the paper and you put it inside the car?

19 A Yeah.

20 Q I'm sorry?

21 A Yeah.

22 Q You told him that?

23 A Yeah.

24 Q Okay. You told Investigator Montgomery
25 that -- that Mr. Dubose got out of the car?

1 A Yeah.

2 Q You told him that, right?

3 A Yeah.

4 Q Right behind you?

5 A Yeah.

6 Q And then you told Investigator Montgomery
7 that he was still trying to assassinate you?

8 A Yes.

9 Q And that -- and that you had to leave town,
10 right?

11 A Yes.

12 Q And you told Investigator Montgomery that T,
13 who was your -- Mr. Dixon's friend came and picked you
14 up in Columbia?

15 A Uh-huh.

16 Q Right?

17 A Uh-huh.

18 Q You have to say "yes" or "no"?

19 A Yes.

20 Q Okay.

21 A They was trying to kill me in the jailhouse
22 too.

23 Q Okay.

24 A The girls.

25 Q Okay.

1 **A** Over Martin Dickerson.

2 **Q** I'm sorry?

3 **A** Over Martin Dickerson.

4 **Q** Okay. And then you told Investigator
5 Montgomery in 2019, on October 24, that you didn't even
6 want to go back to Charleston?

7 **A** Nope. I didn't.

8 **Q** Okay. And you told him that when you left
9 Columbia that you went to Hickory?

10 **A** Yeah.

11 **Q** Okay. And that Mr. --

12 **A** I'd rather go to North Carolina, Hickory,
13 than to be up there in North Charleston. It's worser
14 in North Charleston than in Hickory. I'd rather be up
15 there.

16 **Q** Okay. All right.

17 And then you told him that Mike told you
18 that -- that Mr. Antrone got out of the car, right?

19 **A** That's right.

20 **Q** Okay. And Mr. -- Investigator Montgomery
21 asked you if anyone had a knife. What'd you tell him?

22 **A** No.

23 **Q** No. No one had a knife. But your testimony
24 today is that you told him Antrone had a gun and he was
25 trying to assassinate you?

1 **A** Assassin us, yeah.

2 **Q** And --

3 **A** All because of Psycho Redemption money.

4 **Q** Right. And then do you remember -- so you
5 were in this room handcuffed to a table for quite some
6 time, right?

7 **A** Uh-huh.

8 **Q** And they talked to you for a little bit,
9 asking you questions, right?

10 **A** Uh-huh.

11 **Q** Giving you information to refresh your
12 memory, right?

13 **A** Yeah.

14 **Q** And then they were out in the hall and you
15 were left in that room for quite some time?

16 **A** Yeah.

17 **Q** But the camera was still rolling?

18 **A** Yeah.

19 **Q** And you were having conversation with someone
20 or were you just talking out loud. Do you remember?

21 **A** Bursting out loud. Telling them the truth
22 about everything what Trump did, everything in the
23 (inaudible), everything in government agencies.

24 **Q** Uh-huh.

25 **A** And that was the truth.

1 Q And you remember that you could hear them
2 laughing out loud?

3 A Laughing at me, giggling at me, want to fight
4 me. They want to take my panty, my underwears, my
5 papers. All of that. They want to kill me. They want
6 to do this to me. They want to stab me because of
7 Martin Dickerson.

8 Q Who was doing that?

9 A Yes.

10 Q Who was laughing in the hallway?

11 A All the girls.

12 Q All of the girls?

13 A Girls in the jailhouse, (inaudible), all
14 that, laughing at me, all this, this and that, taking
15 my papers, even though I write my stories. I wrote my
16 stories about my life. Y'all took my notebooks, all of
17 that from me. Y'all did everything. COs opened the
18 gate, took my notebook, my pads, everything I wrote a
19 story about, about my life and everything. And that's
20 a true story about my life.

21 **MS. ZMROCZEK:** Beg the Court's indulgence.

22 (Pause.)

23 **BY MS. ZMROCZEK:**

24 Q Just a few more questions, Ms. Jones.

25 A Uh-huh.

1 **Q** So you said you didn't remember telling
2 Investigator Montgomery a few things that -- that I
3 asked you. You didn't remember telling Investigator
4 Montgomery that Martin Dixon worked for NASA?

5 **A** I didn't know that.

6 **Q** Okay. You didn't tell -- it's your testimony
7 that you didn't tell him that?

8 **A** I think so. I did.

9 **Q** Now, you think you did?

10 **A** I think I did.

11 **Q** Okay.

12 **A** I think I did.

13 **Q** Okay. And -- and -- and it's your testimony
14 that you remember telling Investigator Montgomery
15 that -- that he had a gun?

16 **A** Yeah.

17 **Q** Would it refresh your recollection to watch
18 that interview?

19 **A** Yeah.

20 **MS. ZMROCZEK:** Your Honor, at this time...

21 **THE COURT:** At this time, what?

22 **MS. ZMROCZEK:** At this time -- at this time,
23 Your Honor, I'm marking her interview as a defense
24 exhibit.

25 **THE COURT:** Okay.

1 **MS. ZMROCZEK:** And I would like to publish it
2 to the jury.

3 **THE COURT:** All right.

4 Ladies and gentlemen, I'll have you go to the
5 jury room. Please do not discuss the case.

6 (The jury exits the courtroom at 2:48 p.m.)

7 **THE COURT:** You asked her whether watching
8 this interview would refresh her recollection?

9 **MS. ZMROCZEK:** Correct.

10 **THE COURT:** All right.

11 Ma'am, you may step down. You may do that
12 outside the presence of the jury.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** We will take up some other
15 matters while she is watching that. How long --
16 how long is it?

17 **MS. ZMROCZEK:** Your Honor, it's an hour and
18 45 minutes.

19 **THE COURT:** We'll have to take an hour and 45
20 minutes if it takes that long. You want her to
21 watch the hour and 45 minutes or you have
22 something specific in mind?

23 **MS. ZMROCZEK:** Your Honor, I don't believe --
24 well, she said that she testified -- or she told
25 Investigator Montgomery that Mr. Dubose had a gun.

1 **THE COURT:** I heard what she testified to. I
2 said: Do you want her to watch the hundred and --
3 the hour and 45 minutes or do you have something
4 specific you want her to refer to to refresh her
5 recollection?

6 **MS. ZMROCZEK:** So Your Honor, that's not on
7 there. So I think in order for her to properly
8 answer that question, she has to watch it because
9 it's not said anywhere on there.

10 **THE COURT:** So what's -- what's not on there?

11 **MS. ZMROCZEK:** The fact that she told
12 Investigator Montgomery that Mr. Dubose had a gun
13 and was going to kill them that night.

14 **THE COURT:** All right.

15 Okay. Well, Mr. Scott, any comment by you?

16 **MR. SCOTT:** I still can't figure out what
17 she's trying to accomplish. Does the Court
18 understand?

19 **THE COURT:** No, I -- I have no clue. I mean,
20 you basically asked her --

21 You've gone through the entire interview, it
22 seems like. You've repeated almost everything
23 verbatim and had her "yes" and "no," did she say
24 that, did he say that and all that. Now you want
25 her to watch an hour and 45 minutes of the same

1 thing you've been talking to her about to find out
2 whether or not it refreshes her recollection
3 concerning something, concerning whether or not
4 Dixon had a gun. And then your client -- who had
5 a gun?

6 **MS. ZMROCZEK:** No, Mr. Dubose had a gun.

7 **THE COURT:** Dubose had a gun.

8 **MS. ZMROCZEK:** And Your Honor --

9 **THE COURT:** So how does that help you? If
10 you have the victim with a gun, you want her to
11 admit that she didn't really say that?

12 **MS. ZMROCZEK:** Your Honor, if -- if -- if I
13 may have a few minutes, this may be a good time
14 for a break, and I can think through and see if
15 that's good use of the Court's time.

16 **THE COURT:** I'm fine. We have two other sets
17 of people here that we're getting ready to talk
18 to.

19 **MS. ZMROCZEK:** Okay.

20 **THE COURT:** So time is not a problem with me.
21 And it appears this might be our only trial. I'm
22 fine. You can take as much time as you need.

23 **MS. ZMROCZEK:** Okay.

24 **THE COURT:** I just want to be clear why you
25 -- what you're trying to do.

1 **MS. ZMROCZEK:** So Your Honor, let me just --
2 if I may strategize for a few minutes.

3 **THE COURT:** Sure.

4 **MS. ZMROCZEK:** We can take a break and then I
5 can --

6 **THE COURT:** Just let me know. You know, I
7 can even send the jury to lunch. And we can do
8 something else too.

9 **MS. ZMROCZEK:** Okay.

10 **THE COURT:** Okay. So we're in recess in this
11 case.

12 Just let me know how long so I can decide
13 whether I'm going to let the jury go.

14 (A recess is taken.)

15 **THE COURT:** Give me a clue as to what is the
16 best step with this lady.

17 **MS. ZMROCZEK:** I think that I can just
18 procedurally discuss without having him here,
19 Your Honor. Just procedurally, Your Honor, I've
20 had time to reflect on the testimony.

21 Your Honor, I will not be trying to refresh
22 her recollection or impeaching her. Your Honor, I
23 would, though, when my client gets up here just
24 renew my objection to her competency. And I will
25 put that on the record.

1 **THE COURT:** All right.

2 So where is she?

3 **MR. SCOTT:** She is outside Your Honor.

4 **THE COURT:** We will need her on the witness
5 stand.

6 **MR. SCOTT:** I can go get her.

7 **THE COURT:** So we are through with the jury
8 panel? No. The jury panel downstairs.

9 **THE CLERK:** You want her back on the witness
10 stand?

11 **THE COURT:** Yes.

12 So hopefully make sure they are bringing the
13 guy.

14 **THE BAILIFF:** Yes. I will make sure.

15 **THE COURT:** All right.

16 (Pause in proceeding.)

17 **THE COURT:** All right.

18 Ms. Zmroczek.

19 **MS. ZMROCZEK:** Thank you, Your Honor.

20 As an experienced trial lawyer itself, you
21 know, sometimes you have to think through things
22 at the moment. Your Honor, I have done that. I
23 have left the exhibit marked as an ID. I will not
24 pursue that line anymore.

25 Your Honor, but at this time, before the jury

1 comes back, I would renew my objection to this
2 witness's competency under *State v. Needs*, 508
3 S.E. 2d 857.

4 Your Honor, the -- as you heard the testimony
5 and cross-examination regarding her ability to
6 perceive the events and with a substantial degree
7 of memory as she testified numerous times that it
8 was so long ago she can't remember, and with a
9 reasonable degree of competency, and I think that
10 Your Honor now that you've heard the testimony
11 understood my concerns. And I would, at this
12 time, Your Honor, ask that she be found not
13 competent and her testimony be stricken.

14 **THE COURT:** All right.

15 She is competent to testify. It's for the
16 jury to weigh her testimony, given all of her
17 issues and her ability to recall the testimony
18 truthfully. I do not believe it's the -- her past
19 mental issues affects her ability to testify.

20 She's on medication. She has things under
21 control. She's very articulate. I was impressed
22 by her ability to express herself. She got into
23 some things about the Illuminati and whatever that
24 is, which is kind of beyond me. But she said that
25 guy was trying to get out of a gang and I guess

1 she was trying to get out of it too, whatever that
2 meant. So the jury can evaluate the meaning of
3 all of those things. I do not find it affects her
4 competency to testify.

5 MS. ZMROCZEK: And I'll have no further
6 questions, but I can --

7 THE COURT: All right.

8 MS. ZMROCZEK: -- wait until the jury comes
9 back.

10 THE COURT: We'll do that in front of the
11 jury. After that happens, then what? You have
12 redirect?

13 MR. SCOTT: Briefly, I do.

14 THE COURT: Let's bring the jury.

15 (The jury enters the courtroom at 1:13 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: Thank you, Ms. Zmroczek.

18 MS. ZMROCZEK: Thank you.

19 I have no further questions at this time.

20 THE COURT: No further questions by the
21 defense.

22 Redirect?

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Michelle?

1 **A** Uh-huh.

2 **Q** You were talking about some people when you
3 were in the jail and there were some women laughing at
4 you and making fun of you?

5 **A** Yes.

6 **Q** Has that happened a lot in your life?

7 **A** Yes. Every since I was a kid.

8 **Q** And people tried to take advantage of you?

9 **A** Yes.

10 **Q** And people used you?

11 **A** Yes.

12 **Q** And --

13 **A** Taking granted for my heart and I was being
14 nice.

15 **Q** Okay.

16 **A** And they fight me and they beat me and
17 everything, all the mens and the girls and the guys. I
18 had to fight my way.

19 **Q** You been beat by a lot of men?

20 **A** Yea.

21 **THE COURT:** Talk into the mic.

22 **THE WITNESS:** I was getting beat in all --
23 every last of the guys was dating me.

24 **BY MR. SCOTT:**

25 **Q** Let me ask you: Have you been taken

1 advantage of because of your mental disabilities?

2 A Yes.

3 Q Because --

4 A Because I have mental 'tardation.

5 Q And have people used you because you get a
6 check in the mail?

7 A Yeah.

8 Q And have people tried to get you to give them
9 some of that money?

10 A Yeah.

11 Q And has Martin Dixon used you from time to
12 time?

13 A Yes, he did. Because he kept his money back.

14 Q Did he take money from you?

15 A No. He didn't take money from me. But I
16 asked him if he needed anything else or needed anything
17 you need. I helped him out what I could help him.

18 Q Okay.

19 A But I couldn't do no more because the fact
20 that he didn't help me out back. That's the fact.

21 Q You were having to help him a lot?

22 A Yeah. He didn't help me back.

23 Q Okay. You said you threw your whole heart on
24 him?

25 A I throw my whole entire heart on him. I had

1 loved him. I had care about him. I had did a whole
2 lot. I even overdosed myself because I love him. He
3 said he was going to break up with me because of the
4 fact that I was been with this dude. He wanted me to
5 have sex with this dude and I didn't want to have sex
6 with that dude.

7 Q Was he going to film it or something?

8 A Yes.

9 Q And he is the one who had all of the ideas?

10 A He was all the one that had all the ideas.

11 Q Okay.

12 A And I just wanted to be with one man, only
13 just Martin Dixon.

14 Q All right.

15 Just a couple more questions. You -- you
16 talked earlier about having to speak with Wayne
17 Montgomery --

18 A Uh-huh.

19 Q -- when they bought you back from Hickory.
20 And you told him about how Antrone -- or Anthony Dubose
21 ended up in the trunk, didn't you?

22 A Yeah.

23 Q How did you know how Anthony Dubose ended up
24 in the trunk?

25 A How did I know? Martin Dixon told me.

1 Q Did you see it happen?

2 A Yeah. I saw it everything, details and
3 everything.

4 Q How did you know how Anthony or Antrone
5 Dubose got to the cemetery?

6 A Because I saw everything.

7 Q Okay. How did you know -- let me see if I
8 got a picture. You recognize what that is?

9 A I can't see that.

10 Q How did you know to tell Wayne Montgomery
11 about a rag in a gas tank?

12 A Well, that's true.

13 Q How did you know how to tell him about that?

14 A Because basically I told the whole story and
15 the whole truth about what happened.

16 Q My point is: How would you have known to
17 tell him if you hadn't seen it?

18 A I sawed it.

19 Q Okay. And you told him about how it
20 happened?

21 A Yeah.

22 Q This is State's -- I mean, not State, Defense
23 No. 4 that they showed this to you.

24 A Uh-huh.

25 Q Remember the lady called it a driver's

1 license?

2 A Yeah.

3 Q What do you have? Is it an ID?

4 A Yeah, ID.

5 Q Okay. This is an ID. Do you have it with

6 you?

7 A My auntie has it.

8 MR. SCOTT: Do you have it with you, auntie?

9 MS. RIVERS: Yes, it's in the vehicle.

10 BY MR. SCOTT:

11 Q Oh, okay. But it is an ID. You've never

12 driven a car in your life?

13 A I never drove a car in my life.

14 Q That's what the government gives you so that

15 you can show you are?

16 A Yeah.

17 Q And doesn't have any driving information. It

18 doesn't list a class?

19 A Huh-uh.

20 Q It doesn't list any kind of qualifications --

21 A No.

22 Q -- like a normal license?

23 A No.

24 Q This is just an ID?

25 A Just a ID.

1 Q Okay. So when the defense attorney was
2 saying you have a driver's license, that's not true?

3 A That's not true.

4 Q That's what you were issued for your ID?

5 A Charleston -- Charleston gave me ID, a
6 specially ID saying no license. That's what they gave
7 me.

8 Q Okay. All right.

9 Who was there when Anthony Dubose was put in
10 the trunk of his own car?

11 A Who was there?

12 Q Who was there?

13 A I was there and Martin was there. It's three
14 of us.

15 Q Okay. Who was there when Antrone got hit in
16 the head with a tire iron, or the crowbar?

17 A Martin Dixon and I was there. Three of us.
18 And I watched it.

19 Q All right.

20 A I just stood there and watched, but watched.

21 Q Who was in the graveyard when Antrone Dubose
22 car was set on fire with him in the trunk?

23 A It was me and Martin, but I had watched it.

24 Q Okay. And who was it who went up to Hickory,
25 North Carolina, with Martin Dixon after this?

1 **A** It was me and Martin. And I watched it.

2 **Q** All right.

3 Thank you very much.

4 **MS. ZMROCZEK:** Very briefly, Your Honor.

5 **THE COURT:** Yes.

6 **RECROSS-EXAMINATION**

7 **BY MS. ZMROCZEK:**

8 **Q** You -- you told Mr. Scott that -- that
9 Mr. Dixon helped you and you helped him, right?

10 **A** Nope.

11 **Q** You didn't just say that just now?

12 **A** I didn't help him.

13 **Q** Oh. You didn't help him?

14 **A** Huh-uh.

15 **Q** He wasn't taken advantage of you, was he?

16 **A** He was taken advantage of me.

17 **Q** Okay. How much was your check?

18 **A** My check was 735, I think, or 45. I can't
19 remember.

20 **Q** Do you still get that check?

21 **A** No. Because basically we're trying to get it
22 back.

23 **Q** Oh, so you don't even get a check anymore?

24 **A** I have a check. I'm trying. I'm getting a
25 lawyer.

1 Q Okay.

2 A I'm trying hard to get it back.

3 Q Okay.

4 A Hard as -- beg as hard. I got no money, no
5 resource, no nothing, no anything, no Medicaid, no
6 nothing.

7 Q Okay. And you --

8 A All because of Martin Dickerson.

9 Q All because of Martin Dickerson.

10 Mr. Scott asked you how you knew about the
11 rag in the car, right?

12 A Yeah.

13 Q And how you knew about it was because
14 Investigator Montgomery asked you about it and then you
15 told him yeah, right?

16 A Uh-huh.

17 Q So he asked you first and you told him yeah?

18 A Uh-huh.

19 Q Right? That's how it went?

20 A Uh-huh.

21 Q Is that "yes"?

22 A Yes.

23 Q So that's how you knew about it?

24 A Yeah. But I watched it.

25 Q And you watched it. And you watch that black

1 crowbar, right?

2 A Yeah.

3 Q Thank you, Ms. Jones.

4 A Hit Martin -- Martin hit him.

5 Q Thank you, Ms. Jones.

6 THE COURT: All right.

7 Madam, you may step down.

8 THE BAILIFF: Step down. Watch your step.

9 THE COURT: Call your next witness.

10 MR. SCOTT: The state recalls Wayne

11 Montgomery.

12 THE COURT: All right.

13 We'll do that after lunch.

14 MR. SCOTT: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen, we'll come
16 back at -- how much time y'all for lunch?

17 THE JUROR: An hour and a half.

18 THE COURT: Hour and a half. All right.

19 Y'all come back in an hour and a half.

20 Please do not discuss the case. An hour and a
21 half from now would be 2:54, something like that.

22 (The jury exits the courtroom at 1:22 p.m.)

23 THE COURT: All right.

24 How many more witnesses do you have now?

25 MR. SCOTT: Just recall Wayne just to clear

1 up the fact that he didn't tell her what to say.
2 That was in assertation by the defendant.

3 **THE COURT:** All right.

4 **MS. ZMROCZEK:** And, Your Honor, in doing so,
5 obviously, I'm going to cross-examine with the
6 specific -- the specific numbers of that video.
7 So if while we have an hour and a half lunch break
8 to save the Court some time, if he would like to
9 rewatch that video or, you know, if I need to be
10 able to play it for him to -- to be able to
11 clarify. Because you know, they're going to get
12 up there and say, oh, that ain't true. Well,
13 fine, we'll just watch the video.

14 So that's -- you know, just how long it's
15 going to take, Your Honor. If they're going to
16 get up there and say that I'm lying, then I'm
17 certainly going to have two impeach the witness.

18 **THE COURT:** Say that you're lying?

19 **MS. ZMROCZEK:** That's what he just said: She
20 told the jury that he told her what to say. And
21 so, you know, that's a personal attack on me,
22 Your Honor.

23 **MR. SCOTT:** I don't see it as such.

24 **MS. ZMROCZEK:** The evidence is what it is.

25 **THE COURT:** Well, if it's a personal attack,

1 how (inaudible).

2 **MS. ZMROCZEK:** Well, if he gets up there and
3 say, "I didn't say -- I didn't tell her about the
4 rag, she told me about it," well, it's on video.
5 We know who told who first. I believe that's
6 going to be the substance of his testimony,
7 Your Honor. I will go ahead and pull that
8 specific section up now just so we're prepared.

9 **THE COURT:** All right.

10 Whichever way it goes. I'm here --

11 **MS. ZMROCZEK:** Thank you.

12 **THE COURT:** -- to rule this way or that way.

13 **MS. ZMROCZEK:** Thank you, Your Honor.

14 **THE COURT:** Okay. We'll be back.

15 (A recess is taken.)

16 **THE COURT:** Bring the jury.

17 (The jury enters the courtroom at 3:05 p.m.)

18 **THE BAILIFF:** The jury is seated, Your Honor.

19 **THE COURT:** Very good.

20 Your next witness.

21 **MR. SCOTT:** Your Honor, the state recalls
22 briefly Sergeant Wayne Montgomery.

23 **THE COURT:** You're still under oath.

24 **WAYNE MONTGOMERY**

25 having previously been duly sworn, testifies as

1 follows:

2 **DIRECT EXAMINATION**

3 **BY MR. SCOTT:**

4 Q Sergeant Montgomery, after she was arrested
5 with Martin Dixon in Hickory, North Carolina, and they
6 were bought back to Columbia, did you have an
7 opportunity to interview Ms. Jones?

8 A Yes, sir. I did.

9 Q Okay. And that was -- you had already
10 interviewed the victim, Antrone Dubose, right?

11 A That's correct.

12 Q So you had his version of the story, and now
13 you were looking to see what she had to say about it?

14 A Yes, sir.

15 Q Is that fair?

16 A Yes, sir.

17 Q And is it safe to say you were looking for
18 corroborating pieces of information?

19 A Yes. In speaking to the co-defendant in this
20 case, just trying to gather information that was
21 consistent with what the victim might have told us --
22 told me during the beginning stages of the
23 investigation.

24 Q So she just testified. You've been in here
25 the whole time. Very clear mental health issues. She

1 said she's been treated since she was a little girl for
2 the most part. A bit of word salad going on, would you
3 agree? In other words, she -- she gets off on
4 different tangents and talks about things that may be
5 delusional. Is that fair to say?

6 **A** Yes. Very fair to say.

7 **Q** Okay.

8 **A** Very fair.

9 **Q** Defense attorney mentioned she said the
10 defendant worked for NASA. Is there any evidence he
11 ever worked for NASA?

12 **A** Not to my -- no information I got that he
13 ever worked for NASA.

14 **Q** Okay. And you have information of him being
15 a part of the Illuminati?

16 **A** Other than the statements that was made by
17 the witness, I have no information of such.

18 **Q** And any -- there's a lot of talk about
19 assassinations. Is that fair to say?

20 **A** Yes.

21 **Q** Okay. Did this seem to be product of
22 delusion to you?

23 **A** To me, it appeared to be that, yes.

24 **Q** Okay. Have you interviewed people with
25 mental health issues in the past?

1 **A** Yes. And it's customary in my lot of work is
2 you can be in contact with people of various social
3 economic statuses, various mental health issues. You
4 can deal with someone with a third-grade education in
5 one hour and two hours later someone with a master's
6 degree. So definitely a diverse population of people
7 in all walks of life that we deal with in law
8 enforcement.

9 **Q** You interviewing her, were you trying to
10 trick her in anyway?

11 **A** No. Not at all.

12 **Q** Were you trying to put words in her mouth?
13 Was that your intent ever?

14 **A** Never.

15 **Q** There was an instance where you asked her
16 what color car Antrone Dubose has. Do you remember
17 that exchange?

18 **A** Yes.

19 **Q** And her answer is?

20 **A** She indicated that she believed it was gray,
21 that the vehicle was gray.

22 **Q** Did you challenge her in any way? Did you
23 try to put words in her mouth? What was your response
24 to that?

25 **A** I believe during that exchange, I indicated

1 that -- not exact on the words, but could the car had
2 been black or was it black, just to get the clear color
3 of the car.

4 **Q** Okay. And did she agree that in fact she did
5 remember it to be black?

6 **A** She ultimately stated it was a black car.

7 **Q** And was that you attempting to put words in
8 her mouth or trick her in any way?

9 **A** No.

10 **Q** There was a time I think you asked her the
11 make of the car. What did she say?

12 **A** She believed it was a Honda or Honda-ish type
13 of vehicle. And then I believe I asked her was it a
14 Lexus or could it have been a Lexus.

15 **Q** Okay. And on the heels of that, what did you
16 mention to her as far as putting words in people's
17 mouths?

18 **A** During the interview, when she agreed that it
19 was a Lexus, I actually then reaffirmed with her or
20 just wanted to confirm with her or I stated to her, "I
21 don't want you just to agree with me because I said
22 it." So I wanted to make sure that she understood
23 that, one, if she had her own answers, that is what I
24 wanted from her. But I also didn't want her to just go
25 along with whatever I was saying.

1 Q Okay. And now were you looking for things
2 that she would have knowledge of that you wouldn't
3 necessarily have knowledge of unless you were at the
4 scene of this particular crime?

5 A Yes. And she mentioned some -- some intimate
6 details of what occurred that either was not provided
7 to her, published in any other form. So she was able
8 to put some of those intimate details out during her
9 interview.

10 Q And we just went back and kind of during the
11 break we rewatched a lot of that interview, did we not?

12 A That's correct.

13 Q And this is State's No. 34. Do you recognize
14 that?

15 A Yes. That is a copy of the interview, I
16 believe the entire interview that we had that
17 particular day.

18 Q And that fairly and accurately represents the
19 interview you had with Mr. Jones?

20 A That's correct. It's about an hour and 46/47
21 minutes possibly long.

22 Q If you attempted to influence her in any way
23 or tried to put words in her mouth, it would be on this
24 video?

25 A That's correct. It would be on that video.

1 **MR. SCOTT:** The state offers State's 34 for
2 admission into evidence.

3 **MS. ZMROCZEK:** Without objection.

4 **THE COURT:** It's admitted.

5 (State Exhibit No. 34 is admitted into the
6 record.)

7 **BY MR. SCOTT:**

8 **Q** Tell me some of the things that she talks
9 about in that video that she would have had no real way
10 of knowing unless it was just a giant coincidence or
11 where she guessed one in the million?

12 **A** One of the first things she mentions is the
13 repair for the vehicle. She indicates she spends a
14 couple of hundreds of dollars to fix the vehicle. And
15 she gives in particular what types of tires and things
16 that she fixed on the vehicle to get it ready to come
17 to Charleston.

18 **Q** And that was compelling to you because
19 Antrone Dubose already said this was over money owed
20 because she had done repairs to his car?

21 **A** That's correct.

22 **Q** And you did mention to him anything -- her
23 anything about repairs to a car or anything like that?

24 **A** No. She mentioned that first during the
25 interview.

1 Q Okay. So either that was just a
2 one-in-a-million guess or she had some personal
3 knowledge of those repairs done to his car?

4 A That's correct.

5 Q All right.

6 What else? Did you ever mention that Martin
7 Dixon was -- was implicated in this crime as well?

8 A Only after she initially introduced Mr. Dixon
9 at -- by name.

10 Q Okay. So she was the first to mention Martin
11 Dixon being involved?

12 A That's correct.

13 Q What else?

14 A She indicated that the victim was attempting
15 to call his brother --

16 Q Okay.

17 A -- multiple times.

18 Q That was compelling to you why? Because you
19 had already spoken with Antrone Dubose about him trying
20 to call his brother?

21 A Yes. He indicated that during -- during this
22 process, he spoke with his brother.

23 Q How would she possibly have known about that?

24 **MS. ZMROCZEK:** Objection, Your Honor;
25 speculation.

1 **THE COURT:** Sustained as to the form of the
2 question.

3 **BY MR. SCOTT:**

4 **Q** Okay. So she said she had knowledge that the
5 victim had been trying to call his brother?

6 **A** Yes.

7 **Q** And you already spoken with Antrone Dubose
8 about that?

9 **A** Yes. He mentioned that.

10 **Q** Of course, you were in here when Antrone
11 testified and his brother ultimately testified as well?

12 **A** That's correct.

13 **Q** Okay. What else did she talk about that
14 really dovetailed with Antrone Dubose's version of
15 events when you interviewed him at the hospital?

16 **A** She indicated that it happened, the
17 kidnapping happened in the alleyway which was
18 consistent with what Mr. Dubose stated, that the
19 incident happened behind what he stated was an
20 abandoned building.

21 **Q** Okay. What else did she say? Did you ever
22 tell her -- did anyone ever tell her that this
23 attempted murder happened in the graveyard?

24 **A** No.

25 **Q** Okay. Did she offer that herself?

1 **A** She indicated where the incident took place
2 as far as attempting to burn the vehicle.

3 **Q** Okay. And so if anybody ever made an
4 insinuation that you tried to trick her or put words in
5 her mouth, is that true or untrue?

6 **A** It would be untrue. And they would be able
7 to observe that on the video.

8 **Q** And I'm not going to play the video. It's
9 about -- about an hour and 45 minutes; is that -- is
10 that right?

11 **A** Just about right.

12 **Q** The jury can watch it?

13 **A** Yes, sir.

14 **Q** Is it safe to say that at least the talking
15 parts pretty much end about 47 minutes in?

16 **A** Yes. The interview ended much shorter. But
17 the whole tape is longer.

18 **Q** It continues to record. But there's no real
19 speaking parts after 47 minutes?

20 **A** That's correct.

21 **Q** The jury can -- when they deliberate, they
22 can watch that?

23 **A** Of course, if they wish.

24 **Q** So you are saying that you point out to them
25 about the repairs done to the car and owing her money,

1 about Martin Dixon being involved, about the victim
2 trying to call his brother. You thought it was
3 compelling about she talks about the kidnapping
4 happening in an alleyway. Antrone said it was behind
5 an abandoned building. But you found that relatively
6 consistent.

7 And then the graveyard, she mentioned that it
8 happened in a graveyard?

9 A Yes.

10 Q And nobody ever would have told her that. If
11 you watch that interview, you don't mention it until
12 she brings it up?

13 A That's correct.

14 Q Okay. Thank you very much.

15 Well, briefly, one second, if I may.

16 All right.

17 That's all. Thank you.

18 THE COURT: Ms. Zmroczek.

19 CROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Hi --

22 A Hello.

23 Q -- again.

24 A Yes, ma'am.

25 Q You, Investigator Montgomery -- Sergeant

1 Montgomery, said that you've dealt with and interviewed
2 and questioned people with mental or emotional
3 problems, right?

4 A Yes, ma'am. I have.

5 Q And you knew that they could be very --
6 that -- that -- that they could be open to suggestion,
7 right?

8 A Yes.

9 Q And that some of the things that she was
10 saying were a product of delusion, right?

11 A Yeah, it appeared to be, yes, ma'am.

12 Q You made that determination on your own?

13 A From listening to her, it appeared to be,
14 yes, ma'am.

15 Q Okay. So you don't have a degree in
16 psychology?

17 A No, ma'am.

18 Q Okay. So you are just assuming when she says
19 that he -- he, Mr. Dubose, is going around killing all
20 of her boy cousins and girl cousins, that that's just
21 delusion, right?

22 A No, I'm listening to what she's saying. But
23 it could be.

24 Q It could be. Or it could be true, right?

25 A There is a possibility.

1 Q Okay. A real possibility that some of the
2 things that she is saying is true. But all you are
3 focused on is trying to corroborate what Mr. Dubose has
4 already said, right?

5 A No. She's providing information that only
6 the person or people who was present at that time would
7 know. So not necessarily just trying to pick and
8 choose what I'm listening to, but this is the
9 information she's providing.

10 Q Okay. And we're going to -- I'm going to
11 publish -- I'm going to publish State's 34 in just a
12 few minutes. But I don't want to stop and start it.
13 I'm going to ask you the questions and then we will
14 watch it. Is that fair?

15 A Yes.

16 Q Okay. So you would agree that -- that you
17 read the full warrant to her that -- that -- that has
18 the facts in it that you put in for the arrest warrant,
19 right?

20 A I did not read her the warrant. I believe,
21 if I'm not mistaken, Officer Grant who was on the
22 fugitive task force team actually read her the warrant.

23 Q Okay. All right.

24 And then you would agree with me that you
25 introduced the information about her -- about things

1 being lit on fire?

2 A Yes.

3 Q Okay?

4 A Yes, ma'am. I did.

5 Q She did not independently ever say anything
6 about that until you asked her about that, correct?

7 A I mentioned about things that, I believe, in
8 the vehicle or the gas tank. I believe I mentioned
9 both of those.

10 Q Or both, right?

11 A Yes, ma'am, or something.

12 Q And then -- and then when you would correct
13 her or question her further, she would agree with you,
14 right?

15 A Not necessarily. It depends on what we were
16 discussing.

17 Q Okay. So instead of wasting our time, we'll
18 just watch the video, okay?

19 A Yes, ma'am.

20 Q Thank you.

21 A Thank you.

22 MS. ZMROCZEK: I'm about as graceful as I can
23 be with this.

24 THE COURT: Ms. Zmroczek, do you have
25 specific questions or are you going to --

1 **MS. ZMROCZEK:** Your Honor, at this time, I
2 would move to publish State's 34 that's already in
3 evidence.

4 **THE COURT:** On what basis?

5 **MS. ZMROCZEK:** On the basis that it's in
6 evidence and I would like to publish it.

7 **THE COURT:** Well, the jury will have it in
8 the jury room.

9 **MS. ZMROCZEK:** Certainly, they will.

10 **THE COURT:** It's an hour and 45 minutes. So
11 do you have any particular portion of it that you
12 would like to question this witness concerning?

13 **MS. ZMROCZEK:** Well, and that's what I was
14 doing. Yes, Your Honor. I understand that the
15 jury will have it in there. But certainly it --
16 it's in evidence. I'm not going to play the hour
17 and 45 minutes.

18 **THE COURT:** Well, that's my question. Do you
19 have a particular portion that you want to focus
20 on?

21 **MS. ZMROCZEK:** I do.

22 **THE COURT:** Okay.

23 **MS. ZMROCZEK:** Beginning at -- at minute
24 13 --

25 **THE COURT:** Okay. You can go ahead and begin

1 at whatever minute you said.

2 **BY MS. ZMROCZEK:**

3 **Q** And now, there are two interviews, right,
4 that on this disc, right? But there are two cameras
5 that are in the room?

6 **A** Yes, ma'am. One interview with two camera
7 views.

8 **Q** Right. Right. So it's the same interview,
9 it's just two different views?

10 **A** That's correct. Yes, ma'am.

11 (State Exhibit No. 34 is played.)

12 **THE CLERK:** Judge, the jury can't hear.

13 **MS. ZMROCZEK:** Sorry. I was trying to turn
14 it up.

15 **THE CLERK:** They said they couldn't hear.

16 **MS. ZMROCZEK:** With the volume up, is that
17 better?

18 (State Exhibit No. 34 is played.)

19 **BY MS. ZMROCZEK:**

20 **Q** Okay. You said that's the fugitive task
21 officer?

22 **A** Yes, ma'am. That is master police officer, I
23 believe he is now an investigator, John Grant who was
24 reading the actual warrant to her.

25 **Q** Okay. And the jury will have this back and

1 they can watch the whole thing. So I'm going to skip
2 ahead a little bit to minute 22 to a little bit about
3 28 where -- where you were questioned about the car and
4 she was trying to tell you what color and what type and
5 then you were -- you corrected her or we can just watch
6 the exchange, right?

7 **A** Yes, ma'am.

8 **Q** Okay.

9 (State Exhibit No. 34 is played.)

10 **BY MS. ZMROCZEK:**

11 **Q** Okay. Just so is this you?

12 **A** Yes. Yes, ma'am, that it's me.

13 **Q** Okay. And so you would ask her questions and
14 then you would, as we heard, either make noises and
15 then -- and then maybe give her another option, right?

16 **A** In that particular exchange, which is not --
17 it -- it's, I would say, about halfway through.

18 **Q** Right, right. I'm going to keep playing it.

19 **A** Okay.

20 **Q** Yeah, yeah.

21 **A** I asked her what, obviously what kind --
22 color the car is. She gives an answer.

23 **Q** Okay.

24 (State Exhibit No. 34 is played.)

25 **BY MS. ZMROCZEK:**

1 Q Now, that, you mentioned on direct, was
2 something that matched up with what Antrone said,
3 right?

4 A When you say "that," what -- what are you --
5 I'm not sure what you're talking --

6 Q She just said, "I paid for the car. I paid
7 to fix the car"?

8 A Yes, ma'am. There --

9 Q Okay.

10 A -- there was information previously from the
11 victim that she paid to fix the car.

12 Q Right.

13 (State Exhibit No. 34 is played.)

14 **BY MS. ZMROCZEK:**

15 Q So when you said it was 2018, then -- but
16 then you said it was 2019, she never independently told
17 you where -- or when -- a time period of when the car
18 was fixed, right?

19 A No, ma'am. We weren't talking about the
20 vehicle at that time. I was clarifying what she was
21 attempting to say was the assassination.

22 Q Okay.

23 A But ultimately, I believe I stated something
24 about August. And that's when I'm talking about 2019
25 when the incident occurred.

1 Q Okay.

2 A Yes, ma'am.

3 Q And she never -- she never told you a date
4 that it occurred, right?

5 A That what occurred, ma'am?

6 Q That -- the incident that we're here for.

7 A I don't believe she states a specific date at
8 this particular time.

9 Q Okay.

10 A But she does give the details -- or begins
11 the details of the incident.

12 Q Okay. And -- and so -- yeah. And those are
13 coming right up, right?

14 A At some point.

15 Q Okay. Well, I think it's at 32, so we
16 will...

17 (State Exhibit No. 34 is played.)

18 **BY MS. ZMROCZEK:**

19 Q So she corroborated that he was calling his
20 brother, but she told you that he was calling his
21 brother to claim an assassination, right?

22 A You could attempt to interpret it as that. I
23 think she was -- may have been blending some incidents
24 together. Quite possible.

25 (State Exhibit No. 34 is played.)

1 BY MS. ZMROCZEK:

2 Q Okay. So even though she provided some
3 information, other information that you had
4 documentation for, State's 41 -- I think that says --
5 is it -- that says 41? My eyes are going terrible.

6 A Mine too. Yes, ma'am.

7 Q So State's 41. So you knew that Martin Dixon
8 had paid for a hotel in West Columbia, right?

9 A He registered for that hotel in West
10 Columbia, yes, ma'am.

11 Q Okay. And in fact, I think a few days ago --
12 my days are running together at this point -- you
13 testified that he paid cash for this?

14 A The receipt indicates that it's paid for
15 cash.

16 Q Okay.

17 (State Exhibit No. 34 is played.)

18 BY MS. ZMROCZEK:

19 Q Now, you would agree with me that the warrant
20 that was read to her indicated that -- that Mr. Dubose
21 was in the trunk, right?

22 A Yes, ma'am. I believe --

23 Q Okay.

24 A It's not in front of me. But I think the --
25 I wrote it and I believe the verbiage does say. Yes,

1 ma'am.

2 Q Right, right.

3 A Yes, ma'am.

4 Q And -- and we're not going to go back and
5 play that. They can do that later. But it's all
6 recorded on here, right?

7 A Yes, ma'am.

8 Q Okay. And then -- and then you introduced --
9 or you asked about the tire iron, right?

10 A I -- I believe I asked who hit him with the
11 crowbar or something of that nature.

12 Q Right.

13 (State Exhibit No. 34 is played.)

14 **BY MS. ZMROCZEK:**

15 Q So again, she can't remember what time it
16 was, right? But then you suggest, Was it was
17 nighttime? And she agrees with you, right?

18 A At that moment, yes. We're trying to narrow
19 down the actual timeframe or -- so that we could see if
20 there was some video evidence or something in the area.

21 Q But those were details that she couldn't give
22 you. But when she said, "I can't remember what time it
23 is." But then, you say, "Well, was it nighttime?" And
24 then, boom, she agrees, right? Yeah, it was nighttime.

25 A Yes.

1 Q Okay. I think y'all go on to talk about her
2 phone. I'm going to speed it up a little bit.

3 (State Exhibit No. 34 is played.)

4 **BY MS. ZMROCZEK:**

5 Q You would agree that there were clearly
6 internal inconsistencies within the -- the minute and
7 half that we just watched, right?

8 A It indicates that, yes, ma'am.

9 Q Okay.

10 (State Exhibit No. 34 is played.)

11 **BY MS. ZMROCZEK:**

12 Q So you are trying to -- you're -- you're
13 trying -- are you trying to -- to put a timeline
14 together or are you trying to match up things that you
15 already know?

16 A I'm trying to develop a timeline of events.

17 Q Okay.

18 A And -- and -- and a lot of this exchange --
19 let me start to this. As you alluded, I'm not a
20 psychologist or a therapist. I've been trained to deal
21 with people with mental health through training.
22 However, this would require, at some point, some
23 serious detailed or high level degree. So I'm
24 attempting to gather the information to develop a
25 timeline. And it's a little difficult to keep her on

1 task as we have seen.

2 Q Yes.

3 A Yes, ma'am.

4 (State Exhibit No. 34 is played.)

5 BY MS. ZMROCZEK:

6 Q Shortly thereafter, the interview, you -- you
7 leave the room, right?

8 A Yes, ma'am. We conclude shortly after that.

9 Q Okay. And you -- you left the room for
10 almost an hour. She's in there by herself, right?

11 A That's correct.

12 Q But it's still recording, right?

13 A Yes, ma'am.

14 Q And so anything that she says or any persons,
15 real or imaginary, that she's talking to, it's all
16 recorded on -- on your video, right?

17 A Yes, ma'am. Anything she says is captured in
18 that.

19 Q Okay. Thank you. I just have a few more
20 questions for you.

21 So in your years of investigation, you've had
22 people -- you've had people try to minimize their
23 behavior or explain their behavior, right?

24 A Yes, ma'am.

25 Q Okay. That -- that's something common?

1 A Yes.

2 Q Right?

3 A Or omit information.

4 Q And -- and you've had people either be
5 confused or just outright not tell the truth, right?

6 A Yes.

7 Q And so we've got multiple stories at this
8 point. You have what Mr. Dubose told you about the
9 four or four-and-a-half finger man, Mr. Dixon. And
10 then you've got things that Ms. Jones told you. And
11 you're trying to add them all up to see which makes
12 matches, what makes sense, right?

13 A Yes, ma'am.

14 Q Okay. One thing that would help is had we
15 had those phone records, we wouldn't have to rely on
16 this kind of information, right? Or it would assist in
17 corroborating or -- or proving that that evidence
18 wasn't true, right?

19 A I don't believe in this case that would have
20 done that.

21 Q Right, right. Didn't do that in this case?

22 A No. As clearly indicated previously, I did
23 not do that in this case.

24 Q Okay.

25 A Yes, ma'am.

1 **MS. ZMROCZEK:** Actually, I'll -- I'll -- I'll
2 wait and do it on our case in chief, Your Honor.

3 **THE COURT:** All right.
4 You may step down.

5 **MR. SCOTT:** Thank you.

6 **THE WITNESS:** All right.

7 **THE COURT:** Next witness.

8 **MR. SCOTT:** Your Honor, at this time, the
9 state rests.

10 **THE COURT:** Ladies and gentlemen, that is the
11 state's case. We have to take up a matter outside
12 of your presence. So if you'll go to the jury
13 room. Please do not discuss the case.

14 (The jury exits the courtroom at 3:50 p.m.)

15 **THE COURT:** Any matters of law?

16 **MS. ZMROCZEK:** Thank you.

17 Your Honor, at this time, we would move for a
18 directed verdict as to the -- sorry -- pursuant to
19 Rule 19.

20 And Your Honor, specifically with regards to
21 the attempted murder. The testimony that's in
22 front of you at this point, the substantive
23 testimony was that Mr. Dubose was perhaps hit in
24 the head. And I believe the state even put in a
25 picture of his injury.

1 Your Honor, there was no testimony about a
2 skull fracture. There was no testimony about any
3 long-term injuries. And, Your Honor, I think that
4 at this time -- and I'm relying on State's 32,
5 Your Honor. I would argue that the best evidence,
6 as far as -- as far as the attempted murder really
7 results in an assault and battery third degree,
8 which is a lesser included offense of this charge.
9 And I believe that that's what the evidence shows
10 in this case for that -- for that charge. So for
11 that reason, Your Honor, we would respectfully
12 make that motion.

13 **THE COURT:** Attempted murder is performance
14 of an act or acts which tend but failed to kill a
15 human being when such acts are done with expressed
16 malice with the deliberate intent to kill.
17 Locking someone in the trunk of a car and setting
18 it on fire would constitute -- which would
19 constitute murder, in most instances, certainly
20 is -- would be sufficient evidence of intent to
21 kill, specific intent to kill for the jury to
22 consider whether the defendant is guilty of
23 attempted murder. The motion is denied.

24 **MS. ZMROCZEK:** Thank you. At this time, we
25 would also renew our previous motions.

1 **THE COURT:** Such as what?

2 **MS. ZMROCZEK:** The motions for mistrial, the
3 motions for -- sorry. We would previous -- we
4 would make sure to renew all of our previous
5 objections. I understand that the Court has
6 ruled. But often at times at this stage, the
7 Court of Appeals would like us to make sure that
8 we renew all of our objections. So that's simply
9 what I'm doing at this time, Your Honor.

10 **THE COURT:** Okay. So noted.

11 **MS. ZMROCZEK:** Thank you.

12 **THE COURT:** Okay. Anything else before we
13 proceed with the defense's case?

14 Do you want me to question Mr. Dixon anymore
15 on his decision to testify or not testify?

16 **MS. ZMROCZEK:** I -- I believe that in light
17 what -- the previous inquiry, Your Honor, I think
18 he has made a determination or decision.

19 **THE COURT:** All right.

20 Mr. Dixon, if you would come around here one
21 more time.

22 All right.

23 Sir, you are still under oath. With
24 continuing the conversation we had yesterday. We
25 have now reached a point in the trial where it is

Court Remarks to Defendant

1 time for you to present your defense. And you
2 have the right to claim the protections given to
3 you by the Fourth Amendment of the Constitution,
4 which says that you -- no person can be compelled
5 to be a witness against themselves. You remember
6 us talking about that yesterday?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** All right.

9 And at that time, you indicated that you
10 wanted to speak further with your lawyer and
11 consider further whether or not you wanted to
12 testify?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Now, whether or not you testify
15 is a decision that you must make being fully aware
16 of your right to testify and not testify and all
17 of your rights referenced in the Fourth Amendment
18 to the Constitution.

19 Understand? Do you understand?

20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** And have you made a decision at
22 this point as to whether you want to testify?

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** And what decision is that?

25 **THE DEFENDANT:** I would like to testify.

1 **THE COURT:** All right.

2 Very well. Do you need to talk to anyone
3 else any more about that?

4 **THE DEFENDANT:** Excuse me?

5 **THE COURT:** Do you need to talk with anyone
6 any more about whether or not you should testify?

7 **THE DEFENDANT:** No, Your Honor.

8 **THE COURT:** All right.

9 Very good. You may be seated.

10 **MS. ZMROCZEK:** And Your Honor, I talked to
11 the deputy. And he said that he would remove the
12 leg shackles for the walking back and forth to
13 the -- to the podium. And I do have -- I just
14 need to -- I'm trying to look for it while I'm
15 talking and it's making -- I'm not being very
16 productive. So I do need to -- to grab one more
17 piece of evidence that I do need to admit,
18 Your Honor. I just need about five minutes to
19 find it. Probably not even that long.

20 **THE COURT:** Okay.

21 **MS. ZMROCZEK:** Thank you.

22 (Pause in proceeding.)

23 **MS. ZMROCZEK:** Your Honor, the state has
24 graciously allowed me to use copies of the
25 evidence that I was looking for. I -- I -- it's