

RECEIVED

Dec 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN DONTE BRYAN,

APPELLANT

APPELLATE CASE NO. 2017-001468

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

TOMMY EVANS, JR.
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-6305

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

VOLUME II OF III
PAGES 501-1000

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 19—23, 2017	1
STATE’S RESPONSE TO DEFENSE’S OBJECTION TO STATE’S MOTIVE EVIDENCE BY MR. KIDD	40
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #8, 9, 11, AND 17 (PHOTOGRAPHS) BY MR. PRICE	58
COURT’S RULING EXCLUDING PRIOR BAD ACTS FROM OPENING STATEMENT	61
OPENING STATEMENT BY MR. KIDD	75
OPENING STATEMENT ON BEHALF OF DEFENDANT BRYAN BY MR. PRICE	79
OPENING STATEMENT ON BEHALF OF DEFENDANT WILSON BY MR. PEPER.....	83
TESTIMONY	
DAQUAN GILLIARD	
Direct Examination by Mr. Kidd	85
Direct Examination <i>in-camera</i> by Mr. Kidd.....	91
DEFENSE’S OBJECTION TO HEARSAY BY MR. PEPER	102
RESPONSE BY MR. KIDD	102
COURT SUSTAINS OBJECTION TO HEARSAY	103
TESTIMONY	
DAQUAN GILLIARD	
Continued Direct Examination by Mr. Kidd.....	107
STATE’S MOTION TO EXCLUDE PRIOR BAD ACTS OF WITNESS GILLIARD BY MR. KIDD	149
RESPONSE BY MR. PRICE.....	150
COURT’S RULING FINDING PRIOR BAD ACTS INADMISSIBLE.....	157

TESTIMONY

DAQUAN GILLIARD	
Cross-Examination by Mr. Price.....	159
Cross-Examination by Mr. Peper.....	174
Redirect Examination by Mr. Kidd.....	185
MONTEZ CAPERS	
Direct Examination by Mr. Kidd	208
Cross-Examination by Mr. Peper.....	231
Cross-Examination by Mr. Price.....	243
Redirect Examination by Mr. Kidd.....	244
MICHELE REID	
Direct Examination by Mr. Patrick.....	247
CHARLES MARTIN	
Direct Examination by Mr. Kidd	253
Cross-Examination by Mr. Price.....	271
Cross-Examination by Mr. Peper.....	278
Redirect Examination by Mr. Kidd.....	288
VICTOR KUSKIRK	
Direct Examination by Mr. Kidd	294
Cross-Examination by Mr. Price.....	303
Cross-Examination by Mr. Peper.....	305
Redirect Examination by Mr. Kidd.....	310
DOCTOR CYNTHIA SCHANDL	
Direct Examination by Mr. Patrick.....	317
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #8, 9, 11, AND 17 (PHOTOGRAPHS)	
	328
RESPONSE TO OBJECTION TO STATE’S EXHIBIT #8 (PHOTOGRAPH) BY MR. KIDD	
	329
COURT’S RULING REQUIRING REDACTION OF STATE’S EXHIBIT #8 (PHOTOGRAPH)	
	330
RESPONSE TO OBJECTION TO STATE’S EXHIBIT #9 (PHOTOGRAPH) BY MR. KIDD	
	333
COURT’S RULING REQUIRING STATE’S EXHIBIT #17 (PHOTOGRAPH) TO BE PUT IN BLACK AND WHITE.....	
	335

COURT’S RULING REQUIRING STATE’S EXHIBIT #11 (PHOTOGRAPH) TO BE PUT IN BLACK AND WHITE.....	337

DEFENSE OBJECTION TO STATE’S EXHIBIT #9 PURSUANT TO RULE 403, SCRE BY MR. PEPPER	337

COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #9 (PHOTOGRAPH)	338

TESTIMONY

TIFFANY ADAMS	
Direct Examination by Mr. Kidd	340
Cross-Examination by Mr. Peper.....	384
Redirect Examination by Mr. Kidd.....	392

DEFENSE’S OBJECTION TO STATE’S EXHIBIT #9 (PHOTOGRAPH) PURSUANT TO RULE 403, SCRE BY MR. PEPPER.....	398

DEFENSE MOTION JOINING IN ON OBJECTION TO STATE’S EXHIBIT #9 (PHOTOGRAPH) BY MR. PRICE	398

COURT’S RULING FINDING STATE’S EXHIBIT #9 (PHOTOGRAPH) INADMISSIBLE.....	400

COLLOQUY WITH JUROR #73 REGARDING COURT’S EXHIBIT #6 (JUROR NOTE)	404

STIPULATION AS TO CHAIN OF CUSTODY ON STATE’S EXHIBITS #110, 125, 124, 117, 118, AND 111	408

TESTIMONY

DANIELLE RAVENEL	
Direct Examination by Mr. Kidd	409
Cross-Examination by Mr. Peper.....	416
Redirect Examination by Mr. Kidd.....	420

SAM RIEDEL	
Direct Examination by Mr. Kidd	422

DEFENSE’S OBJECTION TO STATE’S #131 (CALL LOG) BY MR. PRICE	435

COURT’S RULING REQUIRING REDACTION OF CALL LOG.....	438

DEFENSE’S OBJECTION TO STATE’S #132 (TEXT MESSAGE LOG) BY MR. PEPER	441
COURT’S RULING REQUIRING REDACTION OF TEXT MESSAGE LOG	445
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #133 (PHOTOGRAPH) BY MR. PEPER	447
COURT’S RULING FINDING STATE’S EXHIBIT #133 (PHOTOGRAPH) INADMISSIBLE	448
STATE’S MOTION TO ADMIT STATE’S EXHIBITS #135-136 (PHOTOGRAPHS) INTO EVIDENCE PURSUANT TO RULE 404(B), SCRE BY MR. KIDD	449
COURT’S RULING REQUIRING REDACTION OF STATE’S EXHIBITS #135-136 (PHOTOGRAPHS)	449
STATE’S MOTION TO ADMIT STATE’S EXHIBIT #137 (DATA LOG) INTO EVIDENCE BY MR. KIDD	453
RESPONSE BY MR. PEPER	455
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #137 (DATA LOG)	456
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #141 (PHOTOGRAPH) BY MR. PEPER	461
RESPONSE BY MR. KIDD	461
COURT’S RULING ADMITTING STATE’S EXHIBIT #141 (PHOTOGRAPH) INTO EVIDENCE	462
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #145 (PHOTOGRAPH) BY MR. PEPER	463
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #145 (PHOTOGRAPH)	464
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #146 (PHOTOGRAPH) BY MR. PRICE	464
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #146 (PHOTOGRAPH)	465

DEFENSE’S OBJECTION TO STATE’S EXHIBIT #147 (PHOTOGRAPH) PURSUANT TO RULE 403, SCRE BY MR. PEPPER	465

COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #147 (PHOTOGRAPH)	469

DEFENSE’S OBJECTION TO STATE’S EXHIBIT #148 (PHOTOGRAPH) BY MR. PEPPER	470

COURT’S RULING FINDING STATE’S EXHIBIT #148 (PHOTOGRAPH) INADMISSIBLE	472

COLLOQUY WITH JUROR #333 REGARDING COURT’S EXHIBIT #9 (JUROR NOTE)	477

TESTIMONY

SAM RIEDEL	
Continued Direct Examination by Mr. Kidd	482
Cross-Examination by Mr. Price	498
Cross-Examination by Mr. Peper	500
Redirect Examination by Mr. Kidd	510

CATHERINE LEISY	
Direct Examination by Mr. Kidd	514
Cross-Examination by Mr. Price	543
Cross-Examination by Mr. Peper	543
Recross-Examination by Mr. Price	545
Redirect Examination by Mr. Kidd	546
Recross-Examination by Mr. Peper	547

DOMINIQUE EDWARDS	
Direct Examination by Mr. Kidd	549
Cross-Examination by Mr. Price	565
Cross-Examination by Mr. Peper	572
Redirect Examination by Mr. Kidd	578

KEITH EVANS	
Direct Examination by Mr. Kidd	582
Direct Examination <i>in-camera</i> by Mr. Kidd	640

DEFENSE’S OBJECTION TO STATE’S EXHIBIT #147 (PHOTOGRAPH) BY MR. PRICE	643

DEFENSE’S MOTION JOINING IN ON OBJECTION TO STATE’S EXHIBIT #147 (PHOTOGRAPH) BY MR. PEPPER	643

RESPONSE BY MR. KIDD	644
COURT’S RULING FINDING STATE’S EXHIBIT #147 (PHOTOGRAPH) INADMISSIBLE.....	648
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #151 (REDACTED FACEBOOK SCREENSHOT) BY MR. PEPPER	650
COURT RULING REQUIRING REDACTION OF STATE’S EXHIBIT #151 (REDACTED FACEBOOK SCREENSHOT)	652
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #145 (PHOTOGRAPH) BY MR. PEPPER.....	655
COURT RULING FINDING STATE’S EXHIBIT #145 (PHOTOGRAPH) ADMISSIBLE	659
STATE’S MOTION TO ADMIT STATE’S EXHIBITS #152 AND 153 (FACEBOOK SCREENSHOTS) INTO EVIDENCE BY MR. KIDD	663
TRIAL TRANSCRIPT DATED JUNE 23-24, 2017	665
TESTIMONY	
KEITH EVANS	
Continued Direct Examination by Mr. Kidd.....	671
Cross-Examination by Mr. Peper.....	674
Cross-Examination by Mr. Price.....	703
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #152-153 (FACEBOOK SCREENSHOTS) PURSUANT TO RULE 403, SCRE BY MR. PEPPER.....	717
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBITS #152-153 (FACEBOOK SCREENSHOTS).....	718
COLLOQUY WITH JUROR #269 REGARDING COURT’S EXHIBIT #11 (JUROR NOTE)	721
TESTIMONY	
KEITH EVANS	
Redirect Examination by Mr. Kidd.....	726
JOSH CHENEY (<i>IN-CAMERA</i>)	
Direct Examination by Mr. Kidd	739

DEFENSE’S OBJECTION TO STATE’S EXHIBITS #154-156 BY MR. PEPER	744
STATE’S MOTION TO ADMIT STATE’S EXHIBIT #157 INTO EVIDENCE BY MR. KIDD	746
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #157 BY MR. PRICE.....	753
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #157	755
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #154 BY MR. PEPER.....	760
DEFENSE OBJECTION TO STATE’S EXHIBIT #155 BY MR. PEPER.....	769
COURT’S RULING FINDING STATE’S EXHIBIT #157 INADMISSIBLE	771
COURT’S RULING FINDING STATE’S EXHIBITS #155 AND 156 INADMISSIBLE AND FINDING STATE’S EXHIBIT #154 ADMISSIBLE	773

TESTIMONY

JOSH CHENEY	
Direct Examination by Mr. Kidd	791
Cross-Examination by Mr. Peper.....	794
STATE RESTS.....	796
DEFENSE’S MOTION FOR A DIRECTED VERDICT AND RENEWAL OF ALL PRIOR MOTIONS AND OBJECTIONS BY MR. PEPER	796
DEFENSE’S MOTION JOINING IN ON MOTION FOR A DIRECTED VERDICT BY MR. PRICE	798
RESPONSE BY MR. KIDD	798
COURT DENIES MOTIONS FOR A DIRECTED VERDICT	802
TESTIMONY COLLOQUY WITH DEFENDANTS	807

TESTIMONY

JENNIFER BUTLER	
Direct Examination by Mr. Price	819
Cross-Examination by Mr. Peper.....	840
Cross-Examination by Mr. Kidd.....	878
Redirect Examination by Mr. Price	888

CHARGE CONFERENCE	895
STATE’S MOTION TO CHARGE ACCOMPLICE LIABILITY BY MR. KIDD	895
DEFENSE’S MOTION TO CHARGE IDENTIFICATION BY MR. PEPER	899
RESPONSE BY MR. KIDD	899
COURT DEFERS RULING ON MOTION TO CHARGE IDENTIFICATION	903
STATE’S OBJECTION TO MOTION TO CHARGE LESSER INCLUDED OFFENSES OF ATTEMPTED MURDER BY MR. KIDD	905
COURT DEFERS RULING ON CHARGING LESSER INCLUDED OFFENSES OF ATTEMPTED MURDER	907
DEFENSE’S MOTION TO CHARGE LESSER INCLUDED OFFENSES OF ABHAN AND ASSAULT AND BATTERY FIRST, SECOND, AND THIRD DEGREES BY MR. PEPER.....	914
RESPONSE BY MR. KIDD	919
COURT GRANTS MOTION TO CHARGE LESSER INCLUDED OFFENSES OF ABHAN AND ASSAULT AND BATTERY FIRST, SECOND, AND THIRD DEGREES	926
DEFENSE RESTS ON BEHALF OF DEFENDANT BRYAN	932
DEFENSE RESTS ON BEHALF OF DEFENDANT WILSON	933
CLOSING ARGUMENT BY MR. KIDD	933
CLOSING ARGUMENT ON BEHALF OF DEFENDANT BRYAN BY MR. PRICE	951
CLOSING ARGUMENT IN REPLY BY MR. KIDD	963
CLOSING ARGUMENT ON BEHALF OF DEFENDANT WILSON BY MR. PEPER	967
CHARGE ON THE LAW	975
DEFENSE RENEWAL OF ALL PRIOR MOTIONS AND OBJECTIONS BY MR. PRICE	1003
DEFENSE RENEWAL OF ALL PRIOR MOTIONS AND OBJECTIONS BY MR. PEPER.....	1003

TRIAL TRANSCRIPT DATED JUNE 23, 2017	1005
VERDICT	1006
JURY POLL	1009
DEFENSE’S MOTION TO SET ASIDE VERDICT BY MR. PEPER.....	1018
DEFENSE’S MOTION JOINING IN ON MOTION TO SET ASIDE VERDICT BY MR. PRICE	1018
REPSONSE BY MR. KIDD	1019
COURT DENIES MOTION TO SET ASIDE VERDICT.....	1019
SENTENCING.....	1047
TRANSCRIPT OF BENCH CONFERENCES DATED JUNE 19-23, 2017.....	1052
DEFENSE’S OBECTION TO HEARSAY BY MR. PEPER.....	1054
COURT SUSTAINS OBJECTION TO HEARSAY	1055
STATE’S OBJECTION TO PRIVILEGED TESTIMONY BY MR. KIDD	1055
COURT SUSTAINS OBJECTION TO PRIVILEGED TESTIMONY.....	1056
STATE’S OBJECTION TO LINE OF QUESTIONING BY MR. KIDD.....	1057
COURT SUSTAINS OBJECTION TO LINE OF QUESTIONING.....	1057
STATE’S OBJECTION TO MISCHARACTERIZATION BY MR. KIDD.....	1057
COURT SUSTAINS OBJECTION TO MISCHARACTERIZATION.....	1058
DEFENSE NOTATION OF WAIVED CONFLICT ON BEHALF OF DEFENDANT WILSON BY MR. PEPER.....	1058
STATE’S OBJECTION TO SPECULATION BY MR. KIDD.....	1059
COURT SUSTAINS OBJECTION TO SPECULATION.....	1060
DEFENSE’S OBJECTION TO LEADING BY MR. PEPER	1062
STATE’S OBJECTION TO HEARSAY BY MR. KIDD	1063

DEFENSE’S OBJECTION TO STATE’S EXHIBIT #128 AND LACK OF WITNESS’ REQUISTE EXPERTISE BY MR. PEPER.....	1065
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #145 AS IRRELEVANT BY MR. PEPER.....	1071
DEFENSE’S OBJECTION TO STATE’S COMMENTS ON STATE’S EXHIBIT #171 BY MR. PEPER	1073
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #152-153 BY MR. PEPER	1075
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #150-151 BY MR PEPER	1077
DEFENSE’S OBJECTION TO SPECULATION BY MR. PRICE	1079
COURT GIVES LIMITING INSTRUCTION ON CROSS-EXAMINATION OF WITNESS EVANS	1081
STATE’S OBJECTION TO MAKING SOLICITOR A WITNESS BY MR. KIDD.....	1081
COURT SUSTAINS OBJECTION TO MAKING SOLICITOR A WITNESS.....	1082
STATE’S OBJECTION TO LINE OF QUESTIONING BY MR. KIDD.....	1083
STATE’S OBJECTION TO HEARSAY TESTIMONY BY MR. KIDD	1086
COURT SUSTAINS OBJECTION TO HEARSAY TESTIMONY	1086
TRANSCRIPT OF RECONSTRUCTION HEARING DATED AUGUST 8, 2023.....	1089
STIPULATIONS AS TO CONTENT OF BENCH CONFERENCES.....	1099
TESTIMONY	
HONORABLE BENTLEY PRICE	
Direct Examination by Ms. Delany	1117
CULVER KIDD	
Direct Examination by Ms. Delany	1131
Direct Examination by Mr. Brooker	1139
MARK PEPER	
Direct Examination by Ms. Delany	1142
Direct Examination by Mr. Brooker	1154

COURT’S RULING FINDING RECORD ADEQUATELY CONSTRUCTED FOR APPELLATE REVIEW	1158
INITIAL STIPULATIONS SIGNED BY PRIOR STATE’S AND APPELLATE COUNSELS MATTHEWS AND GILLIAM	1166
ADDITIONAL STIPULATIONS SIGNED BY CURRENT STATE’S AND APPELLATE COUNSELS EVANS AND DELANY	1169
INDICTMENTS	1171
SENTENCE SHEETS	1179
CERTIFICATE OF COUNSEL	1183

Direct Examination of Mr. Riedel by Ast. Sol. Kidd

1 then there are other outside agencies that you can hire. Is
2 that my understanding?

3 A. There are other agencies that have different
4 capabilities, yes. Some are other law-enforcement agencies
5 that have different methods because of their training. Some
6 are actual companies which must -- their service must be
7 purchased.

8 Q. Well, in this case, you knew this was a murder
9 investigation; right?

10 A. Yes.

11 Q. Okay. You did not have the ability personally or
12 professionally to hack into a number of the phones provided
13 to you; correct?

14 A. From what I recall, there were a couple that I was
15 unable to. But like I said, there were 13 phones, and I've
16 done over 250 since then so I don't recall exact specifics.

17 Q. If I understand your testimony correctly, before you
18 looked to an outside company, you looked to a
19 law-enforcement agency next door; right?

20 A. Tried to, yes.

21 Q. You didn't try to in this, though, did you?

22 A. I made a few calls around. But I was unable to find
23 anybody to assist me with -- I mean, it depends on what kind
24 of phone, obviously. But the ones that we were dealing
25 with.

1 Q. Well, I just want to make sure I understand. So you
2 called Charleston County to see if they could help you hack
3 into one you couldn't?

4 A. I believe there was conversation about different phones
5 throughout the entire last two years.

6 Q. You think so?

7 A. I know I've talked to the deputy from Charleston County
8 about several phones. Whether or not one of them happened
9 to be this -- any of the models of the phones in this, I
10 couldn't tell you specifically.

11 Q. Okay. So I'm assuming, would that be the same answer
12 if I start asking you North Charleston, Summerville, Mount
13 Pleasant? If I just started naming all these agencies,
14 that's going to be the same answer? You don't know if you
15 reached out to them or not.

16 A. Specifically for any specific device in this case.

17 Q. Okay. If they can't help -- regardless of whether they
18 did or not -- if they can't help, you then move on to
19 third-party companies that you actually pay for; right?

20 A. It's a suggestion to our department. They're the ones
21 that make the decision. I can't send the phone out. I
22 don't have the money to pay them either in my budget or the
23 authority to make any budgetary decisions for the
24 department.

25 Q. Right. I'm with you. Over your pay grade; right?

1 A. Correct.

2 Q. You don't control the purse strings; right?

3 A. Correct.

4 Q. So then you took these phones you couldn't hack and you
5 went to them and said, listen, this is a murder
6 investigation, we need to figure this out, y'all need to
7 spend some money and hack into it; right?

8 A. Every phone that I do for every case, whether or not
9 I'm able to -- or unable to get into it, I relay that
10 information both to the requesting officer as well as any
11 supervisor that may be involved. From that point on, it is
12 not my decision. It is not any of my control of what
13 happens with it. It is out of my hands. I have done what
14 I'm capable of. And from that point on, someone else is
15 responsible for any further decision regarding methods.

16 Q. Is it your testimony that you just simply pass it up
17 the chain?

18 A. Essentially, yeah. It's what has to be done.

19 Q. And then if it comes -- I didn't mean to interrupt you.
20 I'm sorry.

21 A. That's what has to be done. I can't -- like I said, I
22 can't make any decision that would be financially impacting
23 my department or our budget.

24 Q. In my understanding of the chain is, of your testimony
25 of the chain, is that you realize you can't hack into it;

1 right? And so you put that in a report and then notify up
2 the chain. This report goes up the chain, it says, Riedel
3 couldn't get into it; right? Is that what I . . .

4 A. It goes to the requesting officer. And like I said,
5 most of the time the supervisor want to know. And I will
6 let them know, and from that point on, yes.

7 Q. And I apologize. How long have you been with North
8 Charleston?

9 A. Thirteen years.

10 Q. All right. In those 13 years, is it your testimony
11 that you've never personally gone up the chain with these
12 specific requests that I need the money to get in this
13 phone? You've never done that?

14 A. That is not my -- each of the devices are brought to
15 me, and I am, in essence, not the ultimate deciding factor
16 in anyone else's cases. They bring me the phones from their
17 cases, which I acquire the data and give back to them.

18 Q. Well, I understand that. But, I mean, this is a murder
19 investigation; right? I mean, isn't it your job to figure
20 out what happened?

21 A. And I understand. Like I said, the responsible
22 investigator, I cannot be responsible for every murder
23 investigation. Since that one, I've been a part of 50. And
24 I can't make the deciding factors on the devices for these.
25 That's ---

Direct Examination of Mr. Riedel by Ast. Sol. Kidd

1 Q. I gotcha.

2 A. --- relayed up.

3 Q. You're just the phone guy; right?

4 A. Correct.

5 Q. Okay. Phone comes to you. You either hack in, you
6 can't, report back to whoever is in charge of the
7 investigation.

8 A. Correct.

9 Q. Right. Which in this case would be Detective Butler;
10 right?

11 A. I believe she was the lead investigator; yeah.

12 Q. All right. As I understand your testimony, if she is
13 the lead investigator, then she gets to make the call
14 whether to spend the money or not?

15 A. Well, of course she has no more say so in the budget
16 than I do.

17 Q. So then she would go up one level?

18 A. Yes.

19 Q. And then whoever is above her would go up another level
20 until you get to the guy with the decision-making?

21 A. Or until they're told, no, we're not doing that; yeah.
22 And it doesn't have to go all the way to the top.

23 Q. She -- just not her. Doesn't have to go all the way to
24 the top. It's got to go to Butler.

25 A. It has to go to somebody that has control of budgetary

1 items, yeah.

2 Q. I gotcha. Okay.

3 A. Or the decision to submit it for that.

4 Q. That's one type of phone. The other type of phone, you
5 would agree, would you not? Are phones that you don't have
6 to hack into. Right? That aren't password protected?

7 A. There are those, yes.

8 Q. Such as the one that you found, or somebody found, and
9 gave that one to you in the Ford Edge; correct?

10 A. I got 13 phones for this case. I mean --- 30.

11 Q. I apologize. Let me see what it is. I'm sorry.

12 (Brief pause.) The LG phone, do you recall that one?

13 A. The one that was presented to me earlier?

14 Q. Yes, the LG phone.

15 A. Yeah.

16 Q. Okay. You didn't need to hack into that one?

17 A. By hack, back meaning something nefarious or?

18 Q. Sorry. That was a bad question. All you had to do was
19 turn it on in order to do this cell phone dump; right?

20 A. For that one, it had to be under power, yes.

21 Q. Okay. Unlike the other phones that actually required
22 either a passcode -- and if you didn't have that then you
23 had to hack into it or ask law enforcement or go up the
24 chain; right? I just want to make sure I understand. There
25 was a difference between those phones and the LG as far as

1 access; correct?

2 A. Correct. As I indicated, access is often defined by
3 software and components of the device of which LG is one
4 device there's a lot of access points.

5 Q. I'll take your word on it. Okay. So you can get into
6 it is what I'm trying to get at; right? Which means if you
7 can get into, I can get into it; right?

8 A. If you spent the money to buy the equipment I have,
9 yeah.

10 Q. No, no, no. I'm talking about the LG. I'm talking
11 about the LG that you did the cell phone dump from. The one
12 that as soon as you turned on, you were able to start
13 sliding and scrolling and all; right?

14 A. I don't remember if that one had any password
15 associated with it, or if it was a slide screen or a pattern
16 lock or exactly what the security measures on that were. I
17 mean, if . . .

18 Q. Typically, when you pull up a phone on a home screen,
19 it asks you for a code; correct? If it's password
20 protected.

21 A. Not necessarily.

22 Q. All right. On phones that don't have
23 password-protected phones and you can scroll through, you
24 then would be able to open any apps that are on that phone
25 as well; right?

1 A. As long as I can get to the device.

2 Q. You can check the history; right?

3 A. Look around, wherever.

4 Q. Wherever you please; right? Matter of fact, anybody
5 could do that if the phone wasn't password protected; right?

6 A. I suppose so, yeah.

7 Q. Which means that anyone could sue that phone; correct?

8 A. Theoretically, yeah.

9 Q. Anybody could text from that phone; correct?

10 A. Theoretically, yes.

11 Q. Doesn't have to be their phone, you would agree with
12 me.

13 A. Theoretically, yes.

14 Q. They don't have to own the phone that they get on and
15 start texting and Facebooking and all; right?

16 A. I would say they don't have to own any phone.

17 Q. Right. It's either password protected or it's not;
18 right? But if it's not, anybody that picks it up could open
19 it up and start doing whatever the actual owner could do;
20 correct?

21 A. Should be able to as long as they know how to operate
22 it.

23 Q. So all of this information, all of this dump, all of
24 this encrypted -- and I think you used words like access --
25 these are facts. I mean, this is what you were able to get

Direct Examination of Mr. Riedel by Ast. Sol. Kidd

1 out of these phones; correct?

2 A. Yes.

3 Q. All right. There is no doubt about it that this is
4 what you got out of the LG, this is what you got out of -- I
5 think it was, not the iPhone, whatever that third phone was.
6 I mean, these are stone cold facts. That's what you got;
7 right?

8 A. That is a portion of what I got, yes. There was far
9 more than the maybe 25 pages that I've been given out of all
10 of those.

11 Q. None of which you can tell the jury who did it; right?

12 A. Who did what?

13 Q. What's the texts that you show? We know those are
14 texts. Those are facts; right?

15 A. Uh-huh.

16 Q. You can't sit here today and say who pressed those
17 letters and hit send to make those texts go out, can you?

18 A. No.

19 Q. Nor can you do it with the numbers, the outgoing call,
20 the incoming call. You don't know who answered it, do you?

21 A. No.

22 Q. You don't know who physically punched the 843 number
23 outgoing 47 seconds 11/22, you don't know who that was on
24 the other end of the phone, do you?

25 A. No. But I never indicated that I did.

1 MR. PEPER: Thank you, Judge.

2 THE COURT: Any redirect?

3 AST. SOL. KIDD: Briefly.

4 REDIRECT EXAMINATION

5 BY AST. SOL. KIDD:

6 Q. And you touched on it a moment ago. We've shown you an
7 extremely small portion of the content that came off the
8 phone documents. Is that fair to say?

9 A. Yeah. A very minute portion.

10 Q. So there would be -- what other sort of information
11 would be present?

12 A. I mean, there could be chat histories. There could be
13 -- I only saw SMS messages, there's multi-media messages,
14 which would include photographs, videos, or messages among a
15 large group of people. With an iPhone, there's imessages.
16 And then there's a multitude ---

17 Q. Information on applications, videos ---

18 A. There's application information, location information,
19 pictures, videos, audio recordings such as voice mails or
20 other -- I mean, there's a multitude of information that was
21 not presented today.

22 Q. Okay. In your time with North Charleston, have y'all
23 ever sent an iPhone up to be when you were unable to access
24 it?

25 A. Never.

Direct Examination of Mr. Riedel by Ast. Sol. Kidd

1 Q. So how many phones you say you think you've attempted
2 to access in your career?

3 A. As of the beginning of this month, in excess of 625.

4 Q. And never have we sent one up, an iPhone up, that we
5 haven't been able to access?

6 A. No.

7 Q. And how many murder cases do you think you've
8 investigated?

9 A. In nine years as an investigator -- I know in the last
10 two years, it's over 50. So a lot.

11 AST. SOL. KIDD: No further questions.

12 THE COURT: Any exception to the witness being excused.
13 From the State?

14 AST. SOL. KIDD: No, ma'am.

15 THE COURT: From the defense?

16 MR. PRICE: No, ma'am.

17 MR. PEPPER: No, ma'am.

18 THE COURT: Sir, you're excused.

19 Madam Forelady, ladies and gentlemen, we're going to
20 take advantage of this break and testimony to take our lunch
21 recess. We have taken the liberty of ordering your lunch
22 today. It is here. It is in the jury room. The bailiffs
23 will accommodate any drink or requests you have otherwise.
24 Once you have completed eating, if you want to go outside
25 and get some air, the bailiffs will accompany you to do

1 that. And after that, we will resume testimony. I estimate
2 that we'll be out at about 45 minutes. It's pouring rain
3 outside the last time I was able to look. It may have
4 slacked up a little bit. But you probably going to be
5 constrained to being under the covered areas of the
6 courthouse to get air. But if anybody wants to go outside,
7 just let the bailiffs know. And, again, they will accompany
8 you for that process. Do not discuss the case during the
9 break, and please leave your notepads in your seats. Have a
10 good lunch.

11 (The jury exits the courtroom at 1:07 p.m.)

12 THE COURT: Anything before we adjourn for lunch. From
13 the State?

14 AST. SOL. KIDD: No, ma'am.

15 THE COURT: From the defense?

16 MR. PRICE: No, ma'am.

17 THE COURT: Mr. Pepper.

18 MR. PEPER: Judge, presuming Mr. Evans is gonna be the
19 next witness. I don't know if we necessarily have to do it
20 now, but we need to talk about prior convictions and ---

21 THE COURT: Does he have any record?

22 AST. SOL. KIDD: I believe all he has is a possession
23 of marijuana.

24 MR. PEPER: Nevermind, Judge.

25 THE COURT: We're good?

Direct Examination of Mr. Riedel by Ast. Sol. Kidd

1 MR. PEPER: We're good.

2 THE COURT: All right. Y'all have a good lunch. We're
3 going to resume in 45 minutes. I'm going to round it out to
4 1:10 so that will be 1:55. See you all at five of two.
5 Courtroom is going to be locked. It will be reopened at
6 five til two.

7 AST. SOL. KIDD: Your Honor?

8 THE COURT: Yes.

9 AST. SOL. KIDD: Just for scheduling, I think I might
10 need to call my DNA person next. She's here from Columbia
11 so she can get on back.

12 THE COURT: That's up to you.

13 AST. SOL. KIDD: I just want the Court to know that I
14 initially said I would call Mr. Evans. But due to
15 scheduling, I think it might be more practical to call them
16 to testify.

17 THE COURT: It's up to you. Just let Mr. Cornely know
18 so he can plan his time accordingly. I would imagine that
19 would be short witness. I would encourage you to be
20 succinct.

21 (A lunch recess was taken at 1:08 p.m. The proceedings
22 resumed at 2:06 p.m.)

23 THE COURT: State ready to proceed?

24 AST. SOL. KIDD: We are, Your Honor.

25 THE COURT: Defense ready to proceed?

1 MR. PEPER: Yes, ma'am.

2 (Brief pause.)

3 THE COURT: Who is your next witness?

4 AST. SOL. KIDD: Catherine Leisy.

5 THE COURT: Is she in the courtroom? (Brief pause.)

6 Defense ready to proceed?

7 MR. PEPER: Yes, ma'am.

8 MR. PRICE: Yes, ma'am.

9 THE COURT: Please bring in the jury.

10 (The jury enters the courtroom at 2:06 p.m.)

11 THE COURT: Ladies and gentlemen, I hope that you had a
12 good lunch. We'll now resume testimony. State may proceed.

13 AST. SOL. KIDD: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 AST. SOL. KIDD: State calls Catherine Leisy.

16 THE COURT: Ma'am, if you'd come forward to be sworn.

17 (CATHERINE LEISY, was duly sworn and provided the
18 following testimony.)

19 THE COURT: You may proceed.

20 AST. SOL. KIDD: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY AST. SOL. KIDD:

24 Q. Good afternoon, Ms. Leisy.

25 A. Good afternoon.

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 Q. Can you please tell the jury where you're employed?

2 A. I work for the South Carolina Law- Enforcement

3 Division, more commonly referred to as SLED.

4 Q. And what do you do for SLED?

5 A. I am a forensic scientist assigned to the biology

6 department.

7 Q. And do you typically analyze DNA samples and things of
8 that nature as a part of that role?

9 A. That's correct. My primary responsibility is to
10 perform forensic DNA testing on criminal cases to report on
11 the results and the conclusions draw, and testify to those
12 reports as necessary.

13 Q. All right. And can you briefly kind of give us the
14 highlights of your educational background and the training
15 you have qualify you for that position.

16 A. Sure. I have Bachelor of Science degree in genetic
17 engineering from Cedar Crest College in Allentown,
18 Pennsylvania. I've been at SLED for approximately 11 years.
19 I was trained by other core quality analyst in all different
20 types of tests and analyses that I am required to perform.
21 Prior to coming to work at SLED, I spent four and a half
22 years as forensic DNA analyst at a private testing facility
23 known as Borcus Somar (ph) where I ran essentially the same
24 types of tests that I do know. I'm also required to
25 participate in continuing education, which requires me to

1 attend seminars or training sessions related to current
2 forensic techniques.

3 Q. And have you testified in court before?

4 A. I have.

5 Q. Have you been qualified as an expert in court before?

6 A. Yes, I have.

7 Q. In what fields?

8 A. Forensic identification testing and serology.

9 Q. And do you know approximately how many times you've
10 been qualified as an expert in that field?

11 A. Approximately, 70 times throughout the State of South
12 Carolina, as well as California, Massachusetts, New Jersey,
13 Florida and District of Columbia.

14 AST. SOL. KIDD: Your Honor, at this time, the Sate
15 would offer Ms. Leisy as an expert in the fields of forensic
16 identification testing.

17 THE COURT: Any questions or objections?

18 MR. PRICE: No objection, Your Honor.

19 THE COURT: Without objection. So admitted. You may
20 proceed.

21 AST. SOL. KIDD: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Q. And I'm going to show you what's been marked for
24 identification as State's Exhibit 149. And might already
25 have your own copy in front of you. Do you recognize that

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 document?

2 A. Yes, I do.

3 Q. Okay. And what is that?

4 A. This is a document that includes a copy of a DNA report
5 that I prepared for the testing in this case, as well as a
6 copy of a report that was prepared by a forensic serologist
7 relating to her testing in this case.

8 Q. Okay. And what is a forensic serologist? Just so we
9 know what you're referring to.

10 A. Forensic serology is the identification of body fluids
11 such as semen, saliva, or blood. And a forensic serologist
12 will sort of prescreen items for us that are maybe a little
13 bit larger than we have room for in our laboratory. They
14 may test for bodily fluid. They may test for ownership or
15 touch DNA. They then pass those samples on to a DNA analyst
16 for forensic DNA testing.

17 Q. All right. And is this State's ID Number 149, is that
18 a fair and accurate representation of the results that you
19 came by in this case?

20 A. Yes. it is.

21 AST. SOL. KIDD: Your Honor, at this time, we'd offer
22 State's 149 into evidence.

23 THE COURT: Any objection?

24 MR. PRICE: No objection, Your Honor.

25 MR. PEPER: No, ma'am.

1 THE COURT: Marked and admitted without objection.

2 (State's Exhibit No. 149, SLED Report, was received
3 into evidence.)

4 Q. All right. So I'm gonna kind of put it up on the
5 screen just so we can walk through it together and for the
6 benefit of the jury as well as. And for the -- if you ever
7 do need to see any of the physical items, they've all been
8 entered into evidence. So if that would ever at any point
9 help you testify -- help your testimony, just let me know.

10 A. Yes, sir.

11 Q. So I believe this first page this is what you just
12 referred to as the serology report prepared by Ms. Herrera?

13 A. That's correct.

14 Q. And is this a process that is conducted to achieve
15 samples that then go to you for the actual DNA analysis?

16 A. Yes.

17 Q. So she would've processed items -- and these are SLED
18 item numbers I presume on the left side?

19 A. That's correct.

20 Q. So items 1,2,5, 13, and 14, she would have processed
21 those items to attempt to gain a sample to get to you to
22 further test?

23 A. That's correct.

24 Q. Okay. And on the second page of this report, this is
25 the serology analysis that you were just referring to. Is

1 that correct?

2 A. That's correct. This page actually indicates the two
3 items that I performed serology testing on as I began my
4 analysis.

5 Q. Okay. So you performed the serology testing?

6 A. On these two particular items, I did the testing prior
7 to beginning because they were just swabs. Typically, it's
8 larger items, clothing, things of that nature, that go to
9 our serology department.

10 Q. Okay. And can you tell the jury what your results were
11 on these items.

12 A. For SLED item 10, which was indicated as being a swab
13 from the slide area of a glock 36, I did receive a positive
14 result indicating the possible presence of blood on that
15 item. And for SLED item 11, identified as a swab from a
16 barrel area of a glock 36, I also received a positive result
17 indicating the possible presence of blood.

18 Q. Okay. And I'm going to show you what's been marked and
19 entered as State's Exhibit 114. I believe there are a
20 number of swabs inside that package. Does that include
21 those swabs that you are referring to there?

22 A. Yes, it does.

23 Q. And when you have something that tests presumptive for
24 blood, what exactly does that mean?

25 A. It basically just tells us that it's possible that that

1 particular body fluid is present and that item may be
2 worthwhile to continue forward for additional testing to try
3 and develop a DNA profile.

4 Q. Now, we had a number of buccal swabs. I guess, can we
5 first tell the jury what a buccal swab is and how you deal
6 with buccal swabs.

7 A. A buccal swab is how we refer to a sterile cotton swab
8 that is rubbed against the inside of someone's cheek. We're
9 trying to collect cells from that individual so that we can
10 develop a DNA profile to use as a better standard. Once we
11 have an individual standard, we can compare it to a profile
12 that's developed from an item of evidence in an attempt to
13 determine if that individual did contribute to the
14 biological material found on the evidence.

15 Q. Okay. So when we take a buccal swab, we're basically
16 developing a known standard for that subject. Is that
17 right?

18 A. Correct.

19 Q. All right. And so we develop buccal swabs and then
20 basically a DNA -- what would you call it? A DNA profile.

21 A. That's correct.

22 Q. For each of these, I guess, five subjects that where
23 buccal swabs -- SLED items 6, 7, 18, 22 and 23, DNA profiles
24 were developed for those individuals that provided those
25 buccal swabs?

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 A. That's correct.

2 Q. So we developed a profile for Quran Allen, Keith Evans,
3 Marvin Bryan, Justin Wilson, and Daquan Gilliard.

4 A. Yes, sir.

5 Q. Okay. Now, what's a blood spot?

6 A. A blood spot is another form of known standard that we
7 sometimes receive. It's more common when we have an
8 individual who is diseased. A portion of their blood is
9 collected. It is then poured onto a sterile piece of filter
10 of paper. It's just, essentially, very thick stock paper.
11 It's then allowed to dry. It makes it more stable for
12 long-term storage. And then we could take a small portion
13 of that sample and use it just as we do a buccal and create
14 an DNA profile to be used for comparison.

15 Q. Okay. So in this we developed a DNA profile for the
16 decedent, Franklin Williams, Jr.?

17 A. Yes, sir.

18 Q. So then once you have the profiles of the individuals
19 involved in a case, you then look at the items of evidence
20 that come to and attempt to develop profiles from those
21 items of evidence that you can then compare to your known
22 standards. Is that fair to say?

23 A. Yes, sir.

24 Q. Okay. So then we start looking at all the different
25 pieces of evidence that have come to you; right?

1 A. Yes, sir.

2 Q. Okay. And we're just going to track down your -- down
3 the results section of your analysis. All right. So the
4 first item that you tested was item 1.1. Is that right?

5 A. Yes, sir.

6 Q. And what was 1.1?

7 A. SLED item 1.1 was identified as being black knit cap.

8 Q. Okay. And were you able to develop a profile of item
9 1.1?

10 A. Yes, I was.

11 Q. And can you tell the jury what those results were?

12 A. The partial DNA profile developed from the swabs from
13 the cap is a mixture of at least three individuals. The
14 partial DNA profile developed from the major contributor to
15 this mixture matches the DNA profile of Daquan Gilliard.
16 The probability of randomly selecting an unrelated
17 individual having a DNA profile matching the major
18 contributor to this mixture is approximately 1 and 45
19 sextillion. And do to the inability to calculate a
20 statistic, no further interpretation can be offered
21 regarding the minor contributor to this mixture.

22 Q. All right. So I want to talk about that for a second.
23 So we -- the hat arrives at SLED; right? It goes to Ms.
24 Herrera who then, I guess -- did she swab the hat? How does
25 it come to you?

1 A. Well, for her to collect the hat or other items of
2 clothing, what our serologists typically do is take a
3 scraping where they use a sterile plastic sort of spatula to
4 scrape against the item in an attempt to remove any cells
5 that may be present. They will then take a sterile cotton
6 swab soaked in water, swab that scraper as well as the paper
7 that they scrape the material over to collect any cells that
8 may have been removed from that item. The swabs are then
9 placed in coin envelope labeled appropriately with the case
10 item number and then transferred on for forensic testing and
11 DNA.

12 Q. Before I forget, I'm going to show you what's been
13 marked for ID as State's Exhibit 119. I believe the label
14 might be in the back.

15 A. Can I puncture it to actually see?

16 Q. Sure. Do you want some scissors?

17 A. Yes, please. (Brief pause.) So the coin envelope
18 containing the swabs taken from the cap part present within
19 this piece of a pouch.

20 Q. Okay. And so that would be a SLED generated item?

21 A. That's correct.

22 Q. Right. So when we're looking at your item numbers on
23 your report, when an item number is just the number itself,
24 like say item number three, that means it's the same -- you
25 analyze the same thing that we give you. Is that right?

1 A. That's correct. So for this particular item, the cap
2 itself would come in and be identified as item 1. Because
3 what we consider a subitem was collected, so the swabbing
4 and scraping of that item, that is then identified as 1.1.
5 And that .1 indicates that is created from the original
6 item.

7 Q. Okay. And it then becomes that sort of subitem is what
8 you actually tested and develop a DNA profile?

9 A. That's correct.

10 Q. Okay. So basically what we do then is you then go
11 through your analysis, which you just talked about. You
12 said it's a mixture of three individuals. Can you tell the
13 jury how do you know it's three individuals and maybe the
14 difference between a major contributor and a minor
15 contributor.

16 A. So it was determined that this mixture is at least
17 three individuals. We can't necessarily determine exactly
18 how many people are present. But by counting the number of
19 DNA types that are present at each location that we test,
20 and also by measuring the relative intensity of the signal
21 given off by those types, it can tell us the minimum number
22 of contributors we have to have for a particular mixture.

23 When we have multiple contributors like this, if one
24 individual contributes significantly more DNA than the
25 others, their DNA types give off a much stronger signal.

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 And that allows us to determine a major contributor. It
2 just basically allows us to treat that individual's types
3 like a single source profile. We can then make a direct
4 comparison between the major contributors' types and any DNA
5 standard that we have from those individuals for comparison.

6 Q. And so if I'm going to simplify it down to bare bones
7 here, basically the major contributor has deposited more DNA
8 onto that item, and a minor contributor has still deposited
9 DNA onto that item, but just a smaller amount?

10 A. That's correct.

11 Q. Now, can you talk to the jury a little bit about what
12 touch DNA is. And it's not necessarily relevant, I guess,
13 to the hat, but please explain touch DNA and sort of the --
14 of DNA.

15 A. When you use the term touch DNA, we're referring to DNA
16 and cells that have been transferred during physical
17 contact. So between an individual and an item. Say your
18 computer mouse; you sit and use it every day and your skin
19 cells are going to be transferred to that item which could
20 potentially leave enough DNA there for us to test it and
21 develop a profile. But that touch DNA just refers to
22 physical contact causing a transfer.

23 Q. Okay. And using your example, like a mouse example,
24 you know, I use my mouse in my office every day. If you
25 tested it, would you expect to find touch DNA on it?

1 A. It's possible. There are a lot of factors that go into
2 it. It could depend, you know, how often you used it, who
3 else has used it since you did. But it would certainly be
4 possible to develop a usable profile from that.

5 Q. Would it also be possible not to develop a useful
6 profile?

7 A. It is possible, yes.

8 Q. And, you know, just using another example. So I don't
9 think I've ever touched this before. If I just wipe my hand
10 on it like that, would expect to find a DNA sample?

11 A. It would depend, again, on a number of factors. The
12 fact that there was contact would cause there to be some
13 level of transfer. It really becomes a matter of was there
14 enough transfer for us to be able to detect it. We do have
15 to have a minimum amount of DNA present to be able to
16 develop a profile.

17 Q. Do different people, I guess, like sluff off DNA at
18 different rates than other people?

19 A. Absolutely. And there are actually studies that
20 qualify people as light shedders, heavy shedders. It refers
21 to how readily you shed your skin cells and how many of your
22 cells you leave when in physical contact.

23 Q. Okay. And can you put a timestamp on DNA? So like,
24 you know, if I rub my hand here, and then five weeks ago did
25 the same thing right here and you tested both of those

1 samples, would the difference in time make a difference on
2 your test? Would you be able to tell the difference?

3 A. We would not. The longer a sample has been left the
4 more likely it is to degrade or be wiped away. But we can't
5 test two samples like that so I know I know the difference
6 to be longer. We can't necessarily say when it was
7 deposited, just at some point it was deposited.

8 Q. Okay. And how does environmental factors such as
9 moisture and things of that nature, how would that impact a
10 touch DNA sample?

11 A. When DNA comes in contact with moisture, heat,
12 humidity, sunlight, a number of environmental factors, it
13 can cause the DNA in the cell to break down. And once that
14 DNA begins to break down or degrade, it makes it more
15 difficult for us to develop a DNA profile. And it can reach
16 the point where it becomes impossible for us to develop a
17 profile based on the level of degradation.

18 Q. And even further than degradation, it can also simply
19 be kind of washed off or brushed away?

20 A. That's correct.

21 Q. So, like, for example, like moisture, that can actually
22 wash DNA off?

23 A. Yes, sir.

24 Q. Okay. All right. So going back to our results, now
25 that we've had that little tutorial, item 1.1 being a

1 mixture. So we've been able to develop a probability in
2 regards to Mr. Gilliard -- I always Gilliard but Gilliard, I
3 guess -- I'm going to continue to say Gilliard. Are you
4 able to develop a probability as to the minor contributors?

5 A. I am not.

6 Q. And are you able to develop exclusions? So, maybe
7 first, it would be best to explain exclusions as well as
8 matches.

9 A. When we make a comparison between a known individual
10 and a profile developed from evidence, if we don't have
11 consistency between those two profiles. Meaning if the DNA
12 types with the location we're testing are different, we
13 would exclude that individual. And what that means to us is
14 that that individual did not contribute to the DNA profile
15 or the DNA that that profile came from on the item that we
16 tested.

17 Q. Okay. So in reference to item 1.1, that black knit
18 hat, you can say that the major contributor matches Mr.
19 Gilliard.

20 A. Correct.

21 Q. And it is also safe to say you can't exclude the other
22 individuals that you developed profiles from being the minor
23 contributors?

24 A. As far as the minor contributor to this item, I cannot
25 make a formal comparison. Our protocol requires that we be

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 able to develop a statistic on a minor contributor to be
2 able to do this comparison. And based on the low level of
3 DNA contributed from the minors to this item, I cannot
4 generate a statistic, which means I cannot make a
5 comparison.

6 Q. All right. So can't make a probability of including,
7 but you also can't exclude them either?

8 A. That's correct.

9 Q. Okay. So to break down your results on item 1.1, Mr.
10 Gilliard matches the major, and you can't give an inclusion
11 or exclusion comparison to either of the other standards
12 that you took and profiled?

13 A. That's correct.

14 Q. Okay. Let's move onto the next page of your results.
15 And the next item is item number 3; correct?

16 A. Yes, sir.

17 Q. And item number 3 is a straw from a wax McDonald's cup;
18 correct?

19 A. Correct.

20 Q. And you were to develop a profile on item number 3?

21 A. I was.

22 Q. And can you tell the jury what the results are on item
23 number 3?

24 A. The DNA profile developed from the straw from the wax
25 McDonald's cup matches the DNA profile Marvin Bryan. The

1 probability if randomly selecting an unrelated individual
2 having a DNA profile matching this item is approximately in
3 11 septillion.

4 Q. 11 septillion. That's a pretty big number?

5 A. It is.

6 Q. So I'm going to try to put that number in perspective.
7 How many human beings, maybe first, in the United States?

8 A. Approximately 400 million.

9 Q. 400 million. 11 septillion is a lot bigger than that;
10 right?

11 A. Yes, sir.

12 Q. And on the earth is what? Three or 4 billion?

13 A. 7 billion or so.

14 Q. 7 billion? And 11 septillion is a lot larger than that
15 as well; right?

16 A. It is a larger number, yes.

17 Q. Okay. So those are pretty low odds of selecting
18 someone unrelated to match that sample. Is that my
19 understanding?

20 A. Essentially what these stats means that if you randomly
21 selected an individual and developed a profile, the
22 probability that you would see this specific profile is
23 approximately 1 in 11 septillion. It would indicate it is a
24 rare profile.

25 Q. So it's virtually guaranteed that Mr. Bryan's profile

1 matches the profile of that straw?

2 A. The profiles are a match, yes.

3 Q. Okay. And moving on to the next section or the next
4 item, which would be item number 4. And item number 4 is
5 another straw from a foam McDonald's cup. Is that correct?

6 A. It is.

7 Q. And what are the results there?

8 A. The DNA profile developed from the straw from the foam
9 cup matches the DNA profile if Keith Evans. And the
10 probability of randomly selecting an unrelated individual
11 having a DNA profile matching this item is approximately 1
12 in 4.6 octillion.

13 Q. So that's a, I guess, a stronger match. Well, I guess
14 the match is the same, just the rareness of the profile is
15 what creates that probability?

16 A. That's correct. Its' still a match of the profiles and
17 it's a rarer or a more rear profile based on the statistic.

18 Q. And then moving on to profile developed on item 5.1.
19 So this is, I guess, similar to what we discussed earlier.
20 5.1 would be a subitem created by Ms. Herrera; correct?

21 A. That's correct.

22 Q. So item 5, I believe, is a waxed McDonald's cut?

23 A. Yes. It was identified as a cup found on the
24 floorboard.

25 Q. And then she would've created a swab, which I think you

1 probably have in front of you there as well.

2 A. That's correct. That envelope contained in this pouch,
3 it was SLED item 5.1, swabs from the exterior of the cup.

4 Q. And I believe you were unable to calculate a statistic
5 as it relates to that DNA profile.

6 A. That's correct. The profile from that item is a
7 mixture of at least two individuals. And, again, due to the
8 inability to calculate a statistic, no further
9 interpretation will be offered; no comparisons can be made.

10 Q. So I want to kind of post a little bit of a
11 hypothetical to you while we're talking about this item and
12 that would be the concept of DNA transfer. So if I use my
13 explanation earlier, like if I rum my hand here and then, I
14 don't know, we grab a cell phone or something like that and
15 swiped it across, it would then be possible that my DNA
16 would be on this cell phone. Is that right?

17 A. That is possible. That's something we refer to as
18 secondary transfer. It's an indication that you can have
19 transfer of DNA from one source onto another without the
20 original source being in contact. So say you borrowed
21 someone's car, you could get enough DNA, skin cells, from
22 their steering wheel that when you get home and you touch
23 your door handle, you can transfer their DNA to your door
24 handle.

25 Q. Okay. And I like the car example because cars and kind

1 of like carpets are kind of like melting pots of DNA. Is
2 that fair to say?

3 A. I say they collect quite a few sources that are from
4 multiple contributors.

5 Q. Okay. So like a floorboard of a vehicle, especially a
6 rental vehicle that had a lot of occupants, would you expect
7 to find multiple sources of DNA on the floorboard of the
8 vehicle?

9 A. It would certainly be possible. Again, having multiple
10 people in and out of the vehicle would increase the
11 likelihood that you would see multiple contributors.

12 Q. Okay. And then I guess where I'm going with that is if
13 you have a vehicle that has multiple people coming in and
14 out of it, and then you have an item, be it a cell phone, or
15 in this case, a McDonald's cup that is on the floorboard of
16 that vehicle, is transfer DNA possible or probable? Or I
17 guess you might not be able to say the difference is
18 possible or probable, but it is potential that DNA from that
19 floorboard would then end up on the item that was on the
20 floorboard of that car.

21 A. It would be possible if there were enough DNA present
22 on the carpeting of the floorboard, and then an item came in
23 contact with it, you could see some level of secondary
24 transfer.

25 Q. In addition to the amount of DNA that's on the

1 floorboard being a relevant factor, also the length time,
2 the items on there, the amount of contact it's had. There's
3 a lot of factors that could play into that. Is that fair to
4 say?

5 A. It is.

6 Q. Okay. So when it comes to item 5.1 -- I'm getting back
7 on track -- the basic idea is that you found at least two
8 contributors of DNA, but the profile was so weak you
9 couldn't develop a statistical probability?

10 A. That's correct. The profile doesn't meet the standards
11 that we need for me to capture that statistic.

12 Q. Okay. Where do you get those standards from?

13 A. Those are based on our protocol and based on based on
14 our validation studies. Validation studies are samples that
15 we run in labs to make sure the systems that we're using
16 work the way that we need them to. And based on what we've
17 seen, we want a certain level of information, a certain
18 quality of information, before we will generate a statistic
19 and make a comparison.

20 Q. Okay. And then we will get to -- well, I guess before
21 I move onto the next one, so none of the DNA profiles that
22 you develop through buccal swabs and blood spots can be
23 included or excluded as contributors to that?

24 A. That's correct. I made the comparisons without any.

25 Q. Okay. As to the next item, DNA profile developed from

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 item number 9. And item 9 is the swab from the grip and
2 trigger of a glock 36. Is that right?

3 A. That's correct.

4 Q. And I believe your results were the same there?

5 A. They were. From that item I was also able to develop
6 and make sure that these two individuals. And, again, due
7 to the inability to calculate a statistic, no further
8 interpretation will be offered.

9 Q. And so item number 9, that came to you as a swab. Is
10 that correct?

11 A. It did.

12 Q. And, obviously, you weren't there when the swab of the
13 firearm was taken. And I believe you do you have it there
14 in front of you as well.

15 A. I do.

16 Q. But all you can do is test the swab as it arrives to
17 you. It has a mixture of at least two people. And you
18 can't include or exclude any of individuals you developed
19 profiles for?

20 A. That's correct. Again, no comparison was made between
21 this item and any of the known standards that I have.

22 Q. And I just want to be clear about what we talked about
23 earlier about when we were talking about touch DNA because
24 that's what we're talking here is swabs of a gun. It's
25 touch DNA; right?

1 A. We do sometimes see bodily fluid. You may have
2 transfer of blood, sweat, thing like that, to a gun. But
3 typically what we're swabbing for is going to be touch when
4 looking at a firearm.

5 Q. That's a good point. That's exactly what we were
6 talking about on the Glock 36. There was serology so there
7 was blood on that firearm.

8 A. A possible indication of it, yes.

9 Q. A possible indication of blood on that firearm.
10 However, the specific swabs that we're talking about here,
11 number 9, you do not believe was tested presumptive for
12 blood in this case. Is that correct?

13 A. That's correct.

14 Q. So presumably then what we would be talking about with
15 item number 9 would be touch DNA?

16 A. I can't necessarily say that. There may be saliva on
17 it. There could be other sources. What we don't have is
18 serology test indicating bodily fluid. It's just whatever
19 material it was present on that part of the gun when we
20 swabbed it.

21 Q. And so, I guess, what I'm getting at is the thing about
22 a firearm is it lasts a long time. And so it potentially
23 goes through a number of people's hands in the life cycle of
24 the firearm. From some guy in a machine shop who forges it
25 to the buyer to the next seller down the line or anyone that

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 handles it in between, is a potential contributor to a
2 mixture liked you developed here?

3 A. That's correct.

4 Q. And is there any way that you can determine through
5 your analysis of who last touched an item?

6 A. No. There isn't -- again, you can't necessarily put a
7 timeline when there was contact jus that at some point there
8 was transfer of that DNA to that item.

9 Q. So a major contributor could have been someone who
10 touched something a week ago; and a minor contributor could
11 have been someone who touched something five seconds ago?

12 A. That would be possible, yes.

13 Q. All right. So moving on to item number 10 which is a
14 swab from the slide area of the glock 36. Can you tell the
15 jury about your results there.

16 A. The DNA profile developed from the slide area of the
17 glock matches the DNA profile of Franklin Williams, Jr. And
18 the probability of randomly selecting an unrelated
19 individual having a DNA profile matching this item is
20 approximately 1 in 149 nonillion.

21 Q. Nonillion is bigger than septillion?

22 A. It is.

23 Q. So that's an extremely large number?

24 A. One -- would be a one with 30 zeros behind it.

25 Q. Thirty zeros?

1 A. Yeah.

2 Q. All right. Item number 11?

3 A. Item number 11 was identified as swabs from the barrel
4 of the glock. The DNA profile developed from this item is
5 of a mixture of at least two individuals. The DNA profile
6 developed from the major contributor to this mixture matches
7 the DNA profile of Franklin Williams, Jr. And, again, the
8 probability of randomly selecting an unrelated individual
9 having a DNA profile matching the major contributor to this
10 mixture is approximately 1 in 149 nonillion. And due to the
11 inability to calculate a statistic, no further
12 interpretation will be offered regarding the minor
13 contributor to this mixture.

14 Q. Okay. And so I'm clear, items 10 and 11 are the ones
15 that went through serology and tested presumptive for blood,
16 which blood is a pretty good contributor to DNA. Is that .
17 . .

18 A. It is. We tend to get very strong results on at least
19 a blood sample that contain quite a bit of DNA.

20 Q. And that would be one indicator of why you got such a
21 better result from item 10 and item 11 than you did item
22 number 9 even though they were all swabs from the same
23 firearm?

24 A. It could be. Again, with bodily fluid such as blood,
25 we do tend to see a higher concentration of whatever amount

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 of DNA present. So it's not unusual to get a better profile
2 from a blood sample than you would for say just a touch DNA
3 sample.

4 Q. All right. Can you go over the results of item number
5 12, which I believe is the swab from the trigger and the
6 grip of the Smith & Wesson firearm.

7 A. The DNA profile developed from item 12 is a mixture of
8 at least three individuals. The partial DNA profile
9 developed from a major contributor to this mixture is from
10 an unidentified male individual. And due to the inability
11 to calculate a statistic, no further interpretation will be
12 offered regarding the minor contributors to this mixture.

13 Q. Okay. And I believe you went on further in saying
14 Mr. Wilson and Mr. Gilliard are excluded as being the major
15 contributor?

16 A. That's correct.

17 Q. Can you exclude them or any of the other people you
18 developed profiles from as being minor contributors to that
19 item?

20 A. I cannot. Again, due to the inability to calculate a
21 statistic, no comparisons can be made with minor
22 contributors to this mixture.

23 Q. And the DNA profile developed on item 13.1 which would
24 be the swab from the exterior of the driver-side airbag of
25 vehicle. And that would also be a SLED generated item,

1 which I believe you have in front of you as well.

2 A. I do have that item. And the DNA profile developed
3 from SLED on the 13.1 swabs from the driver's airbag is a
4 mixture of at least two individuals. And, again, due to the
5 inability to calculate a statistic, no further
6 interpretation will be offered.

7 Q. So, once again, you can't include or exclude any of the
8 individuals in the vehicle as being contributors to that
9 airbag?

10 A. Correct.

11 Q. So it could have been a sample a guy in China that
12 installed it or someone in the back of the vehicle that made
13 contact with the airbag. You can't make a determination?

14 A. I cannot determine who might have contributed to that
15 profile.

16 Q. And item number 14.1, which I believe is also in front
17 of you, being a swab from the exterior of the rear left
18 passenger-side airbag.

19 A. The partial DNA profile developed from the swab from
20 this airbag is a mixture of at least two individuals. And,
21 again, due to the inability to calculate a statistic, no
22 further interpretation will be offered.

23 Q. And I believe you only got partial DNA profiles from
24 item -- start with item 19 which is a swab SKS charging
25 handle?

Direct Examination of Ms. Leisy by Ast. Sol. Kidd

1 A. That's correct.

2 Q. A partial profile from a 20.1 which is the swab from
3 the SKS trigger?

4 A. Correct.

5 Q. And a partial profile developed on 20.2 which is a swab
6 from the grip of the SKS?

7 A. That's correct.

8 Q. And, finally, only a partial profile developed on item
9 21 which is a swab from the rim of the Hennessy bottle?

10 A. That's correct. And those partial profiles were
11 insufficient for interpretation. Just means that the signal
12 was too low, and I didn't have enough information present in
13 that profile to make a comparison with any known standards.

14 Q. I want to back up a little bit to item number 12 for a
15 second. Why are you able to exclude Mr. Wilson and
16 Mr. Gilliard from that being a major contributor to item
17 number 12 but you're not able to exclude Mr. Bryan from
18 being a contributor to that sample?

19 A. Mr. Bryan can't be excluded. Again, this was
20 identified as being from an unidentified individual. This
21 is actually a supplemental report. An initial report was
22 issued that did not include Mr. Gilliard or Mr. Wilson's
23 profiles because I had not yet received them for testing.
24 When I performed additional testings on those two standards
25 and issued a supplemental report, I included them in the

1 statements just to make it very clear that a comparison was
2 made between these two new known individuals and the major
3 contributor. Typically, when we write up a report and we're
4 issuing a statement as far as an unidentified profile, we
5 don't list everyone out that we're excluding. The fact that
6 we're saying it's unidentified implies that everyone tested
7 is excluded.

8 Q. Gotcha. And getting back down to where we were, items
9 19, 20.1, 20.2, and 21, those -- you're unable to make any
10 comparison as to those items. Is that correct?

11 A. That's correct. They're not sufficient for
12 interpretation.

13 Q. And item number 2.1, swab from the interior of a shoe.
14 No DNA present there?

15 A. That's correct. I was not able to develop a DNA
16 profile from the swabs from the interior of the shoe.

17 Q. And I believe you did no analysis on items 1.2 and 5.2.
18 Is that correct?

19 A. That's correct.

20 AST. SOL. KIDD: Court's indulgence.

21 THE COURT: Yes, sir.

22 AST. SOL. KIDD: No further questions, Judge.

23 THE COURT: Any cross-examination of the witness?

24 MR. PRICE: I just have one question, Your Honor.

25 THE COURT: You may proceed.

1 CROSS-EXAMINATION

2 BY MR. PRICE:

3 Q. Good afternoon, Ms. Leisy. How are you?

4 A. I'm well. Thank you.

5 Q. I just want to make sure that I'm understanding your
6 testimony as to the time in which DNA can be present.

7 There's no way for you to be able to tell us at what point
8 in time the DNA was passed on to a certain object. It
9 could've been very recent time; it could have been very old
10 in time. You're not able to figure that portion out, just
11 that the person was a contributor or not.

12 A. That's correct. All we are determining is that at some
13 point the DNA was transferred and it was present at the time
14 of testing.

15 MR. PRICE: Thank you very much, Your Honor.

16 THE COURT: Any questions, Mr. Peper?

17 MR. PEPER: Thank you, Your Honor. May it please the
18 Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. PEPER:

22 Q. Ms. Leisy, Mark Peper. I represent Mr. Justin Wilson.
23 How are you?

24 A. Well. Thank you.

25 Q. Good. Regarding your report, just to clarify -- and I

1 only care about Justin Wilson. I'm only going to ask
2 questions about him. Okay?

3 A. Yes, sir.

4 Q. The only time -- and you correct me if I'm wrong --
5 that I see his name appearing anywhere in the results is
6 under item 12. Is that correct?

7 A. It is.

8 Q. And that's where you specifically exclude him from
9 being a contributor to the DNA found -- I want to make sure
10 I get this right -- on the Smith & Wesson trigger and grip
11 area. Is that correct?

12 A. That's correct.

13 Q. Okay. And, I guess, correct me if I'm wrong, if his
14 name doesn't appear anywhere else on this then you didn't
15 find his DNA on anything you tested?

16 A. I was not able to match Mr. Wilson to any of the
17 profiles that were suitable for comparison.

18 Q. All right. Ms. Leisy, did you also receive gunshot
19 residue kits in this case?

20 A. That is not something that would be deposited to the
21 DNA department. That's not something we test. It would go
22 to a different department within SLED.

23 Q. Okay. So if it went to SLED, it wouldn't be your
24 department?

25 A. That's correct.

Recross-Examination of Ms. Leisy by Mr. Price

1 Q. Okay.

2 MR. PEPER: Court's indulgence one second.

3 (Brief pause.)

4 Q. Ms. Leisy, in your past life so to speak, didn't you
5 say you worked for a private company. Is that correct?

6 A. Yes, sir.

7 Q. How long were you there?

8 A. Four and a half years.

9 Q. All right. And I'm sorry, you've been at SLED for how
10 long?

11 A. A little over 11.

12 Q. Okay. So 15 or 16 years you've been doing this type of
13 analysis; right? Have you done analysis on GSR kits?

14 Gunshot Residue kits.

15 A. I have not.

16 Q. Okay. All right. Thank you very much.

17 MR. PRICE: Your Honor, I'd like to clarify my question
18 if that's okay. It's not going to be another just a
19 clarification.

20 THE COURT: Uh-huh.

21 RECROSS-EXAMINATION

22 BY MR. PRICE:

23 Q. So you testified earlier that Mr. Bryan, I'm referring
24 to number 3, the straw from the waxed McDonald's cup from
25 the vehicle that attributed Marvin Bryan as a major

1 contributor, you can't testify as to whether that was done
2 -- that that was contributed to or DNA was from four months
3 ago or from the day they actually extracted it and sent it
4 off to SLED?

5 A. No. I cannot determine at what point that DNA was
6 deposited on the item.

7 Q. It could have been six months prior to the day that
8 they actually extracted it and sent it to SLED?

9 A. Assuming it was stored in conditions that would prevent
10 degradation, it could've been, yes.

11 Q. Thank you very much.

12 THE COURT: Any redirect?

13 AST. SOL. KIDD: Just one follow-up, Judge.

14 THE COURT: Uh-huh.

15 REDIRECT EXAMINATION

16 BY AST. SOL. KIDD:

17 Q. Mr. Peper indicated that Mr. Wilson was excluded from
18 item number 12. He's only excluded from being the major
19 contributor to item number 12. You can't exclude him from
20 being a minor contributor. Is that right?

21 A. Again, I cannot make any comparison. So I can't make a
22 formal opinion about whether or not he can included or
23 excluded because I cannot generate a statistic.

24 Q. And there are two other -- that is a mixture of three
25 individuals on item number 12; right?

Recross Examination of Ms. Leisy by Mr. Peper

1 A. At least three, yes.

2 Q. At least three individuals. So the maybe four?

3 A. It could be.

4 Q. Maybe five?

5 A. It could be.

6 Q. So there is -- at least three people that have handled
7 that firearm and left DNA on it?

8 A. At least three sources of DNA have been transferred to
9 the firearm, yes.

10 Q. And maybe more than three?

11 A. Correct.

12 Q. And you can only exclude Mr. Wilson and Mr. Gilliard
13 from being contributors as the major contributor, the person
14 that left the largest sample on it?

15 A. That's correct.

16 Q. Thank you.

17 MR. PEPER: Brief recross, Your Honor?

18 THE COURT: Direct, cross, redirect, unless it's
19 something absolutely new that have not asked.

20 MR. PEPER: I have not asked her this yet.

21 THE COURT: I'm going to give you a little latitude.

22 MR. PEPER: Thank you, Judge.

23 RECROSS-EXAMINATION

24 BY MR. PEPER:

25 Q. You can only get a comparison for DNA swabs that you

1 receive; correct?

2 A. That's correct.

3 Q. So on the top of page two, the items that you analyzed,
4 the people there, one, two, three, four, five, six, that's
5 all you had to work with; right?

6 A. Correct. Those were the only known standards that were
7 submitted.

8 Q. Okay. So if that person's name is not up there, that
9 means you did not get a DNA sample from that person;
10 correct?

11 A. Correct.

12 Q. On a couple of them you were able to get DNA, but you
13 couldn't identify other than a male the individual who
14 contributed; right? For instance, item 12.

15 A. That's correct. Again, I was able develop a partial
16 major contributor to that item, and it is from an
17 unidentified male individual.

18 Q. Right. Thank you.

19 THE COURT: Any further questions from the State?

20 AST. SOL. KIDD: No, ma'am.

21 THE COURT: Any objection to the witness being excused?
22 From the State?

23 AST. SOL. KIDD: No, ma'am.

24 THE COURT: From the defense?

25 MR. PRICE: No, ma'am.

1 MR. PEPER: No, ma'am. Thank you, Judge.

2 THE COURT: You're welcome. Ma'am, you're excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You're welcome. Call your next witness.

5 AST. SOL. KIDD: The State calls Dominique Edwards.

6 (Brief pause.)

7 THE COURT: Sir, if you would come forward to be sworn.

8 Is Mr. Edwards represented by counsel?

9 AST. SOL. KIDD: Mr. McCoy.

10 THE COURT: Are you fine back there, Mr. McCoy, or do
11 you want to come sit up here with the bailiffs?

12 MR. MCCOY: Ma'am?

13 THE COURT: Do you want to come sit up here with the
14 bailiffs or are you fine right there?

15 MR. MCCOY: Fine right here, Judge. Thank you.

16 THE COURT: You're welcome. Yes, sir, please be sworn.

17 (DOMONIQUE EDWARDS, was duly sworn and provided the
18 following testimony.)

19 THE COURT: You may proceed.

20 AST. SOL. KIDD: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY AST. SOL. KIDD:

24 Q. Good afternoon, Mr. Edwards.

25 A. What's up.

1 Q. Can you tell the jury where you're from.

2 A. Charleston.

3 Q. Charleston. Any specific place? Downtown? West
4 Ashley? North Charleston? What?

5 A. Just Charleston.

6 Q. Just Charleston. Where do you live?

7 A. I stay in West Ashley right now.

8 Q. What about in 2015?

9 A. West Ashley.

10 Q. Did you go to West Ashley High School?

11 A. No. I've been to all schools.

12 Q. You've been to all schools?

13 A. Yeah. I got kicked out all Charleston schools,
14 district 20.

15 Q. Do you know Marvin Bryan?

16 A. Somewhat.

17 Q. Do not know Justin Wilson?

18 A. Yes.

19 Q. Do you know Keith Evans?

20 A. Yes.

21 Q. Do you know Daquan Gilliard?

22 A. Somewhat.

23 Q. All right. I guess, let's start one at time. How do
24 you know Keith Evans?

25 A. I used to date his sister at one point in time.

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 Q. You used to date Keith Evans' sister?

2 A. Yeah, at one point in time.

3 Q. What was her name?

4 A. Megan Edwards.

5 Q. When did you date her?

6 A. Around that time, 2015.

7 Q. In 2015?

8 A. Yeah.

9 Q. Would you consider yourself and Keith friends that
10 time?

11 A. Mutual.

12 Q. Mutual friends?

13 A. Yeah.

14 Q. Did you hang out with him often? Did you see him
15 often?

16 A. Mutual, all times. We went with somebody that I know
17 of.

18 Q. Would you see him every day? Once a week? Once a
19 month? How often would you run into him?

20 A. Every couple days or something like that.

21 Q. Every couple of days. So once or twice a week you'd
22 run into him?

23 A. Yeah, I would say so.

24 Q. Where would you see him?

25 A. Just about where I used to live at.

1 Q. Where ---

2 A. Ashleyville.

3 Q. Ashleyville?

4 A. Yeah.

5 Q. So you'd see Keith Evans around Ashleyville a couple of
6 times a week?

7 A. Yeah.

8 Q. Okay. What about Justin Wilson?

9 A. Yeah. He lived around there.

10 Q. In Ashleyville?

11 A. Yes, sir.

12 Q. How long had you known Justin?

13 A. A long time.

14 Q. A long time?

15 A. Yeah.

16 Q. Like?

17 A. Long.

18 Q. Most of our life?

19 A. Yeah.

20 Q. Ten years? 20 years?

21 A. A long time.

22 Q. A long time?

23 A. Yeah. Can't put a number on it.

24 Q. Okay. Did he go by the name of Bubby?

25 A. Yeah, I guess.

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 Q. I mean, you guess?

2 A. Yes. He do.

3 Q. Back in 2015, he lived in Ashleyville?

4 A. Yeah.

5 Q. How often would you see him?

6 A. Every other day.

7 Q. Every other day?

8 A. Yeah.

9 Q. What about Marvin Bryan?

10 A. I wouldn't see him that much. Me, Keith -- like I say,
11 he mutual, like, you know. I know people that know him.

12 Q. You know people that know him?

13 A. Yeah.

14 Q. How often would you see him?

15 A. Probably twice a month.

16 Q. Twice a month?

17 A. Yes, sir. Something like that.

18 Q. Where would you see him when you would see him?

19 A. Just where I live at. Like, through mutual people.

20 Like, he might have known somebody that I know. Something
21 like that.

22 Q. So he might pop in Ashleyville every now and then?

23 Something like that.

24 A. Might have. Might have.

25 Q. Might see him out in a club or something?

1 A. I don't go to clubs.

2 Q. Okay.

3 A. Might see him at a store or something.

4 Q. You see him, you say hello or ---

5 A. I don't -- we probably acknowledge knowledge each
6 other.

7 Q. You acknowledge each other?

8 A. Like, what's up, you know, what's up.

9 Q. Light conversation? Just kind of ---

10 A. Yeah.

11 Q. All right. What about Daquan Gilliard?

12 A. Same thing.

13 Q. How long had you known ---

14 A. Don't know. Not very long.

15 Q. Like, months? Years?

16 A. I can't tell that. I can't tell you.

17 Q. Okay. I'm just, you know, I'm just asking ---

18 A. That's cool. That's cool. I just can't tell you.

19 Q. All right. Where would you run into Daquan when you
20 would run into him?

21 A. Same as I know all the other guys. I be running in --

22 I know that -- some of the guys come to Ashleyville. I'll

23 see them. What's up. Just that.

24 Q. So they pop in Ashleyville from time to time you see
25 them?

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 A. Probably, yeah.

2 Q. Okay. All right. I want to talk about December -- I
3 mean -- excuse me -- November 21, 2015. Do you remember
4 that day?

5 A. Kind of, yeah.

6 Q. Do you remember Mr. Wilson having a rental car was a
7 gray Ford Edge?

8 A. Yes.

9 Q. And do you remember hanging out with Daquan that day?

10 A. No. I wouldn't call it hanging out.

11 Q. Well, what would you call it.

12 A. Like I say, he be with mutual people like I go see
13 somebody, and he's around that person. I'll go chill with
14 them for a little while. That's not hanging out. Like, I
15 came to chill with that person not him.

16 Q. Did Daquan go by DQ?

17 A. Yeah, I guess.

18 Q. He come by your house that day?

19 A. No, not that I can recall. Yeah, he probably was.
20 Probably was. I don't know.

21 Q. Do you recall -- or do you know a guy on Tripe Street
22 name Creep?

23 A. Yeah, he -- next to my homeboy. Some other dude.

24 Q. Another guy who lives on Tripe Street go by the name
25 Creep?

1 A. Yeah.

2 Q. All right. Do you recall in that silver Ford Edge as
3 parked at the house?

4 A. Yeah.

5 Q. Who all was at that silver Ford Edge on Tripe Street?

6 A. I couldn't tell you that because they just -- the car
7 was jus there. It's like a car in a neighborhood with a
8 bunch of guys. Everybody's by the car that day.

9 Q. So a lot of people were in that car that day?

10 A. A lot of people.

11 Q. Did you get in that car that day?

12 A. Yeah, probably did.

13 Q. Was Justin in that car that day?

14 A. Yeah.

15 Q. It's his car; right?

16 A. Yeah.

17 Q. Keith Evans in that car that day?

18 A. Man, I can't, like, put -- probably. Probably. It was
19 a lot of people in that -- it's a car in the neighborhood.

20 Q. Well, what time are we talking about here?

21 A. Early in the day. Like, daytime. The sun out. And
22 just the sun out, you know. I've been back and forth from
23 my house to that house all day. Sometime I see the car,
24 sometime I wouldn't see the damn car.

25 Q. And people hanging out in and around ---

1 A. Just hanging out. Just regular stuff.

2 Q. Now, did you ever leave West Ashley inside that car?

3 A. No, I didn't.

4 Q. Do you recall about what time it was the last time you
5 saw that car?

6 A. I can't tell you exactly. I can't tell you exact time.

7 Q. Well, not exactly. But sun out? Sun down?

8 A. Sun going down.

9 Q. Sun going down. So late in the afternoon was the last
10 time you saw that vehicle. Is that fair to say?

11 A. Yeah, you can say that.

12 Q. Well, I want you to say it. You know, I don't want to
13 -- you know, I don't want to put words in your mouth, man.

14 You got to tell ---

15 A. I ain't gonna tell you that because I can't exactly say
16 that if I don't . . .

17 Q. But I believe what you said was sun was going down;
18 right?

19 A. Sun was going down.

20 Q. Okay. So that would've been the last time you saw the
21 car?

22 A. Yeah.

23 Q. Okay. Do you know who was in the car the last time you
24 saw the car?

25 A. Didn't -- like I said, I was back and forth. But I

1 went to my house, came back, that car was gone. I didn't
2 know who all was in that car. I can't tell you all is in
3 the car for the simple fact that everybody came by that car.

4 Q. Okay. Now, I want to talk about the following day.

5 All right. Do you -- and this would be November 22, 2015.

6 All right. Do you recall Mr. Wilson coming by your house
7 that day?

8 A. I do.

9 Q. And was he alone or was anyone else with him?

10 A. Alone.

11 Q. Did anyone else get there while he was there?

12 A. What do you mean?

13 Q. All right. So did anyone else come by your house that
14 morning besides Justin Wilson?

15 A. Yeah. Yeah.

16 Q. Who else.

17 A. Keith.

18 Q. All right. So on November 22nd, what time was this
19 that he came by?

20 A. Morning.

21 Q. Morning. Okay. So in the morning of November 22nd,
22 Marvin Bryan -- I mean -- excuse me -- Justin Wilson and
23 Keith Evans come by your house?

24 A. Not at the same time.

25 Q. All right. How far apart?

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 A. Like, thirty minutes to an hour. I was sleeping. I
2 can't even -- I can't tell you.

3 Q. All right. So you're sleeping?

4 A. Yeah. That's when I realized that's regular. Like,
5 peoples to come knock on my window that normally we could go
6 outside. Just wake me up. I wake up. I open the door for
7 them. I don't even stay to watch them come through the
8 door. I go straight to the bed. I unlock the door and go
9 straight to the room.

10 Q. November 22nd, you're sleeping?

11 A. Sleeping.

12 Q. How do you know when Justin gets there? The first
13 person who gets there. How do you know ---

14 A. Knocks on my window.

15 Q. He knocks on your window?

16 A. Yeah.

17 Q. Then what do you do?

18 A. I go open the door.

19 Q. Front door? Back door?

20 A. Front door.

21 Q. Front door.

22 A. Yeah.

23 Q. Then what do you do?

24 A. Walk straight to my room. I didn't even watch him get
25 to the door. I walked straight to my bed.

1 Q. You're going back to your bedroom. He follows ---

2 A. Continue sleeping. Probably go eat, get something to
3 drink or something. Came in the back -- I don't know. He
4 came in the back too.

5 Q. Okay. And then I believe you just said about 30
6 minutes give or take?

7 A. Yeah.

8 Q. You get another knock at your window? Or how do you
9 know Keith gets there?

10 A. Because the knock at the door.

11 Q. Knock at the front door?

12 A. (Nonverbal response.)

13 Q. So there's a knock at the front door. Do you get out
14 of bed again?

15 A. No. I didn't get out of the bed.

16 Q. All right. How does Keith get in?

17 A. Bubby let him in. Well, Justin.

18 Q. Justin, right. So Justin lets him in the front door?

19 A. Yeah.

20 Q. They come back to your bedroom?

21 A. Yeah.

22 Q. Okay. So now we're at the morning of November 22nd.

23 You, Justin Wilson and Keith Evans are in your bedroom?

24 A. Yeah.

25 Q. Okay. What's going on?

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 A. Those two fusing.

2 Q. They're arguing?

3 A. Uh-huh.

4 Q. Okay. Does Justin say anything to you during that
5 argument?

6 A. No, because I was sleeping. I don't pay them no mind.
7 Only time I paid them any mind is when they get too loud.

8 Q. Do you recall meeting with me in the past; right?

9 A. Uh-huh.

10 Q. And we recorded that interview; right?

11 A. Yeah, we did.

12 Q. And I even played it back for you since then; right?

13 A. You did.

14 Q. Do you recall you indicating that Mr. Wilson saying I
15 was with you last night?

16 A. Yeah. But you skip a whole lot of stuff.

17 Q. Like what? Fill us in?

18 A. He came to the room. They fussing about a car window.
19 Like saying something about a car, a car window. So, you
20 know, I asked them what the hell they talking about. But
21 first of all it was loud and I was sleeping. So I want to
22 know what they was being loud about. Sorry for the cursing.
23 I wanted to know that they was being loud about. They like,
24 man (descriptive sound) whatever. So they was going to do a
25 report for the car. And he was saying, bro, I need you to

1 say I been with you. And we was talking about a report for
2 the car.

3 Q. And he said ---

4 A. Yeah.

5 Q. --- with you.

6 A. Because the baby mama got the car. And he, like, he
7 wanted to do a report, first I find out his baby mama rented
8 the car. So that's what that was.

9 Q. And how did you respond ---

10 A. I'm telling you now.

11 Q. Telling how now?

12 A. Yeah.

13 Q. Because what did it mean to you when he said I was with
14 you?

15 A. The report for the car.

16 Q. Well, that's not what you told me the last time we met,
17 is it?

18 A. What did I tell you?

19 Q. You said you interpreted it like he wanted an alibi.

20 A. For the car.

21 Q. Those were you exact words.

22 A. Yeah. We were talking about a report for the car. I
23 was with you. I said that's a alibi. Saying I was with you
24 is just a alibi. My and his acknowledgment was a car. I
25 ain't know nothing about that.

Direct Examination of Mr. Edwards by Ast. Sol. Kidd

1 Q. Don't know nothing about what?

2 A. What was going on. This right here. I don't know
3 nothing about that. My acknowledgment was about a car. He
4 say I was with you because they were talking about doing a
5 report for the car. So he I was with you, right. I'm like,
6 hell no.

7 Q. And Keith was there; right?

8 A. Yeah.

9 Q. And he said I was with you last night; right?

10 A. Justin, right?

11 Q. Yeah.

12 A. Yeah.

13 Q. And you said no?

14 A. I said hell no.

15 Q. Because you didn't want to be with Justin that night?

16 A. I don't be with them none of them that night. Whatever
17 they had going on, I don't want nothing to do with it. And
18 you talking about a whole car that just disappeared. I
19 don't want nothing to do with no car -- hell no.

20 AST. SOL. KIDD: Court's indulgence.

21 (Brief pause.)

22 Q. Do you remember when it was when we first met?

23 A. You mean what date?

24 Q. Yeah, approximately.

25 A. No, I don't.

1 Q. Maybe February 22nd of 2016?

2 A. Is that a date?

3 Q. Yep.

4 A. Okay.

5 Q. Does that sound about right?

6 A. Yeah.

7 Q. So roughly 90 days after it happened?

8 A. If that's the math, yeah.

9 Q. And you didn't ever tell me then it was an alibi for a
10 car report, did you?

11 A. Look, already, you and me is talking, right. It's just
12 common sense, like. I'm telling you, like, they never
13 discussed a murder or -- you know what I mean? They never
14 discussed this. They never Discussed that. So I'm telling
15 you he's asking, like to me, I was with you. I was with
16 you. That's all the car. That's all they ever talked about
17 was the car. So I just thought that was just acknowledgment
18 that you and me had. Like, they discuss around you -- be
19 with you. They were talking about the dadgon car.

20 AST. SOL. KIDD: No further questions, Judge.

21 THE COURT: Any cross-examination of the witness?

22 MR. PRICE: May it please the Court, Your Honor?

23 THE COURT: Yes, sir. You may proceed?

24 MR. PRICE: Thank you.

25 THE COURT: You're welcome.

1 CROSS-EXAMINATION

2 BY MR. PRICE:

3 Q. Good afternoon, Domoninque. My name is Bentley Price.

4 I represent Marvin Bryan. You doing okay?

5 A. I'm good.

6 Q. Sure there is other places you would rather be.

7 A. I sure -- yeah.

8 Q. Real quickly. Do you know what Marvin Bryan's nickname
9 is?

10 A. Man, he have all type of nicknames for everybody. No,
11 can't put no name on it.

12 Q. No problem. No problem. All right. Domonique, I'm
13 going to show you something and ask you if you recognize it.

14 MR. PRICE: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 Q. I'll show you this and ask you if you recognize this.

17 Take your time and look at it. No rush.

18 A. That's -- affidavit.

19 Q. That's right. What's it an affidavit of?

20 A. Somebody sworn word, right?

21 Q. I'm sorry?

22 A. An affidavit is somebody's sworn word, right?

23 Q. Well, let me jus show you this and ask you if you know
24 what it is. You know what this is; correct?

25 A. Yeah.

1 Q. What is that?

2 A. Like a warrant or something.

3 Q. That's right. Whose name is on there at the top?

4 A. Mine.

5 Q. That's your name?

6 A. Yeah.

7 Q. Tell me what is says right there's is the offense?

8 A. Murder.

9 Q. That's right. You were charged in this crime, weren't
10 you, Domonique?

11 A. I was.

12 Q. So you were originally charged with murder?

13 A. Uh-huh.

14 Q. And three counts of attempted murder. Is that correct?

15 A. Yes, sir.

16 Q. Do you know when you were served with these warrants?

17 A. I can't recall the date.

18 Q. That's okay. If I showed you the affidavit?

19 A. I believe you if you just say the date and I'll tell
20 yeah because that's the date on the affidavit.

21 Q. Well, I want you to verify it and make sure we're on
22 the same page. So it was sworn out on what date?

23 A. The 24th.

24 Q. Okay. So two day after this incident occurred;
25 correct?

Cross-Examination of Mr. Edwards by Mr. Price

1 A. Yes.

2 Q. And you were served on what day?

3 A. December 3rd.

4 Q. So a couple of weeks later?

5 A. Yeah.

6 Q. That's not your signature, though, is it?

7 A. No.

8 Q. But you were served with these. And you were arrested;
9 correct?

10 A. Yes.

11 Q. You went to jail; correct?

12 A. Yes.

13 Q. What was your bond amount?

14 A. I had no bond for murder and I a hundred thousand for
15 each attempted.

16 Q. That's right. You didn't get bonded out, did you?

17 A. No, I didn't.

18 Q. You sat in jail, didn't you?

19 A. Yes, I did.

20 Q. And you got an attorney, didn't you?

21 A. Yes, I did.

22 Q. You got a very good attorney, didn't you?

23 A. Yes.

24 Q. Mr. McCoy is an excellent attorney, isn't he?

25 A. He is.

1 Q. I'm sure you pay him very good money to and he did a
2 very good job for you; correct?

3 A. (Affirmative head nod.)

4 Q. What happened to those charges?

5 A. The murder got amended to accessory; and the three
6 attempted got dropped.

7 Q. When did that happen?

8 A. At my preliminary hearing.

9 Q. How long was your prelim after you were arrested? Do
10 you know? Just give me approximation.

11 A. A month.

12 Q. About a month?

13 A. Yeah.

14 Q. So you sat in there for a month.

15 A. Yeah.

16 Q. I don't want you to tell anything that your lawyer told
17 you, but why were your charges dropped?

18 A. Because I wasn't there.

19 Q. That's right. You weren't there, were you?

20 A. No.

21 Q. And so who said you were there?

22 A. Yeah.

23 Q. Well, let me back up. Did your attorney give your
24 discovery and you've reviewed that? You took a look at what
25 originally you were charged with; correct?

Cross-Examination of Mr. Edwards by Mr. Price

1 A. Yeah.

2 Q. And why were you charged? What did they say you did?

3 A. Discovery said ---

4 AST. SOL. KIDD: Objection. Hearsay.

5 THE COURT: Sustained. Hearsay. Move on, Mr. Price.

6 Q. Do you know why ---

7 THE COURT: Of his own personal knowledge.

8 Q. You personally know you weren't there?

9 A. Of course.

10 Q. And you personally know somebody put you there?

11 A. Had to.

12 Q. What other evidence did Mr. McCoy bring to you to show
13 that you were there at the scene? That the detectives
14 provided him. What other evidence did he bring to you?

15 A. Recently, the ---

16 AST. SOL. KIDD: Objection, Judge.

17 THE COURT: Sustained. Hearsay and privileged. Move
18 on.

19 Q. Ultimately, you were charged with murder?

20 A. Uh-huh.

21 Q. You went to your prelim?

22 A. Uh-huh.

23 Q. Charged were dismissed except for the murder that was
24 omitted. So at some point in time you were charged in this
25 crime; correct?

1 A. Yes, sir.

2 Q. Because they swore out a warrant with an affidavit that
3 you've seen, you have personal knowledge of, that someone
4 indicated that you ---

5 AST. SOL. KIDD: Objection, Judge.

6 THE COURT: Basis?

7 AST. SOL. KIDD: Speculation and foundation.

8 MR. PRICE: I can have him read the warrant.

9 THE COURT: Doesn't matter. It's all hearsay.
10 Somebody else prepared it. He did not prepare it. He does
11 not know his own rational knowledge of perception. Move On.

12 Q. You know you were charged with murder and you weren't
13 there; right?

14 A. Yeah.

15 Q. You know that; correct?

16 A. Yes.

17 Q. Okay. You met with your attorney concerning testifying
18 here today; correct? I don't know what you talked to him
19 about, I just want to know if you met with your attorney;
20 correct?

21 A. (Affirmative head nod.)

22 Q. And you meet with -- he took you to meet with the
23 prosecutor. Is that correct?

24 A. Yes.

25 Q. And you were subpoenaed to be here; correct?

Cross-Examination of Mr. Edwards by Mr. Price

1 A. Yes.

2 Q. You have to be here, don't you?

3 A. Yes.

4 Q. And you have to tell the truth, don't you?

5 A. Yes.

6 Q. You didn't have anything to do with this crime, did
7 you?

8 A. No.

9 Q. You didn't have one single thing to do with any of
10 this?

11 A. No.

12 Q. And yet you were charged with murder, three counts of
13 attempted murder, and then later found out that information
14 and dismissed it against you?

15 A. Yes.

16 Q. How does that make you feel?

17 A. (No response.)

18 Q. Well, how did it make you feel when you got charged
19 with murder?

20 AST. SOL. KIDD: Objection, Judge. Relevance.

21 THE COURT: Sustained. Relevance.

22 A. I ain't ---

23 THE COURT: Sir, you don't have to answer the question.
24 I have sustained the objection.

25 Q. But, again, you don't want to be here?

Cross-Examination of Mr. Edwards by Mr. Peper

1 A. I don't.

2 Q. You didn't have anything to do with this, did you?

3 A. I didn't.

4 MR. PRICE: Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 THE WITNESS: Excuse me, Judge?

7 THE COURT: Yes, sir.

8 THE WITNESS: Can I speak with my lawyer, please?

9 THE COURT: Yes, sir. Mr. McCoy, if you will come
10 forward.

11 MR. MCCOY: Thank you, Judge. May I approach?

12 THE COURT: You're welcome. Make sure that's off for
13 me. One of the bailiffs, I need you to turn that mic off
14 for me.

15 (Brief pause.)

16 THE COURT: Yes, sir. Mr. Price?

17 MR. PRICE: I don't have any further questions. Thank
18 you very much.

19 THE COURT: You're welcome. Any questions, Mr. Peper.

20 MR. PEPER: May it please the Court?

21 THE COURT: Yes, sir.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. PEPER:

25 Q. You all right?

Cross-Examination of Mr. Edwards by Mr. Peper

1 A. I'm good.

2 Q. Peper, I represent Justin Wilson.

3 A. What's up.

4 Q. When you say hell no, you mean hell no?

5 A. Hell no. You trying to put me in a car that got stolen
6 from you. You get ready to call the cops and you're asking
7 me if I was in the car with you?

8 AST. SOL. KIDD: Objection, Judge.

9 THE COURT: Sustained. Assuming facts not in evidence,
10 rephrase the question.

11 THE WITNESS: This mic ain't on.

12 THE COURT: They'll turn it back on for you, sir. Just
13 give us a second.

14 (Brief pause.)

15 THE COURT: Mr. Peper, you may rephrase the question.

16 MR. PEPER: Thank you, Judge.

17 THE COURT: You're welcome.

18 Q. So you sleeping?

19 A. I'm sleeping.

20 Q. You ain't left West Ashley all night?

21 A. No, I didn't.

22 Q. Knock on the window?

23 A. Yes.

24 Q. It's Justin?

25 A. Yes.

Cross-Examination of Mr. Edwards by Mr. Peper

1 Q. It ain't out of the ordinary?

2 A. No.

3 Q. People knock on you window all the time?

4 A. All the time.

5 Q. You hop up, unlock the door, back to sleep?

6 A. (Nonverbal response.)

7 Q. You ain't worried about it?

8 A. (Nonverbal response.)

9 Q. Right? It's like 5:30, 6:00 in the morning?

10 A. I can't give you an exact time.

11 Q. Okay. So you're sleeping which that's about what time
12 you normally sleeping; right?

13 A. Yeah. Morning. I just was this morning.

14 Q. Right. Right. Right. So you don't know where he
15 goes. He -- sandwich or he goes to sleep. You don't know
16 nothing ---

17 A. He's drunk. He's drunk. I don't want to have keep up
18 with them.

19 Q. I'm with you. I'm with you. Who all is at the house?
20 Granny there?

21 A. Yeah, my Granny.

22 Q. Right.

23 A. Mother.

24 Q. Right.

25 A. I think my sister was it. I don't want to say she was

Cross-Examination of Mr. Edwards by Mr. Peper

1 there, but I don't remember. But I know my Granny and my
2 mother was there.

3 Q. Okay. So there's three of y'all, now there's four of
4 y'all. And then sometime thereafter, you wake up again and
5 now there's five of y'all. Right?

6 A. Uh-huh.

7 Q. And Keith walks through the door?

8 A. I didn't see him walk in the front door.

9 Q. Oh, well Keith comes to the house.

10 A. He comes to the door.

11 Q. All right. But, obviously, they didn't come together?
12 Talking about Justin and Keith. They weren't together.

13 A. No.

14 Q. Right. Then you start hearing them argue.

15 A. Yeah.

16 Q. Right. And I think ---

17 A. That's when I kind of acknowledged that he was there.

18 Q. Right. Right. I'm with you. Because you're thinking
19 what's so loud around here; right?

20 A. Yeah. And get angry fast. No better to be fusing
21 around when I'm sleeping.

22 Q. So were they arguing about where the car was?

23 A. About the car. Because I'm sleeping. And I'm like,
24 man, what y'all got going on. He like man the car get take.
25 I need to do a report. And all this other stuff and all

Cross-Examination of Mr. Edwards by Mr. Peper

1 that. I guess they said they grown.

2 Q. Right.

3 A. Their own stuff. I just wanted to know what the hell
4 y'all so loud for.

5 Q. So you thought Justin was tripping; right?

6 A. Yeah. They both of them be tripping.

7 Q. Right. Keith or Justin was tripping?

8 A. Both of them.

9 Q. Worried about a car for, man. Worried about a car.

10 A. Like, first I thought he was just stupid and I thought
11 they were tripping.

12 Q. I'm with you. I'm with you. Yeah, I'm assuming you
13 never saw -- you don't know how they got there. You don't
14 know how Justin go there, and then sometime later, you don't
15 know how Keith go there either; right?

16 A. (Affirmative head nod.)

17 Q. All right. And I got to ask you again, man: Have you
18 ever in your life said, all right, you going to report
19 something stolen, I'm in?

20 A. Hell no.

21 Q. You ain't gonna try to do that; right?

22 A. No.

23 Q. What if somebody gonna call your name?

24 A. I can't.

25 AST. SOL. KIDD: Objection, Judge.

Cross-Examination of Mr. Edwards by Mr. Peper

1 THE COURT: Basis?

2 AST. SOL. KIDD: Speculation.

3 THE COURT: Sustained. Speculation unless you can
4 establish foundation for the question.

5 Q. Did Justin get arrested later that day?

6 A. I don't remember. I can't tell you. I don't remember.

7 Q. Right. Keith got arrested later that day.

8 A. I don't even remember exactly when they got arrested.

9 Q. Okay. All right. When did you find out that you had
10 warrants out for murder and three counts of attempted
11 murder?

12 A. I mean, I guess sometime after the 22nd of November and
13 before the December 3rd.

14 Q. Okay. So within a week, max, you realize you had
15 murder warrants out?

16 A. Yeah. Yeah.

17 Q. Right. Right. Right. Anybody from North Charleston
18 ever come talk to you about it?

19 A. Somebody from where?

20 Q. Anybody from North Charleston ever, you know, come ask
21 you where were you on November 21 ---

22 A. No, no, no. Nobody talk to me about that.

23 Q. What you mean?

24 A. Like, no, I had no one came to me, talk to me about it,
25 nothing. I just had warrants. I was like what the hell,

1 yeah.

2 Q. So they just took somebody's word?

3 AST. SOL. KIDD: Objection.

4 THE COURT: Basis?

5 AST. SOL. KIDD: Same basis. Speculation, foundation.

6 And we keep doing the same thing.

7 THE COURT: Well, I didn't ask for speaking objections
8 and no commentary. The objection is sustained. Foundation
9 and speculation.

10 Q. Now, I don't know what else to ask you. I mean, you
11 didn't leave your house that night; right?

12 A. I didn't leave out West Ashley -- like Ashleyville. I
13 mean, I left my house that day.

14 Q. Right.

15 A. I mean, that was like through the neighborhood like
16 that. But I never left out Ashleyville.

17 Q. Yeah. Somehow you wake up with warrants on you?

18 A. Yeah. You can say so.

19 Q. All right. Thank you, Domonique.

20 THE COURT: Any redirect?

21 AST. SOL. KIDD: Court's indulgence.

22 REDIRECT EXAMINATION

23 BY AST. SOL. KIDD:

24 Q. And just to boil it down to one thing. The way you
25 interpreter your conversation with Justin was that he wanted

Redirect Examination of Mr. Edwards by Ast. Sol. Kidd

1 you to say you were with him last night?

2 A. Yeah.

3 AST. SOL. KIDD: No further questions.

4 THE COURT: Any objection to the witness being excused?

5 Were you finished with your answer?

6 A. I mean, like, when me and him, when we had our
7 conversation, I let you know that those guys never discussed
8 that in front of me or whatever. Like, so when I say that
9 Justin say I was with you, we was talking about a car.
10 Like, my whole thing no one never acknowledged nothing
11 around me like that. So if he's asking to be with me, the
12 subject at hand, was the car. So that's what my head went
13 straight at. We was acknowledging each other about a car.
14 Like, when he asked me and I said hell no, like, he no I say
15 hell no about that car. He asked me -- I know he asked me
16 something about report for that car. Hell no. I mean, I
17 was just telling you the truth.

18 Q. Sure. And that's all I want for you to tell me the
19 truth.

20 A. Yeah.

21 Q. And you to tell this jury the truth.

22 A. Acknowledgment was about the car.

23 Q. All right.

24 A. It was never about nothing ---

25 Q. Not saying you ever knew anyone got shot that night.

1 A. Yeah.

2 Q. All I'm saying is that Justin Wilson said to you I was
3 with you; right?

4 A. Yeah, that's what I got, yeah.

5 Q. And you said no.

6 A. I said hell no. Yeah.

7 Q. And you told me the first time we met that you
8 interpreted that as he was looking for an alibi. For the
9 car or for whatever reason ---

10 A. Yeah. Yeah.

11 Q. --- he was looking to tell other people if anyone asks,
12 you were with him that night?

13 A. I mean, you could say that, I guess. Yeah.

14 Q. All right.

15 AST. SOL. KIDD: No further questions.

16 THE COURT: Any objection to the witness being excused?
17 From the State?

18 AST. SOL. KIDD: No, ma'am.

19 THE COURT: Mr. Price?

20 MR. PRICE: No, ma'am.

21 MR. PEPER: No, ma'am.

22 THE COURT: Sir, you're excused.

23 THE WITNESS: Thank you.

24 THE COURT: You're welcome, sir. Call your next
25 witness.

1 AST. SOL. KIDD: The State calls Keith Evans.

2 THE COURT: Mr. Cornely, are you fine where you are, or
3 do you want to come sit up here with the bailiffs?

4 MR. CORNELY: I'm fine.

5 THE COURT: Okay. (Brief pause.) We'll take advantage
6 of a restroom break then. Please don't discuss the case
7 while you're out. We appreciate your patience.

8 (The jury exits the courtroom at 3:27 p.m.)

9 (A brief recess was taken at 3:27 p.m. The proceedings
10 resumed at 3:55 p.m.)

11 THE COURT: State ready to proceed? Where's the
12 witness? (Brief pause.) Sir, if you would come over here
13 and stand by the witness stand so you can be sworn. State
14 ready to proceed?

15 AST. SOL. KIDD: We are, Your Honor.

16 THE COURT: Defense ready to proceed?

17 MR. PEPER: Yes, ma'am.

18 THE COURT: Please bring in the jury.

19 (The jury enters the courtroom at 3:56 p.m.)

20 THE COURT: Call your next witness.

21 AST. SOL. KIDD: State calls Keith Evans.

22 THE COURT: Please swear the witness.

23 (KEITH EVANS, was duly sworn and provided the following
24 testimony.)

25 THE COURT: You may proceed.

1 AST. SOL. KIDD: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY AST. SOL. KIDD:

4 Q. Good afternoon, Mr. Evans.

5 A. Good afternoon.

6 Q. Can you please tell the jury where you're from.

7 A. From West Ashley.

8 Q. How long have you lived in West Ashley?

9 A. All of my life, 23 years.

10 Q. You got family in Ashleyville?

11 A. Yes.

12 Q. You spend a lot of time in Ashleyville?

13 A. Yes.

14 Q. How old you?

15 A. Twenty-three.

16 Q. And based on your current attire, you're currently in
17 the Charleston County Detention Center?

18 A. Yes, sir.

19 Q. Do you know Justin Wilson?

20 A. Yes, sir.

21 Q. How long have you known Justin Wilson?

22 A. Since elementary school.

23 Q. Did you go to high school -- elementary school? You
24 went to elementary school with him?

25 A. Yeah.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. What elementary school was that?

2 A. Orange Grove Elementary.

3 Q. So you went Orange Grove Elementary School with Justin
4 Wilson? And have you know him ever since?

5 A. Yeah.

6 Q. You consider yourself pretty goo friends?

7 A. Yes, sir.

8 Q. Or maybe not still, but in November of 2015, y'all were
9 pretty good friends?

10 A. Yes, sir.

11 Q. How often would you see Justin?

12 A. Almost like every day.

13 Q. Almost every day?

14 A. Yeah.

15 Q. He have a nickname?

16 A. Bubby.

17 Q. Is it easy for you to be here testifying today?

18 A. No, sir.

19 Q. And before we go any further, I'm going to backtrack
20 just a second. You've met me a couple of times?

21 A. Yes, sir.

22 Q. Do you recall how many?

23 A. Thirty-three times.

24 Q. And we've entered in what we call proffer agreement.
25 Is that right?

1 A. Yes, sir.

2 Q. Can you try to explain, best you can, the nature of
3 hour proffer agreement to the jury. What it means to you?

4 A. Say that again.

5 Q. Can you try to explain to the jury what our proffer
6 agreement is? What does it means to you that you've entered
7 into an agreement with me? What I'm asking you to do?

8 A. Tell a story.

9 Q. Tell a story?

10 A. Tell the truth.

11 Q. Tell the truth. What are you getting in exchange for
12 telling the truth?

13 A. Nothing.

14 Q. Do you hope to get something?

15 A. Yes.

16 Q. Do you recall -- and you have an attorney?

17 A. Yes, sir.

18 Q. And he is, I think, in the courtroom, Mr. Cornely. And
19 he brought you to see me. Do you remember how long after
20 you were first arrested?

21 A. Maybe like, 18, 20 days.

22 Q. Pretty quickly?

23 A. Yes, sir.

24 Q. Before any of the testing came back from any of the
25 forensic, things like that. Is that right?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Yes, sir.

2 Q. And that was a recorded conversation that we had that
3 day?

4 A. Yes, sir.

5 Q. And we've met, I believe, if my memory serves me
6 correctly, I think twice since then?

7 A. Yes, sir.

8 Q. And both times I believe it was myself, you, your
9 attorney, and my investigator, maybe another attorney from
10 my office?

11 A. Yes, sir.

12 Q. All right. And in order to violate our agreement --
13 how would you violate our agreement?

14 A. Lying.

15 Q. By lying. That's the only thing you can do to break
16 our agreement. Is that right?

17 A. Yes, sir.

18 Q. How do you know knew Marvin Bryan?

19 A. Met him in Ashleyville like four years ago.

20 Q. Four years ago from today or four years ago from 2015?

21 A. Three years like from 2015 -- from 2015.

22 Q. Three years from 2015. So -- and we're playing in
23 approximations here. Roughly 2012 I guess that would be?

24 A. Yes, sir.

25 Q. So you had known about three years before the shooting

1 on November 22nd?

2 A. Yes, sir.

3 Q. Does he have a nickname?

4 A. Tater.

5 Q. So is that what people him?

6 A. Yes, sir.

7 Q. Okay. Are you familiar with the name Rich Porter?

8 A. Yes, sir.

9 Q. What's that?

10 A. It's a guy off a movie.

11 Q. A guy off a movie. That's correct. What's the
12 significance of that?

13 A. He had money.

14 Q. Uh?

15 A. He had money. Real money.

16 Q. Okay. How is the name Rich Porter related to the name
17 Tater?

18 A. Just started calling him that because that's what he
19 favor to me.

20 Q. I'm sorry? I just didn't understand you.

21 A. That's who he favored to me.

22 Q. That's who he favored to you?

23 A. (Affirmative head nod.)

24 Q. Did he ever refer to himself in anyway as Rich Porter?

25 A. No, sir.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. What about on Facebook?

2 A. No, sir.

3 Q. So that's just what you called him?

4 A. Yes, sir.

5 Q. What about Daquan Gilliard?

6 A. I knew him from playing summer league basketball.

7 Q. And how long have you known him at the time in
8 November of 2015?

9 A. A few years. Maybe, like, six, seven years.

10 Q. Six, seven years. So pretty good time. And you're 22
11 now. Is that what you said?

12 A. Twenty-three.

13 Q. Twenty-three now. So in 2015 you were 21, 22 at the
14 time. How old were you in November of 2015?

15 A. Twenty-two.

16 Q. Twenty-two. So you've known him for six years. So
17 you've known him since you were roughly 16?

18 A. Yes, sir.

19 Q. And does he have a nickname?

20 A. DQ.

21 Q. How often would you see Daquan, DQ?

22 A. Not often.

23 Q. Where would you see him when you would see him?

24 A. In Ashleyville.

25 Q. How often would you see Tater?

1 A. Almost like ever day.

2 Q. Almost every day?

3 A. (Affirmative head nod.)

4 Q. Where would you see him?

5 A. His house or Ashleyville.

6 Q. Where does he live?

7 A. Maryville.

8 Q. Maryville is the neighborhood ---

9 MR. PEPER: Objection. Leading.

10 THE COURT: Give a little -- yeah, rephrase.

11 Q. Where is Maryville located in reference to Ashleyville?

12 A. Right across the street.

13 Q. Do you remember what street he lives on in Maryville?

14 A. I think Diana.

15 Q. And you said -- did you live in Ashleyville or just
16 have family in Ashleyville?

17 A. I have family there.

18 Q. Where's your family at in Ashleyville live?

19 A. On Tripe Street.

20 Q. Tripe?

21 A. (Nonverbal response.)

22 Q. Where did Bubby live? Justin?

23 A. On Mamie Street in Ashleyville.

24 Q. Say that one more time.

25 A. On Mamie Street in Ashleyville.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Mamie? Mamie? How do you spell it. Do you know?

2 A. M-a-m-i-e, I think.

3 Q. M-a-m-i-e.

4 A. Uh-huh.

5 Q. And do you know Domonique Edwards?

6 A. Yes, sir.

7 Q. And does he have a nickname?

8 A. D-Nice.

9 Q. D-Nice. How long have you known Dominique?

10 A. Two years, probably from 2015.

11 Q. And how did you know him?

12 A. He's real close with my cousin that live in

13 Ashleyville.

14 Q. So he's close with your cousin in Ashleyville. Who is
15 that?

16 A. John Murray.

17 Q. John Murray. Do you have a sister?

18 A. Yes, sir.

19 Q. What's your sister's name?

20 A. Megan Evans.

21 Q. Megan Edwards?

22 A. Megan Evans.

23 Q. Evans. Excuse me. She ever have a relationship with

24 D-Nice or Dominique?

25 A. Yes, sir.

1 Q. So how would you characterize -- and I guess the five
2 of y'all prior to November 22, 2015? Were y'all pretty good
3 friends?

4 A. Yes, sir.

5 Q. Some more better than others or how is that dynamic?

6 A. Some better than others.

7 Q. Of those folks, who are you closest with?

8 A. Tater.

9 Q. You were closes with Tater?

10 A. Yeah.

11 Q. All right. So I want to start now and talk about the
12 events of November 22nd. All right? Or really
13 November 21st and November 22nd. Okay? Do you recall the
14 events that took place that day?

15 A. Yes, sir.

16 Q. When did you first see Justin and Marvin and Daquan and
17 Domonique that day? On the 21st.

18 A. Met them at aunt's house.

19 Q. At our aunt's house. And that's on Tripe?

20 A. Yes, sir.

21 Q. Who was there?

22 A. Me; me, Tater and Bubby at first.

23 Q. So at first you, Tater, and Bubby?

24 A. Uh-huh.

25 Q. What are y'all doing?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Chilling, smoking and drinking.

2 Q. Hanging out?

3 A. Hanging out, yeah.

4 Q. Smoking marijuana?

5 A. Yeah.

6 Q. Drinking what?

7 A. Ciroc.

8 Q. Ciroc. Inside of your aunts house? Outside? Where?

9 A. Outside.

10 Q. Outside. Front yard? Backyard? Car? What?

11 A. In the backyard and the car.

12 Q. Backyard and the car. Whose car?

13 A. Bubby's rental.

14 Q. Bubby's rental. What time of the day are we talking?

15 A. Like five, six o'clock.

16 Q. Five, six o'clock in the afternoon?

17 A. Yes, sir.

18 Q. All right. So five, six o'clock in the afternoon,

19 silver Ford Edge at your aunt's house on Tripe Street. You,

20 Tater, and Bubby, hanging out, drinking, smoking, doing

21 whatever; having a good time?

22 A. Yes, sir.

23 Q. What do y'all do next? In your own words, tell the

24 jury kind of what happens next and throughout that day.

25 A. We just chilling, hanging out. Waiting on -- D-Nice

1 and DQ walked up and we joined them.

2 Q. All right. So is this right at the same time? Is this
3 much later? Where are we at on a time frame?

4 A. Much later.

5 Q. Much later?

6 A. Yeah. Nightfall.

7 Q. Nightfall. What does that mean? Eight? Nine? Ten?
8 Eleven? Where?

9 A. Eight or nine o'clock.

10 Q. Eight, nine o'clock. So eight, nine o'clock, DQ being
11 Daquan Gilliard and D-Nice being Domonique Edwards come by.
12 Come by your aunt's house?

13 A. Yes, sir.

14 Q. And where are y'all at?

15 A. Still in the backyard.

16 Q. Still in the backyard. Still in the car?

17 A. Yes, sir.

18 Q. And what's going on?

19 A. Same thing. Just chilling, hanging out, smoking weed,
20 drinking.

21 Q. All right. And what do y'all do next? Do y'all go
22 anywhere? I mean, have y'all gone anywhere from the time we
23 first caught up with you at five o'clock in the afternoon
24 til?

25 A. McDonald's.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Go to McDonald's.

2 A. (Nonverbal response.)

3 Q. Okay. And so if we're looking at the -- (Brief
4 pause) -- State's Exhibit 39, we're looking at those
5 McDonald's cups. Is that the trip you're referring to?

6 A. Yes, sir.

7 Q. So that would've been -- and I don't need you to give
8 me an exact minute -- but about what time did y'all go to
9 McDonald's that night?

10 A. Like 7:30.

11 Q. 7:30 p.m.? Who all went?

12 A. DT and Bubby.

13 Q. So that was before DQ and D-Nice got there?

14 A. Yes, sir.

15 Q. Okay. Did y'all just get a drink? Did you eat? What?

16 A. Got drinks and eat.

17 Q. Remember what you ate?

18 A. Ten piece nugget wing.

19 Q. And after McDonald's, where did y'all go?

20 A. Back to my aunt's house.

21 Q. Do you know a guy named Creep?

22 A. Yeah. He lives next door to my aunt.

23 Q. So are y'all in your aunt's yard or in Creep's yard or
24 somewhere in between?

25 A. Somewhere in between.

1 Q. All right. So we are -- after McDonald's, back behind
2 I guess you aunt's or Creep's house or somewhere in between,
3 DQ and D-Nice come up. Where is everyone in the car at this
4 point?

5 A. I'm in the driver's seat. Justin is in the passenger's
6 seat. Tater is in the back seat.

7 Q. So at this point, we would switch and say Justin is in
8 the front passenger seat at this point?

9 A. Yes, sir.

10 Q. Is Tater where he is in this diagram on the other side?
11 Or do you know?

12 A. Is where he's at.

13 Q. He's where he's at right there. And D-Nice and DQ come
14 up. Do they get in the car?

15 A. Yes, sir.

16 Q. Where do they get in the car?

17 A. DQ gets in the back and D-Nice jumps behind the
18 driver's seat.

19 Q. All right. So if we look at this diagram the D-Nice
20 gets right here?

21 A. Yes, sir.

22 Q. And DQ is in sort of the hatch area of the vehicle?

23 A. Yes, sir.

24 Q. All right. How long were you like that?

25 A. Like, ten, 15 minutes.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. All right. And what happens?

2 A. D-Nice leaves.

3 Q. D-Nice leaves. Do you know where he's going?

4 A. I want to say back home.

5 Q. But you don't know for sure of that. You just know he
6 left?

7 A. (Affirmative head nod.)

8 Q. All right. What happens?

9 A. DQ gets behind the driver's seat.

10 Q. All right. So when -- so D-Nice who was sitting right
11 here leaves. DQ gets out of the hatch and gets where he was
12 sitting behind you as the driver of the vehicle?

13 A. Yes, sir.

14 Q. All right. Then what?

15 A. DQ was asking for a ride home.

16 Q. He wanted to go home? He wanted you to drive him home?

17 A. Yeah.

18 Q. And what else is going on?

19 A. Bubby got a phone call.

20 Q. All right. Bubby gets a phone call. Do you know --
21 once again, I can't hold you to a specific time. I realize
22 that. But do you know approximately what time it was when
23 Bubby gets this phone call?

24 A. Like eleven, twelve.

25 Q. Eleven, twelve o'clock at night?

1 A. (Affirmative head nod.)

2 Q. All right. So we just went through a pretty big jump
3 in time right there. I believe -- I believe you just
4 testified a moment ago that you left McDonald's at what?
5 About 7:30. Something like that?

6 A. Uh-huh.

7 Q. And so, I guess, DQ and D-Nice come up there. Were
8 just hanging out for a few hours? Don't go anywhere?

9 A. No, sir.

10 Q. All right. All right. So we're at roughly 11:00 p.m.
11 now; eleven, twelve you say?

12 A. Yes, sir.

13 Q. Okay. And Justin gets a phone call. Tell me about
14 that phone call.

15 A. I heard his voice when he hung up. He say -- Stewy say
16 that the person that shot him was at the club, Pete and
17 Rita's.

18 Q. All right. So he says -- Justin says that he just
19 heard from Stewy who told him that the person who shot
20 Justin is at Pete and Rita's?

21 A. Yes, sir.

22 Q. All right. Now, are you familiar with when Justin was
23 shot?

24 A. Yes, sir.

25 Q. Were you there that night?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. No, sir.

2 Q. Were you with him immediately prior?

3 A. Yes, sir.

4 Q. I'm going to show you what's been marked for
5 identification as State's Exhibit 145. Do you recognize
6 that?

7 A. Yes, sir.

8 Q. Okay.

9 AST. SOL. KIDD: Your Honor, may we approach?

10 THE COURT: Uh-huh.

11 (A bench conference was held off the record and out of
12 the hearing of the jury panel.)

13 THE COURT: Marked and admitted. Are you withdrawing
14 the objection or are you ---

15 MR. PEPER: I am. I'm withdrawing the objection. Yes,
16 ma'am.

17 THE COURT: The objection is withdrawn. Without
18 objection.

19 (State's Exhibit No. 145, Photograph, was received
20 into evidence.)

21 Q. I'm not going to put it on the screen above. I'm going
22 to show you what's been marked and admitted into evidence as
23 States's Exhibit 145. And can tell the jury what we're
24 looking at here.

25 A. FaceTime.

1 Q. FaceTime. So this is FaceTime conversation between
2 who?

3 A. Me and Bubby.

4 Q. You and Bubby. Do you recall when this was?

5 A. I want to say the day after we got out.

6 Q. Day you got out of what?

7 A. The hospital.

8 Q. The hospital. Do you remember what month that was?

9 A. No.

10 Q. How about do you know approximately how -- and I don't
11 need to be exact -- approximately how much longer before the
12 November 22nd shooting this was?

13 A. A few months.

14 Q. A few months. So A few months prior on the day that
15 Mr. Wilson was released from the hospital. Why were you
16 FaceTiming?

17 A. I guess he was letting me know he was out of the
18 hospital.

19 Q. Just kind of touching base?

20 A. Yes, sir.

21 Q. What friends do?

22 A. (Affirmative head nod.)

23 Q. Okay. So get a phone call. I believe your testimony
24 just a moment ago, Justin tell you that Stewy just called
25 him and the person that shot him is at a club, Pete and

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Rita's?

2 A. Yes, sir.

3 Q. All right. What do y'all do at that point?

4 A. Go down to his cousin's house in North Charleston.

5 Q. You go to whose cousin's house?

6 A. Bubby's cousin's house.

7 Q. Bubby's cousin's house. So you go to Justin Wilson's
8 cousin's house in North Charleston. Do you know what street
9 we're on?

10 A. No, sir.

11 Q. Did you recall the first time we met in my office?

12 A. Yes, sir.

13 Q. Do you remember my investigator at that time was kind
14 of a short lady, Sherry Niplock (ph).

15 A. Yes, sir.

16 Q. You remember driving with her afterwards and going to
17 see that residence?

18 A. Yes, sir.

19 Q. But you just don't remember the name of the street
20 y'all were on?

21 A. No, sir.

22 Q. Okay. So you go to -- do you know Bubby or Justin's
23 cousin's name of the house you went to?

24 A. DB.

25 Q. DB. You know his real name?

1 A. No, sir.

2 Q. Do you know of an individual by the name of Zaquan
3 Jones?

4 A. No, sir.

5 Q. And I believe you might have said this, but you don't
6 know DB's real name?

7 A. No, sir.

8 Q. Just know him as DB and that's it?

9 A. Yes, sir.

10 MR. PRICE: Your Honor, I'm having a hard time hearing
11 him.

12 THE COURT: Yes, sir. Could you -- well, he can't move
13 it. But could y'all move that closer to him for me, please.
14 Thank you.

15 Q. And I know it's tough, this part of the testimony.
16 Just do your best to speak up for us. Okay. the court
17 reporter has got to take it down. Everyone here has got to
18 hear you including the people in the back. All right.

19 A. All right.

20 Q. Thank you. So we get the phone call. We go to the
21 house in North Charleston, DB's house?

22 A. Yes, sir.

23 Q. Tell the jury what is happening at DB's house. Y'all
24 go inside? What do y'all do?

25 A. Me, Tater, and DQ stay inside the car and Justin goes

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 inside the house.

2 Q. Okay. You, Tater and DQ stay inside the car. Where
3 are y'all sitting -- seated inside the vehicle?

4 A. I'm the driver. Justin was in the passenger seat.
5 Tater was where he was at. And DQ was right behind the
6 driver seat.

7 Q. DQ was where Justin was. Justin was in the front
8 passenger seat. Justin gets out, goes inside. Then what?

9 A. He comes back out with an assault rifle, and him and DQ
10 switch spots.

11 Q. All right. And State's Exhibit 93; you recognize that?

12 A. Yes, sir.

13 Q. And what is that?

14 A. Assault rifle.

15 Q. Is that the one Justin came out with?

16 A. Yes, sir.

17 Q. So I believe you just testified that when he comes out
18 with the assault rifle, Justin and DQ switch seats?

19 A. Yes, sir.

20 Q. Is that right? Is there anything said about why? Why
21 does that happen?

22 A. He just asked to switch spots.

23 Q. Justin did?

24 A. Yes, sir.

25 Q. Okay. So now we're in the car consistent with the way

1 this diagram lays it out?

2 A. Yes, sir.

3 Q. Okay. From now in the parking lot or in the driveway
4 or in front of that house, DB's hours in North Charleston,
5 to the time that the car crashes in Park Circle, has anyone
6 changed seats?

7 A. No, sir.

8 Q. Where do you go -- or why you're there, anymore phone
9 calls? What's going on inside the car?

10 A. He asked to use my phone.

11 Q. Who's he?

12 A. Bubby.

13 Q. So Justin asked to use your phone?

14 A. Yes, sir.

15 Q. Did he say why or jus say let me use your phone?

16 A. He just said let me use your phone.

17 Q. Did you ask him why or just give it to him?

18 A. I just gave it to him.

19 Q. And series of phone calls. Did you hear anything
20 what's said? What's going on?

21 A. He was just making phone calls. I didn't hear
22 anything.

23 Q. Okay. So he was making calls on your phone, but you
24 didn't know who he was calling or why or what the context
25 was?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. No, sir.

2 Q. Okay. Where do y'all go from there?

3 A. Pete and Rita's.

4 Q. Pete and Rita's. Do you know where Pete and Rita's is?

5 A. Right around the corner from the house we been at.

6 Q. So in North Charleston?

7 A. Yes, sir.

8 Q. What do you do at Pete and Rita's?

9 A. Circle around the parking lot.

10 Q. What are you looking for?

11 A. The person who shot Bobby.

12 Q. Do you have any description at that point?

13 A. A black Buick.

14 Q. A black Buick?

15 A. A black car.

16 Q. Did you know the guy's name they were looking for?

17 A. No, sir.

18 Q. Anybody get out of the Ford Edge?

19 A. No, sir.

20 Q. Anybody come up to the vehicle?

21 A. No, sir.

22 Q. Where do y'all go from there?

23 A. El Cheapo.

24 Q. Did you ever see Stewy that night?

25 A. No, sir.

1 Q. What happens at the El Cheapo?

2 A. We circle around a couple of times.

3 Q. I'm going to show you what's been marked and admitted
4 as State's Exhibit 65.

5 (Video played at 4:30 p.m.)

6 Q. Do you recognize that vehicle there? Do you see my
7 little arrow?

8 A. Yes, sir.

9 Q. Do you recognize that vehicle there?

10 A. Yes, sir.

11 Q. Who is that?

12 A. Us in the Ford Edge.

13 Q. All right. So when you entered -- when you entered the
14 El Cheapo lot the first time there, did y'all stay? What
15 did you do?

16 A. Drove out to the back.

17 Q. Drove out to the back. Where did you go?

18 A. Back out to the highway.

19 Q. Back out to the highway. Is that y'all exiting there?

20 A. Yes, sir.

21 (Video resume play.)

22 Q. All right. It's a little obscure by that jeep there.
23 Do you see that vehicle right there?

24 A. Yeah.

25 Q. Is that y'all as well?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Yes, sir.

2 Q. Do you know where you're going at this point?

3 A. Turn around, go to the hotel.

4 Q. Have you seen the red Charger at this point?

5 A. Yes, sir.

6 Q. Where did y'all see the red charger?

7 A. At the gas station.

8 Q. Who notices it first?

9 A. Bubby.

10 Q. What did he say?

11 A. That's that boy right there.

12 Q. Do you know what he's referring to?

13 A. Creep.

14 Q. Do you know why he's referring to Creep that way?

15 A. Had problems with him in the past.

16 Q. Do you know what kind of problems?

17 A. Shootings, fights.

18 Q. And how do you know that?

19 A. People in Ashleyville.

20 Q. Just from people in Ashleyville talking about it?

21 A. Yes, sir.

22 Q. You know it from Justin telling you about it?

23 A. No, sir.

24 Q. Just other people in Ashleyville?

25 A. Yes, sir.

1 Q. Who else talks about it? Marvin Bryan before?

2 A. No, sir.

3 Q. Are you familiar with Runway?

4 A. Yes, sir.

5 Q. What's that?

6 A. That's a neighborhood in North Charleston.

7 Q. It's a neighborhood in North Charleston?

8 A. Yes.

9 Q. Is there kind of a group of people that kind of
10 associate under that?

11 A. Yes, sir.

12 Q. Is creep one of those people?

13 A. Yes, sir.

14 (Video resumes play.)

15 Q. Now did you see that -- this car right here?

16 A. Yes, sir.

17 Q. Do you recognize that vehicle?

18 A. Yes. That's us.

19 Q. All right. Where are you pulling into right there?

20 A. The hotel.

21 Q. And that car that's backing up right there, is that
22 still y'all?

23 A. Yes, sir.

24 Q. All right. What are y'all doing?

25 A. Watching the red car.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Watching it for what?

2 A. To see what he was about to do.

3 Q. Did you know what you're going to do at that point when
4 the red car left the gas station?

5 A. No, sir.

6 Q. Do y'all pull out there?

7 A. Yes, sir.

8 Q. Is that y'all there?

9 A. Yes, sir.

10 Q. Has the charger already passed you?

11 A. Yes, sir.

12 Q. Right there?

13 A. Yes, sir.

14 Q. And that turn you're making right there, do you know
15 what road you're turning onto?

16 A. Montague.

17 Q. I think you're mistaken. The road from El Cheapo right
18 there. That's Dorchester Road right there; right?

19 A. Yeah.

20 Q. And what are you getting onto?

21 A. The highway.

22 Q. Yeah. Interstate; right?

23 A. Uh-huh.

24 Q. Okay. So where's the red car in relation to y'all's
25 car as you get onto the interstate?

1 A. Like two cars behind -- two cars in front of us.

2 Q. Now, why did you follow them?

3 A. He said follow that red car.

4 Q. Who said follow that red car?

5 A. Bubby.

6 Q. Did you ask any questions or just do it?

7 A. Just did it.

8 Q. And what happens next?

9 A. Get off on the Montague exit.

10 Q. First, I'm going to showing you what's been entered
11 into evidence as State's 68. Is that the route you took to
12 East Montague?

13 A. Yes, sir.

14 Q. Tell the jury what happens when you exit the interstate
15 on East Montague. And that's what we're looking at here;
16 right? The exit from I-26?

17 A. Yes, sir.

18 Q. So you would've exited this way; right?

19 A. Yes, sir.

20 Q. Tell the jury what happens when you get off the
21 interstate.

22 A. Came to a red light.

23 Q. Do you know where the red light was?

24 A. City Hall.

25 Q. Is it at Mall Drive?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Mall Drive, yeah.

2 Q. And what happens?

3 A. They open fired.

4 Q. Is anything said first? Do you -- does anyone tell you
5 to pull up next to them or -- I don't know. I wasn't in the
6 car neither was anyone in the jury. So tell them what
7 happens.

8 A. Pull up on the side of them.

9 Q. Do you just do that on your own?

10 A. No, he told me to.

11 Q. Who told you to?

12 A. Bubby.

13 Q. You pull up beside them. Is the window up or down?
14 When did they get rolled down or what?

15 A. Rolled down --

16 Q. Okay. Does Tater say anything at this point?

17 A. No, sir.

18 Q. And is the red car stopped? Are they moving? What's
19 going on?

20 A. Stopped at the red light.

21 Q. Stopped at the red light on Mall Drive?

22 A. Yes, sir.

23 Q. Any other cars out on the road?

24 A. No, sir.

25 Q. And what happens?

1 A. He open fired.

2 Q. Who?

3 A. Bubby.

4 Q. With what?

5 A. With a assault rifle.

6 Q. What's the red car doing when y'all start shooting at
7 it?

8 A. Jump on the other side of traffic.

9 Q. Goes into oncoming traffic?

10 A. Yes, sir.

11 Q. Are there any cars coming?

12 A. No, sir.

13 Q. Is there a median there?

14 A. Yes, sir.

15 Q. Did they go over the median?

16 A. Yes, sir.

17 Q. Do you know about how many shots Justin gets off at
18 that point?

19 A. Like six or seven.

20 Q. And what's -- the red car jumps the median. They're in
21 oncoming traffic. What are you doing?

22 A. Driving straight.

23 Q. Driving straight. Fast? Slow? What you going?

24 A. Fast.

25 Q. So you step on it?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Yes, sir.

2 Q. Are you trying to get away or are you trying to catch
3 them? What are you trying to do?

4 A. Trying to get away.

5 Q. And what's the red car doing?

6 A. Got behind us.

7 Q. So you get in front of the red car at this point?

8 A. Yes, sir.

9 Q. So you're ahead of the Charger. The Charger is behind
10 you?

11 A. Yes, sir.

12 Q. Any shots being fired at this point?

13 A. Yes, sir.

14 Q. From where?

15 A. Our car.

16 Q. From your car. Are we still using the assault rifle at
17 this point?

18 A. No, sir.

19 Q. All right. Tell the jury how that happens.

20 A. The assault rifle jammed and he said pass me the other
21 pistol.

22 Q. So there's another pistol in the car?

23 A. Yes, sir.

24 Q. Whose pistol is that?

25 A. Tater's.

1 Q. So what does Tater do?

2 A. Hand it to him.

3 Q. Hands the pistol to Bubby?

4 A. Yes, sir.

5 Q. And still shooting?

6 A. Yes, sir.

7 Q. Where on East Montague are we at this point? And I
8 don't need exacts, but so we've had a number of things
9 happen. We've had original shots. According to what you're
10 saying, start being fired right here at the Mall Drive;
11 right?

12 A. Yes, sir.

13 Q. And then they hop the median, you step on it. You get
14 in front of them. They're behind you?

15 A. Yes, sir.

16 Q. Tater gives Bubby the pistol. He's still shooting.
17 Where are we at as far as proximity to Park Circle at this
18 point?

19 A. A few feet away.

20 Q. So you're getting close to Park Circle now?

21 A. Yes, sir.

22 Q. Kind of in this area?

23 A. Yes, sir.

24 Q. Okay. What happens?

25 A. I was going too fast and I didn't know that the turn

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 was coming. And we drove into the baseball field.

2 Q. You still in front of the Charger?

3 A. Yes, sir.

4 Q. At this point. So y'all crash first, the Charger
5 crashes behind you?

6 A. Yes, sir.

7 Q. Show you State's Exhibit 67. Do you recognize that?

8 A. Yes, sir.

9 Q. Roughly, where do you crash into Park Circle?

10 A. Deep, right by the baseball field.

11 Q. I guess you can't do it with your finger. So you're
12 kind of saying in this general area?

13 A. Yes, sir.

14 Q. Did you see the Dodge Charger at that point?

15 A. No, sir.

16 Q. What did you do when the vehicle crashed?

17 A. Jumped out and ran.

18 Q. Which direction did you run?

19 A. Towards Durant.

20 Q. Towards Durant. So Durant goes across both sides of
21 Park Circle; right?

22 A. Yes, sir.

23 AST. SOL. KIDD: Court's indulgence.

24 THE COURT: Would counsel approach for me.

25 (A bench conference was held off the record and out of

1 the hearing of the jury panel.)

2 THE COURT: Madam Forelady, ladies and gentlemen, we're
3 going to go a little beyond five to try to get as much of
4 this witness in as possible. Is that going to cause anyone
5 any scheduling problems? We're going to take a brief
6 restroom and also give you the opportunity to make any phone
7 calls if you need to. I anticipate that we'll go about
8 5:30, 5:35. If you will leave your notepads in your seats
9 and please don't discuss the case.

10 (The jury exits the courtroom at 4:50 p.m..)

11 THE COURT: You may take your seats. As soon as the
12 jury finish making their phones calls, we'll resume, which I
13 think probably about five minutes at the most.

14 (A brief recess was taken from 4:51 p.m. until 5:07
15 p.m.)

16 (The jury enters the courtroom at 5:08 p.m.)

17 THE COURT: Ladies and gentlemen, please give counsel
18 your attention. You may resume questioning.

19 AST. SOL. KIDD: Thank you, Judge.

20 THE COURT: You're welcome.

21 BY AST SOL KIDD: (continuing)

22 Q. All right. Mr. Evans, I think where we left off was
23 after the car crashed, talking about what happened. All
24 right. So what happened when the car crashed?

25 A. Everybody jumped out and ran.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Any gunshots at that point?

2 A. Yes.

3 Q. Did you see who shooting? What do you see?

4 A. I see Bubby still shooting.

5 Q. And in which direction are you running?

6 A. Towards Durant.

7 Q. Towards Durant. All right. As I mentioned earlier,
8 Durant cuts across Park Circle like that. And I believe you
9 testified a moment ago that car crashed about there. Do you
10 know which direction you ran?

11 A. Up. Upward.

12 Q. This way toward Durant?

13 A. Yes, sir.

14 Q. Who are you running with?

15 A. Me, Tater and DQ.

16 Q. Are you all together right away?

17 A. No. Me and DQ was together --

18 THE COURT: I'm sorry. Please repeat your answer. The
19 last part, I didn't hear what you said.

20 THE WITNESS: Me and DQ was together then we met up
21 with Tater.

22 Q. Okay. So car crashes. You get out. You run with DQ,
23 Daquan, up towards Durant. This direction?

24 A. Yes, sir.

25 Q. Is that right?

1 A. Yes, sir.

2 Q. Are there fences or anything in your way?

3 A. Yes. The baseball fences.

4 Q. And how do you get through those?

5 A. Jump them.

6 Q. And where do you first meet up -- or when do you next
7 seer Tater?

8 A. Close to -- headed up Durant.

9 Q. Ahead of Durant meaning where? The intersection of the
10 circle?

11 A. Yes, sir.

12 Q. So right about here?

13 A. Yes, sir.

14 Q. How do you first -- do you see them? Do you hear them?
15 How do y'all make that -- meet back up?

16 A. Tater.

17 Q. What did he say?

18 A. Got to run back and get our phones.

19 Q. So he yells to you. He says we need to go back and get
20 our phones?

21 A. Yes, sir.

22 Q. And what do y'all do?

23 A. I started to go back but they still shooting going on,
24 so I continued running.

25 Q. Do you hear any sirens yet?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. No, sir.

2 Q. All right. So we're in the area of this circle. The
3 yellow circle that I drew. This one. So we're in this area
4 here. When you decide to head back to get your phone, are
5 all three of y'all talking about going back or what?

6 A. Me and Tater.

7 Q. You and Tater?

8 A. (Nonverbal response.)

9 Q. Did Daquan have this phone?

10 A. Yes, sir.

11 Q. Do you and Tater start heading back?

12 A. Yes, sir.

13 Q. How far did you get?

14 A. Back to the baseball field.

15 Q. So you get back in the circle about another -- maybe
16 the baseball field is about -- halfway maybe?

17 A. Yes, sir.

18 Q. So you had run from here to here. Meet up with Tater.
19 And then run back to about here?

20 A. Yes, sir.

21 Q. And then what?

22 A. The shooting was still going on. We ran back towards
23 Durant.

24 Q. Where's DQ during this?

25 A. Still at the head of Durant.

1 Q. So then you and Tater run back to the head of Durant?

2 A. Yes, sir.

3 Q. You meet back up with DQ?

4 A. Yes, sir.

5 Q. Where do y'all go from there?

6 A. DQ said he had a cousin that live on Durant.

7 Q. You know that cousin's name?

8 A. Mega.

9 Q. Mega?

10 A. Yes, sir.

11 Q. You know the address?

12 A. [REDACTED] Durant Street.

13 Q. So what do y'all do?

14 A. We was running at first. Then the sirens start coming.

15 Q. You got to speak up for me a little bit. You're
16 running at first and then what?

17 A. We was running at first then sirens -- we heard the
18 sirens coming. And they was coming down Durant behind us.
19 And Tater said stop running.

20 Q. Okay. State's 72. So your back on Durant with DQ and
21 Tater. And you hear sirens?

22 A. Yes, sir.

23 AST. SOL. KIDD: May I approach your court reporter?

24 THE COURT: You may.

25 Q. I'm going to show you what's been marked and entered

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 into evidence as State's Exhibit 71.

2 (Video played at 5:16 p.m.)

3 Q. Do you know who is who in this photograph at this
4 point?

5 A. I think that's me in the front.

6 Q. You in the front. You know who is in the middle?

7 A. I can't really see. DQ.

8 Q. Who is that right there?

9 A. DQ.

10 Q. Have you seen him recently?

11 A. Yes, sir.

12 Q. He looks a little different now.

13 A. Yes, sir.

14 Q. Hair is longer?

15 A. Yes, sir.

16 MR. PEPER: Your Honor, objection. May we approach?

17 THE COURT: Uh-huh.

18 (A bench conference was held off the record and out of
19 the hearing of the jury panel.)

20 THE COURT: Proceed.

21 Q. Who is this right here?

22 A. That's me.

23 Q. Who is that right there?

24 A. Tater.

25 MR. PEPER: Your Honor?

1 THE COURT: Yes. Do you need to approach?

2 MR. PEPER: Yes ma'am.

3 (A bench conference was held off the record and out of
4 the hearing of the jury panel.)

5 THE COURT: Proceed.

6 (Video played at 5:20 p.m.)

7 Q. What is happening at this point?

8 A. Going to his cousin's house.

9 Q. So the officer let y'all go?

10 A. Yes, sir.

11 Q. And do you know approximately where on this photograph
12 DQ's cousin lives?

13 A. The house right there at the corner of the street.
14 Where that three is at.

15 Q. Right here?

16 A. Yeah.

17 Q. Were y'all close to that house when the officer got out
18 with you?

19 A. Yes, sir.

20 Q. Approximately how far? If you remember.

21 A. Like 5, 10 feet away.

22 Q. And I know time is strange, but do the best and tell me
23 how long -- how much time elapsed from when you jumped out
24 of the car and ran and met up with Tater?

25 A. Like four or five minutes.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. So four or five minutes?

2 A. Yeah.

3 Q. Did you or DQ ever go to the south side or the lower
4 side of the circle?

5 A. No, sir.

6 Q. So you're at Mega's house; right?

7 A. Yes, sir.

8 Q. DQ's cousin?

9 A. Yes, sir.

10 Q. On Durant. What's going on there?

11 A. Chilling.

12 Q. Chilling? I mean, you just went through something
13 pretty traumatic.

14 A. Yes, sir.

15 Q. So what's happening?

16 A. -- rides back home.

17 Q. And how are you doing at?

18 A. DQ phone.

19 Q. And are you able to find a ride?

20 A. Yes, sir.

21 Q. And who picks you up?

22 A. DB.

23 Q. DB. Now, earlier that night, you were at Justin's
24 cousin's house in North Charleston named DB. Is it the same
25 DB?

1 A. No, sir.

2 Q. So A different DB comes and picks you up?

3 A. Yes, sir.

4 Q. Who is this DB?

5 A. He's from Ashleyville.

6 Q. How long have you known this DB?

7 A. Like a year or two.

8 Q. Does Tater know this DB?

9 A. Yes, sir.

10 Q. Is he closer to him than you are or are you closer to
11 him?

12 A. He's closer to him.

13 Q. All right. Do you know approximately what time of the
14 night or morning this is?

15 A. Like five or six o'clock in the morning.

16 Q. So do you know about how long you were at Mega's house?

17 A. Two or three hours.

18 Q. And who gets in the car with DB at Mega's house?

19 A. Me and Tater.

20 Q. Where do y'all go?

21 A. I get dropped off at my aunt's house on Tripe Street in
22 Ashleyville.

23 Q. Now, are y'all talking about what happened at this
24 point? Is there anything being said? What's going on?

25 A. Nothing. I just got dropped off.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. I mean before. Like, at Mega's house or in the car.

2 A. No, sir.

3 Q. So you got dropped off where?

4 A. At my aunt's house on Tripe Street.

5 Q. When you got out of DB's car, was Tater still in it?

6 A. Yes, sir.

7 Q. What did you do when you got to your aunt's house?

8 A. Got in my car and went home.

9 Q. Went home where?

10 A. [REDACTED] -- Road.

11 Q. So you went back to your parents' house?

12 A. Yes, sir.

13 Q. So your car. What kind of car did you have?

14 A. Saturn Ora.

15 Q. And it was at our aunt's house on Tripe?

16 A. Yes, sir.

17 Q. Sometime between five and six, you get in your car and
18 head back home to your parents' house?

19 A. Yes, sir.

20 Q. Tell your parents what happened?

21 A. No, sir.

22 Q. When is the first time you make contact with the
23 police?

24 A. The next day.

25 Q. And before that, do you see Justin again? Bubby.

1 A. Yes, sir.

2 Q. Where do you see him?

3 A. Ashleyville.

4 Q. Ashleyville. All right. So you go home to your
5 parents' house. This is what? 6:00 a.m. When do you go
6 back to Ashleyville?

7 A. Around ten or 11.

8 Q. Do you sleep at all that night or that morning?

9 A. No, sir.

10 Q. Anyone ever come by your parents' house in West Ashley?

11 A. No, sir.

12 Q. Okay. How do you get back to Ashleyville?

13 A. I drove myself.

14 Q. Where do you go when you first get back to Ashleyville?

15 A. My aunt's house.

16 Q. Okay. You go to your aunt's house on Tripe Street.
17 You by yourself?

18 A. Yes, sir.

19 Q. And what do you do when you get to Tripe Street?

20 A. I sit at the house with my cousins for a while.

21 Q. So you sit at your aunt's house with your cousins.

22 When is the first time you see any of the people we were
23 talking about so far?

24 A. Bubby came knocking at the door.

25 Q. So Bubby, Justin Wilson, came to your aunt's house?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Yes, sir.

2 Q. Now, is your car parked out front? Back? Where is the
3 Saturn car at this point?

4 A. The front.

5 Q. Out front?

6 A. Yes, sir.

7 Q. So Justin knocks on your aunt's door. What happens
8 then?

9 A. We walk to D-Nice house.

10 Q. How far is D-Nice's house form your aunt?

11 A. Like 15 feet away.

12 Q. Fifteen feet away. So it's close.

13 A. (Affirmative head nod.)

14 Q. Is it on Tripe?

15 A. No, sir.

16 Q. Do know what street it's on?

17 A. Sycamore.

18 Q. Sycamore. If you walk from D-Nice's house your aunt's
19 house, you walk on the road or is there a cut or what?

20 A. There's a cut.

21 Q. And so you go through a to flip from one street to the
22 other and his house is right there?

23 A. Yes, sir.

24 Q. Okay. Tell the jury what happens when you get to
25 D-Nice's house?

1 A. Start coming up with a plan, an alibi.

2 Q. So who -- y'all go into his house? How does it happen
3 when you get there? You get to D-Nice's house, knock on the
4 door, window? What?

5 A. Knock on the door.

6 Q. Knock on the front door. And who comes to the door?

7 A. D-Nice.

8 Q. Do you go in the house?

9 A. Yes, sir.

10 Q. Where in the house do y'all go?

11 A. D-Nice room.

12 Q. Go into his bedroom?

13 A. (Nonverbal response.)

14 Q. And is it just the three of y'all?

15 A. Yes, sir.

16 Q. And what's being said?

17 A. He was just telling Bubby you got to get down to a --
18 space.

19 Q. And what's Bubby saying?

20 A. He just want everybody to keep it solid.

21 Q. What's that mean?

22 A. No one tells.

23 Q. So not what you're doing right now?

24 A. Yes, sir.

25 Q. Right?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. Yes, sir.

2 Q. And did you develop a plan?

3 A. Yes, sir.

4 Q. What's the plan?

5 A. The car got stolen from the club. Me and Tater walked
6 from the club to Mega's house. And he caught a ride from
7 the club back home.

8 Q. With who?

9 A. With a friend.

10 Q. Justin?

11 A. Yes, sir.

12 Q. What about DQ?

13 A. He was at his cousin's house all night.

14 Q. All right. So let me get this straight. So plan is
15 you all went to the club together.

16 A. Yes, sir.

17 Q. And the car got stolen.

18 A. Yes, sir.

19 Q. And how did you and Tater get home from the club?

20 A. We walked.

21 Q. And how did Justin get home from the club?

22 A. He caught a ride home.

23 Q. And DQ was never there?

24 A. Yes, sir.

25 Q. Any of that true?

1 A. No, sir.

2 Q. And was D-Nice there as y'all were coming up with that
3 plan?

4 A. Yes, sir.

5 Q. Did Justin ask D-Nice to be his alibi?

6 A. No, sir.

7 Q. Were you around each other the whole time?

8 A. Yes, sir.

9 Q. Did anyone else come by?

10 A. Yeah. Tater came by.

11 Q. When did that happen?

12 A. Like 15, 20 minutes after we been sitting in the room.

13 Q. And was he in on that same discussion?

14 A. Yes, sir.

15 Q. And at what point were you first interviewed by the
16 police?

17 A. The next day.

18 Q. So that would be the 23rd?

19 A. Yes, sir.

20 Q. And did you attempt to stick to that story for a while?

21 A. Yes, sir.

22 Q. How long would you say you stuck to that story?

23 A. For like ten, 15 minutes into the interview.

24 Q. So to be clear, you lied to the police for a while?

25 A. Yes, sir.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. And eventually you told them the truth?

2 A. Close to the end.

3 Q. Close to the end of the interview?

4 A. Yes, sir.

5 Q. Was it a pretty long interview?

6 A. Yes, sir.

7 Q. Hours?

8 A. Yes, sir.

9 Q. Sp close to the end of that interview, you finally told
10 the truth?

11 A. Yes, sir.

12 Q. Is that a hard thing to do?

13 A. Yes, sir.

14 Q. Did you know Creep?

15 A. No, sir.

16 Q. Ever met him before?

17 A. No, sir.

18 Q. Just knew of him?

19 A. Yes, sir.

20 Q. What about Franklin Williams?

21 A. No, sir.

22 Q. Ever met him before?

23 A. No, sir.

24 Q. What about Montez Capers?

25 A. No, sir.

1 Q. Never met him?

2 A. No, sir.

3 Q. What about Adrian Williams?

4 A. No, sir.

5 Q. Never met him?

6 A. No, sir.

7 Q. Any of them ever do anything -- do wrong by you?

8 A. No, sir.

9 Q. I'm going to show you what's been marked and entered
10 into evidence as State's Exhibit 144. And as previously
11 testified to, this is a printout of the contacts in your
12 cell phone. Well, before you even say that, I'm going to
13 show you what's been marked as State's Exhibit 94. Do you
14 recognize that phone?

15 A. That's mine.

16 Q. That's your cell phone?

17 A. Yes, sir.

18 Q. And when you were at the North Charleston Police
19 Department, did you eventually give them the password to get
20 into your cell phone?

21 A. Yes, sir.

22 Q. And draw your attention to the line 223 from the
23 contacts list in that phone. Whose contact is that?

24 A. Tater's.

25 Q. I'm going to show you what's been marked State's

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Exhibit 142. Draw your attention to lines number 14 through
2 18. Phone calls made between 1:40 a.m. and 2:03 a.m. Do
3 you recognize any of those phone numbers?

4 A. No, sir.

5 Q. Did you call those phone numbers or receive calls from
6 those phone numbers?

7 A. No, sir.

8 Q. Who was making and receiving calls from your phone at
9 that time?

10 A. Bubby.

11 Q. Do you know where y'all were when these calls were
12 being made?

13 A. Had to be at his cousin's house.

14 Q. In North Charleston?

15 A. Yes, sir.

16 Q. When y'all left his cousin's house, he ever give the
17 phone back to you or did he -- where's the phone at after
18 y'all left?

19 A. Still in the back seat.

20 Q. Still in the back seat. Did you ever get it back
21 before the crash?

22 A. No, sir.

23 Q. Have you ever seen those numbers before? The 0404 the
24 8650 numbers?

25 A. No, sir.

1 Q. Do you know someone that goes by the name Stewy?

2 A. Yes, sir.

3 Q. Who is that?

4 A. Someone who stays in Ashleyville.

5 Q. Do they know Justin?

6 A. Yes, sir.

7 Q. Do they know Tater?

8 A. Yes, sir.

9 Q. Do they know Daquan?

10 A. I don't think so.

11 Q. Okay. I'm going to show you what's been marked for
12 identification as State's Exhibit 152 and 153. See if you
13 recognize these two. Do you recognize those?

14 A. Yes, sir.

15 Q. Is that who you know a Stewy?

16 A. Yes, sir.

17 AST. SOL. KIDD: Your Honor, at this time we'd offer
18 State's 152 and 153 into evidence?

19 THE COURT: Please approach.

20 (A bench conference was held off the record and out of
21 the hearing of the jury panel.)

22 THE COURT: 152 and 153 have been marked for ID only.

23 You may proceed.

24 (State's Exhibit No. 152 and 153, Facebook
25 Screenshots, was marked for identification.)

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Who is Little B?

2 A. He's from Ashleyville.

3 Q. He's from Ashleyville. Do you know his name?

4 A. Bryan.

5 Q. Know his last name?

6 A. Ankrum.

7 Q. Where does he live?

8 A. Tripe.

9 Q. Showing you what's been marked for identification as
10 State's Exhibit 146. Do you recognize that photo?

11 A. Yes, sir.

12 Q. Who is that a photo of?

13 A. Me and Tater.

14 Q. Do you know when approximately that photograph was
15 taken?

16 A. 4/20.

17 Q. When?

18 A. 4/20.

19 Q. April 20th?

20 A. (Affirmative head nod.)

21 Q. Of 2015?

22 A. Fourteen or '15. I want to say '14?

23 AST. SOL. KIDD: Your Honor, we offer State's 146 into
24 evidence?

25 THE COURT: Any objection? (Brief pause.) Any

1 exception to the photo?

2 MR. PRICE: I think he could continue to proffer a
3 little bit more testimony.

4 Q. Do you know when ---

5 THE COURT: Proceed.

6 AST. SOL. KIDD: Sorry.

7 THE COURT: I said proceed.

8 Q. Do know where this photo came from?

9 A. My phone.

10 AST. SOL. KIDD: All right. At this time, we'd offer
11 State's 146 into evidence.

12 THE COURT: Any objection?

13 MR. PRICE: I don't have any objection, Your Honor.

14 MR. PEPPER: That's fine, Judge.

15 THE COURT: Marked and admitted, number 146, without
16 objection.

17 (State's Exhibit No. 146, Photograph, was received
18 into evidence.)

19 Q. What are we looking at here?

20 A. Me and Tater.

21 Q. Y'all been friends for a while?

22 A. Yes, sir.

23 Q. Through your relationship with Justin -- sorry. I keep
24 changing how I use the name -- Justin Wilson, Bubby, and
25 Marvin Bryan, Tater, are you familiar with their Facebook

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 pages?

2 A. Yes, sir.

3 Q. Do you know what they look like?

4 A. Yes, sir.

5 Q. I'm going to show you what's been marked as State's
6 150, State's 151. Do you recognize those two documents?

7 A. Yes, sir.

8 Q. Are those their respective Facebook pages?

9 A. Yes, sir.

10 AST. SOL. KIDD: Your Honor, we'd offer State's 150 and
11 151 into evidence.

12 THE COURT: Do you need to show them to counsel?

13 MR. PEPER: Your Honor, I object on the grounds of
14 personal knowledge.

15 THE COURT: Please approach.

16 (A bench conference was held off the record and out of
17 the hearing of the jury panel.)

18 THE COURT: 151 and 150 are marked for ID only. We'll
19 deal with that later. Proceed with your questions.

20 AST. SOL. KIDD: Court's indulgence.

21 (State's Exhibit No. 150 and 151, Facebook
22 Screenshots, was marked for identification.)

23 Q. What is West cash?

24 A. West Ashley.

25 Q. It's not, you know, something like I refer to West

1 Ashley. Is that fair to say?

2 A. It's a group of people.

3 Q. So it's a group of people from West Ashley that refer
4 to themselves as West cash?

5 A. Yes, sir.

6 Q. Are you one of those people?

7 A. No, sir.

8 Q. Is anyone else that was in the car with you that night
9 one of those people?

10 MR. PRICE: Objection. Speculation.

11 THE COURT: He was in the car. He knows everybody.
12 He's established that he knows everybody in the car.

13 MR. PRICE: Can we approach?

14 THE COURT: Uh-huh.

15 (A bench conference was held off the record and out of
16 the hearing of the jury panel.)

17 THE COURT: Proceed. But he can answer this question
18 if he has personal knowledge of it. Sir, do you need the
19 question repeated, or do you remember the question?

20 THE WITNESS: Repeat it, please.

21 Q. Was anyone in the Ford Edge with you associated with
22 West Cash?

23 A. Yes, sir.

24 Q. Who?

25 A. Tater.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Now, you've been living where for the last year and a
2 half?

3 A. West Ashley.

4 Q. A year and six months?

5 A. Say I was living where?

6 Q. No. Where have you been sleeping the last year and a
7 half?

8 A. County jail.

9 Q. Any particular unit?

10 A. SMU.

11 Q. You know what that stands for?

12 A. Special Management Unit.

13 Q. Have you had any interaction with Marvin, Marvin Bryan,
14 Tater, or Justin Wilson, Bubby, in that time period?

15 A. No, sir.

16 Q. Are they in a different unit than you?

17 A. Yes, sir.

18 Q. What about Daquan? DQ.

19 A. He's in the unit with me.

20 Q. When did he move into the unit with you?

21 A. Probably four or five months ago.

22 Q. Four or five months ago. And I believe you and I first
23 met on December 21, 2015. Is that right?

24 A. I thought it was the 18th.

25 Q. You're saying it was December 18th?

1 A. Yes, sir.

2 Q. All right. So roughly a month after the shooting?

3 A. Yes, sir.

4 Q. Now, you and DQ being in the same unit, does that mean
5 y'all can hang out together all day?

6 A. No, sir. They keep us away from each other.

7 Q. They keep y'all separate?

8 A. Yes, sir.

9 Q. So you're not allowed to sit down and communicate with
10 him?

11 A. No, sir.

12 Q. Can you holler at him down the hallway?

13 A. There's no yelling in there.

14 Q. Have you been able to communicate with him in anyway?

15 A. No, sir.

16 Q. What about being transported over here this week?

17 A. Separate.

18 Q. Separate?

19 A. Yes, sir.

20 AST. SOL. KIDD: Court's indulgence.

21 Q. Well, actually, let me show you what's been identified,
22 marked for ID purposes only, as State's Exhibit 147. Do you
23 recognize that photograph?

24 A. Yes, sir.

25 Q. Do you know where that photograph came from?

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 A. My phone.

2 Q. Who is on that photograph?

3 A. Me, Bubby, and Damon.

4 MR. PEPER: May we approach, Your Honor.

5 THE COURT: I'm going to take it up in-camera.

6 Madam Forelady, ladies and gentlemen, we're going to
7 take advantage of this break in testimony to take our
8 evening recess. During the break, please do not discuss the
9 case among yourselves or with anyone else. Please don't do
10 any independent research on the Internet or read, watch or
11 listen to any media accounts about this case. The clerk has
12 been very generous and arranged for you all to park next
13 door on tomorrow. And we have likewise ordered your lunch
14 for tomorrow. And I'm anticipating that we will break for
15 lunch around noon depending on how we progress with the
16 testimony. You all have been inordinately patient with us
17 today, and I appreciate it. We had to takes up some matters
18 of law that took up a lot more time than we anticipated. I
19 know it might seem that we should be able to deal with these
20 things prior to a case beginning, but it just doesn't work
21 that way. I don't know a flowery way to put it. So I
22 appreciate your patience. Please know we do not take your
23 time for granted. If you would stack your pads up on the
24 banister as you leave, we'll secure them during the break.
25 We'll resume in the morning at 9:30. Have a great evening.

1 (The jury exits the courtroom at 5:58 p.m.)

2 THE COURT: All right. Now, for what purpose is
3 number -- that's the picture with the gun in the lap and
4 all?

5 AST. SOL. KIDD: Yes, ma'am.

6 THE COURT: You're going to have to ask some more
7 questions. I don't know when that picture was taken. I
8 don't know where they were. I don't know whose gun that is.
9 You're going to ask some more questions for me to make a
10 decision about that photo.

11 AST. SOL. KIDD: And I was tired. I though we got the
12 created data out through ---

13 THE COURT: You didn't get it out from him and he took
14 it, and it was on his phone. That's why I need to hear it.

15 AST. SOL. KIDD: Through Detective Riedel who pulled it
16 off, but.

17 THE COURT: I told you at the bench that I needed to
18 hear from him that's why I took it under advisement.

19 AST. SOL. KIDD: Yes, ma'am.

20 (Direct examination resumes out of the hearing of the
21 jury.)

22 BY AST SOL KIDD: (continuing)

23 Q. Mr. Evans, I'm going to show you 147 again. When was
24 that picture taken?

25 A. I can't remember.

Direct Examination of Mr. Evans by Ast. Sol. Kidd

1 Q. Do know roughly in relation to the shooting? Days?
2 Weeks? Months? Years?

3 A. Months.

4 Q. Months. One month? Three months? Five?

5 A. Three.

6 Q. About three months. And do you know whose firearm that
7 is in that photograph?

8 A. No, sir.

9 Q. Who is Damon?

10 A. He's from downtown.

11 Q. He's from downtown. Is he friends with Justin?

12 A. Yes, sir.

13 Q. Friends with you?

14 A. Yes, sir.

15 Q. Do you know if that was the firearm that was used on
16 November 22nd?

17 A. No, sir.

18 Q. No, it wasn't? Or no, you're not sure?

19 A. I'm not sure.

20 Q. Where are y'all when that photo was taken?

21 A. On Tripe Street behind Little B's granny's house.

22 Q. Behind Little B's granny's house on Tripe?

23 A. Yes, sir.

24 AST. SOL. KIDD: I have no further questions as to that

25 ---

1 THE COURT: Now, for what purpose are you offering the
2 photograph?

3 AST. SOL. KIDD: Judge, I think it's a spitting image
4 of the firearm that was used by ---

5 THE COURT: You're going to have to prove ---

6 AST. SOL. KIDD: --- I can't connect it a hundred
7 percent.

8 THE COURT: You're going to have to prove connected a
9 hundred percent for it to be admissible. Otherwise, it's
10 conjecture and speculation.

11 AST. SOL. KIDD: I'm not sure a hundred percent is
12 what's required by the rules. I think that ---

13 THE COURT: I think a percent is what I'm requiring at
14 least as far as it can satisfy my mind that it's not a
15 random firearm. I don't even know in what order these
16 individuals are sitting. You still haven't elicited from
17 him who is lap the firearm is sitting in.

18 AST. SOL. KIDD: He indicated it was Damon's.

19 THE COURT: Damon who? What's Damon's last name?

20 AST. SOL. KIDD: I'm not sure.

21 THE COURT: Was Damon present at this event? Is that
22 Damon's house they went to to get the gun?

23 AST. SOL. KIDD: No, ma'am.

24 THE COURT: You understand the problems the; right?

25 AST. SOL. KIDD: I understand what you're saying.

1 THE COURT: Young man, tell in order -- does he have
2 the photograph with him?

3 AST. SOL. KIDD: Yes, ma'am. It's in front of him.

4 THE COURT: Tell me in order who is sitting in that
5 photograph from left to right.

6 THE WITNESS: Bubby, Damon, and me.

7 THE COURT: Now, is there an exception to the admission
8 of the photo from Mr. Price?

9 MR. PRICE: Your Honor, I'm assuming I'm just going to
10 join in with Mr. Peper's objection based on the relevance
11 and obviously the -- there's just no way to connect that gun
12 with anybody's. Obviously, it's being admitted for the
13 purposes of trying to link that that gun is involved in
14 that. I just don't think they've been able to do it.

15 THE COURT: And, Mr. Peper, do you have an exception to
16 photo or do you consent to its admission?

17 MR. PEPER: I do no consent, Judge, for the following
18 reasons: One, I do not believe it's relevant to what
19 occurred and the incident we're here for today. Two, it has
20 not been authenticated. The testimony I've heard so far is
21 that he does not remember when the photo was taken, maybe
22 months, maybe years. He doesn't know whose gun whose gun it
23 was. He doesn't know Damon's last name. All he knows about
24 Damon, who I guess is the middle guy, is that he lives
25 downtown. Further, he doesn't know if the gun was used,

1 which is an additional point. I don't think he's made the
2 connection. We strenuously object. In an event we even got
3 down that far, then obviously, we got four and three to deal
4 with.

5 THE COURT: All right. Mr. Kidd, you can respond.

6 AST. SOL. KIDD: Judge, I just believe it's relevant
7 because it shows the defendant ---

8 THE COURT: What does it make more or less probable
9 in this case?

10 AST. SOL. KIDD: That the defendant Justin Wilson is
11 the shooter. It makes it more probable ---

12 THE COURT: How does that make that probable when he
13 doesn't have the gun in the photo?

14 AST. SOL. KIDD: Because it puts him in direct access
15 of a firearm that looks exactly like the firearm that was
16 used in this ---

17 THE COURT: But don't all firearms of that caliber
18 pretty much look the same?

19 AST. SOL. KIDD: No, ma'am.

20 THE COURT: Well, then you need a witness to say that.
21 Because I know nothing about guns. And to me, they all look
22 the same. All Glocks of a certain manufacturer pretty much
23 look the same. They have different ones. They have
24 different characteristics, but that's what you need to
25 prove.

1 AST. SOL. KIDD: And this is, I think, a relatively
2 distinct looking Smith & Wesson ---

3 THE COURT: Yeah, but you need a firearm's person to
4 say that.

5 AST. SOL. KIDD: I don't think I need a firearm expert
6 to say this is two-tone ---

7 THE COURT: The average person doesn't know the
8 distinction between firearms. That's a specialty. I'm a
9 layperson and I don't know the difference between firearms.
10 You can't -- that's conjecture to say that the jury should
11 know what a firearm looks like.

12 AST. SOL. KIDD: Well, I'm not saying they should know
13 what a firearm looks like. But what I am saying is that
14 they can take a look at the firearm that's in evidence and
15 say as a layperson, man, that gun looks exactly like that
16 gun in the photograph.

17 MR. PEPER: Your Honor, may it please the Court?
18 That's exactly what's so prejudicial about this testimony.
19 Is that unless he can prove it is, then it's extremely
20 prejudicial for them to get back there and go this must be
21 the same one and here's Justin sitting next to him.

22 AST. SOL. KIDD: But that's not the prejudice that we
23 keep it out. The prejudice that would keep it out would be
24 saying it's character evidence, oh, because he's around a
25 gun.

1 THE COURT: No, that's a precise kind of prejudice that
2 the Supreme Court has articulated. You're taking a leap.
3 You want the jury to believe something you haven't proved.
4 And you have the burden of proof. It's on you. They don't
5 have to prove anything. They can sit there and be quiet the
6 whole trial. The burden of proof is on the State to prove
7 beyond a reasonable doubt every element of the offense.

8 AST. SOL. KIDD: Right.

9 THE COURT: If you're saying that somebody shot
10 somebody, then that element extends to the identify of the
11 weapon you say was used. And it's conjecture. It's
12 speculative to say because a gun is in a picture with
13 someone who is unrelated to this incident, which according
14 to Detective Riedel was taken on September 26th of 2015 on
15 this young man's phone that -- you know how many things can
16 happen in 60 days? A lot.

17 AST. SOL. KIDD: I do. I think a gun can move from
18 Damon to Justin.

19 THE COURT: Could. And that's the operative word,
20 could. Very speculative. Could, maybe, should have, would
21 have; that's speculation. It's conjecture. It's not
22 concrete proof.

23 AST. SOL. KIDD: I believe my burden doesn't have to be
24 beyond a reasonable doubt as to this fact. I believe ---

25 THE COURT: Oh, no, your burden is beyond a reasonable

1 doubt on proof.

2 AST. SOL. KIDD: On the elements of the crime,
3 absolutely. But not as to each piece of evidence that comes
4 in the court.

5 THE COURT: It has to rise above spectra and
6 conjecture.

7 AST. SOL. KIDD: Right.

8 THE COURT: Speculation and conjecture. And right now,
9 that's what it is.

10 AST. SOL. KIDD: Any fact that could make something be
11 more likely than not. They could move something, make
12 something more probable to move the ball down the ---

13 THE COURT: If your witness could say that this was the
14 gun that was used, yeah. Otherwise, it's too -- it's
15 speculative. It's probative value is outweighed by unfair
16 prejudiced. A lot can happen in two months. Lots of things
17 can change. I don't even know if that's -- I'm a layperson
18 and I don't know if that's the same gun. I wouldn't -- I
19 just think you need more proof than that to meet your
20 threshold which is relevance. Which is makes a fact of
21 consequence in this litigation more or less probable. It's
22 a gun. I don't even know who made the gun. I don't know
23 the manufacturer who made the gun. Guns come in series, I
24 would assume. Some look different. Some look -- it just
25 like with cars. Like, they make special editions of cars.

1 I assume they make special editions of guns. That's a large
2 chasm.

3 AST. SOL. KIDD: And I'm not going to be able to put
4 forward any more information about it than I already have.
5 So I understand ---

6 THE COURT: Now, if you want to redact the gun out of
7 the photo and the purpose of offering the photo is to show
8 that these fellows were friends and they're all sitting
9 together taking a photo, I don't have a problem with that.
10 But the gun is more prejudicial than probative because you
11 want to offer it for it's truth and you want the jury to
12 believe that that's the gun that was used in this incident.
13 And you witness can't even tie the gun -- it's character
14 evidence. You want the jury to believe that he's a person
15 that routinely totes guns, and you don't have any proof of
16 that.

17 AST. SOL. KIDD: He's not toting a gun in that photo.
18 But I understand the Court's -- I don't need to argue with
19 you anymore. I understand your position.

20 THE COURT: I think it's problematic.

21 AST. SOL. KIDD: Just note by objection for the record
22 and we can move ---

23 THE COURT: It's noted and overruled. So 147 will be
24 marked for ID only.

25 AST. SOL. KIDD: Thank you, Your Honor.

1 (State's Exhibit No. 147, Photograph, was marked for
2 identification.)

3 THE COURT: So that then leaves us with -- if you want
4 to redact it. Do y'all have any problem with a redacted
5 photo?

6 MR. PEPER: Well, then I don't understand what
7 relevance it is. You got Keith and some dude that's -- I
8 mean . . .

9 THE COURT: Well, didn't they make reference to Damon,
10 though, at some point? Damon from downtown. All these
11 people have the same names. Let me see here, look back at
12 my notes real quick.

13 MR. PEPER: If it's to -- it then becomes relevant to
14 what showed the closeness between Keith and some random dude
15 and Justin.

16 THE COURT: It also corroborates that it is in fact his
17 telephone.

18 AST. SOL. KIDD: I don't need the photo in ---

19 THE COURT: The only purpose you're offering it was to
20 show the gun? Is that pretty much it?

21 AST. SOL. KIDD: Yes, ma'am.

22 THE COURT: Then it's excluded. All right. Be marked
23 for ID only, State's 147. Now that leaves us then with,
24 let's see here -- well, 146 came in without objection. What
25 is the objection of 150 and 151 which are the Facebook pages

1 showing the nicknames.

2 MR. PRICE: You want us to renew the objections or ---

3 THE COURT: I need you to articulate your objection.

4 And I forget which one shows who. Whose Facebook page is
5 number 150?

6 MR. PRICE: That would be Marvin Bryan's, Your Honor.

7 THE COURT: And then the other one then is Mr. Wilson,
8 151?

9 MR. PEPER: Yes, ma'am.

10 THE COURT: And as I recall, each shows their nicknames
11 on it?

12 MR. PRICE: Correct, Your Honor.

13 THE COURT: And what is your objection?

14 MR. PRICE: Court's indulgence jus for a moment, Your
15 Honor.

16 (Brief pause.)

17 MR. PEPER: So, Your Honor, here's my problem, and this
18 is a strange ---

19 THE COURT: We're taking them out of order. Yours is
20 151, correct?

21 MR. PEPER: Yes, ma'am. From a prejudicial standpoint,
22 we may have to come up here. To me, and if this is going to
23 go back there, they're are going to look at it hard.
24 There's at least two guys who, unless somebody identifies
25 who they are, are literally holding a fake gun and pointing

1 it at ---

2 THE COURT: Where's that at? Let me see. Because I
3 didn't see that. I don't really know what that is. That
4 just looks like a blur ---

5 MR. PEPER: It's then going like this, Judge. It's
6 what the kids do these days.

7 THE COURT: Well, I don't know. I know some kids that
8 just point like that when they take pictures. They look
9 silly, but they do it.

10 MR. PEPER: They got a gun in their hand.

11 THE COURT: But it's so blurry I don't think it really
12 matters. They're not offering this to prove who these
13 people are in this picture. They're offering it to show
14 that your client uses the nickname Bubby. The witness has
15 identified that he is familiar with this Facebook page, that
16 he has frequented it. The last post on here was 21st of
17 2015, which was the day before this incident. Now,
18 conceivably what he has on here pressure would need to be
19 redacted. Because I wouldn't want to leave that to
20 speculation as to what he meant. But I don't draw that
21 inference from the picture. It just looks like some silly
22 kids making gestures.

23 MR. PEPER: As I understand it, if it's being submitted
24 to corroborate that he calls Justin Bubby ---

25 THE COURT: That he uses this nickname.

1 MR. PEPER: --- then this would be the seventh
2 witness that has all admitted that he goes by Bubby.

3 THE COURT: This is independent corroboration that's in
4 the public domain. Totally different.

5 MR. PEPER: All right. And if the picture is redacted,
6 we have no problem with it.

7 THE COURT: You have any problem redacting the picture?

8 AST. SOL. KIDD: No, ma'am.

9 THE COURT: Because he's in the smaller picture. So if
10 you have not objection to redacting it, you really could
11 just cut a little piece of white paper and put it over this
12 part of the picture leaving this part showing, and then
13 redact the pressure part of it as well and then it will come
14 in.

15 MR. PEPER: Thank you, Your Honor.

16 THE COURT: And that's number 150? No, 151. And then
17 we need to deal with 150. What does 150 look like?

18 MR. PRICE: Oh, I'm holding it.

19 THE COURT: Can I see it while he's talking to his ---

20 MR. PRICE: Yes, Your Honor. I don't have any
21 objection to this.

22 THE COURT: Okay. Well, then that makes life easier.
23 I assume that's his child.

24 MR. PRICE: That is, Your Honor.

25 THE COURT: Okay. So then 150 will come in without

1 objection. I'll give that to the court reporter. And then
2 we'll see the redacted version of the other Facebook page in
3 the morning, and we'll go from there.

4 (State's Exhibit No. 150, Facebook Screenshot, was
5 received into evidence.)

6 THE COURT: Now, is there anything else we need to deal
7 with before we take our evening recess. From the State?

8 AST. SOL. KIDD: And, Judge, my apologies. I missed
9 that. I think you said ---

10 THE COURT: 150 came in without objection.

11 AST. SOL. KIDD: Came in without objection. And we'll
12 do 151 as a Court's exhibit until I get the redacted copy
13 and nothing else was ruled on until we ---

14 THE COURT: The only other one that I see -- well,
15 let's see. We already dealt with 145. That came in. It
16 was a FaceTime screenshot, I believe. Just going back
17 through my list of pictures that were under advisement.
18 Its' my recollection -- Madam Court Reporter, do you have
19 ---

20 COURT REPORTER: I've got 152 and 153 were identified.
21 And I'm not sure if you said you were going to take that
22 under advisement.

23 THE COURT: 152 and 153, what are those? You sure?

24 COURT REPORTER: Yeah.

25 THE COURT: I don't think so. They're not in my notes.

1 If he did, I might have missed something.

2 (Off record discussion.)

3 THE COURT: Okay. 145 is the FaceTime post. And then
4 what were those other ones?

5 AST. SOL. KIDD: 152, 153 were ---

6 THE COURT: -- those other two people who I'm trying to
7 figure why they're relevant.

8 AST. SOL. KIDD: Well, it's one person. It's Stewy.
9 This is the 0404 number on the call logs and the person that
10 came up to the car at the club before they ---

11 THE COURT: I understand. I've been listening. I know
12 who Stewy is. I'm just trying to figure out why you need
13 two of Stewy's Facebook pages.

14 AST. SOL. KIDD: Well, his cover page shows his name
15 but not much of a photo.

16 THE COURT: Yeah, but the other page shows his name.

17 AST. SOL. KIDD: Right. But it's not -- like the top.

18 THE COURT: If couldn't be but his page with that name
19 on it. Who else would it be?

20 AST. SOL. KIDD: True. I mean ---

21 THE COURT: He didn't tag anybody else in the picture.
22 It's his page.

23 AST. SOL. KIDD: And my only purpose of showing ---

24 THE COURT: I'll take them in order and see what the
25 objections are. There may not be any objections. Those

1 would be the last things that we need to deal with; correct?
2 Yeah, I do have 152 and 153. I apologize. I made a
3 notation to myself and overlooked it. Okay. Let's deal
4 with 145 which is the screenshot of the FaceTime
5 conversation between Mr. Evans and Mr. Wilson. What's the
6 objection to that?

7 MR. PEPER: Well, I mean, at this point he's admitted
8 -- he's testified that's me talking to him after I got shot.
9 So, I guess -- I mean, I guess, my objection is again,
10 Judge, that they're trying to get it in evidence as bad
11 character through him being a victim of a gunshot wound,
12 which obviously ---

13 THE COURT: Well, I would never let them argue it that
14 way. But lots of random people get shot through no fault of
15 their own. I don't think being shot makes you a bad
16 character. If that's the case, a lot of these shootings
17 that happen in Charleston, I mean, it just happens -- I
18 mean, it causes me great -- what's the word I'm looking for
19 -- distress to say it, but it's true. I mean, people get
20 randomly shot all the time.

21 MR. PEPER: Unfortunately, you're right. But in this
22 case, he's going to use it for motive purposes that this is
23 a retribution type of ---

24 THE COURT: Well, if he connects the dots ---

25 MR. PEPER: --- foundation. So now we're ---

1 THE COURT: But he has to connect it. He has to lay it
2 a little at a time. You don't bring that all -- and at this
3 point, it would be relevant to motive. And so I don't
4 really -- as long as he connects the dots, I'm going to let
5 him show motive.

6 MR. PEPER: He got it in through a witness that has no
7 knowledge of who shot him.

8 THE COURT: But you didn't object.

9 MR. PEPER: That's why you took it under advisement,
10 didn't you?

11 THE COURT: No, no, no. You didn't object when he
12 asked him the direct question. Photograph and the question
13 are two separate things. We already moved on from the
14 photo.

15 MR. PEPER: You're right. As I was walking back here,
16 he asked that. And my understanding was your ruling at the
17 bench was I'm going to take this under advisement.

18 THE COURT: No. I'm going to take the picture under
19 advisement. I ruled simultaneously. The objection was
20 raised to the photo. Every question is independent.

21 MR. PRICE: You're right.

22 THE COURT: So if he's offering it to show their
23 relationship and corroboration of their close relationship,
24 I don't have a problem with it. But I cannot foreclose --
25 the only way you're going to show motive through Lisle. And

1 at this point, getting shot is not a bad act. That's not
2 character. People are the victim of random gunshot -- you
3 know, when I talk to young people, I always tell them, you
4 don't know where bullets gonna go. I had a case one time
5 where a bullet ricocheted off a building and hit somebody at
6 a gas tank. You don't know where a bullet is gonna go. So
7 that doesn't make that person that got shot a bad person.
8 It just means they were the victim -- and nothing has come
9 into evidence at this point as to why he was shot or that he
10 was a bad person because he was shot. But it certainly
11 could go to motive in terms of retribution. But he's can't,
12 at least from what I've heard, establish that through
13 witness. But he's getting pretty close with this witness.

14 MR. PEPER: And that's my concern. Is that he's not
15 even required to prove ---

16 THE COURT: He doesn't, but if he wants to. Because
17 people wonder why you would randomly shoot somebody.

18 MR. PEPER: Sure. I agree, Judge. And sure the jury
19 would love to have motive. I mean, what jury wouldn't. But
20 it's not required. It's not an element of ---

21 THE COURT: But he's not foreclosed from showing it.

22 MR. PEPER: I agree, Judge, if he can connect the dots.
23 Again, it doesn't have to be motive -- what's wrong with
24 malice?

25 THE COURT: He's already connected the dots with this

1 witness who said that we got a phone call. He said we're
2 going to get this person. That's the person that shot me.
3 That's enough in and of itself to establish motive.
4 This photo is not being offered to show he was shot. The
5 photo is being offered to show that they were close enough
6 friends, which really goes to his credibility, his
7 interaction with the defendant, that they spoke routinely
8 enough that when he was hurt, he called him. Like I told
9 you, with that neck brace, my assumption was he was getting
10 out of the hospital from a car wreck or that he didn't even
11 get to the hospital. I mean, those neck braces are used for
12 a myriad of purposes. They just stabilize your body.
13 They're not used just for gunshot wounds. Most people wear
14 those after car wrecks. So I wouldn't have any idea why --
15 my first assumption was that he had a car wreck. But he's
16 offering it to show that they had a close enough
17 relationship that when he was released from a traumatic
18 event they were talking. And they don't have to show
19 motive, but they're not foreclosed from showing it.

20 MR. PEPPER: I'm not arguing their foreclosed, Judge.
21 But what they're attempting to do is get it in through 604
22 -- excuse me -- through 404. And that's exactly what
23 they're trying to do here is get in under -- make the
24 connection that because he was shot, that Justin then went
25 out and shot some different guy.

1 THE COURT: Well, they've already established that this
2 witness through res gestae that a phone call happened and
3 another continuum of events happened, and what precipitated
4 it was revenge basically, or getting back at somebody. And
5 that is relevant. I don't have a problem with the
6 photograph. I'll note your exception. It's marked and
7 admitted, number 145, FaceTime conversation.

8 MR. PEPER: Thank you.

9 (State's Exhibit No. 145, Photograph, was received
10 into evidence.)

11 THE COURT: Now, these other ones, I'm a little more
12 concerned about which is number 152 and 153 which is this
13 Stewy individual. And I guess I'm trying to figure out,
14 one, do y'all have any exception to them? And then I need
15 to ask of the State, which I already have, which is why do
16 you need two? Because it's the same thing, basically. One,
17 with a name with a picture you really can't make out. And
18 one with a picture you can make out with the name. This was
19 likewise printed today at 9:46 a.m. Is Stewy going to be
20 called as a witness?

21 AST. SOL. KIDD: No, ma'am. Not unless I get lucky.
22 He's not on the witness list ---

23 THE COURT: So how do we know this is Stewy? There's
24 no nickname on here?

25 AST. SOL. KIDD: Because the witness testified to it.

1 THE COURT: I understand that.

2 MR. PEPER: He did testify to it one time. But -- he
3 testified he never heard of Stewy. I'm concerned that we're
4 not putting them in through the witness at the appropriate.
5 We're getting confused here on testimony just as we did with
6 145 that you and I, Judge, just argued about, which has
7 already been published to the jury. Just in looking back at
8 my notes. It's already put on the overhead and all. So I'm
9 a little concerned ---

10 THE COURT: 145 was not published. I took that under
11 advisement when he moved to admit it and it was put back on
12 the table. I didn't admit ---

13 MR. PEPER: The FaceTime photo with the neck brace?

14 THE COURT: That was put on -- my head must have been
15 down?

16 AST. SOL. KIDD: I don't think I did.

17 THE COURT: I don't think he published that. Because
18 when he -- you objected, I asked y'all to approach. I said
19 in the interest of time, I'm taking it under advisement. I
20 don't recall it being put up there. But I might be wrong.
21 I'm a little weary.

22 MR. PEPER: That's why I was so confused when I heard
23 the testimony of ---

24 COURT REPORTER: I have it in my notes when you came
25 off that bench conference, that it was actually admitted.

1 The objection was withdrawn and it was admitted at that
2 point.

3 AST. SOL. KIDD: That's right.

4 COURT REPORTER: It was. So I have it was in evidence
5 at that point.

6 THE COURT: You know what -- I need to go back to my
7 note right quick. Hold on.

8 (Brief pause.)

9 THE COURT: I have that it is -- you have that the
10 objection was withdrawn on 145?

11 COURT REPORTER: Yeah.

12 MR. PEPER: It was on 140 ---

13 THE COURT: 146 came in without objection. You sure it
14 was 145?

15 COURT REPORTER: Well, I can tell you at 145, the time
16 we started discussing that was at 4:20; 146 was at 5:44 p.m.
17 is what I have.

18 THE COURT: Which one did you say? You said you have a
19 note that 145 the objection was withdraw?

20 COURT REPORTER: Yeah. And that's the only one I have
21 in my notes that we were discussing at that time or was
22 brought up. And that was at 4:20 in the afternoon. I can
23 probably go back to find it in the scrip and the audio of I
24 need to.

25 THE COURT: Yeah, we might need to. Because if

1 withdrew your objection, then it's a moot issue.

2 MR. PEPER: Right.

3 THE COURT: And I just have to go back through my notes
4 because I may have made a cryptic note to myself somewhere
5 in there.

6 AST. SOL. KIDD: For whatever it's worth ---

7 THE COURT: Yeah. I have 145 right here that you
8 withdrew your objection and that it was admitted without
9 objection. So that's a nonissue.

10 MR. PEPER: So, Judge, while we got the court reporter
11 looking back through things ---

12 THE COURT: Oh, she's not going to look back at 145.
13 My notes reflect it and so does her's.

14 MR. PEPER: I gotcha. But onto -- and I don't know
15 what exhibits they are -- Stewy's exhibits. My
16 understanding is that -- the testimony I've heard is that --
17 and I want to make sure I reference it -- he doesn't know
18 Stewy. No one walked up to the car. I never seen Stewy.

19 THE COURT: I don't know. I'm gonna have to go back
20 and look at my notes and see exactly what he said.

21 MR. PEPER: Right. Which I think you were indicating
22 that he testified the exact opposite, which I think you
23 might be right too. I think we both might be right. But
24 that's my concern.

25 THE COURT: I don't think I said how he testified. I

1 said I want to think about it over night and look back at my
2 notes.

3 MR. PEPER: Okay.

4 THE COURT: And I asked Mr. Kidd if Mr. Stewy or Mr.
5 Devoe was going to testify. And he said with luck, but not
6 that he anticipated? And, again, I guess I'm trying to
7 figure out -- tell me again why you're offering this. I'm
8 referring to 152 and 153.

9 AST. SOL. KIDD: It's two-fold. First, it's to
10 identify who Stewy is, and we've now had two testify about
11 it was the person who made the phone call to Justin
12 indicating that the guy who shot him was at the club. It
13 was to identify who that is. And it's the first block in
14 the foundation for future testimony identifying the
15 relationship between Stewy and Justin and Marvin that does
16 not exist ---

17 THE COURT: But how are you going to prove that through
18 hearsay that they can't cross-exam? And how are you going
19 to prove that that's the person -- you know, I have -- I'm
20 not big on social media. But I have some friends who have
21 public pages, and their staff maintains them. They don't
22 even go on them. There are people that thinking they
23 talking to them and they've never been on those pages. And
24 they do it for PR purposes. So how are you going -- no they
25 have the ability to cross-examine every -- and confront

1 every witness you call against them. So how are you going
2 to prove that that's the person? So you might want to think
3 about that. But I'm tired right now, so we are going to
4 adjourn. Because I can't think any more. I've reached my
5 limit today. And I'm sure y'all have to, and I'm a little
6 hungry. And I'm sure Mr. Cornley is too, and I'm sure this
7 young man is. So we'll start in the morning at 9:30. And
8 I'll go back through my notes and we'll see about 152 -- I'm
9 sorry. I'm getting my numbers wrong -- 153 and 152.

10 (The proceeding adjourned for the evening at 6:29 p.m.)

11

12 (Proceedings that took place on Thursday, June 22,
13 2017, and the morning portion of Friday, June 23, 2017,
14 were produced and submitted separately by another court
15 reporter.)

16

- - - - -

17 (The proceedings resumed at 2:56 p.m.)

18 THE COURT: While the bailiff is getting the jury, I
19 understand this is a very emotional proceeding. However,
20 when the jury verdicts are read, I do not expect there to be
21 any audible response from the gallery. If you don't feel
22 for you can abide by those instructions, I would hope that
23 you would excuse yourself at this time. Otherwise, I'm
24 putting it into the hands of the deputies to handle it, and
25 that might not be so pleasant. So I would ask that you

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS

3 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 4 PLAINTIFF,) OF
 5 VS.) RECORD
 6 JUSTIN WILSON AND MARVIN BRYAN) 2017-GS-10-4161 - 4167
 7 DEFENDANTS.)

8
 9
 10 June 23rd, 2017
 11 The morning of June 24th, 2017
 12 Spartanburg, South Carolina

12 B E F O R E:

13 THE HONORABLE DEADRA JEFFERSON, Judge; and a jury.

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

15 E. CULVER KIDD, IV
 16 ASSISTANT SOLICITOR
 17 Attorney for the State

18 MARK ANDREW PEPER
 19 ESQ.
 20 Attorney for the Defendant Wilson

21 BENTLEY D. PRICE
 22 ESQ.
 23 Attorney for the Defendant Bryan

24 HEATHER LANDRY
 25 Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

I N D E X O F W I T N E S S E SWITNESSESPAGE

KEITH EVANS

Direct examination by Sol. Kidd	7
Cross-examination by Mr. Peper	10
Cross-examination by Mr. Price	39
Redirect examination by Sol. Kidd	62

JOSH CHENEY

Direct examination by Sol. Kidd	75
Direct examination by Sol. Kidd	127
Cross-examination by Mr. Peper	130

Motions	131

JENNIFER BUTLER

Direct examination by Mr. Price	155
Cross-examination by Mr. Peper	176
Cross-examination by Sol. Kidd	214
Redirect examination by Mr. Price	224

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Closing by Solicitor Kidd	269
4	Closing by Mr. Price	287
5	Closing by Solicitor Kidd	299
6	Closing by Mr. Peper	303
7	Charge by the Court	311
8	Certificate	340
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
s-97	Driver's License		219
s-151	Facebook Page		47
s-154	Facebook Screenshot		123
s-157	Facebook Screenshot	76	

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-10	Facebook Shot	47	
5	C-11	Juror Note	60	
6	C-12	Juror Note	62	
7	C-13	Original of State's 154	121	
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Thursday, June 23rd, 2017

THE COURT: Can you go ahead and put the witness at the witness stand please?

(WHEREUPON, the witness complies.)

THE COURT: State ready to proceed?

SOLICITOR KIDD: We are, Your Honor.

THE COURT: Defense ready to proceed?

MR. PEPER: Yes, ma'am.

MR. PRICE: Yes, ma'am.

THE COURT: They should be right behind me. You can just set the notebooks right there on the ledge.

(Pause.)

THE COURT: And, Mr. Evans, I'll remind you you're still under oath.

THE COURT: Dallas, we planned for 12, right?

THE CLERK: Yes, ma'am.

THE COURT: Thank you, sir.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Okay. I'm gonna need you to go on that back row for me. I'm sorry. Yes, ma'am.

You may be seated.

Good morning, ladies and gentlemen. I hope everybody had a present -- pleasant and restful evening. We're now

1 going to resume the testimony of the witness.

2 The State may proceed.

3 SOLICITOR KIDD: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 SOLICITOR KIDD: Please the Court?

6 THE COURT: Yes, sir.

7 CONTINUED DIRECT EXAMINATION

8 BY SOLICITOR KIDD:

9 Q Good morning, Mr. Evans.

10 A Morning.

11 Q I've only got a few more questions for you. I know
12 you've been up here for a while.

13 The first of which is in -- I'm gonna show you what's
14 been marked, and I think we already did this one, State's
15 Exhibit 94.

16 Do you recognize that, that phone?

17 A Yes, that's my rights---

18 Q That's what now?

19 And you got to speak up for me.

20 A Form---

21 Q That's your phone?

22 A Yes, sir.

23 Q Would you recognize the other two phones in the
24 vehicle, State's No. 95 and State's No. 96?

25 A Tater's and Bubby's phone.

Keith Evans - Direct examination
by Solicitor Kidd

1 Q And which one's Tater's and which one's Bubby's?

2 A The iPhone is Tater's. The other phone is Bubby's.

3 Q And how do you know that?

4 A Cause like I be around them.

5 Q Now, when we -- oh, when you were testifying yesterday,
6 just to sort of get to the location that we're talking
7 about, when you were at D'Nice's house on the morning of the
8 22nd, and I believe it was you, Bubby, and D'Nice, what
9 was the plan regarding your cell phones?

10 A I left my phone in the charger -- in the car charger
11 while we was at the club.

12 Q What was the plan as far as Tater's phone?

13 A Tater lost his phone in the club and a girl gave it to
14 Bubby.

15 Q And what about Bubby's phone?

16 A He left it in the car.

17 Q And did y'all discuss this?

18 A Yes, sir.

19 Q And now I, I know we've kind of maybe hammered this to
20 death, but do you see Tater in the courtroom today?

21 A Yes, sir.

22 Q Can you identify him for the record please?

23 A How you mean?

24 Q Can you identify him in the courtroom?

25 Which one is he?

Keith Evans - Direct examination
by Solicitor Kidd

1 A The one up in the front.

2 Q The front table?

3 A Yes, sir.

4 SOLICITOR KIDD: For the record, can the record reflect
5 that the witness has identified Marvin Bryan as Tater?

6 THE COURT: He's already testified. Proceed.

7 Q And do you see Bubby in the courtroom as well?

8 A Yes, sir.

9 Q And which one is he?

10 A The one in the same table.

11 Q And these are the same two individuals in the Ford Edge
12 with you on November -- the night of November 21st and into
13 the morning of November 22nd?

14 A Yes, sir.

15 SOLICITOR KIDD: Your Honor, may we approach?

16 THE COURT: You may.

17 (WHEREUPON, a bench conference was held out of the
18 hearing of the jury at this time.)

19 SOLICITOR KIDD: I have no further questions.

20 THE COURT: Any cross-examination of the witness?

21 MR. PEPER: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MR. PEPER: Court's indulgence. Thank you.

24 THE COURT: Uh-huh. (Affirmative).

25 (Pause.)

Keith Evans - Cross-examination
By Mr. Peper

1 MR. PEPER: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. PEPER:

5 Q Mr. Evans, Mark Peper. I represent Justin Wilson.

6 How are you?

7 A All right.

8 Q I'm gonna come up a little closer to you here.

9 Now, Mr. Evans, as I understand it, your job here today
10 is to tell a story, right?

11 A Yes, sir.

12 Q Okay. And you understand my job is to see if your
13 story's believable, right?

14 A Yes, sir.

15 Q And stories, you would agree with me, it -- it's a
16 certain art, right?

17 I mean you got to know how to tell a story, right?

18 A Yes, sir.

19 Q I think you said you went to Orange Grove for
20 elementary school?

21 A Yes, sir.

22 Q That's a good school. My son goes there as well.

23 And so, if it's anything like it was then as it is now,
24 you have story time at the library, right?

25 A Yes, sir.

Keith Evans - Cross-examination
By Mr. Peper

1 Q You go to the library and read you a story, right?

2 A Yes, sir.

3 Q And you kind of get to ask questions about the story if
4 you don't understand something and then she explains the
5 story, right?

6 A Yes, sir.

7 Q You remember doing all that?

8 Now, were you more of like a math or science guy?

9 A Math.

10 Q You liked math better, yeah.

11 Science is tough, right?

12 A Yeah.

13 Q In science, there are, are facts and they don't --
14 science don't lie, right?

15 A Yes, sir.

16 Q Right. Yeah, science doesn't lie.

17 So -- and I'm not asking you if you ever did go to the
18 principal's office, but when you, when you go to the
19 principal's office, you got to tell the principal a story
20 about what happened, right?

21 A Yes, sir.

22 Q And sometimes you tell that principal the story he
23 wants to hear just so you don't get in too much trouble,
24 right?

25 A Yes, sir.

Keith Evans - Cross-examination
By Mr. Peper

1 Q And he'd let you go back to class?

2 A Yes, sir.

3 Q Right.

4 So, when you're telling a story, you're, you're,
5 you're, you're kind of feeling the other person out to see
6 what they want to hear, right?

7 A Yes, sir.

8 Q Right.

9 And that's kind of what, what we're doing here today
10 with this statement, right?

11 You're, you're telling them a story that they want to
12 hear, right?

13 A No, I'm telling the truth.

14 Q But, but you're, you're doing that so that you get
15 leniency for your, your charges, correct?

16 A I don't know what I'm gonna get.

17 Q Well, you know you're faced with murder and three
18 counts of attempted murder, right?

19 A Yes, sir.

20 Q Okay. Just like Mr. Wilson?

21 A Yes, sir.

22 Q Right.

23 And so, if I understand your proffer correctly, you
24 gave a proffer so that -- let me make sure I -- you gave a
25 proffer so that, I want to make sure I get this right, you

Keith Evans - Cross-examination
By Mr. Peper

1 would be taken care of on the back end, right?

2 A Yes, sir.

3 Q Okay. And Mr. Kidd also told you that---

4 SOLICITOR KIDD: Objection, Judge.

5 THE COURT: Basis?

6 SOLICITOR KIDD: He's making me a witness.

7 THE COURT: Rephrase the question.

8 Q Did Mr. -- okay.

9 THE COURT: It's what the proffer agreement states.

10 MR. PEPER: Right.

11 THE COURT: Isn't it?

12 Q Were you told that you had to tell the truth?

13 A Yes, sir.

14 Q All right. You were also told that, if you lied too
15 much, then you could get a second chance?

16 A Yes, sir.

17 Q Right?

18 And a third chance, right?

19 A No, sir.

20 Q Okay. All right. Well, if, if, if you lied, he --
21 you -- they weren't gonna just pull the proffer without at
22 least giving you a chance to come back in and clear some
23 things up, right?

24 A Yes, sir.

25 Q And, in fact, you've met, you've met with Mr. Kidd at

Keith Evans - Cross-examination
By Mr. Peper

1 least on two more occasions, right?

2 A Yes, sir.

3 Q The last time you met with him, last week or a couple
4 weeks ago?

5 A Yes, sir.

6 Q All right. And then the, the middle time, has that
7 been about a month or two ago?

8 A I'm not quite sure.

9 Q Okay. All right. But let's talk about the first story
10 you told, okay, which would of been with Officer Martin.

11 Do you remember being stopped by Officer Martin that
12 night?

13 A While we was walking?

14 Q Yes, sir.

15 A Yes, sir.

16 Q Right.

17 And you remember telling him that y'all heard gunshots
18 and so you started running?

19 A Yes, sir.

20 Q You remember telling him that you were just chilling
21 and heading to somebody's aunt's house on Durant?

22 A Yes, sir.

23 Q Okay. That wasn't the truth, was it?

24 A No.

25 Q All right. It got you out of it that time though,

Keith Evans - Cross-examination
By Mr. Peper

1 didn't it?

2 A That's right.

3 Q He let you go?

4 A Right.

5 Q Then it looks like you go home, at some point, and you
6 tell your dad that you lost your phone, right?

7 A Yes, sir.

8 Q So, that second story, that wasn't true either, was it?

9 A No, sir.

10 Q But you didn't get in trouble for losing your phone,
11 did you?

12 A No, sir.

13 Q Now, you'd of gotten in trouble if you had told him you
14 were driving a car, shot some people up and wrecked,
15 wouldn't you?

16 A Yes, sir.

17 Q Right.

18 You told him what he wanted to hear, right?

19 A (WHEREUPON, the witness nods affirmatively.)

20 Q Now, you also ended up at the North Charleston Police
21 Department that night, right?

22 A Yes, sir.

23 Q And you told them what they wanted to hear, right?

24 A I told them the story we came up with.

25 Q Okay. which would of been the third story, right?

Keith Evans - Cross-examination
By Mr. Peper

1 A Yes, sir.

2 Q Which, if I understand it correctly, was that you was
3 at Honey Beez, right?

4 A Yes, sir.

5 Q With Bubby and D'Nice, right?

6 A Yes, sir.

7 Q In Bubby's rental car, right?

8 A Yes, sir.

9 Q And, on the way to Honey Beez, you said you were
10 sitting in the back seat?

11 A Yes, sir.

12 Q That Bubby was driving?

13 A Yes, sir.

14 Q That D'Nice was in the front passenger?

15 A Yes, sir.

16 Q Okay. You knew that car had wrecked, right?

17 A Yes, sir.

18 Q So, you didn't want to be the driver on a car that
19 wrecked, right?

20 A That's right.

21 Q I feel you.

22 Okay. Now, at some point, it looks like you asked for
23 a lawyer, right?

24 A Yes, sir.

25 Q They didn't stop asking you questions though, did they?

Keith Evans - Cross-examination
By Mr. Peper

- 1 A No, sir.
- 2 Q They kept asking you questions, right?
- 3 A Yes, sir.
- 4 Q So, you changed your story again?
- 5 A Yes, sir.
- 6 Q All right. Now, on the fourth story, it looks like you
- 7 said that D'Nice was driving, right?
- 8 A Yes, sir.
- 9 Q You still didn't want to tell them who was driving the
- 10 car?
- 11 A No, sir.
- 12 Q The car wasn't in your name, was it?
- 13 A No, sir.
- 14 Q The car just wrecked, right?
- 15 A Yes, sir.
- 16 Q Looks like you also told them, and you correct me if
- 17 I'm wrong, that Justin said that's the boy right there,
- 18 right?
- 19 A Yes, sir.
- 20 Q And that Justin said that's the boy right there
- 21 referring to the dude that hit CB at Club Vegas, right?
- 22 A Yes, sir.
- 23 Q And you said that happened at the Cheap Way, right?
- 24 A What happened at the Cheap way?
- 25 Q That that's when he said that.

Keith Evans - Cross-examination
By Mr. Peper

1 A Yeah.

2 Q Right.

3 Okay. And this is when D'Nice is driving, right, and
4 you still in the back seat, right?

5 A Yes, sir.

6 Q All right. Now, it looks like we're in the hour -- I
7 mean you were there a long time, weren't you, at the police
8 station---

9 A Yes, sir.

10 Q ---that night?

11 And they asked you questions pretty much the whole
12 time, coming and going, asking questions?

13 A Yes, sir.

14 Q Now, when Mr. Kidd asked you did you eventually tell
15 them the truth, you said yeah, towards the end, right?

16 A Yes, sir.

17 Q So, at the very end when you said D'Nice was driving,
18 Wilson shot at Charger with SKS rifle, I was in car, you'd
19 agree with me that that's the last thing you said to them?

20 A Yes, sir.

21 Q So, is that what you're saying is the truth?

22 A No, sir.

23 Q Okay. Well, but didn't you tell Mr. Kidd, just earlier
24 that, towards the end of this interview, that's when you
25 told the truth?

Keith Evans - Cross-examination
By Mr. Peper

1 A That's when I started telling the truth placing myself
2 in the car.

3 Q Okay. So, your version of the truth is just that you
4 were in the car?

5 A Yes, sir.

6 Q I got you.

7 Okay. All right. That's when you were served with
8 murder and three attempted murder warrants, right?

9 A Yes, sir.

10 Q And that's when they took those same warrants out for
11 Justin and Dominique, D'Nice, right?

12 A Yes, sir.

13 Q As a result of what you told them?

14 A Yes, sir.

15 Q At that point, they had not interviewed anybody but
16 you, right?

17 A Yes, sir.

18 Q Just you?

19 A Yes, sir.

20 Q Your parents were at the police department that night
21 with you, right?

22 A Yes, sir.

23 Q And you didn't get to speak with them after your
24 interview, did you?

25 A No, sir.

Keith Evans - Cross-examination
By Mr. Peper

1 Q Nah. They're, they're smart enough.

2 They're smart people, right?

3 I mean they do go ahead and get you a lawyer at that
4 point, right?

5 A Yes, sir.

6 Q So, they went out and hired you a lawyer, right?

7 A (WHEREUPON, the witness nods affirmatively.)

8 Q Now, I don't want you to tell me what y'all talked
9 about. Okay?

10 I want to make that clear.

11 I just want to ask you how many times did your lawyer
12 come see you at the jail between the time that you told
13 North Charleston the truth and the time that they brought
14 you downtown to meet with Mr. Kidd?

15 SOLICITOR KIDD: Objection, Your Honor.

16 THE COURT: That's privileged. Oh, sustained.

17 MR. PEPER: All right.

18 THE COURT: It's not your business how many times.

19 Now, if you want to ask another question. That implicates
20 conversations with his lawyer and interactions with his
21 lawyer.

22 MR. PEPER: All right.

23 Did, did---

24 THE COURT: If you want to ask him something else, you
25 can. You can phrase that question a different way.

Keith Evans - Cross-examination
By Mr. Peper

1 MR. PEPER: Yes, ma'am.

2 THE COURT: Uh-huh. (Affirmative).

3 Q Did you tell your lawyer that you didn't tell North
4 Charleston the truth?

5 SOLICITOR KIDD: Objection, Judge. Privileged.

6 THE COURT: Well, it -- he needs to lay the foundation
7 that it's outside the ambit of privilege, that it was
8 said -- the privilege was shed and it was said in the
9 presence of a third party.

10 MR. PEPER: How about---

11 THE COURT: Otherwise it's privileged.

12 MR. PEPER: I'm with you, Judge. I, I got you.

13 About 30 days later is when you end up being brought
14 down to meet with Mr. Kidd, correct?

15 A Yes, sir.

16 Q All right. Was that your idea?

17 A I agreed with it.

18 Q Okay. But it, it -- that wasn't your idea, right?

19 I mean you didn't, you didn't pick up the phone and
20 call anybody and say I want to talk to the prosecutor?

21 A No, sir.

22 Q Right.

23 Okay. And I mean that's what, that's what your lawyer
24 did.

25 He's just trying to go work out a deal, right?

Keith Evans - Cross-examination
By Mr. Peper

1 A Yes, sir.

2 Q You'd come down here. You'd tell what they want to
3 hear. They gonna take care of you on the back end.

4 SOLICITOR KIDD: Objection, Judge.

5 THE COURT: Basis?

6 SOLICITOR KIDD: He's testifying about facts---

7 THE COURT: You're speaking objections. Please
8 approach.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 THE COURT: Objection sustained.

12 Rephrase.

13 Q So, Mr. Evans, you're brought down to meet with Mr.
14 Kidd, and he makes it very clear that, in exchange for
15 whatever story you tell him---

16 SOLICITOR KIDD: Objection, Judge.

17 THE COURT: Basis?

18 SOLICITOR KIDD: Mischaracterizing our proffer.

19 THE COURT: Rephrase the question.

20 If anybody has a phone or other electronic device on,
21 it needs to be turned off. Not silent. Not vibrate. Off.
22 My deputies have very sensitive ears. If it goes off, it's
23 gonna be taken, and it's not gonna be returned to you.

24 You may proceed, Mr. Peper.

25 MR. PEPER: Thank you, Your Honor.

Keith Evans - Cross-examination
By Mr. Peper

1 THE COURT: Uh-huh. (Affirmative).

2 Q You told Mr. Kidd that you'd known Justin since
3 elementary school, right?

4 A Yes, sir.

5 Q That he went to Burke after middle school, but then
6 y'all linked back up later, right?

7 A Yes, sir.

8 Q Okay. And you knew his baby mama and his -- right?

9 A Yes, sir.

10 Q All right. And that you knew Tater, right?

11 A Yes, sir.

12 Q That you met him a couple years ago playing dice,
13 right?

14 A Yes, sir.

15 Q Okay. You told him that you knew Daquan that you
16 called DQ.

17 Is that right?

18 A Yes, sir.

19 Q Through basketball, right?

20 A Yes, sir.

21 Q That he got some anger management problems, right?

22 A Yes, sir.

23 Q Tried to fight people, right?

24 A Yes, sir.

25 Q He'd flip on you, right?

Keith Evans - Cross-examination
By Mr. Peper

1 A Yes, sir.

2 Q And he like that with everybody?

3 A Yes, sir.

4 Q But you ain't trying to hang out with him?

5 A I done been around him a few times.

6 Q I mean you, you told him that you and Marvin were
7 pretty tight, but DQ kind of outside, right?

8 A Yes, sir.

9 Q All right. You then go on, in telling your, your
10 fourth story, that Justin got a phone call that night,
11 right?

12 A Yes, sir.

13 Q Now, when you were asked did he call anyone's name as
14 to who called him, your answer was no, correct?

15 A Yes, sir.

16 Q But you don't know who called him, correct?

17 A I do know who called him.

18 Q All right. So, make sure I understand.

19 Is it your testimony that 30, less than 30 days after
20 the incident, you didn't know who called him, but you do
21 know now?

22 A I knew when the 30 days was up.

23 Q So, you lied to Mr. Kidd during this fourth story?

24 A Yes, sir.

25 Q Okay. All right. Did he tell you that, if you lied,

Keith Evans - Cross-examination
By Mr. Peper

1 you wouldn't get the benefit of the proffer?

2 A Yes, sir.

3 Q But you felt like it was okay because he also told you
4 that, if you've lied too much, I'll let you know and give
5 you another chance to be honest, right?

6 SOLICITOR KIDD: Objection, Your Honor.

7 THE COURT: Basis?

8 SOLICITOR KIDD: Making me a witness.

9 THE COURT: Please approach.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Rephrase the question.

13 Q Eventually you were allowed to come and clean up some
14 of the lies you told them on this proceeding, right?

15 A Yes, sir.

16 Q During the proffer, right?

17 A Yes, sir.

18 Q Okay. That being one of them?

19 A Yes, sir.

20 Q Okay. Now, would you agree with me that your memory of
21 the events would of been better 30 days after than they are
22 today, correct?

23 A You will always remember the truth.

24 Q All right. Now, when you said I don't know who it was
25 that called Justin Wilson, are you -- and now I'm talking

Keith Evans - Cross-examination
By Mr. Peper

1 about later on cause I think you -- let me rephrase, Judge.
2 I apologize.

3 THE COURT: Uh-huh. (Affirmative).

4 Q Later on you'd mentioned that there were some more
5 calls throughout the night, right?

6 A Yes, sir.

7 Q All right. And, in your proffer 30 days after, you
8 said you have no idea who was the caller, right?

9 A No, sir.

10 Q All right. Are you saying you do now know?

11 A I just know he talked to Stewie that day.

12 Q Okay. You know he talked to Stewie.

13 All right. Let's, let's quickly talk about Stewie.

14 You told Mr. Kidd that you had no independent knowledge
15 of who Justin was talking to, right?

16 A The first one?

17 Q Yeah, the, the fourth story, 30 days later.

18 A Yes, sir.

19 Q Right.

20 Okay. Now, you went on to say that y'all pulled up to
21 the Hess, and that's when Stewie walked up to the car,
22 right?

23 A I don't remember saying Stewie walked up to the car.

24 Q Well, then why did you tell them that?

25 I mean you, you don't remember telling him that 30 days

Keith Evans - Cross-examination
By Mr. Peper

1 later in the fourth story?

2 A No, sir.

3 Q Well, I, I found that weird too because earlier today
4 you testified you didn't even know who Stewie was. Excuse
5 me. Yesterday.

6 Right?

7 A I seen Stewie around.

8 Q Okay. But you say you don't know who he is.

9 A (WHEREUPON, the witness nods negatively.)

10 Q Well, then why would you specifically tell Mr. Kidd
11 that's when Stewie walked up to the car, older dude, I've
12 known him two to three years?

13 why, why would you tell him that?

14 You thought that's what he wanted to hear?

15 A No, sir.

16 Q You told him you'd met Stewie through dice games,
17 right?

18 A Yes, sir.

19 Q Now, I believe earlier, on cross, you said you didn't
20 know what kind of car y'all were looking for, right?

21 A Yes, sir.

22 Q But you remember in your proffer 30 days later?

23 A I said black one.

24 Q That's right. That's right.

25 You remember also saying that you didn't know who you

Keith Evans - Cross-examination
By Mr. Peper

1 were looking for, did you?

2 A Yes, sir, I said the person who shot Bubby.

3 Q Well, I know that's what's you said yesterday, but 30
4 days after the shooting---

5 A I told them that too.

6 Q All right. So, you also told him that there was no
7 talking going on inside the car, didn't you?

8 A Yes, sir.

9 Q And I know you've met with Mr. Kidd a couple more
10 times, and I know what your testimony was yesterday, but I
11 just want to make sure I understand your fourth story 30
12 days later.

13 There was no talking going on in the car, correct?

14 A When we was parked in the back yard, that's when he was
15 talking to Stewie. I heard him say that the boy's at the
16 club.

17 Q You, you said that's your testimony in -- now.

18 You're also saying that's not what you told him 30 days
19 after, correct?

20 A That is what I told him.

21 Q All right. I don't know the name of who called him.

22 Are you saying you did not say that to Mr. Kidd 30 days
23 after?

24 A Yes, I said that.

25 Q Now, there's been some testimony that Mr. Wilson

Keith Evans - Cross-examination
By Mr. Peper

1 started using your phone?

2 A Yes, sir.

3 Q Right?

4 And I believe, 30 days later, you said I guess because
5 his phone went dead, right?

6 A Yes, sir.

7 Q So, he said let me see your phone, and I just gave it
8 to him, right?

9 A Yes, sir.

10 Q Not thinking and not knowing what was going on, right?

11 A Yes, sir.

12 Q You didn't hear his conversations, correct?

13 A No, sir.

14 Q Yet, you know he was talking to the same people the
15 whole time, right?

16 A I don't know who he was talking to when he had my
17 phone.

18 Q Right.

19 So, if there's calls being made to and from Justin's
20 phone all the way up to this incident, are you changing your
21 story that the phone wasn't dead?

22 A He used his phone in the backyard and used mine when we
23 got to the cousin's house.

24 Q Make sure I understand your testimony right.

25 The backyard you're talking about in, in West Ashley?

Keith Evans - Cross-examination
By Mr. Peper

1 A Yes, sir.

2 Q Okay. He didn't use his phone the rest of the night?

3 A I guess not.

4 Q Well, don't guess.

5 You were there, right?

6 I mean you were in the car, right?

7 A Yes, sir.

8 Q So, if the call logs on his phone show outgoing,
9 incoming, outgoing, incoming, text this, Facebook that, text
10 in, you're telling me that's impossible?

11 A No, it's not impossible.

12 Q Well, the phone's either dead or it's not, right?

13 A Yes, sir.

14 Q You never used his phone, did you?

15 A No, sir.

16 Q You sure about that, right?

17 A Positive.

18 Q All right. All right.

19 Court's indulgence.

20 THE COURT: Uh-huh. (Affirmative).

21 (Pause.)

22 Q When you met with Mr. Kidd a couple weeks ago, did
23 y'all look at the videos?

24 A Yes, sir.

25 Q All right. Is that how you were able to point out your

Keith Evans - Cross-examination
By Mr. Peper

1 car in that freeze frame he showed you?

2 A Yes, sir.

3 Q Cause I couldn't see it.

4 I figured that's -- you just looked at the video a
5 couple weeks ago, right?

6 A Yes, sir.

7 Q All right. which would of been the third time you met
8 with him, right?

9 A Yes, sir.

10 Q All right. The second time you met with him a couple
11 months back, did you look at the videos as well?

12 A No, sir.

13 Q Okay. You know Daquan told a story too, right?

14 A I know he testified.

15 Q I'm sorry?

16 A I knew he testified.

17 Q Okay. And so, you can deduce that he did the same
18 thing you did, he told a story, and now he's testifying
19 about that story, right?

20 A Yes, sir.

21 Q Okay. Let me go back here. I -- this just bothers me.
22 when, when you told your third story the night when --
23 at the end when you were telling the truth, you knew that
24 you, Marvin, and DQ were stopped by the police department
25 when you told them it was just you, D'Nice, and Justin in

Keith Evans - Cross-examination
By Mr. Peper

1 the car, right?

2 A Yes, sir.

3 Q You didn't think they were gonna find that out?

4 A I lied.

5 Q Huh?

6 A I was lying to them.

7 Q I'm sorry?

8 A I was lying to them.

9 Q I believe I heard you testify yesterday, and you tell
10 me if I'm wrong, that you started running, that Tater said
11 we got to go get our phones, so you turned around, ran all
12 the way back, and then turned around and ran back the way
13 y'all were initially running.

14 Is that right?

15 A Yes, sir.

16 Q Okay. That's your story yesterday, which, by my, my
17 count, is the seventh story.

18 Okay. In the, in the fourth story, the proffer, I
19 believe you said I ran, I heard Tater say we got to go back
20 and get our phones, and that's when the three of us started
21 running together, correct?

22 A (WHEREUPON, no audible response was given.)

23 Q Right?

24 That -- you would agree with me that's different than
25 what you said yesterday in your seventh story, right?

Keith Evans - Cross-examination
By Mr. Peper

1 A Yes, sir.

2 Q Okay. And in-between your fourth story and your
3 seventh story, you met with the State on two different
4 occasions, right?

5 A Yes, sir.

6 Q Okay. The other guys in the other car, not the one you
7 were driving, the other car, you, you see which way they
8 ran?

9 A No, sir.

10 Q All right. Did you see them at all after the crash?

11 A No, sir, I saw, I saw them out the car when I tried to
12 run back for my phone.

13 Q Okay. So -- and that's what, that's what I'm getting
14 at. I'm trying to figure out which one's true, the fourth
15 story or the seventh story.

16 when you ran back to get your phone, you did see them?

17 A They were still by the car.

18 Q They were still by the car.

19 Okay. They're picking stuff up off the ground, right?

20 A I don't know what they were doing.

21 Q Is that why you turned around and said well, I ain't
22 getting that phone and just kept running?

23 A Yes, sir.

24 Q You, Tater, Daquan?

25 A Me and Tater.

Keith Evans - Cross-examination
By Mr. Peper

1 Q So, Daquan, you don't know which way he ran?

2 A He was at Durant, at the head of Durant.

3 Q Well, I know that's where you met up with him, but you
4 don't know where he ran at first, do you?

5 A When he jumped out the car, me and him both ran the
6 same direction.

7 Q You and him both ran the same direction?

8 A Yes, sir.

9 Q Okay. That's not what you told Mr. Kidd 30 days after
10 in that fourth story, is it?

11 A What did I tell him?

12 Q You told him I don't know where they ran. I ran,
13 hopped the fence, crossed the baseball fields, and that's
14 when Tater said we got to go back and get our phones,
15 correct?

16 A I recall I had told him I don't know which, which way
17 Bubby ran. He ran his own direction.

18 Q And would you -- all right. Now -- and you don't have
19 to agree with me in order, but I'm referring to this proffer
20 of 30 days later as your forth story, right?

21 You, you understood that, when I say fourth story, I'm
22 talking about the proffer?

23 A Yes, sir.

24 Q Okay. All right. So, then the, then the fifth story
25 would be, you would agree with me, in consecutive order,

Keith Evans - Cross-examination
By Mr. Peper

1 would be the second time you met with the State, right?

2 A Yes, sir.

3 Q All right. Now, you're saying you did not look at any
4 videos that time, right?

5 A Yes, sir.

6 Q So, you just went over your testimony?

7 A (WHEREUPON, no audible response was given.)

8 Q But you didn't look at any evidence?

9 You just talked?

10 A Yes, sir.

11 Q I got you.

12 Okay. And then the sixth story, which would of been a
13 couple weeks ago, the third time you met with Mr. Kidd,
14 that's when y'all looked at the, the videos and the evidence
15 and stuff, right?

16 A Yes, sir.

17 Q That's when you talk about that, right, and you talk
18 about your testimony?

19 A What do you mean---

20 Q Right?

21 A What do you mean talk about my testimony?

22 Q Well, you talk about, you know, how this was gonna go
23 today and what questions he was gonna ask you and those kind
24 of things, right?

25 A No, but you ain't questioning me.

Keith Evans - Cross-examination
By Mr. Peper

1 Q Okay. Did -- you went over what your proffer was,
2 right?

3 A Yes, sir.

4 Q Okay. Yeah, that's all I mean.

5 Okay. And so, back in your proffer, which would of
6 been the fourth story, you told him we was at D'Nice's
7 house, and we didn't really have a plan really.

8 You told him that, right?

9 A That's what I said.

10 Q All right. But now you're saying that y'all actually
11 had like a, a meeting. Everybody got around a table. Y'all
12 had a little brain storming session, and y'all came up with
13 this grand plan, right?

14 Is that, is that what you told Mr. Kidd just now on---

15 A Yes, sir.

16 Q ---direct examination?

17 A Yes, sir.

18 Q All right. So, if I understand it correctly, that was
19 at D'Nice's house, Domonique's house, right?

20 A Yes, sir.

21 Q All right. So, if Domonique were to say---

22 SOLICITOR KIDD: Objection, Judge.

23 THE COURT: Basis?

24 Q ---that that never happened---

25 SOLICITOR KIDD: Pitting.

Keith Evans - Cross-examination
By Mr. Peper

1 THE COURT: Sustained. Pitting.

2 Q The three of y'all, you, Tater, and Marvin, that was in
3 the car, y'all end up at Mega's house.

4 Is that right?

5 A Yes, sir.

6 Q Did you talk to Mega there?

7 A Yes, sir.

8 Q So, you saw him?

9 A Yes, sir.

10 Q He was home?

11 A Yes, sir.

12 Q He could verify that the three of y'all showed up?

13 A Yes, sir.

14 Q All right. What about his mama?

15 A No, sir.

16 Q She wasn't home?

17 A I think she was upstairs. I'm, I'm not sure.

18 Q I got you.

19 You didn't talk to her?

20 A (WHEREUPON, no audible response was given.)

21 Q Okay. Have any of Mr. Kidd's questions confused you at
22 all?

23 A No, sir.

24 Q Have any of my questions confused you at all?

25 A No, sir.

Keith Evans - Cross-examination
By Mr. Peper

1 MR. PEPER: All right. Court's indulgence one second,
2 Your Honor.

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q I believe you testified yesterday that you and DQ were
6 in the same unit, right?

7 A Yes, sir.

8 Q And DQ is Daquan Gilliard?

9 A Yes, sir.

10 Q I think the one that you and Tater was running with,
11 right?

12 A Yes, sir.

13 Q And he also got charged with murder and three counts of
14 attempted murder, right?

15 A Yes, sir.

16 Q All right. And y'all were in the same unit when y'all
17 both got arrested, right?

18 A Yes, sir.

19 Q And then you testified yesterday y'all were back in the
20 same unit about four or five months ago, right?

21 A Yes, sir.

22 Q You've never been in the same unit as Justin, have you?

23 A No, sir.

24 Q Never been in the same unit as Marvin, have you?

25 A No, sir.

Keith Evans - Cross-examination
By Mr. Peper

1 Q You know, if my math is correct, two weeks ago when you
2 met with Mr. Kidd, were you and DQ in the same unit?

3 A Yes, sir.

4 Q Yeah.

5 Okay. Two times ago when you met with Mr. Kidd, you
6 and DQ in the same unit?

7 A Yes, sir.

8 MR. PEPER: Court's indulgence.

9 THE COURT: Uh-huh. (Affirmative).

10 (Pause.)

11 MR. PEPER: Thank you, Your Honor.

12 Thank you.

13 THE COURT: Mr. Price.

14 MR. PRICE: May it please the Court, Your Honor?

15 THE COURT: Yes, sir. You may proceed.

16 CROSS-EXAMINATION

17 BY MR. PRICE:

18 Q Good morning. My name is Bentley Price. I represent
19 Marvin Bryan.

20 Mr. Evans, I'm not gonna sit here -- wouldn't you agree
21 Mr. Peper did an excellent job pointing out how many times
22 you've lied to the prosecutor?

23 THE COURT: No editorial comment. Ask a question.

24 Q Did you just tell Mr. Peper that you lied several
25 times?

Keith Evans - Cross-examination
by Mr. Price

1 A Yes, sir.

2 Q Okay. I just want to go over that real quickly.

3 You lied to the police officer on the side of the road,
4 didn't you?

5 A Yes, sir.

6 Q And the stakes in that situation were that you may get
7 in trouble, correct?

8 A Yes, sir.

9 Q Stake's not so high. You know, may or may not get in
10 trouble, but you got out of it, and then you lied to your
11 dad, but the stakes weren't very high there, were they?

12 A No, sir.

13 Q Then you met with the detectives.

14 So, you knew something was up, didn't you?

15 A Yes, sir.

16 Q And you lied to them, didn't you?

17 A Yes, sir.

18 Q And the stakes were pretty high there.

19 You knew they could probably charge you with some
20 crimes, correct?

21 A Yes, sir.

22 Q And you lied to them?

23 A Yes, sir.

24 Q You lied to them so bad you put a buddy of yours who
25 you consider a friend in this situation, correct?

Keith Evans - Cross-examination
by Mr. Price

1 A Yes, sir.

2 Q Then you got charged, correct?

3 A Yes, sir.

4 Q So, the stakes are real high, correct?

5 A Yes, sir.

6 Q So, you got the opportunity to come clean to the
7 prosecutor.

8 You met with your lawyer and the prosecutor in the
9 proffer, correct?

10 You were all in the same room, correct?

11 A Yes, sir.

12 Q And you lied, didn't you?

13 A Yes, sir.

14 Q You lied, didn't you?

15 A Yes, sir.

16 Q The stakes were pretty high then though, weren't they?
17 You're charged with murder, correct?

18 A Yes, sir.

19 Q All right. You met with them all again, correct?

20 A Yes, sir.

21 Q And you lied again knowing that the stakes were
22 extremely high, correct?

23 A I don't recall lying again.

24 Q Okay. Then you had the opportunity to come in here
25 today. You're facing 30 to life. That's the highest stakes

Keith Evans - Cross-examination
by Mr. Price

1 that we have.

2 wouldn't you agree with that?

3 A Yes, sir.

4 Q The highest stakes is your life.

5 You would agree with that, wouldn't you?

6 A Yes, sir.

7 Q And so you have lied every time the stakes have gotten
8 a little bit higher, a little bit higher, and a little bit
9 higher. But the day that the stakes are the highest they
10 possibly could be, you're now gonna come clean to the jury.
11 I'm telling you everything's a hundred percent the truth.

12 Correct?

13 A Yes, sir.

14 Q Okay. Just wanted to make sure we were okay on that.
15 I don't have much to even ask you. You -- you're a liar.
16 You're facing the highest stakes that you can lie---

17 SOLICITOR KIDD: Objection, Judge.

18 THE COURT: Sustained.

19 Ladies and gentlemen---

20 MR. PRICE: I---

21 THE COURT: ---you are to disregard counsel's last
22 comments. It's to be stricken from the record.

23 MR. PRICE: I apologize.

24 THE COURT: Mr. Price, ask a question. No editorial
25 comment.

Keith Evans - Cross-examination
by Mr. Price

1 Q You have agreed that you have lied, correct, throughout
2 this process?

3 SOLICITOR KIDD: Objection, Judge. Asked and answered.

4 THE COURT: I'll give him a little latitude.

5 MR. PRICE: He hadn't---

6 THE COURT: Overruled.

7 Rephrase.

8 Q And then -- when, when did you come clean to the
9 prosecutor about you knew it was Stewie on the phone?

10 when did you tell him that?

11 A The second time. The second or third time.

12 Q Okay. And you said you had direct knowledge of that.

13 You obviously lied about that previously, correct?

14 A Yes, sir.

15 Q But you said that you had direct knowledge of that.

16 Did you hear the phone call?

17 A I just heard when Bubbie say Stewie's at the car.

18 Stewie say that boy's at the club.

19 Q Okay. You heard Justin say that?

20 A Yes, sir.

21 Q The phone wasn't on speaker though, was it?

22 A No, sir.

23 Q So, you didn't hear his voice?

24 A No, sir.

25 Q Okay. So, you don't have any direct knowledge?

Keith Evans - Cross-examination
by Mr. Price

1 You just know what someone else said, correct?

2 A Yes, sir.

3 Q Okay. But you've testified here that you, you knew it
4 was Stewie, but you really don't.

5 A Yes, sir.

6 MR. PRICE: Okay. Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q So, briefly, you know what layaway is, right?
10 Everybody knows what that is.

11 A Yes, sir.

12 Q You want something, you put it on layaway, and you put
13 a little something on it every time you get the opportunity,
14 correct?

15 A Yes, sir.

16 Q And you want a deal, correct?

17 A Yes, sir.

18 Q Yeah.

19 You want, you want a deal, correct?

20 A Yes, sir.

21 Q And so, your first story, you put a little something on
22 it. They didn't -- it wasn't enough, correct?

23 So you gave another story, correct?

24 A Yes, sir.

25 Q And you alleged you came a little bit cleaner the

Keith Evans - Cross-examination
by Mr. Price

1 second time.

2 Then you gave a third story, correct?

3 A Yes, sir.

4 Q You put a little something else on it, but you lied,
5 correct?

6 A Yes, sir.

7 Q Well, you lied in your proffer, correct?

8 A Yes, sir.

9 Q And you're hoping that, here today, that this jury is
10 going to miraculously believe you so you can go away with
11 the big prize, which is the deal, correct?

12 A Yes, sir.

13 MR. PRICE: No further questions.

14 THE COURT: Any redirect of the witness?

15 SOLICITOR KIDD: Yes, ma'am.

16 THE COURT: You may proceed.

17 SOLICITOR KIDD: May we approach?

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: Madam Forelady, ladies and gentlemen, I
21 have a brief matter of law to consider. If you would, leave
22 your notepads in your seats. I appreciate your patience in
23 advance.

24 If you would, go with the bailiffs, please.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: You may be seated.

3 Sir, do you need to go to the restroom?

4 THE WITNESS: No, ma'am.

5 THE COURT: Okay.

6 (Pause.)

7 THE COURT: Okay. Mr. Culver Kidd, did y'all redact
8 No. 151 and did y'all show it to counsel?

9 That was the Facebook page.

10 SOLICITOR KIDD: Judge, if you'd remind me what 151
11 was?

12 THE COURT: It was the Facebook page that needed to be
13 redacted.

14 THE COURT REPORTER: I've got it right here.

15 THE COURT: Do you have that?

16 THE COURT REPORTER: I've got both of them I think.

17 THE COURT: No, 151 is not 152 and 153.

18 THE COURT REPORTER: No, I've got it over here.

19 SOLICITOR KIDD: Yes, we did.

20 THE COURT: And, for my benefit, was 128 marked as a
21 Court's Exhibit or was it simply marked for ID only?

22 THE COURT REPORTER: 128?

23 THE COURT: That's the entire CD of all the information
24 that was pulled off the cell phones.

25 THE COURT REPORTER: I have it ID only.

1 THE COURT: That's what I have.

2 THE COURT REPORTER: Yeah.

3 THE COURT: I just needed to make sure my record was
4 accurate.

5 THE COURT REPORTER: Yeah, ID only.

6 THE COURT: Ask them if they're okay with that, and
7 that would be Mr. Peper's client, right?

8 (Pause.)

9 SOLICITOR KIDD: I think -- believe he's all right with
10 that.

11 THE COURT: All right. Any exception, Mr. Peper, to
12 No.---

13 MR. PEPER: No, Your Honor.

14 THE COURT: What number is that again?

15 SOLICITOR KIDD: 151.

16 THE COURT: No. 151?

17 MR. PEPER: No objection, Judge.

18 THE COURT: Okay. 151, the redacted version, will be
19 made an exhibit. The original will be made a Court's
20 Exhibit.

21 (WHEREUPON, State's Exhibit No. 151 was received into
22 evidence at this time. The original of State's Exhibit No.
23 151 was now marked as Court's Exhibit No. 10 for
24 identification purposes only at this time.)

25 THE COURT: Now, let's talk about what Mr. Kidd was

1 saying, and the -- bear with me just one second cause I need
2 clarity on something as well.

3 (Pause.)

4 THE COURT: All right. Now, what was your statement
5 that you were making to the Court, Mr. Kidd?

6 SOLICITOR KIDD: Judge, I believe, in Mr. Peper's
7 cross-examination of Mr. Evans, he elicited testimony
8 regarding an incident that happened at Club Vegas in which
9 an individual by the name of CB, Tony Ancrum, was allegedly
10 struck on the head with a bottle of Hennessy by one of the
11 victims. Specifically Creep, Quran Allen.

12 This was an incident that---

13 THE COURT: How does that incident tie into this
14 shooting?

15 SOLICITOR KIDD: So, this incident predated -- I'm just
16 trying to get my, my time right -- correct.

17 Bear with me.

18 (Pause.)

19 SOLICITOR KIDD: This incident predated Justin Wilson
20 being shot, and was the initiating or one of the initiating
21 incidents which---

22 THE COURT: You're saying this witness testified to
23 that?

24 SOLICITOR KIDD: In cross-examination regarding with
25 Mr. Peper about an incident that occurred at---

1 THE COURT: In response to what question?

2 SOLICITOR KIDD: Mr. Peper's question about what he --
3 what did you tell officers about this incident with CB
4 getting hit on the head with a -- by a bottle by Creep.

5 MR. PEPER: No, that's incorrect.

6 THE COURT: I don't recall that question being asked.
7 I'm gonna have to go back and listen to the testimony---

8 SOLICITOR KIDD: I, I---

9 THE COURT: ---or have the court reporter pull it up
10 and I listened. My head's down, but I'm listening to every
11 word.

12 SOLICITOR KIDD: I know you are, Judge.

13 THE COURT: And I don't recall that, but my memory's
14 not infallible. So, I'll go back and listen and see.

15 SOLICITOR KIDD: I fell in my seat when I heard it and
16 ran to my investigator because that was a---

17 MR. PEPER: I did ask him that, Judge, but you have to
18 understand the---

19 THE COURT: What is the exact question you asked him?

20 MR. PEPER: The first question I asked was, you know, I
21 asked him was -- as I understand your testimony earlier, you
22 said that's the boy that shot at us, right? And I said, but
23 in your third story, and this is the exact question I asked,
24 you said that's the boy right there referring to Creep
25 hitting CB at Club Vegas, not what you testified to earlier.

1 That's the exact question I asked.

2 THE COURT: The only thing you'd be able to do is to
3 elaborate on that statement, but you're not gonna be able
4 to -- that doesn't open up some Pandora's Box.

5 SOLICITOR KIDD: Well---

6 THE COURT: That's a redirect to sort of rehabilitate
7 your witness---

8 SOLICITOR KIDD: I---

9 THE COURT: ---and to clarify something your witness
10 has said. So, if his question is, in his statement that he
11 made to the police, one of the series of statements, is this
12 what you told him, and this is what you're referring to,
13 you're entitled to inquire as to what his response meant,
14 and to clarify or rehabilitate that response, but that
15 doesn't mean you get to go into a whole---

16 SOLICITOR KIDD: Well, he---

17 THE COURT: ---dive of other things.

18 SOLICITOR KIDD: Well, he's opened the door into a, an
19 ongoing feud between West Ashley and North Charleston, and
20 this event is one of the, one of the precipitating events---

21 THE COURT: I don't know that.

22 SOLICITOR KIDD: ---of that back and forth.

23 THE COURT: I don't know that I agree with that
24 assessment of that testimony. Your client -- your witness
25 gave a series of statements to the police. He's entitled,

1 on cross, to inquire into those statements and the voracity
2 and credibility of those statements. He asked a question
3 solely relating to the statement that he gave to the police.

4 You're entitled to clarify that statement. You're
5 entitled to rehabilitate that statement if you feel he
6 didn't answer the question fully as to what he meant. But I
7 don't think that opens the door to anything else, and you
8 already have enough in about what, what motive, what event
9 and any ongoing anxiety about this event cause, really,
10 what's relevant is what happened immediately before and
11 immediately after.

12 Of course, an assessment of immediately before could be
13 a reasonable time and that's subject to interpretation. But
14 I -- I'm gonna go back and listen to the testimony, but I
15 don't think I agree with that.

16 SOLICITOR KIDD: So -- and I, and I find myself in a
17 bit of an ethical dilemma in my---

18 THE COURT: You don't have an ethical dilemma.

19 SOLICITOR KIDD: Well, because I'm, I'm stuck in a box
20 sitting here claiming that the motive for this shooting was
21 Mr. Wilson being shot, and that is the initial reason they
22 go out to the---

23 THE COURT: He's already testified to that.

24 SOLICITOR KIDD: Right. But, but here's the problem.
25 So, that's the initial reason they arm themselves with

1 the weapon and they go out looking for this guy who shot
2 him, Justin, right?

3 THE COURT: Uh-huh. (Affirmative).

4 SOLICITOR KIDD: They don't find Blackley (phonetic).
5 They find Creep. They find Quran Allen, who has this
6 history with Ashleyville. It starts with this event that
7 Mr. Peper just talked about.

8 THE COURT: That's not what he testified to. He
9 testified that that's the guy. I can, I can -- I'm only
10 dealing with what I have heard so far. What you know is
11 not germane to the Court's decision. My decision is based
12 on what I've heard from this witness.

13 SOLICITOR KIDD: Right. He testified that Mr. Wilson
14 said that's the guy right there referring to Creep. Not as
15 the person who shot Justin Wilson, but referring to the
16 person who has an ongoing beef with Ashleyville, which
17 started with this incident at Club Vegas, and there is---

18 THE COURT: If you want to clarify his statement, you
19 can. That's what redirect is for. Clarifying, rehabilitate
20 your witness. How you do that is up to you if you feel that
21 his response to the question was not complete or that it was
22 not accurate or that enough detail was not elicited as to
23 what he meant. He's opened the door to that, but I don't
24 think he's opened the door to anything else. But I'm gonna
25 go back and listen to it and see if my recollection is

1 inaccurate.

2 All right. Now, does the defense still have an
3 exception to 152 and 153, which is the Facebook pages about
4 Stewie?

5 MR. PEPER: Yes, ma'am, on the grounds of relevance,
6 speculation, and authenticity, and then subject to 403.

7 THE COURT: What direct testimony did this, did this
8 witness provide that he knew this was Stewie?

9 SOLICITOR KIDD: He indicated that he's, he's known
10 Stewie for a number of years, that Mr. Wilson -- he knew --
11 he -- Mr. Wilson indicated, after the phone call, that that
12 was Stewie and Stewie indicated that---

13 THE COURT: Yeah, but that has nothing to do with
14 the -- I'm talking about the Facebook page.

15 SOLICITOR KIDD: Right, and he is familiar with
16 Stewie's Facebook page, and that photograph is, in fact,
17 Stewie.

18 THE COURT: So, why is that relevant?

19 SOLICITOR KIDD: To, to indicate who it is that, that
20 not -- nothing is more relevant through this witness, but,
21 once we identified that Facebook page, and that's, in fact,
22 Stewie, then subsequent, subsequent witnesses can then link
23 Stewie to Mr. Wilson and to Mr. Bryan.

24 THE COURT: How?

25 SOLICITOR KIDD: Through, through Facebook.

1 THE COURT: And what witnesses are those going to be?

2 SOLICITOR KIDD: My investigator, Mr. Cheney.

3 MR. PRICE: Your Honor, I'm, I'm just thinking.

4 Doesn't that cause some issue that Mr. Bryan would then
5 be forced to have to testify that he wasn't?

6 I mean I'm just trying to think.

7 Does that put a burden on him---

8 THE COURT: I don't know.

9 MR. PRICE: ---that he has to testify that he doesn't
10 have -- he doesn't know, that he was just clicking likes on
11 Facebook and somehow became friends with him because, of
12 course, that's how---

13 THE COURT: I don't know. They gonna have to face
14 evidence -- they gonna have to cross the evidentiary hurdle,
15 when they get to it, as to whether it's admissible.

16 SOLICITOR KIDD: Then I believe his argument goes to
17 the weight and not to admissibility.

18 THE COURT: I don't know. I haven't heard the
19 evidence. So, I'm not making a decision. I'll hear
20 argument contemporaneously when you attempt to introduce the
21 evidence.

22 I'm gonna leave it under advisement until that time.
23 I'll make a decision about it all at one time cause I've
24 heard conflicting testimony from this witness as to whether
25 he knows Stewie at all. I'm gonna have to go back and

1 listen to his testimony, cause my clerk and I, our, our
2 notes are completely devoid of him identifying really any
3 identification of a Stewie. So, we're gonna have to go
4 back. I'm gonna have to make sure I'm accurate and go back
5 and read again and listen again. Make sure that -- and
6 I'll -- I can't discern any prejudice to either party in
7 handling it in that way.

8 We had a question from the -- one of the jurors asked
9 what exactly is a proffer, and I'm going to instruct the
10 jury that they're not to ask that, that their job is, as the
11 finder of facts, is not one of investigation, but one to
12 listen to the evidence as it is presented. And then, once
13 they've heard all of the evidence, to determine the facts
14 based on the Court's instructions, and the party's
15 arguments, but that the Court can not answer any factual
16 questions. But, rest assured, that any questions they may
17 have that, as the litigation continues, I'm certain they'll
18 be answered.

19 Is there any exception -- some version of that. I
20 can't say I'm gonna say exactly like I just said it.

21 Any exception from the State?

22 SOLICITOR KIDD: No, ma'am.

23 THE COURT: From the defense?

24 MR. PRICE: No, ma'am.

25 MR. PEPER: No, Your Honor.

1 THE COURT: And I'll have the note marked as a Court's
2 Exhibit.

3 why don't we take advantage of this?

4 Y'all take a quick restroom break, and then we'll
5 resume the witness' testimony.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: All right. We have another note.

8 You may be seated.

9 I need the witness here.

10 We have another note from Juror 269. I use to
11 bartender at the same golf course Mr. Peper use to go to or
12 still goes to. We didn't have a relationship outside of a
13 customer/server relationship. I didn't realize until after
14 I was in the front of them, but I know it won't change my
15 decision based on what was shown in the courtroom.

16 So, I would voir dire this juror.

17 SOLICITOR KIDD: which number, Judge?

18 THE COURT: 269. I don't think people pay attention
19 during voir dire. I think they're so tired they just zone
20 out.

21 Let's see. By the time we get to that part, they're
22 not paying attention.

23 That's Susan Norfleet. She works in marketing now.

24 So, I don't think -- that must of been a -- or either that's
25 a second job I guess.

1 MR. PEPER: Back when I played golf.

2 MR. PRICE: Tried to play golf.

3 MR. PEPER: Tried.

4 THE COURT: All right. And then I'll have both of
5 these notes marked as Court's Exhibits once I, once I
6 address each of them.

7 We were -- the court reporter and I were trying to
8 locate certain portions of the testimony in the transcript,
9 but, when you're under pressure like that, it's very
10 difficult to locate things. But I stand by my original
11 ruling, which is the question that Mr. Peper asked, on
12 redirect, the State is certainly entitled to rehabilitate
13 their witness. They're entitled to ask any questions that
14 amplify or elucidate that testimony.

15 And so, to the extent that you need to ask those
16 questions, Mr. Kidd, you are allowed to do that.

17 SOLICITOR KIDD: Thank you, Your Honor.

18 THE COURT: Now, I'll deal with the notes first, and
19 then we'll resume redirect.

20 I need Juror Number 269.

21 THE BAILIFF: Yes, Your Honor.

22 (WHEREUPON, the following takes place within the
23 presence of Juror Number 269.)

24 THE COURT: Good morning, ma'am. I got your note.

25 THE JUROR: Yes.

1 THE COURT: And so, based on that, I need -- are you
2 still currently employed at this particular establishment?

3 THE JUROR: No, ma'am.

4 THE COURT: Okay. How long ago was that?

5 THE JUROR: About two and half or three years ago.

6 THE COURT: I would imagine you were still in college
7 then or maybe?

8 THE JUROR: I wasn't, no.

9 THE COURT: No.

10 Were you---

11 THE JUROR: But I was looking for -- I was looking for
12 my career.

13 THE COURT: Take it as a compliment.

14 THE JUROR: Thank you.

15 THE COURT: As a result of what you have -- the
16 information you've provided to the Court, do you feel that
17 you can remain fair and impartial?

18 THE JUROR: Absolutely.

19 THE COURT: Do you feel that you can render a fair and
20 impartial decision in this case based solely on the evidence
21 as it will be presented and on the law as the Court will
22 instruct?

23 THE JUROR: Yes, Your Honor.

24 THE COURT: And you've indicated you did not have any
25 personal relationship with Mr. Peper, correct?

1 THE JUROR: No, ma'am.

2 THE COURT: And how long would you estimate it's been
3 since you've seen him, other than in the courtroom today?

4 THE JUROR: Since I was working at that location.

5 THE COURT: So, it's been over several years?

6 THE JUROR: Yes, ma'am.

7 THE COURT: Okay. If you would, stand out in the
8 hallway for me.

9 THE JUROR: All right.

10 THE COURT: And just don't discuss anything that we've
11 discussed with your fellow juror---

12 THE JUROR: Yes, ma'am.

13 THE COURT: ---jury numbers.

14 THE JUROR: Okay.

15 THE COURT: Thank you.

16 THE JUROR: Uh-huh. (Affirmative).

17 (WHEREUPON, the following takes place outside the
18 hearing of Juror Number 269.)

19 THE COURT: The juror has indicated she can remain fair
20 and impartial.

21 Any exception to her remaining on the panel, from the
22 state?

23 SOLICITOR KIDD: No, ma'am.

24 THE COURT: From the defense?

25 MR. PEPER: No, Your Honor.

1 MR. PRICE: Not from me, Your Honor.

2 THE COURT: Okay. The note will be marked as a Court's
3 Exhibit.

4 (WHEREUPON, the note was marked as Court's Exhibit No.
5 11 for identification purposes only at this time.)

6 THE COURT: Then bring in the jury so I can addresses
7 the other note that I got.

8 THE BAILIFF: Yes, ma'am.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE BAILIFF: All jurors present, Your Honor.

12 THE COURT: Ladies and gentlemen, we -- oh, you may be
13 seated. I apologize.

14 Ladies and gentlemen, we appreciate your patience as
15 we've worked through some of those matters of law. I
16 received a note from one of your fellow jurors regarding a
17 factual question regarding some testimony that has been
18 presented. And, in that regard, I instruct you as follows:

19 That the Court can not answer factual questions. In
20 your fact finding province, you are to only consider the
21 testimony and evidence which will be submitted into the
22 record for purposes of your deliberations. Although I know
23 it is tempting, you can not conduct any sort of independent
24 fact finding outside of the evidence as it regards any
25 testimony that's being presented.

1 In your fact finding province, it is your
2 responsibility to listen to the evidence, to judge the
3 credibility of the witnesses, apply the law to the facts,
4 and then determine what the facts are in this case. I know
5 that may sound a little vague and not a direct answer, but I
6 will say this, that any questions that you probably have
7 that are lingering in your mind, rest assured that they will
8 be answered.

9 A trial is like a puzzle that's being put together.
10 It's a picture that is being presented. To some extent,
11 you're at a disadvantage because you don't know the whole
12 picture yet, but I would encourage you to remain unbiased
13 and not form any fixed opinions about this case until you
14 have heard all of the evidence and heard the law and the
15 instructions as well as the arguments of counsel. And
16 you're not to draw any inferences or conclusions from the
17 Court's response to the inquiry. And I hope that's given
18 clarity to the question.

19 We're gonna resume with redirect examination of the
20 witness.

21 Any exception from the State?

22 SOLICITOR KIDD: No, ma'am.

23 THE COURT: From the defense?

24 MR. PEPPER: No, ma'am.

25 MR. PRICE: No, ma'am.

Keith Evans - Redirect examination
by Solicitor Kidd

1 THE COURT: And the note will be marked as a Court's
2 Exhibit.

3 (WHEREUPON, the note from the jury was marked as
4 Court's Exhibit No. 12 for identification purposes only at
5 this time.)

6 THE COURT: You may proceed, Mr. Kidd.

7 SOLICITOR KIDD: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 REDIRECT EXAMINATION

10 BY SOLICITOR KIDD:

11 Q First, I want to clear up a little something.

12 How do you know Stewie?

13 A Shooting dice with him at Ashleyville.

14 Q How long -- as of November 2015, how long had you known
15 Stewie approximately?

16 A I'd say 2013, '14.

17 Q So, a couple, two, three years?

18 A Yeah.

19 Q Okay. Did you know him well?

20 what was that -- what was your relationship like?

21 would you see him often or what?

22 A I see him around.

23 Q See him around.

24 Can you try to quantify that, once a month, once a
25 week, what?

Keith Evans - Redirect examination
by Solicitor Kidd

- 1 A Probably twice out the month.
- 2 Q All right. A couple times a month you'd run into him?
- 3 A Yeah.
- 4 Q Where would you run into him at?
- 5 A At a dice game.
- 6 Q Dice game?
- 7 A Yeah.
- 8 Q Where would y'all play dice?
- 9 A In my aunt's, aunt's backyard.
- 10 Q In your aunt's backyard?
- 11 A Uh-huh. (Affirmative).
- 12 Q Is that the same backyard between your aunt's house
- 13 and, and Crip's house on---
- 14 A Yes, sir.
- 15 Q ---Track (phonetic) Street?
- 16 A Yes, sir.
- 17 THE COURT: I'm sorry. Could you please repeat that
- 18 nickname, and spell it for the court reporter if he can?
- 19 Q Between your aunt's house and Crip.
- 20 I believe it's C-R-Y-P-T.
- 21 A C-R-I-P.
- 22 Q C-R-I-P?
- 23 A (WHEREUPON, the witness nodded affirmatively.)
- 24 Q Okay. And did you call Stewie often on the phone?
- 25 A No.

Keith Evans - Redirect examination
by Solicitor Kidd

1 Q Did you have his number?

2 A No.

3 Q Okay. And I believe I showed you some exhibits
4 earlier, but were you -- have you seen Stewie's Facebook
5 page before?

6 A Yes.

7 Q Okay. And you're familiar with that?

8 A Yes, sir.

9 Q Okay. Now, when Mr. Peper was doing cross-examining,
10 examination with you, he continued to ask you about telling
11 a story.

12 A Yes, sir.

13 Q Now, I'm not interested in a story.

14 Okay?

15 A Yes, sir.

16 Q All right. I just want to know the truth, right?

17 A Yes, sir.

18 Q Okay. And, and you did lie a few times, let's be
19 honest about that, right?

20 A Yes, sir.

21 Q You lied to the police officer on Durant.

22 Is that fair to say?

23 A Yes, sir.

24 Q why?

25 why did you lie to the police officer on Durant?

Keith Evans - Redirect examination
by Solicitor Kidd

1 A Didn't want to get, get caught.

2 Q Didn't want to get caught?

3 A Yes, sir.

4 Q Is that what you said?

5 I just didn't hear you.

6 A Yes, sir.

7 Q Makes sense.

8 And then when the police brought you into City Hall in
9 North Charleston, you remember that?

10 A Yes, sir.

11 Q And you lied to them that day too, right?

12 A Yes, sir.

13 Q And why were you lying to them that day?

14 A I was trying to save me and my friends.

15 THE COURT: Sir, I need you to speak up for me, please.

16 A I was trying to save me and my friends.

17 THE COURT: Could y'all turn -- yeah, point that down a
18 little bit for me so he doesn't have to do that.

19 (WHEREUPON, the bailiff complies.)

20 THE COURT: Thank you. Perfect.

21 Q And that interview lasted -- do you know how long?

22 A A couple hours.

23 Q Like nine---

24 A Yeah.

25 Q ---hours?

Keith Evans - Redirect examination
by Solicitor Kidd

1 A Yes, sir.

2 Q And it -- did it get pretty intense at times?

3 A Yes, sir.

4 Q And were you ever a hundred percent truthful with the
5 police when you were interviewed by them at, at City Hall?

6 A No, sir.

7 Q Okay. And then you got an attorney?

8 A Yes, sir.

9 Q And within about 30 days you came to see me?

10 A Yes, sir.

11 Q Okay. And we've met three times?

12 A Yes, sir.

13 Q And in those three times that we've met, I want to know
14 exactly what you've lied to me about.

15 A About Stewie walking up to the car at the club.

16 Q Is that the only thing?

17 A Yes, sir.

18 Q Okay. So, you told me one lie about Stewie walking up
19 to the car at the club.

20 why did you tell me that lie?

21 A I can't quite remember if I saw -- I can't quite recall
22 that night.

23 Q We got -- you got to do better for that, better than
24 that.

25 A I can't recall like if he came to the car or not, and I

Keith Evans - Redirect examination
by Solicitor Kidd

1 don't remember seeing him.

2 Q And, and you told me that he did?

3 A Yes, sir.

4 Q Well, how -- I didn't give you that information, did I?

5 A No, sir.

6 Q Where did you get that information then?

7 A I think DQ first got back.

8 Q When what now?

9 A When DQ first got locked up.

10 Q So, who, who told you that information.

11 A DQ.

12 MR. PRICE: Objection, Your Honor.

13 THE COURT: Sustained. Well, he didn't say what he
14 said.

15 MR. PRICE: Well, I, I was just trying to stop it.

16 THE COURT: He can't say what he said to him, but the
17 answer will stand.

18 Overruled.

19 Q Now, in the three times that we've met, have I ever
20 asked you to testify a certain way?

21 A No, sir.

22 Q Have I ever told you what to say?

23 A No, sir.

24 Q Have I ever asked you to say anything but the truth?

25 A Yes, sir.

Keith Evans - Redirect examination
by Solicitor Kidd

1 Q I have asked you to say something besides the truth?

2 A No, you said say -- just came with the truth, the
3 facts.

4 Q Anything else?

5 A No, sir.

6 Q And Mr. Price laid out how much time you're facing.
7 Thirty years up to the rest of your life in prison, right?

8 That's what murder carries?

9 A Yes, sir.

10 Q And I think he might have indicated that was every
11 reason to lie?

12 A Yes, sir.

13 Q It's also a pretty good reason to tell the truth, isn't
14 it?

15 A Yes, sir.

16 Q And you think people are gonna call you a rat and
17 things like that after this?

18 A Yes, sir.

19 Q Is that easy for you?

20 A No, sir.

21 Q Now, I want to talk about something else that Mr. Peper
22 said. You brought up an incident at a club in which an
23 individual named CB got hit over the head with a bottle.

24 Do you recall that?

25 A Yes, sir.

Keith Evans - Redirect examination
by Solicitor Kidd

1 Q Tell me about that incident.

2 A I wasn't there that night. I heard about it.

3 Q Well, who's CB?

4 A Someone from Ashleyville.

5 MR. PEPER: Objection, Your Honor.

6 THE COURT: He can ask who CB is. He's not asking what
7 happened. Overruled.

8 MR. PEPER: Thank you, Judge.

9 THE COURT: Uh-huh. (Affirmative).

10 Q Who's CB?

11 A Someone from Ashleyville.

12 Q Someone from Ashleyville.

13 How well do you know CB?

14 A Five, five plus years.

15 Q Five plus years.

16 What's his last name?

17 A Ancrum I think.

18 Q Ancrum.

19 Is he related to Brian Ancrum?

20 A Yes, sir.

21 Q Brian Ancrum go by, go by Little B?

22 A Yes, sir.

23 Q Where does Brian Ancrum live?

24 A Trident Street.

25 Q On Trident Street.

Keith Evans - Redirect examination
by Solicitor Kidd

1 Is Brian Ancrum considered west Cash?

2 A Yes, sir.

3 Q Is CB?

4 A No, sir.

5 Q How are they related?

6 A First cousins.

7 Q Now, do you know why CB would be assaulted?

8 A No, sir.

9 Q Do you know of an incident that predates that?

10 A No, sir.

11 THE COURT: You're going beyond my instructions.

12 SOLICITOR KIDD: Court's indulgence.

13 THE COURT: Uh-huh. (Affirmative).

14 (Pause.)

15 Q Now, there was also some testimony on cross-examination
16 about the units in the jail that you've been housed in, and
17 what's the current unit you're in?

18 A SMU.

19 Q And you've been in there since when?

20 A November.

21 Q Since---

22 A 2015.

23 Q Since -- well, since you met with me?

24 A Yes, sir.

25 Q And has that unit done its job and kept you separate --

Keith Evans - Redirect examination
by Solicitor Kidd

1 A Yes, sir.

2 Q -- from the other witnesses since then?

3 A Yes, sir.

4 Q And so when you mention getting some information from
5 DQ, that was prior to being, being put in that unit?

6 A When we first got locked up.

7 Q Like that day?

8 A Yes, sir.

9 Q And so I can make sure that we're one hundred percent
10 clear on your testimony, you don't -- when you replay
11 everything that happened that night, you don't have an
12 independent recollection of Stewie coming up to the car?

13 A No, sir.

14 Q Okay. Thank you.

15 Do you remember anyone coming up to the car at --
16 outside the club?

17 A No, sir.

18 Q Could someone have come up to the car?

19 A Not that I recall.

20 Q So, I guess I'm asking could it be that you don't
21 recall it or are you saying it couldn't have happened?

22 MR. PRICE: Judge, asked and answered. He's answered
23 that he doesn't recall.

24 SOLICITOR KIDD: All right.

25 THE COURT: You need to lay the appropriate foundation

Keith Evans - Redirect examination
by Solicitor Kidd

1 of his knowledge of that question -- of that -- of what
2 you're trying to elicit from him without leading.

3 Q I'm trying to distinguish on what your last answer was.

4 A I just remember riding around.

5 Q And your last answer, I believe, is that you don't
6 recall.

7 I guess I'm asking is it possible that it happened and
8 you just don't remember or are you saying that it never
9 happened?

10 A It never happened.

11 Q Okay. Now, I want to talk a little bit more about your
12 relationship with Mr. Bryan. I want you to tell a little --
13 the jury a little bit more about what kind of relationship
14 you had with him and what he meant to you prior to this
15 incident.

16 A I looked at him like a big brother.

17 Q You looked at him like a big brother?

18 A And he was close. We was close.

19 Q He's older than you, right?

20 A Yeah.

21 Q Did you look up to him?

22 A I don't look up to him, but I just stayed tight with
23 him.

24 Q Y'all were tight?

25 A Yeah.

Keith Evans - Redirect examination
by Solicitor Kidd

1 Q Is that made what you're doing today harder?

2 A Yes, sir.

3 Q Would you say you, you loved him like family?

4 A Yes, sir.

5 Q More so than the other individuals that were out there?

6 A I was close with Bubby too.

7 Q Mr. Peper made a point about that you believed

8 Mr. Wilson's phone died when he borrowed your phone.

9 A Yes, sir.

10 Q Is that right?

11 I show you State's Exhibit 43. I'm gonna show you

12 State's Exhibit 44 first.

13 What's that right there?

14 A A charger.

15 Q What's that right there?

16 A Charger.

17 Q Phone charger?

18 A Yeah.

19 Q Is that back where Bubby was sitting?

20 A Yes, sir.

21 Q Well, I think the most important thing, I think it all
22 comes down to one question.

23 Is what you're telling the jury today a hundred percent
24 the truth?

25 A Yes, sir.

1 SOLICITOR KIDD: No more questions.

2 THE COURT: Any objection to the witness being excused
3 from the State?

4 SOLICITOR KIDD: No, ma'am.

5 THE COURT: From the defense?

6 MR. PRICE: No, ma'am.

7 MR. PEPER: No, Your Honor.

8 THE COURT: Sir, you are excused.

9 who's the State's next witness?

10 SOLICITOR KIDD: May we approach, Judge?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 THE COURT: Madam Forelady, ladies and gentlemen, I
15 have a brief matter of law to take up with the counsel. It
16 might take longer than I anticipate. If your lunch arrives
17 before we're done, I'm gonna have the clerk go ahead and
18 bring it to you. We appreciate your patience.

19 Please don't discuss the case and please leave your
20 notepads in your seats.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: You may be seated.

24 Call your next witness.

25 SOLICITOR KIDD: The State calls Investigator Josh

Josh Cheney - Direct examination
by Solicitor Kidd

1 Cheney.

2 JOSH CHENEY, being first duly
3 sworn, testified as follows:

4 THE CLERK: Please state your name spelling your last
5 for the record.

6 THE WITNESS: Josh Cheney. C-H-E-N-E-Y.

7 THE COURT: You may proceed.

8 SOLICITOR KIDD: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY SOLICITOR KIDD:

11 Q Good morning, Investigator Cheney.

12 A Good morning.

13 (Pause.)

14 Q All right. Good, good morning, Investigator Cheney.
15 Run through this pretty quickly.

16 Okay. Where do you work?

17 A Solicitor's office.

18 Q You work for me?

19 A I do.

20 THE COURT: You can cut through all that. You don't
21 have to go---

22 Q And we began investigating this case how long ago?

23 A I came in later. Probably last three months, four
24 months.

25 Q Okay. And, as part of our investigations, did we start

Josh Cheney - Direct examination
by Solicitor Kidd

1 looking into Facebook?

2 A We did.

3 Q Did you look into the Facebook pages presumably
4 belonging to Mr. Bryan and Mr. Wilson?

5 A I did.

6 Q I'm gonna first show you what's been marked for --
7 marked and entered into evidence as State's Exhibit 150.

8 Do you recognize that?

9 A I do.

10 Q What are we looking at there?

11 A That is the Facebook page that I located on Marvin
12 Bryan.

13 Q And, on Mr. Bryan, now did you have to get a search
14 warrant or be friends with him to see his postings?

15 A I did not. At this time that was captured, it was an
16 open page.

17 Q So, open to the public?

18 Anyone could---

19 A Correct.

20 Q ---of viewed it?

21 I'm gonna show you -- got to mark it first. I'm sorry.
22 We'll mark it.

23 (WHEREUPON, the Facebook page was marked as State's
24 Exhibit No. 157 for identification purposes only at this
25 time.)

Josh Cheney - Direct examination
by Solicitor Kidd

1 Q I'm gonna show you what's been marked for ID as State's
2 Exhibit 157.

3 Do you recognize that?

4 A I do.

5 Q And what is that?

6 A It is a photo that is under Marvin Bryan's profile. It
7 can be located under the photos subsection of his profile
8 page.

9 Q Is Marvin Bryan in that photograph?

10 A I recognize Marvin Bryan from other photos as the one
11 in the blue shirt.

12 Q And is there a comment on that photograph?

13 A It is. It's a West Cash thing.

14 Q Okay. Now, I'm gonna show you what's been marked and
15 entered into evidence -- I apologize. I left it over here.

16 As State's Exhibit 151, do you recognize that document?

17 A I do.

18 Q And what is that?

19 A That is the Facebook profile page that I was able to
20 locate on Justin Bubby Wilson.

21 Q And did you need, the same question, did you need a
22 search warrant or anything to view his Facebook page?

23 A No, I did not. At the time of this capture, it was a
24 public Facebook profile.

25 Q Okay. I'm gonna show you what's been marked for ID as

Josh Cheney - Direct examination
by Solicitor Kidd

1 State's Exhibit 154.

2 Do you recognize that document?

3 A I do.

4 Q And is that a posting by Mr. Wilson?

5 A It is.

6 Q And I believe it says, since then, since then NS tried
7 to take my life, I never leave that strap home, and then
8 it's gun emojis and 101 100 voice.

9 Is that correct?

10 A That's correct.

11 Q And, and I believe we've redacted something out of the
12 bottom.

13 Is that -- did you do that?

14 A Yes, I did.

15 Q I show you State's Exhibit 155 for ID.

16 Do you recognize that document?

17 A I do. Same profile page. Further in the timeline.

18 Q And I believe that posting by Mr. Wilson,
19 November 2nd, 2015, F that Cash up on some new toys, and
20 then gun emojis.

21 Is that right?

22 A That is correct.

23 Q And you would of printed out this document. I believe
24 you might of redacted some stuff at the bottom as well.

25 Is that correct?

Josh Cheney - Direct examination
by Solicitor Kidd

1 A I did do a redaction at the bottom of the page.

2 Q Finally, State's Exhibit 156, do you recognize that
3 document?

4 A I do. That's a photo from Justin Bubby Wilson's
5 Facebook page under his photos that, on the side of the
6 caption, it says westside, Ashleyville, that's where I get
7 paid.

8 SOLICITOR KIDD: All right. Your Honor, those will be
9 the, the documents I would be seeking to enter through this
10 witness.

11 THE COURT: Any objection?

12 MR. PEPER: Thank you, Your Honor.

13 May it please the Court?

14 THE COURT: Uh-huh. (Affirmative.)

15 MR. PEPER: I'll take it in descending order starting
16 with 156 of -- Judge, it looks to me like a picture of
17 Justin. I believe, therefore, what relevance it would have
18 to establish---

19 THE COURT: Well, maybe---

20 MR. PEPER: ---he's been---

21 THE COURT: ---let's do this in a different way.
22 where are the exhibits?

23 SOLICITOR KIDD: Would you like for me to just --.

24 THE COURT: No, I'll keep them.

25 what -- for what purpose would the State be seeking to

1 introduce 156?

2 SOLICITOR KIDD: 156, that's the one of Mr.---

3 THE COURT: Where he's on the porch.

4 SOLICITOR KIDD: I believe he is showing a sign of a W
5 indicating allegiance with West Cash. I believe there's
6 been a---

7 THE COURT: It doesn't say West Cash though, does it?

8 SOLICITOR KIDD: But I believe that sign would -- is---

9 THE COURT: What you believe is not germane. I need to
10 know what independent evidence you have to corroborate that.

11 SOLICITOR KIDD: Well, in, in, in Mr. Bryan's
12 photograph, it specifically says it's a West Cash thing, and
13 he's flashing the same sign. I think that is --.

14 THE COURT: Which picture are you referring to?

15 SOLICITOR KIDD: State's -- the --.

16 THE COURT: Another one that hadn't been admitted?

17 SOLICITOR KIDD: That's right there with it, yes,
18 ma'am.

19 THE COURT: What's the objection, Mr. Peper?

20 MR. PEPER: Again, Judge, I don't -- assuming he
21 lays -- that's authentication, that was enough for you, then
22 I, I still don't understand what relevance it has. If it's
23 to ID---

24 THE COURT: Well, do you really have an authentication
25 issue cause his picture is self-authenticating?

1 Are you, in good faith, saying it's not your client?

2 MR. PEPER: No, I'm not. That was not it.

3 THE COURT: So, so, we really don't have an
4 authentication problem, do we?

5 MR. PEPER: Well, I -- my understanding -- I mean the
6 Rule 5 I got was a video scrolling through his Facebook
7 page.

8 THE COURT: Okay.

9 MR. PEPER: So---

10 THE COURT: So, you're saying you never got this before
11 today?

12 MR. PEPER: I, I mean I was able to like pause the
13 video and then take screenshots, but it---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. PEPER: ---which, you know, I need to know, is that
16 what he did here?

17 I mean I don't --.

18 THE COURT: I don't know. He said he took screenshots
19 of each of these. I would assume that's how they printed
20 them.

21 MR. PEPER: All right. In the event -- fine. I would
22 think more authentication is to be layed, Judge, or
23 foundation. But in -- regardless, assuming it's relevant to
24 ID my client, which has been done over and over and over, I
25 would say it's cumulative. I don't think there's any

1 probative value -- no testimony that I've heard has
2 indicated that the shooting that we're here for tonight was,
3 or today, was gang related, West Cash versus some other
4 gang, and so what purpose would be to show that that's a
5 symbol of West Cash? It doesn't have any relevance to what
6 we have here.

7 I think it's prejudicial than -- I mean it looks like a
8 gang sign, and that's, that's basically what they're trying
9 to get it in with. That essentially would be my objection
10 on all, 154, 155, and 156.

11 THE COURT: 150 is already admitted. So, I don't need
12 to hear anything about that.

13 150 -- oh, I guess I should of took them in order.

14 There's 157.

15 For what purpose would the State be offering 157?

16 SOLICITOR KIDD: And I apologize. If I -- if I can
17 just take a brief look at it.

18 Which one, 157?

19 That's a picture of Mr. Bryan indicating it's a West
20 cash thing. Once again, indicating allegiance. I think it
21 shows an allegiance between Mr. Bryan and Mr. Wilson when
22 you look at the photographs. The photographs---

23 THE COURT: I don't know. They got a bunch of cash in
24 the picture.

25 So, how do I know that's a reference to West Ashley?

1 It says West Cash and there's a bunch of cash on the
2 floor.

3 SOLICITOR KIDD: Well, I think we've had testimony,
4 through the witnesses, that indicate West Cash is a group of
5 individuals from West Ashley. Specifically from the
6 Ashleyville/Maryville area.

7 THE COURT: But that's all you got?

8 There's nothing else except there's a loose affiliation
9 of these individuals that call themselves West Cash.

10 SOLICITOR KIDD: And that individuals that calls
11 themselves West Cash and their relatives have been assaulted
12 by people in North Charleston. Specifically, they've
13 said---

14 THE COURT: You don't have any of your---

15 SOLICITOR KIDD: ---by Mr. Bryan.

16 THE COURT: You've not had one person---

17 SOLICITOR KIDD: And Mr. Peper---

18 THE COURT: ---with direct knowledge of that that's
19 testified. Every single one of your witnesses says that I
20 heard, I think, somebody told me, I heard in the
21 neighborhood. Not one of them had any personal knowledge,
22 other than Mr. Evans who said he had personal knowledge of
23 Mr. Wilson being shot, that he could not tie that
24 necessarily to a West Cash activity cause he said he was not
25 a member of West Cash. If he had somebody with direct

1 knowledge, that would be different, but you can not have
2 testimony based on surmise and speculation and somebody
3 saying somebody told me. That's hearsay.

4 SOLICITOR KIDD: Correct. And I think -- and, and I
5 would agree with the Court's ruling. That's largely why
6 we've stayed away from extrinsic evidence as to those
7 incidents because I think I can prove the incidents
8 happened, but I also couldn't tie them directly to gang
9 activity through my police officers. But I also think that
10 there's been sufficient testimony to indicate a number of
11 instances---

12 THE COURT: Well, if you have a police officer that can
13 testify these people were assaulted, and it's tied directly
14 to this incident, nobody's prohibited you from calling those
15 witnesses. I just told you you had to correct the
16 evidentiary dots and act in accordance with the rules of
17 evidence.

18 SOLICITOR KIDD: Right, and I -- and---

19 THE COURT: So, I assume, since you haven't called
20 them, you aren't able to connect -- you aren't able to
21 establish that?

22 SOLICITOR KIDD: I can establish that the events
23 occurred. My police officers can't say that it's
24 specifically gang related. They can say they investigated
25 an assault at a club or investigated a shooting in

1 Ashleyville.

2 THE COURT: With these individuals?

3 SOLICITOR KIDD: Yes, shootings, shootings in
4 Ashleyville of---

5 THE COURT: No, that's not my question.

6 My question is with these two gentlemen, can your
7 officers testify these two gentlemen were directly involved
8 with incidents in Ashleyville?

9 SOLICITOR KIDD: Yes, ma'am, I specifically have
10 officers who can testify that, five days prior to this
11 shooting, that Mr. Bryan's house was shot up full of holes.
12 They came out. They interviewed Mr. Bryan. They
13 photographed all the holes in his house just days before
14 this murder.

15 THE COURT: Is this the one where he was shot and had
16 to go to the hospital?

17 SOLICITOR KIDD: No, ma'am, this is another incident.
18 This is an ongoing feud between these groups and---

19 THE COURT: But can you tie the person who was shot or
20 shot at to these groups?

21 SOLICITOR KIDD: The person who was shot at was Mr.
22 Bryan.

23 THE COURT: Yeah, but he can't testify and you can't
24 burden shift. So, you have to---

25 SOLICITOR KIDD: But I can prove through that---

1 THE COURT: ---independently establish it.

2 SOLICITOR KIDD: But I can prove through that
3 photograph that he's West Cash because he just says it's a
4 West Cash thing and throws a sign up.

5 THE COURT: Yeah, but you, but you're -- the middle
6 part of your story's missing or your colloquy or your
7 dialogue or your presentation, I guess, or the full picture.

8 SOLICITOR KIDD: Well, no one---

9 THE COURT: Cause none of your witnesses say I've been
10 personally involved in. I know this. I know someone
11 assaulted either one of these defendants, and, as a direct
12 result of that -- well, Mr. Evans testified that, as a
13 direct result of Mr. Wilson being shot, they did what they
14 did that night, which I think is evidence of motive, and it
15 came in and I don't have a problem with that. But what I'm
16 trying to understand is the leap from that to a group of
17 unspecified individuals who you say precipitated an event,
18 none of which you've had testify, or that you can link to
19 this specific event.

20 SOLICITOR KIDD: And that's correct, Judge. No one was
21 arrested in the shooting of Mr. Bryan's house. We don't
22 have -- do we know it was this group, I mean not a hundred
23 percent.

24 THE COURT: See, and that's your problem.
25 Can you link -- I mean do you know who did it?

1 SOLICITOR KIDD: I don't think that's required. I
2 don't believe -- I don't think it's a leap to say his house
3 was shot up five days before this murder, that most likely
4 had something to do with it.

5 THE COURT: I don't know. People do things for strange
6 reasons.

7 SOLICITOR KIDD: Well, I---

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

9 SOLICITOR KIDD: Sure. And---

10 THE COURT: You know---

11 SOLICITOR KIDD: And I can't tell you for a hundred
12 percent either, but I don't think certainty is what's
13 involved here.

14 THE COURT: I think you have to prove to me, by a
15 preponderance of the evidence, that it's relevant, that it's
16 more likely than not, and I haven't heard anything that
17 rises to that level.

18 SOLICITOR KIDD: Well, I, I would argue, Judge, that
19 someone's home, the place where they laid their head with
20 their mother, gets riddled with bullets five days before a
21 murder is more likely than not that that's motive and that's
22 involved here.

23 THE COURT: You know, I don't know. I hear strange
24 things every day. I know that I've seen girlfriends shoot
25 up boyfriend's houses. I don't know. I don't know that

1 that's gang related.

2 SOLICITOR KIDD: well---

3 THE COURT: People do strange things. I stopped asking
4 why a long time ago what motivates people to do the things
5 they do.

6 SOLICITOR KIDD: well, I agree. There's all sorts of
7 strange scenarios that we can come up with, but the most
8 probable, the most likely, the most reasonable scenario---

9 THE COURT: well, I don't know. I can't make a
10 decision based on that cause I haven't heard any evidence on
11 it. So, I need to stick with the pictures and where we are
12 right now.

13 So, 157 is being offered for what purpose?

14 SOLICITOR KIDD: 157 is offered -- being offered to
15 show the affiliation with Mr. Bryan, that is Mr. Bryan's
16 photo, and---

17 THE COURT: Who's gonna authenticate that it's Mr.
18 Bryan?

19 Marvin -- who is Marvin, the low man, Bryan?

20 SOLICITOR KIDD: And under -- underneath Tater T. That
21 is defendant, Marvin Bryan.

22 THE COURT: I don't see Tater T anywhere on here.

23 SOLICITOR KIDD: It's only on the top page of the
24 Facebook post, which we have entered through Mr. Evans. And
25 so we---

1 THE COURT: Is there any exception to the document?

2 MR. PRICE: Yes, Your Honor. I -- you know exactly
3 what I'm going to say. It's obviously---

4 THE COURT: No, I don't, but I want---

5 MR. PRICE: But it---

6 THE COURT: I want to hear it.

7 MR. PRICE: I'm mirroring what you're saying, and the
8 fact that they are trying to, again, make the leap that he
9 is part of this West Cash affiliation. He is indicated
10 that, that, that, you know, Marvin may have, have some
11 affiliation with it. However, they're, again, trying to
12 utilize that and that picture that he is a part of West
13 Cash.

14 There's been no testimony that Marvin ever said
15 anything or was in the car, said anything about shooting,
16 said go get them. Nothing. There's no, there's no motive
17 whatsoever on behalf of Mr. Bryan, and that's what they're
18 trying to utilize it by, by entering that picture. And so I
19 just don't see any relevance to it at this point in time.
20 And, obviously, I think it's very prejudicial.

21 THE COURT: Mr. Peper, your client's not in this
22 picture, is he?

23 MR. PEPER: He's not, Judge, but --.

24 THE COURT: I don't really know who's in this picture.
25 Who are these individuals in the picture?

1 SOLICITOR KIDD: Other members of the West Cash
2 organization.

3 THE COURT: You haven't proven that there is a West
4 Cash organization.

5 SOLICITOR KIDD: I, I believe my witnesses---

6 THE COURT: I think organization is a strong word.

7 SOLICITOR KIDD: Well, association. I have
8 specifically referred, refrained from calling it a gang in
9 Court or in front of the jury for that purpose. I don't
10 want to, you know---

11 THE COURT: First of all, to establish it's a gang,
12 you're gonna have to establish that there's some hierarchy
13 of leadership or some organization or some coordinated
14 effort to accomplish a purpose. It's not a loose
15 affiliation of youngsters basically or overaged adults, who
16 think they're youngsters, saying they're part of some group.

17 SOLICITOR KIDD: And, and I'm not trying---

18 THE COURT: It loosely affiliates themselves with one.

19 SOLICITOR KIDD: I will not use the word gang, but
20 association of friends that operate under a name is---

21 THE COURT: Yeah, you're gonna have to---

22 SOLICITOR KIDD: ---is, is, I think, sufficient and
23 that's what the witness testified to, that they're all
24 members of this neighborhood---

25 THE COURT: My concern with this photo is it implicates

1 character with this money on -- it implicates -- it's
2 problematic. I don't know who these other individuals are,
3 and the money on the floor, and the out -- that just
4 concerns me. I'm gonna think about that.

5 All right. Number 154.

6 SOLICITOR KIDD: May I approach, Your Honor?

7 THE COURT: That's the one that says since they -- I
8 never leave home without being strapped. That's my
9 paraphrase of it.

10 SOLICITOR KIDD: And I think it goes to -- directly to
11 motive and opportunity, Judge. This is -- in a time gap
12 between when, when Mr. Wilson was shot and, and the weeks
13 prior to the murder. I think it is a direct indication of,
14 and opportunity, and the fact that he's gonna arm himself
15 and take care of business.

16 THE COURT: Yes, sir.

17 MR. PEPER: Your Honor, what he left out was in 100 100
18 voice, who -- there's no reason you would know that, but
19 Twoo Hunnit is a rapper. That is nothing but a music quote.

20 THE COURT: 100?

21 MR. PEPER: Twoo---

22 THE COURT: No, the kids say keeping it 100. That's
23 what that 100 emoji means.

24 MR. PEPER: No, Judge, Twoo Hunnit who---

25 THE COURT: It doesn't say 200. It says 100 and 100.

1 MR. PEPER: Right, that---

2 THE COURT: That could be for emphasis.

3 MR. PEPER: The rapper Twoo Hunnit, that's his sign.

4 THE COURT: Oh, okay.

5 MR. PEPER: And that's what it says. In his voice.

6 THE COURT: Oh, you're saying this is lyrics---

7 MR. PEPER: Right, these are---

8 THE COURT: ---from a song?

9 MR. PEPER: These are musical lyrics, first and
10 foremost.

11 THE COURT: From what song?

12 MR. PEPER: Some rap song. I mean rap song he wrote.
13 I'll go Google it if you want me to, but---

14 THE COURT: There's a rapper named Twoo Hunnit?

15 SOLICITOR KIDD: There was---

16 MR. PEPER: Yes, ma'am.

17 SOLICITOR KIDD: ---who was---

18 MR. PEPER: There was. That's exactly right. He knows
19 what it is. That's what I'm saying.

20 THE COURT: Where's he from?

21 SOLICITOR KIDD: West Ashley.

22 MR. PEPER: West Ashley. He passed away.

23 THE COURT: Is she actually a rapper with a recording
24 contract who actually recorded records that were nationally
25 distributed---

1 MR. PEPER: Well, I---

2 THE COURT: ---or is this somebody that recorded in
3 their garage and was distributing it out their trunk?

4 I need to know cause that's not a rap artist.

5 MR. PEPER: He's dead. So, we can't ask him that.

6 THE COURT: Well, no, you would know. You know whether
7 somebody's a recording artist or not.

8 MR. PEPER: I feel confident -- he's a recording---

9 THE COURT: They're on the charts. They are recognized
10 by some entity.

11 MR. PEPER: Right. I'm trying to figure out which is
12 the best way---

13 THE COURT: You know, I can say I'm a rapper and record
14 on my telephone and record it and master strip. I mean you
15 know.

16 MR. PEPER: Right.

17 THE COURT: That's like me saying I'm an author, and
18 sending my book off to one of these little places that
19 prints books and selling them out my trunk. That don't mean
20 I'm an author.

21 MR. PEPER: I can go buy his CD right now.

22 THE COURT: Where?

23 MR. PEPER: That's, that's my answer. At any of the
24 local stores. I'm not -- I don't know -- I can't answer
25 your question about nationally. I don't know.

1 THE COURT: I mean like what local stores?

2 MR. PEPER: Any local CD store that sells rap music.

3 His CD's are in stores.

4 THE COURT: Really?

5 MR. PEPER: Yes, ma'am.

6 THE COURT: I tell you I'm not -- I must be getting
7 old.

8 Okay.

9 MR. PEPER: Yeah.

10 THE COURT: I don't listen to much rap. So --.

11 MR. PEPER: And that's why I said---

12 THE COURT: I don't listen to any rap.

13 MR. PEPER: ---in Twoo Hunnit Voice.

14 THE COURT: Okay.

15 MR. PEPER: You see what I'm saying?

16 THE COURT: So, you need to tell me what song this
17 comes from, and you need to produce for me something---

18 MR. PEPER: All right.

19 THE COURT: ---something I can listen to to see if
20 these are, in fact, the lyrics.

21 MR. PEPER: All right.

22 THE COURT: But I don't know that that's really
23 germane.

24 MR. PEPER: You're right. I mean that is -- and I just
25 threw that out there cause I don't know why.

1 THE COURT: I mean people usually repeat lyrics because
2 they mean something to them.

3 MR. PEPER: Well---

4 THE COURT: It's struck some nerve and it's
5 articulating some present sense impression, you know, some
6 emotion they're experiencing at the time.

7 MR. PEPER: Yeah. Did, did we -- if I understand, it's
8 being offered to---

9 THE COURT: I assume it's being offered---

10 MR. PEPER: ---to show the truth that he left---

11 THE COURT: ---to show his state of mind.

12 MR. PEPER: ---with a gun that night?

13 THE COURT: I think it's being offered to show his
14 state of mind, as I understand the solicitor's argument. I
15 might -- if I'm incorrect, please correct me.

16 SOLICITOR KIDD: No, you're spot on, Judge.

17 MR. PEPER: His state of mind on October 23rd, 2015?

18 THE COURT: That's less than a month before the
19 incident.

20 MR. PEPER: Right. I mean I -- and within the context
21 of the time of when he was released from the hospital from
22 this other incident, which was in September. Again, if my
23 memory is not correct on the dates, I'll stand corrected,
24 but that's my memory of the dates cause that's when -- well,
25 July was---

1 SOLICITOR KIDD: July.

2 THE COURT: ---the Facebook post. I'm sorry. I don't
3 know the extent of his injuries. I don't know how long it
4 took him to recuperate.

5 MR. PEPER: Your Honor, my position is that what
6 relevance it has versus it being offered is outweighed by
7 the prejudicial effect. Especially in that the jury may not
8 know that that's a song lyric. They may literally think
9 that he's saying I take a gun everywhere I go.

10 THE COURT: But isn't that why you would ask that in
11 cross-examination?

12 MR. PEPER: You're right. But I mean it's just too
13 prejudicial.

14 THE COURT: Well, you know, the Supreme Court has said
15 that lyrics to songs are not prejudicial, that it's
16 reflecting somebody's state of mind within a, you know,
17 relevant timeframe.

18 MR. PEPER: They also -- you're right, Judge, but they
19 also says it's very dangerous to let something---

20 THE COURT: I don't recall that language.

21 MR. PEPER: ---in like that.

22 THE COURT: Judge Pieper heard that case. He and I had
23 a lot of consternation about whether them song lyrics should
24 come in. You know, sometimes we talk to each other about
25 things.

1 MR. PEPER: I'm with you.

2 THE COURT: Yeah, we need a little help.

3 MR. PEPER: I know.

4 THE COURT: I can't remember exactly what the -- it
5 seems like -- I can't remember exactly what those song
6 lyrics were, but I know that it was a case that Judge Pieper
7 had, and I know it went up on appeal. I just can't
8 remember. I'd have to look it up and see, but I don't think
9 that being song lyrics makes it inadmissible if it's a
10 reflection of that person's state of mind at the time.

11 MR. PEPER: And so---

12 THE COURT: But you taught me something new. I didn't
13 know there was a rapper named Twoo Hunnit that was---

14 MR. PEPER: There was.

15 THE COURT: ---from Charleston.

16 MR. PEPER: Okay. There was, but I mean---

17 THE COURT: What happened to him?

18 MR. PEPER: He died of a heart attack in his sleep or
19 something, something in his sleep.

20 THE COURT: How young a person was he?

21 MR. PEPER: I don't know.

22 THE COURT: I'm curious.

23 MR. PEPER: Judge, the other issue that I have is that,
24 you know, Mr. Cheney's not gonna know that that's a rap
25 song. So, now, it's shifting the burden to me to call

1 witnesses to say it's a rap song.

2 THE COURT: No, that's why you ask him these questions
3 and you say isn't this a reflection of these two one hundred
4 signs, Two Hunnit, the rapper? Isn't that correct? That's
5 why you get to lead---

6 MR. PEPER: I understand.

7 THE COURT: ---and he doesn't.

8 MR. PEPER: I mean I understand, Judge.

9 THE COURT: Yeah.

10 MR. PEPER: I just -- to me, it's an intent to go after
11 my client's character, which forces me to then put him on
12 the stand. That's exactly what, what he's trying to do with
13 these.

14 THE COURT: No, he doesn't have to testify. He doesn't
15 have to say a word. It's their burden of proof, but I don't
16 think they're prohibited from showing -- that's why Facebook
17 is so dangerous.

18 MR. PEPER: I agree.

19 THE COURT: These young people tend to talk in a stream
20 of consciousness and put their whole life out into a medium
21 that they don't own, that they have no control over, and,
22 generally, I have found that exactly what they say is what
23 they're thinking.

24 Now, is that imprudent?

25 Absolutely.

1 As my mama would say, what happens in your house should
2 stay in your house. No need to tell everybody everything.
3 But this generation of parents did not get that memo.

4 So, they put their whole life in these social contexts,
5 which are in the public realm. You have no expectation of
6 privacy once you hit send. On a text message, on a
7 Instagram post, on a Snapchat post, Facebook, Twitter, I've
8 lost track. They're too many of them. I think they got
9 some new ones now that I'm not aware of.

10 MR. PEPER: Your Honor?

11 THE COURT: But once you put something in the public
12 domain, I don't know that you can necessarily, and it's a
13 reflection of what might well be your state of mind within
14 the context of close -- now, this was a year ago?

15 MR. PEPER: I'm with you. But, but are they gonna call
16 somebody to the stand to show that he had control over his
17 Facebook page?

18 Cause I don't have control over mine. I don't know
19 about you.

20 THE COURT: Well, you have passwords. I don't have a
21 Facebook page.

22 MR. PEPER: But I mean---

23 THE COURT: I don't like social media. I don't have
24 any of it.

25 MR. PEPER: And so now I got to call somebody up there

1 and say yeah, I had his password. He had his password. He
2 had his password.

3 THE COURT: I don't know.

4 Did you-all make any requests under the Closed Storage
5 Act through Federal warrant to get Facebook's records about
6 who accesses accounts on these days?

7 Cause that will tell you. They can tell you exactly
8 which IP address accessed it when.

9 SOLICITOR KIDD: Well, and, and that's part of the,
10 part of the problem, Judge, and we've just gone through this
11 in another case, and the problem in the current day is that
12 everyone's got a cell phone. So, every time I walk---

13 THE COURT: Facebook has a record of every time you log
14 in and every time---

15 SOLICITOR KIDD: Right.

16 THE COURT: ---you log out and where it came from.

17 SOLICITOR KIDD: Right. But IP addresses change with
18 every network that you're on. So, if I'm on the Wi-Fi here,
19 I've got one IP address. If I go home, it goes to another
20 one. If I'm at Starbucks---

21 THE COURT: But you can pretty much isolate---

22 SOLICITOR KIDD: You absolutely can't anymore, and,
23 while that use to be the case when we were sitting in our
24 living rooms logging on---

25 THE COURT: Yeah, but I don't know if he accessed this

1 from his phone or if he did it from the desk top at his
2 house cause you didn't ask for that information.

3 SOLICITOR KIDD: Right. And the current case law says
4 that goes to weight and not admissibility. I don't---

5 THE COURT: You'd have to show me a case that says
6 that.

7 SOLICITOR KIDD: Yes, ma'am, I would rely on 448 New
8 Jersey---

9 THE COURT: I don't have to look outside of South
10 Carolina. I got plenty of cases on Facebook --

11 SOLICITOR KIDD: There's actually not.

12 THE COURT: -- and authentication.

13 SOLICITOR KIDD: And, and I have---

14 THE COURT: We have black letter precedent that deals
15 with authentication. I don't have to look out to a New
16 Jersey Circuit Court that has the same authority as me if it
17 has not been subject to appellate review for documents.

18 SOLICITOR KIDD: So, we would look at Rule 901,
19 which---

20 THE COURT: Which is different. 901 really hasn't
21 caught up with -- I think, at a bare minimum, minimum, you
22 need to have made the effort to have -- exercise your right
23 under the Closed Storage Act to find out what the history
24 was on accessing this account cause it's your burden. It's
25 not theirs.

1 SOLICITOR KIDD: I agree it's my burden, Judge, but the
2 current standard for admissibility of public posts off
3 Facebook, the Court requirement, authentication or
4 identification as a condition for precedence through
5 admissibility is satisfied by evidence sufficient to support
6 a finding that the matter is what the proponent claims.

7 It's a totality of the circumstances. We look at the,
8 the photos on the page making sure it -- that it matches
9 the, the person who we claim to be the, the poster. We look
10 at other identifying information on their, in their about
11 section. If we can further authenticate it through an
12 individual witness, such as I have through Mr. Evans, who
13 says this is their Facebook page, I'm familiar with it, this
14 is where they post, then, Judge, I believe that's met my
15 burden of showing, through those circumstances, that the
16 post is what I claim it to be, which is a communication
17 posted out there in cyberspace by the defendant. And, you
18 know, the jurisdictions are split on this. There's kind of
19 a Maryland --

20 THE COURT: That's because---

21 SOLICITOR KIDD: -- rule of thought.

22 THE COURT: That's because case law and statutes
23 haven't caught up with technology.

24 SOLICITOR KIDD: I, I agree. But the bulk of the
25 country, other than really Maryland, agrees with the

1 totality of the circumstances standard, which I will --
2 attempted to articulate through the New Jersey case because
3 I have been unable to find a case---

4 THE COURT: I can't rely---

5 SOLICITOR KIDD: ---a South Carolina case.

6 THE COURT: Yeah, I can't rely -- is the New Jersey
7 case with concurrent jurisdiction like this Court or is it
8 been subject to appellate review by some Appellate Court
9 cause a district -- I mean a Court case from a Court that's
10 the same as me, that's not gonna be instructive to me.

11 SOLICITOR KIDD: And, and that's -- and that's what it
12 is, but---

13 THE COURT: Cause that's just another judge just like
14 me giving an interpretation of what they think and I
15 can't---

16 SOLICITOR KIDD: That---

17 THE COURT: ---rely on that. It's not precedent.

18 SOLICITOR KIDD: Absolutely. And, you know, I've, I've
19 researched a lot of the states on this. I've researched
20 Texas. I've researched New Jersey. I've researched
21 Maryland and, and other states in our country as well and
22 there's, and there's no precedence in South Carolina
23 regarding the authentication of Facebook post, and that
24 blows my mind considering how long Facebook's been around.

25 I thought, for sure, when I started my West Law

1 research on this issue, that I was gonna come across a case
2 pretty quickly that laid out what foundation I had to lay to
3 enter a Facebook evidence into Court, but it just didn't
4 exist, that I was able to find.

5 So, that's what made me start to rely on, on case law
6 from other jurisdictions, and, you know, I looked to our
7 Supreme Courts. I, I looked to the Federal Districts, but
8 the, the cases on point being, you know, it might be because
9 of the, you know, the fast changing nature of technology,
10 but the only, the only cases on point that I could find are
11 similarly situated Courts as we are.

12 And not that it's binding on you either, but Judge
13 Couch took up this exact same issue last week, and I believe
14 he sided with the New Jersey precedent there as well.

15 THE COURT: Uh-huh. (Affirmative).

16 All right. What -- for what purpose is 154 being
17 sought -- for what purpose is the State seeking to
18 interest -- seeking to introduce 154?

19 SOLICITOR KIDD: And 154, if I can refresh my --.

20 THE COURT: Oh, sorry.

21 SOLICITOR KIDD: That is an indication -- I believe
22 that post occurred on November 2nd approximately 20
23 days---

24 THE COURT: I'm sorry. 155. Not 154.

25 SOLICITOR KIDD: On November 2nd, approximately 20

1 days or 19 days before the murder, indicating he's F that
2 cash up on some new toys, and then a multitude of gun
3 emojis. I believe it -- also goes to his state of mind,
4 especially when taken in conjunction with the prior posts,
5 and also showing that he's arming himself in anticipation of
6 conflict. I think it's very relevant to the events that
7 unfolded.

8 THE COURT: Any objection to 155?

9 MR. PEPER: Your Honor, assuming there's gonna be some
10 additional foundation that authenticates this as either
11 being his page, there would need to be some testimony
12 showing that this is Justin Wilson that posted this. We
13 don't know who posted at this point in time. Not to mention
14 the 403 analysis as we've stated earlier.

15 Our argument, for 155, is the same as 154, Judge, and,
16 to be honest with you, I can't provide you much guidance on
17 the unlawful storage act because I just got these three days
18 before trial. So, I don't really have much research for
19 you.

20 THE COURT: Did you make any effort, Mr. Kidd, to get
21 any information from Facebook as to when the pages were set
22 up and what information was provided when the Facebook pages
23 were set up to establish ownership of the accounts?

24 SOLICITOR KIDD: No, ma'am.

25 THE COURT: Why?

1 SOLICITOR KIDD: Cause my research of the law didn't
2 seem to indicate that was necessary. I admittedly came
3 across this rather late in the game as I'm preparing for
4 trial. I assumed that their Facebook pages would of been
5 deleted by the time we got here.

6 THE COURT: Facebook keeps that information forever.
7 For those who don't read the small print, you don't own
8 anything. You give Facebook -- they own it.

9 SOLICITOR KIDD: Sure. Sure.

10 THE COURT: And they never delete it.

11 SOLICITOR KIDD: So, I---

12 THE COURT: So, they would of had who -- when it was
13 opened, who they said they were. They require an email
14 address. Now they require a phone number as I understand
15 it. They require some way to independently corroborate that
16 you own these pages and you are who you say you are and that
17 you're over the age of consent. And that's been in place
18 for a long time.

19 So, they would of, at least, had, when the page was
20 opened, the name that was used to open it, the email account
21 that was associated with it, the age that was reported by
22 the person, and the name that was given.

23 Now, granted, people use a lot of license and ingenuity
24 and imagination in creating, in creating names on Facebook.
25 It amazes me that they have the time and inclination or the

1 ability to do all of that. It just -- I wonder if they work
2 for a living, but people put a lot of energy into doing
3 these things, but I would, I would of -- it would of been at
4 least helpful to know that, if that information had been --
5 if there had been some attempt to obtain that information,
6 but we have already had people testify that these are, in
7 fact, your clients' pages, and they've interrupted -- Mr. --
8 I forget the names of the witnesses right now. I think
9 there's more than -- well, the gentleman who testified
10 regarding 150 and 151 testified that these are, in fact,
11 their pages. They recognize them to be their pages, that
12 they have communicated with them via these pages.

13 So, I think that may well be enough to establish
14 ownership of the page. My concern, however, is what they
15 say and whether these amount to an admission against
16 interest to some extent or, or a reflection of their state
17 of mind.

18 I am excluding, however, No. 157. I think it is more
19 prejudicial than probative. The other individuals in this
20 photograph are unidentified. There's no testimony that ties
21 them to this incident. The cash in the picture also gives
22 me some consternation because I think it may well rise to
23 the level of implicating the defendant's character because
24 it really sort of implicates some sort of illegal activity
25 to have the copious amount of cash like that on the floor as

1 well as the alcohol being present in the picture.

2 And, at this point, I've not heard any testimony that
3 would have tied this picture to this event and -- or heard
4 any testimony that will make that picture probative on that
5 issue. And so that is excluded and it will be marked for ID
6 only.

7 So, at this point, 150 and 151 have already been
8 admitted. 157 will be ID only. 156, 154, and 155 I'm gonna
9 think about over the lunch break.

10 When did the jury get their lunch?

11 THE CLERK: About five minutes ago, Your Honor.

12 THE COURT: The jury got their lunch about five minutes
13 ago, which was 12:05. We will take a one hour break for
14 lunch. We will resume at 1:05.

15 MR. PEPER: Thank you, Your Honor.

16 THE COURT: Have a good lunch.

17 SOLICITOR KIDD: Thank you, Judge.

18 THE COURT: Sir, you can step down.

19 (WHEREUPON, Court was in recess for the lunch hour.)

20 SOLICITOR KIDD: Your Honor, the Court---

21 THE COURT: Yes, sir.

22 SOLICITOR KIDD: May I approach?

23 (WHEREUPON, a bench conference was held at this time.)

24 SOLICITOR KIDD: I think we're ready to proceed, Your
25 Honor.

1 THE COURT: Mr. Price, you ready to proceed?

2 MR. PRICE: Yes, ma'am.

3 SOLICITOR KIDD: And I appreciate the Court's
4 indulgence. Thank you so very much.

5 THE COURT: No worries.

6 All right. As a result -- as it regards the items that
7 the Court had under, had under advisement, No. 155 will be
8 excluded. Its probative value is outweighed by its
9 prejudicial -- potential for prejudice as well as No. 156.
10 While there's a reference to Westside Ashleyville, there's
11 no reference to West Cash, and it would, inappropriately,
12 potentially bring the defendant's character in issue, and,
13 therefore, its probative value is outweighed by the danger
14 of unfair prejudice. And I've not heard anything, up to
15 this point, that would connect it to any sort of West Cash
16 entity. And I've already ruled on 157.

17 However, 154 will come in. I think there's sufficient
18 evidence in the record, in the testimony of Mr. Evans who
19 authenticated the Facebook page of Mr. Justin Wilson
20 indicating that he knew that to be his page. He identified
21 him and indicated that he was familiar with the page. We
22 have -- and that has already come in as State's Exhibit. I
23 think that's 150. I don't want to get confused. No. 151.

24 Madam Court Reporter, isn't 151 Mr. Wilson's?

25 THE COURT REPORTER: I'll show you these two.

1 THE COURT: Yeah, I'm sorry. Thank you, ma'am.

2 151, yes, is Mr. Wilson. That will -- that page will
3 come in subject to the objection, which is overruled. All
4 of the objections raised regarding that page deal with
5 weight. Not admissibility. It does make probative -- it is
6 probative on the issue of the defendant's state of mind
7 within a close temporal proximity of the event.

8 There's testimony that he was shot in September. This
9 post was made October 23rd of 2015, and then the incident
10 happened almost a month -- well, just shy of a month later
11 in November.

12 Mr. Peper has argued that these are merely rap lyrics.
13 He certainly can question the witness regarding that, but I
14 think any questions on authenticity, while the State could
15 of gone a little farther and gotten the information from
16 Facebook, which probably would of been prudent under the
17 circumstances, we do have, however, in the nature of an eye
18 witness, I guess loosely put, that being Mr. Evans, who
19 indicated -- who identified this as Justin Bubby Wilson's
20 Facebook page, which has his nickname attached to it.

21 The page also appears to have a picture of Mr. Wilson,
22 which was identified, and that page directly correlates with
23 State's Exhibit No. 154, which is a subsequent post. And it
24 states, since then Ns try to take my life, I never leave
25 that strap home with emojis or emojis, I don't know what

1 you call these things anymore, of guns within 101 100 voice,
2 which the defense counsel has said is a rapper, a local
3 rapper, but it is probative.

4 who is John B. Wilson, however?

5 I'm just noticing this.

6 who is John B. Wilson?

7 Is that a relative of Mr. Wilson's?

8 MR. PEPER: We don't know that, Judge.

9 THE COURT: Because there's a statement down here by a
10 John B. Wilson that says any N my dog got beef with I'm
11 punishing. That needs to be redacted from that page because
12 there's been no testimony as to who that is --

13 MR. PEPER: I thought they'd already done that.

14 THE COURT: -- or what he would of meant.

15 Huh?

16 MR. PEPER: I think the one they showed me this morning
17 they had redacted that part.

18 THE COURT: They redacted a page -- another post --

19 MR. PEPER: Oh, okay.

20 THE COURT: -- below it, but right in the comment's
21 section---

22 MR. PEPER: Right.

23 THE COURT: ---under this---

24 MR. PEPER: Right.

25 THE COURT: ---I just noticed that statement, and it

1 doesn't have any probative value and it's to be redacted---

2 MR. PEPER: And, Your Honor, just---

3 THE COURT: ---from that.

4 MR. PEPER: May it please the Court?

5 THE COURT: Uh-huh. (Affirmative).

6 MR. PEPER: Just -- I understand your ruling.

7 THE COURT: Yes, sir.

8 MR. PEPER: I'm not trying to change your mind --

9 THE COURT: Uh-huh. (Affirmative).

10 MR. PEPER: -- unless this makes a difference.

11 THE COURT: Yes, sir.

12 MR. PEPER: He was shot in July and I believe---

13 THE COURT: Oh, I'm sorry. I misspoke, but I still
14 think it's all relevant when you talk about a continuum of
15 events.

16 MR. PEPER: Well---

17 THE COURT: I don't know how long his recuperative
18 period was.

19 MR. PEPER: More important, my, my argument would be
20 how many thousands of Facebook posts he did from July---

21 THE COURT: But you can ask that.

22 MR. PEPER: ---all the way up to September.

23 THE COURT: You can ask that in cross, but this was a
24 month before the incident, which I think it is -- does
25 reflect his state of mind.

1 MR. PEPER: Thank you, Your Honor.

2 THE COURT: And you certainly can question the witness
3 about whether these are rap lyrics.

4 MR. PEPER: Right.

5 THE COURT: And, you know, all of the stuff that would
6 go to the weight of his testimony, but it's really in the
7 nature -- it's, it's reflective of his state of mind, and,
8 to some extent, it's an admission against interest because
9 he's indicating he leaves his house with a gun.

10 MR. PEPER: Oh, no, he's quoting lyrics.

11 THE COURT: Well, that's a weight issue.

12 MR. PEPER: Okay.

13 THE COURT: They say that's not what he meant, but, you
14 know, generally repeat the lyrics of a song cause they like
15 the lyrics of the song, and it's reflective of some emotion
16 they're feeling.

17 I was listening to an interview on satellite the other
18 day from Mary J. Blige, and I digress, but she was saying,
19 that since she's been singing happy songs, nobody's buying
20 her music because people relate to her heartbreak songs, and
21 she said I'm in a happy place in my life.

22 MR. PEPER: Right.

23 THE COURT: So, I'm writing happy songs.

24 MR. PEPER: Right.

25 THE COURT: She said all my fans are writing me saying

1 can you please go back to singing some heartbreak songs
2 cause that's where I'm at in my life right now and I need to
3 be able to croon with you---

4 MR. PEPER: Right.

5 THE COURT: ---in the heartbreak songs.

6 So, you know, people write music because it, it emotes
7 something. It creates a feeling in people, and it -- and
8 they relate to it. So, clearly, even if these are the
9 lyrics to a song, it's reflective of how -- what his state
10 of mind was, and it, clearly, it was something that he
11 related to or he would not have posted it.

12 So, that will come in as 154 subject to the objection.

13 MR. PEPER: Thank you, Your Honor.

14 THE COURT: And, also, I think I already noted that
15 154, I thought, dealt with character and was more
16 prejudicial than probative, probative.

17 And y'all are gonna redact 154, correct?

18 So, I'll make the original 154 Court's Exhibit, and
19 then, once you've redacted that additional comment, we will
20 mark that other as a, as a, as the, the Exhibit No. 154, and
21 already dealt with 156 and 155. Those will be for ID only.

22 And while there's been some discussion about a West
23 cash group, that testimony has come in, but there's been no
24 testimony, at this point, to link that with any feud. And
25 if, if there's some testimony that comes in that can link

1 these defendants to some feud that would rise to the level
2 of proving a motive, the Court will certainly consider that
3 at the appropriate time subject to any contemporaneous
4 objections.

5 SOLICITOR KIDD: Your Honor, if I, if I -- just for the
6 record?

7 THE COURT: Uh-huh. (Affirmative).

8 SOLICITOR KIDD: And I am not -- I'm just doing this
9 more for me than anything else.

10 THE COURT: well, you've already argued it.

11 SOLICITOR KIDD: well, I---

12 THE COURT: You've already stated all the basis---

13 SOLICITOR KIDD: And I'm not, I'm not arguing---

14 THE COURT: I've listened to it.

15 SOLICITOR KIDD: I'm not arguing---

16 THE COURT: And I've ruled.

17 SOLICITOR KIDD: ---against your ruling at all.

18 THE COURT: Uh-huh. (Affirmative).

19 SOLICITOR KIDD: I'm just really protecting myself
20 from, from the---

21 THE COURT: well, no, you protect your record when you
22 make argument to the Court. The benefit of -- the argument
23 is to benefit the Court and aid the Court in making a
24 decision. So, if you had anything you needed to say, you
25 should of said it when I gave you ample opportunity to argue

1 it so I could of considered it prior to ruling. But once
2 the Court's ruled, that's the end of it.

3 SOLICITOR KIDD: Yes, ma'am, and it wasn't, it wasn't
4 contrary to your ruling. It was just that there was a
5 Supreme Court case on point that was consistent with your
6 ruling that I---

7 THE COURT: Which one -- are you referring to East
8 versus State?

9 SOLICITOR KIDD: I was referring to U.S. v. Browne and
10 U.S. v. Hassan, which is on the authentication issue, and I
11 just failed to mention that in the prior argument, and I
12 just wanted to make sure---

13 THE COURT: That's okay.

14 SOLICITOR KIDD: ---that the record was clear on that.

15 THE COURT: Yeah.

16 Do you have citations?

17 SOLICITOR KIDD: Yes, ma'am. It is U.S. v. Browne,
18 834 F.3d 403, and U.S. v Hassan, 742 F.3d 104.

19 THE COURT: Okay. And, again, this case is a little
20 different where you've had somebody already authenticate who
21 the pages belong to, and that they've had interaction and
22 could identify those persons. And the other thing is, with
23 the, the nicknames being attached to those, and their
24 pictures being attached, although, you know, it's, it's
25 subject to cross-examination cause people create fake pages

1 all the time. Especially stars have people create fake
2 pages and cut and paste their pictures, but, you know, I
3 don't have any indication that that's what took place in
4 this case.

5 But, in any event, the defense is more than, than
6 capable of cross-examining on that issue, and, actually, I
7 guess, could -- if they want to recall Mr. Evans to
8 cross-examine him on it, I -- they certainly have that
9 ability.

10 MR. PEPER: And that would be my concern is that he
11 knows who Twoo Hunnit is. I mean he's, he's---

12 THE COURT: Who is that you're referring to?

13 MR. PEPER: Mr. Evans.

14 THE COURT: You can always recall Mr. Evans. It's
15 nothing that says you can't call him in your case.

16 MR. PEPER: Well, okay. You said I can call him and
17 cross him again. I mean in, in -- I mean I couldn't object
18 to this coming in when he was present, and it puts me in a
19 weird spot because after---

20 THE COURT: Well, they didn't try to---

21 MR. PEPER: ---it comes in---

22 THE COURT: Yeah, they didn't attempt to introduce it
23 through him, but there's nothing to preclude you from
24 calling him --

25 MR. PEPER: Well, I believe they did, Judge---

1 THE COURT: -- as a witness.

2 MR. PEPER: ---and I believe you took it under
3 advisement.

4 THE COURT: No, they didn't ask me about those pages.
5 They asked me about some other pages.

6 MR. PEPER: Oh, okay.

7 THE COURT: They asked me about Stewie's pages.

8 MR. PEPER: I apologize, Judge.

9 THE COURT: Which are the pages I took under
10 advisement.

11 MR. PEPER: I apologize.

12 THE COURT: Not these, yeah.

13 MR. PEPER: I am aware that my only remedy, at this
14 point, is to call him in my case in chief.

15 THE COURT: And you certainly can if you want to.

16 MR. PEPER: Right.

17 THE COURT: And you can ask him about it.

18 MR. PEPER: Right.

19 THE COURT: All right. Is there anything else we need
20 to take up before we resume testimony, from the State?

21 SOLICITOR KIDD: No, ma'am, other than my co-counsel
22 forgot he had a document for you, and Mr. Cheney's currently
23 on the stand. So, it shouldn't take but a second, but that
24 would be -- might be prudent.

25 THE COURT: We can, yeah.

1 MR. PEPER: Just---

2 THE COURT: Cause we need that redacted.

3 Well, he can refer to the unredacted one. You just
4 aren't gonna be able to publish it.

5 SOLICITOR KIDD: I just can't publish it. That will be
6 fine. If you want to -- if the Court wishes to proceed that
7 way, that's perfectly fine.

8 THE COURT: Yes, sir.

9 MR. PEPER: Just, procedurally, how do you prefer to do
10 closings and all?

11 I mean it just---

12 THE COURT: I haven't gotten to that page -- that part
13 yet.

14 MR. PEPER: Okay.

15 THE COURT: Yeah.

16 MR. PEPER: I didn't know if there's a time of day
17 where you kind of --.

18 SOLICITOR KIDD: Quite frankly, Judge---

19 THE COURT: Well, we got a lot to do before that.

20 SOLICITOR KIDD: Well, I---

21 THE COURT: He has to rest.

22 SOLICITOR KIDD: I think that I'm---

23 THE COURT: I got to take up motions. I got to advise
24 the clients of their rights -- I mean the defendants their
25 right to testify. I got to look at their record to see if

1 there's any -- we got a lot more to do before we get to that
2 point.

3 SOLICITOR KIDD: Considering where we're at, to be
4 honest, Judge, I think I'm just gonna rest --

5 THE COURT: Then we can take up motions---

6 SOLICITOR KIDD: -- once Mr. Cheney testifies.

7 THE COURT: ---and everything else and deal -- probably
8 take us the rest of the afternoon to do what we need to deal
9 with, and then we'll, we'll deal with all of that.

10 MR. PEPER: Thank you, Your Honor.

11 THE COURT: You welcome.

12 Now, do y'all plan to still call your alibi witness or
13 are y'all still thinking about that?

14 MR. PEPER: Still thinking right now, Judge.

15 THE COURT: This will become -- well, I don't know --
16 do you want to -- you're not gonna publish it and use this
17 one or you want to wait on the redacted one?

18 SOLICITOR KIDD: It's up to Your Honor. It's just
19 about timing. They're gonna see it eventually anyway. So,
20 it's just whether or not you want to---

21 THE COURT: Yeah, you just can't publish it as long as
22 this other little statement is on here.

23 SOLICITOR KIDD: I can just have him---

24 THE COURT: Cause even though you might not make
25 reference to it, I'm sure there'd be some juror that's

1 looking at it. I mean I can't guarantee they won't read it.

2 SOLICITOR KIDD: Right, I wouldn't, I wouldn't put it
3 on the overhead. I could have Mr. Cheney publish the
4 statements. This is the one---

5 THE COURT: Uh-huh. (Affirmative).

6 SOLICITOR KIDD: ---verbally and then we can get the
7 redacted copy --

8 THE COURT: That's fine.

9 SOLICITOR KIDD: -- entered later.

10 THE COURT: That will be for ID. Well, now it becomes
11 a Court's Exhibit.

12 THE COURT REPORTER: Court's Exhibit. As soon as they
13 redact it---

14 THE COURT: And they'll bring the other one back and
15 substitute it, the redacted one.

16 THE COURT REPORTER: Yeah, I'm just gonna put this in
17 right now.

18 THE COURT: Yeah, you can go ahead and mark it as a
19 Court's Exhibit now if you want to.

20 THE COURT REPORTER: Yeah.

21 (WHEREUPON, the original of State's Exhibit 154 was
22 marked now as Court's Exhibit No. 13 for identification
23 purposes only at this time.)

24 THE COURT: All right. Is the State ready to proceed?

25 SOLICITOR KIDD: We are, Your Honor.

1 THE COURT: Defense ready to proceed, Mr. Price?

2 MR. PRICE: Yes, ma'am.

3 THE COURT: Mr. Peper.

4 MR. PEPER: Yes, Your Honor.

5 THE COURT: All right.

6 SOLICITOR KIDD: Well, and -- sorry.

7 THE COURT: Uh-huh. (Affirmative).

8 SOLICITOR KIDD: The two Stewie pages, we---

9 THE COURT: They're still under advisement. I'm still
10 thinking about that.

11 SOLICITOR KIDD: I just don't---

12 THE COURT: You're not prejudiced in anyway.

13 SOLICITOR KIDD: I just don't want to rest in front of
14 the jury.

15 THE COURT: You're not prejudiced by that. If you have
16 to reopen to call somebody to deal with it, I'll let you do
17 that.

18 SOLICITOR KIDD: Thank you, Your Honor.

19 MR. PRICE: Right, and I guess I would be able to
20 cross. Okay.

21 THE COURT: Yeah. Absolutely.

22 MR. PEPER: I got you.

23 THE COURT: Yeah, I just -- I have found that there's
24 some benefit in thinking about things, and I'm -- so, I'm --
25 if, you know, I'm not gonna allow anybody to be prejudiced

1 by my thought process. So, if I -- whatever decision I come
2 to, I'm gonna make sure everybody's rights are preserved to
3 examine the witness.

4 MR. PEPER: Thank you, Your Honor.

5 THE COURT: You welcome.

6 SOLICITOR KIDD: May I approach?

7 THE COURT: yes.

8 Oh, you got a redacted---

9 SOLICITOR KIDD: would you like to see it?

10 THE COURT: Yeah.

11 Mr. Peper, did you see it?

12 MR. PEPER: I did, yes, ma'am. Everything's good.

13 THE COURT: Perfect.

14 MR. PEPER: Thank you.

15 THE COURT: So, that will become State's---

16 THE COURT REPORTER: So, this is -- is that the
17 redacted one?

18 SOLICITOR KIDD: Yes, ma'am.

19 THE COURT: Yes.

20 THE COURT REPORTER: Okay. So, that's the Court's
21 Exhibit one---

22 THE COURT: So, this is 154?

23 THE COURT REPORTER: Yeah.

24 THE COURT: Yeah.

25 (WHEREUPON, State's Exhibit No. 154 was received into

1 evidence at this time.)

2 THE COURT: That is 154, right?

3 THE COURT REPORTER: Yes, ma'am.

4 THE COURT: I'm getting confused. All these numbers
5 are starting to run together.

6 THE COURT REPORTER: I know. 154.

7 THE COURT: Let me see them all again?

8 I'm sorry.

9 THE COURT REPORTER: No, that's okay. I've got it up
10 here. So, that's the original, 154.

11 THE COURT: The original one. Oh, 154.

12 THE COURT REPORTER: And 155 and 156 is now ID only?

13 THE COURT: Yes.

14 THE COURT REPORTER: And you didn't do anything with
15 157, right?

16 THE COURT: Let me see that one.

17 THE COURT REPORTER: Cause I think I have that ID only.
18 I don't think that was under advisement.

19 THE COURT: 157 is out.

20 THE COURT REPORTER: Okay. That was this.

21 THE COURT: That's that one. I -- yeah, I sustained
22 the objection on 157.

23 THE COURT REPORTER: Okay.

24 THE COURT: On 157.

25 THE COURT REPORTER: Okay.

1 THE COURT: And I sustained the objection on 155 and
2 156. So, those are ID only.

3 THE COURT REPORTER: That's right. Okay.

4 THE COURT: And then 154---

5 THE COURT REPORTER: I think I've got them all.

6 THE COURT: ---and this redacted statement comes in.

7 THE COURT REPORTER: That's the redacted one right
8 here.

9 THE COURT: And then, and then what's that, 150, 151?

10 THE COURT REPORTER: Yes, those are in.

11 THE COURT: Yeah, those came in earlier.

12 THE COURT REPORTER: That's right.

13 THE COURT: Okay. I just wanted to make sure I had my
14 numbers right. I'm sorry.

15 THE COURT REPORTER: No, it helps me.

16 THE COURT: Okay. All right. State ready to proceed?

17 SOLICITOR KIDD: Yes, ma'am.

18 THE COURT: Defense ready to proceed?

19 MR. PEPER: Yes, ma'am.

20 MR. PRICE: Yes, ma'am.

21 THE COURT: Please bring in the jury, and if the
22 witness can retake -- well, I don't know.

23 Did you call him in the presence of the jury?

24 I don't think you did.

25 SOLICITOR KIDD: Not in, not in the presence.

1 THE COURT: I think we did it all in camera.

2 SOLICITOR KIDD: Yes, ma'am, not in the presence of the
3 jury.

4 THE COURT: Yeah. So, you'll need to call him.

5 THE BAILIFF: You ready?

6 THE COURT: Yes, sir. Thank you.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE BAILIFF: All the jurors are present, Your Honor.

10 THE COURT: Thank you.

11 Ladies and -- you may be seated.

12 Ladies and gentlemen, I hope that you-all enjoyed your
13 lunch. I apologize for the delay. We had some unexpected
14 matters of law come up that we needed to deal with that took
15 just a little bit longer than I expected. So, please know
16 that, while you've been waiting, we have been working
17 diligently to get those resolved and know that we do not
18 take your time for granted.

19 We're now going to resume testimony. I would ask that
20 you give counsel your attention.

21 You may proceed.

22 SOLICITOR KIDD: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 SOLICITOR KIDD: State calls Investigator Cheney.

25 THE COURT: Sir, if you'd come to the stand to be

Josh Cheney - Direct examination
by Solicitor Kidd

1 sworn.

2 JOSH CHENEY, being first duly
3 sworn, testified as follows:

4 THE CLERK: Thank you. Please take a seat. State your
5 full name spelling your last for the record.

6 THE WITNESS: Josh Cheney. C-H-E-N-E-Y.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY SOLICITOR KIDD:

10 Q Briefly, Investigator Cheney, could you tell the jury
11 where you work please?

12 A The Solicitor's Office.

13 Q How long have you worked for the Solicitor's Office?

14 A Approximately six years.

15 Q And what is your duties with the Solicitor's Office?

16 A I'm an investigator that is assigned to several
17 solicitors. We take cases as they come into our office, and
18 we follow-up on them on a case-by-case basis, interview
19 witnesses, serve subpoenas, and preparation for trial.

20 Q And do you work with me?

21 A I do.

22 Q And how long have you worked with me?

23 A Approximately three months.

24 Q And has -- in part of those three months that you've
25 been assigned to work with me, have we been preparing for

Josh Cheney - Direct examination
by Solicitor Kidd

1 trial in this case?

2 A We have.

3 Q And, in that preparation, I'm gonna show you what's
4 been marked and entered into evidence as State's Exhibit
5 151.

6 THE COURT: You still need to lay a foundation for the
7 document before you publish it---

8 SOLICITOR KIDD: Yes, ma'am.

9 THE COURT: ---and before I can admit it.

10 SOLICITOR KIDD: Yes, ma'am.

11 THE COURT: Is that the---

12 SOLICITOR KIDD: This one was---

13 THE COURT: Oh, that's the one that's already been
14 admitted.

15 SOLICITOR KIDD: This one's already been entered.

16 THE COURT: I apologize.

17 SOLICITOR KIDD: Yes, ma'am.

18 Q Investigator -- Mr. Cheney, do you recognize State's
19 Exhibit 151?

20 A I do.

21 Q And what is that?

22 A That is a Facebook profile page that I was able to
23 locate on Justin Bubby Wilson.

24 Q And did you have to have a password or be friends with
25 him or anything like that to look at that page?

Josh Cheney - Direct examination
by Solicitor Kidd

1 A No, at the time of this screen capture here, it was a
2 public profile.

3 Q And through investigating into this case, did you go
4 through his profile?

5 A I did.

6 Q Let me show you what's been marked for identification
7 as State's Exhibit 154.

8 Do you recognize that item?

9 A I do.

10 MR. PEPER: Objection, Your Honor. State for the
11 record---

12 THE COURT: Basis?

13 It's preserved. We heard it---

14 MR. PEPER: Right.

15 THE COURT: ---prior to.

16 MR. PEPER: Thank you.

17 THE COURT: You're welcome. Noted and overruled based
18 on the Court's prior ruling.

19 Q Go ahead.

20 A I do recognize it.

21 Q All right. And what is it?

22 A It is another screen capture of Justin Bubby Wilson's
23 Facebook profile. It is of this timeline, and there is a
24 post dated October 23rd, 2015.

25 Q Okay. And did you, did you then actually do the screen

Josh Cheney - Direct examination
by Solicitor Kidd

1 capture on this and print it out?

2 A I did.

3 SOLICITOR KIDD: Your Honor, at this time, the State
4 would offer Exhibit 154 into evidence.

5 THE COURT: Already been admitted subject to the
6 objection.

7 Q All right. I'm gonna show you what's been marked
8 State's Exhibit 154, and draw your attention to the posting.
9 It's a little hard to see.

10 Can you tell the date that that post is made?

11 A October 23rd, 2015.

12 Q I don't want to ask you to read it.

13 I have no further questions for Mr. Cheney.

14 THE COURT: Any questions for the witness?

15 MR. PEPER: May it please the Court?

16 THE COURT: Mr. Peper.

17 MR. PEPER: May it please the Court?

18 THE COURT: Yes, sir, you may proceed.

19 CROSS-EXAMINATION

20 BY MR. PEPER:

21 Q Mr. Cheney, Mark Peper with -- for the I represent
22 Justin.

23 Exhibit 154, you still have that in front of you or is
24 it up---

25 A I do not.

Josh Cheney - Cross-examination
by Mr. Peper

1 Q okay. Thank you. You -- thank you.

2 One second, Your Honor.

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q You may not know this. Okay. I certainly didn't.

6 okay.

7 But is it fair to say that what's written in that post
8 are song lyrics from a local rapper?

9 A I was not aware of that.

10 Q Coming in here today, you were not aware of that?

11 A That's correct.

12 Q Okay. And I know he doesn't, he doesn't use quotation
13 marks anywhere on here, does he?

14 A Not that I recall.

15 Q All right. And, and I get that, but -- okay. All
16 right.

17 That's all I have, Judge.

18 THE COURT: Okay. Mr. Price, any cross?

19 MR. PRICE: No, Your Honor. Thank you.

20 THE COURT: You're welcome.

21 Any redirect?

22 SOLICITOR KIDD: No, ma'am.

23 THE COURT: Sir, you may step down.

24 State may proceed.

25 SOLICITOR KIDD: Court's indulgence.

1 THE COURT: Yes, sir.

2 (Pause.)

3 SOLICITOR KIDD: State rests, Your Honor.

4 THE COURT: Madam Forelady, ladies and gentlemen, the
5 State has rested their case. I have some matters of law to
6 take up with the attorneys. I'm not certain whether that's
7 gonna take us the remainder of the afternoon. It is
8 possible that it might, but I'm gonna make that assessment
9 in the next few minutes. And, if it does, I'm gonna send
10 you-all home for the evening in anticipation of concluding
11 the case on tomorrow.

12 During this break, please do not discuss the case and
13 please leave your notepads in your seats. We appreciate
14 your patience.

15 If you would, go with the bailiffs please.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: The State has rested.

19 Are there any motions?

20 MR. PEPER: Thank you, Your Honor.

21 May it please the Court?

22 THE COURT: Yes, sir.

23 MR. PEPER: On behalf of Mr. Wilson, Judge, we would
24 move -- by way of review, murder and then three counts of
25 attempted murder. As Your Honor's aware, as the indictments

1 indicate, on two of the attempted murder charges, the
2 alleged victims were Mr. Allen and Mr. Williams.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. PEPER: Neither of which testified in the State's
5 case in chief. That being Quran Allen or Adrian Williams.
6 I don't know that there's been any credible testimony, for
7 that matter, that they were even a victim of a crime
8 certainly committed by my clients.

9 That being said, we do not believe the evidence, as
10 given rise, to even being questioned as a matter of fact,
11 and, as a matter of law, the State is not met their burden
12 of proof with regards to the elements necessary to convict
13 regarding those two indictments.

14 We would take the same position, although not as
15 aggressively admittedly, Judge, with regards to the other
16 victims as well. That being Franklin Williams on the murder
17 indictment, and Montez Capers, Judge, and certainly I would
18 just renew all of my prior objections that I believe you've
19 noted in the record for me.

20 THE COURT: Okay. Anything further on your motion for
21 directed verdict, Mr. Peper?

22 MR. PEPER: You know, Your Honor, I could give you a
23 colloquy on -- but you, you've heard the testimony. You're,
24 you're aware. In the event I need to argue additionally, I,
25 I will, but it's not a typical -- you're not a typical judge

1 where you kind of need me to give you -- I feel like---

2 THE COURT: You're being kind.

3 MR. PEPER: I feel like -- right. Thank you, Your
4 Honor.

5 THE COURT: I appreciate it.

6 Mr. Price.

7 MR. PRICE: Your Honor, on behalf of Mr. Bryan, I will
8 join in on the motion as to the attempted murders for the
9 two victims that did not come in and testify. I don't
10 believe that the State has met its burden as to those
11 charges.

12 Further, I don't believe the State has met its burden
13 as to malice. I don't believe that they were able to
14 extract that from the pathologist that came and testified.
15 And I don't think there's been any testimony as to malice
16 that would be credible enough to be able a factual basis to
17 go for the jury.

18 So, on those basis, I would be asking that the murder
19 and four counts -- three counts of attempted murder, you
20 grant a directed verdict motion.

21 That's all we have, Your Honor.

22 THE COURT: And anything further in response, Mr. Kidd?

23 SOLICITOR KIDD: Yes, ma'am. I believe the, the crux
24 of their motion is regarding the or the -- the one they're
25 relying on the most is regarding the two attempted murder

1 victims that were not present.

2 There is, there is evidence in the record that --
3 indicating and proving that they're victims. Most
4 importantly, the testimony, the testimony of Montez Capers,
5 who identifies each person in the vehicle, when the vehicle
6 was shot, some ten, twelve times by an assault rifle while
7 driving down the road. I do not believe they even have to
8 have suffered injuries to be victims of attempted murder.

9 But that being the case, they all did. We had the EMS,
10 the EMS worker testified when she transported Mr. Adrian
11 Williams to the hospital that he had suffered four gunshot
12 wounds to the leg. We had Ms. Tiffany Adams testify that,
13 when she responded to MUSC, Mr. Quran Allen was in the bed,
14 and she photographed him, and she photographed his injuries,
15 the gunshot wound to his arm.

16 Additionally, we had the 9-1-1 call that came from
17 Mr. Williams that was entered into evidence in which you
18 hear Mr. Williams complaining of his gunshot as well as
19 yelling for Creep, which is identified as Quran Allen. But,
20 most importantly, I think it would be the testimony of
21 Montez Capers who identified where everyone was in the car
22 at the time of the shooting.

23 I don't know of any legal precedence that requires a
24 victim to testify in order to send a case to the jury. I
25 think, when viewing the evidence in the light most favorable

1 to the State, we've proven each element of the charges as
2 indicted.

3 Additionally, Judge, as to malice, I think, especially
4 as to Mr. Bryan, we're looking at a hand of one, hand of all
5 scenario. I don't think there's much -- any evidence in the
6 record to indicate that he pulled a trigger, but, that being
7 said, under the law of South Carolina, that makes him no
8 less guilty under accomplice liability theories, and I think
9 it would be a -- malice can be accomplished through reckless
10 disregard from the safety of others. At a bare minimum, in
11 which I believe the testimony that pulling up next to a car
12 and unloaded an assault rifle into it certainly accomplishes
13 that at a bare minimum.

14 I think, when viewing the evidence in the light most
15 favorable to the State, it is sufficient to submit these
16 cases to the jury.

17 THE COURT: Anything further, Mr. Price, or Mr. Peper?

18 MR. PRICE: Not from Mr. Price, Your Honor, or Mr.
19 Peper.

20 MR. PEPER: No, Your Honor.

21 THE COURT: Considering the evidence in the light most
22 favorable to the State, the Court is concerned with the
23 existence or nonexistence of evidence and not its weight.

24 The Court does not act as the finder of fact. However,
25 the Court must determine that the evidence rises above that

1 of mere suspicion. The Court, however, is not required to
2 find that the evidence infers guilt to the exclusion of any
3 other reasonable hypothesis.

4 Again, the Court is concerned with the existence or
5 nonexistence of evidence, and whether there is, in the
6 record, any direct or substantial circumstantial evidence
7 which reasonably tends to prove the guilt of the accused or
8 from which his guilt may be fairly and logically deduced.

9 Now, I was concerned regarding the fact that Mr. Allen
10 is absent and was not present to testify as well as
11 Mr. Williams. Mr. Kidd indicated to all, you know, to
12 counsel and to myself that a warrant had been issued for Mr.
13 Allen as they have not been able to locate him as well as
14 Mr. Williams.

15 SOLICITOR KIDD: And, Your Honor, I don't mean to
16 interrupt you, but Mr. Williams was outside the courtroom
17 earlier today.

18 THE COURT: Oh, so, you did locate him?

19 SOLICITOR KIDD: He located himself for us. I had a
20 conversation with him and made a professional judgment call
21 not to call him based largely in part in the condition in
22 which he---

23 THE COURT: Appeared.

24 SOLICITOR KIDD: ---appeared.

25 THE COURT: Is he represented?

1 SOLICITOR KIDD: No, ma'am.

2 THE COURT: Okay.

3 SOLICITOR KIDD: He's been charged with nothing.

4 THE COURT: Thank you. I appreciate that update.

5 But after I, I -- then when confronted with that
6 concern, went back through the record. And while it
7 probably is preferable to have the direct testimony of a
8 "victim" to testify regarding the events that are alleged to
9 have transpired against them, there is substantial
10 circumstantial evidence in the record regarding the injuries
11 of Mr. Allen and Mr. Williams. That being the testimony of
12 the emergency medical personnel, Ms. Adrian Williams, who
13 was one of the first -- Michele Williams. I apologize.

14 SOLICITOR KIDD: Michele Reid.

15 THE COURT: Reid. I can't seem to get nothing right
16 today. I'm sorry. I'm looking at two different sets of
17 notes and I apologize.

18 And she was the emergency medical person who was
19 dispatched to the scene, and she testified that she
20 confronted one individual who was deceased in the vehicle,
21 that being Mr. Franklin Othell Williams, and then the other
22 individual lying in the road, who was identified as Adrian
23 Williams, who she administered treatment to for gunshot,
24 multiple gunshot wounds, to his right leg, and who was then
25 transported to -- for additional medical services.

1 And then, again, I scoured the record and Mr. Kidd is
2 correct that there was the testimony of Mrs. Adams who did,
3 in fact, take a picture that was admitted into evidence of
4 Mr. Allen's injuries.

5 So, while it is not some in the nature of direct
6 testimony, but not from these individuals, there is direct
7 and substantial circumstantial evidence that proves that
8 they were, in fact, injured and within close proximity, and
9 as a result of this incident.

10 And while neither of these people who testified can
11 identify the defendants, I think, when taken into
12 consideration with all of the circumstances, that being the
13 circumstantial evidence, there is substantial circumstantial
14 evidence from which the State can testify, I'm sorry, can
15 argue that, in fact, they were the victims of an attempted
16 murder.

17 The other corroborating testimony which rises to the
18 level of eye witness testimony, as well as substantial
19 circumstantial evidence, is the testimony of Mr. Capers, who
20 was able to identify, through the State's diagram, every
21 individual and where they were located within the vehicle.
22 So, when these circumstances are taken and combined, the
23 State certainly has met their burden of proof.

24 Now, as it regards Mr. Price's argument that there's
25 been no testimony of malice, absent some Belcher evidence,

1 that being of self-defense, which there's none in this case
2 to this point, malice can be inferred from the use of a
3 deadly implement. That being a gun or when any other
4 ordinary instrument is used for deadly force. And so, to
5 that extent, by circumstantial evidence, that, as well as
6 direct testimony, that can be inferred by the jury and the
7 malice requirement has been met.

8 And he's also correct on accomplice theory. That in
9 South Carolina the hand of one is the hand of all. And
10 there is certainly testimony, that being of Mr. Evans, that
11 they conspired, that they had an overt agreement, once this
12 phone conversation took place from Stewie to -- or whom --
13 it really doesn't matter who the phone call came from, but
14 that the phone call initiated the transport of these
15 individuals to another person's house for the purpose of
16 obtaining weapons, which they did obtain, and then, after
17 that, a certain set of circumstances developed which
18 culminated in the shooting at this -- of this vehicle and
19 then the vehicles crashing.

20 So, there certainly is sufficient direct, as well as
21 substantial circumstantial evidence in the record, even the
22 pictures of the cars with the gun holes -- I mean with the
23 bullet holes in it to surmise that the use of deadly force,
24 and the direct testimony of Mr. Evans that, when the assault
25 rifle jammed, that Mr. Bryan provided Mr. Wilson with an

1 additional weapon to accomplish the crime.

2 So, based on what has been presented to the record,
3 there is -- I find there is direct, as well as substantial
4 circumstantial evidence, reasonably tending to prove the
5 guilt of the -- each accused and the motions are denied.

6 And I think -- I didn't go through everything cause the
7 record stands for itself. We've all been here. We've all
8 listened to the testimony, and I don't think I need to go
9 through each and every bit of the testimony. But I just
10 highlighted those things to address the arguments that were
11 raised.

12 MR. PEPER: Thank you, Your Honor.

13 THE COURT: You welcome.

14 All right. If you gentlemen could stand for me please
15 and raise your right-hands to be sworn so that I -- so that
16 I can question you, question you regarding your right to
17 testify.

18 And, as we go through that process, I need to know if
19 there's any record that the State will be seeking to
20 introduce to impeach the credibility of both Mr. Bryan and
21 Mr. Wilson starting with Mr. Bryan.

22 SOLICITOR KIDD: Court's indulgence.

23 (Pause.)

24 THE COURT: I -- well, I'll deal with that in a minute.

25 (Pause.)

1 SOLICITOR KIDD: I don't believe he has any record that
2 --

3 THE COURT: You can use to impeach him.

4 SOLICITOR KIDD: -- to use for his credibility, Your
5 Honor.

6 THE COURT: And what about Mr. Wilson?

7 (Pause.)

8 THE COURT: well, what record does he -- do -- well,
9 we'll go back to that in a minute.

10 SOLICITOR KIDD: The same for Mr. Wilson, Judge. No
11 record that would, would impugn his credibility.

12 THE COURT: If you both, both could raise your
13 right-hands for me.

14 (WHEREUPON, both defendants were placed under oath at
15 this time.)

16 THE COURT: I need you to -- you can put your
17 right-hands down.

18 I need you to speak loudly and clearly, clearly for me.
19 If you don't -- if you can't hear me or you don't understand
20 me, please let me know so that I can go back over anything
21 with you.

22 If, Mr. Bryan, if you would state your full name for
23 the record.

24 THE DEFENDANT: Marvin Donte Bryan.

25 THE COURT: would you spell your middle name for us?

1 THE DEFENDANT: D-O-N-T-E.

2 THE COURT: All right. And -- I'm sorry. Yeah, we got
3 it and Mr. -- I was gonna look at Mr. Wilson---

4 THE DEFENDANT: Oh.

5 THE COURT: ---and ask him to state his full name.

6 THE DEFENDANT: Justin Martel Wilson.

7 THE COURT: Okay. And is that M-A-R-T-E-L?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. I'm going to advise you both of your
10 rights. If you do not understand anything that I say,
11 please let me know if you need me to repeat anything, or
12 explain anything in more detail, please let me know.

13 Do you understand, Mr. Bryan?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand, Mr. Wilson?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: We have now reached the stage of the trial
18 where you may present your defense. You have the right to
19 claim the protections given to you by the Fifth Amendment of
20 the Constitution of the United States, which states, in
21 part, that no person shall be compelled, in any criminal
22 case, to be a witness against himself. That means that you
23 can not be required to testify in this case. You have the
24 right to testify, but that is a personal right, and no one
25 can make you testify.

1 You must ultimately make that decision. If you decide
2 to testify, you will be subject to the same rules that
3 govern other witnesses, and you may be examined and
4 cross-examined on any relevant issue in this case.

5 In addition, if you have any convictions involving
6 dishonesty or false statement or for crimes punishable by
7 imprisonment for more than one year, and this Court
8 determines that the probative value of admitting this
9 evidence outweighs its potential prejudicial effect to you,
10 the solicitor will be able to introduce your record to
11 attack your credibility.

12 If you decide to testify, this decision on your part
13 must be made freely, voluntarily, and intelligently with
14 knowledge of the protections given to you by the Fifth
15 Amendment and the consequences of your decision to testify.
16 If you decide not to testify, I will instruct the jury that
17 that fact can not be considered against you in any manner
18 whatsoever. I will instruct them that you have the
19 Constitutional right to remain silent, and that the
20 assertion of that right can not be used against you, and the
21 fact that you did not testify can not be discussed in any
22 manner whatsoever during the jury deliberation process. And
23 that there is to be absolutely no prejudice to you because
24 you did not testify.

25 Whether or not you testify is a matter and a decision

1 solely for you to make. It's left entirely up to you. You
2 can speak with your attorneys, your family members, your
3 friends, or anyone else, but the final decision is yours.

4 Do you understand your rights regarding your right to
5 testify as I have explained them to you?

6 Mr. Bryan?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Mr. Wilson?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you have any questions about your rights
11 as I've explained them to you?

12 Mr. Bryan?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Mr. Williams (sic)?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: And have you each spoken with your
17 attorneys about your right to testify?

18 DEFENDANT BRYAN: Yes, ma'am.

19 DEFENDANT WILSON: Yes, ma'am.

20 THE COURT: Do you need to speak with them any more
21 right now?

22 DEFENDANT BRYAN: No, ma'am.

23 DEFENDANT WILSON: No, ma'am.

24 THE COURT: Mr. Price, do you need to talk with your
25 lawyer -- I mean -- I'm sorry. I'm getting my words messed

1 up today. I apologize.

2 Mr. Price, do you need to speak with your client any
3 further about whether he should or should not testify?

4 MR. PRICE: I do not, Your Honor. We've discussed it.

5 THE COURT: Do you feel you need to clarify anything
6 further with him?

7 MR. PRICE: Can I ask him?

8 THE COURT: Sure. Go right ahead.

9 (Pause.)

10 MR. PRICE: I do not need any more time, Your Honor.

11 THE COURT: Okay. And Mr.---

12 MR. PRICE: I'm confident, I'm confident he
13 understands.

14 THE COURT: Okay. And, Mr. Bryan, have you fully
15 discussed with your lawyer whether you should or should not
16 testify?

17 MR. PEPER: We need 15 more seconds, Judge.

18 THE COURT: No, I mean I'm giving you a chance---

19 MR. PEPER: Oh, I'm sorry.

20 THE COURT: ---to talk.

21 MR. PEPER: I was just---

22 THE COURT: Yeah, I'm gonna finish and then, if you
23 need more time, I'm gonna give it to you.

24 MR. PEPER: Thank you, Your Honor.

25 THE COURT: Sir, Mr. Bryan, do you -- have you fully

1 discussed with your lawyer whether you should or should not
2 testify?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you need to speak with him any further
5 about whether you should or should not testify?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Are you certain?

8 I saw you hesitated a little bit. If you need to talk
9 with him some more, there's no shame in that. Let me know
10 and I will give you the opportunity to talk to him.

11 THE DEFENDANT: Yeah, I want to talk to him.

12 THE COURT: Okay. we'll take -- why don't we just take
13 a brief break if y'all -- do we have two rooms back there,
14 just one?

15 So, they have to talk one at a time?

16 Do y'all have sufficient privacy to talk or do y'all
17 need to go back there?

18 MR. PEPER: I'm okay right here.

19 MR. PRICE: I'm okay talking to him right here.

20 THE COURT: Okay.

21 MR. PRICE: Yeah, he's fine.

22 THE COURT: Then we'll be at ease for a few moments,
23 and y'all can be at ease, and y'all can have your seats and
24 talk to your lawyers. And then let me know when you're
25 ready to resume.

1 (WHEREUPON, a short recess was taken at this time.)

2 THE COURT: Yes, sir.

3 MR. PRICE: Mr. Bryan and I have discussed it. He
4 doesn't need more time.

5 THE COURT: Mr. Peper, you ready?

6 MR. PEPER: Yes, ma'am.

7 THE COURT: If both of you could stand. I'll remind
8 you you're still under oath.

9 (WHEREUPON, the Defendants comply.)

10 THE COURT: Mr. Bryan, have you had a full opportunity
11 to discuss with your lawyer whether you should or should not
12 testify?

13 THE DEFENDANT: Yeah.

14 THE COURT: Do you need any more time to speak with
15 him?

16 THE DEFENDANT: No, I ain't trying to be -- I ain't
17 trying to be disrespectful.

18 THE COURT: No, and there really is no right or wrong
19 answer, and you're not wasting my time. You only get to do
20 this one time. I just need to make sure that you are secure
21 and certain in your decision cause you only get to make it
22 one time. So, if you need more time to talk with him, you
23 need to tell me that---

24 THE DEFENDANT: Yes.

25 THE COURT: ---cause I will give you that ability.

1 THE DEFENDANT: Yes, just two minutes. I ain't trying
2 the be -- waste the Court's time.

3 THE COURT: No, go right ahead.

4 Mr. Wilson, I'll finish talking to him.

5 Mr. Wilson, have you had a full opportunity to discuss
6 with your lawyer whether you should or should not testify?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you need to speak with him any more at
9 this time?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: And do you fully understand your rights?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And, Mr. Peper, do you agree with that?

14 MR. PEPER: Yes, ma'am.

15 THE COURT: And, sir, do you wish to testify?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Okay. You can take your seat.

18 MR. PEPER: And, obviously, Judge, the decision would
19 be dependent upon---

20 THE COURT: Yeah, it can change.

21 MR. PEPER: ---the forthcoming event, right?

22 THE COURT: Yeah, it's not written in stone.

23 MR. PEPER: Yeah.

24 (Pause.)

25 THE COURT: Mr. Bryan, have you had a full opportunity

1 to discuss with your lawyer whether you should or should not
2 testify?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand your rights?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you need to speak with him any further
7 at this time?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And, sir, do you wish to testify?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Okay. You can take your seat.

12 All right. what I'm gonna do is let the jury go home.
13 we'll discuss charge conference and verdict forms, and then
14 we'll resume in the morning with closing argument and---

15 MR. PRICE: Your Honor, we're putting on a defense.

16 THE COURT: Oh, I'm sorry. I apologize. You told
17 me---

18 MR. PRICE: well, he's just not gonna testify.

19 THE COURT: Yeah, you told me you weren't sure about
20 whether you were gonna call your alibi witness.

21 MR. PRICE: That's correct, but I---

22 THE COURT: Do you plan to?

23 MR. PRICE: I think that was Mr. Peper. I'm putting up
24 a defense, yes, Your Honor.

25 THE COURT: well, fine.

1 MR. PRICE: I'm sorry.

2 THE COURT: You can do that. Oh, I'm sorry I wasn't
3 clear. Yeah, no need to apologize.

4 MR. PRICE: It's not gonna be a long one, if that.

5 THE COURT: Well, take as long as you need to.

6 MR. PRICE: For the Court's purposes, it's not, but --.

7 THE COURT: No, take as long as you need to.

8 MR. PRICE: Okay.

9 THE COURT: All right.

10 MR. PEPER: Well, and, Judge, that may be something
11 that, while we've got you here, you know, my first rodeo in
12 a joint trial. So, I plead ignorance on this. But, as I
13 understand the rules, we are one defense for purposes---

14 THE COURT: Hu huh. (Negative.)

15 MR. PEPER: So, my concern is---

16 THE COURT: No, you're not one defense. You can have
17 adverse interests and be tried together.

18 MR. PEPER: Right. And so, am I correct in thinking
19 that any witnesses that this defendant calls would be
20 subject to cross-examination from---

21 THE COURT: Yeah.

22 MR. PEPER: ---defendant?

23 THE COURT: Uh-huh. (Affirmative).

24 MR. PEPER: And then, in the event---

25 THE COURT: What would happen is -- let me think

1 through this right quick. Mr. Price would direct, Mr. Kidd
2 would cross, you would cross, and then Mr. Price would
3 redirect. I think I'm right.

4 MR. PEPER: I think you're right.

5 THE COURT: We'll see.

6 SOLICITOR KIDD: I believe it's -- my understanding
7 it's the other way around. It would be Mr. Price would
8 direct.

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR KIDD: Mr. Peper would cross.

11 THE COURT: You might be right.

12 SOLICITOR KIDD: Then I would get cross, and then
13 Mr. Price.

14 THE COURT: It's redirect. Either way.

15 SOLICITOR KIDD: Cause I would get the opportunity to
16 cross based on both of their---

17 THE COURT: Yeah.

18 SOLICITOR KIDD: ---clients -- so, yeah, you're right.
19 Both of the witnesses---

20 THE COURT: Yeah, he's right.

21 SOLICITOR KIDD: ---I should get---

22 MR. PEPER: And then the only other question I had,
23 Judge, is that, in the event this defendant doesn't present
24 any evidence, we still have the ability---

25 THE COURT: Oh, I got to pile through all that.

1 MR. PEPER: Right.

2 THE COURT: You know, I got to take things in stages.

3 MR. PEPER: Yeah. Well---

4 THE COURT: It keeps it straight that way.

5 MR. PEPER: It just didn't --.

6 THE COURT: I just have to cross that bridge when we
7 come to it cause I'm, like I told you before, I'm pretty
8 methodical. I do things the same way all the time to make
9 sure I'm not missing anything. Doesn't mean I'm perfect,
10 and I don't miss things, but---

11 MR. PEPER: Right. Well, we---

12 THE COURT: Once we deal with the whole case, then I'll
13 deal with charge conference. I'll deal with argument. I'll
14 deal with verdict. We'll cover it all.

15 MR. PEPER: That's in -- that's -- well, it's our
16 problem, but we got to figure that out because --.

17 THE COURT: Well, I mean we'll cross---

18 MR. PEPER: ---it appears---

19 THE COURT: Yeah, I wouldn't like -- I wouldn't like --
20 I wouldn't use my---

21 MR. PEPER: Yeah, we'll figure it out.

22 THE COURT: Yeah, it's late. We don't have much brain
23 matter left for the day. I wouldn't---

24 MR. PEPER: I got you.

25 THE COURT: Yeah, I wouldn't exhaust it on that right

1 this minute.

2 okay.

3 MR. PEPER: Thank you, Judge.

4 THE COURT: We'll work it out.

5 MR. PEPER: Thank you.

6 THE COURT: You ready?

7 You're welcome.

8 Who's your witness gonna be, Mr. Price?

9 MR. PRICE: Detective Butler.

10 THE COURT: Okay. Is Detective Butler -- oh, they
11 didn't call her in their case in chief, did they?

12 All right.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE BAILIFF: All jurors are present, Your Honor.

16 THE COURT: All right. You may be seated.

17 Ladies and gentlemen, we appreciate your patience as
18 we've worked through those matters of law. I would ask that
19 you give counsel your attention.

20 Mr. Price, you may proceed.

21 MR. PEPER: Court's indulgence, Your Honor.

22 THE COURT: Uh-huh. (Affirmative).

23 (Pause.)

24 MR. PRICE: Your Honor, at this time, the defense would
25 call Detective, Chief Detective Butler, Jennifer Butler.

Jennifer Butler - Direct examination
by Mr. Price

1 THE COURT: If you would come to the stand to be sworn
2 please.

3 JENNIFER BUTLER, being first duly
4 sworn, testified as follows:

5 THE CLERK: Take a seat. Please state your first and
6 last name spelling your last name for the record.

7 THE WITNESS: Jennifer Butler. B-U-T-L-E-R.

8 THE COURT: You may proceed.

9 MR. PRICE: Thank you very much, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. PRICE:

13 Q Good afternoon, Detective Butler.

14 A Good afternoon.

15 Q We've met a couple times before?

16 A Yes, sir.

17 Q You, obviously, know I represent Marvin Bryan.

18 You've been in here throughout the entire portion of
19 the trial.

20 Is that correct?

21 A Yes, sir.

22 Q Just please tell the jury where you work.

23 A I work for North Charleston Police Department, but I'm
24 currently on military leave with the South Carolina Army
25 National Guard.

Jennifer Butler - Direct examination
by Mr. Price

1 Q And were you currently employed in that same position
2 in 2015?

3 A Yes, sir.

4 Q How long you been with the North Charleston Police
5 Department?

6 A I've been with the North Charleston Police Department
7 since October, 2008.

8 Q And, in 2015, what was your current duties at that
9 time?

10 A I was a persons crime detective, which means I
11 investigated crimes against persons. So, assaults,
12 homicides, shootings, shootings into dwellings. I think
13 that's most of them.

14 Q And, at the time of this incident, how long had you
15 been with that unit?

16 A I became a detective in February of 2015.

17 Q Oh, gosh. You want me to do math.

18 A Eight, seven months.

19 Q Yeah, I think you're right.

20 So, you'd, you'd been a detective for about seven
21 months with this unit, correct?

22 A Yes, sir.

23 Q All right. And how many murder cases had you been
24 working on in those seven months?

25 A As a case agent or just in general?

Jennifer Butler - Direct examination
by Mr. Price

1 Q As the case agent. As the head.

2 A This was the second one I was the case agent on.

3 Q So, is it fair to say that this was new to you. Take
4 your time.

5 A I'm sorry.

6 Q Take all the time you need.

7 A Yes, sir.

8 Q That's a, that's a fair assessment on my part, correct?

9 A Being a case agent, yes, sir.

10 Q Okay. And you worked closely hand-in-hand with other
11 detectives though, correct?

12 A Yes, sir.

13 Q But, essentially, in the end, you make the calls,
14 correct?

15 A No, sir.

16 Q Okay. Who makes the call?

17 A The sergeant or the lieutenant. Whoever the supervisor
18 is.

19 Q And who did you work with the -- most of this case
20 alongside?

21 A Like my whole team or my supervisor?

22 Q Well, did you and -- I'll just ask it.

23 Did you and Detective Jellico do a lot of the
24 investigating together?

25 A Yes, sir.

Jennifer Butler - Direct examination
by Mr. Price

1 Q And Detective Jellico did not testify here during the
2 case in chief, correct?

3 A No, sir.

4 Q Okay. I want to begin with -- this is your -- well,
5 Your Honor, may I approach?

6 THE COURT: Yes, sir.

7 Q I want to just show you something and ask you if you
8 recognize this.

9 A Yes, sir, these are my case notes.

10 Q Okay. And how many pages are there?

11 A Three.

12 Q Are there any more case notes that are out there or is
13 that all of them?

14 A I'm not a hundred percent sure. This is all from the
15 major, I guess, incident, but I've had meetings with
16 solicitors and case reviews with my lieutenant. There could
17 be notes on that, but I'm not a hundred percent sure.

18 Q But they're your personal notes?

19 A Yes, sir.

20 Q Okay. So, I was not provided those, correct?

21 Those didn't become part of the discovery?

22 A I'm not sure. I don't do discovery.

23 Q Okay.

24 A I just put my case notes in.

25 Q Okay. I want to talk to you. Let's start in the

Jennifer Butler - Direct examination
by Mr. Price

1 beginning with Mr. Evans.

2 A Yes, sir.

3 Q Mr. Evans came in and, during your investigation, did
4 you have an opportunity, not asking what, what he said, but
5 did you have opportunity to talk to Mr. Evans?

6 A I believe, when he was brought in, myself and Detective
7 Jellico did speak with Mr. Evans.

8 Q Okay. And do you remember what day that was?

9 A No, I don't remember the exact day, no, sir.

10 Can I refer to my notes?

11 Q Absolutely.

12 A Is that---

13 Q Yes, ma'am.

14 THE COURT: Yes, ma'am, you can use your notes to
15 refresh your memory.

16 THE WITNESS: Okay.

17 MR. PRICE: I'm sorry about that.

18 THE COURT: That's okay.

19 A I documented my notes on November 23rd he was in an
20 interview room upon my arrival.

21 Q Okay. So, during your investigation, you speak to
22 Keith Evans on the 23rd?

23 A Yes, sir.

24 Q I'm not gonna get -- everybody knows what he's alleged
25 to have said.

Jennifer Butler - Direct examination
by Mr. Price

1 A Right.

2 Q But you took -- and what did you do with that
3 information?

4 A What do you mean?

5 Q What did you do next?

6 Based on the information he gave you, what did you do?
7 I'll, I'll be more direct. I'm, I'm trying to help---

8 A Yeah.

9 Q ---help her through this to keep everybody going.

10 Did you go and swear out some warrants for arrests?

11 A I believe we got warrants that night, yes, sir.

12 Q You believe or you know for a fact that you got
13 warrants?

14 A I don't have the warrants in front of me. This is the
15 exact day, but I do believe we got them that night.

16 MR. PRICE: Your Honor, may I approach?

17 THE COURT: You may.

18 Q This is just -- what I'm gonna do is I'm gonna give you
19 every single warrant just so---

20 A Okay.

21 Q ---you'll know, and I'll just -- you know you can just
22 look on them.

23 A Yes, sir.

24 Q Okay.

25 A Yes, these were signed -- nope. Wrong one. Wrong

Jennifer Butler - Direct examination
by Mr. Price

1 person.

2 Q Let me ask you, first off, about Keith Evans, Justin
3 Wilson, and Domonique Edwards. I want to see when you swore
4 those warrants out, please.

5 A Okay. Domonique Edwards were signed out by Detective
6 Bailey.

7 Q What day?

8 A His were signed on the 24th of November.

9 Q Okay. November 24th, and that's for Domonique
10 Edwards?

11 A Correct.

12 Q Okay.

13 A Keith Evans were signed by Officer Stone, which means
14 he would of been watched, and then we would of dropped a
15 packet on him, and then the warrants, officers would of got
16 those warrants signed in the morning. And then Justin
17 Wilson's were signed by Detective Bailey -- oh, I'm sorry.

18 Q I'm not asking you when they were signed. I'm asking
19 you when they were sworn out.

20 A The 24th.

21 Q All right. As to Keith Evans?

22 A Yes.

23 Q And as to Justin Wilson?

24 A His were also signed on the 24th.

25 MR. PRICE: All right. So, can I just keep going back

Jennifer Butler - Direct examination
by Mr. Price

1 and forth---

2 THE COURT: Yes.

3 MR. PRICE: ---cause I'm just gonna keep doing that and
4 I don't want to bother you.

5 Can I just take them briefly?

6 A Okay.

7 Q So, on the day that Keith Evans came in and, and
8 speech -- spoke to you, that's your, that's your name at the
9 top of the warrant, correct?

10 A Is that---

11 SOLICITOR KIDD: Judge -- no, sir. Careful not to
12 publish this to the jury.

13 THE COURT: He's not publishing it. He's just asking.

14 MR. PRICE: Oh, I'm sorry. I'll, I'll go back up.

15 A That's Daquan Gilliard's and that is my name on the top
16 of that. I have them all separated.

17 Q Oh, this is Justin Gilliard's?

18 A Yes.

19 Q Okay. Don't, don't yet. Don't put them back yet.

20 A And here's Edwards. That's Edwards and this is---

21 Q Okay. You were the one that prepared the affidavits.

22 Is that correct?

23 A We collectively prepare them as a team.

24 Q You were -- but they were prepared on the 24th of
25 November as to all three defendants.

Jennifer Butler - Direct examination
by Mr. Price

1 Is that correct?

2 A The Defendants Domonique, Keith, and Justin.

3 Q Okay. So, Keith comes in and tells y'all what we have
4 heard testified to as a story?

5 A Yes, sir.

6 Q And, based on that, y'all, as a team, go out and swear
7 out these warrants on the exact same day?

8 A Well, he came in on the 23rd. So, it would of been
9 the next day---

10 Q Okay.

11 A ---but---

12 Q What did y'all do in-between the time that y'all spoke
13 to Mr. Evans on the 23rd and the 24th when you swore out
14 the warrants?

15 Investigative wise, what did you do?

16 A Well, his interview was a lengthy interview. So, like
17 I said, he would of been watched that night, and those
18 warrants would of been dropped in the box. And then the
19 other warrants would of been left on Detective Bailey's desk
20 for him to swear out when he came in the next day.

21 Q Did you go talk to Domonique that afternoon or that
22 evening?

23 A I did not.

24 Q Do you know if anybody in your investigative team went
25 and spoke to Domonique?

Jennifer Butler - Direct examination
by Mr. Price

1 A I do not have any knowledge, no.

2 Q But, from your personal knowledge, did you go talk to
3 Domonique before you swore out a warrant against him?

4 A I did not.

5 Q I'll pointblank ask you.

6 What happened to Domonique's charges?

7 A What happened to them?

8 They were dropped down to accessory I believe.

9 Q And, through your investigation, were they dropped down
10 because you found out that Keith had lied to you?

11 A Correct.

12 Q But you relied on Keith to get the warrants?

13 Am I correct as to that?

14 A Correct.

15 Q But it turned out to be wrong?

16 A Yes, sir.

17 Q Y'all brought, I shouldn't say y'all, Mr. Evans was
18 then subsequently brought back to speak to, I don't even
19 know if you participated in the proffered agreement, but he
20 came to speak to the Solicitor's Office.

21 Is that correct?

22 A Yes, sir.

23 Q And did you participate in that proffer?

24 A In the first one, I was in attendance for, yes, sir.

25 Q Okay. And do you remember the date of that proffer?

Jennifer Butler - Direct examination
by Mr. Price

1 A No, sir.

2 MR. PRICE: Does it have it on there?

3 SOLICITOR KIDD: Yes, sir.

4 Q I'm just looking for the note just to refresh your
5 recollection.

6 okay?

7 A Yes, sir.

8 Q Okay. Okay. Oh, I got it right here. It's under the
9 proffered section in my book here. Well, we have a problem.
10 It's not gonna refresh your recollection cause they didn't
11 date it.

12 A Okay.

13 Q Around December -- would it, would it be fair to say
14 around December 18th, 2015?

15 Does that seem right to you?

16 A I mean based on the testimony I've heard here, it's
17 when they had the first meeting, yes, sir.

18 Q Okay. And I'd like for you to take a look at Daquan
19 Gilliard and Marvin Bryan's warrants, and tell me when those
20 got signed off or what the date is on those --

21 A Do you have---

22 Q -- as to when those were sworn out?

23 A You have Daquan's.

24 Q Okay.

25 A Marvin Bryan's were signed on December 18th.

Jennifer Butler - Direct examination
by Mr. Price

1 Q Okay.

2 A And Daquan's were signed on December 18th, 2015.

3 Q So, the exact same day that Keith came in and gave
4 another, what we're calling a story or a proffer or met with
5 the government, two more people were implicated, and they
6 got warrants out for their arrest?

7 A Yes, sir.

8 Q Okay. And, through your investigation, did you go and
9 speak to Marvin Bryan?

10 A No, sir, when he was picked up, he did not want to --
11 wished to speak to detectives at that time.

12 Q I'm talking about prior to that, to assess any of your
13 investigation, did you go out and ask or investigate as to
14 the whereabouts of Mr. Bryan on the night in question?

15 A No, sir.

16 Q And so did you do the same for Daquan Gilliard?

17 A Like did I not go in --?

18 Q Did you, did you go and inquire or, or seek to
19 interview those guys prior to swearing out the warrants?

20 A I did not, no, sir.

21 Q Do you know if anybody in their investigative team did
22 for either of those defendants?

23 A I am not aware of it, no, sir.

24 Q So, no one went out and spoke to, to these gentleman
25 that -- it was simply just based on what Keith told the

Jennifer Butler - Direct examination
by Mr. Price

1 detectives?

2 A Yes, sir. Well, in the proffer.

3 Q I agree.

4 A So, myself and then the solicitor.

5 Q Got you.

6 So, what Keith -- based on what Keith said in the
7 proffer to y'all, was the information you utilized to them
8 later, swear out the warrants later that evening I'm
9 assuming, and go and serve them or have Mr. Bryan served and
10 Mr. Gilliard served?

11 A Yes, sir.

12 Q Did you or anybody on your team do any other
13 independent investigation into these, into this prior to
14 serving the warrants on Mr. Bryan?

15 A I know we did the phone dumps prior to that, and I
16 believe we went and spoke with Mega at -- on Durant.

17 Q And Mega was?

18 A The, the house that they ran to after you see them on
19 the body camera and the dash cam video of the police
20 vehicle.

21 Q That's correct.

22 So, you do the dump, but you don't have the results
23 back yet?

24 A Well, we get the CDs back immediately from the
25 cellebrite machine. We just don't get the dumps back

Jennifer Butler - Direct examination
by Mr. Price

1 immediately from the cell phone companies.

2 Q Correct.

3 And you talked to Mega?

4 A Correct.

5 Q And that's the only investigation that is done prior to
6 service of or I guess -- I should keep I get -- I don't want
7 to get the jury confused, but the swearing of the warrants,
8 which means you go out and get the warrant to then serve on
9 them at a later date?

10 A Right. And I mean we have the body cam video and the
11 police dash cam video.

12 Q Okay. I want to talk to you now about the
13 investigation as it kind of -- it kind of progressed.

14 Your investigative team -- in your investigation, did
15 you learn that there was witnesses that were on the scene?

16 A Of the initial incident?

17 Q Correct.

18 A Yes, sir.

19 Q And we actually heard one of the witnesses on the 9-1-1
20 tape, correct?

21 A I believe so, yes, sir.

22 Q And, through your investigation, did it uncover a
23 witness that indicated that they could have---

24 SOLICITOR KIDD: Objection, Judge.

25 THE COURT: Basis?

Jennifer Butler - Direct examination
by Mr. Price

1 SOLICITOR KIDD: Hearsay.

2 THE COURT: Please approach.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Sustained. Hearsay.

6 Q Through your investigation, you learned that there
7 were, in fact, witnesses to this crime that were on scene
8 that evening.

9 Is that correct?

10 A Yes, sir.

11 Q And do you know how many?

12 A I believe there was four all together if my memory
13 serves me correct.

14 Q And, through your investigation, did you meet with all
15 four of these witnesses?

16 A I did not. They were -- detectives that responded to
17 the initial scene took statements from them. None of the
18 statements provided fruitful to our investigation. So,
19 there was no need to follow-up at that time.

20 Q Well, who determined whether or not eye witnesses that
21 were on scene information was fruitful or not?

22 Who made that determination?

23 A Like, we collectively as a team. None of the witnesses
24 stated they could see the parties, like identify anyone in
25 anyway. All they could say is that they see like people.

Jennifer Butler - Direct examination
by Mr. Price

1 So, figures running away.

2 Q None of the witnesses indicated that they could
3 identify the defendants?

4 A Right. So that if we showed any of them a lineup, none
5 of them would be able to pick out a specific person. They
6 all saw subjects running away from the scene.

7 Q So, if I showed you -- you're the -- now, you're the
8 lead case agent, correct?

9 So, you---

10 A I'm lead case agent, yes, sir.

11 Q Okay. So, I am going to show you a report, and I'm
12 going to ask that you read the second paragraph and see if
13 that refreshes your recollection?

14 A Okay. Is that where it says---

15 Q Yeah, don't read it out -- you don't have to read it
16 out loud.

17 A Oh.

18 Q I'm just gonna -- I'm just asking you to look -- read
19 that and see if it refreshes your recollection, and then
20 I'll, I'll ask you the question again.

21 A (Witness complies.)

22 Okay.

23 Q Is your -- are you refreshed?

24 A Yes, sir, I don't recall that.

25 Q I'll ask you the question again.

Jennifer Butler - Direct examination
by Mr. Price

1 Through your investigation, did any of the witnesses
2 indicate that they could pick the suspects out of a photo
3 lineup?

4 SOLICITOR KIDD: Objection, Judge.

5 THE COURT: Basis.

6 SOLICITOR KIDD: Hearsay.

7 THE COURT: Sustained. Hearsay.

8 Q Through your investigation, was a photo lineup ever
9 done?

10 A No, sir.

11 Q And did -- are you aware of any witnesses that came to
12 North Charleston to give their ultimate -- they, they, they
13 gave their statement in writing?

14 A Yes, sir.

15 Q And you said there was around four of them?

16 A I believe so, yes, sir.

17 Q Okay. And y'all made the determination that -- let's
18 go back now.

19 A Okay.

20 Q We're, we're gonna go back to what I originally
21 started.

22 who made the determination that the four people that
23 were there information wasn't fruitful enough to continue
24 with the investigation?

25 who made that call?

Jennifer Butler - Direct examination
by Mr. Price

1 A I don't know the specific person. Again, we work as a
2 team. So, once we gather information piece-by-piece, almost
3 like this, like a, a Court hearing, like we sit down in a
4 room together and we go over everything, and it was decided
5 that none of the witnesses could identify any of the parties
6 that were leaving the scene.

7 Q Okay. Let me ask you this.

8 Y'all decided, based on what they told you, that
9 showing them a photo lineup would not assist in them being
10 able to tell y'all whether, in fact, they could or could not
11 identify them?

12 So, did y'all, in fact, at that point in time go
13 attempt to do photo lineups---

14 SOLICITOR KIDD: Objection, Judge. Leading.

15 THE COURT: Sustained. Leading.

16 Rephrase.

17 Q What did -- why, why did you not do any photo lineups
18 is the question?

19 A Again, after we -- we got the initial statements from
20 the witnesses, and then, obviously, they get sent home. A
21 lot of them seen the -- just seen a traumatic event. So, if
22 we need them at a later time, we get telephone numbers and
23 we get addresses for them. And then after we're, I guess,
24 done for the night, for lack of a better term, we sit down
25 and rehash everything that -- we just go over the scene and

Jennifer Butler - Direct examination
by Mr. Price

1 all the evidence that we've collected exactly that night,
2 and it was just decided that, based on the statements given
3 by the witnesses, that they would not be able to pick
4 anybody out of a lineup.

5 MR. PRICE: Court's indulgence.

6 (Pause.)

7 Q Okay. And so do you recall, through your
8 investigation, doing or getting the fingerprint analysis
9 returned back to you?

10 A I do not recall, no, sir.

11 Q If I show you, would it refresh your recollection?

12 SOLICITOR KIDD: Objection, Judge.

13 THE COURT: Basis?

14 SOLICITOR KIDD: Foundation.

15 THE COURT: What exactly are you gonna show her?

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 Q As the lead case agent, does everybody submit
19 everything to you for you to be able to bring to, to Court?

20 I know you don't do the discovery.

21 But it's your responsibility to maintain everything,
22 correct?

23 A Yes, sir.

24 Q Okay. And, during your investigation, did you learn of
25 a fingerprint analysis that was done?

Jennifer Butler - Direct examination
by Mr. Price

1 A I, I don't recall.

2 Q You don't know whether there was fingerprint analysis
3 of the car?

4 A I believe that, when Tiffany or when crime scene
5 analysts processed the vehicle, that she did dust for
6 fingerprints.

7 Q Okay. And do you recall the results of those?

8 A Off the top of my head, no, sir.

9 Q All right. I have just a couple more questions for
10 you.

11 How many people are on your team would you have said
12 that investigated this crime?

13 A Right now or --?

14 Q No, back---

15 A Back then?

16 Q No, I want to know the exact amount of people that were
17 involved in investigating -- on your team that investigated
18 this crime?

19 A I mean the whole detective division---

20 Q How many people is that?

21 A ---investigated the case.

22 Q How about Champion?

23 A That'd be 30, 32, about. Champion's not a detective.

24 Q I'm talking about 2015.

25 Was he a detective?

Jennifer Butler - Direct examination
by Mr. Price

- 1 A No, sir.
- 2 Q Okay. What about Kuechler?
- 3 A He was a detective sergeant, yes, sir.
- 4 Q Jellico?
- 5 A Yes, sir.
- 6 Q Monroe?
- 7 A Yes, sir.
- 8 Q Niemiec?
- 9 Niemiec?
- 10 A Niemiec, yes, sir.
- 11 Q Benton?
- 12 A Yes, sir.
- 13 Q What about Detective Desheers?
- 14 A Yes, sir.
- 15 Q What about Detective Kaufman?
- 16 A Yes, sir.
- 17 Q Was -- Officer Jahngen, was he a detective?
- 18 A What's, what's the name?
- 19 Q Jahngen.
- 20 No?
- 21 A I don't know.
- 22 Q And so how many detectives would you say, just the
- 23 one -- I just mentioned a few that were on the witness list
- 24 that was read in the beginning of the trial, but how many
- 25 detectives would you say in all worked on this case?

Jennifer Butler - Direct examination
by Mr. Price

1 A I say everybody. So, about 32.

2 MR. PRICE: All right. Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. PRICE: I don't have any further questions, Your
6 Honor. Thank you.

7 THE COURT: Mr. Peper.

8 MR. PEPER: Please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. PEPER:

12 Q Good afternoon, Detective Butler.

13 How are you?

14 A Good afternoon, sir.

15 How are you?

16 Q All right. Thirty-two detectives?

17 A In the detective division, give or take, yes, sir.

18 Q Okay. All 32 worked on this case?

19 A I would give a good I mean guess. I can't tell you one
20 hundred percent that every single one of them did, but,
21 anytime we have a major crime like this, everybody chips in.

22 Q Did you bring your case file with you today, didn't
23 you?

24 A It's in my car right now, yes, sir.

25 Q You're the case agent. They're two guys charged with

Jennifer Butler - Cross-examination
by Mr. Peper

1 murder.

2 A Yes, sir.

3 Q You sat right here---

4 A Yes, sir.

5 Q ---the last three days?

6 A Yes, sir.

7 Q You sat right there for whatever reason today.

8 You didn't bring your case file in here with you today?

9 A I took it to my car at lunch because there was an issue
10 that I had. A personal issue that came up.

11 Q You took some notes, right?

12 I know you don't have them with you, but you took some
13 notes throughout your investigation, right?

14 A During my investigation, yes, sir, I took notes.

15 Q All right. You've read those notes recently, haven't
16 you?

17 A I have the ones that were provided --

18 Q All right.

19 A -- by Mr. Rollins (phonetic), yes, sir.

20 Q And that would be for the dates of November 22nd and
21 November 23rd and November 24th.

22 Is that correct?

23 A Yes, sir.

24 Q Is it your position that you do not have any notes
25 after the 24th?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A I believe there was some on the case review. I just
2 can't say 100 percent.

3 Q When you say case review, you talking about the one
4 that you sent to the Solicitor's Office?

5 A Like we -- well, first I meet with my lieutenant and we
6 go over -- or my, my lieutenant and my sergeant. We do case
7 review and then we meet with the solicitors and do a case
8 review.

9 Q All right. So, that case review would of been done --

10 A After.

11 Q -- after the, the last set of notes you have?

12 A Yes, sir.

13 Q So, the 24th?

14 A Yes, sir.

15 Q All right. So, is there anything that you did in
16 addition to what you put in your notes?

17 A Yes, sir.

18 Q All right. So, is it fair to say -- and, and I guess
19 that's, that's what I'm asking. It was a bad question.

20 Everything you definitely 100 percent did you put in
21 your notes, right?

22 A In this set in front of me. I did everything in this
23 set in front of me --

24 Q Right.

25 A -- if that's what you're asking.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q Yeah, and that's what I'm trying to get at.

2 Is there -- are there things that you also did, as the
3 lead agent, that you would not have put in your notes?

4 A No, sir.

5 Q Okay. So---

6 A I mean I put everything in my notes.

7 Q Right.

8 So, if it's not in your notes, you didn't do it?

9 A Not necessarily. The notes just couldn't of gotten
10 into the system.

11 Q Well, I need a better understanding of not necessarily
12 because -- and maybe I should of quit with the first
13 question. I believe your answer was I did everything in my
14 notes, and everything I did I put in my notes.

15 A I do put everything in my notes.

16 Q Okay. And so, my question is, if you did something,
17 but it's not in here, what I'm hearing is that that means
18 you didn't do it?

19 A That doesn't mean I didn't do it, no, sir.

20 Q All right. So then let me ask another way.

21 Are there things that you did, as lead detective on
22 this case, that you failed to put in your notes?

23 A This -- I have more notes. I believe there's notes --
24 more notes than this.

25 Q Well, you just testified earlier that, after your notes

Jennifer Butler - Cross-examination
by Mr. Peper

1 are done, that's when you do your case summary?

2 A I never said that. I said case review---

3 Q Your case review.

4 A ---but that's not after my notes are done, no. I mean
5 you continue -- during a -- especially a case this complex,
6 you're doing stuff, I mean, a whole year afterwards.

7 Q And that's what I'm trying to figure out.

8 Everything you did, after November 24th, that never
9 got reduced to writing?

10 A It should be in my notes in the system, but I don't
11 have access to the computer right now.

12 Q You don't have access to your file right now, right?

13 A I don't have access -- I mean I can go get it out of my
14 vehicle, but --.

15 Q Well, I'll tell you what we'll do. Let me walk you
16 through your notes. If you can't remember, I'll refresh
17 you.

18 Okay?

19 A Okay.

20 Q It, it looks like, on November 22nd, you responded to
21 Park Circle, correct?

22 A Yes, sir.

23 Q All right. And you observed a crime scene, right?

24 A Yes, sir.

25 Q You saw a silver Ford Edge near the baseball field,

Jennifer Butler - Cross-examination
by Mr. Peper

1 correct?

2 A Yes, sir.

3 Q And then you observed a red Dodge Charger that was
4 wrecked, correct?

5 A Yes, sir.

6 Q With a decedent in the front passenger's seat, correct?

7 A Yes, sir.

8 Q At that point, it was -- well, let me ask you this.

9 Is that all you did when you got to the crime scene?

10 A I observed essentially and then I was told to go to
11 MUSC.

12 Q Right.

13 All right. You then go to MUSC, meet with Adrian
14 Williams, right?

15 A Yes, sir.

16 Q All right. He -- you did GSR on him?

17 A Yes, sir.

18 Q All right. And let me stop right there.

19 You took the GSR kit back to North Charleston?

20 A Yes, sir.

21 Q Put it into evidence?

22 A Yes, sir.

23 Q All right. As, as the lead detective, you made sure
24 that GSR got tested?

25 A I don't have that -- it's not ultimately my decision.

Jennifer Butler - Cross-examination
by Mr. Peper

1 We sit down collectively and go over what can be sent
2 because SLED limits us on how many items we can send. I
3 know it did get sent, but I can't tell you that it was sent
4 in the first batch because we can only send so many items at
5 a time.

6 Q It got sent to SLED?

7 A Yes, sir.

8 Q SLED sends it back?

9 A I believe they did. I'm not a hundred percent sure.
10 I've been gone from the department on military leave since
11 pretty much the beginning of the year.

12 Q Beginning of this year?

13 A Yes.

14 Q 2017.

15 Yes, what I'm talking about is my client being charged
16 with murder on November 22nd of '15.

17 A Right.

18 Q I honestly don't care what you did this year.

19 A Okay.

20 Q What I care about, as the lead detective, is whether or
21 not you made sure you figured out whether Adrian Williams
22 fired a gun, and my question to you is did you figure that
23 out?

24 A I can't say if I got results back from SLED. I don't
25 know.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q My next question regards Quran Allen.

2 Do you remember talking to him at MUSC?

3 A Quran Allen?

4 Q Quran Allen?

5 A Yes, sir.

6 Q Did you get GSR on him?

7 A We did do GSR on him.

8 Q You have no idea whether you followed up on testing or
9 not, do you?

10 A We send stuff to SLED and SLED sends it back after they
11 finish testing. The process takes -- I mean it, it doesn't
12 come back immediately. A year. It could take two years.

13 Q Maybe you're confused with, with another case.

14 Do you know who Quran Allen is?

15 A I know who Quran Allen is, yes, sir.

16 Q You know he was driving the Charger?

17 A Yes, sir.

18 Q Right.

19 You know he's the one that bleached his hands, right?

20 A Well, I can't tell you that he bleached his hands, but
21 I can tell you, when I GSR'ed him, his hands smelled like
22 bleach.

23 Q Still GSR'ed him though, right?

24 A Yes, sir.

25 Q You wanted to know if he shot a gun?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A Yes, sir.

2 Q You still don't know.

3 You leave MUSC, and, as you're walking across the
4 parking lot, you run into Jasmine Nelson, right?

5 A I met with a female that said her name was Jasmine
6 Nelson.

7 Q You and Jellico ended up performing a search warrant on
8 Jasmine Nelson's house, right?

9 A I believe so, yes, sir.

10 Q Where you found the bleach?

11 A I believe there was bleach in one of the bathrooms,
12 yes, sir.

13 Q Cause that's where Quran Allen told you he went, right?

14 A Yes, sir.

15 Q Now---

16 SOLICITOR KIDD: Objection.

17 THE COURT: Basis?

18 SOLICITOR KIDD: Or it's too late. Hearsay.

19 THE COURT: I'm sorry. I can't hear you.

20 SOLICITOR KIDD: Hearsay.

21 THE COURT: Please rephrase the question. Do not
22 repeat what someone said to her. Only what she did as a
23 result.

24 Q You searched Jasmine Nelson's house, correct?

25 A Yes, sir.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q Now, can you give me a general idea -- well, can you
2 give me the address of that location?

3 A I don't know the address off the top of my head.

4 Q Can you give me a, a general idea of where it's
5 located?

6 A I believe it's the house off of Dorchester Road.

7 MR. PEPER: Court's indulgence.

8 THE COURT: Uh-huh. (Affirmative).

9 (Pause.)

10 Q I'm gonna show you what's been admitted into evidence
11 as Exhibit 66.

12 Can you see that up there, Detective Butler?

13 A Yes.

14 Q All right. Do you recognize that, right?

15 A Yes, sir.

16 Q It's a map.

17 On this map, can you tell me where Jasmine Nelson --
18 where you, where you found that bleach in that search
19 warrant?

20 A I believe it's somewhere here off of Dorchester. I
21 don't know the exact street name. I would have to see the
22 search warrant to give you the exact address.

23 Q You been in here the whole time, right?

24 A Yes, sir.

25 Q All right. You know this is where Cambridge said he

Jennifer Butler - Cross-examination
by Mr. Peper

1 ran to, right?

2 A Is that --?

3 Q Down there by, by Cosgrove and Azalea?

4 A Yes --

5 Q Right?

6 A -- sir.

7 Q And, as the case agent, you went to Jasmine Nelson's
8 house, right?

9 A Yes, sir.

10 Q You put in your report that she lives 420-feet from
11 Mr. Capers' house, right?

12 A I don't recall putting 420-feet.

13 Q Well, you don't have your report.

14 All right. Would you agree with me that you were there
15 at Jasmine Nelson's house, right?

16 A During the search warrant?

17 Q Right.

18 A Yes, sir.

19 Q Right.

20 You agree with me it was right about here?

21 A Like I said, it's off of Dorchester Road. So, it would
22 be like one of these roads down here. I would have to see
23 the search warrant to give you the exact address.

24 Q All right. I'll work on that for you, and then we'll
25 get you that.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Because if he bleached his hands at, at Jasmine's
2 house, the driver, right, and Mr. Allen -- excuse me. Mr.
3 Allen isn't the driver. And Mr. Capers ended up here, well,
4 it would seem to me that they both ran together, right?

5 A I can't speculate on that.

6 Q I don't need you to speculate.

7 Were you able to deduce or were you able to figure out
8 that they both ran together?

9 A I was not able to figure that out.

10 Q You couldn't figure that out.

11 Can you -- well, you don't have to figure it out for
12 me, but you would agree with me that Mr. Capers ends up
13 here, right?

14 A Correct.

15 Q And you'd agree with me that Jasmine's house, this is
16 Dorchester Road, you, you -- if we call it here, you agree
17 with me it's on Dorchester Road, right?

18 A It's off of Dorchester Road.

19 Q All right. You agree with me that this location is
20 south of Park Circle, right?

21 A Is there a compass on that map?

22 I don't --.

23 Q I'm not asking you---

24 A I just don't know.

25 Q Like -- the, the way I've got it right now, you would

Jennifer Butler - Cross-examination
by Mr. Peper

1 agree with me that's, that's---

2 A Okay.

3 Q ---south---

4 A Yes, sir.

5 Q ---to Park Circle?

6 All right. Now, you would also agree with me, would
7 you not, that this is South Red, right?

8 A If you---

9 Q This is Durant, right?

10 A I don't know the State road numbers off the top of my
11 head.

12 Q Well, look -- let's look up here.

13 A Okay. So---

14 Q That help you?

15 A Yeah, that would be Durant.

16 Q All right. So, there you go.

17 All right. And then why don't you, why don't you draw
18 a down one on South Red?

19 A Like I don't know the state numbers, but --.

20 Q There you go. Right. If that's North Red, and that's
21 South Red. Right. Good.

22 Now -- whoops. I messed you up there.

23 You know what those indicated, that that one and two
24 red arrow?

25 A It's appears that -- well---

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q Yeah, I mean you've, you've been in here all week.

2 A Is that -- I say is that East Montague?

3 It appears that's almost or approximately where -- no,
4 that's the guns I think.

5 Q Shout it out if you know the answer.

6 What is it?

7 A I believe that's where the guns were located.

8 Q I believe you're right. I believe you're right.

9 Right where Mr. Capers and Mr. Allen ran back down
10 here, right?

11 A I can't say they took that path.

12 Q I think where we left it, and I apologize, was that you
13 end up back at City Hall with the coroner, right?

14 After MUSC?

15 A Oh. Yes, sir.

16 Q You notify the coroner that Mr. Williams is deceased,
17 right?

18 A Well, I don't notify the coroner.

19 Q Well---

20 A The coroner determines that, but --.

21 Q You were with her, yeah.

22 And then about 9:30 that morning Danielle Ravenell
23 shows up, right?

24 A Yes, sir.

25 Q You interview her, right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A Yes, sir.

2 Q You and Jellico interview her?

3 A Yes, sir.

4 Q And it's recorded, right?

5 A Yes, sir.

6 Q All right. I assume you wanted to know if the car that
7 came back registered to her, that being the Ford Edge, was
8 still with her, right?

9 A Well, it's not really assume I wanted to know that
10 cause I knew the car wasn't with her. I don't understand
11 your question.

12 Q Did she tell you why?

13 SOLICITOR KIDD: Objection, Judge.

14 THE COURT: Basis?

15 SOLICITOR KIDD: Calls for hearsay.

16 THE COURT: Sustained. Hearsay.

17 Q Okay. Was she in the car when it crashed on Park
18 circle?

19 A No, sir, not that I'm aware of.

20 Q Okay. Well, where was the car?

21 According to her, where was the car?

22 SOLICITOR KIDD: Objection. Calls---

23 THE COURT: Sustained. Hearsay.

24 Q As a result of your conversation with her, did you let
25 her file a stolen police report -- stolen car?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A No, sir.

2 Q Matter of fact, you just sent her home, didn't you?

3 A Well, we got her statement and then she went home after
4 we got all of her contact information.

5 Q Now, you end up doing -- now, this is all on the
6 22nd. I don't want to confuse.

7 From that point on, you end up doing a search warrant
8 on the Ford Edge, correct?

9 A Yes, sir.

10 Q All right.

11 A And the Charger.

12 Q Right. Right. And you've been sitting here the whole
13 time.

14 So, I -- we don't need to go over what you didn't find,
15 right?

16 I mean you would agree with me that what's been
17 admitted into evidence so far is the actual stuff you found?

18 A Yes, sir.

19 Q The items---

20 A Well, myself and crime scene analyst, yes, sir.

21 Q Right.

22 Okay. The one thing that I have not seen anywhere, as
23 a result of your search, is a white T-shirt.

24 Did you find a white T-shirt in the Ford Edge, and, and
25 you know which white T-shirt I'm talking about, right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A No, sir.

2 Q But you've been sitting in here the whole time?

3 A I have.

4 Q The white T-shirt that, you know, Justin Wilson carried
5 the AK-47 out of his cousin's house wrapped up in a white
6 T-shirt. That one.

7 A Oh, okay.

8 Q You, you didn't hear that?

9 A Well, I mean some people said a sheet. Some people
10 said a T-shirt. It was described as two different things I
11 believe.

12 Q Okay. Well, you find a sheet?

13 A No, sir.

14 Q Find a white sheet?

15 A No, sir.

16 Q All right. Upon completion of the search warrant, you
17 go back to City Hall, right?

18 A Yes, sir.

19 Q You sat at your desk where the evidence was
20 inventoried, right, to make sure everything is done?

21 A Yes, sir.

22 Q Well, signed the phones over, right?

23 A Yes, sir.

24 Q Logged the GSR kits, right?

25 A Yes, sir.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q Logged the B.E.S.T. kits, right?

2 A Yes, sir.

3 Q And just for our purposes, what are B.E.S.T. kits?

4 A For narcotics. So, found narcotics---

5 Q Right.

6 A ---are placed in a B.E.S.T. kit and sent to SLED for
7 testing --

8 Q Right.

9 A -- or confirmation.

10 Q All other items you've listed you put into evidence,
11 right?

12 A Yes, sir.

13 Q All right. And then I think that's where you ended up
14 going over to Jasmine Nelson's house, right?

15 A Yes.

16 Q All right.

17 A That's what the address is there.

18 Q Right. Cambridge.

19 A Yes, sir.

20 Q Right?

21 Right off Dorchester?

22 A Yes, sir.

23 Q Yeah.

24 Now, that's completed and you go back to the station so
25 that you could type up a major activity. Now, I'm gonna --

Jennifer Butler - Cross-examination
by Mr. Peper

1 I think I know the answer, but I'm gonna let you tell me.

2 What's a major activity?

3 A So, when a major incident happens, supervisors are
4 required to send out like a major activity report.

5 Sometimes it's just sent out to the news, and then, in
6 addition to that, it's sent out to what we refer to as like
7 the troops, so like all the road officers, just so they can
8 be aware of what has happened in the area that they work.

9 So, if they get like concerned citizen -- like if they get a
10 contact with a concerned citizen that they're aware of, and
11 they're able to tell, you know -- if they get out with
12 someone in Park Circle, and they're like hey, I heard
13 something that night, then they're able to tell them well,
14 yeah, we had a murder last night.

15 Q How long did that take you to type a major activity up?

16 Twenty, thirty minutes, forty minutes?

17 A Probably that one took an hour or so.

18 Q All right. Now, this is still the same day,
19 November 22nd, right?

20 A Yes, sir.

21 Q All right. You then create a folder for all the
22 information, put it in there so it wouldn't get misplaced,
23 right?

24 I mean I, I know you've only been a detective for a
25 while, but pretty, pretty common occurrence over there at

Jennifer Butler - Cross-examination
by Mr. Peper

1 North Charleston to misplace stuff, isn't it?

2 A No, sir.

3 SOLICITOR KIDD: Objection, Judge.

4 THE COURT: Basis?

5 SOLICITOR KIDD: Speculation.

6 THE COURT: Speculation and lack of foundation.

7 Rephrase.

8 Sustained.

9 Q You put -- you made sure nothing would get misplaced.
10 So, you just -- you put it in a folder?

11 A I put it in a folder, yes, sir.

12 Q All right. So, as I understand it, the contents of
13 that folder at that specific moment was the entire case?

14 A I wouldn't say that, no, sir.

15 Q All right. You -- well, where was the rest of the --
16 where was the rest of the stuff?

17 I mean --.

18 A Well, you have chain of custodies. So, I had to sign
19 over---

20 Q In -- I'm -- in your possession. I'm sorry. I meant
21 in your possession.

22 A What I had --

23 Q Right.

24 A -- on the case, that would of been my case file that
25 night or --

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q Right.

2 A -- I guess that morning, afternoon.

3 Q Yeah.

4 Everything that you had in your possession went into
5 that one folder?

6 A Yes, sir.

7 Q Right.

8 Okay. You set it aside and you ate some dinner?

9 A And what?

10 Q You ate some dinner.

11 A I don't think so. I went home probably.

12 Q Well, just look at your report cause I don't want you
13 to testify to something that's wrong.

14 A Okay.

15 Q I mean maybe you didn't eat dinner.

16 Did you put in your report you ate dinner?

17 A I did put in my report I ate dinner.

18 Q Ah. But let's keep looking at your report right there
19 because the next thing you did was put a list together for
20 the next shift of what needed to be completed.

21 A Yes, sir.

22 Q Right?

23 Let me make sure I'm up to speed here because that's a
24 long day. I'm with you. We're having one right now.

25 Okay?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A Uh-huh. (Affirmative).

2 Q Right. I know.

3 A Not as long, but okay.

4 Q All right. So, the murder scene wasn't as long as
5 today is?

6 A No, the murder scene was way longer than today.

7 Q Yeah, like I said, that's a long day.

8 A Way longer.

9 Q I'm with you. That's a long day. And, and you, you've
10 done a lot of stuff. You've been at the crime scene.

11 Okay?

12 A Yes, sir.

13 Q You've been to MUSC, right, where you took some GSR?

14 A Yes, sir.

15 Q You've been back to the station, met with the coroner,
16 and the Williams family, the decedent's family, right?

17 A Yes, sir.

18 Q You've been back out to meet -- get the, get the
19 pictures of the bleach from Jasmine's house, right?

20 A Yes, sir.

21 Q You've been back to the station to meet with Danielle?

22 A Yes, sir.

23 Q Right?

24 You done put everything in a, in a major case file
25 consisting of a folder, right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A Yes, sir.

2 Q You're tired. You're going home.

3 A Yes, sir.

4 Q Okay. Did -- you eat dinner.

5 All right?

6 A Well, I -- if I put it in my notes, that means I
7 probably ate at my desk.

8 Q All right. Before you left, based on that day, you
9 typed up a murder warrant for Justin Wilson, didn't you?

10 A Yes, sir.

11 Q Had talked to no one besides Quran Allen?

12 A Quran Allen?

13 Q Quran Allen.

14 A Okay.

15 Q Montez Capers, Danielle, and the family of the
16 decedent?

17 A Uh-huh. (Affirmative). And we would of got the phone
18 dumps.

19 Q You have no DNA back?

20 A Correct.

21 Q You have no fingerprints?

22 A Correct. Those aren't needed to sign a warrant though.

23 Q I'm gonna throw you a softball here.

24 Okay?

25 A Okay.

Jennifer Butler - Cross-examination
by Mr. Peper

1 Q On the same day that this thing went down --

2 A Okay.

3 Q -- please tell me why you thought you had probable
4 cause to take out a murder warrant?

5 SOLICITOR KIDD: Objection, Judge. Relevance.

6 THE COURT: Goes to thoroughness of the investigation
7 and her credibility. Overruled.

8 Q What did you type on the warrant?

9 A Well, I can tell you it wasn't the same warrant that
10 was issued because we got more information once we
11 interviewed Keith, but we had the information that Danielle
12 provided us that Justin had the car. We had the phone
13 downloads, that his phone was in the car.

14 Q So?

15 A And we had all -- we had all the phone information,
16 some of which is -- obviously, you are not privy to, but we
17 had enough at the time to get a warrant signed.

18 Q You decided that?

19 A No, sir, we, we decided that collectively as a team, as
20 I stated before.

21 Q Okay. But it doesn't say the team and I typed and
22 let -- it says a murder warrant was typed and left to get
23 signed on Justin Wilson.

24 A Correct.

25 Q Right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 Right?

2 A Yeah, a murder warrant was typed and left---

3 Q Okay.

4 A ---to get signed, yes.

5 Q I also completed the bond folder on Quran?

6 A Quran Allen, yes.

7 Q Quran Allen. I'm sorry. Quran Allen.

8 A Yes, sir.

9 Q Right?

10 Cause you end up charging him with obstruction of
11 justice?

12 A Yes, sir.

13 Q wouldn't tell you what you wanted to hear, right?

14 A Well, not necessarily, but --.

15 Q Well, he kept -- he was all over the place, right?

16 A He never told---

17 SOLICITOR KIDD: Objection, Judge.

18 THE COURT: Basis?

19 SOLICITOR KIDD: Calls for hearsay.

20 THE COURT: I'm gonna overrule. Not offered for its
21 truth, but to what took place during the course of the
22 investigation, but be careful, Mr. Peper.

23 MR. PEPER: Yes, ma'am.

24 THE COURT: Ma'am, do you need the question repeated?

25 THE WITNESS: Oh, yes.

Jennifer Butler - Cross-examination
by Mr. Peper

1 THE COURT: Please repeat the question.

2 Q The basis of the obstruction of justice charge against
3 Quran, Quran?

4 A Quran.

5 Q Quran, Quran Allen.

6 A Yes, sir.

7 Q Okay. Was that he changed his stories multiple times?

8 A Well that, and then it wasn't consistent with the story
9 that Montez Capers had provided us.

10 Q Uh-huh. (Affirmative).

11 There's enough to charge or, or draft a warrant for
12 Mr. Wilson though for murder?

13 A What was enough to charge Mr. Wilson for murder?

14 I had enough to draft a warrant that night. It didn't
15 get signed that night, but one of us drafted.

16 Q All right. Did one get drafted for Domonique, D'Nice?

17 A That night, no, sir.

18 Q Did one get drafted for Marvin?

19 A That night, no, sir.

20 Q Did one get drafted for DQ, Daquan?

21 A Daquan that night, no, sir.

22 Q Right.

23 Did one get drafted for Keith, Keith Evans?

24 A That night, no, sir.

25 Q You didn't even talk to Keith Evans yet, have you?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A No, sir, we talked to him the next day.

2 Q Well, that's nice.

3 You already got a murder warrant in your hand for
4 Justin Wilson---

5 A But it's not signed. It's just drafted.

6 Q Let me finish the question.

7 A Okay.

8 Q When you go talk to the first person you're ever able
9 to talk to that was in the Edge, right, Keith Evans?

10 A We have one drafted when he talked to Keith Evans, yes,
11 sir.

12 Q What time did you get to work the next day, 11/23?

13 Do you remember?

14 Was it a half day?

15 A No, sir.

16 Q All right.

17 A I believe we came in at 8:00. That was our call-out
18 week. So, we come in at 8:00PM on our call-out week.

19 Q All right. So, eight o'clock, your guy's, Keith Evans,
20 is in the interview room, right?

21 A Yes, sir.

22 Q All right. And we're not gonna rehash all the
23 testimony. Let, let me ask you.

24 I mean you were in, you were in the room for that
25 interview, right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A With Keith?

2 Q Yeah.

3 A Yes, sir.

4 Q Okay. You heard what he said?

5 A Yes, sir.

6 Q All right. And you heard his second story, right?

7 A On the proffer?

8 Q No, that was his third.

9 The two stories he told in this interview room, right?

10 He -- I'll walk you through it.

11 Okay. At first he says that he---

12 SOLICITOR KIDD: Objection, Judge.

13 THE COURT: Basis.

14 SOLICITOR KIDD: Hearsay.

15 THE COURT: Sustained. Hearsay.

16 Q Did he tell you---

17 SOLICITOR KIDD: Objection, Judge.

18 THE COURT: Sustained. Hearsay.

19 Q Did you take out a warrant for him within the first two
20 hours of his interview?

21 A I don't believe so. I --.

22 Q Well, how long -- how long was his interview?

23 A I know it was a couple hours. I don't know the exact

24 --

25 Q All right.

Jennifer Butler - Cross-examination
by Mr. Peper

1 A -- time.

2 Q All right. I'm gonna, I'm gonna move on.

3 okay?

4 A Okay.

5 Q At the conclusion of his interview --

6 A Yes, sir.

7 Q -- after he tells -- ma'am, I got you there.

8 At the conclusion of his interview, you, you served him

9 with the murder and the three counts of attempted murder,
10 right?

11 A Well, he would of been served. He would of been
12 lodged---

13 Q Right. You detained him?

14 A ---and his packet would of been dropped.

15 Q Yeah.

16 You detained him, right?

17 A Well, he would of been arrested.

18 Q Yeah. Right.

19 Sent over to the county?

20 Sent to---

21 A To Charleston County, yes, sir.

22 Q All right. And I can't ask you what he told you, but I
23 can ask if did you also go get that Justin Wilson one arrest
24 warrant finally signed?

25 A I wouldn't have got it signed. I would have left it

Jennifer Butler - Cross-examination
by Mr. Peper

1 for the next shift because I get off. I mean I would of
2 been working till 4:00AM, and there's no judges available.

3 Q Same thing with Domonique Edwards, right?

4 A Yes, sir.

5 Q And then you go home?

6 A Did I go home?

7 Q Uh-huh. (Affirmative).

8 A I believe so, yes, sir.

9 Q All right. So, you went to work for two hours on
10 November 23rd?

11 A No, we work a whole shift.

12 Q Well, where's the rest of your notes?

13 A That is my notes.

14 Q Yeah, I know. That's my problem.

15 where -- what else did you do that day for this murder
16 case that you'd just been assigned?

17 A The interview.

18 Q You just told me it was two hours.

19 A No, I said it was a couple of hours. I don't recall
20 the exact time.

21 Q What else did you---

22 A I don't know how---

23 Q ---do that day?

24 A The interview, sir.

25 Q That's it?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A I mean we spoke to -- I spoke to Tammy Greene also.

2 Q Now, whose Tammy Greene?

3 why do you want to talk to her?

4 A Mega's mom.

5 Q Right.

6 whose Mega?

7 A Marcus, which is the house that they went to after they
8 left the scene of the shooting.

9 Q They being Keith --?

10 A Keith, Marvin Bryan, and Daquan Gilliard.

11 Q what did old Mega have to say?

12 A That---

13 SOLICITOR KIDD: Objection, Judge.

14 THE COURT: Sustained. Hearsay.

15 Q what, what -- were you able to talk to Mega?

16 A Not that night.

17 Q All right. According to your notes, looks like the
18 next day, on November 24th, you ended up talking to
19 Mega -- who we call Mega?

20 A Yes. Well, he was --.

21 Q Marcus, yeah.

22 Right, Marcus, Mega, the, the three guys that got
23 stopped running from the scene, right, told you -- told --
24 Mega was suppose to be their alibi where they spend the
25 night, right?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A I mean I wouldn't -- I don't know if you would call it
2 alibi, but that's where they ran when they were leaving the
3 scene.

4 Q All right. But he, he didn't roll with that when you
5 talked to him?

6 SOLICITOR KIDD: Objection, Judge.

7 THE COURT: Basis?

8 SOLICITOR KIDD: Calls for hearsay.

9 THE COURT: Sustained. Hearsay.

10 Q Did you show Mega a photo of Keith Evans?

11 A Yes.

12 Q Does he know Keith Evans?

13 SOLICITOR KIDD: Objection, Judge.

14 THE COURT: Sustained. Hearsay.

15 She can say what she did as a result.

16 Q That's all you did on the 24th, right?

17 A Yes, sir.

18 MR. PRICE: Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q On direct examination, Mr. Price asked you about these
22 four witnesses that gave written statements at the police
23 station.

24 A Yes, sir.

25 Q Do you recall that?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A (Witness nods affirmatively.)

2 Q As I understand your testimony, your testimony was
3 that, based on the information provided to you, the team sat
4 around the table and decided there's no need to ever
5 communicate with those four people again, right?

6 A Well, I wouldn't say communicate with them ever again.
7 I would just say not -- they didn't have enough knowledge, I
8 guess, to do a photo lineup.

9 Q What more knowledge do you need---

10 SOLICITOR KIDD: Objection, Judge.

11 THE COURT: Basis?

12 SOLICITOR KIDD: I -- hearsay.

13 THE COURT: I haven't heard the whole question.

14 State the whole question please.

15 Q What more -- well, four people told you -- well, you,
16 you learned in your investigation that they were witnesses,
17 right?

18 A We learned there were four people in the circle, yes,
19 sir.

20 Q Right.

21 And one of those individuals gave her phone to one of
22 the people in the Dodge Charger, correct?

23 A I believe so, yes, sir.

24 Q As a matter of fact, she didn't get her phone back, did
25 she?

Jennifer Butler - Cross-examination
by Mr. Peper

1 A I believe that's correct.

2 Q And as she's giving the phone to the Dodge Charger, a
3 guy comes out of no where from across the street?

4 SOLICITOR KIDD: Objection, Judge.

5 THE COURT: Basis?

6 SOLICITOR KIDD: Calls for hearsay and speculation.

7 THE COURT: Sustained. Unless you can establish
8 foundation based on her own rational perception.

9 Q When you got on the scene, Mr. Adrian Williams was
10 laying in the middle of the road, correct?

11 A I believe -- I don't recall if he was still there or if
12 he had already been transported, which is why I was told to
13 go to MUSC.

14 Q Uh-huh. (Affirmative).

15 A I mean literally we parked. I saw the silver vehicle
16 in the distance, and I could see the decedent covered in
17 blood in the front passenger or the -- yeah, the front
18 passenger seat of the red car, and I could tell that he was
19 deceased. And then Sergeant Kuechler advised that I needed
20 to go to MUSC because we had a victim at MUSC. So, I don't
21 100 percent recall if he was still on scene when I got there
22 or if he had already been transported.

23 Q Nor did you---

24 A I met with him at the hospital.

25 Q Okay. Nor do you know whether he actually stayed on

Jennifer Butler - Cross-examination
by Mr. Peper

1 scene the entire time while the cops were on the way there?

2 You don't---

3 A Who, Adrian Williams?

4 Q Right.

5 A He was transported by EMS.

6 Q I understand that. I understand that.

7 But you don't know if he ran across the street and then
8 ended up running back because he knew he wasn't gonna make
9 it that far?

10 A I mean I'm not a medical person. I can just tell you
11 he was shot multiple times. I mean I don't -- I can't tell
12 you if he would of ran or not. He had significant injuries.

13 Q Well, you didn't learn that through your investigation?

14 A If he ran across the street?

15 Q Yeah.

16 You, you didn't learn that one of the witnesses---

17 SOLICITOR KIDD: Objection, Judge.

18 Q ---saw---

19 THE COURT: Assumes facts not in evidence and hearsay.
20 Sustained.

21 Q You didn't follow-up with a single eye witness after
22 that night?

23 A The -- based on the statements that they gave us that
24 night, there was nothing more to follow-up on. They were
25 driving when they saw the people running across the road.

Jennifer Butler - Cross-examination
by Mr. Peper

1 That's the extent---

2 Q No, no, no.

3 A ---of most of what they saw.

4 Q Did -- I need help. You just told me that one of the
5 eye witnesses gave her phone to one of the people from the
6 Dodge Charger.

7 A The victims. But based on the suspects, they didn't --
8 when they saw people running away from where the silver car
9 had wrecked, which was a significant distance away from
10 where the red car had wrecked, they wouldn't have been able
11 to identify any of our suspects.

12 Q And that's why---

13 A One of our witnesses---

14 Q Yeah.

15 A All of our victims showed up at the hospital.

16 Q And, and that's, that's my problem that I'm having
17 right here because you have not given any thought to these
18 victims, what they might have to say, where they might have
19 gone after this collision, right?

20 You're just focused on the Ford Edge, right?

21 A We talked to the victims, but the idea is to get the --
22 I mean we have suspects at large.

23 Q You learned---

24 A With---

25 Q ---everything you needed to know about this case from

Jennifer Butler - Cross-examination
by Mr. Peper

1 the victims that you talked to?

2 A No, you investigate.

3 Q Right.

4 A I mean you do a lot more than just that.

5 Q That's, that's what I'm saying. That's my point and
6 that's why you would want to talk to these, these eye
7 witnesses.

8 If nothing else, you would agree with me, would you
9 not, that you want to corroborate what someone else has told
10 you, right?

11 A With --?

12 Q The victim tells you one thing. Eye witness tells you
13 another thing. You gonna want to talk to that eye witness
14 again.

15 Right?

16 A I mean not if it's the same thing.

17 Q Different things.

18 Okay. We're, we're, we're over.

19 okay?

20 A Okay.

21 Q If, if a victim tells you he didn't move from the
22 roadway after he got shot, all right?

23 A Okay.

24 Q But an eye witness says he wasn't here when we were
25 here, he came out of nowhere from across the road, you're

Jennifer Butler - Cross-examination
by Mr. Peper

1 gonna want to go back and ask him about that, right?

2 A If they were referring to the same party, yes.

3 Q All right. Especially if the witness says they came
4 running from back across the road and then laid down in the
5 middle of the street, right?

6 A I'm sorry. What was your question again?

7 Q Well, let me, let me back up. I -- let me, let me back
8 up cause I forgot that the next day you only worked for a
9 couple hours.

10 So, you didn't know that those were found---

11 A No, I worked a full eight hours.

12 THE COURT: Please don't make any editorial comments,
13 Mr. Peper.

14 MR. PEPER: I'm sorry.

15 THE COURT: Please phrase it in the form of a question.

16 Q You didn't know that those guns had been found so close
17 to the, to the cars, did you?

18 A Well, they were found that morning while I was still
19 working.

20 Q As I'm saying, you didn't, you didn't -- when you, you
21 talked to these four eye witnesses---

22 A I didn't talk to the eye witnesses. Other detectives
23 did. I responded to MUSC after the initial response to the
24 scene.

25 Q I -- Court's indulgence, Your Honor.

Jennifer Butler - Cross-examination
by Mr. Peper

1 THE COURT: Uh-huh. (Affirmative).

2 (Pause.)

3 MR. PEPER: Talk to my client one second, Your Honor.

4 THE COURT: Uh-huh. (Affirmative).

5 (Pause.)

6 MR. PEPER: Thank you, Judge. No further questions.

7 THE COURT: Any questions for the witness?

8 SOLICITOR KIDD: Yes, ma'am.

9 CROSS-EXAMINATION

10 BY SOLICITOR KIDD:

11 Q Good afternoon, Ms. Butler.

12 A Good afternoon, sir.

13 Q All right. Let's start with Mr. Evans interview.

14 You weren't in that interview the whole time, were you?

15 A No, sir, I was in and out.

16 Q A number, a number of other detectives were conducting
17 that interview for the most part.

18 Is that correct?

19 A Yes, sir.

20 Q You came in and out a few times?

21 A Yes, sir.

22 Q That interview lasted approximately between 8:30 and, I
23 believe, it was about 3:00AM?

24 Is that about right?

25 A That sounds pretty close, yes, sir.

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 Q So, that would be seven hours and some change. Maybe
2 even closer to eight.

3 A Yes, sir.

4 Q So, the implication by Mr. Peper that you didn't do
5 anything that day, an eight hour interview's relatively
6 significant?

7 A Yes, sir, that is.

8 Q Okay. Also, when you have warrants signed for people,
9 don't they have to be signed by a judge?

10 A Yes, sir, we present the facts to the judge.

11 Q And doesn't the judge have to review that warrant to
12 make sure there's probable cause?

13 A Yes, sir.

14 Q And if there's not probable cause, the judge won't sign
15 it, will they?

16 A Correct.

17 Q Now -- and you, you did ultimately speak with Mega,
18 Marcus Greene?

19 Is that right?

20 A Yes, sir.

21 Q And you did ultimately speak with his mother, mother,
22 Tammy Greene?

23 Is that right?

24 A Yes, sir.

25 Q And they both resided at [REDACTED] Durant Avenue?

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 A I believe that was the address, yes, sir.

2 Q Did your investigation stop with an arrest?

3 A No, sir.

4 Q I want to talk about GSR a little bit. The best way
5 GSR has been described to me is it's like flour. Like if
6 you had a -- it's a really fine particle.

7 Is that sort of fair to say?

8 A Yes, sir.

9 Q So, if you threw up a bunch of flour, that would be
10 kind of like how it would be when a, a gunshot goes off?

11 A Uh-huh. (Affirmative).

12 Q Is that fair to say?

13 A Yes, sir.

14 Q And so someone holding a gun and shooting it would
15 presumably have GSR on their hands?

16 A Yes, sir.

17 Q Is that right?

18 And also people in close proximity would have GSR on
19 their hands too?

20 A Yes, sir.

21 Q In fact, GSR is so common around people discharging
22 firearms that SLED has refused to test victims for GSR?

23 A I believe that is new, that they just started, yes,
24 sir.

25 Q And that's because you would expect to find GSR on any

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 victims?

2 A Correct.

3 Q Because GSR travels with projectiles?

4 A Yes, sir.

5 Q Is that right?

6 So, not only is GSR on the -- around where a gun is
7 fired, but gunshot residue also travels with the projectile
8 from another gun going towards any victims who are
9 presumably the targets?

10 A The way it's been explained to me, yes, sir.

11 Q Okay. So, would you expect GSR to be on everyone's
12 hands inside the Dodge Charger?

13 A Yes, sir.

14 Q Now, I want to talk a little bit about you were there
15 for the -- when the search warrant was conducted in the --
16 on the vehicle.

17 Is that correct?

18 A Yes, sir.

19 Q I'm gonna show you what's been marked for ID, I believe
20 I have this right, State's Exhibit 97.

21 THE COURT REPORTER: 97 was never -- you said the
22 driver's license?

23 SOLICITOR KIDD: Yes.

24 THE COURT REPORTER: Never introduced---

25 SOLICITOR KIDD: Correct.

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 THE COURT REPORTER: ---or entered into evidence.

2 Q I'm gonna show you what's been marked for
3 identification as State's Exhibit 97, and see if you
4 recognize that.

5 A Yes, sir. So, South Carolina ID.

6 Do you want me to state the number?

7 Q Where, where did -- where did you come into possession
8 of that item?

9 A It was in the sunglass thing of the bench. So like I,
10 I guess that's where you put your sunglasses, but the little
11 thing right above where the light is.

12 Q Okay. All right. And did you collect that item?

13 A Yes, sir.

14 Q And then you put it in this bag?

15 A Yes, sir, and my initials are on the bag, and I put the
16 label on it.

17 Q And then what, took it to evidence in North Charleston?

18 A Yes, sir.

19 SOLICITOR KIDD: All right. Your Honor, at this time,
20 State would offer State's Exhibit 97.

21 THE COURT: Share it with counsel, please.

22 (Pause.)

23 THE COURT: Any exception?

24 MR. PEPPER: None, Your Honor.

25 MR. PRICE: No, ma'am.

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 THE COURT: Marked and admitted without objection, 97.

2 (WHEREUPON, State's Exhibit No. 97 was received into
3 evidence at this time.)

4 Q Ms. Butler, do me a favor and pop that open and --.

5 A Do you want me to read---

6 Q Just -- I'll take it. I'll just put it on the
7 overhead.

8 Is that the item you recovered from the Ford Edge?

9 A Yes, sir.

10 Q And I believe you just said it was in the sunglasses
11 holder?

12 A Yes, sir.

13 Q When you met with Danielle Ravenell, do you recall
14 that?

15 A Yes, sir.

16 Q And you went through her cell phone, right?

17 A Yes, sir.

18 Q And you documented a number of phone calls inside her
19 cell phone.

20 Is that correct?

21 A Yes, sir.

22 Q And I believe you ended up taking pictures of them.

23 Is that right?

24 A Yes, sir.

25 Q So, you let her keep her phone. You just -- what did

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 you take pictures on with, your cell phone or a camera?

2 A No, we have like a -- yeah, a camera in the back that
3 we can use.

4 Q Do you remember what phone calls you documented on her
5 phone?

6 A I know there was calls from the number that she advised
7 was Justin Wilson's. I can see how it's labeled. I think
8 it was labeled do not answer this call, and then there was a
9 couple other calls early in the morning from numbers that
10 she didn't have saved in her phone that we documented.

11 Q And, based on your conversations with her and your
12 investigation, you determined that she was not with
13 Mr. Wilson that night?

14 A Correct.

15 Q Now, Mr. Peper spent a good deal of time trying to
16 indicate like we didn't search or look at where the route
17 would of been back to where Montez Capers house, but we have
18 detectives actually walk that entire route, didn't we?

19 A I believe so, yes, sir, or patrol officers, a team.

20 Q In an attempt to find a hose spigot where he might have
21 cleaned off his arm?

22 A Yes, sir.

23 Q So, we had police officers walk that entire distance.
24 Isn't that correct?

25 A Yes, sir.

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 Q And I realize you're getting beat up over being here
2 cause you're the case agent, right, but you didn't interview
3 any witnesses, did you?

4 A No, sir.

5 Q I mean you came in the interview with Keith Evans some?

6 A Right, but---

7 Q You didn't---

8 A ---the witness---

9 Q ---conduct that interview either, did you?

10 A No, sir.

11 Q The witnesses on scene, you didn't interview them, did
12 you?

13 A No, sir.

14 Q And I believe those were people who showed up when they
15 saw the cars crash or at when -- they saw -- came, came upon
16 a car crash?

17 A Right. Yes, pretty much. And one of them saw like
18 people running, but that was it.

19 Q But they were interviewed?

20 A Yes, sir, they spoke to detectives at the scene, and
21 they got written statements from them.

22 Q And they, they have written statements from all of
23 them, right?

24 A Yes, sir.

25 Q Now, do you know where Quran Allen is today?

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 A No, sir.

2 Q Do you know if there's active warrants for him?

3 A I believe there's one issued because he didn't come
4 here.

5 Q Mr. Peper also asked you about narcotics.

6 Did y'all find narcotics in the case?

7 A Yes, sir, we did.

8 Q In which vehicle?

9 A Both vehicles.

10 SOLICITOR KIDD: Court's indulgence.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q And, and just to -- I want to try to clarify one thing
14 about what a case agent is. A case agent's kind of like a
15 supervisor.

16 Is that fair to say?

17 A I don't have the powers of a supervisor, but, yes, sir.

18 Q So, it's kind of like you get a lot of the, a lot of
19 the grief and a lot of the responsibility, but none of the
20 benefits I guess, right?

21 A Yes, sir.

22 Q But -- and but it also means though that, in, in a
23 larger part -- in a large respect, you're hands off?

24 A Yes, sir, kind of -- I would describe it like a
25 secretary kind of. Not demeaning anybody that's a

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 secretary. But I'm responsible for getting everything and
2 putting it together, and I would send my team out to do
3 stuff while I'm working on, for example, like cell phone
4 records. Like I would sit there and go through that while I
5 would have someone else on my team go do an interview. And
6 I am working on putting the whole case together for trial
7 basically.

8 Q And you also -- different detectives have different
9 strengths?

10 A Yes, sir.

11 Q Is that fair to say?

12 So, like, like -- I would agree with you, but y'all
13 like Detective Jellico to conduct interviews cause he's
14 pretty good at breaking people?

15 A Yes, sir, he's been doing it for 30 years.

16 Q Been doing it a long time?

17 A Yes, sir.

18 Q So, a lot of times you put Jellico in a room with a
19 suspect?

20 A Yes, sir.

21 Q And other, and other detectives have their strengths.
22 You know, Detective Benton's incredible at documentation.
23 So, he, you know, something that's document, you know,
24 intensive in that regard that needs a lot of attention to
25 detail, he's a, he's a good candidate for that.

Jennifer Butler - Cross-examination
by Solicitor Kidd

1 A Yes, sir.

2 Q So, in large part, as a supervisor, you could -- would
3 direct those people with those -- that skill-set to specific
4 tasks.

5 Is that fair to say?

6 A Yes, sir.

7 SOLICITOR KIDD: Okay. I don't have any further
8 questions.

9 THE COURT: Any redirect?

10 MR. PRICE: Very, very briefly if I may, Your Honor.

11 THE COURT: You may proceed.

12 MR. PRICE: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. PRICE:

15 Q Just real quickly, Detective Butler.

16 How many times have you testified in Court?

17 A In like this?

18 Q No, no, let's exclude prelims.

19 A Or---

20 Q Cause I know you've done a bunch of those.

21 A What, what about City Court?

22 Q No, ma'am, just---

23 A Just here?

24 Q Yes, ma'am.

25 A This is my first time. Well, I had one a month ago. I

Jennifer Butler - Redirect examination
by Mr. Price

1 think a month ago, give or take.

2 Q Did you testify in that one?

3 A Yes, sir.

4 Q Were you surprised that I called you as a witness?

5 A Yes, sir.

6 Q Were you shocked that I called you as a witness?

7 A I wouldn't say shocked. Just---

8 Q Surprised?

9 A ---surprised.

10 Q Okay. Just a couple more quick questions.

11 Do you know who Sergeant Andrew Coker is?

12 A Yes, sir.

13 Q And what was his role in y'all's investigative team?

14 A I, I don't know.

15 MR. PRICE: Okay. Can I show her just a document to
16 refresh her recollection?

17 THE COURT: Uh-huh. (Affirmative). You can if she
18 created the document.

19 MR. PRICE: No, it's in her -- it's out of her file,
20 but it's got his---

21 THE COURT: Is it in her file?

22 MR. PRICE: Oh, it came out of her file. I'll give it
23 to you.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

Jennifer Butler - Redirect examination
by Mr. Price

1 Q See if that document refreshes your recollection as to
2 what role Sergeant Coker would have played in your
3 investigation.

4 SOLICITOR KIDD: Judge, I would object to outside the
5 scope of cross.

6 MR. PRICE: Well, it was on my---

7 THE COURT: Don't talk to each other.

8 I'm gonna give him a little latitude although it is.

9 Ma'am, you may answer the question.

10 A This is a, a AFIS latent print department report.

11 Q Okay.

12 A I think I said that word wrong, but --.

13 Q So, just, just briefly explain what his role was.

14 A So, he would of run fingerprints from what that
15 document states.

16 Q Okay. And I'm not asking you what the document states.

17 I'm asking you, of your own independent knowledge, are
18 you familiar with the results of those tests?

19 A Without reading it off the paper, no, sir.

20 Q Okay. And do you know where Sergeant Coker is now?

21 A I believe he's retired.

22 Q And how long ago did he retire?

23 A I want to say two years. Well, one of them was -- so,
24 maybe a year ago.

25 Q Okay. So, I mean he's, he's no longer with the North

1 Charleston Police Department?

2 A No, sir.

3 MR. PRICE: Thank you very much, Your Honor.

4 THE COURT: Ma'am, you may step down.

5 Defense may proceed.

6 MR. PRICE: Your Honor, may we approach?

7 THE COURT: Uh-huh. (Affirmative).

8 (Whereupon, a bench conference was held out of the
9 hearing of the jury at this time.)

10 THE COURT: Madam Forelady, ladies and gentlemen, we're
11 gonna take advantage of this break in testimony to take our
12 evening recess.

13 Dallas, can you come here for a second and let me ask
14 you a quick question?

15 Bear with me.

16 (Pause.)

17 THE COURT: We're gonna take advantage of this break in
18 testimony to take our evening recess. However, before you
19 leave, if you could accommodate the deputy clerk and give
20 him your lunch order so that we can be prepared to take care
21 of that in the morning. We anticipate concluding testimony
22 as well as closing argument and instruction on tomorrow.

23 So, while you've not heard all of the evidence in this
24 case, I would ask, excuse me, that you make sure that you
25 not have any discussion about this case among yourselves or

1 with anyone else. Do not read, watch, or listen to any
2 media accounts about the case or do any independent research
3 on the Internet. When you return to the courthouse, please
4 don't have any contact with anyone you do not recognize to
5 be a fellow juror.

6 we'll resume in the morning at 9:30. If you would
7 leave your notepads on the bannister, we'll secure them
8 during the break. And if you'd go to the jury room, Dallas
9 will be in there with you to get your lunch orders.

10 We appreciate your patience. Have a great evening.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Now, other than Ms. Bar, are there gonna be
14 any additional witnesses from the defense?

15 MR. PEPER: In all fairness, Judge, we are trying our
16 best to communicate, locate, and make present Myles Lawson.

17 THE COURT: Who is that?

18 MR. PEPER: The four, the four eye witnesses, Judge,
19 that I was referring to.

20 THE COURT: Did you list any of them on the witness
21 list?

22 MR. PEPER: No, Your Honor, but we -- no. No, ma'am,
23 we did not. I mean --.

24 THE COURT: Do you plan to call Mr. Franklin?

25 That's the only witness you-all listed.

1 Do you plan to call him as a witness?

2 MR. PRICE: While he's discussing that, Your Honor,
3 my -- there is one client -- client. There is one witness
4 that is on the witness list who is under subpoena.

5 THE COURT: Who's that?

6 MR. PRICE: That's Marcus Greene.

7 THE COURT: Uh-huh, Number 19, uh-huh. (Affirmative).

8 MR. PRICE: Yes, sir, that I may or may not call.
9 We're having some scheduling issues.

10 THE COURT: Just make sure they're all here in the
11 morning at 9:30.

12 MR. PRICE: Yes, Your Honor.

13 MR. PEPPER: Your Honor, I think we've established an
14 alibi. I'm not gonna call my alibi witness.

15 THE COURT: Okay. Okay. So, will the State have any
16 rebuttal testimony?

17 SOLICITOR KIDD: Well, it's difficult for me to say
18 until I hear their final witness. As of---

19 THE COURT: You have some general idea based on
20 everything that we've heard other than these witnesses. You
21 have their statements.

22 SOLICITOR KIDD: I don't have any rebuttable to Ms.
23 Butler's testimony. If Ms. Bar testifies, I don't
24 anticipate having any rebuttable. However, if Mr. Marcus
25 Greene testified, I would anticipate having rebuttable.

1 THE COURT: Okay.

2 MR. PEPER: And, Judge, just to clarify, it doesn't
3 look like we're gonna have access to Mr. Lawson. You can
4 scratch him unless Mr. Price is able to locate him.

5 THE COURT: Okay.

6 MR. PEPER: And we've left repeated messages for
7 Alexander Holmes, the third, the fourth witness listed.

8 THE COURT: They were originally listed, Alexander
9 Holmes?

10 MR. PEPER: They were not, judge. We, we didn't -- I
11 mean it's Detective Butler's case.

12 THE COURT: I don't understand that.

13 MR. PEPER: Yeah.

14 THE COURT: What do mean?

15 MR. PEPER: They were not listed, Judge.

16 THE COURT: Yeah, they only have a duty to list who
17 they plan to call. If they don't plan to call these
18 witnesses, they don't have to list them.

19 MR. PEPER: Right.

20 THE COURT: Are there any other witnesses other than
21 what you've just told me about?

22 MR. PRICE: No. No, Your Honor.

23 THE COURT: Mr. Peper.

24 MR. PEPER: No, ma'am.

25 THE COURT: All right. Okay. In the interest of time,

1 we're going to a charge conference. I can't imagine that
2 anything else is going to develop that would change anything
3 about what I instruct at this point. Of course, I can
4 always add to the instruction, but I think it's better use
5 of our time.

6 And did you-all have any requests for instruction that
7 you wanted to submit to the Court?

8 SOLICITOR KIDD: My only request will be the hand of
9 one, hand of all charge, but I would be satisfied with your
10 standard charge in that I think I've heard it a few times.

11 THE COURT: Mr. Price.

12 MR. PRICE: Your Honor, having tried cases in front of
13 you before, your standard charges, you know, that you
14 typically give, we're, we're okay with. I don't have any
15 special charge. I think it's a pretty clear cut case. I
16 mean --.

17 THE COURT: Okay.

18 MR. PRICE: I would -- yeah. Yeah, I mean---

19 MR. PEPER: And I'm not prepared, Judge. I could have
20 it prepared.

21 THE COURT: I mean if you want to expend your energy, I
22 generally only use what I craft. I mean I --.

23 MR. PEPER: Right.

24 THE COURT: I'm just trying to save you the time.

25 MR. PEPER: Well, I'm trying to---

1 THE COURT: I like things that are pretty clear cut and
2 direct that are easy to understand. I mean it's -- I mean
3 there's nothing new under this. It's pretty
4 straightforward.

5 MR. PEPER: Right.

6 How do you feel about lesser includedes?

7 THE COURT: I mean if you request them, I don't know.

8 MR. PEPER: Right.

9 THE COURT: I don't know that there's any evidence to
10 support it, but, you know, I'll consider it.

11 MR. PRICE: I mean I think we would, we would ask---

12 THE COURT: It either happened or it didn't based on
13 the way this case is been presented.

14 MR. PEPER: Yeah, I know. Yeah. Well --.

15 THE COURT: I don't know if there's any in-between.
16 Nobody's conceded that they -- in order for any of the
17 lesser includedes to be considered, you would have to
18 concede that your client shot somebody.

19 MR. PEPER: Right. I mean it's either -- I mean we, we
20 know, yeah, but your standard charges are---

21 THE COURT: I mean I'll consider -- I mean I'm always
22 open, and this is the time to tell me so I can think about
23 it overnight. But we'll go over it and then I'll give you a
24 chance to tell me anything else you want after we go over
25 it.

1 MR. PEPER: Thank you, Judge.

2 THE COURT: You're welcome.

3 I'll give the jury a general instruction regarding
4 their responsibility and my responsibility, how they are to
5 judge witness credibility and believability. Give them a
6 general instruction on expert witness testimony. A general
7 instruction on direct and circumstantial evidence, which
8 includes the new language regarding the State's requirement
9 on circumstantial evidence when it's relied on to establish
10 an element of the offense.

11 I'll give a general instruction that the charge, the
12 arrest, and the indictment are not evidence as well as on
13 the presumption of innocence. Charge Victor versus Nebraska
14 on reasonable doubt as well as the failure of the defendants
15 to testify, which is basically what I told them during
16 advising them of their rights, that they have the right to
17 remain silent, that right can not be used against them, and
18 that they have no burden of proof in this case.

19 I'll then instruct them on the elements of murder,
20 which I think we all know what those are, and I will
21 instruct inferred malice because this is not a circumstance
22 where self-defense has been alleged, and, therefore, Belcher
23 would not be applicable.

24 I'll then instruct 16-3-29, which is attempted murder.
25 I think we all know the elements of that as well.

1 I'm debating instructing identification, which is the
2 state's burden to prove the identity of the individuals who
3 committed the offense. will also instruct hand of one,
4 which is accomplice liability.

5 I'll also give a general instruction regarding
6 punishment because there's been reference to the amount of
7 time a person can receive for these offenses, which the way
8 it was presented dealing with credibility as well as
9 possible prejudice in presenting testimony is appropriate.
10 However, jury can not consider punishment in terms of from a
11 emotional standpoint as to whether the State has met their
12 burden of proof, and I will instruct them that they can not
13 consider that in determining whether the State has met their
14 burden of proof in proving the elements of the offense.

15 I'll then instruct regarding multiple charges, which is
16 they're several indictments in this case, in this, each of
17 which have separate and distinct elements. All of which
18 must be proven separately and individually in order for the
19 defendants to either be acquitted or -- and that they can
20 each be acquitted or convicted on any or all of the
21 offenses. I'll then instruct on the form of the verdict.

22 Are there any exceptions to the charges proposed from
23 the State?

24 SOLICITOR KIDD: No, ma'am.

25 THE COURT: From the defense, Mr. Price?

1 MR. PRICE: No, ma'am.

2 THE COURT: From the defense, Mr. Peper?

3 MR. PEPPER: No exceptions, Your Honor. We, we
4 obviously with strenuously ask you to charge identification
5 and have to do---

6 THE COURT: I mean I don't have---

7 MR. PEPPER: ---research tonight or --?

8 THE COURT: No, I mean if y'all request it, and the
9 State doesn't have any opposition, I don't have any. I just
10 thought you have some ID witnesses. I don't know that it
11 fits the general criteria of ID. I usually instruct ID when
12 people have been identified either by a show-up or a lineup.

13 Generally, ID is a little less important when you have
14 folk that knew people, and they were all in close proximity,
15 and they identified him as the person that did it because
16 the instruction deals with lighting conditions and stuff
17 like that and whether you knew the person in the past. I
18 mean I don't see any harm or foul in instructing it.

19 MR. PEPPER: Thank you.

20 THE COURT: The State have any opposition to
21 instructing identity, to instructing identification?

22 SOLICITOR KIDD: Yes, Your Honor, I think it---

23 THE COURT: Tell me what the basis of that objection
24 is.

25 SOLICITOR KIDD: Well, it's just cause I think it

1 confuses the jury. We don't have any identification
2 procedures in this case whatsoever.

3 THE COURT: I don't think you have to, do you?

4 SOLICITOR KIDD: I mean all of our ID is based on years
5 of, of knowledge of who these individuals are. It's all
6 codefendant testimony. We don't have any source of
7 identification outside of the two cooperating codefendants
8 other than, you know, physical evidence.

9 THE COURT: Yeah, but what's the harm to you in
10 instructing it?

11 SOLICITOR KIDD: Cause I think it confuses the jury.

12 THE COURT: How would it confuse them?

13 SOLICITOR KIDD: Because I think it creates a situation
14 where they think about an identification procedure when both
15 witnesses testify.

16 THE COURT: I don't instruct about an identification
17 procedure. I just say you have to prove identity beyond a
18 reasonable doubt, just like every other element, which you
19 do.

20 SOLICITOR KIDD: Right. And the only identification
21 type testimony that I sought was really when Mr. Evans
22 identified them in Court. And if they think that is what
23 you are referring to, I think it might think that---

24 THE COURT: Well, you do---

25 SOLICITOR KIDD: ---that's the only issue.

1 THE COURT: You wouldn't have asked him to identify
2 them unless you wanted him to identify them as people who
3 committed this offense, and the people who he was talking
4 about, and the jury has to consider the weight of that
5 testimony, and you do have to prove identity beyond a
6 reasonable doubt or you wouldn't have asked him to identify
7 them.

8 SOLICITOR KIDD: I agree it's an element of my offense,
9 and I have to prove that they committed the offense. I just
10 think the charge, as I recall it, is not crafted for that
11 purpose. I believe it's more crafted for as you've
12 communicated when it's a police proceeding.

13 THE COURT: No, it's not. It doesn't even make
14 reference to that.

15 SOLICITOR KIDD: What -- and can I take a look at
16 your---

17 THE COURT: It just simply says that an issue in this
18 case is the -- well, I usually leave that part of it out.
19 The State has the burden of proving identity beyond a
20 reasonable doubt. You must be satisfied, beyond a
21 reasonable doubt, of the accuracy of the identification of
22 the defendant or defendants before you may convict them.

23 Identification testimony is an expression or belief of
24 impression by a witness. You must determine the accuracy of
25 the identification. You must consider the believability of

1 each identification witness in the same way as any other
2 witness.

3 You may consider whether the witness had an adequate
4 opportunity to observe the offender at the time of the
5 offense. This will be affected by things like how long or
6 short a time was available or how far or close the witness
7 was, the lighting conditions, and whether the witness had a
8 chance to see or know the person or persons in the past.

9 Once again, I instruct you the burden of proof on the
10 State extends to every element of the crime charged, and
11 this includes the burden of proving, beyond a reasonable
12 doubt, the identity of the defendant or defendants as the
13 people, the people or persons who committed the crime. If,
14 after examining this testimony, you have a reasonable doubt
15 as to the accuracy of the identification, you must find the
16 defendant or defendants not guilty.

17 SOLICITOR KIDD: And, specifically, as it refers to
18 accuracy and lighting and the length of time, I think
19 those -- that charge is, is crafted for the show-up or for
20 the, you know, witness who viewed or didn't know exactly who
21 a witness was and had to pick them out of some situation.

22 THE COURT: If that were the case, y'all wouldn't do
23 lineups with people who know people.

24 SOLICITOR KIDD: We don't.

25 THE COURT: You wouldn't -- yeah, you do. You do it

1 all the time.

2 SOLICITOR KIDD: Well, it depends on their breadth of
3 knowledge.

4 THE COURT: No, I've had---

5 SOLICITOR KIDD: Like, in this case, we didn't do it
6 because---

7 THE COURT: You didn't, but I mean to say that would be
8 inaccurate. I've had it too many times where people knew
9 each other very well and y'all did show-ups and lineups.
10 So, that's not --.

11 SOLICITOR KIDD: Well, often---

12 THE COURT: -- that unheard of.

13 SOLICITOR KIDD: I think the, the standard policy that,
14 not that it matters, but would be---

15 THE COURT: I think it depends on the officer.

16 SOLICITOR KIDD: I would agree. It changes.

17 THE COURT: Uh-huh. (Affirmative).

18 SOLICITOR KIDD: But I think the point is that it
19 wasn't done in this case, which makes, in my opinion, the
20 charge misleading.

21 THE COURT: I'll think about it overnight.

22 Any other exceptions to the charge from the State?

23 SOLICITOR KIDD: No, ma'am.

24 THE COURT: The defense, Mr. Price?

25 MR. PRICE: No, ma'am.

1 THE COURT: Mr. Peper.

2 MR. PEPER: No, ma'am.

3 THE COURT: Okay. Anything else we need -- is there
4 gonna be any request for any lesser included instructions?

5 MR. PRICE: No, ma'am.

6 THE COURT: We'll have verdict forms.

7 Mr. Peper?

8 MR. PEPER: No, ma'am.

9 THE COURT: Okay. We'll have verdict forms available
10 for you-all to review in the morning.

11 Is there anything else we need to address before we
12 adjourn for the evening, from the State?

13 SOLICITOR KIDD: No, Your Honor.

14 THE COURT: From the defense?

15 From the defense?

16 MR. PRICE: Well, Your Honor, we're discussing -- we
17 agree with you, obviously, that our clients should have
18 confess -- admit that they actually shot someone for the
19 lesser included offense of voluntary or involuntary.

20 But would you be willing to consider ABHAN?

21 THE COURT: No.

22 MR. PRICE: Okay.

23 SOLICITOR KIDD: They either killed somebody or they
24 didn't. There's a death in this case. It might be ABHAN on
25 the attempted murder, but not on the murder. ABHAN is not a

1 lesser included of murder.

2 MR. PRICE: What about as to the attempted murder?

3 THE COURT: Let me look at my chart right quick, and I
4 can tell you whether case law says that's an acceptable
5 lesser included offense.

6 (Pause.)

7 THE COURT: The lesser included of attempted murder are
8 ABHAN, A&B first, A&B second, and A -- potentially A&B
9 third, which would be a simple assault, but I wouldn't think
10 that that is supported by these facts. I need to look at
11 the statute. I'm not certain A&B second would be -- well,
12 it could conceivably be based on the nature of the injuries.
13 I have to look at the -- I have to look at 16-3-600 cause I
14 can't remember exactly how it says it.

15 MR. PRICE: Thank you very much.

16 THE COURT: All right. Does the State have any
17 exception to the request for lesser included instructions on
18 attempted murder?

19 SOLICITOR KIDD: Yes, Your Honor.

20 THE COURT: And what would be the basis of the
21 exception?

22 SOLICITOR KIDD: Judge, I think, under the
23 circumstances and the evidence in this case in which you
24 have such an egregious act of unloading an assault rifle
25 into a vehicle, I don't, I don't think there can be any

1 conclusion other than the intent was to kill the individuals
2 inside. And there hadn't been any evidence to the contrary.
3 I think this is not -- what is it, this is a who done it,
4 and, as such, I think it should remain attempted murder.

5 I think, specifically, attempted murder requires malice
6 where ABHAN, I think, requires -- I need to look back at the
7 Omnibus Statute, but I believe the ABHAN requires great
8 bodily injury, and I think A&B first requires either the
9 threat of or moderate bodily injury, but I just don't think
10 there's any, any evidence that would support that a, that a
11 jury could rationally conclude that anything but a specific
12 intent to kill was -- could be inferred from the action
13 taken.

14 THE COURT: Well, an A&B first provides, under
15 Subsection C(1)(a), a person commits the offense of assault
16 and battery in the first degree if a person unlawfully
17 injures another person, and the -- and (A)(1) and
18 Subsection i and double ii are inapplicable. Subsection B,
19 however, is conceivably applicable because it says offers or
20 attempts to injure another person with the presentability to
21 do, and the act is accomplished by means likely to produce
22 death or great bodily injury or occurred -- well, the other
23 part doesn't -- it is inapplicable because it deals with
24 commission of a robbery, burglary, kidnapping, or theft and
25 then let's see.

1 Assault and battery in the first degree is a lesser
2 included -- well, that doesn't apply here. Well, yeah, it
3 is. It says assault and battery in the first degree is a
4 lesser included offense of assault and battery of a high and
5 aggravated nature and attempted murder as defined by
6 16-3-29.

7 Let's see. Second degree, moderate bodily injury, and
8 it is a lesser included of attempted murder pursuant to the
9 statute, and it is likewise a lesser included of attempted
10 murder pursuant to the statute. But the problem or the rub,
11 I think problem's too strong a word, is there really was not
12 any testimony in any great degree regarding Mr.---

13 MR. PEPER: Capers.

14 THE COURT: Capers -- no. No, the gentleman whose
15 pictures were taken in the hospital by the crime scene tech
16 whose name I can't remember right now.

17 SOLICITOR KIDD: Mr. Allen.

18 MR. PEPER: Quran Allen. I'm sorry.

19 THE COURT: Yeah, there wasn't any real specificity
20 about what his injuries were. The other gentleman, the EMT
21 testified about multiple gunshot wounds. I don't know.
22 I'll think about it over the evening to see if the facts
23 support lesser included instructions.

24 All right. Is there anything else we need to talk
25 about?

1 MR. PRICE: No, ma'am.

2 MR. PEPER: No, Your Honor. Thank you.

3 SOLICITOR KIDD: No, ma'am.

4 THE COURT: All right. Have a good evening. See y'all
5 in the morning. 9:30.

6 THE COURT: Please make sure the court reporter has all
7 the exhibits.

8

9 (WHEREUPON, Court was in recess for the evening.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Friday, June 23rd, 2017

2

3 THE COURT: Did we finally get the defendants?

4 SOLICITOR KIDD: Ma'am?

5 THE COURT: Did the defendants ever arrive?

6 SOLICITOR KIDD: Yes, ma'am.

7 (Pause.)

8 THE COURT: Were you-all able to locate Ms. Bar?

9 MR. PEPER: We were and I spoke with her at length last
10 night, and haven't heard from her since or seen her since,
11 Judge.

12 THE COURT: So, you don't plan to call her as a
13 witness?

14 MR. PEPER: Unfortunately, do not.

15 MR. PRICE: So, obviously, Your Honor, I'm just gonna
16 rest.

17 THE COURT: Let me take it one at a time.

18 MR. PRICE: Yes, ma'am.

19 THE COURT: Thank you.

20 (Pause.)

21 THE COURT: And who were the other witnesses you-all
22 were trying to locate and were not able to -- who were the
23 other witnesses you told me you were gonna call?

24 MR. PEPER: Your Honor, Mr. Wilson was, on his behalf,
25 we were trying to locate Myles Lawson. We were unable to do

1 so as well as Alexandria -- one second, Your Honor.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. PEPER: Alexandria Holmes, Judge.

4 THE COURT: I had her marked as Greene.

5 MR. PEPER: And you marked -- no, that wouldn't be.

6 No, ma'am.

7 THE COURT: I had Alexander Holmes.

8 MR. PEPER: Alexandria Holmes and Maleke Bar.

9 THE COURT: And you've made unsuccessful attempts to
10 locate them and secure their appearance today, correct?

11 MR. PEPER: Numerous, yes, ma'am, all unsuccessful for
12 those three.

13 THE COURT: Well, that would be four, wouldn't it?

14 MR. PEPER: Well, it---

15 THE COURT: Ms. Bar, Mr. Lawson -- well, you talked to
16 Ms. Bar.

17 MR. PEPER: Right.

18 THE COURT: But she didn't show up. So, the alternate
19 result was that it was unsuccessful.

20 MR. PEPER: That's correct.

21 THE COURT: And then Mr. Lawson, Ms. Holmes, and
22 Mr. Moore.

23 Is that correct?

24 MR. PEPER: Yes, ma'am. Oh, I---

25 THE COURT: Huh?

1 MR. PEPER: The third one is Mrs. Holmes, Alexandria.

2 THE COURT: Well, I had Monique Bar.

3 MR. PEPER: Right.

4 THE COURT: Myles Lawson.

5 MR. PEPER: Yes, ma'am.

6 THE COURT: Alexandria Holmes.

7 MR. PEPER: Yes, ma'am.

8 THE COURT: And Maleke Moore.

9 MR. PEPER: Yes, ma'am, thank you.

10 THE COURT: You're welcome.

11 Now, who was going to try to contact Marcus Greene?

12 MR. PRICE: I was, Your Honor.

13 THE COURT: That was your --?

14 MR. PRICE: That was mine, yes, Your Honor.

15 THE COURT: Were you able to locate him?

16 MR. PRICE: No, ma'am, he's under our subpoena, but

17 I -- for whatever that's worth. We know where he is. I

18 just -- did they ask you to help locate him?

19 MR. PRICE: I did not. I don't -- it's not an issue of
20 location.

21 THE COURT: Oh, I got you.

22 Okay. So, based on that, Mr. Price, I assume you're
23 ready to rest?

24 MR. PRICE: Yes, ma'am.

25 THE COURT: And, based on that, I assume you're ready

1 to rest likewise, Mr. Peper?

2 MR. PEPER: I am, Your Honor, because, after consulting
3 with my client, we've made a strategic decision not to call
4 our alibi witness. So, yes, ma'am, we, we do not plan on
5 offering any evidence --

6 THE COURT: Okay.

7 MR. PEPER: -- or testimony.

8 THE COURT: And does the State have any rebuttal
9 witnesses?

10 SOLICITOR KIDD: No, ma'am.

11 THE COURT: And I assume then that the State would open
12 in full, Mr. Price would then argue, the State would argue,
13 and then Mr. Peper would have last argument.

14 Is that accurate?

15 MR. PEPER: Yes, ma'am.

16 SOLICITOR KIDD: That's not how I understand it, but
17 --.

18 THE COURT: He didn't present any witnesses. He gets
19 last argument. He doesn't have a joint defense with
20 Mr. Price. Their interests are adverse.

21 SOLICITOR KIDD: I understand that and, you know, I, I
22 know that new -- this is all relatively new under the Beatty
23 case.

24 THE COURT: I don't think you have---

25 SOLICITOR KIDD: It's just my understanding that if

1 either of them puts forth evidence it's forecloses---

2 THE COURT: You find me a case.

3 SOLICITOR KIDD: ---the last argument.

4 THE COURT: You find me a case that says that, unless
5 they are joint defendants with a joint defense, they don't.
6 Their position is their interest are adverse. Your position
7 is that their interest is the same. Your -- what your
8 position is not dispositive. It's what they perceive.

9 SOLICITOR KIDD: Then, under that theory, Your Honor, I
10 still then would believe that I would, at least, get
11 rebuttal to---

12 THE COURT: You do.

13 SOLICITOR KIDD: ---Mr. Price's.

14 THE COURT: You do. I said you, Mr. Price, and you,
15 and then Mr. Peper.

16 SOLICITOR KIDD: Okay.

17 THE COURT: So, you get last argument with Mr. Price.
18 Mr. Peper gets last argument as to you.

19 SOLICITOR KIDD: Understood.

20 THE COURT: That's what happens when you try people
21 jointly. I, I -- they're not an indivisible entity cause,
22 at anytime, one of them could of decided to testify against
23 the other. They're adverse. Their interests are adverse
24 although you're arguing that they're accomplices. You have
25 the burden of proving that they were in some joint

1 enterprise to accomplish this crime.

2 Okay. After some thought over the evening recess -- I
3 guess I need some clarity. I'm going to charge
4 identification because I think you have four individuals in
5 the car, and, even though the State is arguing accomplice,
6 accomplice liability, they still have the burden of proving
7 the identity of the individuals who either one or multiple
8 who carried out this incident. And there's been some
9 evidence deduced, during cross, that maybe there's another
10 individual in the car who was never pursued and could
11 potentially, I guess, have been involved in this likewise.

12 Now, I need to be clear as to what lesser included
13 offenses the State -- I mean the defense is requesting.

14 MR. PEPER: Thank you, Your Honor.

15 May it please the Court?

16 THE COURT: Yes, sir.

17 MR. PEPER: Mark Peper on behalf of Justin Wilson.

18 Your Honor, as I read the statute, 16-3-600, you're
19 (sic) asking you to charge the lesser included of attempted
20 murder of AB first, AB second.

21 THE COURT: I need you to slow down for me.

22 MR. PEPER: Yes, ma'am.

23 THE COURT: Assault and battery fist?

24 MR. PEPER: Yes, ma'am.

25 THE COURT: Uh-huh. (Affirmative).

1 I'm listening.

2 MR. PEPER: Second.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. PEPER: And third.

5 THE COURT: Tell me what supports an A&B third.

6 MR. PEPER: Yes, ma'am, A&B third, as you're aware, is
7 if---

8 THE COURT: It's simple assault.

9 MR. PEPER: Yes, ma'am, and, and the statute says---

10 THE COURT: I know what it says, but, factually, there
11 has to be some, some support in the record to instruct that.
12 The way I was part of -- when I -- I'm well aware of when
13 omnibus reconciliation took place, and the Legislature's
14 intention was to remove the vague common law principles that
15 related to lesser included offenses.

16 So, they specifically articulated, within the statute,
17 what is considered a lesser included offense. And it is a
18 lesser included offense, but you got to have some facts to
19 support it. Just because it's deemed a lesser included
20 offense doesn't mean you automatically get it. There has to
21 be some factual support in the record to give an
22 instruction.

23 So, I'm trying to figure out what facts are there that
24 have been produced that would support an assault cause an
25 assault and battery is like you just shoving somebody.

1 That's not when you have a gun involved, and the testimony,
2 at this point, is that there were significant injuries such
3 that it required people to go to the hospital and receive
4 treatment.

5 MR. PEPER: Well, I agree with that, but I would argue,
6 Judge, the plain meaning of the statute simply says a person
7 unlawfully injures another person. I think the testimony
8 has showed that the occupants were injured, and it says
9 that, you know, if somebody unlawfully injures a person,
10 then that's assault and battery third.

11 THE COURT: Okay. And what I -- and that's the extent
12 of what you're requesting on the lesser -- I would assume
13 that's on the assault.

14 MR. PEPER: That's only on third, yes, ma'am.

15 THE COURT: On the attempt.

16 MR. PEPER: On the -- all under attempt, right, yes,
17 ma'am.

18 THE COURT: Okay.

19 MR. PEPER: Yeah.

20 THE COURT: Would you, likewise, be requesting the same
21 thing, Mr. Price?

22 MR. PRICE: Yes, Your Honor.

23 THE COURT: And I assume your reasoning is the same?

24 MR. PRICE: Yes, Your Honor.

25 THE COURT: All right. What's the State's position?

1 SOLICITOR KIDD: Our first position would be that I
2 didn't hear them address ABHAN. So, they almost sounded
3 like they only were requesting---

4 THE COURT: They didn't request ABHAN. They said
5 assault and battery first, second, and third.

6 MR. PEPER: Well---

7 SOLICITOR KIDD: I don't, I don't think you get down to
8 those without an ABHAN in there in the first place.

9 THE COURT: Do you?

10 I don't think the statute says that.

11 MR. PRICE: I thought we---

12 MR. PEPER: I think the Omnibus got rid of ABHAN that
13 way.

14 THE COURT: No, actually, under Omnibus, ABHAN still
15 exists. It's been codified.

16 MR. PRICE: I thought we asked for it yesterday.

17 THE COURT: Huh?

18 MR. PRICE: I thought we discussed ABHAN yesterday and
19 that was still -- we, we were just trying to -- I haven't --
20 I know we asked for it.

21 THE COURT: I looked back at the statute, and 16-3 --
22 after June 2nd of 2010, 16-3-600(b) includes, let's see
23 here, assault and battery of a high and aggravated nature.

24 MR. PEPER: Yes, ma'am, you---

25 THE COURT: And then (c), which is first degree, and

1 (d), which is second degree, and I assume (e) is simple
2 assault, which is first -- third degree.

3 MR. PEPER: Yes, ma'am.

4 THE COURT: Now, are you saying you have no objection
5 to charging ABHAN, Mr. Kidd?

6 SOLICITOR KIDD: No, ma'am, I am saying that I do have
7 an objection to charging ABHAN.

8 THE COURT: Uh-huh. (Affirmative).

9 Are you-all requesting ABHAN?

10 MR. PRICE: Yes, ma'am, we -- I'm, I'm sorry. I
11 thought that was still -- we had requested it yesterday and
12 I think---

13 THE COURT: I think yesterday everybody was so tired
14 nothing was really said and that's why---

15 MR. PRICE: I thought he was just clarifying the fact
16 that we didn't ask for it.

17 THE COURT: Yeah, that's why I'm asking now.

18 MR. PRICE: Yes, ma'am.

19 THE COURT: Cause I needed clarity once I went
20 downstairs and started looking at it.

21 MR. PRICE: I would agree. Everybody was kind of
22 spent. But, yes, ma'am, we are definitely asking for---

23 THE COURT: As well as weary.

24 MR. PRICE: ---for ABHAN, first degree, second degree,
25 and now we are asking to include third degree.

1 THE COURT: Okay.

2 MR. PRICE: Okay.

3 THE COURT: All right. Yes, sir.

4 SOLICITOR KIDD: I would first object to ABHAN, but I
5 would understand the Court charging it in, in my -- in all
6 due respect to my duties to be candid with the Court. It
7 makes logical sense, and, to be honest, so does assault and
8 battery in the first degree---

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR KIDD: ---because it includes specific
11 language that when acts are likely to cause death or great
12 bodily injury.

13 THE COURT: Uh-huh. (Affirmative).

14 SOLICITOR KIDD: I do not believe anything below
15 assault and battery in the first degree, there's any
16 evidence on the record to support those charges. I think---

17 THE COURT: Doesn't assault and battery in the second
18 degree -- well, let's see. First degree says, and I'll pull
19 it -- my computer's just not cooperating with me today.

20 SOLICITOR KIDD: So, first, first degree---

21 THE COURT: First degree is great bodily injury, and
22 they define great bodily injury to mean which causes a
23 substantial risk of death or which causes serious permanent
24 disfigurement or protracted loss or impairment of the
25 function of a bodily member or organ, which I think clearly

1 we have that.

2 Second degree involves, let's see, moderate bodily
3 injury to another person or results -- or moderate bodily
4 injury to another, to another person could of resulted. And
5 moderate bodily injury means physical injury requiring
6 treatment to an organ system of the body other than the
7 skin, muscles, and connective tissues of the body except
8 when there is penetration of the skin, muscles, and
9 connective tissues that require surgical repair of a complex
10 nature or when treatment of the injuries requires the use of
11 regional or general anesthesia, and I think certainly the
12 gentlemen who had the multiple shots in his leg fit that
13 criteria.

14 Now, the picture of the other guy, I'm really not sure
15 what -- I don't know whether there's a grazing injury. I
16 don't know what he had cause there wasn't any testimony
17 about it. It's just a picture.

18 The fact that he was in the hospital, I guess you could
19 surmise that it was life threatening to some degree or he
20 wouldn't have been at the hospital. But then he also
21 testified his parents had to take him to the hospital if I'm
22 not getting my folk confused, which is possible.

23 MR. PEPPER: That's correct, and---

24 THE COURT: So, clearly he needed medical treatment.
25 Now, nobody asked him the extent of his medical treatment,

1 but the fact that you have to go to a hospital and they give
2 you treatment --

3 MR. PEPER: Well, I would---

4 THE COURT: -- is problematic. I mean I think it's a
5 weight issue for you to argue whether, you know, there was
6 any deficits in the evidence.

7 MR. PEPER: Well, I specifically---

8 THE COURT: And then assault and battery third degree
9 simply is just an assault and battery, which when somebody
10 injures another person or offers or attempts to injure
11 another person with the presentability to do so.

12 SOLICITOR KIDD: So, so, my distinction is this. It's
13 the offer or attempt to injure another with the
14 presentability to do so that implies to the second and
15 third. Distinguished from the first degree, which is with,
16 which can cause death or great bodily injury.

17 THE COURT: But the problem you have is that the
18 statute says all three of them are lesser includedes of
19 attempt to commit murder.

20 SOLICITOR KIDD: They, they all can be lesser
21 includedes.

22 THE COURT: Yeah. Uh-huh. (Affirmative).

23 SOLICITOR KIDD: They're not automatic lesser
24 includedes.

25 THE COURT: I agree.

1 SOLICITOR KIDD: There has to be evidence on the record
2 to support it. And when you distinguish between first,
3 second, and third, and first specifically includes the risk
4 of death or great bodily injury, I think it stops there
5 because second and third -- I, I don't think anyone could
6 conclude that riddling a car with an assault rifle is not
7 causing the risk of death or great bodily injury.

8 THE COURT: Tell me how you're prejudiced by my
9 instructing it if I accept the facts as you argue them. You
10 should then be able to convince a jury that they don't
11 apply.

12 So, how are you prejudiced?

13 SOLICITOR KIDD: Well, absolutely. I think I can
14 convince a jury, even if you do charge it, but that doesn't
15 mean we need to throw out all these charges to the jury to
16 mull over and consider. I think we should charge the ones
17 that are supported by the facts and evidence, which, in my
18 opinion, is the, is the attempted murder, the assault and
19 battery of a high and aggravated nature, and two -- and I
20 will concede that it would, arguably, be appropriate to
21 charge assault and battery in the first degree as well, but
22 I, I---

23 THE COURT: Why not assault and battery second where we
24 talk about the treatment of connective tissues cause that's
25 what they---

1 SOLICITOR KIDD: Because I think it specifically is
2 distinguished from assault and battery first when it talks
3 about offering or -- attempting or offering to injure with
4 the -- with acts that cause -- could cause death or great
5 bodily injury, and I don't think we can go below that
6 because I don't think anyone arguably---

7 THE COURT: Assault and battery second says a person
8 commits the offense of assault and battery in the second
9 degree if the person unlawfully injures another person or
10 attempts -- or offers or attempts to injure another person
11 with the presentability to do so, and either moderate bodily
12 injury to another person results or moderate bodily,
13 moderate bodily injury to another person could of resulted.
14 And then the rest of that is basically -- deals with
15 nonconsensual touching, which is not applicable here.

16 But it defines moderate bodily injury means physical
17 injury requiring the treatment to an organ system of the
18 body other than the skin, muscles, and connective tissues of
19 the body except when there's penetration of the skin,
20 muscles, and connective tissues that require surgical repair
21 of a complex nature, or when treatment of the injuries
22 requires the use of regional or general anesthesia. And I
23 don't think you can argue the bullet wound would not require
24 that because it would. It would require general anesthesia.
25 Nobody's gonna poke around in your body without some general

1 anesthesia when a bullet wound is involved. That would be
2 excruciating.

3 SOLICITOR KIDD: And that's, that's not -- that's not
4 my point. My only point is that the facts in evidence are
5 that we have riddled a car with an assault rifle, and that
6 no one -- there's no evidence or no one can conclude that
7 that is not the risk of death or great bodily injury, and
8 that's where assault and battery first comes in. And that
9 there's no evidence that anything less than that happened.

10 And so we shouldn't charge anything less than that. I
11 mean that's -- it's, it's, it's bare as I can boil it down
12 to.

13 THE COURT: Anything further from the defense?

14 MR. PEPER: Your Honor, with respect to A&B third, I, I
15 think the Court proved my point in discussing I believe it
16 was Montez Capers that -- the gentleman who showed up with
17 his parents that just had kind of a graze.

18 THE COURT: I don't know. There was no testimony about
19 that. He says he went to the hospital and, apparently---

20 MR. PEPER: Right.

21 THE COURT: ---he had a gunshot wound sufficient for
22 the authorities to have reported it, and I don't know what
23 treatment he got because nobody asked him. But when you go
24 to a hospital, and the hospitals are always thinking about
25 money and who's going to pay, they're not gonna render

1 treatment unless it's significant, and unless you can sue
2 them because you might go home and die.

3 MR. PEPER: My position, Judge, is that you're right.
4 There has been no testimony as to whether he was injured
5 or---

6 THE COURT: But they can---

7 MR. PEPER: ---sought treatment. Therefore---

8 THE COURT: They can argue that he had to go to a
9 hospital and that that's life threatening. Most people only
10 go to the hospital when they think I might die. Otherwise,
11 they gonna stay home and try to doctor it themselves, which
12 is not prudent, but they do it anyway.

13 MR. PEPER: You're right, but I would argue that others
14 go there for mental reasons. Nervous. They just -- they're
15 not---

16 THE COURT: But that's not -- there's no evidence in
17 the record---

18 MR. PEPER: Bullets just went by me. And so I'm
19 reporting---

20 THE COURT: No, you wouldn't go. No. No. Not these
21 folk. Not when they know they gonna have to report it to
22 the police. No. I don't -- that's not logical.

23 MR. PEPER: Thank you, Your Honor.

24 THE COURT: You welcome.

25 I'm going to instruct -- it appears that the State has

1 no exception to and would concede that facts would support
2 the instruction of ABHAN and assault and battery in the
3 first degree, and I will instruct those.

4 I, I debated, probably far longer last night than I
5 should have, but nonetheless I did, assault and battery in
6 the second degree, as well as assault and battery in the
7 third degree, and I just think, out of an abundance of
8 caution, I'm going to instruct them. And if the State's
9 theory holds out, then, you know, it's no harm, no foul.

10 We'll prepare the verdict forms and I will give you the
11 opportunity to review them shortly cause we need to print
12 them, and they will be -- I don't think they'll be that
13 long, but they certainly probably would be a couple of pages
14 on each of those attempts because of the lesser included
15 offenses.

16 Now, is there anything else the Court needs to consider
17 in terms of instructions before we proceed with bringing in
18 the jury and the allowing you-all to rest in their presence
19 and begin closing argument?

20 From the State?

21 SOLICITOR KIDD: No, ma'am.

22 THE COURT: From the defense?

23 MR. PRICE: No, ma'am.

24 THE COURT: And, Mr. Peper, anything further?

25 MR. PEPPER: No, Your Honor.

1 THE COURT: Now, I need to ask a question.

2 Mr. Kidd, how long do you think your closing argument
3 will be?

4 SOLICITOR KIDD: Roughly an hour.

5 THE COURT: For both or are you saying---

6 SOLICITOR KIDD: Well---

7 THE COURT: ---combined or are you saying---

8 SOLICITOR KIDD: Well, when I open in -- when I close
9 in full, it will be roughly an hour. Rebuttable is largely
10 dependent on what Mr. Price puts up.

11 THE COURT: Just give me an estimate. I'm trying to---

12 SOLICITOR KIDD: Ten minutes.

13 THE COURT: ---estimate it for lunch.

14 SOLICITOR KIDD: I can't imagine rebuttal being long.

15 THE COURT: Okay. Mr. Price, how long is your argument
16 gonna be?

17 MR. PRICE: Thirty minutes max.

18 THE COURT: And Mr. Peper?

19 MR. PEPER: I would estimate an hour, Judge. I, I
20 tried not to keep staying for any longer than an hour
21 certainly. It's just a lot of stuff.

22 THE COURT: well, you know, if I listen to what people
23 who specialize in this say, they say that, when you're
24 speaking, if you don't capture and close your audience in
25 ten minutes, you've lost them.

1 MR. PEPER: I know.

2 THE COURT: Cause they're not listening anymore.

3 MR. PEPER: I know.

4 THE COURT: which would probably support why they don't
5 listen in voir dire, but --.

6 MR. PEPER: Right.

7 THE COURT: You know, after about what, how long?

8 By the time we do voir dire, they've been listening to
9 us over an hour.

10 what I'm going to plan for is have lunch here by, let's
11 see, that's two hours, thirty, forty minutes. Let's shoot
12 for 12:30 cause my instructions are gonna probably be right
13 at about 30 minutes, give or take, and I'll, you know, I'll
14 gauge the jury in terms of taking breaks.

15 Now, are y'all gonna need any technology?

16 Have you tested it out?

17 Have you used it and you're clear?

18 Everything works?

19 SOLICITOR KIDD: Yes, ma'am.

20 THE COURT: All right. Do y'all need to take a
21 restroom break cause -- before we begin this process?

22 (WHEREUPON, no audible response was given.)

23 THE COURT: Everybody's good?

24 (WHEREUPON, no audible response was given.)

25 SOLICITOR KIDD: Works for me.

1 Do you have all the exhibits?

2 THE COURT REPORTER: I do. Everything's out that's in
3 evidence right there.

4 THE COURT: Perfect. Thank you, ma'am.

5 THE COURT REPORTER: You welcome.

6 THE COURT: Do y'all need to see the verdicts forms
7 before y'all argue?

8 MR. PEPER: That was one question, Judge.

9 THE COURT: I need to print them. So --.

10 MR. PEPER: Yes, ma'am.

11 THE COURT: Tell them not to bring the jury in.
12 Yes, sir.

13 MR. PEPER: I'd like to publish the, the verdict forms
14 to the jury---

15 THE COURT: I'm gonna publish.

16 MR. PEPER: ---in my closing.

17 THE COURT: well, you can explain them, but you're
18 running a risk of me doing something different.

19 MR. PEPER: well, just -- I'd like to show them their
20 options.

21 THE COURT: No, you're not. No, I'm gonna do that.

22 MR. PEPER: Thank you, Your Honor.

23 THE COURT: well, I'm gonna explain it to them and
24 they'll have it in the jury room. Now, if you want to say
25 you have these options, and these are what are called lesser

1 included offenses, you can do that, but---

2 MR. PEPER: You think I'll be able to view those prior?

3 THE COURT: Yeah, I'm gonna let y'all see them just as
4 soon as I look at it so I can --.

5 MR. PEPER: Thank you.

6 THE COURT: Give me one second please.

7 SOLICITOR KIDD: Yes, ma'am.

8 (Pause.)

9 THE COURT: You know, what else I'm thinking?

10 well, no, they'll have the indictments or I could put,
11 put the victim's names on each indictment. It might make it
12 even -- but I won't staple the verdict forms to the
13 indictments. I guess that's really not necessary cause
14 they'll have the indictments, and they'll have each persons
15 name on it.

16 So, I'll, I'll scrap that. I don't think that's
17 necessary.

18 MR. PEPER: Yeah, I see what you're saying though.
19 They got four.

20 THE COURT: But I want -- the indictments go back
21 there. So, they'll know.

22 (Pause.)

23 THE COURT: You-all can approach and look at this on
24 the computer because we're gonna have to -- oh, that's all.
25 The murder is cut and dry. It just says guilty or not

1 guilty.

2 You want to look at the verdict form?

3 SOLICITOR KIDD: Yeah, I'll just look at it.

4 (Pause.)

5 THE COURT: All right.

6 (WHEREUPON, a bench conference was held at this time.)

7 THE COURT: Each one of the attempted murders is gonna
8 say the same thing for each defendant.

9 Any exception?

10 MR. PEPER: No, ma'am, they're all---

11 SOLICITOR KIDD: No, ma'am.

12 MR. PEPER: ---gonna look like that, right?

13 THE COURT: Yeah, they're all gonna look like that,
14 and, the other one, murder, is just simply guilty of murder
15 or not guilty.

16 MR. PEPER: Thank you.

17 THE COURT: All right. Do you have all the evidence?

18 THE COURT REPORTER: Everything's right there.

19 THE COURT: And you-all -- are y'all -- oh, I gave Mr.
20 Price time to go to the restroom. As soon as he gets back
21 we'll start.

22 (Pause.)

23 THE COURT: All right. State ready to proceed?

24 SOLICITOR KIDD: Yes, ma'am.

25 THE COURT: Defense ready to proceed?

1 MR. PRICE: Yes, Your Honor.

2 THE COURT: All right. Mr. Peper, are you ready?

3 MR. PEPER: Yes, ma'am.

4 THE COURT: Please bring in the jury, and then I'm
5 gonna allow you-all to rest in the presence of the jury, and
6 we'll reserve motions.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE BAILIFF: All the jurors are present, Your Honor.

10 THE COURT: Thank you.

11 Good morning.

12 (WHEREUPON, the jurors respond good morning.)

13 THE COURT: Oh, that was slow. You may be seated.

14 I know it's Friday and it's been a long week, and we
15 appreciate y'all being so patient with us.

16 I hope y'all had a restful evening. Now, we're, we're
17 -- now we will proceed with the remainder of the trial.

18 Mr. Price, you may proceed.

19 MR. PRICE: Thank you, Your Honor.

20 At this time the defense rests.

21 THE COURT: Mr. Peper, you may proceed.

22 MR. PEPER: Thank you, Your Honor.

23 May it please the Court, Judge, we have no case in
24 chief.

25 THE COURT: So, do you rest?

1 MR. PEPPER: We also rest. Thank you, Judge.

2 THE COURT: You're welcome.

3 And is there any rebuttal from the State?

4 SOLICITOR KIDD: No, ma'am.

5 THE COURT: And we'll reserve motions.

6 Madam Forelady, ladies and gentlemen, both the State
7 and the defense have rested their cases. We have now
8 reached the stage of the trial where we will have closing
9 argument and instruction.

10 We have ordered your lunch and I've estimated that it
11 will arrive by 12:30, and we should have concluded argument
12 and instruction by that time after which you'll be allowed
13 to deliberate regarding this case.

14 As we go along in this process, I will take breaks as
15 needed. I would ask that you give counsel your undivided
16 attention.

17 SOLICITOR KIDD: Thank you, Your Honor.

18 THE COURT: You welcome.

19 SOLICITOR KIDD: May it please the Court?

20 THE COURT: Yes, sir, you may proceed.

21 SOLICITOR KIDD: Mr. Price. Mr. Pepper.

22 Ladies and gentlemen, this is my opportunity to give
23 you my closing argument, and it's gonna be a little bit
24 different cause we have two defendants on trial. So, this
25 is -- I'm gonna close in full here. Mr. Price will then

1 give you a closing argument. I will reply. It will be a
2 short reply argument, and then Mr. -- and then you'll hear
3 from Mr. Peper. So, you'll hear from me one more time after
4 this, but I'm gonna try to go through everything in full as
5 best that I can now, and won't be limited to reply in a, in
6 a short time.

7 As the judge is gonna instruct you, and if I ever
8 misquote the law or say -- describe the law in some way any
9 different than the judge does, you defer to the judge.
10 She's the authority on the law, and you're the authority on
11 the facts.

12 But I try to, I try to breakdown the law from you --
13 for you in some regards, and if -- but, like I say, if I'm
14 ever different in that regard, then, Judge Jefferson, defer
15 to her. She's the authority in the law.

16 But one of the things she's gonna describe to you is
17 burden of proof. The burden of proof's on me. I have to
18 prove the case beyond a reasonable doubt.

19 Now, what's beyond a reasonable doubt?

20 Does not mean beyond all, all doubt. It is very few
21 things in this world that are absolute certainties, and
22 absolute certainty's not required. It's that which leaves
23 you firmly convinced. If you're firmly convinced of the
24 defendants' guilt after this trial, then you find him
25 guilty. If you're not, then you don't. But that's what my

1 burden is.

2 I don't have to prove to you, with absolute certainty,
3 that they're guilty. That's why we have the jury system.
4 That's why they're 12 of you that have to agree.

5 And, and, and, also, right before I get started going
6 through the actual evidence in this case, I want to address
7 something that you're likely gonna hear from the attorneys
8 because they've kind of harped on it a lot during their
9 case, and it's why I did not call all these witnesses.

10 why -- where are these detectives that worked on this
11 case?

12 where is all this?

13 well, there, there's rules to how we present evidence.
14 You probably saw me objecting over and over and over, and it
15 gets frustrating.

16 So, you think well, what's, what's he want to keep out
17 of Court?

18 why, why is he objecting?

19 what -- cause there's rules to how we introduce
20 evidence. If you want to have a witness testify to
21 something, they have to have observed it. You can't just
22 put it in through other people. There's -- it's rules that
23 we have to follow, and there's proper ways to do it. And,
24 while -- I have the burden of proof. They don't have to
25 prove anything.

1 That being said, there's a discovery process in these
2 cases. All of the information that I have they have, and
3 they, just as they called Detective Butler, also have the
4 ability to call witnesses and enter evidence. And they
5 chose not to and that's fine. The burden's on me, but just
6 know that, just because we don't call a witness doesn't mean
7 there's some, something being hidden from you. We're giving
8 you the evidence in the case. We're giving you what you
9 need to return a verdict.

10 Now, this is the State versus Marvin Bryan and Justin
11 Wilson, as you have seen throughout this week, and I know
12 it's been slow at times. It's a murder trial, and it's,
13 it's important.

14 Now, what did we hear about?

15 We heard about Justin Wilson, Justin Wilson, and we
16 heard that he was shot in the neck back in July of 2015.
17 You heard from both Keith and Daquan. I know Daquan was a
18 long time ago, but that's what happened.

19 He got a call on the 21st. That boy that shot you is
20 out at the club. We have motive. That's what it is. We
21 have motive, but you also heard a little bit more. It's not
22 just that. And you got bits and pieces of it in, in little
23 things.

24 You know about a group of individuals from West Ashley
25 and West Cash, and a group of individuals from North

1 Charleston, Runway, and you heard a little bit about feuds.
2 You know, maybe a guy gets a bottle over the head in a club.
3 I think Keith even said, you know, they're just a number of
4 fights and a couple shootings. There's stuff going on.
5 This is not an isolated incident. This isn't just a random
6 car that gets shot up.

7 Now, we can never truly empathize with someone like
8 Montez Capers or some of the other individuals in the car
9 and understand what it must have been like to have lived
10 through that experience. And there's no evidence to show
11 that they did anything wrong that night, but there's a back
12 story.

13 And you heard Quran Allen, the guy named Creep. I mean
14 I understand some nicknames. Bubby. I understand Tater.
15 Almost endearing.

16 But Creep?

17 And you heard from Montez Capers, and, as I indicated,
18 we can empathize with Montez. An experience that he'll
19 never forget. But when Montez sits up here and tells you
20 he's never heard of Runway, he's lying to you. But all that
21 be that as it say, let's focus on what we know for sure.

22 Let's talk about the phone calls, and, and you have,
23 and you will have, all of the records back there if you want
24 to review them in more detail than I presented to you right
25 here. But you're gonna have Justin Wilson's phone records,

1 and, in the 48-hours leading up to the murder, they have 11
2 incoming and outgoing calls from [REDACTED]-0404. Stewie.
3 Twenty-two incoming or outgoing calls from the 8650 number
4 in the 48-hours leading up to murder. A consistent pattern
5 of contact with those numbers.

6 why is that important?

7 Cause when you look at Keith's phone, who testified he
8 knew that when the -- in the parking lot or, excuse me, in
9 the driveway at the Admiral Street house, that Justin
10 borrowed his phone.

11 what do we have?

12 The 0404 number, Stewie, and the 8650 number. Three
13 incoming and outgoing calls and two contacts on the -- with
14 the 8650 number. Those are the only ones in that 48-hour
15 period, and they occur within 30 minutes of the murder. And
16 not just in the 48-hour period. Those are the only, only
17 ones in his phone. The only time Keith contacts those
18 numbers is within 30 minutes of the, of the murder.

19 But, meanwhile, we go back and now I sum it up here,
20 but you'll have the records, a consistent pattern of contact
21 to those numbers in Justin Wilson's phone.

22 And how do you know it's Justin Wilson's phone?

23 Danielle Ravenell gives us the number. The home
24 screen, there's a photo of him and Danielle. And the text
25 messages.

1 In a text conversation starting at 1:18AM, he sends a
2 text, what are you doing. Gets a response back at 1:29 and
3 38 seconds.

4 who is this?

5 1:52:09, Bubby.

6 Now, that is approximately 20 minutes before the
7 murder. More importantly, it is just over seven minutes
8 from when that car first appears in a gas station video at
9 the El'Cheap, at the El'Cheapo, the Cheap Way Gas Station.
10 Not even seven minutes or just over -- excuse me. Just over
11 seven minutes before that car comes into the gas station
12 video, he's responding on the phone that's found in the back
13 of that car. This is Bubby.

14 This case isn't just about Justin Wilson. It's about
15 Marvin Bryan as well. You know he's in the car. He's out
16 with the police officer just minutes after with Keith and
17 Daquan, who both admitted to being there. His phone is also
18 in the back seat passenger side of the floorboard right
19 where Keith and Daquan said he was sitting.

20 And what do they tell you?

21 That SKS jams. The clip -- see it on the floorboard,
22 the back driver's side floorboard of the vehicle, jams,
23 won't shoot anymore, Marvin gives them a pistol, the .40
24 caliber Smith & Wesson.

25 Now -- actually, before you play that, interesting

1 thing when we look at Justin Wilson's phone records cause it
2 baffled me at first. Phone calls at 2:13 and 22 seconds and
3 2:16 and 31 seconds to 9-1-1.

4 How's that possible?

5 The phone's in the back of the car.

6 Someone's calling 9-1-1 on the phone?

7 (WHEREUPON, an audio recording was played for the jury
8 at this time.)

9 SOLICITOR KIDD: The phone's Bluetooth to the car. You
10 know when you get into a new car, and they got the nice
11 Bluetooth capability. But when airbags are deployed, it has
12 an emergency feature so that it calls 9-1-1 on the phone
13 that's connected to the car. That's what you're hearing
14 right there, and that's why you're seeing 9-1-1 calls on
15 Justin Wilson's phone records.

16 Now, they absolutely took a lot of time to impeach or
17 impugn both Daquan and Keith's credibility. And they're
18 right. They're facing a lot of time. They've got a lot of
19 reasons to lie. Sure. They got a lot more reasons to tell
20 the truth.

21 And how do you know that they're telling the truth?

22 Because the evidence. Cause the evidence corroborates
23 everything they said.

24 They say Keith's driving. They say Daquan's in the
25 front passenger seat. Justin Wilson's behind the driver,

1 and Tater's in the back seat on the passenger side.

2 well, how do we know that?

3 First, we have the liquid on Daquan's back. You can
4 look through the photos in more detail, but the only liquid
5 spilled in that vehicle is in the front passenger seat. The
6 liquid on Daquan's back. The liquid in the seat. The only
7 place it is. So, you know Daquan's in the front passenger
8 seat. You can corroborate what they're saying with the
9 physical evidence.

10 Also, I don't know if the -- the corner won't show up
11 on the screen, but if you, if you see, on the front left
12 corner of the -- that passenger seat, that's that black knit
13 hat with Daquan's DNA on it in the front passenger seat
14 where he said he was sitting, where Keith said he was
15 sitting. It's corroborated. The DNA. Keith's DNA.

16 And I know there's two McDonald's cups, but they all
17 identify one as a styrofoam cup and one as a waxed cup. The
18 DNA from the styrofoam cup right by the driver, Keith Evans
19 DNA. The DNA on the waxed cup, Marvin Bryan's.

20 We know where they're sitting. Marvin Bryan's phone
21 where they say Marvin Bryan was sitting. Justin Wilson's
22 phone where they're saying Justin Wilson was sitting.

23 You know, I didn't really understand cell phone
24 addiction until I had a child. I got a three year old son,
25 and he's like probably any three year old. He's pretty

1 crazy. He can dive off a table, have blood gushing down his
2 face, and then he doesn't cry a second. But if you take a
3 cell phone away from him, you're gonna have a melt down for
4 about an hour.

5 You know, if I leave my cell phone in my office and
6 start heading home, I'll realize it when I'm a half block
7 away, and turn around and go get it. I can only imagine how
8 you feel this week having your cell phones being held back
9 there. It's, it's the day that we're in and the connection
10 that we have to our cell phones that is unique. And to say
11 that these cells phones are just randomly left in the back
12 of the car conveniently right before a murder is absurd.
13 It's absolutely absurd.

14 And as to Marvin Bryan's cell phone also, in the
15 contacts of Keith's phone, you heard him testify he referred
16 to Marvin Bryan as Rich Porter. He's stored in, in Keith's
17 phone as Rich Porter, and the, and the cell phone numbers
18 match.

19 Now, you have the rental paperwork from the car. I
20 don't think there's any question Justin -- this is Justin's
21 car. You heard from Miss Ravenell this is the car that they
22 rented together, which she never drove, he paid for, and
23 there he is on the rental agreement. This is a car that he
24 rented two days before.

25 It's Justin's motive, Justin's car, Justin's phone.

1 The phone numbers he's calling are in Justin's phone. Yeah,
2 they're used on Keith's phone too, but those are Justin's
3 friends, and the gun comes from Admiral, Justin's cousin's
4 house, Saquan Jones, DB. You heard from Danielle Ravenell.
5 She didn't really know what she was testifying to it at that
6 point in time.

7 You know, when you asked her doesn't Justin have a
8 cousin on Admiral?

9 Yeah. Yeah. Saquan Jones.

10 Well, the importance of that is it corroborates exactly
11 what Daquan and Keith said. We went out to Justin's
12 cousin's house on Admiral. You heard Keith. He drove my
13 investigator out there to see the house. All corroborated.
14 Everything they say is corroborated.

15 But does it really matter where each individual is
16 inside the car?

17 Doesn't matter who pulled the trigger, and it does not,
18 it does not matter one bit. That's because the law in South
19 Carolina is the hand of one is the hand of all. And I'll
20 read it to you, and the judge will charge it to you, but
21 when two or more people are acting with a common plan or
22 intent, and they're present at the commission of a crime, it
23 does not matter who actually commits the crime. They are
24 all guilty. The hand of one is the hand of all.

25 Now, there's a difference between that and just mere

1 presence. If you're just there, don't know what's going on,
2 and your buddy does something crazy, you're not guilty. You
3 have to be involved in it, and there's definitely the
4 testimony from Keith and Daquan that, that Marvin, Tater,
5 handed Justin the gun, the pistol. I mean that's surely
6 involvement, but this is so much worse than that.

7 This is an ambush. This is an execution. This is a
8 planned event. This is not a spur of the moment occurrence.
9 These are people who went looking for someone, armed
10 themselves with an assault weapon, stalked them outside of
11 the gas station, waited for them to leave, followed behind
12 them, went down 26, and with some of the most brazen actions
13 you can ever imagine, within a stones throw from City Hall
14 in North Charleston, unloaded an assault rifle into the
15 vehicle. This is not just some spur of the moment
16 occurrence.

17 what do I have to prove to you?

18 what is my burden?

19 what are the elements of the offense that you have to
20 find to hold them guilty?

21 The elements of murder are relatively short. Killing
22 of another person, that's self-explanatory, with malice
23 aforethought. Oh, that's a little more complicated.

24 Attempted murder. Attempts to kill another person,
25 that's pretty self-explanatory, with intent to kill, so

1 that's what we call a specific intent crime, and with malice
2 aforethought. But this is what I have to prove to you in
3 order to hold them accountable.

4 what's malice aforethought?

5 We always hear about malice on TV and things like that.
6 Malice is the conscious intent to cause death or great
7 bodily harm to another person, or a general evil and
8 depraved state of mind in which a person is unconcerned for
9 the lives of others. Can not imagine any action more
10 unconcerned for the lives of others than unloading an
11 assault rifle into a vehicle occupied by four individuals.

12 And what we're doing here, and what I'm gonna ask you
13 to do is to deliver justice. What they were doing were acts
14 of revenge, and there's a difference. There's a big
15 difference. Revenge is emotional. Justice is what we're
16 doing here. It's rational. It's going through things, and
17 it's making rational decisions. Revenge is personal. A
18 response to something that happened to them.

19 Justice is impartial. Justice is fair. Revenge is
20 vindictive. Justice is vindication. Revenge is a cycle
21 that does not stop. Justice is closure. Justice puts this
22 stuff to bed. Revenge, that's the eye for an eye that the
23 whole world is blind. Justice is about restoring the
24 balance.

25 I want to talk a little bit more. I got a little bit

1 ahead of myself. But I want to talk a little bit more about
2 the ways that we can corroborate what Keith and Daquan told
3 you cause that is important.

4 Your Honor, the clerk?

5 THE COURT: He went to do the lunch order.

6 Do you need help with the---

7 SOLICITOR KIDD: I just need to flip the ELMO.

8 UNIDENTIFIED INDIVIDUAL: Your Honor, I know how to use
9 the equipment.

10 Do you mind if I---

11 THE COURT: Thank you. Yeah, I appreciate it.

12 You got it? Is it on though? Is the ELMO itself on?

13 SOLICITOR KIDD: The ELMO is. Well, it's okay. I --
14 it's all right.

15 THE COURT: He'll be right back. It's not gonna take
16 him but about a couple more minutes.

17 SOLICITOR KIDD: I'll hold, I'll hold -- I got it.

18 UNIDENTIFIED PERSON: All right. Good.

19 SOLICITOR KIDD: So, one of the important things that
20 you needed to know about both what Keith and Daquan said is
21 where they went after the cars crashed, right?

22 Well, just when I needed it, right?

23 By the directions that they ran and what happens?

24 So, we have the cars crash. I know y'all are familiar
25 with where in the circle they crashed. And one thing I want

1 to say about this circle before I go on is it's easy to look
2 at a map and think oh, this is just a tiny little box that
3 we can just jump across real quickly. Park Circle is pretty
4 big. If y'all are familiar, you're from the Charleston
5 area, you've been in Park Circle, it, it's large. When you
6 look at the satellite image, I mean there's two baseball
7 fields inside the circle and a ton of park area. You're not
8 just walking across the park in 30 seconds. It's a, it's a,
9 it's a large area. But, either way, I just ask you to keep
10 that in mind when sometimes you lose perspective when we
11 look at maps.

12 But both Keith and Daquan, who, by the way, have been
13 kept separate since 30 days after this happened. There's a
14 special unit in the jail. You've heard about it. They have
15 been kept separate.

16 But what do they both say?

17 We got out and run -- the car. We run. Daquan's right
18 there. We run to the head of Durant. Right here. Keith
19 and Daquan. They get there, Tater, Marvin Bryan, catches up
20 with them. Hey, man, you know, BG, we got to go back and
21 get our phones.

22 what do they do?

23 Start heading back to the car. Started getting close
24 to the car. People are coming and sirens. They bail. Head
25 back up Durant.

1 So, they do this number, right, that we kind of did in
2 trial. Before the officer gets out with them right there
3 that you see on the video.

4 where are the guns found?

5 Down here after a running gun battle with another
6 individual from the red Charger.

7 But it's more than just that.

8 what do both Keith and Daquan say?

9 Man, we got out, kind of running, looked back, there's
10 Justin out of the car still shooting. Trajectory's
11 important.

12 when they first start shooting, they start from behind
13 the car. When they're pulling up behind it, on East
14 Montague right by the police station, they're pulling up
15 behind, rolling down the window, start shooting.

16 what do we get then?

17 Bullet holes from the rear, here, here, here, as they
18 pull up next to them, here, here. The cars take off.
19 Keith's in the front racing down Montague. The Charger's in
20 the other lane of traffic. Ends up behind them. Keith
21 crashes first in the middle of Park Circle. The Charger
22 crashed on the curb there. Justin gets out, keeps shooting
23 while, while Keith and Daquan and Tater eventually run.

24 I also want to talk with you a little bit about
25 Domonique, D'Nice. You know, they made a big deal about him

1 being arrested, and I know he came in here and testified to
2 you, and he lied to you some too. You know, they made a big
3 deal about why he got arrested in this case, and you want to
4 know why he got arrested in this thing?

5 Because, when they went by Domonique's house on the
6 22nd, the day after, the -- really the day of the murder,
7 and Justin Wilson went to him and said yo, I was with you
8 last night. But when we asked D'Nice on the stand, his
9 response was rudely hell no.

10 well, what do you think it was that night or that day
11 on the 22nd?

12 Hell, yeah, I got you man. And so, that was the story
13 from then on. That was the story was that Justin was with
14 D'Nice. So, as the investigation continued, Justin was with
15 D'Nice. Justin was with D'Nice.

16 So, when Justin gets -- when evidence shows Justin
17 guilty of murder, well D'Nice was there too. I'm not saying
18 it's right, but he put himself in that.

19 You know, the alibi plan, which, which also
20 corroborates Keith and Daquan by the way, you know Keith
21 saying yeah, we went, we went to D'Nice's house the next day
22 to chop it up, figure out what the story was. The story was
23 DG was gonna be at Mega's house over there on Durant all
24 night, that Tater got drunk and gave his phone or lost his
25 phone, some girl gave it back to Justin who then left it in

1 the car, and we walked home -- we walked back to Mega's
2 house from the club, and Justin was with D'Nice. The car
3 got stolen, and Justin just left his phone in the car. That
4 was the alibi story.

5 You know, the pictures you're gonna look at here,
6 things like this, this is revenge. What I need you to do is
7 deliver justice. I need you to follow the law the judge
8 charges you. I need you to hold them accountable for what
9 they did. Nothing more and nothing less.

10 Now, the judge is gonna charge you some lesser -- what
11 we call lesser included offenses. So, nothing on the
12 murder, but, on the attempted murder, lesser included
13 offenses, assault and battery of a high and aggravated
14 nature, assault and battery first degree, assault and
15 battery second degree, assault and battery third degree.
16 You'll have that all.

17 But to -- but for you to find that it is anything other
18 than attempted murder would be finding that unloading an
19 assault rifle into a car in this nature is something other
20 than attempting to kill the people inside. And that just
21 does not make sense.

22 Follow the law that she charges you, find the facts as
23 they are, and hold them accountable for what they did, and
24 return verdicts of guilty.

25 Thank you.

1 THE COURT: Mr. Price.

2 MR. PRICE: Thank you.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 MR. PRICE: Mr. Kidd.

6 Good morning.

7 Y'all've been very attentive throughout this trial, and
8 you've noticed that, obviously, two separate jobs here. And
9 we obviously tend to disagree on a lot of the information
10 that's been given, and disagree to a lot of things about the
11 entire trial itself.

12 But if you'll remember the story I told you or what I
13 discussed with you in opening statements was that I use to
14 sit at that table, and I told you the story about the first
15 murder case that I had where the prosecutor that was above
16 me, who I was working with, and I essentially did what
17 Charlie is doing, and the other solicitor, which I was
18 helping, and I was assigned a couple witnesses, but her
19 telling me that I went to those witnesses and I got their
20 statements, and I talked to them a little bit, and I came
21 back and I told Shawn. I said listen, I said, you know,
22 their account of what's going on seems to be a little bit
23 iffy, a little off. And he said -- and he said so? I said
24 well, I think we probably just shouldn't call them.

25 Remember what I said he said to me?

1 He said that is not your decision to make.

2 So, I vehemently disagree with the Solicitor's Office
3 and the State when they say that they didn't call certain
4 people because we have to follow certain rules. He's right.
5 You have to find justice in this case, but how are you gonna
6 do that when there's, I've accounted -- I've counted again.
7 This is just a witness list. They don't have to call
8 everybody. He's right. But they have to give you a little
9 bit of notice, during the voir dire process, to make sure
10 there's no conflicts, which y'all see how that transpires.

11 But I count 56 people on this witness list. You didn't
12 hear from 56 people. I think I counted around ten or
13 twelve, maybe thirteen witnesses.

14 They didn't even call the lead agent in this case. I
15 did.

16 What do you think PFC Champion would of told you?

17 Just stands for Private First Class, but we'll just
18 call them detectives.

19 What about Kuechler, Jellico, Monroe, Niemiec, Benton,
20 Bailey, Desheers, Fogle?

21 I can just keep going. It's two pages. Yeah, we made
22 a big deal about it.

23 You know why it's a big deal?

24 Because it is.

25 It's their job to prove our clients guilty beyond a

1 reasonable doubt. It's your job to determine the facts, and
2 the facts come from the witness stand.

3 we could -- where's this other trial?

4 where are these other detectives?

5 we didn't hear anything from any of them, and Detective
6 Butler indicated that there was 32 detectives on this case.

7 where are they?

8 why didn't they come and tell you what their
9 investigation showed?

10 I'll tell you why. Because it probably wasn't good,
11 and the information they had, the State didn't want to bring
12 it to you because it didn't. We had the opportunity, as you
13 have seen, to bring out what is wrong and what they have
14 messed up, what they've done incorrectly, all of those
15 things, and the State doesn't want to bring you those
16 people.

17 They chose who comes and testifies, and let's talk
18 about who they chose.

19 First they chose Daquan Gilliard. You've heard a lot
20 about Daquan. The prosecutor even admitted to y'all that
21 Daquan lied. He came in here and told you some lies.
22 Daquan has done nothing but lie just like -- we'll get to
23 Keith Evans, but I do want to point this out. That Daquan
24 and Keith obviously are self-professed liars. That's what
25 they do, and we'll talk about the deals, and the time

1 they're facing, and everything that goes into that, and why
2 they, obviously, are continuing to lie.

3 But what I would not want to be is in Mr. Kidd's
4 position because now he's got two witnesses. He's agreed
5 that both of them have lied to you. Under their proffer,
6 he's asked them to do nothing. He's asked them to do
7 nothing but come in here and tell the truth. And now he's
8 got to determine whose proffer is gonna get revoked. I
9 wouldn't want that job because those two guys, he's
10 admitted, have lied.

11 The agreement that they had with him was to not lie,
12 and what did they come in here and do?

13 They're facing 30 to life and they only have one job.
14 They didn't do it.

15 Daquan, sitting at his house sleeping on the night of
16 the murder. Next day, allegedly, Justin and Keith go to
17 discuss whatever they're going to discuss about the car.
18 Marvin Bryan wasn't there. Daquan says that. He wasn't a
19 part of whatever that they'd gotten themselves involved in
20 and it is a big deal.

21 It's an enormously large deal that, because Keith said
22 something before anyone began any investigation into this
23 case, which is why I had to call Detective Butler and Mr.
24 Peper had to cross-examine her, because she's done nothing
25 to investigate this crime. They've essentially relied on

1 Keith who's a liar.

2 Keith lies, tells them about Domonique. They do no
3 independent investigation. I asked Detective Butler, I said
4 whatever -- what did you do between the time that Keith told
5 you his story and swearing out the warrants?

6 We know the answer is nothing. Keith came in on
7 November 24th and the warrants, she testified, were sworn
8 out that exact same day. So, someone who has absolutely
9 nothing to do with this crime, could of been me, Keith could
10 of just said Bentley Price. I was at home with my kids that
11 night too. Got arrested for murder. Was incarcerated for
12 six weeks. Had to get a very good attorney to get him out,
13 to get him a deal, and, essentially, get the truth to be,
14 alleged truth, to be told, but we know Domonique had
15 nothing -- I mean Daquan had nothing to do with this. I
16 mean Domonique. Sorry. I said Daquan. Had nothing to do
17 with this.

18 But it's amazing. You should, you should be appalled
19 by that, that that's how this investigation started and has
20 continued.

21 You have -- let's talk about the, the, the detectives
22 they did bring. The first one that was on the scene was
23 Officer Martin, and Officer Martin came in, and he's been a
24 law enforcement officer for years. He knows what he's
25 doing.

1 I asked him if he understood what reasonable
2 articulable suspicion is. That's a fancy way of saying do
3 you think somebody's committing a crime. He under -- said
4 he understood that, and that gives him the opportunity to
5 then investigate further. So, he does.

6 He gets out and he investigates. And he comes to a
7 conclusion, rightfully so, that the three individuals had
8 not been running, had not been taking off and running down
9 Durant. They didn't -- they weren't sweating. Didn't have
10 elevated heart rates. He said he actually felt Mr. Bryan's
11 chest, and thought that -- and, essentially, came to a
12 conclusion that they were simply walking down Durant, which,
13 by the video, you see they're simply walking down Durant.

14 And the other thing is, is I asked him, I said, well,
15 did they get -- run from you, give you accurate information?

16 He said didn't run from me.

17 Did they give you accurate information?

18 They did. Gave him their names. Gave him their phone
19 numbers. Told them what they were doing. They were walking
20 to their cousin's house. And he concluded that and he let
21 them go. That's what's the evidence shows.

22 Evidence does not show anyone running down Durant from
23 Park Circle. That's not what it shows. You've seen the
24 video. You saw them in the video. Nobody's panting.
25 Nobody's buckled over, you know, tired. You saw three

1 people walking to their cousin's house. That's what the
2 evidence showed you.

3 Talk about some of the -- let's talk about some of the
4 evidence that was produced. DNA or the DNA was submitted
5 and it came back that Marvin Bryan had some DNA on a
6 McDonald's cup. Nobody has testified when anybody went to
7 McDonald's that I recall. I think they, they may of said
8 that they went earlier in the day, but I don't, I don't
9 recall any, any of that at this point.

10 And I asked the SLED agent well, how long could the DNA
11 have been on there. She said there's no way of telling.
12 There's no way of telling when Marvin Bryan was ever in that
13 car. It -- that's the only link, other than two liars, that
14 puts Mr. Bryan in that car.

15 There was some fingerprint cards that were done in this
16 case. We didn't see those. We didn't, we didn't get to
17 those. We don't know what those results are, and I'll
18 certainly -- Detective Butler wasn't able to testify as to
19 those.

20 There's a reason. Because the person that could of
21 come and testified as to those, the State didn't call. He
22 retired but he could be subpoenaed and brought here to
23 testify and he wasn't. So, we don't know. We don't know
24 what that would of showed us or, or, or proven to us.
25 Again, more information that we don't have to be able to

1 make a decision.

2 So, the entire trial, for five days, no one -- and I
3 will be honest with y'all, I had never heard of it until we
4 came in here to trial, and I asked my client about it.
5 Marvin Bryan's nickname has always been Tater since he was a
6 child. All of a sudden we come to Court, after Keith is met
7 up with the prosecutor about a week before, and now,
8 randomly selected, there is a name in his phone by the name
9 of Rich Porter.

10 And who is the one person out of the entire universe
11 that has a random nickname for somebody who has a street
12 name that everybody knows it, but now he comes in here, on
13 the day of trial, and says oh, yeah, that's what I call him.

14 So, my name is Bentley, and, all of a sudden, my sister
15 is gonna call me Dave?

16 It's not gonna happen. Keith's lying. We know he's
17 lying. Keith's a liar. He's -- I asked him if he lied. He
18 says he's lied. And, on the day of trial, the link between
19 the phones from Marvin Bryan to Keith Evans is a nickname
20 that no one has ever heard of.

21 Did you hear anybody else, including the prosecutor,
22 call Marvin Bryan anything but Tater?

23 No.

24 Who's the one person that calls him Rich Porter,
25 because it's in his phone that way, is the person that grew

1 up allegedly with him. He says he looked up to him. He
2 says he was like a bigger brother, but he randomly just
3 calls him a different name.

4 It's a lie. Keith is lying.

5 Now, let's talk about Keith. Keith came in, we all
6 agree, we went through that testimony, we don't need to go
7 through it again, but the prosecutor and I really disagree
8 on this. That -- he's charged with murder. He's facing 30
9 to life. His proffer is busted because he lied. That's all
10 he was told that he had to do was tell the truth. He
11 didn't.

12 So, that is not a reason to come in here and now tell
13 the truth when you know you're facing 30 to life.

14 What is it -- what, what do you do at that point?

15 You continue your lie because what did he do the first
16 time that I, I kind of went through with him that, that
17 layaway process of he just gives a little bit more when the
18 stakes get just a little bit higher. So, the first time he
19 got caught, he gave a little white lie. Stakes weren't that
20 high. He gets charged with murder. Tells it, obviously, a
21 bigger lie. He gets to come in here. He knows that they're
22 gonna cop him for lying cause he lied. He knows his proffer
23 is gonna be busted. Facing 30 to life.

24 wants a deal and you-all think he came in here and told
25 the truth?

1 I'm not insulting your intelligence. But -- believe
2 you me. I'm not trying to do that. I'm simply pointing out
3 the fact that Keith is absolutely lying. He has, he has
4 never once told the truth. He has been given, time after
5 time, chance after chance, even Mr. Peper pointed out the
6 fact that they said if you lie in your proffer, we'll clean
7 it up. And now, all of a sudden, he's facing 30 to life and
8 he came in here and told y'all the truth.

9 Again, I am not insulting anyone's intelligence at all.
10 That is just a fact.

11 The last two things is Keith and Daquan both came in
12 and testified, and they alleged that Marvin was in the car
13 and gave a gun to Justin.

14 Okay. No one ever really thought to ask them, no one
15 has, no one has testified, not once, anything about Marvin.
16 He hasn't said anything. No one testified he talked. No
17 one said he was there. The only thing they said was he's
18 alleged to have passed a gun, and you got to remember two
19 things.

20 Allegedly, Keith and Daquan don't know what's going on.
21 That's what they said. And this event begins to occur,
22 which they have testified was obviously a very traumatic or
23 scary event.

24 And Keith's going a hundred miles an hour down the
25 road, and you got Daquan scared to death in the front, and

1 you think they took the time, the wherewithal to turn around
2 and watch Marvin give him the gun?

3 No one testified to that. No one has, no one has come
4 in here and said -- that is just a story that works for
5 Keith and Daquan.

6 Has anyone come in here -- think back. You'll have
7 your notes.

8 Did either one of them say I turned around and I saw or
9 I heard Marvin Bryan say or I heard Justin say?

10 The answer is no. They have no idea. It is a
11 complete, made up fabricated lie. They're in the front
12 seat. No one testified that they heard him say anything,
13 that they saw him do it. They never said it. It's just
14 their story. The story works for them.

15 Lastly, the prosecutor asked you to, to hold the
16 defense accountable. What I ask you to do is hold the State
17 accountable. It's their job to prove to you, beyond a
18 reasonable doubt, that Marvin Bryan committed murder or
19 three attempted murders. And, yes, they are correct. The
20 burden stays with them all the time. They have the burden
21 to prove guilty beyond a reasonable doubt.

22 Now, the judge is gonna argue -- charge you as to what
23 doubt is.

24 Okay. I want you to think about, as you go through
25 your deliberations, how much doubt that you're going to

1 have.

2 where are the other 46 witnesses?

3 why didn't they come and tell us what was going on?

4 where are the four eye witnesses that were there?

5 why didn't they come?

6 why didn't they bring them to the stand?

7 why did the State not give you everything that you
8 needed to find justice in this case?

9 Y'all are intelligent people. You know why. Because
10 when I call Detective Butler to the stand, I had to extract
11 everything out of her because they didn't want her to
12 testify. I had to call the lead agent in this case. I
13 asked her if she'd ever seen that, had she ever been called
14 by the defense. No. The answer is cause it doesn't happen.
15 But I did it cause I had to. She has a three page case
16 report and that's it.

17 Members of the jury, you have a very large burden, and
18 we've put a lot on you. And we ask you to do what's right
19 and what's just, and, unfortunately, you weren't provided
20 with enough information to make that decision. I would ask
21 that you do what's just, and find Marvin Bryan not guilty.

22 Thank you for your time.

23 THE COURT: Mr. Kidd.

24 SOLICITOR KIDD: May it please the Court?

25 THE COURT: Yes.

1 SOLICITOR KIDD: Your Honor?

2 THE COURT: Yes.

3 SOLICITOR KIDD: You know, one of the things that's
4 funny to me about how a -- harping on the 56 witness thing,
5 I'm not sure you remember when I published the stipulations,
6 but we stipulated to chain of custody and things like that
7 meaning every single witness that the evidence went through
8 their hands before it went to testing, every one of those
9 witnesses is on, is on the witness list. But I didn't have
10 to call them because they stipulated to them. Maybe 15, 20
11 people there that we didn't call because they said it's not
12 necessary.

13 Credibility is a funny thing. Keith and Daquan are --
14 they lied. They lied to the police. Sure.

15 who wouldn't?

16 who wouldn't?

17 But everything that they have told you is corroborated.
18 Everything.

19 You know, they want to know well, why was Daquan
20 arrested only on the word of Keith?

21 well, he wasn't. He was in the video right there after
22 the murder. It wasn't just Keith.

23 No evidence that they were running. Listen to the
24 video when the officer's going down Durant.

25 Is that three guys running?

1 He says it himself right before he pulls up on them.

2 You know -- and about the DNA evidence, I know
3 everyone's probably hoping for a smoking gun there when the
4 DNA lady was testifying. It's a bit anti-climatic.

5 But in the real world, non-TV world, where you get that
6 hair fiber or that one droplet of blood that solves the
7 case, it doesn't happen. I've been doing this job ten years
8 and rarely does it happen. And, if it does happen, it
9 doesn't end up in a trial. It ends up in a plea.

10 The fingerprints. It's a rental car they've had for
11 two days. They're fingerprints everywhere. If they were
12 beneficial, they could call them if they wanted to. I have
13 the burden of proving to you, giving the evidence you need
14 to convict them, but they could call and to put forward
15 evidence that you have to believe that there was some
16 smoking gun fingerprint, they'd call that witness too.

17 And you want to talk about how you can believe Keith,
18 how you can believe Daquan.

19 Can you imagine how hard it would be to testify against
20 people you consider family that are that close to you?

21 And if you're going to lie, would you put yourself in
22 that vehicle?

23 would you lie and make yourself a driver of a vehicle
24 who just did these horrendous acts?

25 Is that the lie you're gonna tell giving me what I need

1 to convict you of murder?

2 Is that a lie that you're gonna tell?

3 And I know y'all don't know me very well. A week long.
4 But they're gonna be held accountable for their role in
5 this. Absolutely. Cause they're in it up to here.

6 Mr. Price said to hold me accountable. Well do. Hold
7 me accountable. Hold me accountable for giving you what you
8 need. You have what you need to reach your verdict.

9 You know, why didn't we call the, the lead agent, the
10 case agent like that's some miraculous person?

11 She told you she's really just a supervisor collecting
12 stuff and keeping it together and having other people do the
13 work. As such, there's really not much she can testify to.
14 You know, if you interview someone, you can't call the
15 person to interview them. You got to call the person that
16 was interviewed. That's the rule in Court.

17 So, a detective on the witness list who interviewed
18 someone, I can't call them to the stand. He has nothing he
19 can testify about. That everything that was told to him is
20 hearsay. If I want that information in, I got to call the
21 person who he interviewed, which is what we did.

22 You know, you want the eye witnesses from the scene.
23 You heard from them on the 9-1-1 calls. That's who we're
24 talking about. People who showed up after the fact.

25 Could you have better witnesses than the people who

1 were in the vehicle?

2 The video evidence right before, the video evidence
3 right after, the cell phones, you have the evidence you
4 need.

5 Use that evidence, apply it to the law, and find them
6 guilty.

7 Thank you.

8 THE COURT: Madam Forelady, ladies and gentlemen, we're
9 gonna take a brief restroom break. You've been sitting
10 almost an hour.

11 During the break, please do not discuss the case in any
12 manner whatsoever. Please leave your notepads in your
13 seats. As soon as you're done with that process, we'll
14 resume argument. Please go with the bailiffs.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: I'm thinking it will take them about ten
18 minutes and then we'll resume argument.

19 We'll be at ease.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: Defense ready to proceed?

22 MR. PRICE: Yes, ma'am.

23 MR. PEPPER: Yes, ma'am.

24 THE COURT: The jury should be right behind me.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE BAILIFF: All the jury is present, Your Honor.

3 THE COURT: Thank you.

4 You may be seated.

5 Ladies and gentlemen, if you would give counsel your
6 attention.

7 Mr. Peper, you may proceed.

8 MR. PEPER: Thank you, Your Honor.

9 May it please the Court?

10 THE COURT: Yes, sir.

11 MR. PEPER: Mr. Price. Mr. Kidd.

12 Ladies and gentlemen of the jury, Madam Forelady, thank
13 you for your continued patience with us throughout the week.
14 Thank you for the courtesies you've extended us in giving us
15 your patience. I would, if I could, give you a hand. I
16 really would. I, I really enjoy being here with you this
17 week.

18 Speaking of hand, we do a lot of things with our hands,
19 right?

20 I tend to talk a lot with my hands. My father use to
21 always tell me that, as a news director, he use to say stop
22 talking with your hands so much. They, they want to see
23 you. And I inherited that one for sure.

24 We do. We shake hands. We say hi.

25 We do a lot of things with our hands, right?

1 It's important in this case.

2 We even pray with our hands, don't we?

3 My seven year old boy, telling him to jump, he says how
4 high, right?

5 My two and a half year old girl, tell her to jump, she
6 just sits down period, right?

7 But he's getting her to the point where she may not
8 close her eyes, but she may do one of these, but she's
9 putting her hands together at the dinner table, right?

10 That's important to me. That's important to me.

11 I tell stories with my hands. Other people tell
12 stories different ways. Some people tell stories over and
13 over and over again until they get it right or at least
14 think they've got it right. The next time you meet with
15 that person to tell their story, and they change it a little
16 bit more. Now I know what you're saying. Yep, that's my
17 story. And it goes on and it goes on and it goes on.

18 In Keith's case, you have it seven times. Seven times
19 it took him to figure out what story he was suppose to tell.
20 I feel bad for Keith. I really do. I don't feel bad for
21 what he did that night, but I feel bad for what I had to do
22 to him on that stand.

23 I didn't have a choice. I, I just didn't have a choice
24 because everything I needed to know about Keith I knew from
25 his first answer to the State's first question, which was

1 Mr. Evans, why are you here today. To tell a story.

2 Okay. Well, Mr. Evans, are you here to tell a story or
3 are you here to tell the truth about -- oh, woa, the truth.
4 That's all I needed to know. That's kind of how it went the
5 entire time with both Keith and Daquan.

6 Mr. Kidd didn't get the answer he wanted, he'd ask it a
7 different way. Are you sure that you -- let me, let me show
8 you this, this freeze frame, and you see that little blur
9 back here, what, what, what is that?

10 My car?

11 That's right. That's right.

12 And where are y'all getting on to right here?

13 Montague?

14 Well, are you sure that's Montague or is that the, the
15 I?

16 Oh, it's the, the I.

17 Frustrating. But I had to point that out because the
18 story that the State wanted them to tell was Justin, Justin,
19 Justin, and Justin's plan, Justin's guns, Justin's cousin.
20 Everything was Justin, which makes for a good story if you
21 want it to be about Justin, but you got to be able to prove
22 it. That ain't good enough and y'all deserve better, and I
23 think you'll agree with me on that.

24 Unfortunately, science is almost the polar opposite of
25 storytelling. In storytelling, we just got -- you can kind

1 of maneuver your way. Oh, he wants to -- oh, okay. Science
2 is what it is. It's black or it's white. There is no gray
3 in science.

4 where's the science in this case?

5 There is some. There is some. There's things in it at
6 149. You're gonna get this -- you'll be able -- every
7 single person will be able to use your hands and flip
8 through it and see the results for yourself. I won't read
9 it to you. You'll be able to see it.

10 I tell you what I remember from it. I'm not a smart
11 man.

12 Okay. The stuff she's talked about, over my head. But
13 I know the difference between major, a minor, and excluded.
14 That's direct evidence. That's real. It don't get no
15 realer than that. The other stuff is circumstantial.

16 We're trying to prove that a thing happened. His phone
17 was in the car. Well, yeah, I know, Detective Butler. I
18 mean that, that, you know. That doesn't prove he was in
19 there.

20 Well, I imagine -- I think we can develop a story to
21 where, you know, his phone's in the car. Oh, oh, hey, hey,
22 Mr. Prosecutor. His ID, forget -- his ID was in the car.
23 Yeah, it's his car. It's his car. I mean -- well, I know,
24 but that's -- let's use that as -- craft that story too.
25 We, we -- we can put him in the car.

1 Uh, oh. His phone is not password protected. Well,
2 you know, that's a good point. That's gonna hurt us a
3 little bit, but I mean we, we got to go after Justin. I
4 mean we got to tell the story about Justin. I mean it's
5 just -- let's just hope the jury doesn't pick up on that.

6 I mean but, yeah, Mr., Mr. Prosecutor, if they pick up
7 on it now, they're gonna be able to figure out that, you
8 know, all you got to do is open it and you can text people,
9 and you can Facebook, and you can do all kind of stuff.
10 Doesn't necessarily mean it was Justin. Well, I know, I
11 know, but let's -- this is our story and we got to -- we got
12 to get there.

13 I'm probably more offended than y'all are, but you
14 deserve better.

15 The other type of evidence is the testimony of
16 witnesses, and, and, like I told you, it's just not there.

17 Okay. That's what evidence is right there. It's
18 testimony. It's circumstantial where you use your hands.
19 You just pick stuff out and try to get people to here, can
20 you tell a story about this, can you tell a story about
21 that, and then there's science. True. What we know, we
22 know.

23 We know Montez Capers saw three subjects get out of the
24 Ford Edge. Three. He never once said four. Never. He
25 said three. He said three within five hours of the

1 shooting. Three. See what three get out of that Edge,
2 science.

3 Now, Montez had a little time to think about it. I'm
4 not saying, you know, he just rolled with it. He had five
5 hours to make sure he knew exactly how many people got out
6 of that car cause he knew the cops were gonna come to him.
7 He knew the cops were gonna come to the hospital where he
8 was going.

9 Let's talk about which way he ran. All the way down.
10 All the way down.

11 what else did he say?

12 what else did he say?

13 You know, Montez had been in this, but I tell you who
14 really convinced me is Lieutenant Buskirk. Lieutenant
15 Buskirk, I said, yeah, that, that doesn't fit their story.
16 He says well, yeah, there's open fields around there, yeah,
17 and there's that all out there, all out there. That's a
18 little closer to Park Circle than that, but where the guns
19 were found. One of which had Franklin Williams DNA on it.

20 It's funny to me and, you know, we can talk about
21 Butler. I'm done with Butler. I, I, I can't take any more
22 of Butler. She wouldn't, she wouldn't give it to me. I
23 mean she gave me Dorchester Road. It's off Dorchester Road,
24 right.

25 Talking about Quran, Quran, I don't know that I ever

1 got that right. But Creep. Creep ends up 470 feet from
2 where Mr. Capers ends up. I mean he zigzagged too. Maybe he
3 picked up a couple guns zigzag too. It's not my job to
4 prove if he did it or not. It's my job to point out what
5 they haven't proven.

6 Uses his hands. I do that pretty regularly to show all
7 this. I used my hand to show you three, three people,
8 within 17 minutes, they're caught by a North Charleston
9 police officer running away from Park Circle. Three.

10 Seventeen minutes now. That's a long time. It
11 actually would be until almost noon, actually a little more
12 than that. The car, car, gun, gun, three.

13 Now, we talked about Montez. We talked about Creep.
14 I'm just making sure it hasn't been seventeen minutes ago.
15 Right here. Three.

16 I don't feel good about this because -- well, I got to
17 represent my client period. First and foremost. It may of
18 seemed to y'all that Mr. Price and I were working together
19 and we were. No more than Mr. Kidd and I were working
20 together. We're lawyers. We talk. We see something, we
21 let each other know.

22 I got to do my job, and there's three. There's three
23 on video, and there's three getting out of the car. There's
24 three according to the testimony. Two of them testified.
25 The third one's in this courtroom. Three of them.

1 Ladies and gentlemen, if anything and everything that
2 you heard, you've seen, if it caused you to hesitate to act
3 as to whether or not Justin Wilson is guilty beyond a
4 reasonable doubt, then the law requires you to find him not
5 guilty. It requires you.

6 Judge Jefferson is gonna read you the law, but listen
7 for those words, when she tells you what the law is,
8 reasonable doubt is defined to hesitate, to hesitate, right?

9 Using my hands now. It doesn't mean beyond 100
10 percent. I, I get that. It's beyond any reasonable doubt.
11 Something causes you to hesitate.

12 For instance, what my son did last night at the dinner
13 table, he hesitated, and it did not go well with mama
14 because she spent all afternoon making a nice pot of
15 spaghetti sauce for us. I love my wife to death. She
16 allows me to do what I love to do. She takes care of our
17 children, and, when she can, she puts dinner on the table
18 for us when we get home. And my seven year old, in his
19 first bite of spaghetti last night, did one of these. Just
20 right after we're done, he hesitated.

21 Now, he ate the rest of the spaghetti. I didn't even
22 have to tell him to. But that first bite he took, something
23 ain't right in the sauce. Just kind of hesitated a little
24 bit.

25 That's reasonable doubt. That's the definition of

1 reasonable doubt. I feel very confident that I've given you
2 a number of different ways to hesitate upon convicting my
3 client, to hesitate as to whether or not Mr. Kidd, on behalf
4 of the State, and Lieutenant Butler, the lead investigator
5 for this agency, has proven, beyond a reasonable doubt.

6 where is Butler?

7 okay. She's not here for her case.

8 Come on. Use hands. The hand of one is the hand of
9 all. You'll hear that from her.

10 Six hands in that car. Six hands in that car. All 24
11 hands in that jury box that's gonna deliberate must believe,
12 beyond a reasonable doubt, no hesitation, that there were
13 eight hands in that vehicle, and that seven and eight
14 belonged to Justin Wilson.

15 Thank you.

16 THE COURT: The gentleman with that -- will you move
17 that please.

18 Thank you, Mr. Peper.

19 During this trial, ladies and gentlemen, you and I have
20 certain duties to perform. As the trial judge, it is my
21 responsibility to preside over the trial of this case, and
22 to rule upon or pass upon the admissibility of the evidence
23 that has been offered during this trial.

24 You are to consider only the competent evidence before
25 you, and you are to disregard and disabuse your mind from

1 any testimony which has been ordered stricken from the
2 record in this case during the progress of this trial if
3 there has been any. You are to consider only the testimony
4 which has been presented from the witness stand, together
5 with any exhibits which have been made a part of the record
6 in this case.

7 Excuse me. I apologize.

8 And any stipulations of counsel which have been made a
9 part of this record. I instruct you that a stipulation is
10 an agreement between the attorneys, and it requires no
11 further proof.

12 I have the additional duty to charge or instruct you on
13 the law applicable to this case. As the presiding judge,
14 I'm the sole judge of the law of this case, and it is your
15 duty, as jurors, to accept and apply the law as I now state
16 it to you. If you have a preconceived idea as to what the
17 law is or what the law ought to be in a case or in this
18 case, and it should not agree with what I now tell you the
19 law is, you are obligated, under your oath, to abandon this
20 preconception on your part because you are sworn to accept
21 the law and apply the law precisely as I now state it to
22 you.

23 In every case tried in this Court before a jury, the
24 jury becomes the sole and exclusive judges of the facts.
25 You, the jury, are the judges of the facts in this case.

1 This Court is the judge of the law.

2 The Constitution of our State has declared that a trial
3 judge shall not indicate, state, comment upon, or make any
4 statement to a trial jury about the facts in a case. Since
5 you, the jury, are the sole judges of the facts in this
6 case, you are not to infer anything from what I said during
7 the progress of this trial in ruling upon the admissibility
8 of evidence or otherwise or anything that I say now to you
9 during the course of this instruction that I have any
10 opinion about the facts. The law does not allow me to have
11 an opinion about the facts.

12 This is a matter solely for you, the jury, to
13 determine. As jurors then, it is your duty, as I've
14 instructed, to determine the effect, the value, the weight,
15 and the truth of the evidence presented during this trial.
16 Necessarily, you must assess the credibility of witnesses
17 who have testified.

18 Credibility is simply a legalistic term meaning
19 believability. It becomes your duty, as jurors, to analyze
20 and to evaluate the evidence and determine the credibility
21 of that evidence. Some of the things you may consider as
22 you decide whether or not to believe a witnesses testimony
23 about a particular matter include what was the manner and
24 appearance of the witness who testified. Was he or she
25 straightforward or hesitant in answering. Was the testimony

1 of a witness consistent or inconsistent. How did the
2 witness come to know the facts that he or she testified to
3 or what was his or her ability to know these facts. Is
4 there some reason a witness would want to give testimony
5 which would help or hurt one side or the other.

6 In other words, was the witness biased or prejudiced,
7 and was the testimony of a witness strengthened or weakened
8 by other testimony or evidence.

9 Ladies and gentlemen, you can believe as much or as
10 little of each witnesses testimony as you think proper. You
11 may believe the testimony of a single witness against that
12 of many witnesses or just the opposite. I further instruct
13 you that, in determining the question of credibility or
14 believability of witnesses who have testified, you may
15 believe one witness as against several witnesses or several
16 witnesses as against one witness. You may believe a part of
17 the testimony of a witness and reject the remaining part of
18 the testimony of that same witness. If you have a good and
19 sound reason, you may believe the testimony of a witness in
20 its entirety or reject the testimony of a witness in its
21 entirety.

22 You may consider the demeanor of the witness. That is
23 the manner and appearance of the witness who testified from
24 the witness stand. Again, as I've instructed, you can
25 believe as much or as little of each witnesses testimony as

1 you think proper.

2 I further instruct you, ladies and gentlemen, that our
3 rules of evidence, evidence ordinarily to not -- do not
4 permit a witness to testify to opinions or conclusions. An
5 exception to this rule exists for witnesses we call expert
6 witnesses.

7 An expert -- a witness, who by their education,
8 training, and experience, has become an expert in some art,
9 science, profession, or calling, may state an opinion as to
10 relevant and material matters in which the witness claims to
11 be an expert, and may also state the reasons for the
12 opinion.

13 You should consider any expert opinion received in
14 evidence in this case like any other evidence. Give it the
15 weight you think it deserves. If you decide that the
16 opinion of an expert witness is not based on sufficient
17 education, training, and experience or if you conclude that
18 the reasons given in support of the opinion are not sound or
19 that the opinion is outweighed by other evidence, you may
20 disregard the opinion entirely.

21 An expert witnesses testimony is to be given no greater
22 weight than that of other witnesses simply because the
23 witness is an expert. Further, you are not required to
24 accept an expert's opinion even though it is uncontradicted.

25 Ladies and gentlemen, they're two types of evidence

1 which are generally presented during a trial. Direct
2 evidence and circumstantial evidence. Direct evidence is
3 the testimony of a person who asserts or claims to have
4 actual knowledge of a fact. Such as an eye witness.
5 Circumstantial evidence is proof of a, of a chain of facts
6 and circumstances indicating the existence of a fact.

7 The law makes absolutely no distinction between the
8 weight or value to be given to either direct or
9 circumstantial evidence. Nor is a greater degree of
10 certainty required of circumstantial evidence than of direct
11 evidence.

12 I further instruct you that crimes may be proven by
13 circumstantial evidence. Again, as I've instructed, the law
14 makes no distinction between the weight or value to be given
15 to either direct or circumstantial evidence. However, to
16 the extent the State relies on circumstantial evidence, all
17 of the circumstances must be consistent with each other,
18 and, when taken together, point conclusively to the guilt of
19 the accused beyond a reasonable doubt. If these
20 circumstances merely portray the defendant's behavior as
21 suspicious, the proof has failed.

22 The State has the burden of proving the defendants'
23 guilty beyond a reasonable doubt. This burden rests with
24 the State regardless of whether the State relies on direct
25 evidence, circumstantial evidence, or some combination of

1 the two.

2 You should weigh all of the evidence in this case.

3 After weighing all of the evidence, if you are not convinced
4 of the defendant's -- I'm sorry. I apologize. After
5 weighing all of the evidence, if you are not convinced of
6 the guilt of the defendants beyond a reasonable doubt, you
7 must find the defendants not guilty. Conversely, if you are
8 convinced of the guilt of the defendants beyond a reasonable
9 doubt, then you must find them guilty.

10 I instruct you, ladies and gentlemen, that the fact
11 that the defendants were arrested, charged, and indicted is
12 not evidence in this case, and can not be considered by you
13 as evidence of guilt in this case. Nor does it create any
14 presumption or inference of guilt. This documentation,
15 ladies and gentlemen, are simply the formal documents or
16 written instruments which contain the charge or charges made
17 against a defendant. They simply serve as the formal
18 documentation by which the case is processed or brought into
19 the Court.

20 The defendants have pled not guilty to the indictments,
21 and that plea casts the burden on the State to prove the
22 defendants' guilty because a person charged with committing
23 a criminal offense in South Carolina is never required to
24 prove himself innocent.

25 I instruct you, Madam Forelady, ladies and gentlemen of

1 the jury, that it is a cardinal and important rule of the
2 law of evidence that the defendants, in a criminal trial, no
3 matter what the seriousness of the charge or charges made
4 against them may be, will always be presumed to be innocent
5 of the crimes for which they are indicted unless their guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 This presumption of innocence does not cease when you
9 retire to deliberate, but it accompanies the defendants from
10 the time of their appearance throughout the trial until you
11 reach a verdict in this case. Our Supreme Court has said
12 that the presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the defendants,
14 and it remains with them and assigns them to that class, the
15 innocent, until that presumptive robe of righteousness has
16 been stripped from their person by evidence satisfying you
17 of that guilt beyond a reasonable doubt.

18 The presumption of innocence is not mere legal theory.
19 It is not just a legal phrase. It is a substantial right to
20 which every defendant is entitled unless you, the jury, are
21 satisfied, from the evidence, of guilt beyond a reasonable
22 doubt.

23 The State has the burden of proving the defendants
24 guilty beyond a reasonable doubt. Some of you may have
25 served in the past as jurors in civil cases where you were

1 told that it is only necessary to prove that a fact is more
2 likely true than not true. Such as by the greater weight or
3 the preponderance of the evidence.

4 In criminal cases, the State's proof must be more
5 powerful than that. It must be beyond a reasonable doubt.
6 Proof beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. They're very few
8 things in this world that we know with absolute certainty,
9 and, in criminal cases, the law does not require proof that
10 overcomes every possible doubt. If, based on your
11 consideration of the evidence, you are firmly convinced that
12 the defendants are guilty of the crimes charged, you must
13 find the defendants guilty. If, on the other hand, you
14 think there's a real possibility that the defendants are not
15 guilty, you must give them the benefit of the doubt and find
16 them not guilty.

17 I instruct you, ladies and gentlemen, and emphasize
18 that the fact that the defendants in this case did not
19 testify is not a factor to be considered by you in any
20 manner whatsoever in your deliberation of this case, and in
21 your consideration on the question of a verdict in this
22 case. It must not be considered by you in any manner
23 whatsoever.

24 The defendants have the constitutional right to remain
25 silent, and the assertion of this right must not be

1 considered by you in your deliberations. I repeat, under
2 your oath, you are to draw no conclusion whatsoever from the
3 fact that the defendants in this case did not testify. The
4 fact that these defendants did not testify should not be
5 discussed in any way or in any manner in the jury room
6 during your deliberations.

7 The burden of proof, as I've instructed, is on the
8 State to prove guilt beyond a reasonable doubt. The
9 defendants are not required to prove their innocence. The
10 burden remains on the State to prove guilt beyond a
11 reasonable doubt.

12 Each defendant in this case is charged with murder.
13 The State must prove, beyond a reasonable doubt, that the
14 defendants killed another person with malice aforethought.

15 Malice is hatred, ill will, or hostility towards
16 another person. It is the intentional doing of a wrongful
17 act without just cause or excuse, and with an intent to
18 inflict an injury or under circumstances that the law will
19 infer an evil intent.

20 Malice aforethought does not require that malice exist
21 for any particular time before the act is committed, but
22 malice must exist in the minds of the defendants just before
23 and at the time the act is committed. Therefore, there must
24 be a combination of the previous evil intent and the act.

25 Malice aforethought may be express or inferred. These

1 terms express and inferred do not mean different kinds of
2 malice, but merely the manner in which malice may be shown
3 to exist. That is either by direct evidence or by inference
4 from the facts and circumstances which are proven.

5 Expressed malice is shown when a person speaks words
6 which express hatred or ill will for another or when the
7 person prepared beforehand to do the acts which was later
8 accomplished. For example, lying in wait for a person or
9 any other acts of preparation going to show that the deed
10 was within the defendant's mind would be expressed malice.

11 Malice may be inferred from the, from conduct showing a
12 total disregard for human life. Inferred malice may also
13 arise when the deed is done with a deadly weapon.

14 A deadly weapon is any article, instrument, or
15 substance which is likely to cause death or great bodily
16 harm. Whether an instrument has been used as a deadly
17 weapon depends on the facts and circumstances of each case.
18 I instruct you that the following are examples of
19 instruments which may be deadly weapons:

20 A pistol, a shotgun, a rifle, a dirk, a dagger, a
21 knife, a slingshot, metal knuckles, a razor, gasoline, a
22 firebomb or Molotov cocktail, and lighter fluid. A gun may
23 be a deadly weapon even if it is not operating.

24 I instruct you that facts are proven, beyond a
25 reasonable doubt, sufficient to raise an inference of malice

1 to your satisfaction, this inference would simply be an
2 evidentiary fact to be considered by you, the jury, along
3 with the other evidence in the case, and you may give it the
4 weight, value, and effect you decide it should receive.

5 The defendants are also charged with attempted murder.
6 In order to prove this crime, the State must prove the
7 defendant attempted to kill another person with malice
8 aforethought, either express or implied.

9 Malice is hatred, ill will, or hostility towards
10 another person. It is the intentional doing of a wrongful
11 act without just cause or excuse and with an intent to
12 inflict an injury or under circumstances that the law will
13 infer an evil intent.

14 Malice aforethought does not require that malice exist
15 for any particular time before the act is committed, but
16 malice must exist in the mind of the defendant just before
17 and at the time the act is committed. Therefore, there must
18 be a combination of the previous evil intent and the acts.

19 Malice aforethought may be expressed or inferred.
20 Again, as I've instructed, the terms express and inferred do
21 not mean different kinds of malice, but merely the manner in
22 which malice may be shown to exist. That is either by
23 direct evidence or by inference from the facts and
24 circumstances which are proven.

25 Express malice is shown when a person speaks words

1 which express hatred or ill will for another or when the
2 person prepared beforehand to do the act which was later
3 accomplished. For example, lying in wait for a person or
4 any other acts of preparation going to show that the deed
5 was within the defendant's mind would be expressed malice.

6 Malice may be inferred from conduct showing a total
7 disregard for human life. Inferred malice may also arise
8 when the deed is done with a deadly weapon, and, as I've
9 instructed, a deadly weapon is any article, instrument, or
10 substance which is likely to cause death or great bodily
11 harm. Whether an instrument has been used as a deadly
12 weapon depends on the facts and circumstances of each case.

13 The following are examples of instruments which may be
14 deadly weapons:

15 A pistol, a shotgun, a rifle, a dirk, a dagger, a
16 knife, a slingshot, metal knuckles, a razor, gasoline, a
17 firebomb or Molotov cocktail, and lighter fluid. A gun may
18 be a deadly weapon even if it is not operating.

19 If facts are proven, beyond a reasonable doubt,
20 sufficient to raise an inference of malice to your
21 satisfaction, this inference would simply be an evidentiary
22 fact to be considered by you, the jury, along with the other
23 evidence in the case, and you may give it the weight, value,
24 and effect you decide it should receive.

25 Intent means intending the result which actually

1 occurs. Not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant, and other
3 circumstances from which you may naturally and reasonably
4 infer intent. Evidence of the character of the act, the
5 character of the instrument used, the manner in which it was
6 used, the purpose to be accomplished, and the resulting
7 wounds or injuries may be considered in determining the
8 intent with which the act was committed. Intent may also be
9 inferred when it is demonstrated that the defendant
10 voluntarily and willfully commits an act, the natural
11 tendency of which is to destroy another's life.

12 An attempt is an effort to accomplish a crime which
13 does not succeed. An attempt includes a specific, a
14 specific intent to do a particular criminal act along with
15 an act falling short of the act intended. The State must
16 show more than mere preparation and intent. There must be
17 some overt act committed in the effort to commit the crime.

18 Intent means intending the result which actually
19 occurs. Not accidentally or involuntarily. Intent may be
20 shown by acts and conduct of the defendant, and other
21 circumstances from which you may naturally and reasonably
22 infer intent.

23 Ladies and gentlemen, if you find that the State has
24 failed to prove that the defendant is guilty of attempted
25 murder, you must then decide whether the State has proven

1 that the defendant is guilty of assault and battery of a
2 high and aggravated nature.

3 To prove assault and battery of a high and aggravated
4 nature, the State must prove, beyond a reasonable doubt,
5 that the defendant unlawfully injures another person, and
6 great bodily injury to another person results or the act is
7 accomplished by means likely to produce death or great
8 bodily injury. Great bodily injury means bodily injury
9 which causes a substantial risk of death or which causes
10 serious permanent disfigurement or protracted loss or
11 impairment of the function of a bodily member or organ.

12 If you find that the State has failed to prove that the
13 defendant is guilty of assault and battery of a high and
14 aggravated nature, you must then decide whether the State
15 has proven that the defendant is guilty of assault and
16 battery first degree.

17 To prove assault and battery first degree, first
18 degree, the State must prove, beyond a reasonable doubt,
19 that the defendant unlawfully injures another person and
20 the act offers or attempts to injure another person with the
21 presentability to do so, and the act is accomplished by
22 means likely to produce death or great bodily injury. Great
23 bodily injury means bodily injury which causes a substantial
24 risk of death or which causes serious permanent
25 disfigurement or protracted loss or impairment of the

1 function of a bodily member or organ.

2 If you find that the State has failed to prove the
3 defendant is guilty of assault and battery first degree,
4 then you must decide whether the State has proven that the
5 defendant is guilty of assault and battery second degree.
6 To prove assault and battery second degree, the State must
7 prove, beyond a reasonable doubt, that the defendant
8 unlawfully injured another person or offers or attempts to
9 injure another person with the presentability to do so, and
10 moderate bodily injury to another person results or moderate
11 bodily injury to another person could have resulted.

12 Moderate bodily injury means physical injury requiring
13 the treatment to an organ system of the body other than the
14 skin, muscles, and connective tissues of the body except
15 when there's penetration of the skin, muscles, and
16 connective tissues that requires surgical repair of a
17 complex nature, or when the treatment of the injuries
18 requires the use of regional or general anesthesia.

19 If you find, ladies and gentlemen, that the State has
20 failed to prove that the defendant is guilty of assault and
21 battery second degree, you must then decide whether the
22 State has proven that the defendant is guilty of assault and
23 battery third degree. To prove assault and battery third
24 degree, the State must prove, beyond a reasonable doubt,
25 that the defendant unlawfully injured another person or

1 offered or attempts to injure another person with the
2 presentability to do so.

3 I instruct you, ladies and gentlemen, that if a crime
4 is committed by two or more people who are acting together
5 in committing a crime, the act of one is the act of all. A
6 person who joins with another to commit an unlawful act is
7 criminally responsible for everything done by the other
8 person which happens as a probable or natural consequence of
9 the acts done in carrying out the common plan and purpose.

10 For example, two people can be guilty of killing
11 another person when only one of the two had a gun, there was
12 only one bullet, and only one of the two fired the shot that
13 caused the death. If two or more people are acting
14 together, are together, acting together, assisting each
15 other in committing the offense, the act of one is the act
16 of all. As it is sometimes said, the hand of one is the
17 hand of all.

18 Prior knowledge that a crime is going to be committed
19 without more is not sufficient to make a person guilty of
20 that crime. Mere knowledge that another person is going to
21 commit a crime, even if the defendant is present when the
22 crime is committed, is not sufficient to convict the
23 defendant as a principal. Guilt as a principal is shown by
24 actual or constructive presence at the scene as a result of
25 prior arrangement. Therefore, a finding of a prior arranged

1 plan or a common scheme is necessary for a finding of guilt
2 as a principal.

3 The State must prove, beyond a reasonable doubt, by
4 competent evidence, the theory of the hand of one is the
5 hand of all. A principal in a crime is one who either
6 actually commits the crime or who is, or who is present
7 aiding, abetting, or assisting in committing the crime.

8 When a person does an act in the presence of all, and
9 with the assistance of another, the act is done by both.
10 Where two or more acting with a common plan or attempt -- or
11 intent are present at the commission of a crime, it does not
12 matter who actually commits the crime. All are guilty. The
13 hand of one is the hand of all.

14 Present at the commission of a crime means to be
15 sufficiently near to aid and abet and assist in the
16 commission of the crime. However, mere presence at the
17 scene of a crime is not sufficient to convict one as a
18 principal on the theory of aiding and abetting.

19 Intent is also a necessary element for there, for there
20 must have been a common design or intent to commit the
21 crime, and the crime must have been committed pursuant
22 thereto with the person aiding and abetting by some overt
23 act. Intent means intending the result which actually
24 occurs. Not accidentally or involuntarily. Intent may be
25 shown by acts and conduct of the defendant and other

1 circumstances from which you may naturally and reasonably
2 infer intent. The State must prove these elements beyond a
3 reasonable doubt.

4 The State has the burden of proving identity beyond a
5 reasonable doubt. You must be satisfied, beyond a
6 reasonable doubt, of the accuracy of the identification of
7 the defendant before you may convict the defendant.
8 Identification testimony is an expression of belief or
9 impression by a witness. You must determine the accuracy of
10 the identification of the defendant. You must consider the
11 believability of each identification witness in the same way
12 as any other witnesses. You may consider whether the
13 witness had an adequate opportunity to observe the offender
14 at the time of the offense.

15 This will be affected by things like how long or short
16 a time was available, how far or close the witness was, the
17 lighting conditions, and whether the witness had the chance
18 to see or know the person in the past. Once again, I
19 instruct you the burden on -- the burden of proof on the
20 State extends to every element of the crime charged, and
21 this includes the burden of proving, beyond a reasonable
22 doubt, the identity of the defendant as the person who
23 committed the crime. If, after examining the testimony, you
24 have a reasonable doubt as to the accuracy of the
25 identification, you must find the defendant not guilty.

1 Ladies and gentlemen, each defendant in this case is
2 charged with several indictments and they are as follows:

3 As to the Defendant Marvin Donte Bryant, Indictment
4 2017-GS-10-4164, murder, 4165, 66, and 67, attempted murder.
5 And the defendant, Justin Martel Wilson, Indictment
6 2017-GS-10-4160, murder, and 4161, 4162, and 4163, attempted
7 murder.

8 Each indictment, ladies and gentlemen, charges a
9 separate and distinct offense. You must decide each
10 indictment separately on the evidence and the law applicable
11 to it uninfluenced by your decision as to any other
12 indictment. The defendants may be convicted or acquitted on
13 any or all of the offenses charged. You will be asked to
14 write a separate verdict of guilty or not guilty for each
15 indictment.

16 And while I may have, during the course of this
17 instruction, referred to the defendants collectively, you
18 are to consider each charge against each defendant with the
19 law applicable to it as well as to each indictment. And, as
20 I've indicated, the defendants may be convicted or acquitted
21 on any or all of the offenses charged, and you will be
22 required to write a separate verdict of guilty or not guilty
23 for each indictment.

24 Ladies and gentlemen, you have heard testimony as well
25 as some references to the penalty a person can serve for a

1 crime that has been alleged in the indictments. In
2 determining whether the State has met their burden of proof
3 in this case, you are not to consider any possible penalty
4 for any particular crime. The punishment for crimes is a
5 matter of law for the Court to determine, and should never
6 be considered by you, in any manner whatsoever, at arriving
7 at a fair and impartial verdict in this case.

8 They're several possible verdicts for each of the
9 indictments, and I'm going to go through that with you.

10 Ladies and gentlemen -- and you don't have to try to
11 write this down because the verdicts are reduced to writing,
12 and they will go into the jury room with you along with the
13 indictments.

14 Ladies and gentlemen, your verdicts must be unanimous,
15 which means all 12 of you must agree in order to reach a
16 verdict in this case. And, again, you will be asked to
17 write a verdict -- to fill out the verdict form for each
18 charge.

19 Madam Forelady, it is your responsibility to fill out
20 the verdict forms once the jury has reached a unanimous
21 verdict, and, again, as I've instructed, your verdict must
22 be unanimous, which means all 12 of you must agree.

23 For each indictment, that being the State against
24 Marvin Donte Bryan and the State against Justin Martel
25 Wilson, on the Indictments 2017-GS-10-4164 and 4160, which

1 is murder, the options are as follows:

2 We, the jury, unanimously find the defendant guilty of
3 murder or not guilty.

4 And, as it regards each indictment against each
5 defendant on the charges of attempted murder, those verdict
6 forms read as follows:

7 We, the jury, unanimously find the defendant guilty of
8 attempted murder, or, as to the lesser included offense,
9 guilty of assault and battery of a high and aggravated
10 nature, or, as to lesser included offense, guilty of assault
11 and battery in the first degree, or, as to lesser included
12 offense, guilty of assault and battery in the second degree,
13 or, as to the lesser included offense, guilty of assault and
14 battery in the third degree, or not guilty. And each of
15 those indictments or each of those offenses of attempted
16 murder all read the same. And, in the interest of brevity,
17 I will not read each one of them as they all duplicate one
18 another.

19 Again, ladies and gentlemen, your verdict must be
20 unanimous, which means all 12 of you must agree.

21 Madam Forelady, when the jury has reached a verdict, it
22 is your responsibility to fill out the verdict form, to sign
23 and date that form, and also knock on the door and advise
24 the bailiffs that the jury has reached a verdict in each of
25 the indictments.

1 Also, during your jury deliberation process, if you
2 have -- if the jury has any questions, you should write
3 those questions out and sign and date the form and follow
4 the same procedure by knocking on the door, and advising the
5 bailiffs that the jury has a question. Any notes that you
6 provide to the Court should never indicate any numerical
7 breakdown, and it should not disclose any secret -- any
8 portions of your deliberative process. So, I provide that
9 for your information.

10 Ladies and gentlemen, if you have any questions during
11 deliberations, please know that there will be a delay in us
12 responding, and that is because there's a procedure that we
13 must follow in answering your questions. So, know, if you
14 have a question, there will be a delay because we have to
15 follow that process.

16 Again, ladies and gentlemen, your verdict must be
17 unanimous, which means all 12 of you must agree.

18 I'm going to ask that you return to your jury room, but
19 do not yet begin your deliberations, and please leave your
20 notepads in your seats. I have some very brief matters of
21 law to take up with the attorneys that may require
22 clarification of an instruction or further instruction.
23 However, if there's no further instruction, we will send in
24 the evidence, along with the verdict forms, and your
25 notepads, and, at that time, you will be allowed to begin

1 your deliberations, and I will also excuse the alternates at
2 that time.

3 Your lunch should arrive by 12:30, and, as soon as it
4 has arrived, we will bring that in to you. And, also, I'll
5 tell you, in advance, that if any of you want to take a
6 break to go get air, stretch your legs or otherwise, the
7 bailiffs will accompany you to do that. But if any of jury
8 members are absent, you can not deliberate while they are
9 not present.

10 If you would go with the bailiffs for me please, and do
11 not yet begin your deliberations.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: You may be seated. You can take your
15 seats.

16 Any exceptions from the State?

17 SOLICITOR KIDD: No, Your Honor.

18 THE COURT: Any exceptions from the defense?

19 MR. PRICE: No, ma'am.

20 MR. PEPER: None, Your Honor.

21 THE COURT: All right. Can y'all just please
22 doublecheck for me and make sure all the evidence is there
23 cause it's a lot of it, and y'all probably gonna need a cart
24 to take all that evidence back there.

25 Do you have gloves, Dallas, for them?

1 They're gonna need gloves cause some of that stuff
2 is---

3 THE BAILIFF: Yes, ma'am.

4 THE COURT: And make sure all the safeties are on the
5 weapons for me please---

6 SOLICITOR KIDD: They've all been---

7 THE COURT: ---and there's no unspent ammunition,
8 correct?

9 SOLICITOR KIDD: I believe I took all of that out.
10 Actually I know I did. No. Well --.

11 THE COURT: Just double-check for me.

12 SOLICITOR KIDD: So, there---

13 THE COURT: Because, if there's unspent ammunition, as
14 long as the safeties are in there, that's not a problem I
15 don't think.

16 SOLICITOR KIDD: So, I---

17 THE COURT: But I just need you to double-check and
18 make sure all the safeties are on the weapons.

19 SOLICITOR KIDD: They are. They've all been made safe
20 with zip ties.

21 THE COURT: Perfect.

22 SOLICITOR KIDD: Except for the assault rifle, which is
23 been---

24 THE COURT: I thought there were zip ties on that too.

25 SOLICITOR KIDD: Oh, there is. There is.

1 THE COURT: Yeah.

2 SOLICITOR KIDD: So, they've all been made safe with
3 zip ties. I believe there's one or two unspent rounds in
4 individual---

5 THE COURT: Well, as long as they're zip ties, you
6 know, yeah. I just needed to make sure those -- that they
7 have been secured.

8 MR. PRICE: Yeah, you took them out of this.

9 SOLICITOR KIDD: I took all live rounds and didn't
10 enter that in.

11 MR. PRICE: Right.

12 SOLICITOR KIDD: But there's a couple individual
13 packets in there.

14 MR. PRICE: Okay.

15 SOLICITOR KIDD: Do they have a --?

16 THE COURT: They do. They have a clean laptop.

17 SOLICITOR KIDD: They have a clean laptop?

18 THE COURT: But I need you to make sure that there's no
19 special software that needs to be utilized.

20 SOLICITOR KIDD: I believe everything has its own.

21 THE COURT: They have a clean laptop back there, don't
22 they?

23 THE BAILIFF: There's one in the other courtroom.

24 THE COURT: We need to find another laptop. Well, see
25 if they're using it. Doublecheck for me and see if they're