

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Feb 11 2025

SC Court of Appeals

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALONZA D. MARABLE,

APPELLANT

APPELLATE CASE NO. 2023-000988

RECORD ON APPEAL

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

ALAN WILSON
Attorney General

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

MELODY J. BROWN
Senior Assistant Deputy Attorney General

PO Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR APPELLANT

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Ste. 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 12-15, 2023.....	1
OPENING STATEMENT BY MS. BARBER.....	10
OPENING STATEMENT BY MR. SHELTON	13
TESTIMONY	
TONIA MALLETT	
Direct Examination by Mr. Cooper	16
Cross Examination by Mr. Shelton.....	23
ERICA MCKELVEY	
Direct Examination by Ms. Barber	43
NYAJA MCKELVEY	
Direct Examination by Ms. Barber	54
Cross Examination by Mr. Shelton.....	56
LASHAWN SINGLETON	
Direct Examination by Mr. Cooper	58
JUSTIN BONNELL	
Direct Examination by Ms. Barber	62
ADAM MALONE	
Direct Examination by Mr. Cooper	70
KENDRA MOSELEY	
Direct Examination by Ms. Barber	75
Cross Examination by Mr. Shelton.....	93
Redirect Examination by Ms. Barber.....	96
JONATHAN GLENN	
Direct Examination by Mr. Cooper	102
Cross Examination by Mr. Shelton.....	118
Redirect Examination by Mr. Cooper	120
CANDY DOZIER JOHNSON	
Direct Examination by Mr. Cooper	139

MICHAEL SANCHEZ

Direct Examination by Mr. Cooper	143
Cross Examination by Mr. Shelton	147

JESSICA FREEMAN

Direct Examination by Mr. Cooper	148
Cross Examination by Mr. Shelton	153
Redirect Examination by Mr. Cooper	157
Re-cross Examination by Mr. Shelton	162

MICHAEL COOK

Direct Examination by Mr. Cooper	164
Cross Examination by Mr. Shelton	168

JEROME DESHEERS

Direct Examination by Mr. Cooper	170
Cross Examination by Mr. Shelton	179
Redirect Examination by Mr. Cooper	181
Re-cross Examination by Mr. Shelton	184

ANITA MOORE

Direct Examination by Ms. Barber	191
Cross Examination by Mr. Shelton	215
Redirect Examination by Ms. Barber	219

JAMES GREEN

Direct Examination by Mr. Cooper	227
Cross Examination by Mr. Shelton	251
Redirect Examination by Mr. Cooper	252

JAMAUL SIMMONS

Direct Examination by Mr. Cooper	261
Cross Examination by Mr. Shelton	276

PIERRE NELSON

Direct Examination by Mr. Cooper	279
Cross Examination by Mr. Shelton	307
Redirect Examination by Mr. Cooper	315

ALEXANDRIA REID

Direct Examination by Mr. Cooper	334
--	-----

AUDREY TYRRELL

Direct Examination by Mr. Cooper	336
Cross Examination by Mr. Shelton	346

JENNIFER BUTLER	
Direct Examination by Mr. Cooper	353
COLLOQUY WITH THE DEFENDANT REGARDING HIS RIGHT TO TESTIFY	363
TESTIMONY	
RYAN DEWANE	
Direct Examination by Mr. Cooper	372
Cross Examination by Mr. Shelton	389
NICHOLAS BATALIS	
Direct Examination by Mr. Barber	396
DAVID PRITCHARD	
Direct Examination by Mr. Cooper	412
DAVID PRITCHARD (PROFFER)	
Direct Examination by Mr. Cooper	454
DAVID PRITCHARD	
Continued Direct Examination by Mr. Cooper	460
Cross Examination by Mr. Shelton	510
Redirect Examination by Mr. Cooper	528
DAVID PRITCHARD	
Direct Examination by Mr. Cooper	569
CLOSING ARGUMENT BY MR. COOPER	623
CLOSING ARGUMENT BY MR. SHELTON	677
CHARGE ON THE LAW	698
JURY NOTE DISCUSSION	721
VERDICT	725
SENTENCING	745
COURT'S EXHIBIT #1 (JURY NOTE)	747
INDICTMENTS	748
CERTIFICATE OF COUNSEL	752

1 THE COURT: How is he going to do that without saying
2 what somebody told him without having direct knowledge of
3 it?

4 MR. COOPER: Judge, I think he does have direct
5 knowledge of it. Again, the record --

6 THE COURT: How?

7 MR. COOPER: -- is replete with witnesses that have
8 talked about it, witnesses --

9 THE COURT: He cannot say what somebody said to him,
10 that's hearsay.

11 MR. COOPER: Yes, ma'am, he doesn't have to. The
12 record is replete --

13 THE COURT: No, he can only say what he did as a result
14 of that testimony -- in other words, all he can say is what
15 he did as a result, which is that he arrested Mr. Marable.
16 He can't make any reference as to what he thinks the motive
17 was. He doesn't have any direct knowledge of it.

18 MR. COOPER: I'm talking about Antwan Johnson.

19 THE COURT: I'm sorry if I misstated. Or did I mean to
20 say what I said?

21 MR. COOPER: I think you said Mr. Marable, I think you
22 may have meant Mr. Johnson. But, Judge, given that this was
23 the officer that swore out warrants against Mr. Johnson,
24 that goes directly as to why he swore out warrants. I think
25 motive is --

1 THE COURT: Why he swore out warrants, it's still
2 hearsay. Swearing out a warrant doesn't require that you
3 have an exception to hearsay.

4 MR. COOPER: Judge, I, also, think he has testified
5 during his testimony, not objected to by Mr. Shelton, about
6 knowing that Mr. Johnson was robbed by --

7 THE COURT: He didn't object then, but he's objecting
8 now. So I have to take up what has been made
9 contemporaneously.

10 MR. COOPER: I understand.

11 THE COURT: I needed to know --

12 MR. COOPER: Ma'am?

13 THE COURT: Go ahead, I'm listening.

14 MR. COOPER: He has already put on the record what I'm
15 asking him to say again. That is already in the record from
16 this detective. He's indicated that he does have firsthand
17 knowledge. The Defense did not object to it. It goes
18 directly to his role as case agent. And what the jury -- it
19 goes to one of the reasons why this individual was charged.

20 And it, also, is fair, Judge, I think in contrast that
21 Mr. Johnson had a potential motive and this Defendant did
22 not. So I think that falls squarely within his role as case
23 agent. He has already testified to it and the Defense did
24 not have an objection to that testimony. Both sides have
25 solicited information throughout the trial and it is an

1 intragel part of the State's case and the State's theory of
2 the case and information to which he does have direct
3 knowledge from multiple sources.

4 And, furthermore, I know we're not at the jail calls
5 yet, he mentions that on one of the jail calls as being
6 aware of that. So, Judge, I think it is already in the
7 record. I think he has --

8 THE COURT: He mentions in the jail calls that they're
9 trying to pin this on him and -- he doesn't inculcate
10 himself, but we'll deal with that later. I need to know
11 what direct knowledge this witness has or what he's about to
12 testify to other than what someone told him. And I don't
13 think the record -- you know, you asked those of the
14 witnesses who had direct knowledge. He doesn't get to
15 repeat what somebody said.

16 MR. COOPER: And, Judge, he wouldn't, but he's already
17 testified --

18 THE COURT: He didn't make an objection then, but he's
19 making an objection now and I have to deal with what is
20 contemporaneously before the Court. What happened before,
21 there was no objection. I assume there was some reason it
22 came in, but I need to know for right now. The objection is
23 speculation, foundation and hearsay. I need to know what
24 exceptions there are to those rules that you're arguing or
25 facilitate your ability to elicit this testimony.

1 Our Supreme Court has reenforced there is no
2 investigative hearsay. You offer a statement for its truth,
3 it can't be hearsay.

4 MR. COOPER: And, Judge, again --

5 THE COURT: The other statements where I overruled, the
6 statements were not being offered for hearsay. They were
7 merely saying I went from this step to this step to this
8 step. It wasn't being offered for its truth. But here,
9 you're trying to elicit from this witness statements made by
10 other folks offered for their truth to give Mr. Antwan
11 Johnson, who is not a Defendant in this case, a motive.

12 MR. COOPER: And, Judge, I would get back to I
13 understand the prohibition against investigative hearsay. I
14 get the position of Detective Pritchard as the case agent,
15 as the arresting officer, the one that brought charges
16 against Mr. Johnson and this Defendant. It's not mere
17 speculation. He has had this information and direct
18 knowledge of that from several witnesses. He is not going
19 to say who told him. He, again, has already testified about
20 what he --

21 THE COURT: How is he going to tell me what he thinks
22 the motive is without repeating what somebody said to him?
23 He doesn't have any direct knowledge of someone being
24 robbed, he wasn't there.

25 MR. COOPER: Judge --

1 THE COURT: It can only be reported to him.

2 MR. COOPER: Ma'am?

3 THE COURT: It can only be reported to him by somebody
4 else, who has already testified and who the Defendant has
5 had the ability to cross-examine.

6 MR. COOPER: And they can cross-examine this witness --

7 THE COURT: They can't cross-examine him on what
8 somebody else said.

9 MR. COOPER: It goes to show why he did and why he
10 directed -- why initially Mr. Johnson was determined as a
11 suspect, that's how he first got turned onto this. It goes
12 directly to the heart of the investigation. And, again,
13 Judge, I do think it's somewhat --

14 THE COURT: You've already elicited this testimony. To
15 some extent, it's asked and answered.

16 MR. COOPER: Yes, Your Honor. But, again, this is the
17 witness that has knowledge of this information. And, Judge,
18 this Court has let that evidence in --

19 THE COURT: I let it in because nobody objected.
20 Again, it's not my job to object. It's only my job to rule
21 on objections that are contemporaneously made and preserved
22 for the record. I don't intervene with folk are questioning
23 people because if you let it in, there must be some reason
24 you're letting it in and it's not my business. It's my
25 business when somebody propounds an objection and then I get

1 involved and I have to make a ruling. It has to be based on
2 rules in those rules of evidence and any precedent
3 interpreting those rules.

4 So you need to respond, Mr. Shelton, to Mr. Cooper's
5 arguments regarding your objection.

6 MR. SHELTON: Yes, Your Honor. The specific is for the
7 motive, Judge, the motive of Antwan Johnson. Judge, Antwan
8 is not here to testify, so any motive he would have gotten
9 of Antwan Johnson would have been from Antwan Johnson. If
10 he has other -- if he believes there's other motive, then
11 that would be speculation.

12 So, Judge, there's just -- I would -- there's evidence
13 out, so let the jury make that determination if that was
14 motivation or not, but I don't believe this officer has the
15 ability to testify about what Antwan Johnson's motivation is
16 without eliciting some of Antwan Johnson's testimony.

17 THE COURT: Mr. Cooper?

18 MR. COOPER: Judge, I would further submit that given
19 the status of Mr. Johnson that he would currently fall under
20 unavailable declarant and --

21 THE COURT: He's not unavailable. There's several
22 rules that deal with being unavailable and there's been no
23 finding by this Court that he's unavailable.

24 MR. COOPER: Is that going to be a potential finding of
25 this Court because --

1 THE COURT: I don't know. I haven't heard anything
2 yet. I simply told you this morning that I wasn't going to
3 have a jury sitting for two hours while I hashed that out.
4 We had a doctor, especially forensic pathologist sitting out
5 in the hallway and I was not going to have him waiting for
6 two hours. Nor was I going to have another witness who flew
7 here from Washington waiting. That was not an efficient use
8 of the Court's time. I think I was very clear about that.
9 I told you we would deal with it at another time when we had
10 more time to expend. I did not make a ruling. I haven't
11 heard anything upon which to make a ruling.

12 And who know, he might want to testify. I don't know.
13 We haven't gotten that far yet. But right now, I'm dealing
14 with this witness and there's been no finding that Mr.
15 Johnson is unavailable. And even if he was, I'm not certain
16 this witness would be able to testify to what he said --

17 MR. COOPER: Judge, it was --

18 THE COURT: I need you to ask the question you want to
19 ask the witness so I can hear what the answer is.

20 BY MR. COOPER:

21 Q Based on the totality of the investigation, Detective
22 Pritchard, were you able to determine if -- were you able to
23 determine if [LR] [REDACTED] robbed Antwan Johnson earlier in
24 the day, earlier in the day of the shooting?

25 A Yes, sir, I was.

1 THE COURT: You object to that question?

2 MR. SHELTON: I don't object to that question.

3 THE COURT: Okay. So we don't have an issue with that
4 question. Would that satisfy what you're trying to elicit?

5 MR. COOPER: Yes, ma'am, I think so.

6 THE COURT: So if there's no objection to the question,
7 we can move on then? Are you going to remember your
8 question?

9 MR. COOPER: I'll do my very best.

10 MR. SHELTON: As long as there's no motive indication
11 after that --

12 MR. COOPER: I won't ask the witness about the motive
13 of Mr. Johnson.

14 THE COURT: So what you're going to say, from the
15 totality of the investigation, were you able to determine --

16 MR. COOPER: Whether LR [REDACTED] [REDACTED] had robbed Antwan
17 Johnson earlier in the day of the shooting.

18 THE COURT: And you have no objection to that?

19 MR. SHELTON: No objection to that.

20 THE COURT: Are there going to be any other questions
21 that you're going to elicit along that line?

22 MR. COOPER: Not along that line, Judge. I would like
23 to ask him if he was able to determine from the
24 investigation if this Defendant had any motive and the
25 answer I believe would be no. But I think that is

1 completely fair game in this situation.

2 THE COURT: Do you have an objection to that question?

3 MR. SHELTON: No.

4 THE COURT: Any other questions --

5 MR. COOPER: Judge, that's all I have.

6 THE COURT: Okay. Bring the jury in, please.

7 MR. SHELTON: As long as that doesn't open up the door

8 --

9 THE COURT: Do you have any objection to the question?

10 MR. SHELTON: No.

11 (WHEREUPON, the jury enters the courtroom at 2:22 p.m.)

12 THE BAILIFF: All the jurors are present, Your Honor.

13 THE COURT: You may be seated.

14 Ladies and gentlemen, we appreciate your patience.

15 Mr. Cooper, you may proceed.

16 MR. COOPER: Thank you, Judge.

17 THE COURT: You're welcome.

18 BY MR. COOPER:

19 Q Detective Pritchard, if you would, please, tell the
20 jury if based on the totality of your investigation, were
21 you able to determine if [REDACTED] [REDACTED] had robbed Antwan
22 Johnson in the hours before the shooting?

23 A Yes, sir, I was.

24 Q And, finally, Detective Pritchard, were you able to
25 determine if this Defendant had any motive to shoot and kill

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

LR [REDACTED] [REDACTED]

A No, sir, I was not.

MR. COOPER: Thank you for your time. I have no further questions. Please answer anything Mr. Shelton may have for you.

THE COURT: Mr. Shelton, you may proceed.

MR. SHELTON: Thank you, Your Honor.

THE COURT: You're welcome.

CROSS-EXAMINATION

BY MR. SHELTON:

Q Okay, let's unpack some of this. So, Detective Pritchard, let's start with the shooting issue.

A Yes, sir.

Q I don't have a still shot, but on the video from Marson Street overlooking the shooting.

A Yes, sir.

(WHEREUPON, video is played for the jury.)

BY MR. SHELTON:

Q Mr. [REDACTED] he's ahead of Mr. Simmons; is that correct?

A Yes, sir.

Q He's quite a distance ahead of Mr. Simmons, correct?

A Yes, sir.

Q And we replay it if we need to, but where Mr. Simmons was, he could almost tell when gunshots started, correct?

A I guess whenever they started to run, yes, sir.

1 Q There's no firing, the gun --

2 A The fire from the gun, no, sir.

3 Q So you don't see any of that, correct?

4 A Correct.

5 Q So you can't tell if there's two, three, four or five
6 guns out there?

7 A Not based on this video, no.

8 Q You can't tell how many shots are coming based off this
9 video?

10 A Not based on this video.

11 Q And there's not a video out there that you can tell how
12 many shots there were?

13 A No, sir.

14 Q And there's nothing indicating the amount of -- or no
15 hearing of the shots, so you can't tell -- nothing is
16 recorded, so you can't tell how many shots there are from
17 the recording, correct?

18 A No, sir, there's just a guesstimation of 911 callers
19 and witnesses and stuff.

20 Q And 911 calls, there were many different variables,
21 many different ideas of how many gunshots, correct?

22 A Yes, sir.

23 Q Including, there were some different guesses from Mr.
24 Simmons, too, correct?

25 A Yes, sir.

1 Q Is that typical when you come to a crime scene that the
2 witnesses have different ideas of what they saw and heard?

3 A Yeah, everyone perceives things differently.

4 Q And that could be, also, true with the witness that you
5 learned about the Ford Focus, correct? It may not have been
6 true?

7 A Yeah, it was just a lead at the time because we didn't
8 -- when we initially spoke to him, we didn't have this
9 video. It was just a lead.

10 Q So Mr. Simmons, when those shots are fired, can you
11 tell about where he's at? Do you need to see it again?

12 A Yes, sir.

13 (WHEREUPON, video is replayed for the jury.)

14 Q Where he's at when the gunshots --

15 A Would you like me to just put a dot on the screen?

16 Q Yes.

17 A (Witness complies.)

18 Q And when this car backs in, there's another car next to
19 him, correct?

20 A Just to the left of it, yes, sir.

21 Q And there's a porch there, correct?

22 A Correct.

23 Q So he's about right there. So he's not -- he hasn't
24 made it past the trailer?

25 A Oh, he had. He had a vantage point of it. This isn't

1 a good vantage point of what he would have been seeing.

2 Q Because it's on this side of the camper?

3 A Yeah, it's higher up and it's at a different angle from
4 where he's coming from.

5 Q So he would have been coming around the corner. So
6 you've got a porch there, correct?

7 A Correct.

8 Q And probably a car there, correct?

9 A Just in front of the porch, yes, sir.

10 Q And next to the car that's backed in, correct?

11 A Correct.

12 Q And there's nothing in this video right here that tells
13 you that that car is the one that's on Lakewood? Nothing
14 that you can compare that puts that car the exact same as
15 Lakewood?

16 A Exact same, no. I could say it's similar just from
17 this -- I can see it's a dark in color sedan. If you look
18 at it next to the car that's in the driveway, you can see
19 clearly -- this is a black and white video, but you can see
20 it's a light in color car. The one beside it, a dark in
21 color car.

22 Q But you don't see that little square --

23 A No, it's too far.

24 Q Okay. Can't tell the license plate, correct?

25 A Correct.

1 Q It's just a dark in color sedan?

2 A Yes.

3 Q You can't say it's a Ford Focus, correct?

4 A No, the only video we can say it's a Ford Focus is [REDACTED]
5 [REDACTED] and on Emden, I think it's clear enough you can see
6 it's the same car. But not in this video, no, sir.

7 Q So 1948 --

8 A 1928, sorry.

9 Q There was one picture that was backed in, so -- so you
10 see a circle emblem, is that the Ford emblem?

11 A Basically, how we usually do it, it's not any kind of
12 crazy, cool detective stuff. We use Wikipedia, type in Ford
13 Focus and you go through Wikipedia and it will give you a
14 picture of each model as it goes through the existence of
15 it. And that's how we're able to track down and get an idea
16 of what a year model vehicle we're looking for. And it was
17 just from comparing this still shot and going through
18 different makes and models of cars that we determined it to
19 be a Ford Focus.

20 Q And that is 2017 at the top right?

21 A Correct.

22 Q So it's off?

23 A Yes, sir.

24 Q And it was -- if I did my notes right, 2024 when you
25 saw a car back into right before the shooting?

1 A That sounds about right.

2 Q So that's seven minutes after?

3 A About.

4 Q So you don't that that car right there is the same one
5 that backed into where the shooting took place?

6 A Well, not correct. That's the same car that we seen
7 drive up on Emden. I can say that's the same car that
8 backed into [REDACTED] because we know after the shooting, it goes
9 on Railroad. Once it goes on Railroad, we know exactly
10 where it goes to, which is on Emden. So I can that car is
11 the same car that backed into [REDACTED] which is, also,
12 the same car that pulled into Emden. You can directly
13 connect them that way.

14 Q The car that left the shooting, you don't have eyes on
15 it the whole way it goes, do you?

16 A No.

17 Q Okay. So you don't know where it went?

18 A I know it doesn't go out of the neighborhood and I do
19 know it goes to [REDACTED]

20 Q It's an assumption, correct?

21 A It's an assumption based off of the evidence that I
22 have, yes, sir.

23 Q The evidence that you have?

24 A Yes, sir.

25 Q And it's, also, when you're saying that yes, it's the

1 same car going back and forth down the street, that's, also,
2 an assumption based off the evidence that you have?

3 A Yeah, whenever it's going back and forth down the
4 street, obviously, it's not going slow enough for us to see
5 it as a Ford Focus. It's a dark in color car around the
6 area around the time this is going on. We know based on
7 witness testimony is car is doing what we're seeing it doing
8 on video.

9 Q But you don't see the little square off to the side.
10 You don't see the license plate? You have nothing that you
11 can say that that's the car other than --

12 A The only way to answer --

13 MR. COOPER: Your Honor, I would object at this time.

14 THE COURT: Basis?

15 MR. COOPER: Asked and answered.

16 THE COURT: I'm going to give him a little latitude,
17 overruled.

18 BY MR. SHELTON:

19 Q Other than it being a dark in color sedan, correct?

20 A I think based on witness -- well, information that I
21 got, along with seeing the car coming back and forth -- I
22 can answer your question saying yes, this is the only view
23 of this car where we can see the sticker, that is correct,
24 that would be the case. But I can, also, say based on
25 everything else I have of the car driving around that it's

1 the same car.

2 Q Okay. And so that sticker, you can't read that
3 sticker, correct? You don't know that it says True Auto on
4 it, isn't that correct?

5 A No, sir, not on this picture.

6 Q In fact, in any picture, you cannot see this sticker
7 that says True Auto, correct?

8 A You can't see that's True Auto, but on the still shot
9 that's zoomed in, there's a sticker and you can see it's
10 something else, which is the Focus.

11 Q You're assumption on that. You can't read Focus,
12 correct?

13 A I'm drawing that conclusion based off after we
14 identified the car, seized it, did a search warrant, I know
15 what it is then, yes, sir.

16 Q Yes, you're drawing conclusions. So the shell casings
17 for the 223 were found right here, correct?

18 A Yes, some on the porch. There was one on the other
19 side of this car, yes, sir.

20 Q Actually, like, further back in the yard, correct?

21 A Correct.

22 Q And shell casings, I guess, they eject a certain way,
23 so it made a right, left, back, forward?

24 A Most firearms, they're going to eject to the right
25 unless you purchase a firearm specific for a left-hand

1 shooter.

2 Q Okay. And the video, you could not tell where a
3 shooter was standing, correct?

4 A We can go back and show me the zoomed-in portion and
5 I'll show you where everyone was.

6 Q Sure. When the shots were being fired?

7 A Well, if we can draw a conclusion saying whenever they
8 were running that that's when the shots are being fired,
9 then, yes.

10 Q But you can't see the actual shooting taking place,
11 correct?

12 A No, I'm just going off what we talked about as far as
13 whenever they start running, we believe that's whenever the
14 shots were started.

15 Q And I think your testimony earlier was that you believe
16 you saw a second person moving around because of the fencing
17 and it got darker?

18 A Yeah, you can see it.

19 Q You can, also, see shadows, correct?

20 A Correct.

21 Q So you can't tell exactly where this person or anybody
22 that was out there was standing, correct?

23 A I can give you a pretty good general idea. It's going
24 to be pretty close.

25 Q Was there anything on the ground that would be able to

1 tell you where they're standing?

2 A No, just the video evidence.

3 Q Okay. Couldn't see in that video what type of gun was
4 being shot, correct?

5 A The Marson Street video, no, you can't see any guns.

6 Q Okay. And the Lakewood video, you couldn't see any
7 guns?

8 A No, sir.

9 Q And I think it's your contention -- or your testimony
10 that you believe that Antwan was holding a black cloth on
11 the Emden Street?

12 A Yes, as he's walking up, you can see something flopping
13 around. It looks like maybe a tee shirt, maybe a toboggan,
14 something soft.

15 Q So you see no guns in that video, correct?

16 A No, sir.

17 Q When you arrived, did you talk -- did you have a chance
18 to see Mr. Simmons?

19 A You're talking about the night of?

20 Q The night of, yes.

21 A No, sir.

22 Q On the 18th going into the 19th?

23 A No, sir.

24 Q Did not talk to Mr. Simmons?

25 A Did not.

1 Q So he was not on scene?

2 A No, he had departed prior to our arrival.

3 Q So he had left before the police got there?

4 A Yes, sir.

5 Q And when you arrived on scene on the 18th, was it
6 important evidence to -- strike that. When did you get the
7 video from Marson?

8 A Marson Street would have been the next day whenever we
9 came in.

10 Q Did you -- at that point in time, you realized that one
11 of the suspects touched the victim's clothing, correct?

12 A You can see him bend down. Unknown what was touched or
13 if anything was taken or anything like that, it's hard to
14 tell. You see him bend down.

15 Q Did you direct to try to get some swabs or any type of
16 DNA maybe from the clothing from the victim?

17 A No, sir.

18 Q Now, your testimony to the jury on when the car was
19 backing in was the brake lights?

20 A Yes, sir.

21 Q And then you believed it was running lights?

22 A Yes, sir.

23 Q But that's not what you always believed?

24 A No. Whenever I initially started looking at the video,
25 I thought they were always brake lights. It wasn't until I

1 took some time and looked at the video further that I
2 realized the difference.

3 Q And so at some point in time, you thought it was
4 impossible for the driver to have even gotten out of the
5 car?

6 A Initially -- well, not necessarily getting out, but not
7 to have been the shooter.

8 Q Okay.

9 A Yes, sir.

10 Q So one of the descriptions that Mr. Simmons gave was
11 that it was a light-skinned black male or just
12 light-skinned?

13 A What he described as a light-skinned male.

14 Q And we had a picture of Antwan, he's light-skinned,
15 correct?

16 A Yes, sir.

17 Q So let's talk about what swabs you did collect. You
18 collected the guns, you collected the ammunition, correct?

19 A Correct.

20 Q And your testimony was you ran it through IBIS,
21 correct?

22 A Yes, sir.

23 Q And it did not have a hit, correct?

24 A Yes, sir.

25 Q So you decided not to send that to SLED to test the

1 cartridge casings?

2 A Yes, sir, correct.

3 Q So those ARs, those rifles, they could have shot the
4 223, correct?

5 A Not per IBIS, no, sir.

6 Q Well, it could have shot 223 rounds?

7 A They did shoot 223 rounds, that's why we seized them,
8 yes, sir.

9 Q But IBIS did not give it a hit, so you didn't send it
10 to SLED?

11 A No, sir.

12 Q So you sent the AR because there was a hit, correct?

13 A Yes, sir, the one from Alonza's house, yes, sir.

14 Q You sent that to SLED and it was inconclusive?

15 A Yes, sir.

16 Q So SLED did not match IBIS, correct?

17 A Not that it did not match IBIS, it's just saying the
18 analyst couldn't say it was the gun used, but they, also,
19 couldn't say it was not the gun used.

20 Q So it wasn't a match --

21 A I think the way he put it was he wouldn't swear on his
22 mom's life or something like that.

23 Q So IBIS is a computer system, correct?

24 A Yes, sir.

25 Q Okay. And so this computer system didn't get it

1 correct, didn't get it right?

2 A Well, it's just a presumptive. Even like whenever we
3 get a hit, it says on the hits that we get this is
4 presumptive, this is not probable cause. This is a
5 presumptive test, more testing needs to be done. It's on
6 the actual hit whenever we receive it.

7 Q So at any point in time, do you think maybe IBIS didn't
8 get it right on the guns taken from Emden Street?

9 A I mean, I can't guess how many times IBIS gets it right
10 or wrong. I can only go off a system that's provided to us
11 to use and it's a system that we trust and we use it all the
12 time.

13 Q So it was your decision not to send it to SLED?

14 A Yes, sir, that's correct.

15 Q Then the DNA swabs, you decided -- it was your decision
16 not to send the passenger -- the front passenger -- the
17 driver's side, I'm sorry. It was your decision not to send
18 the driver's side swabs to SLED for DNA analysis?

19 A By the time I had already made that decision, we had
20 already arrested Mr. Marable. When we stopped him and
21 arrested him, he was the driver of the car. By that time,
22 he had already been ID'd by other people as being the driver
23 of the car?

24 Q So you decided not to send the back driver's side swabs
25 to SLED?

1 A And, again, that was the other shooter, Mr. Johnson.
2 He had already been ID'd and charged. Whenever I initially
3 sent up that group of DNA swabs, I was trying to determine
4 who else was inside the car.

5 Q Right.

6 A And corroborate people's statements.

7 Q And you had learned Pierre was in the back passenger
8 seat by the video from Emden, correct?

9 A And that's why I wanted to corroborate his statement as
10 well as far as being -- I could send five, those are the
11 five I chose.

12 Q Okay. There was swabs of live rounds? You had swabs
13 of live rounds?

14 A I believe Ms. Moseley yesterday testified to that,
15 those were never sent.

16 Q So you never sent those?

17 A No, sir.

18 Q You mentioned that you sent DeSheers out to do research
19 on the Ford Focus, you remember that?

20 A Yes, sir, he was tasked with that.

21 Q By that time, you already had a suspect of the vehicle,
22 correct?

23 A No, by that time, I knew we were looking for either a
24 person by the name of Lorenzo, Lo or Alonza, that's all we
25 had at that point.

1 Q But didn't you show Ms. Freeman the picture of the car?

2 A Yes, whenever that picture was shown, I came in the
3 morning that he was, actually, stopped. And they said, Hey,
4 we have a person by the name of Alonza Marable stopped. I
5 said, Okay, I'm going to meet with Jessica Freeman to
6 confirm that that is who Alonza is. So I drove over to [REDACTED]
7 [REDACTED] Street and that's when that picture was shown.

8 Q Okay. The ammunition that you got from Railroad,
9 you're familiar with the Ferndale area, correct?

10 A Yes, sir.

11 Q And CMS Shooting Sports is within?

12 A It's across the street.

13 Q Across the street?

14 A Yes, sir.

15 Q You can buy ammunition there?

16 A Yes, sir.

17 Q You can buy guns?

18 A Yep.

19 Q Palmetto State Armory not too far, also?

20 A Yes, sir.

21 Q So all these items are things that could be bought
22 there, correct?

23 A It could. I don't know what kind of brands they sell,
24 but, yeah, ammunition is sold.

25 Q It's not illegal to own a rifle at age 18?

1 A No, sir.

2 Q So there's nothing illegal about owning that rifle?

3 A No, it was a nonissue to us.

4 Q Nothing illegal about the scope, correct?

5 A Nope.

6 Q Nothing illegal about the ammunition, having that in
7 your house?

8 A No, sir.

9 Q I believe your testimony was, also, that the magazine
10 that was found underneath the bed, that was full?

11 A Yeah, if it had 30 rounds in it, that would have been a
12 full magazine because that was a 30-round magazine.

13 Q Okay. So nothing had been shot out of that magazine,
14 correct? It was full?

15 A You can't say that. I can go outside, shoot off a gun,
16 grab bullets out of my pocket, reload it, put it down and
17 it's going to appear that nothing was shot. So I can't say
18 that.

19 Q But it was full?

20 A The magazine under the bed was full, yes, sir.

21 Q Okay. Was there DNA taken on the plastic bag that was
22 found in the brown paper bag?

23 A I'm not aware of any DNA. I know it was dusted for
24 fingerprints.

25 Q And there was no fingerprints found on that

1 identifiable?

2 A Not to my knowledge, no, sir.

3 Q But you don't know when that brown paper bag got in Mr.
4 Marable's home, right?

5 A There's no way of knowing, no, sir.

6 Q There was nothing when it was taken out of the house
7 based on the brown paper bag?

8 A No, sir.

9 Q Nothing that saw him carrying it from the car into the
10 home, nothing like that?

11 A No, no, sir.

12 Q So we don't know when that got there?

13 A We don't.

14 Q You, also, collected a lot of cell phones, Alonza's
15 cell phones?

16 A Yes, sir.

17 Q And you ran some analysis of those, correct?

18 A Correct.

19 Q Nothing of evidentiary value from the cell phones?

20 A No, not from the cell dumps themselves. Like, the
21 content of the phones, I don't recall.

22 Q And the cell phones were not, I guess, moving or
23 anything like that during the time of this incident,
24 correct?

25 A Well, I don't remember any location data on the phone

1 themselves. I don't recall getting any location data off of
2 there.

3 Q Okay. You did take gunshot residue of L.J., the
4 victim, correct?

5 A Yes, sir.

6 Q Was that ever sent to SLED?

7 A No, we collected that before we got the video from
8 Marson Street showing the shooting. Once we seen that he
9 wasn't armed or shot back, there's no reason to.

10 Q Okay.

11 A And I've since learned that SLED won't accept gunshot
12 residue kits from victims anyway, they're going to presume
13 to have it on them.

14 MR. SHELTON: I don't have any other questions.

15 THE COURT: Any redirect of the witness?

16 MR. COOPER: Yes, ma'am.

17 THE COURT: You may proceed.

18 MR. COOPER: Thank you.

19 THE COURT: You're welcome.

20 REDIRECT EXAMINATION

21 BY MR. COOPER:

22 Q Detective Pritchard, I'm just going to go over a couple
23 of things Mr. Shelton went over with you. He asked about
24 your perception of the case at the very beginning that may
25 have changed; is that right?

1 A Correct.

2 Q Would the fact that your analysis or your perception or
3 theory of the case changed about the case, is that a bad
4 thing?

5 A No, if my perception is changing, that means I'm
6 learning more about the case.

7 Q Is your job to follow the evidence wherever it leads?

8 A Correct.

9 Q And is streamline or does it sometimes take twists and
10 turns and goes all over the place?

11 A It's usually all over the place.

12 Q I want to talk briefly, Mr. Shelton mentioned to you
13 and I think he's asked other witnesses in this case about
14 DNA. And you chose not to send swabs from the driver's side
15 and the steering wheel of that Ford Focus to SLED; is that
16 right?

17 A That's correct.

18 Q Tell the jury who was arrested driving that vehicle?

19 A Alonza Marable was arrested.

20 Q Whose DNA would you expect to find in the driver's side
21 and on the steering wheel of that vehicle?

22 A Alonza Marable.

23 Q You're allowed to send five swabs initially, right?

24 A Yes, sir.

25 Q Don't want to waste them on things you already know?

1 A Correct.

2 Q Talking about IBIS, are you aware that is the national
3 database for examining weapons and shell casings and things
4 like that?

5 A That's my understanding, yes, sir.

6 Q IBIS gave you a potential hit on which rifle?

7 A The one located in the suspect's bedroom.

8 Q Based on not getting hits on the other ones, would you
9 say IBIS excluded those items?

10 A Yes, sir.

11 Q Have you ever seen or been aware in your career any
12 scenario which IBIS identified a potential lead that was
13 later excluded by a firearms examiner?

14 A No, I've never heard of that.

15 Q And in this case, did SLED exclude that rifle, State's
16 124, as being the weapon used?

17 A No, sir, they did not.

18 Q I want to ask you again, and Mr. Shelton mentioned the
19 brown paper bag of ammunition. Showing you State's 79, do
20 we see the brown paper bag in this picture?

21 A Yes, sir, it's under placard 16.

22 Q Showing you State's 80, describe again for the jury the
23 caliber and brand of ammunition that was found in this bag?

24 A Norma 223 and Cor-Bon 40 caliber.

25 Q And is that the majority -- that's the kind of 40

1 caliber shell casing that was found on scene?

2 A Yes, sir.

3 Q And the majority of which of the 223 casings on the
4 scene were, also, Norma; is that correct?

5 A That's correct.

6 Q Do you remember how many of those 223 casings found on
7 the scene were Normas?

8 A I believe there was 12 total and 11 of those were
9 Norma, I believe. There was ten recovered the initial
10 night, two more on a followup, couple days later.

11 Q And then tell the jury how many shell casings, how many
12 223 shell casings from the scene were collected and
13 determined to be Tulammo brand?

14 A One.

15 Q Showing you State's 23, does that show that shell
16 casing?

17 A It does.

18 Q Showing you State's 24, read that head stamp for us.

19 A Tulammo 223 Rem.

20 Q Showing what's already in evidence as State's 113, tell
21 the jury what this is, please.

22 A This is that shell casing.

23 Q And you only found one like that on scene; is that
24 correct?

25 A That's correct.

1 Q Showing you State's 121, tell us how many Tulammo
2 rounds were found in the Defendant's residence?

3 A There is 99 packaged in this bag.

4 Q Pull out that box if you would, please.

5 A (Witness complies.)

6 Q How many rounds come with that box?

7 A 100.

8 Q It was one short?

9 A Yes, sir.

10 MR. COOPER: I have no further questions.

11 THE COURT: Sir, you may step down.

12 The State may call its next witness.

13 MR. COOPER: May we approach?

14 THE COURT: You may.

15 (WHEREUPON, a bench conference was held in the presence
16 of the jury, but outside the hearing of the jury.)

17 THE COURT: Madam Forelady, ladies and gentlemen, I
18 have a brief matter of law to take up with counsel. During
19 the break, please, do not discuss the case and, please,
20 leave your notepads in your seats. We appreciate your
21 patience.

22 (WHEREUPON, the jury exits the courtroom at 2:59 p.m.)

23 THE COURT: You may take your seats.

24 Did y'all talk about the jail recordings at all? I
25 guess the first place to start would be which ones would you

1 THURSDAY, JUNE 15, 2023

2 THE COURT: All right. Did y'all figure out -- any
3 challenge with the CD?

4 MR. COOPER: Mr. Shelton and I worked last night and
5 this morning. We have worked out an agreement for all the
6 clips, actually, you see on the screen before you, Your
7 Honor. So, yes, ma'am, we are ready to proceed with that.

8 THE COURT: Do we need to have -- what is the word I'm
9 looking for? A legend, I guess, for lack of a better word?

10 MR. COOPER: We've got them listed as call one, clip
11 one. If you want me to, Judge, when we play them, I can
12 refer to them by that. Then, also --

13 THE COURT: You don't have to. For purposes of the
14 record, I just wanted to make sure that it was -- as long as
15 y'all can figure it out and as long as it's clear for the
16 court reporter. It's on one DVD, right, or CD?

17 MR. COOPER: Yes, ma'am, on CD.

18 THE COURT: And it will be easy for the jury to be able
19 to click on it and play it?

20 MR. COOPER: Yes, ma'am. The way I'll have my
21 investigator do it is it has a screen shot of the actual
22 player, it still has the date and time on there as well and
23 we can, also, see what the time stamp is.

24 THE COURT: Okay.

25 Is that correct, Mr. Shelton?

1 MR. SHELTON: Well, yes, Judge. I did provide some
2 more extra information or extra clips --

3 THE COURT: If the clips are played, you have annotated
4 them with the ones you would want played?

5 MR. SHELTON: Yes, Your Honor. Obviously, this is all
6 over objection, so it's not consented to.

7 THE COURT: I didn't assume it was. I'm going to rule
8 on the objection.

9 MR. SHELTON: Yes, Your Honor. Thank you. And I want
10 to argue against precedent. I know what Your Honor's take
11 on the precedent is, but for purposes of the record, I'd
12 like to put a couple things on the record.

13 THE COURT: You can argue anything you'd like.

14 MR. SHELTON: Yes, ma'am. And I know how the ruling is
15 going to be, Judge.

16 THE COURT: I took it under advisement to think about
17 it for a reason. Bear with me one second.

18 MR. SHELTON: Just the Constitutional arguments. I
19 understand those, though, but I would like to put those on
20 the record just to make sure the record is clear.

21 THE COURT: Bear with me one second.

22 (Pause.)

23 THE COURT: Can I hear it all the way through before I
24 rule on it? Because I'd like to hear it in its entirety.

25 MR. COOPER: Judge, you would have heard everything the

1 State --

2 THE COURT: Yeah, but I want to hear how it's going to
3 be played for the jury.

4 MR. COOPER: We can do that now.

5 THE COURT: Thank you.

6 MR. COOPER: You want us to just go in order?

7 THE COURT: Just do it the way you would play it.

8 MR. COOPER: We will play now --

9 THE COURT: You don't have -- I don't think you have to
10 preface with that. I think you need to preface it with the
11 jury. I just think you need to play it. I think you all
12 would want to stipulate the date the calls took place, but
13 other than that, I don't think anything else needs to be
14 said.

15 MR. COOPER: Judge, we have that in stipulation.

16 THE COURT: And you've reduced the stipulation to
17 writing?

18 MR. COOPER: I've sent it over to Mr. Shelton. He's
19 agreed to it. He's signed it as well. For the Court, it is
20 marked as State's 165, which I would ask once the jury comes
21 back before we play the calls that I can address the jury.

22 THE COURT: It should be Court's whatever is next in
23 line because it doesn't go back to the jury.

24 What number would that be?

25 THE COURT REPORTER: 3.

1 THE COURT: Court's 3.

2 MR. COOPER: And, Judge, Mr. Shelton and I were, also,
3 talking. Would you like the CD the State provided to you
4 yesterday, would you like to make that --

5 THE COURT: I'm already going to make that a Court's
6 Exhibit.

7 MR. COOPER: So that will be Court's 4?

8 THE COURT: I'll do that in a moment with the court
9 reporter.

10 MR. COOPER: And then once the jury is here, the Court
11 will read to them the stipulation?

12 THE COURT: Once I rule on it.

13 MR. COOPER: Yes, ma'am.

14 (WHEREUPON, jail phone calls played for the Court.)

15 MR. COOPER: Judge, that would be the extent of the
16 calls the State would intend to offer in this case. And,
17 Judge, I just want to make sure you know, this is the
18 product Mr. Shelton and I worked on together.

19 THE COURT: Do you have any objection to the redactions
20 and the -- well, the edited video, Mr. Shelton?

21 MR. SHELTON: Your Honor, I'm in a tough position. I
22 mean --

23 THE COURT: No, they're two separate things. You can
24 still -- they're two very separate things. You can still
25 object to the admissibility, but I need to know once it's

1 redacted and I've allowed your participation in it whether
2 you object. It's two separate things.

3 MR. SHELTON: I still believe it's unfair -- it has an
4 undue tendency to suggest an improper decision on an
5 improper basis, Judge, so I still think there's a 403
6 argument, but I did take part in adding two clips. I don't
7 feel --

8 THE COURT: I gave you that option.

9 MR. SHELTON: Yes, Your Honor.

10 THE COURT: With the option being you're not going to
11 participate.

12 MR. SHELTON: Yes, Your Honor. But I don't want that
13 to show as consent that I --

14 THE COURT: Like I said, they're two separate things.
15 You can object to the admissibility of the testimony as a
16 whole, but I need to know if you object to the redactions
17 that have been made and do you object to those portions of
18 the DVD that have been added at your request? Two separate
19 things.

20 MR. SHELTON: Your Honor, this is -- what was played
21 for you is what was discussed between the Assistant
22 Solicitor and myself.

23 THE COURT: And you have no objections to that video
24 that has been edited with your assistance?

25 MR. SHELTON: No, Your Honor.

1 THE COURT: What is your objection to the admissibility
2 -- although, I've already heard a great amount of argument,
3 I need to know if there's something you haven't already
4 argued.

5 MR. SHELTON: Yes, Your Honor. And I want to start
6 with State vs. Ellefson, E-L-L-E-F-S-O-N. It's 266 S.C. 494
7 from 1976. Judge, it's a Supreme Court decision that,
8 essentially, says that pretrial detainees have still
9 Constitutional rights. This was jailhouse -- this was jail
10 mail versus phone calls. However, Judge, based off that
11 premise that pretrial detainees still have Constitutional
12 rights and a Constitutional right to a First Amendment of
13 free expression and be able to express themselves --

14 THE COURT: Do y'all have a copy of the document that
15 he was made aware of at his booking that included the use of
16 this telephone system? I believe it was sent to you on
17 yesterday and I'd like the benefit of it, please.

18 MR. COOPER: Judge, I'll be happy to go get it as that
19 was going to be offered if I called the witness. I can find
20 one for you.

21 THE COURT: That will be helpful.

22 MR. COOPER: Since we stipulated to it, we didn't bring
23 that today. I sent it to Mr. Shelton yesterday.

24 THE COURT: When did you send it to my law clerk?

25 MR. COOPER: When we were in court yesterday.

1 MS. BARBER: No, we did not send it to her law clerk.

2 THE COURT: Yeah, he doesn't have it.

3 MR. COOPER: You mean Mr. Shelton, Judge, when we sent
4 it to Mr. Shelton?

5 THE COURT: Yes.

6 MR. COOPER: We sent it to Mr. Shelton yesterday during
7 court when we were having this discussion. I forwarded it
8 to him -- Ms. Barber did.

9 THE COURT: It was between 4:00 and 4:30 -- well,
10 between 4:00 and 5:00?

11 MR. COOPER: Yes, ma'am. Is it okay if we e-mail you a
12 copy or do you want a physical one?

13 THE COURT: What do y'all have? Do y'all have a
14 physical copy? All you have is e-mail, right?

15 MR. COOPER: I have digital here, but I have a physical
16 in the office.

17 THE COURT: Was it e-mailed to you and then you printed
18 it?

19 MR. COOPER: I don't know, Judge, I --

20 THE COURT: Ms. Barber is shaking her head. You can
21 e-mail it to my law clerk, please.

22 MS. BARBER: Thank you, Judge.

23 MR. SHELTON: And I'm sorry, Your Honor, my argument is
24 not that he didn't have knowledge, so I'm not arguing he
25 didn't have knowledge that they were being recorded and

1 could be used against him. That's not my argument, Judge.
2 My argument is that he had no other opportunity. So in the
3 jail, to make phone calls, you have to use this, this
4 system. And I hope the Solicitor would stipulate to that.

5 So he has no other means of communicating with his
6 family by phone --

7 THE COURT: They can come visit him. He has other
8 means.

9 MR. SHELTON: Yes, Judge. However --

10 THE COURT: And I don't believe those conversations are
11 recorded, are they?

12 MR. SHELTON: It depends. At this time, sometime
13 they're over the video calls, so sometimes those are --

14 THE COURT: You're saying when they come to the jail,
15 they don't sit in a booth and talk to their family members?

16 How do visits take place at the jail?

17 MR. COOPER: We're not playing video calls. These are
18 all audio.

19 THE COURT: I understand that, but I asked the question
20 for a reason.

21 MR. COOPER: I do believe they are recorded.

22 THE COURT: How does visitation take place at the jail?

23 THE DEPUTY: Everything is recorded, it's video or
24 otherwise.

25 THE COURT: So if they come to the jail and sit and see

1 them in person, it is recorded and they're advised of that,
2 I assume?

3 THE DEPUTY: Yes, ma'am.

4 THE COURT: And I would assume that's for security
5 purposes and public policy?

6 THE DEPUTY: It is.

7 THE COURT: You may continue, Mr. Shelton.

8 MR. SHELTON: So, Judge, it's a First Amendment
9 violation of his free expression in addition to the --

10 THE COURT: Tell me how that's a violation when he can
11 use prudence and not talk about things.

12 MR. SHELTON: He could, Judge.

13 THE COURT: Or maybe talk about them with his attorney
14 and have him communicate those things.

15 MR. SHELTON: Right, Your Honor, but it stifles his
16 ability to express himself freely.

17 THE COURT: Is there some case law that says you have
18 unlimited and unfettered free expression when you're in
19 detention?

20 MR. SHELTON: Your Honor, I believe that State V.
21 Ellefson does say that you have the same Constitutional
22 rights as every --

23 THE COURT: But there's a precedent since then that
24 negates that premise, doesn't it? Because this isn't a
25 First Amendment argument. This isn't a free speech

1 argument.

2 MR. SHELTON: Well, it's, also, a Fourth Amendment
3 argument, Your Honor, that the State should have obtained --

4 THE COURT: You have no expectation of privacy when
5 you're talking to your relatives at the jail. The only
6 people you have an expectation of privacy is your lawyer.
7 You know you're in an environment where you're being
8 recorded. You know you're in an environment where you're
9 detained and people are observing everything you do. Not
10 because they're trying to eavesdrop, but because for public
11 policy and security purpose, they have to make sure that not
12 only the public at large is safe, but, also, that your
13 client is safe and that his safety is maintained as well.

14 MR. SHELTON: And I'm not arguing against that for the
15 detention center, what I'm arguing for is the State being
16 able to then get those documents and to be used against him
17 in court without a warrant. So that is the argument, the
18 Fourth Amendment argument.

19 I understand that there's a public policy for the
20 detention center to have that ability and to have the
21 ability to monitor the jail calls, so I definitely
22 understand the security argument. However, for the State to
23 then be able to get those jail phone calls and then to be
24 able to use it against him at trial is, I believe, a
25 different argument, Judge. So I just wanted to make those

1 Constitutional arguments for the record --

2 THE COURT: I believe you made them when we began this
3 colloquy a couple days ago.

4 MR. SHELTON: And I may have, Judge, and I apologize.
5 I just wanted to be clear.

6 THE COURT: No, you don't have to apologize, I just
7 wanted to be clear that you did, in fact, make all of those
8 arguments.

9 MR. SHELTON: Yes, Your Honor. And then the overall
10 general evidentiary argument for these is a 403, unfair
11 prejudice, relevancy as to whether this, actually, does
12 inculcate him. So I think that -- you know, I just want to
13 stand on those as far as unfairly prejudicial, Your Honor.

14 THE COURT: Anything further from the State?

15 MR. COOPER: Judge, I just want to respond briefly.
16 One, again, the State submits this evidence under Rule
17 801(d)(2), statement of party opponent. The Defendant is
18 absolutely a party opponent.

19 Regarding Mr. Shelton's comments about prejudicial, it
20 is, certainly, prejudicial, but it is more probative than
21 prejudicial as it goes clearly to consciousness of guilt,
22 actions done, trying to evade prosecution in this case.

23 Regarding the document that was sent to the clerk, on
24 Page 14, section 8 of that document is where it's discussed
25 the call is being recorded. And then later in the document,

1 he electronically signs because this was April of 2020
2 during the pandemic. He electronically signs that he
3 understands all the rules in jail. There are signs posted
4 by those calls. Every time you make a call, it says it's
5 being recorded. And the Defendant himself made a comment to
6 his mother that this is a recorded line. So he, certainly,
7 knew it was being recorded. The State was fully within its
8 rights to get those records. The Defense, likewise, has
9 subpoena power and could get those records if he wanted.

10 The other thing, Judge, is and the State agrees with
11 the Court, this is not a Fourth Amendment issue and the
12 reason you are being recorded is for that reason, safety
13 concerns. And the Defendant does not have the right to
14 unmonitored communication from the jail.

15 So, Your Honor, for all those reasons, we'd ask that
16 you overrule this objection and let the jail calls in.

17 THE COURT: Let me see. I need that document. So if
18 y'all will bear with me for a moment.

19 You said it was 14 pages?

20 MS. BARBER: Not in its entirety, Your Honor. Page 14
21 encompasses the rule that they relate to him being recorded.

22 THE COURT: Thank you for that clarification.

23 MS. BARBER: You're welcome.

24 (Pause.)

25 THE COURT: When you're booked into the Al Cannon

1 Detention Center and you go through something, there's a
2 resident orientation handbook that is dated April of 2023.
3 And on Page 14, section 8 of that handbook -- and there's
4 lot of things it covers. It covers the resident work
5 program, library, visitation, attorney visitation, legal
6 assistance, mailing correspondence, inspection of persons
7 and property, resident discipline, prohibited acts, the open
8 bay housing unit rules, pod housing unit rules and then it
9 has a whole other three or four sections on housing rules,
10 violation of sanctions, grievance procedures, recreation,
11 dress code, contraband, rights and responsibilities.

12 Bear with me because, although, the index has numbers,
13 the actual document is not numbered. Or is y'all's numbered
14 and mine just didn't print?

15 MR. COOPER: Beg the Court's indulgence.

16 (Pause.)

17 MR. COOPER: I believe it's number 16.

18 THE COURT: Yeah, I got it. It's numbered on the
19 index. It's just not physically numbered.

20 MR. COOPER: If Your Honor would like, I can have that

21 --

22 THE COURT: I have it. Thank you. I appreciate the
23 offer.

24 (Pause.)

25 THE COURT: My page 11 in this document at section --

1 and I'll have this marked as a Court's Exhibit and make a
2 copy of it -- no, I think I'm going to make a copy of the
3 whole document. But I numbered it based on -- I did not
4 number the index pages.

5 But on Page 11 at Section 8, it says, All resident
6 phone calls from the detention center are recorded and
7 collect in nature with the exception of dialing 112 for the
8 PREA hotline or the Tri-County Speaks Hotline, which is
9 Start 603 to report a PREA incident. If a resident attempts
10 a collect call and the call can't be accepted for billing or
11 blocking issues, the resident and family member will hear a
12 recorded message from the telephone provider explaining how
13 to set up a credit/debit account.

14 And that Section 7, Residents can have their attorney
15 request to have their business telephone number placed on
16 the list of unmonitored calls through the chief deputy.

17 It looks like what they did is because of the pandemic,
18 which they reference during certain portions of this manual,
19 that because of Covid, certain things are not going to be
20 able to be done in person, but at line -- and I'm not going
21 to go through all the questions because they ask 22
22 questions, it appears that they were answered electronically
23 by Mr. Marable.

24 And in addition, he, also, initialed electronically
25 certain of those provisions, one of which is number 15, I

1 understand the rules of the facility. I received a copy of
2 my intake classification notice, which is 16. I have
3 watched the orientation video and received copies of the
4 inmate orientation handbook, that's number 19, which he
5 initialed, which includes the provision regarding the
6 telephone that I just read. And I agree to abide by the
7 rules of Sheriff Al Cannon Detention Center, SACDC, that's
8 number 21 that he initialed.

9 So it's clear that Mr. Marable was aware that he was
10 being recorded, that he consented to the use of the jails
11 telephone system and how that works and how it is set up.

12 It is my understanding that the purpose of the
13 recording of calls and otherwise is a matter of public
14 policy and a matter of security and safety, not only for the
15 public, but, also, for Mr. Marable.

16 Without belaboring the time or the hour, I believe the
17 Fourth Amendment argument has already been addressed
18 regarding whether a warrant is required to receive jail
19 phone calls. I do not find credible the argument, or
20 persuasive that Mr. Marable had no other option. He had
21 many options. He could not use the system or he could use
22 the system and be more prudent and edited in his
23 conversations knowing that they would be recorded. And
24 that, certainly, after being Mirandized that any statements
25 he made, other than those which were privileged, could be

1 used against him.

2 Now, moving to the argument regarding 403, which is Mr.
3 Shelton's argument that it is not relevant, I have -- I took
4 the matter under advisement because I was -- I needed time
5 to think about it. I needed time to process and listen to
6 the calls again for myself and determine exactly what was
7 being said. Because the Court is not the finder of fact.
8 It is only the gatekeeper, so to speak, and whatever
9 inferences can be drawn from the statements really could be
10 argued both ways.

11 They could be inculpatory and they could be
12 exculpatory, which I think, certainly, goes to the benefit
13 of Mr. Marable, especially even eliminating his need or
14 feeling that he needs to testify because his words regarding
15 this incident, his attempts to exculpate himself, his
16 version of it, actually, would then be in the record, which
17 is Mr. Johnson set him up. He was not involved in this --
18 my words, not his, I'm paraphrasing what was said on the
19 tapes. That he's trying to, basically, blame everybody but
20 who's responsible and it was him and his friends, referring
21 to Mr. Johnson, who were trying to exact some form of
22 revenge for a theft that purportedly took place earlier in
23 the day and his only involvement was that he gave Mr.
24 Johnson a ride. And he wasn't going to take responsibility
25 for what took place as a result of it. In other words,

1 exculpating him from any conspiracy or knowledge of any
2 conspiracy regarding these events.

3 However, there's, also, other information that he
4 provides, that being the attempt to contrive an alibi as
5 well as any references to the weapon that was not found in
6 the residence, or even those that were found in the
7 residence and, apparently, some knowledge that the rifle
8 they found was, in fact, his and had been removed from the
9 residence when it appears his mother is reading the search
10 warrant return to him.

11 In addition to that, it, also, divulges his knowledge
12 of the purported facts and circumstances surrounding the
13 event. To some extent, the things that he has said have
14 been admissions against interest.

15 So taking Mr. Shelton's arguments, hopefully, in the
16 order that he made them, I would ask that you all indulge
17 the Court. Our Court of Appeals echoing our Supreme Court
18 has been very clear as to what analysis the Court should
19 engage in when looking at the admission of jail calls.

20 The State argues that they are relevant and they show
21 consciousness of guilt and any probative value the
22 conversations had are substantially outweighed by any
23 potential unfair prejudice to the Defendant.

24 When I look at -- again, going almost in backwards
25 order, and I apologize, the recorded conversations between

1 Mr. Marable and his family do show a consciousness of guilt.
2 When looking at evidence and determine if it is relevant,
3 because not all relevant evidence is admissible, however,
4 evidence -- I'm sorry, I said that backwards. I apologize.
5 Evidence that is relevant is admissible unless it is
6 excluded by those exceptions that we know to be clear, that
7 being the United States Constitution, the South Carolina
8 Constitution, any South Carolina statutes and rules of
9 evidence or other rules that have been promulgated by our
10 Supreme Court.

11 When considering Rule 402, evidence is relevant when it
12 has any tendency to make the existence of any fact that is
13 of consequence to the determination of the action more
14 probable or less probable than it would be without the
15 evidence. And, again, that's citing Rule 401 and its
16 progeny.

17 Evidence is relevant if it tends to establish or make
18 more or less probable some matter in issue upon which it
19 directly or indirectly bears. Our courts have been clear
20 that the relevance test is not stringent and is not a
21 standard that is difficult to (unintelligible) citing State
22 vs. Sweat, which is 362 S.C. 117 at Page 127, which is a
23 2004 Court of Appeals decision.

24 Evidence is admissible if logically relevant to
25 establish a material fact or element of the crime. It need

1 not be necessary to the State's case in order to be
2 admitted. Evidence that carries the probative -- and,
3 again, citing the White precedent, probative weight of a
4 feather tips a balanced scale and assist the jury in
5 arriving at the truth of the issue.

6 Going back, evidence is admissible if logically
7 relevant to establish a material fact or element of a crime.
8 One of the issues in this case is identification. And the
9 conversations that Mr. Marable had on the telephone put him
10 at the scene of the crime, which would be one of the
11 elements. Of course, it would be free for Mr. Shelton to
12 argue it was mere presence. And the State, of course, has
13 to meet all of the elements of the offense and prove
14 definitely Mr. Marable's identification and that he was more
15 merely present. However, in his statements, he clearly says
16 he gave Mr. Johnson a ride.

17 He then attempts to exculpate himself by saying, I
18 merely gave him a ride, now, he's trying to get me into all
19 of this mess. But those statements can cut both ways, as
20 well as the other statement regarding his bad judgment,
21 which could seem to inculcate him as well. And his mother
22 indicating -- you know, she wished he had told her about
23 everything that was going on. And then his response,
24 certainly, would indicate a consciousness of guilt as well
25 and make relevant one of the elements of the crime, which is

1 his presence and his identification on the scene, which ties
2 him to his other statements regarding the weapons as well as
3 the motivation for the incident.

4 Although motive is never an element, however, intent is
5 an element and very well ties into that element as well,
6 which is not only that you did something, but you were
7 conscious you were doing it and you intended to do it, that
8 it was not accidental.

9 It, also, goes to the elements of accomplice liability,
10 that being whether, in fact, he was in some combined effort
11 with Mr. Johnson and others that resulted in the death of
12 Mr. Reid.

13 And he, also, says that he was the driver of the
14 vehicle, although in some statements, he says it could have
15 been anybody's car. It could have been one of Mr. Johnson's
16 relatives cars. But the only evidence so far in the record
17 regarding the vehicle is one that was owned -- or, at least,
18 Mr. Marable had permissive use of.

19 Certainly, Mr. Shelton is free to argue, which he's
20 already brought out in cross-examination, that swabs, DNA
21 swabs were never taken at the gearshift or steering wheel or
22 other places that would confirm Mr. Marable being the driver
23 of the car involved in the incident.

24 So the Court would find that this element assist the
25 jury in arriving at the truth, which makes it relevant, and

1 it tends directly or indirectly to establish or make more or
2 less probable some matter of issue in the case. The Court
3 does not act as the finder of fact, again, only as the
4 gatekeeper.

5 And our courts have found, again, evidence is relevant
6 if it tends to establish or make more or less probable some
7 matter in issue upon which it directly or indirectly bears
8 and it is not required that the inference sought should
9 necessarily follow from the fact proved.

10 So, clearly, based on the Court's analysis, it is
11 relevant pursuant to Rule 403 and will assist the trier of
12 fact and the Court acting in its gatekeeper function
13 regarding the evidence. The Court, however, must exercise
14 its discretion and exclude such evidence if its probative
15 value is substantially outweighed by the danger of unfair
16 prejudice with the operative words being substantially
17 outweighed, not simply outweighed. And the Court must look
18 to whether there is a danger of unfair prejudice that
19 substantially outweighs the probative value of the evidence,
20 citing State vs. Collins, 409 S.C. 524, which is a 2014
21 Supreme Court case. As a general rule, any guilty act,
22 conduct or statements on the part of the accused are
23 admissible as some evidence of consciousness of guilt.

24 And, again, without belaboring the point, the
25 statements made by Mr. Marable regarding his location, his

1 contrivance, allegedly, of an alibi, the presence or absence
2 of weapons, his knowledge of the facts and circumstances of
3 the case and his presence at the scene are all consciousness
4 of guilt. Therefore, the Court would overrule the objection
5 and admit the testimony from the jail, which, clearly, the
6 Defendant had no expectation of privacy. In his own
7 recitation when he's talking to his mother, he is clear that
8 the statements are being recorded and prudent in any
9 statements that he does not make to her. And while I have
10 not seen it, I have no reason to doubt that a sign is posted
11 by the phones notifying the user that their phone calls are
12 being monitored.

13 And, again, you have no right to unmonitored
14 communication in a detention center for a myriad of public
15 policy as well as security reasons that go beyond any
16 arguments regarding Fourth Amendment and the need for a
17 warrant. I'm not aware of any precedent from the South
18 Carolina Supreme Court or the U.S. Supreme Court that
19 requires the State to obtain a search warrant prior to
20 obtaining the records from the jail regarding any
21 conversations.

22 And, again, on the other hand, as I listened to the
23 statements, many of them are exculpatory, so I'm hard
24 pressed as to how those prejudice Mr. Marable, where he,
25 basically, said Antwan Johnson did this, I had no

1 involvement in it. And my words, not his, no good deed goes
2 unpunished.

3 So I'm going to mark the entire -- as a Court's
4 Exhibit, I'm going to mark the intake classification details
5 where he acknowledges receipt and watching the video
6 regarding any statement that he makes in use of the
7 telephone equipment. And, also, my Page 11 of that
8 orientation manual, Sections 7 and 8, which I will highlight
9 in -- not the whole section, but just the numbers and the
10 page number will be marked as a Court's Exhibit as well. So
11 those will become Court's -- the entirety of the call will
12 be marked as Court's 4. Actually, the edited DVD would be a
13 State's Exhibit because that would go back.

14 So where is the edited DVD?

15 MR. COOPER: The exhibit copy is State's 103.

16 THE COURT: So you kept the original number?

17 MR. COOPER: Yes, Your Honor.

18 THE COURT: So State's 103 will be admitted subject to
19 the objection, but I need to know, again, Mr. Shelton, did
20 you have a full opportunity to participate in the editing of
21 the excerpts and did you have a full opportunity to include
22 those portions of your client's statements that you wished
23 to be played for the jury?

24 MR. SHELTON: Yes, Your Honor.

25 THE COURT: In the light of completeness.

1 MR. SHELTON: Yes, Your Honor.

2 THE COURT: Okay. So that will be State's 103.

3 (WHEREUPON, State's Exhibit No. 103 was admitted into
4 evidence.)

5 THE COURT: So what number -- you only have Court's 1
6 and 2 --

7 MR. COOPER: I'm think the most recent thing --

8 THE COURT: I'm asking the court reporter.

9 THE COURT REPORTER: The next one will be Court's 4.

10 THE COURT: So what's Court's 3?

11 THE COURT REPORTER: Court's 3 would have been the
12 stipulation.

13 THE COURT: For the chain witness?

14 THE COURT REPORTER: Uh-huh.

15 THE COURT: Okay. So the DVD would be 4?

16 THE COURT REPORTER: Yes, ma'am.

17 THE COURT: So I want you to make that 5, which is the
18 provisions from the manual, Sections 7 and 8, Page 11. And
19 then Court's No. 6 will be Mr. Marable's intake sheet, which
20 consist of two pages.

21 (WHEREUPON, Court's Exhibit Nos. 1 through 6 were
22 marked for identification only.)

23 THE COURT: The provisions that I referred to, which is
24 number 15, which is understanding the rules of the facility,
25 19, watching the orientation video, which included the

1 provisions regarding use of the system and abiding by the
2 rules, which was number 21.

3 Now, I need to deal with the jury note, which will be
4 marked as Court's Exhibit next in line No. 7.

5 (WHEREUPON, Court's Exhibit No. 7 was marked for
6 identification only.)

7 THE COURT: All right. We have a note from the jury
8 and it reads as follows: Number one, What weapon was
9 associated with the projectile found in Mr. Jimenez -- I
10 think they meant -- they have an apostrophe, so I think they
11 meant to put an S, which would be possessive, Jimenez's
12 trailer/head injury?

13 The next question, number two, To be clear, was a 40
14 caliber pistol ever recovered, parenthesis, that was used at
15 the scene, end of parenthesis?

16 Three, At the Emden house, did they interview anyone
17 else from that night to identify the driver? Signed by the
18 Foreperson.

19 My response to them would be as follows, and I will do
20 that before we proceed with the testimony this morning.
21 Would be as follows: Ladies and gentlemen of the jury, all
22 of the evidence in this case has been presented to you. The
23 Court cannot answer factual questions. You must only
24 consider the testimony and evidence that has been submitted
25 into the record for the purposes of your deliberations. You

1 cannot conduct your own independent investigation or fact
2 finding outside of the evidence and testimony presented to
3 you during the course of this trial. You're not to
4 speculate or draw any inferences or conclusions from this
5 response to your inquiry during your deliberations. And I
6 think I may, also, add and emphasize that the note would
7 indicate that there's the potential for premature
8 deliberation regarding the facts and circumstances of this
9 case and I would remind them that that is strictly
10 prohibited.

11 Any exception from the State?

12 MR. COOPER: The only thing would be, Judge, the State
13 hasn't rested. I don't know if it's, I guess, proper to say
14 that they have all the evidence, but that would be the only
15 exception.

16 THE COURT: They've heard all the evidence up to this
17 point.

18 MR. COOPER: Up to this point.

19 THE COURT: I'm not going to add to this point because
20 that goes without saying. They've heard what they've heard.
21 I may, also, add that South Carolina does not allow juries
22 to ask factual questions.

23 MR. COOPER: I would ask that you,--

24 THE COURT: And by your oath, you are bound to decide
25 this -- that there are certain procedural rules that we

1 follow in the trial of the case. Cases are presented a
2 certain way based on those rules and that's why this is
3 essential -- I hope I remember all of this. That's why it
4 is essential that you keep an open mind, that you do not
5 decide any issue in this case until you've heard all the
6 evidence from the lips of the sworn witnesses and other
7 evidence that may be introduced and not have any discussion
8 regarding this matter until all the evidence has been
9 presented, the parties have made their closing arguments and
10 the Court has instructed you on the law.

11 MR. COOPER: I would ask that you add that, Judge.

12 THE COURT: Any exception, Mr. Shelton?

13 MR. SHELTON: Yes -- well, Judge, I think I -- for
14 purposes of protecting my client and the record, I have to
15 move for a mistrial. I think that they're already starting
16 deliberations. I don't feel that's proper. I don't feel
17 them even asking questions at this point in time in the case
18 is proper.

19 THE COURT: Juries watch too many shows on TV and they
20 really think that they're -- and in other states, like in
21 Texas, you can ask questions, where the jury is a little
22 more than the finder of the fact. They, also, determine the
23 punishment. So during the course of a trial in other
24 states, juries are allowed to ask factual questions.

25 I don't know what kind of shows they have been watching

1 that has given them that impression. I don't know who,
2 actually, asked this question, maybe just the Foreperson and
3 not the whole jury because it is only signed by her.
4 Generally, at least, in my experience of late, when somebody
5 else on the jury is asking questions, the Foreperson says
6 Juror So and So wants to know this and then list it out.

7 But even if I take everything in the light most
8 favorable to you, the Supreme Court has said that I need to
9 give a curative instruction, that the remedy is not a
10 mistrial.

11 MR. SHELTON: Yes, Your Honor. For purposes of the
12 record, I don't believe that a curative instruction will
13 alleviate this and it feels like -- it sounds like -- it
14 comes across as them already starting deliberations, so I
15 would respectfully, Your Honor, move for a mistrial.

16 THE COURT: Anything further from the State?

17 MR. COOPER: Judge, I do think that your -- I can try
18 to find some case law to supplement, but I think, Your
19 Honor, this can be cured by an instruction. It doesn't
20 appear to do anything outside of the presence of what was
21 heard in the courtroom, so I don't think there's anything to
22 unduly influence and I think your curative instruction would
23 be the appropriate result and not a mistrial.

24 THE COURT: Anything further?

25 MR. SHELTON: Nothing from the Defense, Your Honor.

1 THE COURT: Please bring in the jury.

2 And I'll note your exception and it's overruled.

3 MR. SHELTON: Thank you, Your Honor.

4 THE COURT: The grant or denial of a mistrial is solely
5 within the province and discretion of the Court. Our
6 Supreme Court has been very clear that, at least, an
7 objectionable way to handle it would be to give a curative
8 instruction and not to grant a mistrial. And there's no
9 evidence in the record to indicate that they are prematurely
10 deliberating. But even if they had, the remedy would still
11 be a curative instruction.

12 Now, I'm assuming that this is the last witness for the
13 State?

14 MR. COOPER: Judge, potentially. I have not had this
15 situation before. Given that note was provided and the
16 State's case is still open, the State would ask that we be
17 able to recall Detective Pritchard.

18 THE COURT: You haven't rested. You can call any
19 witness you want.

20 MR. COOPER: Then the State would intend to play jail
21 calls and would intend to call Detective Pritchard to the
22 stand in recall pursuant to -- beg the Court's indulgence.

23 THE COURT: I don't think you have to give a reason.
24 You haven't rested your case and you didn't excuse him. You
25 excused him subject to recall.

1 MR. COOPER: Then the State would intend to play these
2 jail calls and recall Detective Pritchard.

3 THE COURT: Are you going to have any witnesses other
4 than your client potentially, Mr. Shelton?

5 MR. SHELTON: No, Your Honor.

6 THE COURT: I assume you're, also, going to read the
7 stipulation.

8 MR. COOPER: Yes, ma'am. And then after reading it, I
9 would then ask to admit State's 103 into evidence.

10 (WHEREUPON, the jury enters the courtroom at 12:05
11 p.m.)

12 THE BAILIFF: All jurors present, Your Honor.

13 THE COURT: You may be seated.

14 Good morning -- well, I guess, it's good afternoon.
15 Ladies and gentlemen, we have been working diligently while
16 you've been waiting in an effort to go through the remainder
17 without having to stop and start, so we appreciate your
18 patient. While you've been waiting, we have been working,
19 so, please, know we do not take your time for granted. I
20 hope everyone had a pleasant and restful evening.

21 I received your note. Number one, what weapon was
22 associated with the projectile file in Mr. Jimenez's
23 trailer/head injury? Number two, to be clear, was a 40
24 caliber pistol ever recovered, parenthesis, that was used at
25 the scene, end parenthesis? Three, at the Emden house, did

1 they interview anyone else from that night to identify the
2 driver?

3 In response to that question, ladies and gentlemen, I
4 advise you as follows: Under our rules in the State of
5 South Carolina, juries cannot ask actual questions regarding
6 the facts and circumstances of the case. By your oath, you
7 are required to decide this case only according to the
8 testimony that is presented from the lips of the sworn
9 witnesses and the other evidence that may be introduced.
10 Under our rules of evidence and procedure, there is a way
11 that attorneys try a case and that is based on those rules
12 of evidence and procedure.

13 So I would instruct you further that you have at this
14 point heard the evidence in this case. The Court cannot
15 answer factual questions. You must only consider the
16 testimony and evidence that has been submitted into the
17 record for purposes of your deliberations. You are
18 prohibited and cannot conduct your own independent
19 investigation or fact finding outside the evidence and
20 testimony presented to you during the course of this trial.
21 And, of course, you are not to speculate or draw any
22 inference or conclusion from the Court's response to your
23 inquiry during your deliberative process.

24 I would, also, sternly admonish and remind you that
25 this note could imply that there has been premature

1 deliberation or discussion regarding the facts and
2 circumstances of this case. And by your oath, you're to
3 have on discussion about the facts and circumstances of this
4 case until you have heard all of the evidence, you've heard
5 the arguments of the parties and the Court has instructed
6 you on the law and released you to begin your deliberations.

7 Any exceptions from the State?

8 MR. COOPER: No, ma'am, not from the State.

9 THE COURT: Any exceptions other than those we took up
10 in-camera, Mr. Shelton?

11 MR. SHELTON: Nothing, Your Honor.

12 THE COURT: Is the State ready to proceed?

13 MR. COOPER: Yes, ma'am.

14 THE COURT: Is the Defense ready?

15 MR. SHELTON: Yes, Your Honor.

16 THE COURT: Mr. Cooper.

17 MR. COOPER: Thank you, Your Honor. The State would
18 like to read what's marked as Court's Exhibit 3, a
19 stipulation, to the jury.

20 THE COURT: You may proceed.

21 MR. COOPER: The State and the Defense entered into a
22 stipulation that the telephone calls, which is a CD labeled
23 State's Exhibit 103, were made by the Defendant while he was
24 incarcerated at the Sheriff Al Cannon Detention Center on
25 April the 21st of 2020, during the hours of 12:23 p.m. and

1 3:30 p.m. They consist of four of the first five calls he
2 made while at the Sheriff Al Cannon Detention Center.

3 The State and Defense agree that the records custodian
4 from the Sheriff Al Cannon Detention Center, Melissa High,
5 authenticated those telephone calls as being true and
6 accurate copies of the calls placed by the Defendant on
7 April 21st, 2020.

8 Your Honor, at this time, the State would offer what
9 has been marked as State's Exhibit 103 pursuant to
10 stipulation into evidence.

11 THE COURT: It is marked and admitted subject to the
12 objection, which has already been overruled and findings of
13 fact and conclusions made for the record.

14 You may proceed.

15 MR. COOPER: Thank you, Judge. May we publish that CD
16 to the jury.

17 THE COURT: You may proceed.

18 MR. COOPER: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. COOPER: Starting with the first call placed by the
22 Defendant, April 21st, 2020 at 12:23 p.m. If you'll play
23 that for us, please, sir.

24 (WHEREUPON, jail phone call was played for the Court
25 and jury.)

1 MR. COOPER: And now playing the second call from the
2 same day, the next call in sequence, April 21st, 2020 -- or
3 a clip from that same call, I apologize.

4 THE COURT: Just say the time and date, that's all we
5 need to hear.

6 MR. COOPER: Yes, ma'am.

7 Call on April 21st, 2020, again, the call is at 12:23
8 p.m. starting at mark 4:32.

9 (WHEREUPON, jail phone call played for the Court and
10 the jury.)

11 MR. COOPER: This is now from the second jail call on
12 April 21st, 2020. This call starts at 12:42:43. This is
13 the first clip.

14 (WHEREUPON, jail phone call played for the Court and
15 the jury.)

16 MR. COOPER: Again, from that same call on April 21st,
17 2020, call beginning at 12:42:43. This is the second clip
18 from that call.

19 (WHEREUPON, jail phone call played for the Court and
20 the jury.)

21 MR. COOPER: And, again, from the second call on April
22 21st, 2020, that call began at 12:42:43. This is a third
23 clip from that call.

24 THE COURT: Please don't make any reference to the --

25 MR. COOPER: I'm sorry, Your Honor?

1 THE COURT: Just say the date and time, that's all we
2 need.

3 MR. COOPER: Yes, ma'am.

4 (WHEREUPON, the jail phone call is played for the Court
5 and jury.)

6 MR. COOPER: This is still from April 21st, 2020, at
7 12:42:43 p.m.

8 (WHEREUPON, the jail phone call is played for the Court
9 and jury.)

10 MR. COOPER: This is again from the call on April 21st,
11 2020. The call began at 12:42:43.

12 (WHEREUPON, the jail phone call is played for the Court
13 and jury.)

14 MR. COOPER: Another clip from the same call on April
15 21st, 2020, at 12:42:43 p.m.

16 (WHEREUPON, the jail phone call is played for the Court
17 and jury.)

18 MR. COOPER: Another clip from the call on April 21st,
19 2020. The call began at 12:42:43 p.m.

20 (WHEREUPON, the jail phone call is played for the Court
21 and jury.)

22 MR. COOPER: And now for the next call that began on
23 April 21st, 2020, at 2:20:24 p.m.

24 (WHEREUPON, jail phone call was played for the Court
25 and jury.)

1 MR. COOPER: Clip from that same call on April 21st,
2 2020, at 2:20:24 p.m.

3 (WHEREUPON, jail phone call is played for the Court and
4 jury.)

5 MR. COOPER: Another clip from call April 21st, 2020,
6 that began at 2:20:24 p.m.

7 (WHEREUPON, jail phone call is played for the Court and
8 jury.)

9 MR. COOPER: And the now from a clip again on April
10 21st, 2020, the call began at 3:30:15.

11 (WHEREUPON, jail phone call is played for the Court and
12 jury.)

13 MR. COOPER: Clip from same call, April 21st, 2020, at
14 3:30:15 p.m.

15 (WHEREUPON, jail phone call is played for the Court and
16 jury.)

17 MR. COOPER: Another clip from the call on April 21st,
18 2020 at 3:30:15 p.m.

19 (WHEREUPON, jail phone call is played for the Court and
20 jury.)

21 MR. COOPER: And the final clip in that same call,
22 April 21st, 2020. The call began at 3:30:15 p.m.

23 (WHEREUPON, jail phone call is played for the Court and
24 jury.)

25 MR. COOPER: Your Honor, that would be the extent of

1 the jail calls the State would seek to admit.

2 THE COURT: Anything further?

3 MR. COOPER: Not from this testimony. The State does
4 have one additional witness.

5 THE COURT: Call your witness.

6 MR. COOPER: Thank you, Your Honor. The State would
7 like to recall Detective Pritchard.

8 THE COURT: Sir, if you would come to the stand to be
9 sworn.

10 DAVID PRITCHARD,

11 after being duly sworn, testified as follows:

12 THE CLERK: Please have a seat. If you'd state your
13 full name for the record, spelling your last name.

14 THE WITNESS: David Pritchard, P-R-I-T-C-H-A-R-D.

15 THE COURT: You may proceed.

16 MR. COOPER: Thank you, Judge.

17 DIRECT EXAMINATION

18 BY MR. COOPER:

19 Q Detective Pritchard, I just have a few brief questions
20 for you. One, I want to focus your attention to [REDACTED]
21 Street. We watched the video yesterday showing --

22 MR. SHELTON: Your Honor, I'm sorry. Can we approach?

23 THE COURT: Uh-huh.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury, but outside the hearing of the jury.

1 THE COURT: Madam Forelady, ladies and gentlemen, I
2 have a brief matter of law to take up with counsel. Please
3 don't discuss the case and, please, leave your notepads in
4 your seats. If you would leave your notebooks.

5 Bailiffs, if you all would just keep them in the
6 hallway for me, please.

7 (WHEREUPON, the jury exits the courtroom at 12:25 p.m.)

8 THE COURT: You may be seated.

9 All right. What's your objection?

10 MR. SHELTON: Yes, Your Honor. I'm sorry, Judge. It's
11 just not been happening in 16 years that I practiced. I
12 think this is kind of new.

13 THE COURT: It's not unusual. I get them in civil and
14 criminal cases.

15 MR. SHELTON: For purposes of the record, just in case,
16 I objected, obviously, and I moved for a mistrial. I object
17 to this line of questioning --

18 THE COURT: You've already moved for a mistrial and
19 I've already denied it.

20 MR. SHELTON: Yes, Your Honor. And I just want to make
21 the record clear that I'm objecting to this recall of this
22 testimony --

23 THE COURT: What's the basis of your objection to his
24 recalling his witness?

25 MR. SHELTON: That this is going to be based off the

1 note given from the jury, Judge.

2 THE COURT: Have these questions already been asked?
3 You can't ask questions you've already asked. That's not
4 the purpose of recalling the witness. If this testimony has
5 already been elicited, you can't ask the questions again.
6 You can argue it in the close of your case, but you don't
7 get to ask the witness the questions again.

8 So my memory -- and I'll have to go back through my
9 notes -- was that these questions have already been asked.

10 MR. COOPER: Judge, the ones I'm going to ask --

11 THE COURT: Except the Emden house, I don't know if
12 that was elicited. And I think that question in number two
13 is no. I don't recall there ever having been a 40 caliber
14 pistol ever recovered that was used at the scene. Correct?

15 MR. COOPER: Ma'am?

16 THE COURT: The answer to question number two is no; is
17 that not correct.

18 MR. COOPER: I think Mr. Green from SLED briefly
19 touched on he was able to match a weapon.

20 THE COURT: His testimony was I can compare it if you
21 find me a weapon to compare it to.

22 MR. COOPER: He did.

23 THE COURT: So a 40 caliber pistol was never recovered,
24 correct?

25 MR. COOPER: It was examined by SLED, yes, ma'am.

1 THE COURT: There was a 40 caliber pistol?

2 MR. COOPER: It showed --

3 THE COURT: They're talking about a handgun. They're
4 not talking about a rifle.

5 MR. COOPER: I know.

6 THE COURT: Which number is that?

7 MR. COOPER: I don't have the weapon, Judge. What I'm
8 trying to say is the SLED witness, he testified, I think it
9 was his third report, he was made aware of an IBIS hit from
10 Sumter County that a handgun he confirmed that weapon was
11 the weapon.

12 THE COURT: That's what their asking in this question.
13 They want --

14 MR. COOPER: I'm --

15 THE COURT: They're asking if a 40 caliber pistol was
16 found at that scene that was used at that scene. That's
17 what this question is asking.

18 MR. COOPER: I understand.

19 THE COURT: And the answer is no.

20 MR. COOPER: So what weapon was associated with the
21 projectile found in Mr. Jimenez's trailer/head injury? I
22 don't remember if that question was ever asked.

23 In the meantime, while I'm considering your objection,
24 Mr. Shelton, I would assume you have some case law or rule
25 on point that the Court would be able to rely upon in making

1 an analysis or decision?

2 MR. SHELTON: Your Honor --

3 THE COURT: I'm not aware of any.

4 MR. SHELTON: -- I think it goes under Rule 611. I
5 believe that the witness may be recalled only in the
6 discretion of the Court. So it's in your discretion, Judge.
7 However, Judge, given the basis --

8 THE COURT: All of these questions enure to your
9 client's benefit. I'm a little surprised you're objecting.
10 They all tend to exculpate him.

11 MR. SHELTON: Judge, it gives the State an insight into
12 the thoughts of the jury.

13 THE COURT: Gives them a chance to say they didn't find
14 any of this stuff.

15 MR. SHELTON: Judge, I understand that, but this is
16 giving the State another bite at the apple based off
17 questions the jury has now indicated to us. And so, I --
18 inherently, Judge, I just don't feel that this is --

19 THE COURT: All of these questions enure completely to
20 your client's benefit. They all tend to exculpate him.
21 What weapon was associated with the projectile in Mr.
22 Jimenez's trailer/head injury? I don't know that that
23 question was ever asked.

24 To be clear, was a 40 caliber pistol ever recovered
25 that was used at the scene? The answer to that question is

1 no, there wasn't one ever recovered. That, clearly, enures
2 to your client's benefit.

3 And at the Emden house, did they interview anyone else
4 from that night to identify the driver? And I think the
5 answer to that is they talked to other people and nobody
6 could identify the driver.

7 Isn't that the answer?

8 MR. COOPER: Jessica Freeman from the house identified
9 the driver.

10 THE COURT: Have you already asked him that question?

11 MR. COOPER: I have.

12 THE COURT: Because you showed him that picture, so you
13 don't get to ask him that.

14 MR. COOPER: I wasn't going to.

15 THE COURT: So for what purpose are you calling the
16 witness?

17 MR. COOPER: Judge, I am going to show Detective
18 Pritchard, and I have not asked the questions, State's
19 Exhibit 149, 150 and 151, which are screen shots from the
20 video of [REDACTED] Street, which you see other people
21 milling around. We're just going to ask Detective Pritchard
22 --

23 THE COURT: Did you show those to Mr. Shelton?

24 MR. COOPER: I can.

25 THE COURT: I think you need to.

1 MR. COOPER: They're in evidence. These are the ones
2 -- screen shots from the video. And ask him if he was able
3 to identify any of the other people in this video that he
4 was already able to identify? Was he able to speak with any
5 of them? Then I'm going to ask him about --

6 THE COURT: Well, what are the answers going to be?
7 Did they talk to anybody else that was able to identify him?

8 MR. COOPER: No, ma'am.

9 THE COURT: Okay.

10 MR. SHELTON: Judge, I understand, but it's based
11 solely off the jury's questions, Judge.

12 THE COURT: I'm not aware of any prohibition in the
13 rules that says that's prohibited. It happens in criminal
14 cases less -- well, I can't say that. It happens about
15 50/50. Sometimes it's about witnesses that haven't been
16 called yet and sometimes, frankly, the lawyers -- what ends
17 up happening is it eliminates questions being asked after
18 you've already argued and charged.

19 I had a very extensive civil case that went 15 days
20 about a month ago and the lawyers were very appreciative of
21 the notes because they all utilized it to tailor the
22 testimony because they realized that they think like
23 lawyers, not like lay people.

24 But back to my original analysis, I'm not aware of any
25 rules that says they can't recall their witness, except to

1 the extent -- of course, you can't recall a witness and ask
2 the same questions. So I would never allow them to ask the
3 same questions.

4 MR. SHELTON: Your Honor, just for purposes of the
5 record, this is, also, so that I don't give -- by allowing
6 --

7 THE COURT: You've got to have a basis for an
8 objection. You don't have generalized objections. So I
9 need to know if you have case law or a rule that says they
10 cannot recall a witness for this purpose. But, again,
11 looking at the note, all these questions are enure you
12 client's benefit. I can't discern any prejudice to him.
13 They all exculpate him.

14 MR. SHELTON: Except, Judge, I did move for a mistrial.
15 I understand Your Honor --

16 THE COURT: There's no basis for a mistrial.

17 MR. SHELTON: I understand that, Judge, however, to
18 preserve that, I feel that I need to object to this line of
19 questioning that --

20 THE COURT: They're two separate things. I don't think
21 either one of them are codependent.

22 MR. SHELTON: I understand, Judge. For purpose of the
23 record, that is one of the basis of my objection, Judge.

24 THE COURT: And is there any good faith argument that
25 these questions do not exculpate your client?

1 MR. SHELTON: I don't know what the jury is thinking
2 when they ask those questions, Judge.

3 THE COURT: I think the plain language of those
4 questions exculpate your client. It goes to a deficit in
5 evidence. I don't think there's any other way to read it.

6 MR. SHELTON: Yes, Your Honor. And it's allowing the
7 State to then try to explain.

8 THE COURT: They can't bolster something that doesn't
9 exist.

10 Ask the questions so I can hear them, please.

11 MR. COOPER: Thank you, Judge.

12 BY MR. COOPER:

13 Q Detective Pritchard, if you would, I want to show you
14 State's Exhibit 149. What is this a picture of?

15 A This is the front of [REDACTED] Street.

16 Q Showing you State's 150. What is this picture?

17 A This is the same image -- or not the same image.

18 Q The next image in sequence?

19 A Yes, sir.

20 Q And showing you State's 151, this picture, what is
21 this?

22 A Also, the front of [REDACTED]

23 Q And in these pictures in the video when you reviewed
24 them, did you observe a variety of people milling around the
25 area?

1 A Yes, sir.

2 Q Were you able to identify who any of those people were?
3 Not the ones related to the case, but other people?

4 A Not on this video, no, sir.

5 Q Were you able to interview any of those other people?

6 A I did speak to -- on the day we did the search warrant,
7 I did speak to Jessica Freeman's husband, her mother and,
8 also, her father.

9 Q And in your experience in the Ferndale community, is it
10 a popular thing to cooperate and speak with law enforcement?

11 A It's not.

12 MR. COOPER: Your Honor, that would be the extent of
13 the questions the State would seek to ask Detective
14 Pritchard.

15 THE COURT: You've already asked him these questions.

16 MR. COOPER: I haven't, Judge.

17 THE COURT: You did -- well, you didn't ask him that
18 explicitly, but you, basically, asked Ms. -- the witness at
19 Emden Street that. She didn't want to be here. It was
20 uncomfortable.

21 MR. COOPER: Yes, Judge, but I have not asked Detective
22 Pritchard about any other witnesses on the scene.

23 THE COURT: But is there a particular witness that he
24 tried to talk to that didn't talk to him?

25 MR. COOPER: No, Judge, that's what we're saying.

1 There are people evident in the video. Detective Pritchard
2 said he was unable to identify any of the other people and
3 was unable to speak with anybody else that may have been
4 present at the scene at that time. The State did elicit the
5 testimony previously that he spoke to Jessica Freeman, who
6 then, also, testified, but I am not asking him these
7 questions.

8 THE COURT: So to be clear, you're not asking anything
9 about question one, which is Mr. Jimenez and the projectile?

10 MR. COOPER: That is correct.

11 THE COURT: Nothing about the 40 caliber pistol?

12 MR. COOPER: That is correct.

13 THE COURT: Only about whether there were other
14 witnesses that were examined at the Emden house?

15 MR. COOPER: That is correct.

16 THE COURT: Any exception to the line of questioning --
17 well, do you want to ask any questions for the proffer?

18 MR. SHELTON: Well, Your Honor, I --

19 THE COURT: I need to know if you have any questions
20 for the proffer?

21 MR. SHELTON: Yes.

22 THE COURT: Proceed.

23 BY MR. SHELTON:

24 Q Detective Pritchard, did you try to interview anybody
25 that you said would have been on that video?

1 A No, sir. I interviewed the three people I listed
2 whenever we did the search warrant. They were all there
3 that time of night, but I can't say that those are the
4 people that were on the camera or not.

5 Q So you didn't try to obtain their information and who
6 they were?

7 A No, sir.

8 THE COURT: With your ability to cross-examine him on
9 that issue creating deficits in the investigation, do you
10 have any exception to the witness being recalled in this
11 line of questions?

12 MR. SHELTON: Yes, I still do, Your Honor.

13 THE COURT: And what's the basis of the objection?

14 MR. SHELTON: They get to explain away and try to
15 explain away why they did not do certain things, Judge.

16 THE COURT: For the record, 611(d) is about rebuttal
17 witnesses. It's not about the ability to call a witness in
18 your case in chief and reexamine them. And that is based on
19 the rules interpreting -- the case law interpreting Rule
20 611(d).

21 Generally, when you call a witness and you excuse them
22 subject to recall, you generally are retaining them for
23 rebuttal purposes, not for recall in your case in chief.
24 While I think it is in my discretion and probably
25 permissible to allow the witness to testify regarding this

1 line of questioning, out of an abundance of caution, I'm
2 going to sustain the objection. I just think it's
3 problematic. You examined your witness. You placed your
4 evidence in the record and I just think it creates a problem
5 we don't need. The objection is sustained.

6 Sir, you may step down.

7 MR. COOPER: For the jury, can we have David Pritchard
8 stay on the stand and you sustain that objection in front of
9 the jury. Because the jury is going to be left hanging --

10 THE COURT: We can do that if you'd like.

11 MR. COOPER: Okay, if we could just do that, please.

12 THE COURT: No worries. Do you have any other
13 witnesses other than the detective?

14 MR. COOPER: The State would rest after that. Would
15 you like me to do that in the presence of the jury?

16 THE COURT: Actually, I'm going to do several things.
17 I'm going to excuse the jury in the presence of the jury.
18 I'm going to let you rest in the presence of the jury.

19 If you will stand, sir. I'll remind you that you are
20 still under oath.

21 (Defendant stands.)

22 THE COURT: Have you had a full opportunity to discuss
23 your rights as I have explained them to you?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions about your rights

1 as I have explained them to you?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Have you had a full opportunity to discuss
4 with your lawyer whether you should or should not testify?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And you've had -- I believe the deputies,
7 also, made available your ability to speak with your family
8 members, correct?

9 THE DEFENDANT: That's correct, Your Honor.

10 THE COURT: And you had the ability to have an informed
11 conversation with them on yesterday evening, correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you need to speak with your lawyer or
14 anyone else further at this time?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Sir, do you wish to testify?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: You can take your seat.

19 What I'm going to do is I'm going to sustain the
20 objection. I'm going to let you rest. I'm going to let Mr.
21 Shelton rest. I'm going to reserve motions and I'll hear
22 those. The jury's lunch is a little delayed, but as soon as
23 their lunch gets here, I'm going to let them eat. We're
24 going to do charge conference and we'll take a little brief
25 break for lunch and then we'll resume with closing argument.

1 MR. COOPER: Yes, Your Honor.

2 THE COURT: Any exception from the State?

3 MR. COOPER: No, ma'am.

4 THE COURT: From the Defense?

5 MR. SHELTON: Just that we'll be able to make the
6 directed verdict motion?

7 THE COURT: I reserved your motion.

8 MR. SHELTON: I'm sorry, Judge.

9 THE COURT: I'm more interested in a good record than
10 you are. I just don't want to have to send them in and out,
11 in and out, so I said I reserved motions.

12 MR. SHELTON: If my name is not next to it on a
13 transcript, so I just wanted to make sure, Judge.

14 THE COURT: No, no, you're not waiving anything by me
15 doing it this way.

16 Bring in the jury.

17 (WHEREUPON, the jury enters the courtroom at 12:41
18 p.m.)

19 THE BAILIFF: All jurors are present, Your Honor.

20 THE COURT: You may be seated.

21 The objection is sustained, sir. You may step down.
22 Anything further from the State?

23 MR. COOPER: No, Your Honor. At this time, the State
24 would rest.

25 THE COURT: Anything further from the Defense?

1 MR. SHELTON: No, Your Honor. At this time, the
2 Defense rest.

3 THE COURT: Madam Forelady, ladies and gentlemen, both
4 the State and the Defense have rested their case. I have
5 some matters of law I have to take up with counsel, after
6 which, we will have closing argument and the Court's
7 instruction regarding this case.

8 I ordered your lunch to arrive at 12:00. They have a
9 little hang up today. I don't know whether it's the weather
10 or not, but they have advised us that it is out for
11 delivery. So as soon as it arrives, we'll have it in the
12 jury room and you all can go ahead and start eating and have
13 your lunch and recess. After that, we will resume argument.

14 The recess will probably be a little more compressed
15 today and I'll make a decision as to how long it will be
16 once I know what time your lunch has arrived. I, also, need
17 to give counsel a moment to collect themselves and eat as
18 well.

19 You may, also, walk around if you would like and get
20 some air before your lunch arrives. As soon as I figure out
21 exactly what time frame we're going to be out for lunch,
22 you'll be allowed to walk around during that process as
23 well.

24 Again, please, don't have any discussion about the case
25 and, please, leave your notepads in your seats. Don't read,

1 watch or listen to any media accounts if there are any.

2 We'll see you all shortly. I'll let you all know how
3 long the lunch break will be once the lunch gets here.

4 (WHEREUPON, the jury exits the courtroom at 12:42 p.m.)

5 THE COURT: You may be seated.

6 If you all can indulge me, I'm going to hear motions in
7 a moment. I need you all to follow along with me to make
8 sure I'm all on the same page.

9 Madam Court Reporter, if you could do the same.

10 According to my list of exhibits, 1, 2, 3, 4 came in
11 without objection, as well as 5, 6, and 7. 9 through 23
12 came in without objection. 24 through 30 came in without
13 objection. 31 was ID only. 32 came in without objection.
14 33 was ID only. And I need to make sure that the black and
15 white photos that were supposed to be substituted that those
16 were done for Mr. Reid.

17 Were those done?

18 MR. COOPER: And, Judge, Exhibit 33, that's a picture,
19 also, in evidence and the other black and whites were, also
20 --

21 THE COURT: Me and the court reporter have 33 as ID
22 only.

23 What do y'all have?

24 MR. COOPER: Sorry, Judge, that's correct.

25 THE COURT: That's okay.

1 34, 35 and 36 I have came in without objection. 38
2 through 53 came in without objection. 55 came in without
3 objection. 56 through 68 came in without objection. 69 and
4 70 are ID only. Those are the black and white photos that
5 should be 69A and 70A without objection. 71 through 77 came
6 in without objection. 79 and 80 came in without objection.
7 82 was ID only. 83, without objection. 84, ID only. 85,
8 without objection. 86, ID only and 87 without objection.

9 And what do you have on 81, Madam Court Reporter?

10 THE COURT REPORTER: 81 is in.

11 THE COURT: Without objection?

12 THE COURT REPORTER: Yes, ma'am.

13 THE COURT: 88 came in without objection. 89 through
14 92 were ID only. 93 through 96 were ID only. 97, without
15 objection. 98, ID only, as well as 99, I still had as ID
16 only.

17 What do you have, Madam Court Reporter?

18 THE COURT REPORTER: 97 is in.

19 THE COURT: Uh-huh, what do you have for 98?

20 THE COURT REPORTER: ID.

21 THE COURT: 100 came in, 101 came in, 102 and 103.
22 Because those are the jail calls that were redacted subject
23 to the objection. 105 through 118 came in without
24 objection. 119, ID only. 120 through 137, without
25 objection. 138, 139, 140, 141, 142 and 143 were never

1 offered, so they would be ID only. 144 came in without
2 objection. 145, ID only, as well as 146. 147 through 151
3 came in without objection. 152 came in without objection.
4 153 was ID only. 154 and 155, I have they were not using.
5 156 was ID only. 157 came in without objection. The
6 stipulations, which were 158 and 159, were Court's Exhibit's
7 1 and 2. 158 is the picture of Mr. Jimenez in black and
8 white at the hospital -- 158A. So 158 is ID only and 158A
9 is without objection. 160 came in without objection. 161
10 came in without objection. 164 came in without objection.

11 Did I leave out any numbers?

12 MR. COOPER: Judge, we had State's Exhibit 162, also,
13 in evidence.

14 THE COURT: Yes, without objection.

15 MR. COOPER: That is the State's recollection, too,
16 Judge.

17 THE COURT: Is that your recollection, Mr. Shelton?

18 MR. SHELTON: Yes, Your Honor.

19 THE COURT: Thank you all. I wanted to make sure we
20 were all on the same page.

21 The State has rested, are there any motions?

22 MR. COOPER: Judge, I wanted to make sure you said 164
23 is, also, in evidence? That was a CD.

24 THE COURT: Yes.

25 MR. COOPER: Thank you.

1 THE COURT: You're welcome.

2 MR. SHELTON: Yes, Your Honor, motion for directed
3 verdict. Judge, as to the assault and battery of a high and
4 aggravated nature on Mr. Jimenez, there has not been any
5 direct testimony on what caused his injuries. There has
6 been nobody that came and testified. Mr. Jimenez didn't.
7 There's been some circumstantial evidence, but there's been
8 nothing showing that what happened was a bullet grazing his
9 head. There's just been --

10 THE COURT: There's a picture, is there not?

11 MR. SHELTON: There's blood, yes, Your Honor.

12 THE COURT: No, there's a picture of his wound, is
13 there not?

14 MR. SHELTON: I believe the picture just shows blood,
15 Judge. I don't believe that the picture from --

16 THE COURT: I think circumstantially, you can infer
17 when somebody has blood on their head and there's blood and
18 hair on his residence wall where he was sleeping that an
19 injury took place that required medical intervention, which
20 is great bodily injury as defined by the statute.

21 MR. SHELTON: Yes, Your Honor, I believe there could be
22 circumstantial. I don't believe that there is substantial
23 circumstantial, which is what is required at a directed
24 verdict motion --

25 THE COURT: Give me one second. I need to look at Mr.

1 Jimenez's picture.

2 MR. COOPER: Look at State's 5, Your Honor. Would you
3 like me to get it for you?

4 THE COURT: That would be helpful. I have 158 was him
5 at the hospital.

6 MR. COOPER: Judge, the color pictures --

7 THE COURT: 158A is the black and white.

8 MR. COOPER: That was the one from the scene --

9 THE COURT: Oh, yeah, I forgot about that. I need the
10 other one from the hospital.

11 Go ahead, Mr. Shelton.

12 MR. SHELTON: Judge, I just believe that there has been
13 no evidence whatsoever that would rise to the level to
14 overcome a directed verdict motion that the assault and
15 battery of a high and aggravated was committed in this
16 incident. The State has not been able to prove what,
17 actually, happened to Mr. Jimenez in the home.

18 There's many different ways and things that could
19 happen that cause somebody to bleed. Judge, we see blood.
20 We see a picture in the hospital. We don't have any
21 testimony from a doctor. We don't know what the wounds was,
22 how it's characterized. We don't what type of injury was
23 committed. So, Judge, there's just nothing, no testimony
24 saying what Mr. Jimenez was doing at the time that he
25 started bleeding. There's nothing. So he is not here to

1 testify. He did not come to testify to his injuries --

2 THE COURT: There's some case law that says the victim
3 doesn't have to come. I had that come up recently in a case
4 and I had to do some research on it. And I just have a
5 vague recollection because I thought you would need one, but
6 there seems to be case you don't need it. It's not a
7 requirement of the State proving the elements of the
8 offense.

9 MR. SHELTON: Your Honor --

10 THE COURT: I'll look for that case during the break,
11 but I'm pretty sure -- because I was fixed in my opinion
12 that it was required, but I was convinced by case law it is
13 not.

14 MR. SHELTON: Well, Your Honor --

15 THE COURT: Which kind of surprised me to tell you the
16 truth.

17 MR. SHELTON: Yes, Your Honor. Judge, I just feel that
18 there has not been any evidence that has shown that he
19 obtained this injury at the time of any type of shooting.
20 So, Judge, I just don't feel that the State has met their
21 burden to overcome a directed verdict motion on the assault
22 and battery of a high and aggravated nature against Mr.
23 Jimenez. There's just been no testimony whatsoever that
24 this incident caused this injuries.

25 So, Judge, I just respectfully move for a directed

1 verdict on the assault and battery of a high and aggravated
2 nature.

3 Judge, I don't feel the State has met their burden on
4 the malicious part for Mr. Alonza Marable for either
5 attempted murder on Mr. Simmons or the murder of LR
6 the victim, L.J., Judge. So I ask that you grant a directed
7 verdict on murder and attempted murder for Alonza. The
8 record is clear that it was Antwan Johnson's gun that shot
9 and killed Mr. Johnson -- that killed the victim, Your
10 Honor. The record is clear that he is the one that had the
11 issues. There's nothing here showing that there was any
12 type of plan, common scheme, nothing showing that there was
13 anything that was planned between Mr. Johnson and Mr.
14 Marable. Nothing showing that he acted in concert in any
15 way with Mr. Johnson.

16 I just respectfully ask for a directed verdict on the
17 murder and attempted murder, also.

18 THE COURT: Would the State like to respond?

19 MR. COOPER: Yes, Judge. Thank you.

20 At the directed verdict stage, the Court is concerned
21 not with the weight of evidence, but the existence of
22 evidence in the record. During the course of the trial, the
23 State elicited testimony. I'll go through the charges in
24 order.

25 Regarding murder, the State has to prove the Defendant

1 killed another person with malice aforethought, that could
2 be expressed or implied malice. Part of expressed malice
3 when a person prepared beforehand to do an act which they
4 later accomplished, or inferred malice, which is total
5 disregard for human life.

6 There was an abundance of testimony in this case,
7 Judge. One, the victim -- the living victim, Jamaul
8 Simmons, indicated that there were two shooters. He was
9 able to hear the different guns. There were two shooters.
10 It was, also, indicated that he heard the bullets going past
11 his head.

12 We have testimony from Pierre Nelson, who was in the
13 vehicle, that the driver, along with Mr. Johnson got out and
14 opened fire. That the driver, he's noticed a long barrel
15 gun back in the after the shooting.

16 And Ms. Freeman identified the Defendant as the driver
17 about 60 seconds after the shooting on video. The vehicle
18 being driven has been shown to be the Defendant's car. The
19 rifle that SLED, while they can't confirm was used, they
20 can't exclude was used, was found under his bed at his house
21 along with the ammunition. There were three different types
22 of ammunition found on scene. All three types found at this
23 Defendant's house.

24 In addition to that, Judge, there's testimony from
25 Pierre Nelson in the car that one person in the car said,

1 There are them boys. And that they were aware there were
2 two people outside.

3 I know Mr. Shelton tried to show with the video that
4 maybe the Defendant may not have seen Mr. Simmons, but there
5 was testimony that the people in the car were aware there
6 was more than one person. Mr. Simmons articulated that he
7 heard bullets going past his head.

8 So with regards to the attempted murder in this case
9 where the State has to show the Defendant acted with intent
10 to kill and with malice aforethought, we have elicited
11 evidence that the Defendant would have been aware there was
12 more than one person when he opened fire and that person
13 felt in fear of their life.

14 So, Judge, the State's contention is there is evidence
15 in record, enough that exist for the jury to consider
16 whether they believe that Mr. Marable saw Mr. Simmons,
17 attempted to kill him and was unsuccessful.

18 Going back to the murder of **LR** Mr. Reid was,
19 in fact, killed in this crime, both confirmed by testimony
20 and video. While the pathologist did testify that,
21 potentially, it was the handgun that was used, as we all
22 know the law in the State of South Carolina, the hand of one
23 is the hand of all. This is a textbook case for that. Both
24 Defendants opened fire, so it does not matter who, actually,
25 killed Mr. Reid as long as it was one of the two

1 codefendants because the act of one is the act of all. Mr.
2 Marable is equally guilty of that as if he had fired the
3 bullet himself.

4 Regarding assault and battery of a high and aggravated
5 nature, in that case, Judge, the State has to prove that a
6 person unlawfully injured another person and either great
7 bodily injury resulted or the act is accomplished by means
8 likely to produce death or great bodily injury.

9 Judge, we agree with the Court the victim does not have
10 to testify. I was not able to collect medical records to
11 show that great bodily injury resulted, but the act being
12 accomplished by means likely to produce death or great
13 bodily injury. He suffered a gunshot wound to the head.
14 There was picture evidence taken by the responding officer
15 that was advised of what had happened and testified about
16 what he saw on scene. There was testimony from the crime
17 scene technician about collecting that projectile from the
18 trailer. There was hair on the wall where the bullet had
19 gone through and there was blood on the floor.

20 The rifle -- or the projectile that was located, while
21 it was inconclusive whether it was to Mr. Marable's gun, it
22 was confirmed by SLED to be consistent with 223 ammunition,
23 which was the type of gun the Defendant was using.

24 So, Judge, the State would be arguing to the jury that,
25 certainly, a gunshot wound to the head and being shot at and

1 struck by a bullet is, certainly, enough to be considered
2 act that is accomplished by means likely to produce death or
3 great bodily injury. So, Judge, we think the record is
4 replete with evidence that supports the elements of all
5 three charges the State has to prove. Again, Judge, the
6 Court not being concerned with the weight, but with its mere
7 existence. Those facts do exist. This case should be sent
8 to the jury and the Defendant's motion should be denied.

9 Thank you.

10 THE COURT: Anything further?

11 MR. SHELTON: One thing, Your Honor. There was a brand
12 new case that came out yesterday, State vs. James Caleb
13 Williams, that has to do with the attempted murder and the
14 transferred intent on specific intent and --

15 THE COURT: I always charge them specific intent.

16 MR. SHELTON: Well, as far as directed verdict motion,
17 the majority concluded the trial court erred in not granting
18 the directed verdict motion and that was --

19 THE COURT: Which case was that?

20 MR. SHELTON: They were quoting State vs. Williams in
21 that case --

22 THE COURT: I don't know what the instructions were and
23 I'd have to read it, but it's my understanding since --
24 there's a progeny of cases that deal with -- State vs. King,
25 but no specific is required. That's no longer the law. And

1 as it regards Belcher, which is inferred and expressed
2 intent, the use of a weapon cannot be instructed at all. So
3 I don't know what was instructed in this case. I have no
4 idea. I don't know what the evidence was, I have to look at
5 it. But I don't know if this case is applicable, but I'll
6 be glad to look at it.

7 MR. SHELTON: And, Your Honor, as part of the argument,
8 Judge, for Jamaul Simmons, transferred intent to the
9 malicious intent on his part, there's evidence that he
10 called and talked -- hand of one, hand of all even --

11 THE COURT: The evidence is deeper than that. It's not
12 just about accomplice liability. It's about whether the
13 evidence rises to the level of substantial circumstantial
14 evidence that your client was present with a weapon and was
15 shooting indiscriminately and whether one of those bullets
16 went through the wall of that trailer and hit Mr. Jimenez in
17 the head and then caused his injury. There's no doubt this
18 is great bodily injury. It requires medical intervention.
19 It involves a system in his body. It would require some
20 level of surgical intervention. So it, clearly, comes
21 within the ambit of the statute.

22 I don't know what the facts are in this case. I'd have
23 to review it to see. But every case turns on facts, they're
24 not always analogous.

25 MR. SHELTON: And I'm referring specifically -- and I'm

1 sorry, I wasn't clear.

2 THE COURT: That's okay.

3 MR. SHELTON: I'm referring specifically to the
4 attempted murder charge on Jamaul Simmons, Your Honor.

5 THE COURT: It requires specific intent and I always
6 instruct it. They have to prove that he specifically
7 intended to do it.

8 MR. SHELTON: And for the directed verdict motion, I
9 don't believe that there's been any evidence whatsoever that
10 there was malice aforethought towards Jamaul Simmons. And I
11 believe it has to be specific to Jamaul Simmons and there
12 was nothing in the record to show that there was any malice
13 aforethought towards Jamaul Simmons. Therefore, I believe
14 there should be a directed verdict on the attempted murder
15 charge.

16 THE COURT: You can imply malice when there's a total
17 disregard for human life, when behavior exhibits that. And
18 if you've involved in a conspiracy -- they have to prove
19 that he aided, abetted in some overt act or, you know, was
20 involved in a conspiracy to inflict injury on these
21 individuals.

22 I don't think that you are absolved of something just
23 because somebody incidentally was there and he used an
24 implement that's designed to take life. That's a total
25 disregard for human life, which is not instructing that the

1 use of a gun is implied malice. It's not, but any
2 indication of a lack of disregard for human life is implied
3 malice. It becomes a factual issue for the jury to sort out
4 whether he was merely there by giving somebody a ride,
5 whether he wasn't there at all, whether the State has fallen
6 short of their responsibility to prove identification beyond
7 a reasonable doubt because that is their responsibility -- I
8 mean, their burden, rather.

9 But I'm not going to instruct the jury on that old law.
10 I always instruct malice with specific intent. And the
11 State has to prove -- they have to prove specific intent
12 beyond a reasonable doubt on both offenses, that being the
13 attempted murder as well as murder'.

14 MR. SHELTON: And I think it has to be specific intent
15 towards that person, Judge, that victim.

16 THE COURT: That would vitiate accomplice liability.
17 As long as you enter into a criminal enterprise together,
18 you're responsible for everything that flows from that
19 criminal act. And when you engage in behavior that he
20 designed to take life and when you prepare beforehand,
21 that's expressed malice.

22 MR. SHELTON: Well, in the record, Judge, the
23 codefendant, Antwan Johnson, had known Mr. Jamaul Simmons
24 prior to, talked to him beforehand. Mr. Simmons called him
25 afterward. Judge, if there's evidence that there was not a

1 malice toward Jamaul Simmons on Mr. Johnson's part, so a
2 hand of one, hand of all -- I know it's kind of --

3 THE COURT: It's a circular argument. The facts can
4 cut both ways. Either he simply gave somebody a ride and he
5 didn't know what they were going to do or he was in it for a
6 pound and for a penny. They called him. They were mad he
7 was robbed. They all got into -- and whatever flowed from
8 that, they may not have intended when they formed the
9 criminal enterprise to kill someone, but they had guns.
10 Guns plus behavior, when you add those together, although a
11 gun by itself is not evidence of malice. Behavior that
12 shows a total disregard for human life is implied malice.

13 So when you take the totality of the facts and
14 circumstances, it's for a jury to suss out whether they
15 intended to do it, whether he had the specific intent to do
16 it. It's not for this Court to make that decision. I'm not
17 the finder of facts. Those all in my mind are factual
18 issues for you -- I'm sure that you both will ably argue to
19 the jury and make an ardent attempt to convince them as to
20 your version of the facts and the implications or inferences
21 to be drawn from those facts.

22 But, clearly, when a jury is instructed, they're told
23 that they have to look at the totality and it's for them to
24 give the weight, value and effect to the evidence that they
25 think it should receive. And they can disregard -- they

1 could decide, as I'm sure you will argue, that he was merely
2 present or that he wasn't present and that he didn't know
3 they were going to do all of this, and the record is void of
4 any evidence that they intended to do this. But I think
5 there is enough in the record to imply and for there to be a
6 reasonable circumstantial -- there is substantial
7 circumstantial evidence that the jury could believe that
8 they were friends, that he called him to come to his aid, he
9 was robbed. And Mr. Marable doesn't have to be the one that
10 was robbed. If he was aiding and abetting and made
11 preparation beforehand and, otherwise, to vindicate what
12 happened.

13 The fact that a person was shot and that was not
14 necessarily the intention of the conspiracy, I don't know
15 that the law has any prohibition on that. Once you enter
16 into an enterprise, it goes where it goes. If somebody gets
17 shot, that's a reasonable -- you have a gun. A gun is an
18 implement designed to excel a projectile. It's only
19 intention is death. A gun ain't intended to maim nobody.
20 It's intended to kill you. So when you get involved in
21 that, you go wherever it goes and you're responsible for
22 wherever it goes.

23 Now, of course, that's what the State's going to argue.
24 I feel certain that you will have a separate argument, which
25 is my client was merely there and you have no evidence that

1 he was involved in any type of a conspiracy. The hand of
2 one is not the hand of all. And the law is replete and the
3 instructions are that mere presence or proof of mere
4 presence is not sufficient to prove someone guilty of a
5 crime beyond a reasonable doubt. These are all factual
6 issues that y'all -- the Court can't act as the finder of
7 fact. It's not my prerogative.

8 And, frankly, I know people don't believe it, but I
9 have no opinion about the facts in this case. I have no
10 position. I'm just the gatekeeper. I'm just the person
11 that calls the balls and the strikes and makes sure
12 everybody has a fair trial. But it's not for me to insert
13 myself and start sifting through the facts and deciding who
14 I believe and who I don't believe and what may have
15 happened, what didn't happen. I have no idea, I wasn't
16 there. That's why we have advocates on both sides. I think
17 you all can argue all of those things to a jury and then
18 they, as the finder of fact, can, ultimately, determine who
19 they believe, who they don't believe and what they think
20 happened at the time of this incident.

21 If you'll give me a few minutes, I need to review the
22 case that Mr. Shelton has cited. I appreciate your
23 indulgence.

24 MR. COOPER: May we take a comfort break while you're
25 during that?

1 THE COURT: Sure.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: The Court is not concerned with the weight
4 of evidence, only existence or nonexistence of evidence.
5 And I emphasize, this Court is not the finder of fact. It
6 is not for me to determine who is credible, who's not
7 credible and determine who I believe or who I do not
8 believe. Certainly, under our Constitution and our code of
9 laws, the trial court is not allowed to have an opinion
10 about the facts and I, certainly, do not have an opinion
11 about the facts of this case.

12 The Court is required to determine only if there is any
13 direct or any substantial circumstantial evidence reasonably
14 tending to prove the guilt of the accused. The Court is not
15 concerned with the weight of evidence, only the existence or
16 nonexistence of evidence. Of course, the evidence presented
17 by the State must rise above a mere suspicion. And the
18 Court is not required to find the evidence infers guilt to
19 the exclusion of any other reasonable hypothesis. And the
20 Court must view the evidence in the light most favorable to
21 the State.

22 And without belaboring the hour because you all have
23 very carefully argued the elements of the offense and your
24 positions as to how the evidence meets or does not meet
25 those elements, the Court finds there is direct and

1 substantial circumstantial evidence reasonably tending to
2 prove the guilt of the accused on each of these charges,
3 that being assault and battery of a high and aggravated
4 nature, murder and attempted murder.

5 Now, as regards to the case that Mr. Shelton has
6 pointed out, the Court finds it is not analogous to this
7 situation. This was a set of facts that took place at a
8 club in Sumter, South Carolina where the State specifically
9 argued transferred intent and where the Court instructed
10 transferred intent, which in this Court's mind negated the
11 requirement of specific intent that is required to be proved
12 by the State of South Carolina.

13 This is not a transferred intent case. It has not been
14 argued as a transferred intent case. It has been argued as
15 an accomplice liability case and, of course, that does not
16 negate and the Court will instruct the jury that the State
17 must prove guilt as well and one of those elements of the
18 offense is specific intent to kill as well as proving
19 specific intent to have attempted a murder. The motion is
20 denied.

21 Now, in regards to a charge conference, we're doing
22 that now. I'll go over the instructions with you and then
23 we'll take a short recess. The jury's lunch arrived about
24 five minutes ago.

25 I will give the jury general instruction regarding

1 their responsibility and my responsibility, how they're to
2 judge witness credibility and believability. I will give
3 them a general instruction on expert witness testimony. I
4 will, likewise, give them a general instruction on the two
5 types of evidence, which is direct evidence and
6 circumstantial evidence. I'll give them a general
7 instruction on the charge, the arrest and the indictment not
8 being evidence as well as on the presumption of innocence.
9 I'll charge Victor vs. Nebraska on reasonable doubt, after
10 which, I will instruct regarding the fact that the Defendant
11 didn't testify.

12 I will then instruct on the elements of murder, which
13 we know are malice, which can be expressed and inferred,
14 that being preparation beforehand as well as conduct that
15 shows a total disregard for human life. And that is
16 pursuant to, of course, Belcher, State vs. Burdette and
17 Teague vs. Lane and the most recent case that came out from
18 the Supreme Court indicating that any instruction after
19 Belcher should not include (unintelligible) the use of a
20 deadly weapon. So that will not be included.

21 They will further be instructed that if facts are
22 proven beyond a reasonable doubt sufficient to raise an
23 inference of malice to your satisfaction, this inference
24 would simply be an evidentiary fact to be considered by you,
25 the jury, along with the other evidence in this case and you

1 may give it the weight, value, and effect, if any, you
2 decide it should receive.

3 I will then instruct intent, which is that is an
4 element of the crime that the State must prove beyond a
5 reasonable doubt.

6 MR. COOPER: Judge, are you at the criminal intent
7 charge or the specific intent charge at this point? The one
8 where they talk about medically dissecting the brain --

9 THE COURT: I am at the one intent charge, you have to
10 prove he intended to do it.

11 MR. COOPER: Thank you.

12 THE COURT: You're welcome.

13 I probably will add this language in both the attempted
14 and the murder instruction at the conclusion of intent. I
15 will instruct to find the Defendant guilty -- well, I got a
16 little ahead of myself. I think I'll probably add it to
17 both. To find the Defendant guilty of murder, the State
18 must prove beyond a reasonable doubt that -- I got a little
19 ahead of myself. I need to add that to my instruction on
20 the attempted murder.

21 I then will instruct the elements of 16-3-29, which is
22 attempted murder, which is the Defendant is charged with
23 attempted murder. In order to prove this crime, the State
24 must prove beyond a reasonable doubt that the Defendant
25 attempted to kill another person with malice aforethought,

1 either expressed or implied. And I'll use the same
2 definition for malice as is a part of the murder
3 instruction, including preparing beforehand and malice may
4 be inferred from conduct showing a total disregard for human
5 life, utilizing the same language if facts are proven beyond
6 a reasonable doubt to your satisfaction, it's simply an
7 inference. And for them to give it the weight, value and
8 effect they decide it should receive.

9 Within that instruction, I will, likewise, include the
10 following: An attempt is an effort to accomplish a crime
11 that does not succeed. An attempt includes a specific
12 intent to do a particular crime. To do a particular
13 criminal act along with an act while in short of the act
14 intended, the State must show more than mere preparation and
15 intent. There must be some overt act committed in the
16 effort to commit the crime.

17 Intent means intending the result which actually
18 occurs, not accidentally or involuntarily. Intent may be
19 shown by acts and conduct of the Defendant and other
20 circumstances from which you may naturally infer intent.

21 Then I will include the following language: Criminal
22 intent is a mental state of consciousness of wrongdoing. It
23 is up to you, the jury, to determine what the Defendant
24 intended to do based on the circumstances shown to have
25 existed.

1 To find the Defendant guilty of attempted murder, the
2 State must prove beyond a reasonable doubt that the
3 Defendant had an intent to kill the victim. And since I
4 would have already done the two-page instruction on intent,
5 I don't feel the need to reread the entire thing again.

6 MR. COOPER: Judge, could I ask you to read it because
7 I want to make sure I have the right stuff. And I'm not
8 sure where I may have gotten this, but one of the specific
9 intent charges talks about character of the act, character
10 of the instrument --

11 THE COURT: That's my longer instruction.

12 MR. COOPER: That is in there, okay. I just wanted to
13 make sure. Thank you.

14 THE COURT: All my charges include the most current
15 black letter precedent, but I shortened it with the attempt
16 because I feel like the jury's attention span is short and
17 I've already read intent to them, so I sort of shorten it at
18 the end of it. I think it's really to the point, which is
19 criminal intent is a mental state of consciousness of
20 wrongdoing and it's for you, the jury, to determine what the
21 Defendant intended to do based on circumstances shown to
22 have existed. I have eliminated the rest of that language
23 about failure to act, negligence or recklessness because
24 more than that is required on an attempted murder.

25 And then I will further instruct, to find the Defendant

1 guilty of attempted murder, the State must prove beyond a
2 reasonable doubt that the Defendant had an intent to kill
3 the victim.

4 MR. COOPER: Thank you.

5 THE COURT: I will then instruct on the elements of
6 assault and battery of a high and aggravated nature, which
7 is 16-3-600(b), which is the Defendant is charged with the
8 offense of assault and battery of a high and aggravated
9 nature.

10 To prove assault and battery of a high and aggravated
11 nature, the State must prove beyond a reasonable doubt that
12 the Defendant committed an unlawful injury to another person
13 and great bodily injury to another person resulted or the
14 act was accomplished by means likely to produce death or
15 great bodily injury. Great bodily injury means bodily
16 injury which causes a substantial risk of death or which
17 cause serious permanent disfigurement or protracted loss or
18 impairment of the function of a bodily member or organ.

19 I will then instruct the elements of identification,
20 which the State must prove identification beyond a
21 reasonable doubt. I will, also, instruct mere presence and
22 then I will instruct accomplish liability, which we commonly
23 refer to is the hand of one is the hand of all.

24 I will then instruct that there are multiple offenses
25 in this case that the Defendant has been charged with, but

1 the State must prove each indictment separate and distinct
2 beyond a reasonable doubt and that they have to make a
3 decision on each separate and independent of one another
4 uninfluenced by their decision as to any or collectively of
5 the indictments that they have to write a separate verdict
6 and he can be acquitted or convicted on any or none. Then I
7 will explain the forms of the verdict.

8 Any exception to the charge as proposed?

9 MR. COOPER: The only thing, Judge, I don't think I
10 heard you actually charge hand of one.

11 THE COURT: I'm not reading it to you. I did say hand
12 of one --

13 MR. COOPER: I missed it, Judge, I'm sorry. Just out
14 of an abundance of caution.

15 THE COURT: No worries. And I appreciate any input
16 because sometimes I forget stuff. Of course, that
17 instruction is based on current case law regarding
18 accomplice liability.

19 Any exceptions or requests from the Defense?

20 MR. SHELTON: Judge, the only thing I would based off
21 what came out today is ask for a charge on alibi. I didn't
22 present alibi, but the State did.

23 THE COURT: The case law is that when you -- an alibi,
24 the Defendant has to testify to his alibi.

25 MR. SHELTON: Your Honor, the State provided statements

1 from the --

2 THE COURT: Those were his statements, but --

3 MR. SHELTON: And the State introduced it.

4 THE COURT: It's him contriving an alibi, it's not him,
5 actually, saying he has an alibi.

6 MR. SHELTON: It's an opinion, though, Judge --

7 THE COURT: I can look up the case law. I think the
8 case law is when you have an alibi, you've got to testify to
9 it.

10 MR. SHELTON: But the State --

11 THE COURT: It's an affirmative defense.

12 MR. SHELTON: I objected to that testimony coming in.
13 The State is the one who decided to bring it in. They
14 opened the door to that --

15 THE COURT: I think mere presence covers -- well, I
16 don't know.

17 MR. SHELTON: No, because they have to disprove it,
18 Judge. So I ask that alibi be included --

19 THE COURT: You have to assert an alibi and it's my
20 understanding -- I need to find the case law on it, but you
21 have to testify when you assert an alibi and you, also, have
22 to give notice to the State of an alibi.

23 MR. SHELTON: Your Honor, the State presented it.

24 THE COURT: They're not presenting it for that purpose.
25 They're presenting it to say that he didn't have an alibi

1 and he contrived one and he's trying to make up a story. I
2 don't think they're offering to say that he, actually, had
3 an alibi.

4 MR. SHELTON: But the jury has a right to believe that,
5 Judge, so I think that that is --

6 THE COURT: I think even leniently and very generously
7 looking at those statements, they don't create an alibi.
8 I'm going to look up the case law and I'm going to tell you
9 what conclusion I come to, but it's my understanding when
10 you assert an alibi, you've got to testify about. Even more
11 importantly, under the rules, you have to give them written
12 notice of an alibi. Him testifying on a jail tape does not
13 give him testimony that there is an alibi that the State has
14 to refute.

15 MR. SHELTON: Judge, they -- over my objection, the
16 State presented that evidence, so they presented the
17 evidence of a potential alibi.

18 THE COURT: I'll note your argument.

19 MR. SHELTON: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 Bear with me just a moment.

22 (Pause.)

23 THE COURT: I assume since you have not presented any
24 evidence, you intend to preserve last argument?

25 MR. SHELTON: Yes, Your Honor.

1 THE COURT: And I assume the State has not exception.

2 MR. COOPER: I'm sorry, Judge, I could not hear what
3 you were saying.

4 THE COURT: I said that because he did not present any
5 evidence, I'm assuming it is his posture he has maintained
6 last argument.

7 MR. COOPER: Yes, to the State's displeasure, I think
8 he has last close.

9 THE COURT: Give me one second.

10 (Pause.)

11 MR. COOPER: Judge, for the record, you encapsulated
12 the State's argument, but I would, also, object to an alibi
13 defense. I do think the Defense has to procure that and
14 present evidence to that. The State did not present it for,
15 obviously, presenting it as an alibi. I think it goes to
16 consciousness of guilt, as Your Honor noted earlier today,
17 but it was, in fact, not an alibi, but an attempt to evade
18 prosecution and evade arrest.

19 THE COURT: Naturally, I don't think -- he doesn't -- I
20 have to, again, find the case. I think he can call other
21 people. If he called other witnesses, he could do that to
22 say he was with me to establish an alibi. Like, he could
23 have called whomever he would have contended he was in
24 Columbia with to testify that we were in Columbia that day.
25 I just think that -- so when I say he has to testify, what I

1 really mean is that he has to present some testimony on
2 alibi to support that defense, which, of course, if he had
3 presented it, the State would be required to disprove it
4 beyond a reasonable doubt.

5 MR. SHELTON: And, respectfully, Judge, I think that --
6 well, at least, the instruction I'm looking at, it says,
7 there's no burden on the defendant to prove an alibi.

8 THE COURT: There's not. They have to disprove alibi,
9 but to bring it into evidence, you've got to raise it.

10 MR. COOPER: And at the beginning of the jury charge,
11 Judge, it says the defendant has raised the defense --

12 THE COURT: There are, also, rules that deal with
13 alibi, that being Rule 5(e)(1), upon written request to the
14 prosecution stating the time, date and place at which the
15 alleged offense occurred, the defendant shall serve within
16 ten days or at such time as the Court may direct upon the
17 prosecution the written notice of his intention to offer an
18 alibi defense. The notice shall state the specific place or
19 places at which the defendant claims to have been at the
20 time of the alleged offense and the names and addresses of
21 the witnesses upon whom he intends to rely to establish such
22 alibi.

23 MR. SHELTON: And, respectfully, Judge --

24 THE COURT: I didn't ask for argument. I've been real
25 lenient about that, but once I start ruling, I don't expect

1 y'all to interrupt me. I don't expect you to have a
2 rebuttal. Rule 18 is very clear, unless the Court has --
3 and I've been very generous in letting you all make
4 arguments on issues. So once I've heard everything and I
5 start to rule, that's the conclusion of the matter.

6 MR. SHELTON: Yes, Your Honor.

7 THE COURT: Yeah, I'm not going to instruct alibi, the
8 case law doesn't support it.

9 While you're correct, Mr. Shelton, that the Defendant
10 has no burden of proof and the State must disprove an alibi
11 beyond a reasonable doubt, the case law is very clear that
12 the defense of alibi is raised by the defendant where the
13 defendant shows he was at another specified place or time
14 that the crime was committed and, therefore, it was
15 impossible for him to have been present at the scene of the
16 crime. Case law, also, supports that mere denial of
17 presence at the scene of a crime is not an alibi.

18 So it does not -- as it has been raised does not come
19 within the definition of alibi, which is State vs. Robbins,
20 a 1980 Supreme Court decision, which to my knowledge is
21 still good case law. I do not perceive that playing the
22 tapes in any way was burden shifting. There's still no
23 burden on the Defendant to prove anything in this case, but
24 it is my understanding of the status of the law that it is
25 the defense that is raised by the defendant. I've never

1 known the State to raise a defense for a defendant, that
2 being alibi, and the calls do not rise to the level of an
3 alibi as defined by our case law. Mere statement or denial
4 of presence is not an alibi.

5 Also, there has not been compliance with the rules,
6 that being Rule 5(e), which is very little case law on that
7 rule regarding alibi. There's a recent case, that being --
8 it just came out the other day, Elvis, the Elvis case where
9 they were precluded from calling alibi witnesses by the
10 trial court because they had not complied with Rule 5(e) and
11 it was sustained by the Supreme Court.

12 The State didn't offer the evidence as an alibi. What
13 they did is they offered it as consciousness of guilt in
14 trying to contrive a story that he was not present at the
15 scene.

16 But in light of everything we've already gone over, I'm
17 going to give an instruction on identification, which
18 requires the State to prove beyond a reasonable doubt that
19 the Defendant is the person who committed these offenses and
20 that is their burden of proof. If they fail to establish
21 it, then the proof has failed. In addition to that, they
22 have to prove more than mere presence. And I'm going to
23 instruct that as well.

24 So I think that mitigates against any argument that
25 you've raised regarding alibi, so your request is denied.

1 Any other requests regarding instructions from the
2 State?

3 MR. COOPER: No, ma'am.

4 THE COURT: From the Defense?

5 MR. SHELTON: No, Your Honor.

6 THE COURT: So there are no requests for any lesser
7 included instructions, correct?

8 MR. COOPER: The State does not think they're
9 appropriate.

10 MR. SHELTON: I would request assault and battery first
11 for the assault and battery of a high and aggravated nature.

12 THE COURT: Let me see if that's, actually, a lesser
13 included offense because I think the way the case law now
14 works once they passed the statute, they then determine
15 what's lesser included. I'm not sure that ABHAN -- I need
16 to look at my chart right quick. Bear with me.

17 MR. SHELTON: Yes, ma'am.

18 THE COURT: Because the statute now codifies ABHAN, so
19 it has the same elements, so I don't know that assault and
20 battery first would be a lesser included of ABHAN.

21 Just one moment.

22 (Pause.)

23 THE COURT: It is a lesser included.

24 Any exception from the State?

25 MR. COOPER: Yes, ma'am. I think the elements met are

1 for great bodily injury.

2 THE COURT: I'm sorry, say that one more time.

3 MR. COOPER: That the State has presented evidence --
4 and I'm trying to pull up the law real quick, Judge. Beg
5 the Court's indulgence. I've got it right here. Just beg
6 the Court's indulgence while I'm reading it and I can better
7 respond.

8 (Pause.)

9 MR. COOPER: So, Judge, I do think assault and battery
10 in the first degree, I assume the Defense is trying to offer
11 that under the ABHAN charge, is inappropriate because that
12 discusses an offer or attempt. Certainly, there was injury
13 in this case. It's been testified to, there's picture
14 evidence of it. So we think, Judge, the ABHAN is the proper
15 charge because there was no attempt or offer, there was
16 injury actually inflicted, which would fall squarely under
17 the ABHAN statute.

18 THE COURT: Mr. Shelton, what facts are there to
19 support a lesser included assault and battery first degree?

20 MR. SHELTON: Judge, we don't know what the injuries
21 were, so they could find that there wasn't great bodily
22 injury, but there was an offer or attempt for great bodily
23 injury. So I think assault and battery first degree would
24 be appropriate.

25 THE COURT: Anything further from the State?

1 MR. COOPER: Sorry, Judge, I was talking to Ms. Barber.
2 I didn't hear what you were asking me. I apologize.

3 THE COURT: I said is there anything further in
4 response to Mr. Shelton's argument?

5 MR. COOPER: Judge, again -- and I think there's a
6 decent chance I could talk myself out of conviction in this
7 argument, but I think the ABHAN statute contemplates actual
8 injury. Mr. Shelton is free to argue whether the injury was
9 great bodily, but the fact that there is actual injury puts
10 it squarely under the ABHAN statute. There is no offer or
11 attempt because the injury was inflicted. So I think it
12 would be improper to charge ABHAN.

13 I've said this before and talked myself out of a
14 conviction, but I think if they don't think there's great
15 bodily injury or it wasn't done by means likely to
16 accomplish that, they can return a verdict of not guilty.
17 But I think A&B first would not be the correct charge to
18 provide.

19 THE COURT: So what's the prejudice to you if you don't
20 prove your case, they get to consider a lesser included
21 offense?

22 MR. COOPER: Well, I think, Judge, providing a lesser
23 charge that doesn't meet the facts is inappropriate. I
24 think that would give the jury some inference that is an
25 appropriate option when it does not fit the law.

1 THE COURT: That's not been my experience. I think
2 that it's a misnomer to lawyers that somehow juries reach
3 compromised verdicts. I think either you've met your burden
4 of proof or you haven't. If you haven't met your burden of
5 proof on the ABHAN, then only can they look at assault and
6 battery first.

7 MR. COOPER: I agree with that, Judge.

8 THE COURT: So if your argument is as you have
9 represented to the Court that you have sufficient evidence
10 to support ABHAN, then they -- that's where I'm trying to
11 figure out where the prejudice to include it.

12 MR. COOPER: I just think the prejudice is that would
13 provide a charge not supported by the evidence. Same with
14 voluntary manslaughter. That is not appropriate. The facts
15 in the case don't support that. The facts in the case do
16 not support --

17 THE COURT: You didn't have anybody testify to what his
18 injuries were.

19 MR. COOPER: And, Judge, I think the jury can infer --

20 THE COURT: We don't know whether it, actually, went in
21 his skull. We don't know whether -- he's at the hospital, I
22 mean, we can assume he had some medical intervention, but we
23 don't know the extent to which there was medical
24 intervention.

25 MR. COOPER: I understand, Judge, but there is

1 testimony in the record that there is an injury. That takes
2 it squarely outside --

3 THE COURT: But the injury has to be defined, does it
4 not?

5 MR. COOPER: Ma'am?

6 THE COURT: Bear with me one second. I just need to
7 look at the elements real quick. I apologize.

8 (Pause.)

9 THE COURT: I think I'm probably going to instruct it.
10 I think it's a matter for y'all to argue. Assault and
11 battery under the statute, in the first part of it,
12 16-3-600(c), clearly, is not -- it's nonconsensual touching
13 and all that, so it wouldn't even be applicable, but a
14 person commits the offense of assault and battery in the
15 first degree if a person unlawfully injures another person
16 and the act either --

17 Well, skip that part. Like I said, the first part of
18 the statute doesn't apply, so we go to subsection two, which
19 is a person commits the offense of assault and battery in
20 the first degree if the person unlawfully offers or attempts
21 to injure another person with the present ability to do so
22 and the act either is accomplished by means likely to
23 produce death or great bodily injury or -- the rest of this
24 doesn't apply, which is during a theft, burglary or robbery.
25 And with the same definition of great bodily injury.

1 Anything further from the State?

2 MR. COOPER: I just want to make sure, Judge, that
3 you're -- I understand the Court's ruling. You're only
4 doing that under the ABHAN charge, that is not a lesser
5 included to the attempted murder?

6 THE COURT: He requested the assault and battery first
7 for the ABHAN.

8 Correct?

9 MR. SHELTON: Correct, Your Honor.

10 THE COURT: Is there anything else we need to cover on
11 instructions from the State?

12 MR. COOPER: No, ma'am.

13 THE COURT: Anything from the Defense?

14 MR. SHELTON: No, ma'am.

15 THE COURT: It is 1:50. The jury has had their lunch
16 30 minutes. It would give them an hour if we take 30
17 minutes. So we'll be out for 30 minutes. We'll resume at
18 2:30, which gives you a little more than 30 minutes because
19 it's 1:51, at which time, we'll have closing arguments and
20 charge.

21 Y'all have a good lunch.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Can y'all approach for me and look at the
24 verdict form.

25 MR. COOPER: No objection from the State for those.

1 THE COURT: Any exception, Mr. Shelton?

2 MR. SHELTON: No, Your Honor.

3 THE COURT: All right. Thank you very much.

4 MR. COOPER: Judge, is it possible, your attempt
5 charge, is there any way I can just compare? I thought I
6 heard it right.

7 THE COURT: I don't want you repeating what I'm saying.
8 I don't want them to run the risk of getting confused.
9 Nothing personal.

10 Is the State ready to proceed?

11 MR. COOPER: Yes, ma'am.

12 THE COURT: Defense ready to proceed?

13 MR. SHELTON: Yes, Your Honor.

14 THE COURT: Please bring in the jury.

15 And just as a reminder, during closing arguments and
16 the Court's instructions, there is to be no movement in the
17 gallery. If you have any telephones, they need to be off,
18 not silent or vibrate, they need to be off. I'm going to
19 leave it to the discretion of the bailiffs and the deputies
20 how to handle anybody who does not follow the Court's
21 instructions. If your phone is on, it will be taken from
22 you.

23 (WHEREUPON, the jury enters the courtroom at 2:50 p.m.)

24 THE BAILIFF: All jurors are present, Your Honor.

25 THE COURT: You may be seated.

1 Madam Forelady, ladies and gentlemen, both the State
2 and the Defense have rested their case. We have now reached
3 the stage of the trial where we will have closing argument
4 and instruction. You will hear from the State, followed by
5 the Defense.

6 Under our rules of procedure, normally, the party with
7 the burden of proof has the last say, but there are, also,
8 other provisions of that procedure that allow the Defense to
9 have the last say. So you will hear, again, from the State,
10 followed by the Defense, after which, I will instruct you
11 regarding the law applicable to this case. I would ask that
12 you give counsel your undivided attention.

13 You may proceed when you're ready.

14 MR. COOPER: Thank you, Judge. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 CLOSING ARGUMENT BY MR. COOPER:

18 MR. COOPER: Ms. Barber and Mr. Shelton.

19 Good afternoon, ladies and gentlemen. I want to thank
20 you, first of all, before we get into it for your attention
21 this week. I know it's been a long week. Several times,
22 you were out of the courtroom for a long period of time. I
23 want to thank you for your attention, first of all.

24 I know some of y'all may be beginning summer break and
25 this is not how you wanted to start your summer vacation. I

1 know this hasn't been necessarily fun, hasn't been easy, but
2 it matters and it's important and I appreciate that.

3 As far as our criminal justice system, it's the best
4 system of its kind in the world. It allows for citizens to
5 come in and decide the facts of a criminal case. And more
6 than that, to decide what kind of crime society will
7 tolerate and what they won't.

8 So I get a chance to speak to you for a little bit.
9 Mr. Shelton will then come talk to you. The Judge will give
10 you the law of the State of South Carolina and you'll get to
11 deliberate. Before you do that, I want to go through some
12 of the evidence with you in this case.

13 So, first of all, I want to take you to the scene.
14 We're going to talk about shooters. We know in this case,
15 based on the evidence in this case, that there were two
16 shooters. We know from testimony, which I'll get to in a
17 minute, but we, also, can tell based on the video and the
18 location of the shell casings.

19 Now, as you've seen this week, our monitor up there is
20 broken, so I've got to come up here so I can draw on it.
21 But this is video from [REDACTED] Street that showed the
22 shooting. That is where the car backs in, the shots are
23 fired from and that's the porch, if you remember, from the
24 crime scene testimony of Detective Pritchard where the shell
25 casings were found.

1 Again, this is just a zoomed in area, but, again, it
2 shows the car backed up and it shows that area where the
3 shell casings were found on the porch, where they were found
4 on the ground in front of the porch and in the grass in that
5 area. That's consistent with what we heard from Mr. Nelson,
6 Pierre Nelson that got out, that was in the car that said
7 that Antwan got out of the back seat and the driver got out.
8 There were no shots and nobody got out of the passenger side
9 of that vehicle.

10 We, also, know there were two shooters because of the
11 testimony of Jamaul Simmons. He was the one that was
12 walking home with the victim in this case. He's the one
13 that you remember from the video, from his testimony, he ran
14 behind the trailer, ran for his life. But he told that he
15 heard a handgun and he heard a rifle firing at the same
16 time.

17 This, again, is that area. And the empty spot is where
18 the car backed in. Again, the porch and the ground in front
19 of the porch where we found those shell casings. That's
20 important because if you have this rifle -- I'm not going to
21 point it at anyone in the gallery, but if you've got this
22 thing and you've got it framed up, if you look right here,
23 this is where the rounds come out. This is where those
24 shell casings are ejected from. So it makes sense, if
25 you're facing this direction, they're on the right side.

1 In that case, in this picture, the shooters got out of
2 the car, shooting from there on the video and from the
3 testimony. So when we find the shell casings, we find the
4 handgun shell casings up here. We find the rifle shell
5 casings on the steps of the porch and from the porch, in the
6 skirting of the porch. It's all consistent with both of the
7 shooters being out of what would be the driver's side of the
8 vehicle as that vehicle had backed in.

9 And I want to talk to you, too, about those shell
10 casings. There were 12 rifle shell casings found on this
11 scene, 11 of which were the Norma 223 caliber. You'll have
12 all the evidence in this case -- I want you to think about
13 this. You'll have all the evidence. You'll have all the
14 pictures that have been admitted that you've seen on this
15 screen. You'll, also, have all the physical exhibits, all
16 the shell casings if you want to look at them. But you can
17 read the head stamps on 11 of them and they say Norma 223.

18 And the reason that's important, as we talked about in
19 this case, is they find some in front of the residence.
20 They find some in this skirting that they went back to a day
21 later. Inside that white skirting is where they find two of
22 those shell casings. And backing up, that white skirting on
23 the edge, as those shots were being fired that ended up in
24 between the porch and that casing -- and that's consistent
25 because -- I'll show you in a second -- the other shell

1 casings we find are here and on the porch. All consistent
2 with somebody having gotten out of the driver's side of that
3 vehicle, just like Pierre Nelson told you. Antwan got out
4 of the back seat of the driver's side and the driver, also,
5 got out. And the two that were found in the skirting, also,
6 Norma 223. That's the other one they collected, Norma 223.

7 And as we talked about, that is important because they
8 find two unfired versions in the trunk of the Defendant's
9 car. That's the other one, two Norma 223 rounds. And,
10 again, the head stamp. You'll get to compare -- every
11 single one of these casings are in evidence.

12 And the reason that's important is you heard the
13 testimony. What did they find at his house in his bedroom?
14 A whole bunch of unfired Norma 223 rounds. And as Mr.
15 Shelton has talked about, certainly, the rounds are legal to
16 buy. A person Mr. Marable's age, 18 or older, can purchase
17 those rounds. But to find them on scene, to find them in
18 his car, the car that was used in this case and to find them
19 in his bedroom along with, and don't forget, a rifle that
20 can fire those 223 rounds, in his bedroom.

21 As I mentioned, we have 11 of the 12 of the Norma 223.
22 Remember Detective Pritchard's testimony yesterday, they
23 found one of the Tulammo. So it says the brass case and
24 we've got this silver steel casing. It's not the clearest
25 picture of the head stamp, but, again, you will have that

1 evidence. Take them out and look at it. I encourage you to
2 do so. Y'all have been thorough this week. We've seen you
3 taking notes and I appreciate that. Take the time to review
4 all the evidence here you want to. It's here for your
5 review during deliberation.

6 The reason that's important is we heard yesterday in
7 testimony they, also, found 99 rounds of that in the
8 Defendant's house, in his bedroom. Detective Pritchard told
9 us, there's 99 in his house, there's one at the scene. What
10 does this box say? 100 cartridges. I wonder where the
11 other one went? It's on Lakewood Street.

12 So now, we have all the rifle rounds found at the
13 scene. We have unfired versions found in the Defendant's
14 car and in his bedroom. We have the rifle found underneath
15 that mattress. That's his beginner's permit right there in
16 front of the bed. And then just at the top, and you can
17 notice, the cord is there and the charger at the top that
18 connects right there, so right beside where he lays his head
19 at night is all that ammunition. You've got the yellow and
20 black box, the Tulammo ammunition. You've got the magazine
21 that holds the Norma 223 caliber bullets. And underneath
22 his mattress where he lays down at night was that rifle and
23 another magazine for that 223 ammunition.

24 Another thing that's interesting in this picture, we
25 mentioned it during the trial as well, is what is in that

1 black and red box, 40 caliber handgun ammunition. The same
2 type, the same brand and the same caliber as that other
3 shell casing that was recovered from the scene. Handgun
4 ammunition, Cor-bon S&W 40 caliber. And you'll be able to
5 do this. It's the exact same thing on these rounds.

6 So all the ammunition we find at the scene, all three
7 different types of brand, all three different calibers,
8 every single one made its way from his bedroom to that
9 scene.

10 And one of the other most important parts that's
11 interesting in this case, that's just the side of the box
12 showing its 40 caliber. And I hope you heard it, I'm going
13 to play it for you again in a second, I hope you heard it
14 today when we came back and you listened to the jail calls
15 by this Defendant. That brown paper bag that's marked as
16 item 16 in that picture, do you know what was in that? An
17 unopened extended magazine for a Glock 40 caliber handgun.
18 And it says it right on the label. But what else is in
19 there? A plastic bag of ammunition that contains 14 of the
20 Norma 223 rifle rounds found on the scene and 14 of the
21 Cor-Bon Smith & Wesson 40 caliber handgun ammunition that
22 was, also, found at the scene.

23 Why is that important? Just give us one second and
24 we'll let Mr. Marable tell you.

25 Mark, play call three, clip two for us, please. That

1 first part.

2 (WHEREUPON, jail phone call was played for the jury.)

3 MR. COOPER: That's call two, clip one, I'm sorry, I
4 had the wrong one. Got ahead of myself. Call two, clip
5 one, Mr. Marable is going to tell us why this is so
6 important.

7 (WHEREUPON, jail phone call was played for the jury.)

8 MR. COOPER: So what you hear is you hear the Defendant
9 ask his sister -- so back up one thing, too. When you hear
10 Nay-Nay, Shanicea Pease, I may be saying her first name
11 wrong, Shanicea Pease is his sister. That's the woman who
12 the Ford Focus was registered to and that lived with him at
13 that address. That's Nay-Nay.

14 And then they talk about Bree, that is his girlfriend.
15 Kebreana Samuels, who you heard Detective Butler tell you,
16 both of them were present when they executed the search
17 warrant at his residence. So that's who he's talking to.

18 So what you're going to hear is he asked, They take
19 that brown bag and she asked me if it was trash? Her
20 response, Yeah, I think so. And he lets out an audible
21 sigh. And she says, No, the brown bag right here, but it's
22 empty. So they took all the stuff out and ripped it open.
23 He says, Right. I was going to say throw that one away.

24 Mark, play that for us.

25 (WHEREUPON, jail phone call was played for the jury.)

1 MR. COOPER: So he's very clearly concerned about what
2 was in that brown bag and that makes sense, right? So not
3 only do we have all the ammunition that's found on scene can
4 be accounted for in his bedroom, now, we have these rifle
5 rounds and these handguns rounds together in a bag. I
6 wonder if they came out of that Ford Focus when he got home
7 that night? He's very clearly concerned about it.

8 And one of the things that's interesting -- and these
9 calls that y'all heard, they were four out of the first five
10 calls that he made in the first several hours after he had
11 been arrested. He's trying to clean things up. He's trying
12 to see if they can get rid of evidence. Didn't want the
13 police to find them. Is that going to be problematic? How
14 do you explain having two different types of rifle and
15 handgun ammunition in a bag in a place where they find the
16 rifle as a prime suspect coming from Lakewood Street. He
17 was very concerned about that.

18 And when talking about the ammunition, Mr. Shelton has
19 asked a number of times about isn't it legal for him to be
20 able to buy this? Isn't it legal for him to have it? Yes,
21 it is. It wasn't legal for Antwan Johnson. So who do you
22 think provided the ammunition? Who do you think provided
23 the weaponry? The person that could legally buy it. The
24 person that could legally have it. You think it's a
25 coincidence that all three types of ammunition, the two

1 rifle casings and the one handgun ammunition are, also,
2 found at his house right when that rifle is? It's not a
3 coincidence.

4 You heard from SLED when Jamie Green came to testify,
5 this handgun, it was under his bed, right in arm's reach of
6 that ammunition involved in this case. There was an IBIS
7 hit that, potentially, suggested this could be the weapon.
8 And Detective Pritchard told you that's why it was sent to
9 SLED. And then the SLED analyst told you while he couldn't
10 say it's a match, he said he could not exclude it. And he
11 told you how high his threshold was. He told you if he said
12 it was match, that means he would send his mother to the
13 electric chair on that evidence. But he did not exclude
14 that weapon. He said there was too much there that was
15 similar for me to be able to exclude that.

16 So you have a weapon that is not excluded from being
17 used in this crime near all the different types of
18 ammunition at the house of the suspect identified by
19 witnesses as driving that Ford Focus and being involved in
20 this case. That's not a coincidence.

21 Now, what about that 40 caliber handgun, the one that
22 Antwan Johnson used that, ultimately, shot and killed
23 **LR** What about that weapon? Where did that
24 weapon go? Again, I'll let the Defendant tell you.

25 Mark, if you'll play call three, clip two for me, the

1 first half -- actually, hold on one second. I want to make
2 sure.

3 What you're going to hear in that call is listen to his
4 mother this time. She says, They got your rifle, the
5 handgun, all the rounds. And then he interrupts because he
6 knows that's not true, that she misread the document. He
7 says, No, they don't. No, they don't. They only got the
8 rifle, mom, I promise you. I promise you that. She says,
9 Okay. He said, They took the rifle and all the ammunition I
10 had at the house. Then she asked the most important
11 question that y'all have, also, had, Where is the other gun?
12 And what does he say? It's a recorded line.

13 Play it, please.

14 (WHEREUPON, jail phone call was played for the jury.)

15 MR. COOPER: Let me ask you this, is that a statement
16 by somebody who wasn't there? Is that a statement by
17 somebody that doesn't know what they're doing or doesn't
18 know what this is all about? Or is that a statement by
19 somebody who was involved that provided the ammunition and
20 the weaponry and knows exactly where that gun is, somewhere
21 the police aren't going to find it? Or, certainly, not be
22 able to find it and connect him to it.

23 You heard it was found later when Mr. Green testified
24 from SLED, that it made its way to Sumter after the fact.
25 But you, also, know that Antwan Johnson pled guilty to the

1 shooting of LR [REDACTED] and the witness identified him and
2 he was identified through the investigation as being the one
3 that fired that handgun, running up to the body on the
4 video. Very clearly, he knew what happened to that weapon.
5 It's not a statement of somebody that doesn't know what's
6 going on or a statement of somebody that wasn't there or
7 wasn't involved.

8 Now, I want to talk a little bit about the vehicle, the
9 Ford Focus. It's been the focus of a lot of this case and
10 how they developed that vehicle. So, initially, it starts
11 out -- before this, you heard Detective Malone, who spoke to
12 a witness on scene, who advised that they think they saw a
13 dark in color Ford Focus leaving the area after the shots.

14 And while I know there are -- several people have
15 talked about was it -- I think Officer Cook was mistaken --
16 was it brown, was it gray, was it blue? It was a
17 dark-colored vehicle. And there's several ways we're able
18 to identify exactly which car this was.

19 So if you remember, this is the video from [REDACTED]
20 [REDACTED] Street. You can watch it in full when you
21 deliberate. The vehicle first appears to be going up the
22 street and coming down the street and not doing so slowly
23 before, ultimately, backing in here before leaving and going
24 back up the road.

25 Another thing to note in talking about the Ford Focus,

1 I think you heard a little bit on the jail calls that came
2 in about this Defendant saying it was a different vehicle.
3 There's not really many other vehicles on the road after 11
4 o'clock at night that night. It's not like there was a
5 variety of different vehicles. There was only one vehicle
6 that was running up and down these streets out for a hunt,
7 looking for LR [REDACTED] and anybody else that got in their
8 way.

9 This Ford Focus -- and you heard both Detective
10 DeSheers and Detective Pritchard talk about it. That right
11 there -- and I know it's not the clearest video and this is
12 probably a good time to say this. I think Mr. Green talked
13 about it in several references about TV shows and things
14 like that. One of the worst things to the criminal justice
15 system has been CSI, NCIS, Law & Order because everybody
16 thinks all these cases are custom-made for a 60-minute
17 episode and commercial breaks. That's there 15 HD cameras
18 everywhere, that there's 17 witnesses that are willing to
19 show up and testify that want to be here, that there's all
20 this different evidence. And that's just not always the way
21 the court works. Thank God, we have this. Thank goodness,
22 we have the video of the shooting. That we had some
23 witnesses we were able to find so we could help find who
24 killed LR [REDACTED] Thank goodness, we even had this.

25 But what we noticed here was that emblem. And it is

1 hard to see, but you can tell that it's not the same emblem,
2 that it looks like there's something raised right here and
3 then somebody below that, but it gave them to go off of.
4 And, ultimately, something to compare to.

5 Now, I think Mr. Shelton was asking Detective Pritchard
6 yesterday, how do we know this is the vehicle that was
7 involved in the shooting? I'll show you.

8 Mark, play that video clip for us, please. If you'll
9 back up all the way to the beginning for us.

10 (WHEREUPON, video was played for the jury.)

11 MR. COOPER: The vehicle is parked --

12 Pause it real quick for us.

13 (WHEREUPON, the video is paused.)

14 MR. COOPER: This is where I asked Detective Pritchard,
15 it was a motion sense camera, so the vehicle had sat for
16 several minutes and the camera had gone off. By the time it
17 picked up motion and restarted, the vehicle had turned left
18 and gone up the street, out of here and right up that way.

19 And what Detective Pritchard, also, told you, and I'll
20 show you a map in a second. This is Lakewood Street. So
21 the victim's trailer was up at the top of the street right
22 here. What you're going to notice in this video is that,
23 ultimately -- and it's hard, but you can still see with the
24 lights -- that the car travels up here and then takes a
25 left. Again, I'll show you this on a map in a second. But

1 takes a left up the street and is gone out of sight for
2 close to a minute before he comes back, comes down and then
3 you'll see it back in. And that's important. I'll show you
4 in a second.

5 Mark, if you'll play the video, please.

6 (WHEREUPON, the video was continued.)

7 MR. COOPER: You see the lights at the top. It appears
8 the vehicle went that way. You can see the lights. Again,
9 I think it's close to a minute before it comes back. Again,
10 the time stamp is off, but this is one of the ways that we
11 know that this is the vehicle involved in the shooting. We
12 see headlights coming at the top again. Right there. And,
13 ultimately, the vehicle is backing in and we can see those
14 lights going backwards. What you can see here is the
15 headlights are going to go off. The headlights go off.

16 Again, this is why I encourage you --

17 Mark, pause it real quick for me.

18 (WHEREUPON, the video was paused.)

19 MR. COOPER: This is why I, also, encourage you to
20 watch this in the jury room. You'll have that ability.
21 Believe me, I sympathize. It is hard to see from where
22 you're sitting the minute details of the video, but I want
23 to cue you up to that so that when you go back there, you
24 know what to look for. Because you can see the car go,
25 leave and turn left and, ultimately, come back.

1 And the reason that's important is -- we're going to
2 show the second half of the video. But, also, that's what
3 Pierre Nelson, right, that they were driving around looking
4 and all of a sudden, somebody says, There are them boys.
5 They found them. So they go back to Lakewood Street and
6 they back in ready.

7 Continue with the video, Mark, please.

8 (WHEREUPON, video was continued.)

9 MR. COOPER: So you see the car coming that way, coming
10 back down Lakewood Street, backing in. And then wait for
11 it, the headlights are going to go off. Got to hide them in
12 the cover of darkness. That's how we can clear up that the
13 vehicle in the picture with the decal, that is the same
14 vehicle. There weren't any other cars driving up and down,
15 running up and down the road on Lakewood that night.

16 I want to show you -- I'm sorry, I've got to run back
17 to the monitor so I can show you. But this is Lakewood
18 Street. You've got the video from Lakewood that comes from
19 here. Then we see the vehicle drive up and then take a left
20 back on Railroad. And then what do we see when it goes to
21 the video of the shooting? And on the video from Lakewood,
22 that video comes back, comes down and then backs in.

23 Remember, that's important not only from Pierre's
24 testimony, but, also, Jamaul. Because if you remember --
25 I'm going to show you a different map. You remember Jamaul

1 Simmons, the one that was with LR [REDACTED] that night, he
2 mentioned they had come across the railroad tracks and come
3 out of a cut. And what did he tell you? That a vehicle had
4 been sitting somewhere around here and then passed them and
5 was up here when it stopped as if they had been seen. And
6 then Pierre Nelson confirmed that saying that someone in the
7 car, whether it be Antwan Johnson, the Defendant or the
8 fourth person we've never been able to identify said, There
9 are them boys. They found who they were looking for. And
10 as the victims come this way, that car has already gone and
11 backed in.

12 There are no other cars in that video that are running
13 around up and down the street. I think we may have seen one
14 car that came in and parked and stayed, but it pulled in and
15 it stayed there for the duration of the video. There aren't
16 other cars racing up and down Lakewood and Railroad and all
17 of that. That isn't what's happened. The car driven by
18 that Defendant with Antwan Johnson and others in the car.

19 So you heard through the investigation about what car
20 was found at the Defendant's house, this Ford Focus. And,
21 again, we see that with the raised emblem and then the other
22 emblem below it, which does appear very similar to the one
23 that's right there. So you've got the raised, almost square
24 and that right there.

25 But if you have any doubt, one of the best facts in

1 this case is do you remember whose DNA was found on the back
2 side passenger door of this vehicle? Pierre Nelson. The
3 odds that somebody that admits to being in the car when this
4 happened, that wasn't friends with that Defendant, that his
5 DNA is on the car and they got the wrong Ford Focus. No.
6 And the DNA was strong, 71 septillion times more likely that
7 Pierre's DNA was involved than unrelated people. I think
8 she said there's 25 zeros behind that 71. That's how sure
9 that SLED is that Pierre Nelson's DNA is on the back side
10 interior door. I know Mr. Shelton queried about DNA could
11 come off, wash off, things like that, but this is on the
12 interior of that back door.

13 Again, this ties it all together, you've got the video
14 from [REDACTED] Street. And, again, you'll be able to watch
15 the video. You see that Ford Focus pull up and you see
16 Antwan Johnson getting out of that passenger seat and then
17 you see Pierre Nelson coming out from around the vehicle.

18 Mark, is it possible for you to pull up that video of
19 Emden? I think it's State's -- if you'll play that for us,
20 please.

21 (WHEREUPON, video was played for the jury.)

22 THE COURT: So this is the video. I think it's about
23 15 seconds before the car shows up. What you're going to
24 see is Antwan Johnson getting out of that passenger seat,
25 dapping up the driver, somebody he knew, somebody he was

1 friends with, and then Pierre coming around. Antwan gets
2 out. Daps up the driver and then Pierre walks around from
3 the back passenger seat where his DNA was found and then
4 goes back.

5 So, again, this is how we are tying that Ford Focus
6 being the one used in the crime. And, remember, not only
7 were the decals very similar and not only was Pierre
8 Nelson's DNA in the back seat of the interior of that car,
9 but that's the same car they found two unfired Norma rifle
10 rounds in. There's a certain point where a coincident is
11 highly unlikely. This is his car and these are his actions
12 and this is the car that was used that night.

13 But, again, to show once they got back to Emden
14 Street -- now, I'm telling you, I wish we were able to
15 identify or know who these other people are so we could have
16 talked to them, we could have figured out what they may have
17 seen, if anything. Who they knew, if anything. And that's
18 not on Detective Pritchard, they did a fantastic
19 investigation. I think he even told you up on the stand
20 that even his theory of the case had changed as he followed
21 the evidence. Nobody wanted more evidence than that man.
22 But who are these people? How do you know people that are
23 just hanging out? Do they know Alonza or Antwan or Pierre?

24 And I think y'all knew this before you came in. I
25 think you could see it a little bit when Jamaul testified,

1 when Pierre testified, when Jessica testified, especially in
2 these communities, it is not exciting, it is not something
3 people want to do, to speak to law enforcement. And it's,
4 certainly, not exciting or something people want to do to
5 come sit in that chair and give testimony. Because while
6 y'all were watching them, so was he. So was the shooter.
7 So they're being seen as giving testimony that can be
8 considered snitching if you will. That's not a popular
9 thing.

10 The good thing is, Detective Pritchard did speak to
11 somebody, somebody who lived at that residence, somebody
12 that knew the parties involved, and that was Jessica
13 Freeman. And she told you, she didn't want to be here. She
14 identified that car as looks like the one. She didn't come
15 in here and say that's it a hundred percent, that's the car.
16 She was trying to be as honest as she could. She said it
17 looks like the car. She knew who Alonza was, called him by
18 his name.

19 And remember, too, I don't want this to get lost in it
20 either. She, also, identified Antwan and Pierre Nelson.
21 Remember what she said about Antwan Johnson, that she raised
22 him since he was born, that she loved him. Is that somebody
23 that's going to lie? I mean, she, actually, told the police
24 yes, I know him, that's Antwan. She's telling the truth and
25 it's uncomfortable. What motive does she have to lie? What

1 motive does she have to say I'm going to tell on the person
2 I love more than anything else, but let me see who else I
3 can get, too. That doesn't make any sense. She knew Alonza
4 Marable. She knew Pierre Nelson and she knew Antwan
5 Johnson. And she told the police what she saw. Even though
6 she didn't want to, even though it wasn't exciting for her,
7 she was honest. And that means the world. She was honest
8 then and she was honest no matter how uncomfortable it was.

9 And I know Mr. Shelton asked her about it was nighttime
10 and could she really see, but you saw in the video where
11 Antwan and Alonza -- that window was down. I wish we could
12 see who that is, but you can tell the window is down. You
13 can see a driver. I know we, the State, can't tell who that
14 is, but she was standing on that porch.

15 I'm going to show you from a different angle. The
16 video makes it look a lot further than it really is. This
17 is the porch and that's where -- that was a terribly drawing
18 on my part. That's the porch. The vehicle comes up here.
19 Actually, I'm going to show you another photo, that's
20 Jessica Freeman right there. Can't see, obviously, for the
21 post, but I have a separate picture for you. She's sitting
22 on the porch. Sitting just under those cameras in a rocking
23 chair. Somewhere, I guess, she may like to sit on
24 especially an April evening. It probably was nice weather.
25 It wasn't raining, I'm sure it was nice weather. And she's

1 hanging out there. That's probably exactly where she was
2 sitting when she saw that car. She knew who got out. She
3 knew Antwan. She knew Pierre. She knew the Defendant. She
4 didn't have a reason to lie.

5 And another thing that's important about the people at
6 this house -- again, this wasn't comfortable for them.
7 Remember Sergeant Glenn, who testified at the beginning of
8 the week, how he went there and they were more than happy to
9 help. These weren't people that were trying to hide the
10 ball in any way. Even after they knew that someone they
11 loved may have been involved, they provided the video.
12 Thank goodness for that. And then when asked who did you
13 see, she was honest. Alonza was the driver. Antwan was in
14 the car and so was Pierre.

15 And I know there were, I think, some things in the jail
16 calls and then Pierre Nelson mentioned the Defendant,
17 Alonza, was in the front seat, but couldn't remember if he
18 was the driver. Told police he was the driver, but couldn't
19 remember today. He was nervous on the stand.

20 The 911 calls comes in beginning at 11:18:20. That's
21 what you heard from Tonia Mallette, the 911 operator, at the
22 beginning of the week.

23 You heard from Sergeant Glenn and Detective Pritchard
24 about that video and how it's six minutes off. How the
25 correct time stamp -- so here, we have where the vehicle

1 shows up, it's 23:13, which is 11:13, but it was six minutes
2 slow. So add your six minutes, that becomes 23:19:35, that
3 is one minutes and 15 seconds after 911 gets its very first
4 call for shots fired. So if you're going to believe that
5 somehow Alonza Marable wasn't the driver -- because we know
6 the driver got out and shot. You heard that from Pierre.
7 You can tell that by the location of the shell casings. And
8 we know in this video, the driver is Alonza Marable. But if
9 you can't see in that passenger seat from here. It's dark
10 in there, but the lights are on and the window is down, so
11 you can see the driver.

12 What had to happen if he wasn't the driver at the time
13 of the shooting? In the haste of leaving the scene, wait,
14 wait, wait, stop, we got to pull over. I want to drive now.
15 No, he was the driver the entire time. You think he was
16 going to let someone else drive his sister's car. He was
17 having a blast. Alonza Marable was the driver in this
18 video. Alonza Marable was the driver before that. He's the
19 driver on Lakewood. He's the driver when they backed in at
20 the shooting. He's the one that gets out with the rifle and
21 fires. It's Alonza Marable.

22 Taken by somebody again who has no reason to be
23 dishonest, especially when she gave up the person she loved
24 the most. She was honest about it all. Like she said, she
25 thinks that was the car. She knows that was the driver.

1 And even Pierre, this is the one that Pierre filled out.
2 Pierre Nelson told police he was in the car, told police
3 that Antwan Johnson was in the back with him. That Antwan
4 got out and he heard the shots. At first, he was covering
5 up his head because he was so scared. He didn't know what
6 was going to happen. He gets back in and there's that
7 handgun between Antwan and Pierre.

8 And he, also, says the driver got out and shot. And
9 when he gets back in, he can see the movement of a long
10 barrel they passed on the way in that moving to the front
11 seat. He didn't know exactly what kind of gun. He wasn't
12 an expert on guns, but knew it had a long barrel. But he
13 said the driver got out and shot and so did the back seat
14 driver, the person behind the driver. And that's consistent
15 with what we see. He told police the driver was Alonza
16 Marable. He was nervous on the stand. Again, that's
17 understandable because this is not a comfortable environment
18 sitting here. Again, y'all are looking at him, but he,
19 also, has to sit in front of the person that's been accused
20 of this, in this case, the person that did this. But having
21 to sit here, coming from the same communities, that's not an
22 easy thing.

23 But he came in and he tried to tell the truth. He
24 didn't guess. He didn't come out and say yep, driver, I
25 remember. I think he was being honest. He told the police

1 then when his memory was fresh. I asked him -- I think I,
2 actually, asked a more confusing question than I meant to,
3 but his memory was more clear two days after the incident
4 than it's going to be three years later. He wasn't charged.
5 He wasn't involved in the crime. He was involved as a
6 witness. Spoke to police and told police what he saw.

7 Again, with the Ford Focus -- again, we're talking
8 about coincidences, like ammunition. We've got a Ford Focus
9 registered to his sister at his house on Railroad Avenue.
10 That Ford Focus had two unfired Norma 223 rifle rounds in
11 the trunk. That Ford Focus had Pierre Nelson's DNA on the
12 interior of the back seat door. And that Ford Focus had a
13 decal that was eerily similar to the one that was on
14 Lakewood Street. Again, you add all that up, is that a
15 coincidence? No. And that Ford Focus that was being by
16 this Defendant was identified by Jessica Freeman at that
17 house dropping off Antwan and Pierre Nelson a minute and 15
18 seconds after the shooting. It's not a coincidence.

19 I want to go over a couple more of the jail calls with
20 you. The first one you're going to hear is -- and with
21 Pierre Nelson, Mr. Shelton tried to show that somehow
22 Marable wasn't the driver. His sister's car was there and
23 he was there per Pierre Nelson, per Jessica Freeman, somehow
24 he wasn't the driver.

25 One of the calls you're first going to hear is he says,

1 Little Bro, tell them I had something to do with it. I just
2 gave.

3 Mark, if you'll play call two, clip two, please.

4 (WHEREUPON, jail call was played for the jury.)

5 MR. COOPER: So you heard him say, All I did was give
6 him a ride. Then you heard the second part. When his
7 sister asked, Who said you had something to do with it? He
8 said, Twan, tell everybody he's a snitch.

9 Play it again for me.

10 (WHEREUPON, jail call was played for the jury.)

11 MR. COOPER: Tell everybody he's a snitch. Now, ladies
12 and gentlemen, I want to ask you this, if someone has been
13 wrongly accused, are they going to say tell everybody that
14 guy's a snitch? Or tell him he lied on me, I didn't do
15 this. He's upset that Twan told that he was involved.
16 That's what he's saying when he said tell them he's a
17 snitch. The ultimate crime can me made on the streets.
18 He's a snitch because he told law enforcement the truth
19 about his involvement.

20 And the other part of that call you're going to hear,
21 he's going to say, Yeah, bro, I give the boy a ride, but I
22 ain't had nothing else to do with this.

23 Mark, play call two, clip seven for me.

24 (WHEREUPON, jail call was played for the jury.)

25 MR. COOPER: He gave little bro a ride. He's said

1 several times -- he's admitted as being the driver. I know
2 he's saying he doesn't have anything else to do with it.
3 Evidence contradicts that. But if you've got any question
4 about who the driver was, if he gave the little bro a ride,
5 what, he gave him a ride at some point and then got out and
6 switched and let someone else be the driver and that person
7 shot him? Or is it he went and picked up Twan and Pierre?
8 You heard from Pierre, that car showed up.

9 No one changed drivers. They didn't change drivers.
10 You heard from Pierre when he was talking about getting in
11 the car and he was told we're going by one of the guy's
12 house. Told the police at that time that Alonza was the
13 driver, but what his understanding was he was one of the two
14 guys they were going to see.

15 He got in the back. He didn't really know the people
16 that well. He said hey, we're going to one of the guy's
17 houses. They rode around and around and around. He didn't
18 know where they lived, so it wasn't weird to him that they
19 were riding around. But you never hear him say anybody got
20 out until the shooting. So they're riding around, riding
21 around, riding around until someone says, There are them
22 boys. And that's when they backed in and that's when the
23 shooting happens. That's when Antwan gets out of the back
24 driver's side and that's when the driver gets out, Alonza
25 Marable. They didn't switch.

1 So you've got Jessica Freeman saying that's the driver.
2 Then you have this Defendant saying he's, also, the driver.
3 He may say things about not involved, not me, but why would
4 he say at all I gave him a ride if he had never been the
5 driver? I get why people would lie trying to get themselves
6 out of something, but why would you ever say I gave him a
7 ride if he was never the driver?

8 And we talked about some of his statements. We talked
9 about why people would lie. Again, you heard some of these
10 calls. I'm going to go over them again with you. One of
11 the main ones, the very first call that you heard. And
12 that's going to start out, he's talking to his mother. The
13 very first call he makes once he makes it to the jail on
14 April the 21st, the very first thing he wants to say to
15 somebody when he gets to that phone -- when he gets to the
16 jail, the first thing he says to his mother, here's what he
17 says. She says, Hello. Hello. He says, Yeah, what's up,
18 ma? What's up? He says, Man, I need Nini's number. His
19 sister, first of all. He needs Nini's number, first of all.
20 You talk to Nini yet? She says, Nini? Nini's in a cop car.
21 I'm on my way now. What's going on? She's panicked. He
22 says, Man, them boys trying to charge me with something
23 another person did. Someone done told them, I guess, I'm
24 involved in it. And then he says, The only thing we got to
25 do is tell them that me and Nini was in Columbia on those

1 days that they left and we returned on the day that Nini
2 returned. That's the only way. And his mom said okay. He
3 said, That's the only way we're going to get out of this.
4 We'll use that alibi that me and Nini was in Columbia and we
5 just wanted to ride around. We didn't go anywhere specific
6 because they're probably going to try to run the cameras,
7 but just tell them me and Nini been in Columbia. You're our
8 alibi.

9 Saturday night, they want to figure out where we was
10 at, we should have been in Columbia on the way back.
11 Because when did Nini get back? He didn't even know what
12 day she got back. Because he didn't go with her. She
13 mentioned Saturday and they would be coming back yesterday.
14 Again, this is on a Tuesday. He says, Yeah, I think she
15 came back in the morning. He says, We've got to find a way
16 to get out with them. You've got to tell Kebree the story,
17 too. His girlfriend, the mother of his child. It was at
18 the house when they did the search warrant. Got to include
19 her in on our story, too.

20 Mark, if you'll play call one, clip one for me, please.

21 (WHEREUPON, jail call was played for the jury.)

22 MR. COOPER: So let me ask you this, Mr. Shelton is
23 going to get up here, I'm sure, and say something about this
24 guy wasn't the driver, this guy wasn't there, he wasn't
25 involved, he's been wrongly accused, somebody set him up.

1 That is the very first thing he says once he's in the jail.
2 The very first chance he gets to talk to his mother and what
3 does he say? Got to set up this alibi. Is that the sound
4 of a person wrongly accused? It's the sound of somebody
5 that knows they got caught and is trying to figure out how
6 in the world can we get out of this. It's not the sound of
7 somebody who us wrongly accused.

8 Mr. Shelton is going to talk about and I'm just going
9 to mention it now, too. There's a law called mere presence.
10 The Judge is going to instruct you on that. What that
11 simply means is that the State has to prove more than you
12 were just merely around the crime when it happened. And
13 that makes sense, right? I shouldn't just be able to say
14 oh, he was there and that be end of it. Mere presence isn't
15 enough. And I think Mr. Shelton is going to try and say
16 well, Mr. Marable was just merely present.

17 No, mere presence is Pierre Nelson. It's a person who
18 was in the car, had no idea what was going on, didn't have a
19 weapon, didn't get out, didn't shoot, didn't do any of that.
20 And when he talked to police, he told them everything he
21 knew and he wasn't charged because he was merely present.
22 He wasn't involved.

23 This one, he was the driver. Had the ammunition, had
24 the rifle, had the car. And the first thing he says to his
25 mother when he's in jail, we have to set up that alibi and

1 make sure Nini knows this is what she's got to say, too.

2 That's the sound of someone who knew they had been caught.

3 Next jail call. And, again, I've told you about the
4 evidence. You will have the recordings and I think you'll
5 have a way to listen to it in the jury room, but if not, you
6 can request to rehear any testimony and request to hear the
7 recordings as many times as you want, and I encourage you to
8 do that. As many times as you want, you can rehear them.

9 The next thing you're going to hear is he tries to
10 construct this alibi. This is the second call he makes. He
11 says, Them boys can't even pin me with that because I've
12 been in Columbia with you, talking to his sister. What day
13 did we come back? Again, the crime happened on a Saturday
14 night. This is on Tuesday morning. I appreciate people may
15 forget things like that weeks, months, years after. We're
16 talking two and a half days. He's asking what day we came
17 back not because he forgot, but because he's got to say the
18 right thing.

19 Mark, play us call two, clip three, please.

20 (WHEREUPON, jail call was played for the jury.)

21 MR. COOPER: Got to make sure we got the story right.

22 So this next call, let's see. This next call, again,
23 he's talking about setting up an alibi, but, also, not just
24 making sure everybody is on board with it, but making sure
25 they know what to say and what not to say. He says, Don't

1 worry. And look, we don't tell them we've been at no hotel
2 or room like that. Tell them we just went to ride around
3 because them boys will check the camera and stuff like that.
4 We didn't go nowhere specific, we just went up there for a
5 little road trip riding around, bro. He says, Yeah, we been
6 at (unintelligible), that's where we were at. He's like,
7 you feel me, you feel me. Make sure they know that, too.
8 I'm telling you. He said, That's why I'm telling you. Tell
9 them boys we been in Columbia, we just got back from
10 Columbia. And his sister is catching on, right, right,
11 right. And he says again, make sure all that, too. Got to
12 make sure everybody the police talked to knew what they had
13 to say.

14 And, again, there's a difference in saying do they
15 remember that, make sure they remember that and make sure
16 she knows.

17 Mark, if you will play call two, clip six for me.

18 (WHEREUPON, jail call was played for the jury.)

19 MR. COOPER: Try to make sure everybody has it. Again,
20 that was his second call after being arrested. Trying to
21 make sure everybody has it right.

22 In this next clip, he's, also, talking about the alibi,
23 but he's, also, going to mention something that's
24 interesting, something about I didn't even know Antwan. In
25 one voice, he'll talk about knowing Antwan and he got robbed

1 and all of that and in another voice, well, I really don't
2 know who he is.

3 In this call, he says, I don't know Antwan or the
4 person who died. I don't know why he bringing me into it.
5 I don't know. I've been in Columbia with Nini, came back
6 with Nini came back.

7 Mark, play call five, clip three for us, please.

8 (WHEREUPON, jail call was played for the jury.)

9 MR. COOPER: So it's interesting, here's the thing, if
10 he had gone with her, he'd say when we got back. What time
11 was it we got back? What day did we get back? Not when did
12 Nini come back or I came back when Nini came back. He's
13 trying to build an alibi, unsuccessfully, but he's trying.

14 And, ladies and gentlemen, do we think he let someone
15 else drive his car and Jessica got it wrong and all the
16 ammunition that was found on scene in the car just, also,
17 happened to be found at his house? Too many things for this
18 all to be a coincidence. And, again, if someone is wrongly
19 accused, it's I didn't do this. They got it wrong. And I
20 know in some of the clips, he'll start going down that
21 wrong, but the very first thing he does is we've got to spin
22 up an alibi. You've got to tell them where I was. You've
23 got to tell them -- or don't tell them places so they can't
24 check the cameras. And tell then Twan's a snitch. Not he
25 lied on me, he snitched. He's telling the truth.

1 Another one of the calls, he talks about the evidence
2 in the case. He says he's trying to put me in the story --
3 and then the person, I think it's his mother at this point,
4 says yeah, I know, read the search warrant. And he says,
5 Yeah, right. She says, I read what it said. Then he says,
6 That's his word against mine unless their evidence says
7 otherwise.

8 Mark, play us call five, clip one, please.

9 (WHEREUPON, a jail call was played for the jury.)

10 MR. COOPER: Unless their evidence says otherwise.
11 Again, these are not the things a person wrongfully accused
12 would say. It's his word against mine. They've got to
13 believe him over me unless they've got evidence.

14 And talking about Antwan, Antwan and this Defendant
15 knew each other. You could tell from Pierre that Antwan
16 knew who the driver of the car was. The driver rolls up to
17 Antwan's house. They get in and they're friendly with each
18 other. And this Defendant, also, says that on his calls,
19 too.

20 On his third call, says, Yeah, that boy Twan, I don't
21 know why he trying to bring me in it. Him and his people
22 went back there in the car. I was not driving, bro. I
23 don't know why he trying to bring me into that because, you
24 feel me, he got robbed and he went to go, feel me. Person
25 says, Right. And then he says, Then he robs him earlier

1 that day. And the other person says, Okay, okay. Because
2 it says in there there was an incident earlier in the day
3 that happened. And he says, All right, the boy who got
4 killed and robbed Twan, he had him at gunpoint with another
5 person. That's what he told me. So he came to me because I
6 was out riding my dirt ride. He said, Bro, I just got
7 robbed. I said, Bro, I can't do nothing about that. And
8 then he said, then he asked me (unintelligible). I said, I
9 was riding his dirt bike. That's when he went and got his
10 people. Him and his people went back there. I wasn't
11 there, bro. I was in Columbia with Nini. The alibi. And
12 then the person at the end of the line says word. And then
13 the next thing he says is, Unless their evidence confirms me
14 being there.

15 Mark, if you'll play the second half of call three,
16 clip two, please.

17 (WHEREUPON, a jail call was played for the jury.)

18 MR. COOPER: Unless the evidence confirms otherwise, I
19 was not there.

20 Ladies and gentlemen, the evidence is confirming
21 otherwise. Why would someone say they were wrongly accused
22 -- if they have the wrong person, you wouldn't say I wasn't
23 there unless they can prove it. You wouldn't say that.

24 There's a couple more calls, I'm going to save that for
25 in a minute. I want to talk to you about the law in this

1 case. The Judge, once I finish and once Mr. Shelton has had
2 a chance to address you, will read you the law in this case.
3 She will tell you what the law in the State of South
4 Carolina is about the charges, about how you make a
5 decision, about all of that, she'll go through that. But I
6 want to go through it briefly with you now.

7 In the State of South Carolina, murder is defined as
8 the killing of another person with malice aforethought. The
9 State has to prove, it's our burden, that that Defendant
10 killed LR [REDACTED] with malice aforethought. Malice,
11 again, lawyers use words that make things complicated. But
12 malice means ill will or hatred or hostility for another
13 person. It can be the intentional doing of a wrongful act
14 without just cause or excuse with the intent to inflict
15 injury. Under circumstances, the law will infer an evil
16 intent. The law does not require that the malice exist for
17 any particular time before the act is committed, but malice
18 must exist in the mind of the Defendant just before and at
19 the time the act is committed. That just means when he
20 pulls the trigger, his goal was to kill.

21 And there's no time requirement or length of time, but
22 in this case, we know it was for a decent amount of time
23 before this. They were driving around for 20 minutes
24 looking for these guys. You see them in the neighborhood
25 riding around. No other reason for being there. And then

1 someone says, There are them boys. And when you get out and
2 you arm yourself with a weapon like this and you get them in
3 your sights and pop, pop, pop, pop 12 times, that's malice.
4 There is no other reason to raise a gun like this, the only
5 design is to kill.

6 And here's the thing that's interesting. Antwan
7 Johnson got robbed. We know that. We know that about the
8 victim. LR [REDACTED] robbed Antwan Johnson earlier in the
9 day. Not that this excuses any action of what Antwan did,
10 he pled guilty, he's being held accountable, but he had some
11 reason he was upset with him. This Defendant armed himself
12 for the sport of it. That makes it worse. He had no
13 motive. He had no reason. He had no beef with the guy. He
14 just thought it would be fun to grab this rifle, put him in
15 these sights, that Sight Mark sight and just pull the
16 trigger 12 times. Not that motive makes it better, but
17 there is something worse about somebody that had no stake in
18 the game, but he's the one driving everyone around. And
19 then pointing a rifle. It's not a video game. LR [REDACTED]
20 is dead because of that, because of his actions.

21 The combination of an evil intent and the act. That
22 intent was formulated as they were driving around looking
23 for him. That was the act and that was the instrument.

24 And this isn't part of the law, but I heard a lawyer
25 say this one time. Back in the day, murder was defined a

1 little bit differently. But it had a phrase a heart bent on
2 mischief. And I like that because that's exactly what it
3 is, right? It's somebody whose desire, whose goal is
4 mischief, is to hurt, is to inflict pain, to kill somebody.
5 A heart bent on mischief. How else do you describe getting
6 in a car in the middle of the night, racing around and
7 looking for somebody and then putting them in the sights of
8 a rifle like that? It's a heart bent on mischief. It's
9 malice. Evil intent. They did what they set out to do.

10 I know -- and I'm going to get to this in a second.
11 But I know that -- Dr. Batalis was talking about it was
12 likely the handgun that caused LR [REDACTED] to die, that
13 struck LR [REDACTED]

14 When you look for malice, there's two different types,
15 the Judge will tell you. There's expressed malice. It's
16 real clear when a person speaks words that express hatred or
17 ill will towards another. I'm going to kill you, stuff like
18 that. Very clear. Expressed malice. Or when a person
19 prepared beforehand to do an act which was later
20 accomplished. When they did what they set out to do.
21 That's him and Antwan Johnson. They set out hunting. They
22 found their victim. They lined him up. They succeeded.
23 LR [REDACTED] was laying on the ground in front of that house
24 shot dead 15 feet from his house. 15 feet from where his
25 mother said she came out and saw him. Mission accomplished.

1 Or you can infer malice, total disregard for human
2 life. If you don't think this was expressed malice, what
3 else would this be described as in a neighborhood where
4 Detective Pritchard talked about families and kids? You can
5 see in some of our crime scene pictures, there were kids'
6 toys around. Lining this thing up and just letting the
7 bullets fly. Total disregard for human life. The Defendant
8 had malice. It existed long before the shots starts. It
9 existed while they were riding around looking for their
10 victim.

11 Alonza Marable is clearly guilty of murder, clearly
12 guilty with malice aforethought, intending to kill LR [REDACTED]
13 [REDACTED] and then succeeded.

14 Attempted murder. This is for Jamaul Simmons. The guy
15 who was with LR [REDACTED] A person, who with the intent to
16 kill attempts to kill another person with malice
17 aforethought, either expressed or implied. So you're
18 getting to the same malice we just went through about what
19 malice is. The only difference here is they didn't succeed.
20 That's the difference.

21 What the Judge is, also, going to tell you -- and this
22 is the legalize and the way lawyers want to make things so
23 complicated. The attempt is almost heard to prove than a
24 murder, okay, because for attempted murder, you have to have
25 in your mind that specific intent to kill the person you're

1 trying to kill, you just failed, okay?

2 So with Jamaul Simmons, I think Mr. Shelton is going to
3 try to argue that Mr. Marable didn't have the intent to kill
4 Jamaul Simmons. Maybe he says he didn't see him on the
5 trail. He went through that questioning with Detective
6 Pritchard about where he was on the trail.

7 Well, listen to what Jamaul Simmons told you. They're
8 walking home and he hears the bullets going by. He's able
9 to tell a handgun and a rifle. He was able to talk about
10 the shirts covering the faces. He saw enough. He was that
11 close to death and he went and ran and hid behind a trailer.
12 He was in harm's way.

13 And you heard from Pierre in that car that someone
14 shouted out, Them boys are right there. They knew then
15 there was more than one person. He may not have known his
16 name, but when you, again, line up this sight and you put
17 multiple people in that sight and you pull the trigger, it's
18 intent to kill. You can't describe it any other way. When
19 you put more than one person in the cross hairs and you just
20 open fire, what other intent is there? Intent to kill.

21 Again, like I said, it requires specific intent. And
22 the reason that's important, I'll distinguish it in a
23 second, because you've got to have that specific intent to
24 kill. He saw two people, he tried to kill two. Not
25 accidentally or involuntary. May be shown by actions of the

1 Defendant and other circumstances for which you may
2 naturally and reasonably infer intent. If it looks like
3 intent, if that's how you see it, it's what it is. If
4 someone is trying to do something, if that is their goal,
5 that's intent. Demonstrated by the Defendant is voluntary
6 and willfully committing an act. The natural tendency which
7 is to destroy another's life.

8 There was nothing involuntary about the Defendant's
9 actions. I mean, honestly, again, without motive, it's like
10 he was excited for it. He got in the car and tried to hunt
11 down somebody that he had no beef with. Sees people
12 running, doesn't even know LR [REDACTED] or Jamaul Simmons
13 and he just opens fire on two kids. And make no mistake,
14 LR [REDACTED] was 16, Jamaul Simmons was 15, children.
15 Eighth grade going into ninth grade. Lining up children in
16 his sights and pulled that trigger 12 times. The tendency
17 of which is to destroy another's life.

18 The Judge is going to tell you more about what criminal
19 intent entails. Trying to get an effort to completion. A
20 crime that doesn't succeed. Trying to do it, but you don't
21 succeed. An act that falls short. You've got to have more
22 than mere preparation to show this. You can't just talk
23 about it. You've got to have, the law calls it overt act,
24 some act in furtherance of it. Sometimes that can be an
25 issue, but in this case, he did everything but kill him.

1 Had the weapon, found him, opened fire. He just fell short.
2 Lucky for Jamaul, though. Thank goodness for that.

3 The third person, Martin Jimenez. The individual that
4 was in the trailer across the way. With regards to that,
5 the Defendant is charged with assault and battery of a high
6 and aggravated nature. What that simply means is one, the
7 Defendant unlawfully injured somebody. We know there was
8 injury. We see the picture, we heard the testimony. He was
9 asleep in his trailer when he got grazed by a bullet.
10 Imagine if that bullet had been just a little bit further
11 down. We'd be here on a second murder charge. A personally
12 unlawfully injures another and great bodily to another
13 person results or the act is accomplished by means likely to
14 produce death or great bodily injury.

15 You heard the crime scene tech talk about trying to
16 talk to Mr. Jimenez at the hospital and there being a
17 language barrier. Mr. Jimenez wasn't here this week. Don't
18 have the medical records to talk about his injury. That
19 does not mean he doesn't deserve justice.

20 In this case, all Mr. Jimenez would have known is woke
21 up and had this injury. He didn't see the shooter. He was
22 in his bed asleep. And the pictures and the blood show that
23 from his trailer. But either you can believe there was
24 great bodily injury or the act was accomplished by means
25 likely to produce death or great bodily injury. He was shot

1 in the head. And if you have any question whether that act
2 was accomplished by means likely to produce death, just look
3 at what happened to LR [REDACTED] Their goal was to kill.
4 Fortunately, we're not here for two additional murder
5 charges. What if they had hit Jamaul? What if Mr.
6 Jimenez's bullet would have been just a little bit further
7 down?

8 And talking about the round that killed -- or that shot
9 Mr. Jimenez. So you heard the SLED agent talking about
10 inconclusive with the gun, that it was more -- to many
11 similarities to exclude, but not enough to say it was a
12 match. One of the things he was able to say was -- you can
13 listen to the testimony again if you want to. Was that the
14 projectile that was taken out of the trailer at [REDACTED]
15 Street where Mr. Jimenez was sleeping is consistent with
16 ammunition loaded in the 223 caliber weapons. It's a rifle
17 round. It's a rifle round. It's a rifle round. He
18 couldn't say -- he said it was inconclusive with the weapon,
19 but said it was consistent with 223 ammunition. It's a
20 rifle round.

21 And so this is the definition of great bodily injury,
22 bodily injury which causes substantial risk of death.
23 Again, shot in the head. Or which causes serious permanent
24 disfigurement, protracted impairment in function of a body
25 part or organ. Not arguing the second one, that's part of

1 the definition. The top part of the definition is bodily
2 injury which causes substantial risk of death or the fact
3 that an act was done or an act was accomplished by means
4 likely to produce death or great bodily injury. What else
5 is a gunshot meant for?

6 One of the things I want to show you is this trailer.
7 As Detective Pritchard told you, this is the victim's
8 trailer. This is where the victim was shot. And this is
9 where we get the shooting video. This is Mr. Jimenez's
10 trailer. Look at that.

11 I'm sure Mr. Shelton is going to try to get up and
12 argue that no way to know this happened at the same time or
13 the same person or whatever the case may be. You heard
14 Detective Pritchard and you heard the officer on scene talk
15 about once they found the deceased, LR [REDACTED] Jr., they
16 were then made aware of another victim in the exact line of
17 fire.

18 Again, this is standing in the vantage point to the
19 shooters. The shooter would have been down here. This is
20 where the body of LR [REDACTED] was left by their bullets.
21 And you can't see it through here, but directly behind here
22 is where Mr. Jimenez's trailer was. This is the video
23 camera that gives us the angle of the shooting. Right
24 through there. Right through there. And you heard
25 Detective Pritchard, they learned it happened

1 contemporaneously with the death of the victim. That was
2 the collateral damage of their hunt.

3 Again, this is just the daytime of the picture, so
4 we're a little bit further back, but if you remember, shell
5 casings here, shell casings here, stairs, the handgun shell
6 casing was up here. This is where that other car was parked
7 if you remember from the crime scene pictures. The
8 Defendant backed his Ford Focus in here. The victim lays
9 here after being shot. That is Mr. Jimenez's trailer.
10 Collateral damage.

11 Lucky again that bullet wasn't that much further down.
12 That's Mr. Jimenez with an injury to his head. Again, we're
13 lucky. He was very lucky. That was the blood on his
14 bedroom floor. That was his bed. And if you'll remember
15 from the crime scene technician, the black stuff on the wall
16 was his hair where the bullet hole was. It scalped him.
17 We're lucky again it wasn't worse. An act that is
18 accomplished by means likely to produce death or great
19 bodily injury. There's not much closer one comes to death
20 when a bullet that scrapes right through the top of your
21 head.

22 Now, this is one of the things the Judge is going to
23 instruct you on, the hand of one is the hand of all. And
24 the reason this is important, and this is when it comes to
25 LR [REDACTED] especially. LR [REDACTED] was most likely

1 killed by the bullet fired by Antwan Johnson, Antwan
2 Johnson's handgun. You heard that from Dr. Batalis if it
3 had have been a rifle round, it likely would have been more
4 catastrophic damage. Not a more catastrophic result, but a
5 more catastrophic damage.

6 But in the State of South Carolina, it doesn't matter
7 in this situation who fired the shot that killed LR [REDACTED]
8 [REDACTED] because the hand of one is the hand of all. If a crime
9 is committed by two or more people who are acting together,
10 the act of one is the act of all. A person who joins with
11 another to accomplish an illegal purpose is criminally
12 responsible for everything done by the other person which
13 occurs as a natural consequence of the acts done in carrying
14 out the common plan.

15 Ladies and gentlemen, when people get into a car and
16 they're riding around looking for somebody -- and you heard
17 the testimony from Pierre, they both get out at the same
18 time. They can't tell who started firing first, they just
19 both of them fired. It doesn't get any more textbook hand
20 of one, hand of all than that. A lot of times -- an example
21 I'm going to give you, a lot of times we're facing something
22 like this where two people rob a bank. And in the act of
23 robbing a bank, one brought a gun, shot and killed somebody.
24 They're both legally responsible. But in this case, they
25 both fired.

1 What the Judge is going to tell you is the act of one
2 is the act of all. Two people could be guilty of killing
3 another person when only one of them had a gun, there was
4 only one bullet and only one of the two fired the shot that
5 caused the death. The hand of one is the hand of all.

6 And even this case is different because in this case,
7 we have two weapons. We have two people firing at LR [REDACTED]
8 [REDACTED] and Jamaul Simmons. Two people open fire. While
9 Antwan Johnson may have been the one that struck the fatal
10 blow, you do not get credit for just being a bad shot.
11 That's not how this works. They both sought out to
12 accomplish it and they're both guilty because of it.

13 And, ladies and gentlemen, that makes sense, too,
14 right? When two people are doing something together, they
15 both should be liable. This is the exact kind of conduct,
16 two people opening fire -- this is the kind of conduct, two
17 people open fire that the law is trying to punish, but,
18 also, prevent. We don't want people to be doing this.

19 And think about it if you will, do you think this would
20 have happened had Antwan Johnson and Alonza Marable not
21 joined up? Do we think LR [REDACTED] would be dead today?
22 Antwan Johnson is 15 years old and sitting on his porch.
23 Upset about being robbed, but sitting on his porch. You
24 heard that from Pierre Nelson. Pierre Nelson, who was,
25 also, 15 rode his bike over to that house because he was 15,

1 because he was either in eighth grade or ninth grade. He
2 couldn't drive. He was too young. These are children.
3 Until 18-year-old Alonza Marable shows up with his car and,
4 as Mr. Shelton pointed out, his legally purchased, legally
5 owned ammunition and weaponry and carries this off to the
6 killing. Do we really think that would have happened had
7 Alonza Marable not picked them up in the car?

8 And that is exactly why the hand of one is the hand of
9 all. It's because we want to discourage this. People
10 shouldn't be coming together for these kind of things. But
11 if they do, they're equally guilty. Again, in this case,
12 you've got two that opened fire. You don't get credit for
13 missing. That's not how it works. The hand of one is the
14 hand of all.

15 You're going to hear the Judge talk about the burden in
16 this case. And it rest squarely on the State, it's beyond a
17 reasonable doubt. It's our job, myself and Ms. Barber, to
18 prove to you beyond a reasonable doubt that this Defendant
19 is guilty of murder, attempted murder and assault and
20 battery of a high and aggravated nature beyond a reasonable
21 doubt.

22 And the law does not require proof beyond all doubt.
23 There are very few things in this world that we know beyond
24 all doubt. The law doesn't require that. Beyond a
25 reasonable doubt is proof that leaves you firmly convinced,

1 firmly convinced of the Defendant's guilt. Reasonable doubt
2 is doubt that would cause a reasonable person to hesitate to
3 act. We don't know -- we know very few things beyond all
4 doubt. If you knew if beyond all doubt, it means you would
5 have seen it, you would have heard, you would have been
6 there, likely, would have wanted you to be a witness.
7 That's beyond all doubt. That's not what the law requires.
8 It requires after looking at the evidence, hearing the
9 testimony that you're firmly convinced.

10 In this case, the evidence, every step along the way,
11 from the evidence collected at the scene, the testimony of
12 the witnesses, the statements made by the Defendant himself
13 show he is guilty. He and Antwan joined together for this
14 common purpose to go after LR [REDACTED] and their collateral
15 damage was Jamaul Simmons and Martin Jimenez.

16 One of the other things the Judge is going to talk to
17 you about, I think Mr. Shelton is going to touch on is there
18 is circumstantial evidence and direct evidence. One of the
19 classic examples they give is rain. If you're outside and
20 it starts raining and you're getting wet, you know it's
21 raining. That is direct evidence. You were there when it
22 happened, you could see it, you could feel it, you could
23 hear it. That is direct evidence. Eyewitness testimony,
24 things of that nature.

25 Circumstantial evidence is a little bit different.

1 Proof of a chain of facts and circumstances indicating the
2 existence of a fact. So the classic example is if someone
3 were to walk through those doors right now and they're
4 sopping wet, raindrops all over them, you hear a little bit
5 of thunder, you can probably infer from those facts that
6 outside, it's raining. That's circumstantial evidence.

7 So in this case, we have eyewitness testimony. We have
8 Jessica Freeman, who puts the Defendant as the driver of the
9 car that contained Antwan and Pierre Nelson. As far as who
10 the shooter is, Pierre Nelson tells you the driver gets out.
11 We know who the driver is. The weapon used is consistent --
12 is not excluded, this one. The ammunition found on scene,
13 two different calibers and two different brands, also, found
14 at his house. His statement once arrested or spinning an
15 alibi. All I did was drive. All I did was drive. Oh, I
16 wasn't there, I was in Columbia with my sister. Just tell
17 me what day she got back so I know.

18 You mount all these things together, the Ford Focus,
19 the DNA in the Ford Focus, you add these things together,
20 proof of a chain of facts and circumstances indicating
21 existence of a fact. There's no other logical conclusion
22 but that it was Antwan and Alonza Marable. The Judge will
23 tell you the law makes no distinction between each kind of
24 evidence. They both equal the same result.

25 Credibility of witnesses. You got to see all the

1 witnesses testify. And as much as Mr. Shelton and I don't
2 like it, what we say isn't evidence. It's just our
3 observation, our conclusions that we draw. Evidence comes
4 from that chair.

5 When I first started, there was a judge that when he
6 would qualify the jury, like we did with Judge Price
7 downstairs, and when he would come and talk to the jury
8 before trial, he would, actually, come off the bench and
9 come up to the podium and he would tell you that you're more
10 qualified or as qualified as anybody else to be a juror for
11 two reasons. One, you bring the tools you need to be a
12 successful juror with you, common sense and sense of logic
13 and reason.

14 And what I mean by that is -- and the examples I give
15 are a little corny, but it drives home a point. You've got
16 a friend that bales on going out one night. Is it because
17 they're really sick or just don't want to go? You have to
18 evaluate that. You've got your favorite dessert at home and
19 it's gone. Did you throw it away by accident? Did your
20 spouse or partner eat it? You know, people are trying to
21 tell things that happened and you evaluate every single day
22 is someone lying, is someone telling the truth? Do they
23 have a reason to lie? Is there a bias? You do that with
24 everybody you talk to. That's what that means. You can
25 evaluate yourself testimony from that stand.

1 It's clear that Pierre and Jamaul, even Jessica didn't
2 , want to be here. Why would they lie? What do they have to
3 lie about? They're scared. They're nervous. They did the
4 best they could to be honest and tell you what they saw.

5 As I mentioned, what Mr. Shelton is likely going to say
6 is mere presence. As I mentioned, that's exactly what
7 Pierre Nelson is, someone who wasn't involved, didn't know
8 and just happened to be in the wrong place at the wrong
9 time. Clearly, by the evidence in this case and the
10 statements of the Defendant, that's not him.

11 The Judge is, also, going to tell you you're the judge
12 of the facts. You get to decide what's important and what
13 is not. One of the things I think is important is Mr.
14 Shelton told you in the beginning in his opening statement,
15 he said Antwan, Antwan, Antwan. Antwan was the one that was
16 robbed, not Alonza. True. Antwan didn't shoot him. Facts.
17 Antwan pled guilty to murder. True statement. Antwan was
18 the one that was friends with Pierre. Also, a true
19 statement. He was friend with Jamaul. Also, a true
20 statement.

21 He, also, had that motive we talked about. The
22 Defendant didn't. He didn't have a dog in the fight. But,
23 nonetheless, he saddled up with his rifle and he went to
24 hunt. That does make it worse. He wasn't robbed by L.J.
25 He didn't even know who he was. He wasn't friends with

1 Pierre, didn't know who he was. He wasn't friends with
2 Jamaul, didn't know who he was. Again, it makes it all the
3 more important, too, that Pierre's DNA was in his sister's
4 car.

5 You got someone again that squares up in a neighborhood
6 with kids and who else may be there and just opens fire 12
7 times, striking a child, almost hitting another, going into
8 a trailer across the way. That's malice. That's evil
9 intent. It's a heart bent on mischief. Antwan Johnson, as
10 you heard, has pled guilty. He's being held accountable, as
11 he should. Now, it's time to hold him accountable.

12 I want to play you two more calls. You're going to
13 hear this Defendant telling his mother -- this is his fifth
14 call. He's been in jail for a couple of hours. You're
15 going to hear him say, Don't worry too much. Don't feel bad
16 for me. Y'all ain't made me do nothing that I did. You
17 feel me? Y'all ain't raised me like that.

18 Mark, play the next to the last recording, please.

19 (WHEREUPON, a jail call was played for the jury.)

20 MR. COOPER: These, again, are not the statements of a
21 man who just gave someone a ride, of a man that's wrongly
22 accused for a crime he didn't commit. These calls evolve
23 from the beginning when he's trying to create an alibi.
24 He's trying to figure out how in the world to get out of
25 this. Telling his mother, he's very clearly accepted what's

1 happening, y'all didn't make me do what I did. Y'all didn't
2 raise me like this.

3 This Defendant, his weapon, his vehicle, his
4 ammunition, his giving Antwan Johnson a ride, this all led
5 to this, the murder of LR [REDACTED] the attempted murder of
6 Jamaul Simmons, the injury that leads to the assault and
7 battery of Martin Jimenez, at his hands. Mr. Johnson's
8 hand. Their hands together. Their weapons are firing at
9 the same time. They are equally guilty. One's been held
10 accountable. It's the other's turn.

11 You're going to hear this last call, a very short clip.
12 His mom starts to get upset and tells him that she loves
13 him. And he says, I know, them boys would never thought to
14 kill me. I just made a wrong decision. Gotta leave it up
15 to God and the lawyers.

16 Mark, play the last clip for me, please.

17 (WHEREUPON, a jail call was played for the jury.)

18 MR. COOPER: Leave it up to God and the lawyers. No,
19 it's up to you.

20 Thank you, Judge.

21 THE COURT: Does anyone need a comfort break?

22 (There was no response.)

23 THE COURT: You may proceed.

24 MR. SHELTON: Your Honor, I need to --

25 THE COURT: You got something you need to do?

1 (Pause.)

2 THE COURT: You may proceed.

3 CLOSING ARGUMENT BY MR. SHELTON:

4 MR. SHELTON: Before I start, reasonable doubt, I can't
5 count how many times Mr. Cooper picked this gun up. Picked
6 this gun up. This is his case. That gun. Mr. Green with
7 SLED said he had reasonable doubt that that gun shot any of
8 those casings. He had reasonable doubt, the expert.

9 I said Antwan, Antwan, Antwan, right? Antwan pled
10 guilty to murder and ABHAN. Antwan had got robbed by L.J.
11 Antwan wanted to get back at L.J. Antwan, Antwan, Antwan.

12 The State, they have a theory. And I'm getting a
13 little bit older, my kids, my two boys are 14 and 11. One
14 is about to go in the sixth grade. They don't think I
15 remember what it was like when I was in sixth grade, fifth
16 grade, sixth grade. They don't think I remember. I do
17 remember. I remember before middle school and being excited
18 and going to science class. Why? Because that science
19 room, it had those -- it had fun, exciting things. You had
20 eye wash. You had beakers. You had experiments. What I
21 learned is the scientific theory, that's what I learned.

22 So you have a theory. You run experiments. You find
23 out if that theory is right. You have hypothesis. That's
24 what science is about. Taking politics out of it, vaccines.
25 They run experiments before somebody is hurt. Before drugs

1 are given to individuals, they run experiments. The State
2 didn't do that. They didn't run any experiments. They
3 didn't test their theories. They had a theory and that was
4 it. They didn't test it. They use circumstantial evidence.
5 That's all they brought you today -- this week, I'm sorry.
6 This week.

7 Start with car, 164, you can, also, watch those videos
8 back there and you can see this. This is it. This is what
9 they say is the one that, also, did the shooting. This is
10 what they say is the one that was casing the neighborhood.
11 Watch that video. You can't tell that this is the same car.
12 You can't tell that down the road that this car right here
13 is the one that pulled in backwards. That's their theory,
14 but you can't tell that. There's no video that's saying
15 that this car right here, this car is the one that is
16 running up and down the neighborhood. We don't know.
17 They're assuming it's the same car rolling up and down the
18 road, but there's nothing distinguishing it, nothing.
19 There's no, like, tag light out, no taillights out, no
20 license plate, nothing. There's a car that comes up and
21 down the road three or four times. Is that the same car?
22 They're assuming it is, but they don't know. There's
23 nothing saying that that is.

24 They want it to be because they want it to corroborate
25 some type of story, but they don't know that that car is the

1 same car. There's nothing linking it. They don't know that
2 that car is Alonza's car or Alonza's sister's car. Nothing.
3 Nothing. Watch that video. It's by movement, right. So
4 you see the car sitting there and then the next time you see
5 the car, supposedly, it's off to the left, but it's all the
6 way down the street the next time the camera picks it up.
7 It could have went right. It could have went right. And it
8 could have went right, then it would have went down this way
9 and out. We don't know. It could have done that. You
10 can't see it on the video. This car, when it leaves
11 Lakewood, that's the way it could have went, but they're
12 assuming it went left and up the street and then came back
13 around and it's the same car. We don't know. We don't know
14 any of that.

15 They need this to link. They need this to link based
16 off this little sticker on the side. Maybe it's a sticker,
17 we don't know. You can't read anything on it. That's the
18 only way we can get it to link to Alonza so we have to link
19 that, it has to be that car.

20 No one testified about them casing the neighborhood.
21 No one testified about it. Pierre said he didn't know where
22 they were going. All of a sudden, he looked up and we're
23 here. That's all he said. That's the only evidence. You
24 can only consider evidence that came here from the stand.
25 Nothing said that they were casing the neighborhood looking

1 around, driving around. Nothing.

2 Thousands of registered similar cars in the tri-county
3 area and that's only if you count Ford Focuses, looking for
4 a circle and a little sticker on the side, that's all we
5 know. Just this week on my way to court, all the different
6 cars and brands that I saw that had a circle emblem on the
7 back, Toyota, Subaru, Hyundai, Nissan, Kia, Lexus, Infinity,
8 that's in addition to the Ford. All the stickers I saw on
9 my way to court every morning, beach stickers, school
10 stickers, political stickers, brewery stickers. They want
11 to say it's True Auto, that's it. That's True Auto on those
12 pictures from Lakewood. It's True Auto, that's it.

13 And here's what really gets me, really gets me, North
14 Charleston Google search. That's what they want. They want
15 to give you a Google search of what Ford Focuses look like.
16 That's what they want. That's what they're providing to
17 you. They want that type of evidence to take away
18 somebody's life and liberty. You cannot let that happen. A
19 Google search, no expert, nobody came up here, nobody from
20 Ford, no auto expert. No one came up here and said that was
21 a Ford Focus. Google search. Wikipedia.

22 Guns and ammunition, yeah, his guns, his ammunition, so
23 that makes him guilty? Because he legally purchased a gun
24 and he legally purchased ammunition, that makes him guilty?
25 That's what they want. Circumstantial evidence. That

1 evidence. Everything is in boxes. It wasn't stuff that he
2 just was throwing around, getting off the street. It was
3 organized. It was in boxes. Ammunition in the room versus
4 -- on the scene versus in the room. How much ammunition did
5 he have in the room? Does he have ammunition in the room
6 that doesn't match ammunition on the scene? You'll have
7 pictures of the ammunition.

8 The bag, right? So -- actually, let me go back. So
9 the ammunition on the scene, they want to use -- that's one
10 out of 99 they say is missing. That's what they want to
11 say. That's what they're linking, right? They come up here
12 and say the box says a hundred, supposed to be 99. Look
13 where that's found. There is their parked car. This is the
14 front yard.

15 You'll see on the video that's played, so you'll have a
16 picture of it, the car to this side of this, right, the car
17 backed in. Supposedly, two people get out and they're
18 shooting. How does it end up way over there if it's the
19 same one that came from this box? We don't know -- we don't
20 know when those casings got there. We don't know if the
21 casings have been there. We don't know if somebody was
22 shooting before and dumped them out or they fell out. We
23 don't know.

24 We didn't have anybody come testify what the scene
25 looked like before the shooting. L.J.'s mom came up here

1 and testified. She didn't say what it looked like before
2 the shooting. So we don't know. So they're assuming that
3 all those came from this shooting. They could have been
4 there. There's no date and no time stamp on the bag, right,
5 so the bag found in the house. When did the bag get there?
6 He asked about it in the jail call, but we don't know when
7 the bag got there. We don't have the detective saying oh,
8 we saw him walking into the house with that bag. Oh, we got
9 that bag on video. Nothing. We don't know how long the bag
10 has been there. We heard talking about taking out the
11 trash, thought it was trash. No DNA, no fingerprints,
12 nothing.

13 And those two live bullets found in the trunk. It's
14 not the front seat. It's not even the back seat. It's in
15 the trunk. He legally owned a firearm, legally owned
16 ammunition. Keeping in the back, the trunk doesn't show
17 that it was used in the front seat. C&S Shooting Sports,
18 it's across the street, right across the street. So you're
19 going to expect similar ammunition in that neighborhood.
20 You're going to expect it. It's right across the street.
21 Anybody that's going to be in that neighborhood is going to
22 go to that store and they're going to purchase same
23 ammunition. It doesn't mean that the casings found on the
24 scene came from Alonza. In fact, Green with SLED says it's
25 reasonable doubt in his mind those casings came from this

1 gun. Reasonable doubt. Reasonable doubt. I jumped ahead.
2 I had to. No fingerprints, no DNA, nothing on the casings.
3 No time stamp. We don't know when they got out there, if
4 they came from the shooting. We don't know.

5 I'm submitting to you if there was a link to that gun,
6 you would have heard about it, believe me. There's no link.
7 No link. You would have heard about it. They would have
8 told you that they pulled it off Alonza. They would have
9 told you that it was Alonza's family member. They would
10 have told you if there was a link. No link. This is bound
11 to be something.

12 The jail calls. 18-year-old, black male pulled out of
13 his vehicle at gunpoint, arrested and put in a jail cell
14 being told he's there for murder, attempted murder. 18,
15 senior in high school pulled out at gunpoint. So is that
16 talking about Columbia, when was I there, is that farfetched
17 that it's creating an alibi? Or with everything going on,
18 being thrown in a jail cell with adults at 18, pulled out of
19 a car at gunpoint, is that farfetched to not understand, to
20 not remember? Is that farfetched to try to remember when
21 you were in Columbia? Is that farfetched? Is that creating
22 an alibi or is it trying to remember? It's talking to your
23 mom. It's talking to your sister. And just because I'm
24 coming back with Nini, that doesn't mean he rode with Nini.
25 Listen to it. Came back the same time as Nini. That

1 doesn't mean that he rode with her. He just came back at
2 the same time. You hear her say yeah, we were here. He's
3 trying to remember. This is a traumatic time in his life
4 getting arrested. It's not easy. Thinking clearly, he
5 wasn't thinking clearly. Trying to gather the information
6 of what's going on. That's what those jail calls are.
7 They're not creating an alibi. He's trying to remember at
8 18, after just what happened to you, that's what it is.

9 Giving a ride. Just gave a boy a ride. Could giving a
10 ride mean gave him his car? That's a ride. Gave him his
11 car, that's a ride. Could that be how Pierre's DNA got in
12 the car? It doesn't mean that it was Alonza. Because he
13 says in there, you'll hear those jail calls, he wasn't
14 there. He's saying he wasn't there.

15 He says that Antwan came up to him and says he got
16 robbed. He said he couldn't do anything about it. Didn't
17 know anything about it. Show you pictures, not in none of
18 those pictures because I was not there. I don't know why
19 he's bringing me into it. I was in Columbia.

20 But think about the situation that he's in at the time
21 he's making those first phone calls. His family doesn't
22 even know why he's arrested. He only knows because they
23 gave him the charges. First phone calls. It's reasonable
24 doubt.

25 And like Mr. Cooper said, if I give you the wrong law,

1 the Judge is the judge of the law, okay, so you have to
2 listen to her. This is my interpretation. Well, not my
3 interpretation, but I think it's going to be very, very
4 similar to what the Judge says. The State has the burden of
5 establishing every fact necessary to prove the Defendant
6 guilty beyond a reasonable doubt. Every fact. Every fact.
7 This gun was used. Fact? No. Reasonable doubt. The
8 expert said it's reasonable doubt, so Mr. Cooper can pick up
9 that gun as much as he wants. He can point it and say that
10 that is evidence. It's not. Their own expert says it's
11 reasonable doubt. Reasonable doubt. My client gets the
12 benefit of reasonable doubt. Any reasonable doubt goes to
13 Alonza.

14 The law presumes every person charged with a crime to
15 be innocent and the burden of establishing guilt is on the
16 State. They have the burden. Alonza doesn't have to prove
17 a thing. How can you prove yourself innocent? All you can
18 say is I'm not guilty. You have to give the Defendant the
19 benefit of all reasonable doubt.

20 So let's talk about Jessica. It's dark outside.
21 There's a picture. It's dark outside. Many distractions.
22 You saw that picture. How many cars are in here? I think
23 Jessica said over a dozen people were there. Cars moving,
24 cars going in and out. Distractions. She's distracted.
25 It's dark. Distance. And I submit -- y'all will have to

1 make that decision, but I submit there's cars parked
2 straight back and forth, sideways so they can move out from
3 back and forth, so it's much larger of a distance than the
4 other picture. Than that picture. I question when that
5 picture was taken, but there's a swing set there with cars
6 parked right where that swing set was. You don't see
7 lights, nothing outside that's going to illuminate the area
8 where that car pulled up. And all she has to look through
9 is a small window, a small window with all those other
10 factors with everything else going around. But she was only
11 given one choice of somebody to pick, one choice. That's
12 because the State's theory, the detectives' theory needs it
13 to be Alonza.

14 I'm not going to give you a six-pack lineup where you
15 have to then pick the person out of it, no, that's going to
16 test my theory. I don't want to test my theory. I'm going
17 to give you one picture. Is this the person that was
18 driving? Because they don't want that theory tested. One
19 picture. How suggestive is that? Are they not suggesting
20 it? Is that how it's supposed to go, where the detective
21 can decide who it is? I want that person to be it, I'm
22 going to suggest it. I'm only going to provide that person.
23 I'm only going to provide that picture.

24 There are no other witnesses, but you saw on that video
25 of how many people were out there, how many cars were moving

1 out. There are not other witnesses from that one. None.
2 Go back to the date and time. So we're just going to
3 believe the detective who looked at the video when he's now
4 telling us oh, yeah, it was six minutes difference, however
5 many minutes, nine minutes, I don't know. We're going to
6 believe him? Where is the person's video that it was? Why
7 didn't they come testify about oh, yeah, it's off by this
8 amount? Where is the company that's going to come and say
9 yeah, it's off by this amount?

10 Lakewood, she came and testified, but it was the
11 detectives looked at the camera and said oh, it's saying
12 this time, so that means it was off by this amount. So why
13 are we believing that it was within a minute and 15 seconds?
14 Because we've got to trust their time. We've got to trust
15 what they're saying, that that's how far off it was. We
16 don't know. We don't. We don't have anything to verify
17 that. Nothing to verify that. So what if that was hours
18 later? What if it was?

19 Jamaul, doesn't know Alonza. He knew about L.J.
20 robbing Antwan. He knew about it. Antwan told him. He
21 knew about it. He knew about L.J. robbing Antwan, L.J.
22 being shot out and killed and he calls Antwan after. He
23 said he went back and saw his friend on the ground. What
24 did the detective say? He was nowhere to be seen when he
25 showed up. He was gone. He was no longer on scene. Why?

1 Why? He knew Antwan. He knew Pierre. So why? He left the
2 scene.

3 And yes, I'm going to -- Mr. Cooper said I was, the
4 angle. Bear with me a second. You guys can watch that
5 video and you can determine when that shot happened and when
6 he took off running where he was, but I can tell you that
7 when you watch that video, what you'll see is not what
8 Jamaul says, that he was standing there right next to him
9 walking in the field, he was back. He was back behind him.
10 Why? Why was he back behind him? Everything he knows, why?

11 And I'm not good at that thing, so I'm not going to
12 even try, so I apologize. I'm old school. I don't want to
13 try and mess something up.

14 I'm using this picture, but the car is parked, the car
15 is packed. They get out, they're in between the cars. You
16 have this porch here. Watch that video. Tell me where
17 Jamaul is standing in that field and how he has the side of
18 L.J.'s house next to him and how he is going to see any
19 shooter whatsoever when he's walking across that field when
20 the shots start. How is he going to see it with that porch
21 right there, how far it extends? You see where the shell
22 casings are, it's right where that guy is standing. So if
23 they're standing next to the porch close enough that there
24 are supposedly rounds that got put into the side, how? How
25 does Jamaul see him? He doesn't.

1 This goes to the malicious heart, so specific intent.
2 It's complicated. But you've got to be able to say that
3 Antwan -- they're going to say hand of one, hand of all,
4 Antwan meant to try to kill Jamaul or that Alonza tried to
5 kill Jamaul. Intended to for attempted murder. On Jamaul,
6 you have to say intended to kill him. Everything we know
7 about Jamaul and his relationship with Antwan, you really
8 think Antwan was trying to kill him?

9 So Pierre, he doesn't know Alonza. He was told
10 Alonza's name by Antwan. Just like asking to talk about
11 Alonza's statements by an 18-year-old and everything he just
12 went through, being pulled out of a car, Pierre, he was 18
13 when he testified today -- I mean, earlier this week, just
14 18 years old. 18. The detective let his mom come in there
15 with him. A 15-year-old being told, first thing being told,
16 we already know Antwan and Alonza. We've already talked to
17 them. In a 15-year-old mind, that's what he wants to hear.
18 That's what that detective wants to hear in that 15-year-old
19 mind. I've got to get out of trouble. Alonza and Antwan
20 because that he's going to talk about. First thing he says
21 to him, first thing.

22 So we've got a 15-year-old who doesn't want to get in
23 trouble. He knows that that detective's theory is Antwan
24 and Alonza. Here he says, I can't say Alonza was driving.
25 He was struggling. He still doesn't want to get in trouble.

1 He's sitting up there with his lawyer, right next to his
2 lawyer, he doesn't want to get in trouble. He signed an
3 agreement with the State. Now, I need to tell the State
4 what they want to hear, but I've got to tell the truth, too.
5 I don't know what to do. I've got to say Alonza, that's
6 what they want, but I'm just going to say he's not driving.
7 I have to say Alonza, I can't say who it really was. I
8 can't say who was really there because that's not what they
9 want. That's not the agreement I signed. They want Alonza.
10 Alonza's on trial. They want Alonza. I have to say Alonza,
11 I have to. Sitting up there with his lawyer.

12 He doesn't say Alonza. Because Alonza wasn't there.
13 Alonza wasn't shooting. Said he didn't know what happened
14 in the car, didn't know where they were going. All of a
15 sudden, they're at the place. Got out. Put his head down
16 when they were shooting. Anybody shooting? He doesn't
17 know. He knows Antwan got out. Doesn't know what happened
18 in the car. There was no plan. Pierre was with Antwan. He
19 was with them. He was with them supposedly when Antwan came
20 and picked him up.

21 I submit to you, ladies and gentlemen, if we had a
22 video of Alonza coming up to Emden Drive and picking up
23 Pierre and Antwan, do you think you would see it? Do you
24 think they would provide that to you? Yes, they would.
25 Because everything is Alonza. You would see him. Did they

1 provide? They haven't provided anything. They have the
2 burden of proof here and they're not providing it. Why?
3 Because it's not there. It doesn't fit their theory. It's
4 not true. Where is it? They want to believe Pierre that
5 Alonza came and picked him up. Where is that video? Maybe
6 it doesn't fit with the time. Maybe the timeframe doesn't
7 work. Maybe it's not there because it didn't happen.

8 They want to say that that is the car. That car is the
9 one going up and down the neighborhood. Because of his
10 Google search, his Wikipedia, that's the car. That's the
11 car. That's it. That's it. Watch the video, please.
12 Watch the zoomed-in one. You don't see another person. You
13 don't see another person get out of that car, you don't.
14 There are all kinds of video cuts because there's at one
15 point in time, watch the video, that the guy -- Antwan that
16 goes up to the body afterward. Talk about callous, he goes
17 up to the body that he just kills. He comes back to the car
18 and it skips a second, half a second, nanosecond. There are
19 skips in the video. It's grainy. You can't tell, you can't
20 see another person getting out of that car. If there was
21 another person getting out of that car, you can't see it.
22 It could have been from the passenger side. It could have
23 been from the driver's side. We don't know.

24 Brake lights. He was wrong about the brake lights.
25 Was he? No. Look at it. Totality of the circumstances.

1 Innuendos, guesses, has to be. Not testing his theory.
2 He's not testing it. He's got what he wanted. He wouldn't
3 send anything else to SLED. That IBIS hit that turned out
4 not to be, that reasonable doubt from IBIS hit, you're not
5 going to send anything else to SLED? It was found on Emden
6 Street. It was his test fire, so when SLED did their own
7 test fire, maybe they're better at test firing. Why not?
8 The DNA, I don't need to, I already know from a 15-year-old
9 who was the driver and who was the passenger behind the
10 driver's side, so I don't need to send any more DNA out
11 there. I don't need to send that up. I already know from
12 the 15-year-old, so I don't need to send any more things to
13 SLED. I don't need to take swabs of the casings. Let's
14 try. Why not? Try.

15 So what do we know? Antwan pled to murder and ABHAN.
16 **LR** did not deserve to die. Antwan pled. Justice
17 was done. Antwan was robbed at gunpoint by L.J. Antwan's
18 family had an arson of guns. Was Jessica protecting that
19 family? Antwan's friend, he was on scene on camera. He's
20 not charged. Pierre was there before they left the house,
21 knew about the robbery, so he can just -- because he tells
22 the police that he put his head down during the shooting,
23 he's not charged. Alonza says he wasn't there, he's not
24 guilty. Pierre is not charged. Who is this fourth person?
25 The police, they stop. They don't want to send anything

1 else up to SLED. Nothing else to SLED. Because I got my
2 info from a 15-year-old, so okay, we don't need to find this
3 fourth person. I don't care. They're done.

4 He has no motivation. There is no motive. It doesn't
5 make sense. It's not that he's this calculated cold
6 individual. Can you tell that from the jail calls when he's
7 telling his mom he loves her? Does that sound like a cold,
8 calculated individual? Or does that sound like somebody
9 that's gotten arrested and doesn't know what's going on? No
10 motivation and no ill will. There's nothing. It doesn't
11 make sense. Right, it doesn't make sense.

12 There's nothing, no one, not one single person, not a
13 shred of evidence came from this stand that said there was
14 any agreement whatsoever between Alonza and Antwan, nothing.
15 Not one piece of evidence, nothing at all. The State wants
16 to show you hand of one, hand of all. Not one piece of
17 evidence shows there was a plan at all or an agreement.

18 So quickly, Martin, these injuries, yeah, they do look
19 bad. And you'll see the pictures. You'll see him in the
20 hospital. You'll see those pictures back there, but they
21 have no clue as to what happened. No clue. Not one person
22 got up there and told you how it happened. Not a doctor,
23 not Mr. Jimenez. Can't they use interpreters because
24 there's a language barrier? They do it all the time. He
25 didn't come up here and tell you that he was just laying on

1 his bed and a bullet came and hit his head. He didn't say
2 that. Not at all. He couldn't get cross-examined about
3 well, was that hole there first? We don't know. Because he
4 wasn't there. We couldn't find that out. The State -- the
5 burden is on the State. They didn't have anyone testify.
6 Why? Was he not going to say what they wanted him to say?
7 I don't know. But they didn't have him come testify.

8 They want to say great bodily injury because they want
9 to show this blood picture and this picture of him sitting
10 in the hospital, but they don't have a doctor come and tell
11 what injury it was. So they want you to find somebody
12 guilty and not provide you the evidence. You can't let that
13 happen. You can't. They didn't provide a single thing.
14 Wouldn't let me even ask. You know, it may be silly, well,
15 did you drop your phone on your head? Did you jump up? I
16 mean, who knows? Maybe that sounds ridiculous, right, but
17 we don't know. We don't know what the condition of the
18 house was before. We don't know what the condition was
19 after because no one is here to testify to that.

20 Just quickly, you're going to have a chance to decide
21 for Mr. Jimenez ABHAN or assault and battery first. If you
22 find they haven't proven assault and battery of a high and
23 aggravated nature, which is ABHAN, that's legal jargon, then
24 you can then choose assault and battery first. Once again,
25 listen to the Judge, so -- if it's different, listen to what

1 the Judge says. But ABHAN is actually sustaining great
2 bodily injury. There's been no testimony whatsoever about
3 what injury he had and whether that qualifies for great
4 bodily injury. And it's extensive, so you'll hear that in
5 the charge. Assault and battery first is could have
6 sustained great bodily injury. But I submit we don't know
7 what happened. That's what I submit, we don't know what
8 happened because he wasn't here to testify.

9 Yes, I'm going to talk about mere presence. The
10 Defendant's presence where a crime is being committed or
11 mere association with a person who commits a crime, just
12 knowing a person that commits a crime does not make a
13 defendant an accomplice or an aider or abetter of the person
14 committing the crime. Just because you're associated with a
15 person doesn't mean that you are guilty with that person.
16 Proof of at the scene of the crime is not sufficient to find
17 someone guilty.

18 Malice is hatred, ill will or hostility towards another
19 person. Malice must exist in the mind of the defendant just
20 before and at the time the act is committed. There must be
21 a combination of previous evil intent in the act. Alonza
22 has no malice towards them. He doesn't know them. No ill
23 will. He doesn't know them.

24 I try to think of different ways to explain different
25 things. I've used football fields. You go down a football

1 field and you've got to get past the end zone to actually be
2 reasonable doubt. So beyond a reasonable doubt, there's
3 different levels. No evidence, no trace of evidence
4 whatsoever. A scintilla of evidence is any evidence at all,
5 even the smallest measurable amount of evidence, that's not
6 guilty. The State has to go above that. It should be based
7 on reasonable suspicion. It should be based on specific or
8 particular facts and reasons, not based on a hunch or guess.
9 That's not enough. Go above that.

10 Probable cause, reasonable and trustworthy information
11 that a particular person has committed a particular crime.
12 It's not enough. It's beyond reasonable and trustworthy
13 information that a particular person has committed a
14 particular crime. It's beyond that. More than that. The
15 greater weight or amount of evidence is the preponderance of
16 evidence. It's above that. Beyond a reasonable doubt is
17 more than that. A firm belief that the allegations are
18 true. That's clear and convincing. Beyond that. Beyond a
19 firm belief. It is a clear -- you have to go beyond all
20 reasonable doubt for conviction, firm conviction.

21 I always try to come up with an example. The example I
22 usually use is a milk jug. You go to your fridge, see milk,
23 look at the date on it and yesterday, it was expired. I'm
24 going to smell it. It smells okay, okay, I'm going to drink
25 it. It smells really bad, you know you're dumping that out.

1 But if there's like a question, that's reasonable doubt. Is
2 this good or bad? Would you give that to your kids? That's
3 reasonable doubt.

4 'Well, give you another example. In our trial, would
5 you send your mother to the electric chair with this
6 evidence? With this evidence? With this car? I loved how
7 the State and Detective Pritchard would say the car, it's a
8 car. Would you send your mother to the electric chair with
9 that evidence, with inconclusive, as Agent Green said with
10 SLED? He wouldn't. But the State wanted to pick that gun
11 up how many times? Wanted to show you how many casings?
12 But he wouldn't, the expert wouldn't. Send your mother to
13 the electric chair with this evidence.

14 He's 21 now. He was 18. Senior in high school. His
15 senior pictures. Don't take away his life, his liberty with
16 this evidence. I ask you to find him not guilty. Thank
17 you.

18 THE COURT: Does anyone need a comfort break before the
19 Court begins instructions? Is everybody comfortable?

20 (No audible response.)

21 THE COURT: Would the attorneys approach, please?

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury, but outside the hearing of the jury.)

24 THE COURT: Ladies and gentlemen, why don't you stand
25 up right quick.

CHARGE BY THE COURT:

THE COURT: During this trial, ladies and gentlemen, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and to rule upon or pass upon the admissibility of evidence which has been offered. You are to consider only the competent evidence before you and you are to disregard and disabuse from your mind any testimony which may have been stricken from the record of this case during the progress of this trial if there has been any.

You are to consider only the testimony which has been presented from the witness stand, together with any exhibits which have been made a part of the record in this case and any stipulations made by the attorneys. And as I explained earlier, a stipulation is an agreement between the attorneys and it requires no further proof.

I have the additional duty, ladies and gentlemen, to charge or instruct you on the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you have a preconceived idea of what the law is or what the law ought to be in a case or in this case and it should not agree with what I now tell you the law is, you are obligated under your oath to abandon this preconception on your part because you

1 are sworn to accept the law and apply the law precisely as I
2 now state it to you.

3 In every case tried in this court before a jury, the
4 jury becomes the sole and exclusive judges of the facts.
5 You, the jury, are the judges of the facts in this case.
6 This Court is the judge of the law. The Constitution of our
7 state has declared that a trial judge shall not intimate,
8 state, comment upon or make any statement to a trial jury
9 about the facts in a case.

10 Since you, the jury, are the sole judges of the facts
11 in this case, you are not to infer anything from what I have
12 said during the course or progress of this trial in ruling
13 upon the admissibility of evidence or otherwise or anything
14 that I say now to you during the course of this instruction
15 that I have any opinion about the facts. The law does not
16 allow me to have an opinion about the facts. This is a
17 matter solely for you, the jury, to determine.

18 As jurors, then, it is your duty, as I've instructed,
19 to determine the effect, the value, the weight and the truth
20 of the evidence presented during the trial. Necessarily,
21 you must assess the credibility of witnesses who have
22 testified in this case. Credibility is simply a legalistic
23 term, which means believability. It becomes your duty as
24 jurors to analyze and to evaluate the evidence.

25 Some of the things you may consider as you decide

1 whether or not to believe a witness's testimony about a
2 particular matter include what was the manner and appearance
3 of the witness who testified? Was he or she straightforward
4 or hesitant in answering? Was the testimony of a witness
5 consistent or inconsistent? How did the witness come to
6 know the facts that he or she testified to or what was his
7 or her ability to know these facts? Is there some reason a
8 witness would want to give testimony which would help or
9 hurt one side or the other? In other words, was the witness
10 biased or prejudiced? And was the testimony of the witness
11 strengthened or weakened by other testimony or evidence?
12 Ladies and gentlemen, you can believe as much or as little
13 of each witness's testimony as you think is proper.

14 I further instruct you that in determining the question
15 of the credibility or believability of witnesses who have
16 testified, you may believe one witness as against several
17 witnesses, or several witnesses as against one witness. You
18 may believe a part of the testimony of a witness and reject
19 the remaining part of the testimony of that same witness.
20 If you have a good and sound reason, you may believe the
21 testimony of a witness in its entirety or reject the
22 testimony of a witness in its entirety. You may consider
23 the demeanor of a witness, that is the appearance and manner
24 of a witness from the witness stand.

25 Again, as I've explained, you can believe as much or as

1 little of each witness's testimony as you think proper. You
2 have but one objective, to determine the facts in this case
3 and to apply the law as I instruct you and to give those
4 facts as you find them the weight, value and effect you
5 decide they should receive.

6 Ladies and gentlemen, our rules of evidence ordinarily
7 do not permit witnesses to testify to opinions or
8 conclusions. An exception to this rule exist for witnesses
9 we call expert witnesses. A witness who by their education,
10 training and experience has become an expert in some art,
11 science, profession or calling may state an opinion as to
12 relevant and material matters in which the witness claims to
13 be an expert and may, also, state the reason for their
14 opinion.

15 You should consider any expert opinion received in
16 evidence in this case like any other evidence, give it the
17 weight you think it deserves. If you decide that the
18 opinion of an expert witness is not based on sufficient
19 education, training and experience or if you conclude that
20 the reasons given in support of the opinion are not sound or
21 that the opinion is outweighed by other evidence, you may
22 disregard the opinion entirely.

23 An expert witness's testimony is to be given no greater
24 weight than that of other witnesses simply because the
25 witness is an expert. Further, you're not required to

1 accept an expert's opinion even though it is not
2 contradicted.

3 Ladies and gentlemen, there are two types of evidence
4 that are presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who asserts or claims to have actual knowledge
7 of a fact, such as an eyewitness. Circumstantial evidence
8 is proof of a chain of facts and circumstances indicating
9 the existence of a fact. The law makes absolutely no
10 distinction between the weight or value to be given to
11 either direct or circumstantial evidence nor is a greater
12 degree of certainty required of circumstantial evidence than
13 of direct evidence.

14 I instruct you that crimes, as I've explained, may be
15 proven by circumstantial evidence and the law makes no
16 distinction between the weight or value to be given to
17 either direct or circumstantial evidence. However, to the
18 extent the State relies on circumstantial evidence, all of
19 the circumstances must be consistent with each other and
20 when taken together point conclusively to the guilt of the
21 accused beyond a reasonable doubt. If these circumstances
22 merely portray the Defendant's behavior as suspicious, the
23 proof has failed.

24 The State has the burden of proving the Defendant
25 guilty beyond a reasonable doubt and this burden rest with

1 the State regardless of whether the State relies on direct
2 evidence, circumstantial evidence or some combination of the
3 two. Ladies and gentlemen, you should weigh all of the
4 evidence in this case.

5 I instruct you that the fact that the Defendant was
6 arrested, charged and indicted is not evidence in this case
7 and it cannot be considered by you as evidence of guilt in
8 this case, nor does it create any presumption or inference
9 of guilt. This documentation is simply the formal written
10 instrument or instruments which contain the charge or
11 charges made against the Defendant. They simply serve as
12 the formal documentation by which the case is processed or
13 brought into the court.

14 The Defendant has pled not guilty to the indictments
15 and that plea cast the burden on the State to prove the
16 Defendant guilty because a person charged with committing a
17 criminal offense in South Carolina is never required to
18 prove himself innocent. I instruct you that it is a
19 cardinal and important rule of the law of evidence that the
20 defendant in a criminal trial, no matter what the serious of
21 the charge made against him may be will always be presumed
22 to be innocent of the crime for which he is indicted unless
23 his guilt has been proven by evidence satisfying you of that
24 guilt beyond a reasonable doubt.

25 This presumption of innocence does not cease when you

1 retire to deliberate, but it accompanies the Defendant from
2 the time of his appearance throughout the trial until you
3 reach a verdict in this case. Our Supreme Court has said
4 that the presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the Defendant
6 and it remains with him and assigns him to that class, the
7 innocent, until that presumptive robe of righteousness has
8 been stripped from his person by evidence satisfying you of
9 that guilty beyond a reasonable doubt.

10 The presumption of innocence is not mere legal theory.
11 It is not just a legal phrase. It is a substantial right to
12 which every defendant is entitled unless you, the jury, are
13 satisfied from the evidence of his guilt beyond a reasonable
14 doubt.

15 What is a reasonable doubt in the law? The State has
16 the burden of proving the Defendant guilty beyond a
17 reasonable doubt. Some of you may have served as jurors in
18 civil cases where you were told it is only necessary to
19 prove that a fact is more likely true than not true, such as
20 by the greater weight or the preponderance of the evidence.
21 In criminal cases, the State's proof must be more powerful
22 than that. It must be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the Defendant's guilt. There are
25 very few things in this world that we know with absolute

1 certainty and in criminal cases, the law does not require
2 proof that overcomes every possible doubt. If based on your
3 consideration of the evidence, you are firmly convinced that
4 the Defendant is guilty of the crimes charged, you must find
5 the Defendant guilty. If on the other hand, you think there
6 is a real possibility that the Defendant is not guilty, you
7 must give the Defendant the benefit of that doubt and find
8 him not guilty.

9 I instruct you and emphasize that the fact that the
10 Defendant did not testify is not a factor to be considered
11 by you in any manner whatsoever in your deliberation of this
12 case. It must not be considered by you in any manner
13 whatsoever. A defendant has the Constitutional right to
14 remain silent and the assertion of this right must not be
15 considered by you in your deliberations. I repeat, ladies
16 and gentlemen, under your oath, you are to draw no
17 conclusion whatsoever from the fact that the Defendant in
18 this case did not testify. The fact that the Defendant did
19 not testify is not to be discussed in any manner whatsoever
20 in the jury room during your deliberation process. The
21 burden of proof, as I have stated to you, is on the State.
22 The Defendant is not required to prove his innocence. The
23 burden of proof remains on the State to prove guilt beyond a
24 reasonable doubt.

25 Ladies and gentlemen, the Defendant is charged with

1 attempted murder. In order to prove this crime, the State
2 must prove beyond a reasonable doubt that the Defendant
3 attempted to kill another person with malice aforethought
4 either expressed or inferred. Malice is hatred, ill will or
5 hostility towards another person. It is the intentional
6 doing of a wrongful act without just cause or excuse and
7 with an intent to inflict an injury or under circumstances
8 that the law will infer an evil intent.

9 Malice aforethought does not require that malice exist
10 for any particular time before the act is committed, but
11 malice must exist in the mind of the Defendant just before
12 and at the time the act is committed. Therefore, there must
13 be a combination of the previous evil intent and the act.

14 Malice aforethought may be expressed or inferred.
15 These terms expressed and inferred do not mean different
16 kinds of malice, but, merely, the manner in which malice may
17 be shown to exist. That is either by direct evidence or by
18 inference from the facts and circumstances which are proven.

19 Expressed malice is shown when a person speaks words
20 which express hatred or ill will for another or when the
21 person prepared beforehand to do the act which was later
22 accomplished. For example, lying in wait for a person or
23 any other acts of preparation going to show that the deed
24 was within the Defendant's mind would be expressed malice.
25 Malice may be inferred from conduct showing a total

1 disregard for human life.

2 If facts are proven beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, this inference would simply be an evidentiary
5 fact to be considered by you, the jury, along with the other
6 evidence in the case and you may give it the weight, value
7 and effect, if any, you decide it should receive.

8 Intent means intending the result which actually
9 occurs, not accidentally or involuntarily. Intent may be
10 shown by acts and conduct of the Defendant and other
11 circumstances from which you may naturally and reasonably
12 infer intent. Evidence of the character of the act, the
13 purpose to be accomplished and the resulting wounds or
14 injuries may be considered in determining the intent with
15 which the act was committed. Intent may, also, be inferred
16 when it is demonstrated that the Defendant voluntarily and
17 willfully commits an act the natural tendency of which is to
18 destroy another's life.

19 An attempt is an effort to accomplish a crime which
20 does not succeed. An attempt includes a specific intent to
21 do a particular criminal act along with an act falling short
22 of the act intended. The State must show more than mere
23 preparation and intent. There must be some overt act
24 committed in the effort to commit the crime.

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. And, again, that would just be one factual
5 consideration for you to determine the effect, value and
6 weight, if any, that it should receive.

7 I instruct you, ladies and gentlemen, that criminal
8 intent is a mental state, a consciousness of wrongdoing. It
9 is up to you, the jury, to determine what the Defendant
10 intended to do based on the circumstances shown to have
11 existed. I further instruct you that to find the Defendant
12 guilty of attempted murder, the State must prove beyond a
13 reasonable doubt that the Defendant had an intent to kill
14 the victim.

15 The Defendant is, also, charged with assault and
16 battery of a high and aggravated nature. To prove assault
17 and battery of a high and aggravated nature, the State must
18 prove beyond a reasonable doubt that the Defendant committed
19 an unlawful injury to another person and great bodily injury
20 to another person resulted or the act was accomplished by
21 means likely to produce death or great bodily injury.

22 Great bodily injury means bodily injury which causes a
23 substantial risk or death or which causes serious permanent
24 disfigurement or protracted loss or impairment of the
25 function of a bodily member or organ.

1 Ladies and gentlemen, if you determine that the State
2 has not proven assault and battery of a high and aggravated
3 nature to your satisfaction, included within that offense is
4 the offense, the lesser-included offense of assault and
5 battery first degree. To prove assault and battery first
6 degree, the State must prove beyond a reasonable doubt that
7 the Defendant offered or attempted to injure another person
8 with the present ability to do so and the act was
9 accomplished by means likely to produce death or great
10 bodily injury. Again, as I've explained, great bodily
11 injury means bodily injury which causes a substantial risk
12 of death or which causes serious permanent disfigurement or
13 protracted loss or impairment of the function of a bodily
14 member or organ.

15 The Defendant is charged with murder. The State must
16 prove beyond a reasonable doubt that the Defendant killed
17 another person with malice aforethought. Malice is hatred,
18 ill will or hostility towards another person. It is the
19 intentional doing of a wrongful act without just cause or
20 excuse and with an intent to inflict an injury.

21 Malice aforethought does not require that malice exist
22 for any particular time before the act is committed, but
23 malice must exist in the mind of the Defendant just before
24 and at the time the act is committed. Therefore, there must
25 be a combination of the previous evil intent and the act.

1 Malice aforethought may be expressed or inferred.
2 These terms expressed and inferred do not mean different
3 types or kinds of malice, but, merely, the manner in which
4 malice may be shown to exist. That is either by direct
5 evidence or by inference from the facts and circumstances
6 which are proven.

7 Expressed malice is shown when a person speaks words
8 which express hatred or ill will for another or when the
9 person prepared beforehand to do the act which was later
10 accomplished. For example, lying in wait for a person or
11 any other acts of preparation going to show that the deed
12 was within the Defendant's mind would be expressed malice.
13 Malice may be inferred from conduct showing a total
14 disregard for human life.

15 If facts are proven beyond a reasonable doubt
16 sufficient to raise an inference of malice to your
17 satisfaction, this inference would simply be an evidentiary
18 fact to be considered by you, the jury, along with the other
19 evidence in the case and you may give it the weight, value
20 and effect, if any, you decide it should receive.

21 Ladies and gentlemen, in order to establish criminal
22 liability, criminal intent is required. For example, the
23 mental state required to be proven by the State for a
24 particular crime might be purpose, intent, knowledge,
25 recklessness or criminal negligence. Criminal intent must

1 be proven by the State beyond a reasonable doubt. Criminal
2 intent is always a matter that must be determined by the
3 jury from the circumstances surrounding the situation.

4 There is no way to prove intent to a mathematical
5 certainty. There is no way medical science can dissect a
6 person's brain and determine what the person had in mind, so
7 the law says that criminal intent may be inferred from the
8 circumstances shown to have existed. This is how you make a
9 determination of whether or not the element requiring intent
10 was present. It is not necessary to establish intent by
11 direct and positive evidence, but intent may be established
12 by inference in the same way as any other fact by taking
13 into consideration the acts of the parties and all the facts
14 and circumstances of the case.

15 Criminal intent is a mental state, a consciousness of
16 wrongdoing. It is for you, the jury, to determine what the
17 Defendant intended to do based on the circumstances shown to
18 have existed.

19 Ladies and gentlemen, an issue in this case is the
20 identification of the Defendant as the person who committed
21 the crime charged. The State has the burden of proving
22 identity beyond a reasonable doubt. You must be satisfied
23 beyond a reasonable doubt of the accuracy of the
24 identification of the Defendant before you may convict the
25 Defendant.

1 Identification testimony is an expression, a belief of
2 impression by a witness. You must determine the accuracy of
3 the identification of the Defendant. You must consider the
4 believability of each identification witness in the same way
5 as any other witness. You may consider whether the witness
6 had an adequate opportunity to observe the offender at the
7 time of the offense. This will be affected by things like
8 how long or short a time was available, how far or close the
9 witness was, the lighting conditions and whether the witness
10 had the chance to see or know the person in the past.

11 Once again, I instruct you, the burden of proof on the
12 State extends to every element of the crime charged. And
13 this specifically includes the burden of proving beyond a
14 reasonable doubt the identity of the Defendant as the person
15 who committed the crime. If after examining the testimony,
16 you have a reasonable doubt as to the accuracy of the
17 identification, you must find the Defendant not guilty.

18 I further instruct you that mere presence at the scene
19 is not sufficient to prove someone guilty of a crime. A
20 defendant's presence where a crime is being committed or
21 mere association with a person who commits a crime does make
22 a defendant an accomplice or an aider and abetter of the
23 person committing the crime.

24 The burden is on the State to prove every element of
25 the crime charged. If you find after reviewing all of the

1 evidence that the State has proven that the Defendant was
2 only present at the scene of a crime and they have not
3 proven beyond a reasonable doubt any other participation in
4 the crime, then you must find the Defendant not guilty. The
5 law is that proof of at the scene of the crime is not
6 sufficient to find someone guilty.

7 Ladies and gentlemen, I instruct you that if a crime is
8 committed by two or more people who are acting together in
9 committing a crime, the act of one is the act of all. A
10 person who joins with another to commit an unlawful act is
11 criminally responsible for everything done by the other
12 person which happens as a probable or natural consequence of
13 the acts done in carrying out the common plan and purpose.

14 For example, two people can be guilty of killing
15 another person when only one of the two had a gun, there was
16 only one bullet and only one of the two fired the shot that
17 caused the death. If two or more people are together,
18 acting together, assisting each other in committing the
19 offense, the act of one is the act of all. Or as it is
20 sometimes said, the hand of one is the hand of all.

21 Prior knowledge that a crime is going to be committed
22 without more is not sufficient to make a person guilty of
23 that criminal. Mere knowledge that another person is going
24 to commit a crime, even if the defendant is present when the
25 crime is committed is not sufficient to convict the

1 defendant as a principle.

2 Guilt as a principle is shown by actual or constructive
3 presence at the scene as a result of prior arrangements.
4 Therefore, a finding of a prior arranged plan or common
5 scheme is necessary for finding of guilt as a principle.
6 The State must prove beyond a reasonable doubt by competent
7 evidence the theory of the hand of one is the hand of all.

8 A principle in a crime is one who either actually
9 commits the crime or who is present aiding, abetting or
10 assisting in committing the crime. When a person does an
11 act in the presence of and with the assistance of another,
12 the act is done by both. Where two or more acting with a
13 common plan or intent are present at the commission of a
14 crime, it does not matter who actually commits the crime,
15 all are guilty. The hand of one is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near to aid and abet and assist in the
18 commission of the crime. However, mere presence at the
19 scene of a crime is not sufficient to convict one as a
20 principle on the theory of aiding and abetting.

21 Intent is, also, a necessary element where there must
22 have been a common design or intent to commit the crime and
23 the crime must have been committed pursuant thereto with the
24 person aiding and abetting by some overt act.

25 Intent means intending the result which actually

1 occurs, not by accident 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.

5 And as I've instructed, ladies and gentlemen, if an
6 inference is raised to your satisfaction, it is simply a
7 fact for you to consider and to give the weight, value and
8 effect you decide it should receive. The State must prove
9 these elements, ladies and gentlemen, beyond a reasonable
10 doubt.

11 Ladies and gentlemen, you have heard reference
12 concerning a potential penalty a person can serve for the
13 crimes alleged in the indictment. In determining whether
14 the State has met their burden of proof, you cannot consider
15 any potential or possible penalty for any particular crime.
16 The penalty or punishment for a crime is a matter of law for
17 the Court to determine if it becomes applicable and should
18 never be considered by you in any manner whatsoever in
19 arriving at a fair and impartial verdict in this case.

20 Ladies and gentlemen, there are three indictments in
21 this case, and I will go over those with you. They each
22 charge a separate and independent offense. They are as
23 follows: Indictment 2023-GS-10-1991, attempted murder;
24 indictment 2023-GS-10-1994, assault and battery of a high
25 and aggravated nature; and 2023-GS-10-1995, murder.

1 Each of these indictments, ladies and gentlemen,
2 charges a separate and distinct offense. You must decide
3 each indictment separately on the evidence and the law
4 applicable to it uninfluenced by your decision as to any
5 other indictment. The Defendant may be convicted or
6 acquitted on any or all of the offenses charged and you will
7 be asked to write a separate verdict of guilty or not guilty
8 for each indictment.

9 Ladies and gentlemen, there are several potential
10 verdicts in this case. You don't have to try to write it
11 down, the verdict forms will go into the jury room with you,
12 but I'm going to go over them with you at this time.
13 There's absolutely no significance whatsoever to the order
14 in which I state these potential verdicts, it is simply that
15 one must be stated first.

16 Preliminarily, ladies and gentlemen, I instruct you
17 that in order to reach a verdict in this case, your verdict
18 must be unanimous, which means all 12 of you must agree in
19 order to reach a verdict in this case. And those potential
20 verdicts are as follows: As to indictment number
21 2023-GS-10-1991, we, the jury, by unanimous consent find the
22 Defendant guilty of attempted murder or not guilty. As to
23 indictment 2023-GS-10-1994, we, the jury, by unanimous
24 consent find the Defendant guilty of assault and battery of
25 a high and aggravated nature or as to the lesser included

1 offense, guilty of assault and battery in the first degree
2 or not guilty. And as to indictment 2023-GS-10-1995, we,
3 the jury, by unanimous consent find the Defendant guilty of
4 murder or not guilty. Again, ladies and gentlemen, there's
5 absolutely no significance to the order in which I stated
6 these potential verdicts, it is simply that I must state one
7 first. Again, your verdict must be unanimous, which means
8 all 12 of you must agree in order to reach a verdict.

9 Madam Forelady, it will be your responsibility to fill
10 out the verdict forms once the jury has reached a unanimous
11 verdict and to sign and date those forms. It is, also, your
12 responsibility to write out any questions the jury may have
13 during deliberations. Again, reenforcing that the Court
14 cannot answer factual questions.

15 In addition to that, any notes that you send out should
16 never denote a numerical breakdown of the jury because your
17 deliberations are secret and should never be divulged
18 outside of that room. Any notes that you write should be
19 written on the notebook that you have. They should, also,
20 be dated and signed.

21 If you have a question, please, knock on the door and
22 advise the bailiffs that you have a question. Please know,
23 ladies and gentlemen, if you have a question, there will be
24 a delay in our response because there's a process that we
25 have to follow in answering your questions. So, please,

1 don't think we're ignoring if you have a question, it simply
2 means we're adhering and following that process.

3 Also, once you've reached a unanimous verdict, Madam
4 Forelady, and you've filled out the verdict forms, please,
5 knock on the door and advise the bailiffs that the jury has
6 reached a unanimous verdict.

7 I'm going to ask that you return to your jury room, but
8 do not yet begin your deliberations. I have some brief
9 matters of law to take up with counsel that may require
10 further instruction or clarification of an instruction. If
11 there's no further instruction, we will dismiss the
12 alternate, we will send in your notebooks and the evidence
13 and you will be allowed to begin your deliberations.

14 If you would go with the bailiffs for me and, please,
15 leave your notepads in your seats.

16 (WHEREUPON, the jury exits the courtroom at 6:01 p.m.)

17 THE COURT: You may take your seats.

18 Any exception from the State?

19 MR. COOPER: No, ma'am.

20 THE COURT: Any from the Defense other than what we've
21 already gone over in charge conference?

22 MR. SHELTON: No, Your Honor.

23 THE COURT: All right. Can y'all one more time as they
24 load that evidence -- have y'all already gone through it?
25 Is everything there?

1 MR. COOPER: We will. Any exhibits I used, I will put
2 them back over there.

3 THE COURT: Yeah, if y'all could put the exhibits you
4 both used back over there, then as it is loaded, make sure
5 everything that's supposed to go back --

6 Y'all are going to need a cart for that, I believe.

7 Get the alternate for me and go ahead and take the jury
8 their notebooks for me, please.

9 And just for you all's edification, I've had
10 discussions with the sheriff's department. We will send the
11 weapon back. We will not send back any ammunition. If they
12 want to see the ammunition -- and that's what I'm going to
13 tell the Foreperson when I bring her back in. I'm, also,
14 going to let her know to communicate with them that they're
15 not to try any independent experiments with anything.

16 If we could bring out the alternate so I can excuse
17 him. Also, when you bring the alternate, if you could bring
18 the Foreperson for me.

19 (WHEREUPON, alternate juror and Foreperson enters the
20 courtroom.)

21 THE COURT: I need order in the Court. We're still in
22 session. I need everyone standing to take a seat. I need
23 there to be no movement.

24 I need my Foreperson to stay where you are and I need
25 my alternate -- if y'all could shift places for me.

1 Sir, we appreciate your time and your attention to this
2 case. I know it seems thankless, but an alternate is so
3 very necessary in the event that one of the jurors cannot go
4 forward. You're welcome to hang out with us if you want.
5 If you don't want to, you're welcome to go home. Have a
6 good evening. Have a good rest of the week. Do you need a
7 work excuse before you leave or can we mail it to you?

8 ALTERNATE JUROR: You can mail it.

9 THE COURT: And you're welcome to discuss the case,
10 just don't do it until after the jury comes back with a
11 verdict and everybody is dismissed. I hope you had a good
12 experience. I hope it was educational.

13 ALTERNATE JUROR: Yes, it was.

14 THE COURT: If you want, the bailiffs can shred your
15 notes or you can tear them out and shred them yourself.
16 It's up to you.

17 ALTERNATE JUROR: It's fine if they do it.

18 THE COURT: Perfect. Thank you so very much. Have a
19 good rest of the week. Have a good summer.

20 ALTERNATE JUROR: Thank you very much.

21 THE COURT: Thank you.

22 And Madam Foreperson, I neglected to do this before we
23 adjourned, but I'm going to entrust you to provide this to
24 the jury. We're sending in the firearm, but not the
25 ammunition. For safety purposes, we cannot do that. If

1 they want to look at the ammunition, let us know, we will
2 remove the gun and bring in the ammunition.

3 And, also -- well, they won't be in there together, so
4 we don't have to worry about any experiments. That's why we
5 do it. Thank you, ma'am.

6 THE FOREPERSON: Thank you, ma'am.

7 THE COURT: And the jury can begin their deliberations
8 once the Foreperson is back in the jury room and that should
9 be right at 6:08.

10 All right. We'll await further instructions from the
11 jury. If y'all could continue to assist the Court making
12 sure all that evidence has gone back.

13 (WHEREUPON, jury deliberations began at 6:08 p.m.)

14 THE COURT: They have sent a note, Can we, please, have
15 a written out description of the three charges? Signed by
16 the Foreperson.

17 And my response will be as follows: Ladies and
18 gentlemen of the jury, our procedures do not allow for a
19 copy of the jury charge/instructions to be given to you. If
20 there is a specific instruction that you would like given
21 again or the entire instruction, please, advise us and I
22 will accommodate your request immediately.

23 Any exception to that response from the State?

24 MR. COOPER: No, ma'am.

25 THE COURT: From the Defense?

1 MR. SHELTON: I'm sorry, Judge, could I hear that
2 again?

3 THE COURT: Sure.

4 Can we, please, have a written out description of the
5 three charges? My response will be as follows: Ladies and
6 gentlemen of the jury, our procedures do not allow for a
7 copy of the jury charge/instructions to be given to you. If
8 there is a specific instruction that you would like given
9 again or the entire instruction, please, advise us and I
10 will accommodate your request immediately.

11 MR. SHELTON: I agree, yes.

12 THE COURT: And then, also, No. 102, when the jury went
13 to play it was blank, so we had to substitute it and that
14 was facilitated by Lindsay. Is there any exception to
15 marking the blank 102 as a Court's Exhibit and the
16 substituted 102 has been provided to the jury.

17 Any exception from the State?

18 MR. COOPER: No exception, Judge, I just want to state
19 for the record I think we've had some issues in our office
20 with that, but I know they were signed and identified by
21 witnesses. And officer of the court, those witnesses
22 observed there was video at that time on that CD and what
23 they observed was accurate. So I just wanted to make sure
24 that was clear. I know we've had some issues in our office
25 with that technology, but the witnesses that signed it, as

1 an officer of the court, did view and the video at that time
2 was on the disk. Other than that, no exception, Your Honor.

3 THE COURT: Any exception, Mr. Shelton?

4 MR. SHELTON: No, Your Honor.

5 THE COURT: Also, we had a bench conference right
6 before I gave instructions where I indicated to the parties
7 I would give a brief general instruction on punishment
8 because it was referred to in argument and, of course,
9 that's not appropriate consideration for the jury. And at
10 the bench, you all both indicated to me that you had no
11 exception.

12 Is that accurate from the State?

13 MR. COOPER: The only thing, Judge, I don't know, I may
14 have missed my opportunity, the more I think about it, with
15 just the reference to -- certainly, I know it came from the
16 State's witness, but the electric chair, if the Court would
17 just be inclined to indicate to the jury that this is not a
18 capital case --

19 THE COURT: I don't think I need to make that -- it
20 doesn't matter if it is. It's not appropriate for them to
21 consider.

22 MR. COOPER: I just didn't want them to --

23 THE COURT: Even in a capital case, it's bifurcated and
24 they know that going into it. They're told that's what the
25 punishment is. They're told that there's going to be a

1 penalty phase and a guilt phase. I don't think that any of
2 the jurors are under the misapprehension that this is a
3 capital case. I gave them instruction in response to Mr.
4 Shelton's arguments about making him give up his life
5 because that's just not appropriate.

6 MR. COOPER: Given that ruling, Judge, I have no
7 exception to how you handled that earlier.

8 THE COURT: And my recollection is you had no exception
9 either, Mr. Shelton?

10 MR. SHELTON: That's correct, Your Honor.

11 THE COURT: I'll have the jury's note marked as a
12 Court's Exhibit. I will have it taken into them and they're
13 not to -- that they're to keep that note with the evidence
14 so it will be part of the record.

15 Is there anything else that we need to take up before
16 we await further instructions from the jury? I would ask
17 that y'all hang tight because, normally, there's a question
18 and then they want to rehear something, which means you've
19 got to do that right quick. So if y'all would hang tight.

20 MR. COOPER: You're sending that written response back,
21 you're not writing them a charge in that instruction?

22 THE COURT: No, no, just sending that written response.

23 Y'all just hang with me and see if they ask for
24 something. If they do, I will accommodate then and if not
25 -- and then once their dinner gets here, I will let you all

1 know and we will take a little break. Generally, I almost
2 need you to hang tight with that, too, because when they
3 eat, they have more questions.

4 (WHEREUPON, Court was in recess awaiting a verdict.)

5 THE COURT: All right. The jury has reached a verdict.
6 Is there anything before we proceed from the State?

7 MR. COOPER: Nothing from the State, Your Honor.

8 THE COURT: From the Defense?

9 MR. SHELTON: No, Your Honor.

10 THE COURT: Please bring in the jury.

11 (WHEREUPON, the jury enters the courtroom at 8:23 p.m.)

12 THE COURT: You may be seated.

13 Madam Forelady, is it correct that the jury has reached
14 a verdict?

15 THE FOREPERSON: Yes, we have, Your Honor.

16 THE COURT: If you would give the verdict form to the
17 bailiff, please.

18 Sir, if you would stand for publication of the verdict.
19 (Defendant stands.)

20 THE CLERK: State of South Carolina, County of
21 Charleston, State of South Carolina vs. Alonza Donta
22 Marable, Jr., as to indictment number 2023-GS-10-1991, we,
23 the jury, by unanimous consent find the Defendant not guilty
24 on the charge of attempted murder. As to indictment number
25 2023-GS-10-1994, we, the jury, by unanimous consent find the

1 Defendant of assault and battery of a high and aggravated
2 nature. As to indictment number 2023-GS-10-01995, we, the
3 jury, by unanimous consent find the Defendant guilty of
4 murder. Signed Foreperson of the jury, June 15th, 2023.

5 THE COURT: You may be seated.

6 Is there any request to poll the jury from the State?

7 MR. COOPER: Not from the State, Your Honor.

8 THE COURT: From the Defense?

9 MR. SHELTON: Yes, Your Honor.

10 THE COURT: Ladies and gentlemen, the clerk is going to
11 call your number. She's then going to ask you two
12 questions. I would ask that you raise your hand when she
13 calls your number and answer each question accordingly.

14 You may proceed.

15 THE CLERK: Ladies and gentlemen, when I call out your
16 juror number, if you would, please, just raise your right
17 hand and answer or not to the two questions I ask you.

18 Juror Number 270, is this your verdict?

19 JUROR #270: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR #270: Yes.

22 THE CLERK: Juror Number 292, is this your verdict?

23 JUROR #292: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR #292: Yes.

1 THE CLERK: Juror Number 254, is this your verdict?

2 JUROR #254: Yes.

3 THE CLERK: It is still your verdict?

4 JUROR #254: Yes.

5 THE CLERK: Juror Number 92, is this your verdict?

6 JUROR #92: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR #92: Yes.

9 THE CLERK: Juror Number 21, is this your verdict?

10 JUROR #21: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR #21: Yes.

13 THE CLERK: Juror Number 90, is this your verdict?

14 JUROR #90: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR #90: Yes.

17 THE CLERK: Juror Number 132, is this your verdict?

18 JUROR #132: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR #132: Yes.

21 THE CLERK: Juror Number 241, is this your verdict?

22 JUROR #241: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR #241: Yes.

25 THE CLERK: Juror Number 218, is this your verdict?

1 JUROR #218: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR #218: Yes.

4 THE CLERK: Juror Number 111, is this your verdict?

5 JUROR #111: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR #111: Yes.

8 THE CLERK: Juror Number 34, is this your verdict?

9 JUROR #34: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR #34: Yes.

12 THE CLERK: Juror Number 110, is this your verdict?

13 JUROR #110: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR #110: Yes.

16 THE CLERK: Your Honor, the jury has been polled and
17 the verdict stands.

18 THE COURT: Madam Forelady, ladies and gentlemen, we
19 thank you for your time and attention to this case. I know
20 that jury service may seem thankless, but your service to us
21 is incredibly vital and we could not do the bulk of the work
22 that we have to perform in this courthouse without your
23 willingness to meet your civic responsibility and to,
24 really, donate your time to us. So I hope you know how very
25 appreciative we are of your jury service.

1 Is there anyone who needs a work excuse before they
2 leave on today? We can get one for you. I can have them
3 bring it to the jury room. Otherwise, they will be mailed
4 to you along with your mileage checks and your jury service
5 checks.

6 Anyone that wishes to remain for sentencing, you are
7 welcome to do that. When I excuse you, if you would remain
8 seated, you can remain for that process. Anyone that does
9 not wish to is certainly welcome to be excused. Your
10 service has been satisfied for the remainder of the week, so
11 you're excuse for the week.

12 You may discuss this case if you would like. Sometimes
13 lawyers will contact you. They just need input sometimes.
14 That's why we call it the practice of law because it's never
15 quite perfected. So sometimes, they just want a layperson's
16 opinion on the trial.

17 By the same token, you don't have to discuss the case
18 and if someone should exceed your comfort level, please,
19 contact the clerk's office so that we can take the
20 appropriate action to protect your privacy.

21 Is there anyone that wishes to remain for sentencing?
22 Okay. Have a wonderful evening. Your dinner is in your
23 room and you're welcome to take it with you.

24 Madam Foreperson, if you could just stand at the end.
25 I need you to stay right there for me and she's going to

1 bring the indictments to you to complete.

2 (WHEREUPON, the jury exits the courtroom at 8:29 p.m.)

3 THE COURT: And I need sentencing sheets.

4 MR. COOPER: Your Honor, beg the Court's indulgence.

5 We are working on that as we speak.

6 Your Honor, if you could give me a couple minutes, I
7 can run to our office and grab those real quick.

8 THE COURT: I need you to send someone else because I'm
9 not going to -- I'm proceeding with the rest of what we need
10 to do.

11 Are there any posttrial motions from the State?

12 MR. COOPER: No posttrial motions from the State, Your
13 Honor.

14 THE COURT: From the Defense?

15 MR. SHELTON: Yes, Your Honor. I renew all motions
16 during trial, including the directed verdict motion. I have
17 a motion for a new trial notwithstanding the verdict, Judge.

18 THE COURT: Would the State like to respond to Mr.
19 Shelton's motions?

20 MR. COOPER: Your Honor, I think the Court has handled
21 all the issues that have come up appropriately. I think the
22 evidence that was submitted to the jury was appropriate. I
23 think -- the motion for mistrial was denied. I think the
24 Court has handled everything appropriately. I think the
25 jury has heard the evidence. Your Honor, I recanted that in

1 detail at the directed verdict response and I would submit
2 the same responses here for this motion. Your Honor, there
3 is substantial evidence in the record for all three charges.
4 We respect the jury's verdict on the attempted murder, but,
5 certainly, the jury saw the evidence the State submitted in
6 responding guilty to murder and guilty to ABHAN. We think
7 those verdicts should, certainly, stand.

8 THE COURT: Anything further, Mr. Shelton?

9 MR. SHELTON: No, Your Honor.

10 THE COURT: I'm sorry, I didn't hear you?

11 MR. SHELTON: No, Your Honor.

12 THE COURT: The Court has ruled on all motions that
13 were made contemporaneously, so those are preserved for the
14 record. In regards to the motion for a new trial, whether
15 to grant a new trial is solely within the discretion of the
16 Court and will not be disturbed absent an abuse of
17 discretion. However, our courts have been very clear about
18 the basis for a new trial and it is only appropriate when
19 there is no evidence to support a conviction. And here,
20 there is direct and substantial circumstantial evidence
21 reasonably tending to prove the Defendant's guilt. So it
22 would be an abuse of discretion for this Court to disregard
23 the jury's findings of fact and their application of law to
24 those facts and substitute its judgment for that of the jury
25 where there is evidence to support a conviction. So the

1 motion for new trial is denied.

2 The directed verdict, I think I've covered, I made a
3 contemporaneous ruling on that motion, which is there was
4 direct and substantial circumstantial evidence reasonably
5 tending to prove the guilt of the accused and it raises
6 above a mere suspicion. It's very clear that the jury
7 weighed the testimony of the witnesses, especially in light
8 of the not guilty verdict on the attempted murder.

9 Bear with me one moment.

10 (Pause.)

11 THE COURT: It's clear that they made their own
12 findings of fact based on the credibility and believability
13 of the witnesses and that is emphasized by the fact that
14 they found the Defendant not guilty on the attempted murder
15 offense, which tells the Court they gave strict attention to
16 the attempt requirement. And it tells me, also, that they
17 weighed the testimony of Mr. Simmons. So the jury's
18 verdict, it clearly raises above mere suspicion and is
19 supported by the evidence. The Court will not disturb the
20 finder of fact.

21 Now, does the State have any statements? Are there any
22 victims that wish to be heard?

23 MR. COOPER: The State would like to respond, Judge.
24 The victim, LR [REDACTED] is represented by his mother and
25 his sister. His mother, Ms. Singleton, and his family have

1 been present with the State throughout this entire case.
2 They have been patient. They have been involved throughout
3 this case as well as the prosecution of the juvenile. They
4 do not wish to speak to the Court, but I want the Court to
5 know that they have been here throughout this entire process
6 and entirely supportive.

7 Judge, just by way of background, this Defendant has
8 done 659 days in jail as of today.

9 THE COURT: How much monitor time did he have?

10 MR. SHELTON: Actually, Your Honor, he's done 770 days
11 because 107 --

12 THE COURT: I need to know the day he was committed to
13 the Detention Center.

14 MR. COOPER: This is three different separate --

15 THE COURT: I need to know each date.

16 MR. COOPER: He was in, at least, in Charleston County
17 April 21st of 2020 through August 6th of 2020. He was then
18 booked back in on September the 3rd of 2021 through March
19 3rd of 2023. And then, again, starting Monday with the
20 trial.

21 MR. SHELTON: He was, though, booked into Berkeley
22 County and his bond was revoked --

23 THE COURT: Unless it was on these charges, he doesn't
24 get any credit.

25 MR. COOPER: It was on a charge that occurred --

1 THE COURT: I'm not calculating any credit. I simply
2 check the boxes. That's for the Department of Corrections.
3 The legislature has been very clear. The Court does not
4 calculate the time served. That's why they removed that
5 little -- the only reason it's on the sentence sheets now is
6 because county detention centers will not release people
7 unless we put a number of days for time served. That's the
8 only reason that box is on that sentence sheet. Otherwise,
9 he'll go to R&E and they'll get all his records and they'll
10 calculate what he's entitled to. The calculation of credit
11 is solely within the province of the Department of
12 Corrections. The Court is not supposed to be calculating
13 all of that. I want to know for my own benefit because I'm
14 just curious.

15 MR. SHELTON: And he was on the ankle monitor this last
16 time for 101 days, Judge.

17 THE COURT: Was he allowed to leave the house or was he
18 strictly on house arrest?

19 MR. SHELTON: He was allowed to leave for work during
20 the day. There was a curfew.

21 THE COURT: And when was he released and the house
22 arrest started?

23 MR. SHELTON: March 3rd of 2023.

24 THE COURT: And then he was booked back in on Monday,
25 which was the 12th. Am I accurate?

1 MR. SHELTON: Yes, Your Honor.

2 THE COURT: So then he gets time from 6/12 to today,
3 which is 6/15. And then you were going to tell me about
4 another date in September. Why was he booked into Berkeley?

5 MR. SHELTON: Judge, he was arrested on an unlawful
6 carrying and simple possession of marijuana.

7 THE COURT: So those are Berkeley charges?

8 MR. SHELTON: Yes, and his bond was automatically
9 revoked and --

10 THE COURT: Which bond?

11 MR. SHELTON: This in Charleston.

12 THE COURT: So what time did he spend in Charleston if
13 his bond was revoked?

14 MR. COOPER: That was September the 3rd, 2021, through
15 March 3rd, 2023.

16 MR. SHELTON: That's when he got transferred from
17 Berkeley to Charleston, but his bond was revoked --

18 THE COURT: They'll have to hash that out as to whether
19 he's entitled to that time or not.

20 MR. SHELTON: Yes, Your Honor.

21 THE COURT: Because I don't know whether they consider
22 that time spent on the gun and the marijuana or not. I
23 don't know. And I don't want to give him any false
24 impression that somehow I have the ability or the
25 prerogative to calculate that.

1 Is there any exception to the -- I assume, Mr. Shelton
2 is going to want to have him have credit for the time he was
3 wearing the monitor. Does the State have any exception to
4 that?

5 MR. COOPER: The State does, Judge, and this is why.
6 He was arrested while out on bond for unlawful carry and
7 simple possession. He, ultimately, pled guilty to that
8 unlawful carry --

9 THE COURT: But this says he didn't have the monitor
10 until 3/3 of 2023.

11 MR. COOPER: Judge, the State would have exception
12 then. He was allowed to leave for work. Our understanding
13 is that true strict house arrest is not leaving for work.
14 Since he was allowed to leave the house, we would ask he not
15 get credit.

16 THE COURT: And what's the argument for credit, Mr.
17 Shelton?

18 MR. SHELTON: Your Honor, he had very limited abilities
19 to leave, so he, actually --

20 THE COURT: Who issued that order?

21 MR. SHELTON: Well, it's complicated, but it was Judge
22 Price.

23 THE COURT: What date is that order?

24 MR. COOPER: Judge Dennis initially, but it was Judge
25 Price that let him out in March.

1 THE COURT: What was the date of the order?

2 MR. SHELTON: It would have been March 3rd when he got
3 released, I believe, because --

4 THE COURT: Was it during Covid Judge Dennis gave him
5 house --

6 MR. COOPER: Judge Dennis initially set his bond --

7 THE COURT: Was that strict house arrest?

8 MR. SHELTON: On March 3rd, Judge Price reinstated his
9 prior bond because the State had not called the case for
10 trial or made an offer. So his bond was reinstated on March
11 3rd.

12 THE COURT: I got that part.

13 MR. SHELTON: So then it reinstated the previous bond
14 --

15 THE COURT: So Judge Dennis had placed him on house
16 arrest?

17 MR. COOPER: I've got the order right here.

18 THE COURT: What date is that order?

19 MR. COOPER: That order is 29th or 23rd of April, 2021.
20 I think it's the 23rd of April, 2021, Judge Dennis --

21 MR. SHELTON: I think it was Judge Dennis -- Judge
22 Price initially set the bond with an ankle monitor. Judge
23 Dennis is the one that took off the ankle monitor.

24 THE COURT: Okay. Amended bond order, Judge Price,
25 August 17th, 2020, he had a \$200,000 surety GPS, strict

1 house arrest, work, church, doctor, attorney. Can live with
2 his mother at 1018 Villa Court, Goose Creek. Entitled to
3 seek a bond modification after three months. The amended
4 order replaces the order of July 31st, 2020.

5 July 31st, 2020, consolidated 200,000, GPS, strict
6 house arrest, work, church, doctor, attorney. Can seek
7 modification in three months.

8 And then bond revocation was May 13th, 2021, and that
9 was by Judge Dennis. He, also, had a curfew from 6:00 p.m.
10 to 6:00 a.m. And what he states is that the Defendant was
11 arrested by the Goose Creek Police Department on May 6th,
12 2021, and charged with one count of unlawful carrying of a
13 weapon and possession with the intent to distribute
14 marijuana, and he revoked it. It's dated May 13th, 2021.
15 And that was based on the April 23rd, 2021 order, which was
16 issued by Judge Dennis, which provides that he -- previous
17 GPS is removed, strict house arrest, can only leave for
18 work, church, doctor or attorney. Curfew 6:00 p.m. to 6:00
19 a.m. and regarding certain provisions about violations. And
20 it modified a previous order from August 17th of 2020.

21 MR. COOPER: Judge, I have the sentencing sheets here.
22 I want to ask for advice on one. I've never done this.
23 Would you -- the ABHAN was reduced from attempted murder or
24 amended at trial, would you like the sentencing sheet to
25 reflect that the initial charge was ABHAN or that it was a

1 lesser included from attempted murder? I've never dealt
2 with that before.

3 THE COURT: It was amended, so I think it would be the
4 ABHAN.

5 Mr. Shelton, do you agree?

6 You would only do lesser included if it was being
7 reduced. You didn't reduce it, you amended the indictment.

8 MR. COOPER: Thank you. May I approach?

9 THE COURT: Thank you.

10 MR. COOPER: Yes, ma'am. Thank you.

11 THE COURT: All right. I've made an attempt to find
12 Judge Dennis's amended bond order that he signed August
13 17th, 2020, but for whatever reason, we can't locate it.
14 It's not in the file nor is it in the system. I can only
15 assume something happened during Covid because we were doing
16 a lot of stuff electronically. I don't know what could have
17 happened to it.

18 Anything else further from the State?

19 MR. COOPER: Yes, Judge. Judge, Your Honor has heard
20 the facts of this case. You've heard more than the jury
21 has. The jury wasn't aware, but you are of the involvement
22 of the codefendant. The codefendant did implicate Mr.
23 Marable in his statement to law enforcement. He, also, and
24 a fact the jury was not aware of, indicated that this
25 Defendant provided a handgun to Mr. Johnson.

1 So, Judge, the concern of the State, certainly, the
2 fact that he was the adult, the older, the guide of Antwan
3 Johnson, provided weapon, provided ammunition and the
4 State's opinion encouraged this behavior. Judge, this
5 Defendant, I argued to the jury, unlike Mr. Johnson didn't
6 have a motive. And, honestly, in this case, I think it
7 makes it worse.

8 The State is concerned by that behavior. The State is
9 concerned with the weapon he armed himself with and the
10 recklessness of his actions and his absolute disregard for
11 all human life in that trailer park that night. And then
12 while out on bond, picks up another unlawful carry to which
13 he pled guilty to.

14 THE COURT: When did he plead guilty?

15 MR. COOPER: It was in 2022, I believe, but it was
16 during the pendency, he picked up and was convicted of -- I
17 think we can find it in just a second for Your Honor. I
18 think he got a time-served sentence, but the fact of it that
19 he was again with a gun while out on bond for this charge is
20 very concerning to the State.

21 Judge, we are in a posture -- I know he was 18 at the
22 time and 21 now, the State is now asking this Court for a
23 life sentence, but we are asking this Court for something
24 more than the minimum. We believe the 30-year minimum is
25 not -- his conduct is not deserving of just the 30-year

1 minimum. The State, as Your Honor is aware, did make a plea
2 offer of 20 to 30 years on the manslaughter charge, which
3 would have been the controlling charge in that plea. Not
4 because so much of a deficit of the case, but as Your Honor
5 has witnessed this week, the difficulty of getting the
6 witnesses here. So, Judge, we think that more than 30 years
7 is an appropriate sentence in this case.

8 His only prior record other than that 2021 conviction
9 are two juvenile convictions out of Florida in 2015. He had
10 a burglary of unoccupied dwelling and a grand theft --

11 THE COURT: Will that be expunged from his record?

12 MR. COOPER: I don't believe so.

13 THE COURT: Why wouldn't they be? Is the law different
14 in Florida than here?

15 MR. COOPER: I don't know how the Florida system works.
16 I don't have an answer for you on that.

17 THE COURT: It works the same all over the country.
18 When you become of age, you no longer -- your record is
19 supposed to be expunged.

20 MR. COOPER: That, I don't know, Judge. I'm sorry.

21 But the State would -- again, the victims don't wish to
22 speak. They are in agreement with the State's ask.
23 Detective Pritchard does not wish to speak, but he is, also,
24 in agreement with the State's request.

25 Your Honor, given the facts of the case, given the

1 callousness of the Defendant's actions, again, Judge, the
2 testimony and the facts of the case of not only of the
3 riding around, but the Defendant guiding the vehicle and
4 driving Mr. Johnson himself around looking for, so not much
5 a lying in wait, but a hunt. This Defendant had time, ample
6 time to consider his actions. Had ample time to deescalate
7 and chose murder, chose violence, chose a repeated barrage
8 of bullets at Mr. Reid, Mr. Simmons and, ultimately,
9 striking Mr. Jimenez as well. So, Judge, we respectfully
10 request this Court -- August 31st, 2021, I believe, is the
11 date of conviction of that burglary charge, the unlaw carry.

12 Again, Judge, in the totality of the circumstances and
13 given everything that has been admitted this week and that
14 the Court has seen, the State would respectfully ask that
15 you sentence this Defendant to more than the 30-year minimum
16 day-for-day sentence. Thank you.

17 THE COURT: You're welcome.

18 Mr. Shelton, I'll be glad to hear from you.

19 MR. SHELTON: Thank you. May it please the Court?

20 THE COURT: You're welcome.

21 MR. SHELTON: Judge, obviously, I've known Alonza and
22 have been representing him since almost about the time that
23 he was arrested. I was appointed as a conflict case in the
24 public defender's office. So I haven't sought to get any
25 more money and I'm not trying to toot my own horn, but --

1 THE COURT: Yeah, I thought it might be a conflict
2 case.

3 MR. SHELTON: And it's for Alonza, Judge. I probably
4 could have gotten off the case at some time given my private
5 practice and where I went, but I --

6 THE COURT: Oh, I understand what you're saying now.

7 MR. SHELTON: So, Your Honor, Alonza, when he first
8 bonded out, he was on the ankle monitor. At that point in
9 time, I did wait some time to ask for it to be released
10 because I wanted to see how well he was doing. We got all
11 the reports. He was working two jobs at that point in time
12 that he was on that first ankle monitor, Judge. Carlos
13 Dunlap, who passed away, but he -- when Alonza picked up the
14 new charge wrote letters on his behalf saying that he was
15 willing to stay on the bond even with the new charges
16 because that's how much he got to know Alonza and cared
17 about him and wanted to be there and support him.

18 Judge, that time he spent in jail that second time, the
19 659 days, was difficult for Alonza. It was difficult for
20 the case. It was difficult for me and his relationship.
21 There was other people in the jail that had a lot of
22 influence. But, Judge, the second time he got out, the last
23 101 days, every time I called him, he was working and then
24 the next half of his day, he was babysitting his kids and
25 his sister's kids.

1 THE COURT: How many children does he have?

2 MR. SHELTON: He has two kids, Your Honor.

3 THE COURT: What are their ages?

4 MR. SHELTON: Three and -- two and one, Judge. So his
5 kids were a lot of what was thought about in accepting
6 offers and negotiating because he was -- he understand what
7 this punishment could mean. And at the 30 years, he
8 wouldn't be able to be there for his kids and he was willing
9 to take that chance knowing that he had a chance to
10 influence his kids in a positive light and to be there. And
11 I think that shows how much he has grown up since this time.

12 So, Judge, I respectfully ask Your Honor since it is a
13 day-for-day, he knows that, for the 30 years day-for-day.

14 THE COURT: Does he wish to say anything for the
15 record?

16 THE DEFENDANT: Yes, Your Honor, I would like to
17 address the Court.

18 THE COURT: Yes, sir.

19 THE DEFENDANT: I just ask that you show leeway and
20 that, you know, you be mindful of the circumstances that Mr.
21 Shelton was just telling you about my kids, about how I'm a
22 different person now than I was at the time of this incident
23 and how I've grown. I just want to be there for my kids. I
24 just ask that you show leeway when you decide your sentence.

25 Thank you, Your Honor.

1 THE COURT: You're welcome, sir.

2 Sir, if you would stand for sentencing.

3 (Defendant stands.)

4 THE COURT: On the offense of assault and battery of a
5 high and aggravated nature, sir, you're sentenced to the
6 State Department of Corrections for a period of 15 years.
7 You'll get credit for any time that you've served pursuant
8 to 24-13-40. It will be calculated and applied by the
9 Department of Corrections. I'm, also, going to give you
10 credit for the time that you spent on monitored house arrest
11 from 3/3 of 2023 to 6/12 of 2023. Again, those terms will
12 be calculated by the Department of Corrections and I've
13 ordered the ATU that is available to you.

14 On the offense of murder, sir, you're sentenced to the
15 State Department of Corrections for a period of 30 years.
16 You'll get credit pursuant to 24-13-40 to be calculated and
17 applied by the Department of Corrections. Likewise, you'll
18 get credit for the monitored house arrest from 3/23 of 2023
19 to 6/12 or 2023.

20 These sentences are concurrent with one another. I've,
21 also, ordered the ATU.

22 Thank you very much.

23 MR. SHELTON: Thank you, Your Honor.

24 (WHEREUPON, Court's Exhibits 8 and 9 were marked for
25 identification only.)

CERTIFICATE OF TRANSCRIBER

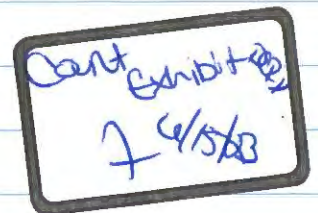
I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

December 5, 2023

Penny M. Johnson
Penny M. Johnson
Transcriber

1. What weapon was associated with the projectile found in Mr. Jimenez' trailer/head injury?
2. To be clear, was a 40 caliber pistol ever recovered (that was used at the scene)?
3. At the Emden House, ~~there~~ did they interview anyone else from that night to identify the driver?

Allyson Jenkins
6/15/23



DOCKET NO. 2023-GS-10-01994

The State of South Carolina
County of Charleston

FILED

4/6/2023 4:47:54 PM
JULIE J. ARMSTRONG
CLERK OF COURT

COURT OF GENERAL SESSIONS

APRIL TERM 2023

THE STATE

VS.

ALONZA DONTA MARABLE, JR.

A.K.A. Alonza Dontae Marable Jr

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

DWC/0367451
WITNESSES

North Charleston Police Department

Chris Ross

AGENCY CASE NUMBER

2020-011024

ARREST WARRANT NUMBER

2020A1010202192

DATE OF ARREST

04/21/2020

ACTION OF GRAND JURY
TRUE BILL

APR 04 2023

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2023, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about April 18, 2020, the Defendant, Alonza Donta Marable Jr., did, with intent to kill and malice aforethought, attempt to kill Martin Jimenez. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DANIEL WEST COOPER
ASSISTANT SOLICITOR

DOCKET NO. 2023-GS-10-01995

The State of South Carolina
County of Charleston

FILED

4/6/2023 4:47:54 PM
JULIE J. ARMSTRONG
CLERK OF COURT

COURT OF GENERAL SESSIONS

APRIL TERM 2023

THE STATE

VS.

ALONZA DONTA MARABLE, JR.
A.K.A. Alonza Dontae Marable Jr
B/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

DWC/0367451

WITNESSES

North Charleston Police Department

Chris Ross

AGENCY CASE NUMBER

2020-011024

ARREST WARRANT NUMBER

2020A1010202193

DATE OF ARREST

04/21/2020

ACTION OF GRAND JURY
TRUE BILL

[Signature] APR 04 2023
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2023, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about April 18, 2020, the defendant, Alonza Donta Marable Jr. with malice aforethought did kill and murder LR [REDACTED] Jr. by means of shooting him, and Lanelle [REDACTED] Jr. did die in Charleston County as a proximate result thereof on or about April 18, 2020 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

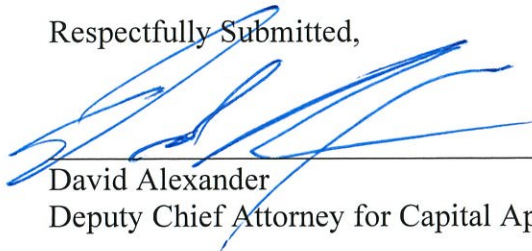


DANIEL WEST COOPER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Feb 11 2025

SC Court of Appeals

This 11th day of February, 2025.

RECEIVED

Feb 11 2025

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.

ALONZA D. MARABLE,

APPELLANT

APPELLATE CASE NO. 2023-000988

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 11th day of February, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT