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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-000184

Tristian Cummings, #344693 , ... Appellant,
v.
State of South Carolina, ... Respondent.

APPENDIX

VOLUME II

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SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. So instead of saying the back door, would that be safe
2 to say that is the side door?

3 A. Side door, sir.

4 Q. All right. And is that where Mr. Cummings was?

5 A. Yes, sir.

6 Q. Do you know if there was a back door in that place?

7 A. You said did I know?

8 Q. Yeah. Did you know?

9 A. Yes, sir. I know because I got the same kind of
10 apartment.

11 Q. Okay. Tell us about that. Where is the back door?

12 A. On the side.

13 Q. Okay. Are there more than two doors into that duplex?

14 A. Yes, sir.

15 Q. Where's the -- where's the third door, then?

16 A. No, it's only two doors.

17 Q. So it's only two doors?

18 A. Yes, sir.

19 Q. Is there a front door?

20 A. Yes, sir.

21 Q. Is there a side door?

22 A. Yes, sir.

23 Q. Is there a back door ---

24 A. No, sir.

25 Q. --- to 34 Burgess?

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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- 1 A. No, sir.
- 2 Q. Is there a back door to [REDACTED]?
- 3 A. No, sir.
- 4 Q. All right. Thank you. So you were -- Mr. Cummings is
- 5 at the side door. Tell the jury what he's doing.
- 6 A. Kicking the door, sir.
- 7 Q. Was he kicking it? And how many times is he kicking
- 8 it? Is this loud? Tell them about it. They weren't there.
- 9 Tell them what it sounded like.
- 10 A. It was a loud noise.
- 11 Q. And what did you do during this time period?
- 12 A. I was right behind him.
- 13 Q. You're standing behind him?
- 14 A. Yes, sir.
- 15 Q. Did you know that Mr. White was calling the police?
- 16 A. No, sir.
- 17 Q. Cincinnati?
- 18 A. No, sir.
- 19 Q. How many times do you think he kicked the door?
- 20 A. I don't know, sir.
- 21 Q. What did -- what happened to the door?
- 22 A. The door got kicked in.
- 23 Q. Did it get kicked into the -- to the kitchen?
- 24 A. Yes, sir.
- 25 Q. And what did you two do at that point?

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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- 1 A. Ran in, sir.
- 2 Q. And so you both went into the house at that time?
- 3 A. Yes, sir.
- 4 Q. Or the duplex. And who had the gun?
- 5 A. (Witness pointed to the Defendant).
- 6 Q. Who?
- 7 A. Tristian.
- 8 Q. Tristian Cummings?
- 9 A. (Affirmative nod).
- 10 Q. Okay. And what were you going in that house at that
- 11 time to do?
- 12 A. Look for drugs and money, sir.
- 13 Q. So you were trying to rob Mr. White?
- 14 A. Yes, sir, I was.
- 15 Q. And what were you -- where -- when you got into the
- 16 home, where did you go in the home? What did you do?
- 17 A. I was in the kitchen looking through cabinets.
- 18 Q. Were you opening all of them?
- 19 A. Yes, sir.
- 20 Q. Did you throw any -- things around in there?
- 21 A. Think so, sir.
- 22 Q. Were you slamming any cabinets?
- 23 A. Yes, sir.
- 24 Q. Where was Tristian Cummings?
- 25 A. I think he was by the bathroom.

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Now you said your apartment -- your duplex is the same
2 as 34 Burgess.

3 A. Yes, sir.

4 Q. So when you're in the kitchen, how far away from the
5 kitchen is the bathroom?

6 A. Not too far, sir.

7 Q. Three, four feet?

8 A. Yes, sir.

9 Q. And he's down there. What is he doing? What is he
10 doing down that hall?

11 A. He shot the man.

12 Q. Is he saying anything?

13 A. No, sir.

14 Q. Is he beating on the door down there?

15 A. No, sir.

16 Q. Did you see what he was doing down there?

17 A. No, sir.

18 Q. So you stayed in the kitchen -- your testimony is you
19 stayed in the kitchen the whole time?

20 A. Yes, sir. And it happened so fast, the police came.

21 So we -- we wasn't even in there that long.

22 Q. So the police were there very quickly?

23 A. Yes, sir.

24 Q. How many gunshots did you hear?

25 A. I don't remember, sir.

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. No idea?

2 A. No, sir.

3 Q. Did you hear any screaming?

4 A. No, sir.

5 Q. Now you said the police got there quickly. Is that
6 right?

7 A. Yes, sir.

8 Q. And where were you when the police got there?

9 A. I was in the kitchen.

10 Q. And what kind of clothing did you have on, do you
11 remember?

12 A. I had a red and white sweater on, hoodie.

13 Q. Do you remember what Tristian Cummings had on?

14 A. No, sir.

15 Q. I'll show you State's exhibit 16. Is this accurate for
16 what you had on?

17 A. Yes, sir.

18 Q. Is that, in fact, you?

19 A. Yes, sir.

20 Q. Is that when you were down at the detention center?

21 A. Yes, sir.

22 Q. Now when the police get there and you're in the
23 kitchen, what do they say to you?

24 A. Tell me to put my hands up.

25 Q. And do you do that?

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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- 1 A. Yes, sir.
- 2 Q. Do you remember where you're standing in the kitchen
- 3 when they come in?
- 4 A. No, sir.
- 5 Q. And do you put your hands up?
- 6 A. Yes, sir.
- 7 Q. When you're in the kitchen with your hands up does
- 8 anyone run behind you?
- 9 A. Yes, sir.
- 10 Q. Who ran behind you?
- 11 A. Tristian, sir.
- 12 Q. And where did he go?
- 13 A. Went out the front door.
- 14 Q. And that's the front door, 34 Burgess?
- 15 A. Yes, sir.
- 16 Q. And Tristian Cummings, you know that for a fact he ran
- 17 behind you?
- 18 A. Yes, sir.
- 19 Q. And did you see him go out the door?
- 20 A. No, sir.
- 21 Q. Well, you were standing right there. How did you not
- 22 see him?
- 23 A. Because I was facing the cops. I had my hands up.
- 24 Q. So you were looking at him?
- 25 A. Yes, sir.

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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- 1 Q. Did you see him put down a gun?
- 2 A. No, sir.
- 3 Q. But no question he came down that hall?
- 4 A. Yes, sir.
- 5 Q. After he went out that door what did you -- what
- 6 happened to you next?
- 7 A. I got handcuffed, sir..
- 8 Q. And how long -- and were you taken out of the house?
- 9 A. Yes, sir.
- 10 Q. Was anyone else in that house with you besides Tristian
- 11 Cummings?
- 12 A. No, sir.
- 13 Q. Was anybody else a part of this armed robbery,
- 14 burglary, first, ---
- 15 A. No, sir.
- 16 Q. --- murder?
- 17 A. No, sir.
- 18 Q. No one else?
- 19 A. No, sir.
- 20 Q. No one else talked about it?
- 21 A. No, sir.
- 22 Q. Discussed it?
- 23 A. No, sir.
- 24 Q. Now you were charged with the same charges that Mr.
- 25 Cummings faced, is that correct?

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yes, sir.

2 Q. And you also had a domestic violence charge, I believe.

3 Is that correct?

4 A. Yes, sir.

5 Q. Now in June of '16 did you make a statement to

6 Investigator Fortner along with your attorney? Is that --

7 did you do that?

8 A. Yes, sir.

9 Q. With your attorney, Mr. Joe Watson?

10 A. Yes, sir.

11 Q. Did he accompany you to make that statement?

12 A. Yes, sir.

13 Q. And what you said in that statement today, is that the

14 same as your testimony here? The same stuff you said in

15 June of '16, is that what you're telling this Court here

16 today?

17 A. Yes, sir.

18 Q. Now, you said that this was going to be an armed

19 robbery, that's what it was going to be.

20 A. (Affirmative nod).

21 Q. Did you ever tell the police that you thought this

22 could be a burglary?

23 A. Yes, sir.

24 Q. Did you clear that up with law enforcement? Did you

25 tell them -- tell them that you actually meant it was going

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 to be an armed robbery?

2 A. No, sir.

3 Q. Well you're telling the jury here today that you ---

4 A. Oh, yeah, yeah, yeah, yes, sir.

5 Q. All right. How did you know that Mr. White would be at
6 home?

7 A. Because I know he was on house arrest.

8 Q. So he had to be at home?

9 A. (Affirmative nod).

10 Q. Now you have an unlawful carrying a pistol on your
11 record where you paid a fine, is that right?

12 A. Yes, sir.

13 Q. And you already pled guilty to voluntary manslaughter
14 and burglary, first, is that correct?

15 A. Yes, sir.

16 Q. And you've received a deferred sentence until after you
17 testified, is that correct?

18 A. Yes, sir.

19 Q. Did you plead guilty to those charges because you were
20 part of the plan that caused -- that resulted in Mr. White's
21 death? Is that why you pled guilty to those charges?

22 A. Yes, sir.

23 Q. Have you been promised any particular sentence for
24 testifying here today?

25 A. No, sir.

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Is there any additional information you need to tell
2 this jury about what happened on 34 Burgess?

3 A. No, sir.

4 Q. I'm going to ask you is the person that you planned the
5 armed robbery and burglary with and whose actions resulted
6 in the death of Mr. White, is he in the courtroom here
7 today?

8 A. Yes, sir.

9 Q. Will you point him out for the jury?

10 A. (Witness pointed to the Defendant).

11 Q. Is he sitting -- what's he wearing?

12 A. White shirt, sir.

13 Q. And is that Tristian Cummings?

14 A. Yes, sir.

15 Q. And is that who was with you?

16 A. Yes, sir.

17 Q. Is that the same person that ran out -- ran out the
18 side, excuse me, ran out the front door?

19 A. Yes, sir.

20 Q. Any question about that?

21 A. No, sir.

22 Q. Were you able to -- I'm going to back you up just one
23 second. Were you able to find anything of value in the
24 short time you were in Mr. White's home?

25 A. No, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. But you were going there for -- for what purpose? What
2 were y'all trying to get?

3 A. Money, sir.

4 Q. All right.

5 **THE COURT:** Cross-examination.

6 **MR. RICHEY:** Thank you, Your Honor.

7 **THE COURT:** Mr. Richey.

8 **Cross-Examination by Mr. Richey:**

9 Q. Sir, you -- you killed this man, didn't you?

10 A. No, sir.

11 Q. You -- you -- you intentionally killed this guy that
12 night, correct?

13 A. No, sir.

14 Q. You -- you pled to voluntary manslaughter, right?

15 A. Yes, sir.

16 Q. Okay. And you had a lawyer, right?

17 A. Yes, sir.

18 Q. And you stood right here in front of a judge, right?

19 A. (Affirmative nod).

20 Q. You have to answer. Did you?

21 A. Yes, sir.

22 Q. And in front of that judge you pled guilty to
23 intentionally killing this man, correct?

24 A. No, sir.

25 Q. Okay. You had a lawyer, right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 A. Yes, sir.

2 Q. Did that lawyer tell you what the elements of voluntary
3 manslaughter was?

4 A. Yes, sir.

5 Q. And he told you the elements of it that you -- you
6 intentionally killed the man, is that correct?

7 A. Yes, sir.

8 Q. And you stood up and told that judge you done that?
9 Right?

10 A. (No response).

11 Q. Huh?

12 A. I didn't do it.

13 Q. What? Excuse me?

14 A. I said I ain't do it.

15 Q. But you told the judge you did it. But you're telling
16 everybody now you didn't do it, right?

17 A. Um-hum (affirmative).

18 Q. Okay. Huh? You got to answer. Did you -- that's what
19 you told him, right?

20 A. Yeah.

21 Q. So you came in this court, you put your right hand up
22 and swore in front of the judge, correct?

23 A. (Affirmative nod).

24 Q. You got to answer yes or no.

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And you had a lawyer, Mr. Watson, representing you,
2 right?

3 A. Yes, sir.

4 Q. And you're telling this Court and everybody that you
5 lied to that judge, right?

6 A. No, sir.

7 Q. Huh?

8 A. No, sir.

9 Q. You told that -- you said you didn't kill that man,
10 right?

11 A. Hands of one, hands of all.

12 Q. Okay. Let me go back and ask you again. You pled to
13 killing that man, right?

14 A. Yes, sir.

15 Q. And you're telling this jury now you did not kill this
16 man, correct?

17 A. (Affirmative nod).

18 Q. You got to answer yes or no.

19 A. Yeah.

20 Q. And ---

21 **MR. McMASTER:** Your Honor, he's asked that question
22 about four times. He's ---

23 **MR. RICHEY:** No, ---

24 **THE COURT:** I'll ---

25 **MR. McMASTER:** --- already answered it.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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- 1 **THE COURT:** --- allow him -- you can go forward.
- 2 Q. You also burglarized this man's house, right?
- 3 A. Yes, sir.
- 4 Q. You did that, right?
- 5 A. (Affirmative nod).
- 6 Q. Right?
- 7 A. Yes, sir.
- 8 Q. And -- and -- and this is a area that you are more
- 9 familiar with than Mr. Cummings, correct?
- 10 A. Yes, sir. Yes, sir.
- 11 Q. Okay. Because you live in this proximity to this
- 12 gentleman, right?
- 13 A. Yes, sir.
- 14 Q. So Mr. Cummings don't live there. You had to go bring
- 15 Mr. Cummings there, correct? He had to get there, right?
- 16 A. Yes, sir.
- 17 Q. Okay. And Little Twin, who is that?
- 18 A. Who?
- 19 Q. Little Twin?
- 20 A. Little 20?
- 21 Q. Yeah, is that one of your friends?
- 22 A. Yes, sir.
- 23 Q. Okay. And Little Twin, the three of y'all were there
- 24 that night, right?
- 25 A. No.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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- 1 Q. Little Twin -- Little 20 ---
- 2 A. Twenty.
- 3 Q. --- is a friend of yours, right?
- 4 A. Yes, sir.
- 5 Q. Okay. And you said that you were in that house that
- 6 night that the police officer was there, right?
- 7 A. Yes, sir.
- 8 Q. You were in that house? And you said that you did not
- 9 see Mr. Cummings put down a gun, right?
- 10 A. Yes, sir.
- 11 Q. And you were right there in that house, right?
- 12 A. (No response).
- 13 Q. Right?
- 14 A. (Affirmative nod).
- 15 Q. You have to answer ---
- 16 A. Yeah.
- 17 Q. --- yes or no. Huh?
- 18 A. Yeah.
- 19 Q. So if somebody put down a gun in that house that night,
- 20 it wasn't Tristian Cummings, right?
- 21 A. (No response).
- 22 Q. Right?
- 23 A. (No response).
- 24 Q. Right?
- 25 A. Man, he -- he had the gun, man.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. No, that's not what I'm asking you. I'm asking you if
2 somebody put a gun down in front of you that night, you
3 didn't see nobody with no gun that night, right? You didn't
4 see Mr. Cummings put that gun down, did you?

5 A. I didn't see him put the gun down, ---

6 Q. Okay.

7 A. --- but I know he had the gun ---

8 Q. Okay. So -- so you -- you were arrested in that house,
9 right? In that kitchen by that counter, right? Right?

10 A. Yeah.

11 Q. Okay. And if somebody put a gun down in front of you
12 that night, it wasn't Tristian Cummings, was it?

13 A. Yeah, it was.

14 Q. Oh, so now you saw somebody put a gun down?

15 A. Nah, man, ...

16 Q. You testified you did not see Tristian Cummings put a
17 gun down, correct?

18 A. I know he had the gun, though.

19 Q. That's not what I'm asking you. I'm asking you, you
20 did not see him put that gun down, correct?

21 A. No, I didn't see him ---

22 Q. Okay.

23 A. --- put the gun down.

24 Q. So if somebody put a gun down in that house that night
25 from where you're from, it wasn't Mr. Cummings, correct?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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- 1 A. It was him.
- 2 Q. You gave a recorded statement, right? You and Mr.
- 3 Watson, right?
- 4 A. Um-hum (affirmative).
- 5 Q. Right? In that recorded statement you said you didn't
- 6 go in that house, right?
- 7 A. No, I didn't say that.
- 8 Q. Okay. You never said you did not go in that house?
- 9 A. I did go in the house.
- 10 Q. Okay. But you never gave a statement that said you
- 11 didn't?
- 12 A. No.
- 13 Q. Did you give a statement saying that a dog was shot in
- 14 that house?
- 15 A. No.
- 16 Q. Okay. You never said you stood in the road?
- 17 A. No.
- 18 Q. And we talked about this house being the side door and
- 19 back door. Really this side door is considered the back
- 20 door, correct?
- 21 A. (Affirmative nod).
- 22 Q. Yeah? You got to answer yes or no because ---
- 23 A. Yeah.
- 24 Q. --- she's got to take it down. That's considered the
- 25 back door. And you're saying here, right here, this side

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 door is kicked in, right?

2 A. Yes, sir.

3 Q. And when you went to that front door that night and you
4 knocked on it, he closed the door back, correct?

5 A. Yeah. Yes, sir.

6 Q. He said -- he said, don't come in here. And he closed
7 the door back, right?

8 A. Yes, sir.

9 Q. So -- and when all this kind of went off -- when it all
10 kind of happened, it happened really quick, correct?

11 A. Yes, sir.

12 Q. And y'all were actually surprised that the police were
13 around the home, correct?

14 A. Yes, sir.

15 Q. And it was multiple police around that house, right?

16 A. Yes, sir.

17 Q. Okay. So -- so when you're in the house and the cop
18 has you in the house, right?

19 A. (Affirmative nod).

20 Q. That house has, unbeknownst to you, has got police all
21 around it, right?

22 A. (Affirmative nod).

23 Q. You got to answer yes or no.

24 A. Yes, sir.

25 Q. Okay. And -- and this front door, this front door,

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 okay, this front door was closed at the time that you were
2 in that house, correct?

3 A. Yes, sir.

4 Q. Huh?

5 A. Yes, sir.

6 Q. Okay. So -- so an individual, to get away from --
7 individual to get out of that house, he's got to open that
8 front door, correct?

9 A. Yes, sir.

10 Q. Right?

11 A. Yes, sir.

12 Q. Okay. And at the time that individual is trying to get
13 out of that house and get away that quickly, what that
14 individual don't know is we got police all around here,
15 right?

16 A. Yes, sir.

17 Q. And so if a individual went out the front of that house
18 that night, then he would encounter these police right here
19 because they're already set up, right?

20 A. Um-hum (affirmative).

21 Q. Right?

22 A. Yes, sir.

23 Q. And you saw them when you -- you said, oh, my God, all
24 these police out here, right?

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And you didn't know that they pretty much were around
2 this house, right?

3 A. (No response).

4 Q. Right?

5 A. Um-hum (affirmative).

6 Q. Okay. And so the person who -- who go out the front
7 ---

8 **MR. McMASTER:** I object. He can't -- he's asking that
9 he saw -- if he was inside and he saw the police around the
10 outside of the house. He said no ---

11 **THE COURT:** What is your objection? You can't have a
12 ---

13 **MR. McMASTER:** Your Honor, ---

14 **THE COURT:** --- speaking objection.

15 **MR. McMASTER:** --- it's an improper question. And ---

16 **THE COURT:** Overruled. You can go ahead.

17 Q. And -- and -- and so -- so from where you're sitting,
18 right? Where you're sitting, because the police got there
19 so quick, correct?

20 A. Yes.

21 Q. So quick, okay, that -- and you're familiar with this
22 area, correct?

23 A. Yes, sir.

24 Q. Very familiar.

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And you know back in here where all the kudzu and all
2 that stuff is, right?

3 A. Yes, sir.

4 Q. Right? You know that a person, to go out that front
5 door, he'd have to go -- he'd have to go out here and he'd
6 have to go around here or around there, right?

7 A. (Affirmative nod).

8 Q. Right?

9 A. Yes, sir.

10 Q. And the day that you were there you would say that's
11 impossible because the police was there, right?

12 A. Yes, sir.

13 Q. Right? And so -- so you would think because of the
14 distance the person would have to go out of that house, the
15 distance that he would have to run because that's, you know,
16 it looks short, but that's a good distance, not far, but
17 it's a distance to get back here, right?

18 A. Yes, sir.

19 Q. Right?

20 A. Yes, sir.

21 Q. Okay. And -- and either way -- either way, right?

22 A. (No response).

23 Q. So for somebody to get out of that door and to get down
24 there quickly, they'd have to have a head start, wouldn't
25 you say?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 A. Yes, sir.

2 Q. That they would have to be there at the door and, boom,
3 gone, quick, almost before the police got there, right?

4 A. Um-hum (affirmative).

5 (Pause)

6 Q. Right?

7 A. (No response).

8 (Pause)

9 Q. Right?

10 A. (No response).

11 Q. Let me ask you this again. Someone getting out that
12 front door with the police standing right there, that would
13 not be a reasonable thing to believe they'd get past all
14 those cops, correct?

15 **MR. McMASTER:** Objection. Speculation.

16 **THE COURT:** Sustained.

17 **MR. McMASTER:** Thank you.

18 Q. And there's no doubt in your mind -- there's no doubt
19 in your mind that that house was surrounded, right? By
20 police?

21 A. It was.

22 Q. Huh?

23 A. It was.

24 Q. Okay. Okay. And -- and this is an area that you're
25 familiar with, right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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- 1 A. Um-hum (affirmative).
- 2 Q. And -- and somebody who is unfamiliar with this area
- 3 because you know that all these kudzu and all this stuff
- 4 back there? You know that, right?
- 5 A. I don't know no kutch (ph.).
- 6 Q. Excuse me?
- 7 A. I don't know no kutch.
- 8 Q. You -- no. You know the terrain or how this land is
- 9 laid back here, right?
- 10 A. Um-hum (affirmative).
- 11 Q. Right?
- 12 A. (Affirmative nod).
- 13 Q. And you know that -- that that's not a place that you
- 14 would run to to get away, right?
- 15 A. (No response).
- 16 Q. That's -- that's -- that wouldn't be the easier path,
- 17 right?
- 18 A. (No response).
- 19 Q. Well, let me ask you this. When you walk here do you
- 20 walk back this way?
- 21 A. No.
- 22 Q. This is the easier path, right?
- 23 A. (Affirmative nod).
- 24 Q. Right?
- 25 A. Yeah.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And you know that?

2 A. (Affirmative nod).

3 Q. So -- so just you, we're talking about you, if you had
4 the intentions to try to get away from somebody, you would
5 probably take the clearer route, correct?

6 A. (Affirmative nod).

7 Q. Correct?

8 A. Yeah.

9 Q. 'Cause you're from there and you know the landscape,
10 right?

11 A. (Affirmative nod).

12 Q. But when somebody's there that don't know the landscape
13 and know the terrain, they -- they don't take that way
14 because they may not -- let me rephrase it. They're prone
15 to take a route you wouldn't take, right?

16 A. (Affirmative nod).

17 Q. Right?

18 **MR. McMASTER:** Again, speculation. He has no way to
19 know what someone else might want to do.

20 **THE COURT:** I'll allow him to ask.

21 Q. In planning -- in planning this crime -- you say you
22 planned it, right?

23 A. (Affirmative nod).

24 Q. You the -- you the guy that came up with all this,
25 right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 A. Yes, sir.

2 Q. So if you don't come up with all this, this guy might
3 still be alive, right? If you don't come up with it, right?

4 A. (No response).

5 Q. Right?

6 A. (No response).

7 Q. You could have not planned this, right?

8 A. (Affirmative nod).

9 Q. Right?

10 A. Yeah.

11 Q. Okay. And -- and -- and so all the planning and
12 centerfold and the know -- and the knowhow came from you,
13 right?

14 A. Yes, sir.

15 Q. And -- and this is somebody that you live close to,
16 right?

17 A. Yes, sir.

18 Q. This is somebody that you know the type of business
19 they're in, right?

20 A. Yes, sir.

21 Q. Right?

22 A. Yes, sir.

23 Q. And -- and -- and so -- so your main thing, you didn't
24 need anybody to tell you how to get in this man's house, did
25 you?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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- 1 A. Uh-uh (negative).
- 2 Q. You didn't need to get -- you didn't need nobody to
- 3 tell you that this man sold drugs, right?
- 4 A. (Negative nod). No.
- 5 Q. You didn't need nobody to tell you at all that he may
- 6 have money in there? Right?
- 7 A. Uh-uh (negative).
- 8 Q. Right?
- 9 A. No.
- 10 Q. Okay. And so this -- this idea started with you?
- 11 A. Yes, sir.
- 12 Q. Not with Tristian Cummings, right?
- 13 A. Um-hum (affirmative). Yes, sir.
- 14 Q. Okay. And in that car and all that drive you talking
- 15 about guns, you and Tristian Cummings were not the only two
- 16 people in that car, correct?
- 17 A. Um-hum (affirmative).
- 18 Q. Huh?
- 19 A. Yes, sir.
- 20 Q. Okay. Who was in that car?
- 21 A. Two friends, sir.
- 22 Q. Was -- was Little Twin one of them?
- 23 A. No, Little 20 dead, sir.
- 24 Q. Oh, he's dead now?
- 25 A. Well, he's deceased. That's my friend.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. Excuse me?

2 A. He's deceased, sir.

3 Q. Okay. All right. But you did have two other people in
4 that car?

5 A. Yes, sir.

6 Q. And -- and you -- that was during the planning stages,
7 right?

8 A. No, sir.

9 Q. You planned that the day before?

10 A. No, I planned it at my house that night.

11 Q. So you're testifying and you say you weren't promised
12 anything, correct?

13 A. Um-hum (affirmative).

14 Q. You're not -- you say you weren't promised anything,
15 correct? Nothing at all, right?

16 A. (Negative nod).

17 Q. So you just decided to come to court today and say now
18 I'm going to tell the truth, today?

19 A. Been told the truth.

20 Q. Okay. So -- so -- so when you were arrested you told
21 them that you were there to rob him, right?

22 A. No, I told them it was a burglary, but ---

23 Q. Okay.

24 A. --- same thing.

25 Q. Okay. Robbery and burglary the same thing. Is that

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 what you're saying?

2 A. Yeah.

3 Q. Okay. And -- and you're facing, on these charges,
4 burglary -- you pled to burglary, first, right?

5 A. (Affirmative nod).

6 Q. Right?

7 A. Yes, sir.

8 Q. Okay. And that potential sentence is 15 years to life,
9 correct?

10 A. Yes, sir.

11 Q. You don't expect to get a life sentence, do you?

12 A. No, sir.

13 Q. You expect, because you came here today and cooperated
14 with the State, you expect them to do something for you,
15 right?

16 A. No, sir.

17 Q. You -- so -- so you don't expect to get a life
18 sentence?

19 A. (Witness shrugged).

20 (Pause)

21 **MR. RICHEY:** One moment.

22 (Pause)

23 **MR. RICHEY:** No other questions for him.

24 **THE COURT:** Redirect.

25 **MR. McMASTER:** Yes, Your Honor.

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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1 Redirect Examination by Mr. McMaster:

2 Q. When the police came to that house, where were you
3 located?

4 A. Kitchen, sir.

5 Q. So is it safe to say you don't know where anybody was
6 standing outside as far as the police are concerned?

7 A. Um-hum (affirmative).

8 Q. Did you see any other police besides the one that had
9 the gun on you?

10 A. No, sir, but I know they was out there.

11 Q. How did you know that?

12 A. I heard sirens and lights.

13 Q. Okay. But you didn't see anybody. You don't know
14 where they were standing?

15 A. No, sir.

16 Q. You don't know if there was one standing over here, or
17 up the road. You don't know, do you?

18 A. No, sir.

19 Q. You don't know if those lights and sirens were people
20 coming to the scene. You don't know that, do you?

21 A. No, sir.

22 Q. And you said you are from this area and if you were
23 trying to run away, you would have probably run back down
24 Burgess?

25 A. Yes, sir.

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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1 Q. Is Tristian Cummings from this area?

2 A. No, sir.

3 Q. So running back down in there, he wouldn't know kind of
4 where to go, just to run?

5 A. Yes, sir.

6 Q. Did you have the gun that night?

7 A. No, sir.

8 Q. Did you both need money?

9 A. Yes, sir.

10 Q. Is that why this robbery plan was come up with?

11 A. Yes, sir.

12 Q. Did anyone else have a gun that night?

13 A. No, sir.

14 Q. Was anybody else in that house with you?

15 A. No, sir.

16 Q. Now, if you were going out the front door and unlocked
17 -- unlocking the front door to get out, you might need both
18 hands to do that, couldn't you?

19 A. Yes, sir.

20 Q. And when the police officer's there with a gun in your
21 face, pointing the gun at you, are you looking at who's
22 going out the front door?

23 A. No, sir. I was looking at the officer.

24 Q. You were looking at the pistol is what you ---

25 A. Looking at the ---

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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1 Q. --- were looking at.

2 A. --- pistol.

3 Q. And this story that you've told the -- your testimony
4 here today that you've told this jury, is this essentially
5 the same as what you told the police back in June of 2016?

6 A. Yes, sir.

7 Q. So almost three years ago?

8 A. Yes, sir.

9 Q. The same information?

10 A. Yes, sir.

11 Q. Except about the burglary versus the armed robbery?

12 A. Yes, sir.

13 Q. To be clear?

14 A. Yes, sir.

15 Q. And you mentioned something you came up here and you
16 pled guilty.

17 A. Yes, sir.

18 Q. You pled guilty. And when he was talking to you about
19 that, using a lot of legal terms, you didn't understand all
20 those, did you?

21 A. I didn't, sir.

22 Q. But you used one. You said a hand of one is a hand of
23 all.

24 A. Yes, sir.

25 Q. Where does that -- what did that mean to you?

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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- 1 A. (No response).
- 2 Q. What does that mean to you?
- 3 A. (Negative nod).
- 4 Q. What do you think it means?
- 5 A. I don't know, sir.
- 6 Q. Well, what did you say it for?
- 7 A. (Witness shrugged).
- 8 Q. Is that why you pled guilty under that?
- 9 A. Yes, sir.
- 10 Q. Did you plead guilty because you were involved in this?
- 11 A. Yes, sir.
- 12 Q. And do you plead guilty because you took part in this?
- 13 A. Yes, sir.
- 14 Q. That you conspired to do this?
- 15 A. Yes, sir.
- 16 Q. And did you take part in this because of this robbery
- 17 and this burglary that you and Tristian Cummings were
- 18 involved in, it led to the death of Mr. White?
- 19 A. Yes, sir.
- 20 Q. Is that what went on?
- 21 A. Yes, sir.
- 22 Q. So you were a part of that?
- 23 A. Yes, sir.
- 24 Q. But you're telling this jury today you never had the
- 25 gun and you never -- and you never shot anybody?

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yes, sir.

2 Q. But you were in close proximity to Tristian Cummings
3 when he fired that gun?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes, sir.

7 **MR. McMASTER:** That's all, Your Honor.

8 **THE COURT:** All right. You may step down. You may
9 call your next witness.

10 **MR. McMASTER:** Thank you, Your Honor. I'm going to
11 call Deputy Nunez, please.

12 **THE COURT:** Deputy Nunez, if you could please come
13 forward and place your left hand on the Bible and raise your
14 right hand as the clerk administers the oath.

15 **Michael Nunez,** being duly
16 sworn testified as follows;

17 **MADAM CLERK:** Thank you.

18 **THE COURT:** Have a seat in the witness chair. Pull up
19 real close to that microphone. Speak loudly, clearly and
20 slowly. And let's state your full name, please.

21 **INVESTIGATOR NUNEZ:** Investigator Michael Nunez.

22 **THE COURT:** Thank you, Mr. Nunez. Mr. McMaster, you're
23 recognized.

24 **MR. McMASTER:** Thank you, Your Honor.

25 **Direct Examination by Mr. McMaster:**

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And, Deputy Nunez, who do you work for?

2 A. Greenville County Sheriff's Office.

3 Q. And were you working for them back in 2016, March of
4 2016?

5 A. Yes, sir.

6 Q. In what capacity were you working then?

7 A. I was on uniform patrol on Bravo Platoon.

8 Q. And what were your duties back then?

9 A. Routine patrol and answering 911 calls.

10 Q. All right. Well, I'm going to take you back to the
11 early morning hours of March the 6th, 2016. Did you receive
12 a call regarding this incident?

13 A. I didn't receive the call. I was actually working in
14 the Taylors beat area. But when a deputy calls for
15 emergency assistance, it's kind of broadcast all around. So
16 I heard that come over the radio and decided to respond.

17 Q. And did you respond?

18 A. I did.

19 Q. And tell the jury about how long did it take you to get
20 -- to get to the incident location?

21 A. I was coming from about Rushmore and Wade Hampton area
22 when I activated my lights and proceeded that way. So a
23 couple of minutes I'd probably say.

24 Q. Was Tristian Cummings in custody when you got there?

25 A. By the time I arrived, yes.

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And I believe we've seen a picture here, State's
2 exhibit 17, is that what you recall the way he ---

3 A. Yes, sir.

4 Q. --- was dressed?

5 A. Um-hum (affirmative).

6 Q. The way he -- the way he looked?

7 A. Yep.

8 Q. That was ---

9 A. Black male, dark clothing.

10 Q. And when you got there were you able to observe
11 Tristian Cummings and take a look at what he was wearing,
12 how he was dressed?

13 A. Yeah. When I arrived there they had already had him in
14 handcuffs, and they were at a patrol car. He had been
15 placed in the patrol car. And while he was inside the car,
16 he was actually taking some of his clothes off. He was
17 complaining about not being able to breathe and his legs
18 hurting. And he was trying to kick off his shoes and pull
19 his pants down and stuff like that inside the car.

20 Q. Do you recall him taking off any -- you said shoe?

21 A. (Affirmative nod).

22 Q. How about any -- any of his other clothing?

23 A. He had gloves on. And he had a sweatshirt on and the
24 shoes. When we pulled him out of the car to take the
25 photographs, I noticed that he had one glove on. There was

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 another glove in the car. I think there was a shoe in the
2 car still, too.

3 Q. I'm going to show you State's exhibit 18. Can you
4 identify that, what we're looking at there?

5 A. Yeah, that's the Defendant at the back of a patrol car.
6 He's -- don't know if he's being put back in the patrol car
7 or being taken out because it's kind of blurry, but you can
8 see that there's a glove in the floorboard of the car.

9 Q. Okay. And is that on ---

10 **MR. McMASTER:** And I've shown this to Defense counsel,
11 Judge, State's exhibit 18. I'd ask it be entered into
12 evidence at this time.

13 **MR. RICHEY:** No objection.

14 **THE COURT:** It's into evidence.

15 (Whereupon State's exhibit 18 was admitted into
16 evidence)

17 Q. Is that uncommon for defendants to try to -- people
18 charged to try to take things off? Is that ---

19 A. No, it's not -- it's not uncommon. Sometimes things
20 get taken off because it's kind of hectic when they go into
21 the car or come out of the car. Shoes might be untied or
22 loose. Clothing sometimes falls off.

23 Q. But to get a glove off you would have to ---

24 A. Yeah, you'd probably have to pull it off.

25 Q. Okay. And what were your duties after you were in --

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 you saw him in the car?

2 A. After that I was in charge of -- he was placed into my
3 custody because the ambulance had come. And he was actually
4 going to go to the hospital to be checked out for breathing
5 problems. So I rode with him in the ambulance. So one of
6 the things that we have to do is everything that's on him
7 that's not a weapon, goes with him in his property.

8 Q. So you would have put his -- his glove, ---

9 A. Yeah.

10 Q. --- his jacket, whatever?

11 A. Yeah. I would have collected all that and -- pretty
12 standard after put on the gurney. They're usually covered
13 in a blanket or a sheet to put the stuff either on the -- on
14 the sheet or on his legs, something like that just so that
15 we can see it and we know where it is.

16 Q. So you stayed with him at all times?

17 A. Yeah. I rode with him the entire time he was in the
18 ambulance.

19 Q. And then are you with him when we go into the hospital
20 room?

21 A. Yep. We went through the standard intake procedure
22 that the ambulance goes through. And he was escorted to a
23 room. I stayed with him the whole time. I was next to the
24 gurney and in the room with him.

25 Q. Did you ever leave -- I think it was -- excuse me.

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 Until you were relieved did you ever leave the Defendant?

2 A. No.

3 Q. Is that standard procedure as well?

4 A. Yeah. He was in our custody. That means he's in our
5 -- our care and control.

6 Q. So when you say you didn't leave, you didn't leave the
7 room?

8 A. No. Correct.

9 Q. Do you know where the Defendant's clothes were placed
10 when he got to the room?

11 A. They were balled up. And I placed them on the ground,
12 I think, next to the -- next to the bed that he was laying
13 in.

14 Q. Okay. Did the Defendant complain about anything in the
15 room?

16 A. Yeah. It was actually pretty cold in the room. It's
17 usually cold in the ER anyway. He complained about being
18 cold. And I think the nurse actually brought him an extra
19 blanket and at one point took the jacket that he had, that
20 sweatshirt, took it off the ground and put it on him like as
21 a blanket to cover up -- cover him up.

22 Q. So you got the jacket off the floor out of the balled
23 up clothes?

24 A. Yeah.

25 Q. And handed it to him?

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yeah. I just kind of grabbed it and put it on him
2 because he was cold.

3 Q. And is it safe to say that they would have taken his
4 gloves and things like that off at that time to administer
5 first aid?

6 A. Correct. Yeah, everything would have been taken off
7 because they would have been looking for, in the ambulance,
8 they usually look for injuries or look for IV's and stuff.
9 So they want clear arms. So the jacket would have been
10 taken off, gloves would have been taken off.

11 Q. When did you leave the Defendant's -- the Defendant's
12 room?

13 A. After I got relieved by Deputy Heath.

14 Q. Okay. And was anybody there when you were leaving?
15 Was there anything in change over there?

16 A. Yeah. I think it was forensics was there to collect
17 his clothing while I was leaving, take additional
18 photographs, maybe run some tests, I don't know. They were
19 -- they were there, though, to collect the stuff.

20 Q. Now, did the Defendant have or did you have a chance to
21 have the Defendant identify himself by his name while you
22 were present in the hospital room with him?

23 A. Yeah. When I was there, actually, he -- he asked me if
24 I was investigating this case. I told him I'm just, you
25 know, I'm just watching him at that point, I wasn't the

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 investigating officer, I wasn't even involved in the
2 incident.

3 Q. Did you have him identify himself by name?

4 A. Yeah. He -- he told me his name, Tristian Cummings,
5 after -- he asked to talk to somebody. And so I actually
6 called one of the investigating officers ---

7 Q. Let me ask you this. Did you -- can you identify the
8 person that identified himself as Tristian Cummings?

9 A. Yes, sir. He's the gentleman sitting over there in the
10 white shirt. (Witness pointed to the Defendant).

11 Q. All right. After completing your report did you have
12 any other -- at this time did you have any other involvement
13 in this case once you left the hospital?

14 A. No. After leaving the hospital, I completed my report,
15 that was it.

16 Q. Did you notice anything about the Defendant's --
17 Defendant's mouth that night?

18 A. Yeah, he was -- he was missing teeth in the front. And
19 I don't know how many, but ...

20 Q. I'm going to show you State's -- State's exhibit 19.
21 Can you identify that?

22 A. State's exhibit 19.

23 Q. 19?

24 A. Yeah. This same condition his mouth was in, missing
25 the two front teeth.

3 **MR. RICHEY:** No objection.

5 MR. McMASTER: Thank you.

8 Q. So he was missing those teeth when he was booked in?

10 Q. When you were with him in the hospital.

12 Q. If you'll answer any questions Mr. Richey may have.

14 **MR. RICHEY:** No questions.

17 **MR. McMASTER:** Deputy Jeffery Heath, please.

21 **Jeffery Heath**, being duly
22 sworn testified as follows:

24 **THE COURT:** Have a seat in the witness chair. Pull up
25 real close to that microphone. Speak loudly, clearly and

JEFFERY HEATH - DIRECT EXAMINATION BY MR. McMASTER

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1 slowly in order that we can hear everything that you have to
2 say. And let's start with your full name.

3 **MASTER DEPUTY HEATH:** Master Deputy Jeffery Scott
4 Heath.

5 **Direct Examination by Mr. McMaster:**

6 Q. Who do you work for?

7 A. Greenville County Sheriff's Office.

8 Q. And were you working for the Greenville County
9 Sheriff's Office back in March of '16?

10 A. Yes, sir, I was.

11 Q. And what capacity -- what duties did you have back
12 then?

13 A. Working as Adam Platoon on uniform patrol. Would
14 respond to 911 calls for service.

15 Q. And with regards to the incident at 34 Burgess, did you
16 ever go to that incident location in regards to this case?

17 A. No, sir, I did not.

18 Q. Where did -- how did you get involved? Tell the jury
19 how you're involved in this case.

20 A. I responded to the hospital as a relief unit for Deputy
21 Nunez because it was the end of his shift and the beginning
22 of mine.

23 Q. And did you know any of the underlying facts of why you
24 were there?

25 A. I -- on our computers there's a computer aided dispatch

JEFFERY HEATH - DIRECT EXAMINATION BY MR. McMASTER

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1 system which will show very limited information about
2 certain calls. So out of curiosity I kind of looked it up
3 and I saw that it appeared to be some sort of burglary and a
4 foot chase had happened. But other than that, I really
5 didn't know much about the case.

6 Q. What were your duties when you arrived? You said to
7 relieve Nunez?

8 A. Was to relieve Deputy Nunez and just take custody of
9 Mr. Cummings.

10 Q. Did you stay with the Defendant in his hospital room?

11 A. Yes, sir, I did.

12 Q. Did the Defendant receive medical treatment while you
13 were there?

14 A. He did.

15 Q. And what was that?

16 A. While I was there they were evaluating him. They took
17 him out of the room for a CAT Scan. When they moved the
18 bed, I noticed that there was a glove sitting on the floor.
19 That was odd because it wasn't like a medical glove or
20 anything.

21 So since we're responsible for people's property while
22 they're in our custody, I asked Mr. Cummings if that was his
23 glove. He indicated that it was. So then I took that, kept
24 it with me so we wouldn't lose it. He went and got his CAT
25 Scan, came back to the room. I went with him for the CAT

JEFFERY HEATH - DIRECT EXAMINATION BY MR. McMASTER

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1 Scan.

2 Q. Had all his other material that he had -- that came
3 with him in the ride over, had it been collected at that
4 point?

5 A. Yes. When I first arrived one of the investigators was
6 there completing paperwork and taking items and stuff from
7 the -- from the room, his clothing.

8 Q. So this was -- but you said this was under the bed?

9 A. Yeah. This had -- this was under the bed. I only
10 noticed it when they moved it for the CAT Scan.

11 Q. All right. I'm going to show you -- it's been marked
12 State's exhibit 23. I'm going to show you what's been
13 marked State's exhibit 23. Can you tell the jury -- can you
14 tell the jury what this is?

15 A. This is the envelope that I would have put the glove
16 into. I had called one of the investigators, asked him
17 about it, if this was something that was necessary for them.
18 They asked me to put it down to Property and Evidence. And
19 I can tell that this is the same one because my initials,
20 the date and the case number are here on the evidence tape.

21 Q. And what -- tell the jury -- what's P&E? What kind of
22 place is P&E?

23 A. It's a secure location down in the basement of the law
24 enforcement center where we put evidence or property that
25 we're going to be returning to people. What I did was I

JEFFERY HEATH - DIRECT EXAMINATION BY MR. McMASTER

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1 would have taken this, put it into an envelope, filled out
2 some paperwork and then slid it through a little opening in
3 a door that would be collected by the evidence people in the
4 morning or later in the day when they opened up.

5 Q. And do you have access into P&E?

6 A. Just on the outer portion where we can shove things
7 through the door or in a locker.

8 Q. So once it's shoved through, you can't go back in and
9 get it?

10 A. No.

11 Q. Does that appear to be in substantially the same
12 condition as it was?

13 A. Yes.

14 Q. Okay. And would you at this time open -- yeah, open
15 that, please.

16 (Pause)

17 Q. That's all right. And would you just look in it and
18 tell us what you see in there.

19 A. It's a glove.

20 Q. Does it appear to be the same glove that you put into
21 Property and Evidence back on March the 6th?

22 A. Yes, sir.

23 Q. Okay.

24 **MR. RICHEY:** No objection.

25 **MR. McMASTER:** No objection?

JEFFERY HEATH - DIRECT EXAMINATION BY MR. McMASTER

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1 **MR. RICHEY:** No.

2 **MR. McMASTER:** Your Honor, without objection we'd ask
3 that this glove be entered into evidence at this time,
4 State's exhibit 23.

5 **THE COURT:** It's into evidence.

6 **MR. McMASTER:** Thank you.

7 (Whereupon State's exhibit 23 was admitted into
8 evidence)

9 Q. Other than putting State's exhibit 23 into evidence at
10 that time did you have any further duties in this case?

11 A. No, sir. I had transported Mr. Cummings down to the
12 detention center. And then as soon as I left there,
13 immediately put the glove into P&E and then went about my --
14 the rest of my shift.

15 (Pause)

16 **MR. McMASTER:** I don't have any other questions, Your
17 Honor.

18 **THE COURT:** Cross-examination.

19 **MR. RICHEY:** No questions.

20 **THE COURT:** You may step down and you're free to leave.
21 You may call your next witness.

22 **MR. CULBREATH:** Your Honor, the State would call Dar
23 Shaw.

24 **THE COURT:** Yes, sir. Please come forward. I'd ask,
25 if you would, place your left hand on the Bible. Raise your

DARWIN SHAW - DIRECT EXAMINATION BY MR. CULBREATH

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1 right hand as the clerk administers the oath.

2 **Darwin Shaw**, being duly
3 sworn testified as follows;

4 **MADAM CLERK:** Thank you.

5 **THE COURT:** Have a seat in the witness chair. Pull up
6 real close to that microphone. Speak loudly, clearly and
7 slowly in order that we can hear everything that you have to
8 say. And let's start with your full name, please, sir.

9 **SERGEANT SHAW:** Darwin Shaw, S-h-a-w.

10 **Direct Examination by Mr. Culbreath:**

11 Q. Sergeant Shaw, good morning. Could you tell the jury a
12 little bit about yourself and where you currently work, if
13 you work, and where you used to work.

14 A. I'm just working part-time at a golf shop. I retired
15 last February from the Forensic Division. I was a sergeant
16 there for 18 years, total of 19 years. Prior to that I was
17 with the police department in Nebraska for 21 years, 14
18 years as a detective and seven years as a road officer.

19 Q. Okay. And back on March 7th of 2016 were you -- is
20 that where you were employed as a sergeant?

21 A. It was, yes.

22 Q. And that was in forensics?

23 A. Yes, sir.

24 Q. All right. Did you receive specialized training with
25 regard to your forensics activities with the Department of

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1 Public Safety?

2 A. I did. Most -- most everything is on-the-job training,
3 but there's also specialized schooling in on-site
4 investigations, evidence collection and processing and how
5 to work crime scenes.

6 Q. Okay. Would it be fair to say you get training on a
7 wide range of different areas in forensics, and on a given
8 case you may be asked to do a specific thing or a number of
9 things?

10 A. That's correct, yes.

11 Q. Okay. If I could take your attention back to March 7th
12 of 2016, do you recall becoming involved in the case that
13 we're here for today?

14 A. I did.

15 Q. Okay. Could you tell the jury a little bit about how
16 you got involved.

17 A. I was contacted by dispatch of an autopsy that was
18 going to be performed that we were requested to have an
19 officer respond to. Usually as a supervisor I had more
20 flexibility. So I attended a lot of the autopsies that were
21 requested. And I responded to the morgue that morning.

22 Q. Okay. Had you been provided any instructions or kind
23 of set out some duties that you needed to attend to while
24 you were there?

25 A. And it's just a standard protocol on death

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1 investigations where we collect potential evidence, we take
2 photographs, usually roll their fingerprints. On homicides
3 we do additional collection like either head hair, pubic
4 hair, fingernail clippings, that type of thing. And
5 especially in a -- in a case where there was a shooting, we
6 do a gunshot residue test on the victim's hands.

7 Q. All right. So you did have an occasion to attend the
8 autopsy of Jeryl White?

9 A. Yes, I did.

10 Q. Okay. And all of those different tasks that you just
11 mentioned, did you conduct, as you mentioned, a GSR, gunshot
12 residue testing or sampling on Mr. White?

13 A. Yes, I did.

14 Q. Can you tell the jury a little bit about what that is,
15 what that sampling kit is?

16 A. It's called a Gunshot Residue Test Kit. It's specified
17 as an SEM Kit, which stands for Scanning Electron
18 Microscope. Basically what it is is a vial that has like
19 sticky fly paper on a little dab. And what you do is you
20 dab the palm of the hand as well as the back of the hand,
21 both hands.

22 The SEM picks up gunshot particles, which consists of
23 antimony, barium and lead. So the -- you do the dabber in
24 hopes of getting gunshot particles. And then they use a
25 microscope to quadrant off the section that was dabbed to

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1 try to find gunshot particles that were retrieved from the
2 hand.

3 Q. Okay. As far as the testing, you don't do the testing,
4 correct?

5 A. That's correct.

6 Q. Okay. You just have the -- is it a standard packet or
7 a standard test kit?

8 A. There is. It changed. I'm not sure which one I --
9 there used to be four dabbers. One would be the left front,
10 left back, right front, right back. And then the Crime Lab
11 changed it to where only there were two dabbers. One would
12 be for the left hand only and one for the right hand only.
13 So I'm not sure which one I did. Probably the four dabbers.
14 I'd have to look at it.

15 Q. Okay.

16 **MR. CULBREATH:** Your Honor, may I approach?

17 **THE COURT:** Yes.

18 Q. Sergeant Shaw, I'm going to show you an envelope here
19 with some barcodes on it and just ask you if you recognize
20 any of those?

21 A. I do.

22 Q. All right. What are those?

23 A. They're barcodes that specify what evidence has been
24 put into Property and Evidence. The ones specifically for
25 me, what we do is we would label evidence under our

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1 initials. So label DS1 was a gunshot residue -- it was a
2 GSR SEM Collection Kit on Jeryl Lamar White.

3 Q. Okay. Do you generate that label?

4 A. I do. I have to pull all the information in. And then
5 the label comes off. And then I attach it to the evidence.

6 Q. Okay. And is that for purposes of turning it into
7 Property and Evidence?

8 A. It is.

9 Q. Okay. And so you've mentioned when you go out on a
10 crime scene, you're collecting various types of evidence.
11 Is that how you keep track of it by creating barcodes and
12 specific identifiers and then turning them into P&E?

13 A. It is.

14 Q. Okay. And in this particular case, if you would, since
15 it appears to have three in it, if you'll take the scissors
16 and cut that open and take a quick look inside.

17 (Pause)

18 Q. All right. And if you can look in there and see if
19 there is a SEM Kit. It may be marked DS1.

20 A. There is.

21 Q. All right. And if you could pull that out for me. All
22 right. And do you recognize that?

23 A. I do.

24 Q. And what is that?

25 A. This is an envelope that comes with the -- the kits

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1 that are provided with the dabbers. You do the dabbers.

2 When they're done, you put it in this bag. It's sealed with
3 evidence tape, it's initialed. And then a barcode is
4 applied to the package on the outside to show what is
5 specifically on the inside of the package.

6 Q. Okay. Does that appear to be in substantially the same
7 condition as it was when you first placed it in P&E?

8 A. It does.

9 Q. Okay. And would it be -- if it were to be tested,
10 would somebody come and get it from P&E and do the testing?

11 A. It would -- normally it went -- it would go to SLED,
12 which either somebody from our Crime Lab may transport it
13 down to SLED. That's normally how it goes. Once I'm done
14 with it, it goes to Property and Evidence, and I have no
15 further contact with it once it's done.

16 Q. Okay. And would this be the kit that you used to take
17 the sampling on the deceased, Mr. Jeryl White?

18 A. Yes, it is.

19 **MR. CULBREATH:** Your Honor, at this time I'd like to
20 move this into evidence.

21 **MR. RICHEY:** No objection.

22 **THE COURT:** It's into evidence. That's State's exhibit
23 ...

24 **MR. CULBREATH:** This would be 24. State's 24.

25 (Whereupon State's exhibit 24 was marked and admitted

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1 into evidence)

2 **MR. CULBREATH:** That's all the questions I have for
3 this ...

4 **THE COURT:** Cross-examination, Mr. Richey.

5 **MR. RICHEY:** No questions, Your Honor.

6 **THE COURT:** You may step down.

7 A. Thank you, Your Honor.

8 **THE COURT:** You're free to leave. You may call your
9 next witness.

10 **MR. CULBREATH:** Your Honor, the Court's indulgence one
11 moment.

12 (Pause)

13 **MR. McMASTER:** Your Honor, may we approach?

14 **THE COURT:** Yes.

15 (Whereupon a bench conference was held off the record
16 in the presence of the jury, but out of their hearing)

17 (Whereupon the bench conference was ended)

18 **THE COURT:** Madam Forelady, ladies and gentlemen of the
19 jury, I'm going to ask that you return to the jury room to
20 allow you to refresh yourselves. We have some legal matters
21 to attend to outside of your presence. Madam Forelady, once
22 again, there's to be no discussion about the case
23 whatsoever. And you can follow the bailiff.

24 (Whereupon the jury exited the courtroom at 11:28 am)

25 (Pause)

1 **THE COURT:** I tell you what we're going to do, we're
2 going to break for lunch. And we'll return at 1:00 and
3 y'all can get all this stuff straight. And we'll reconvene
4 at 1:00.

5 **MR. CULBREATH:** Yes, sir.

6 **MR. McMASTER:** Thank you, Your Honor.

7 **MR. RICHEY:** Yes, sir.

8 **THE COURT:** If we could -- if you could bring the
9 forelady of the jury back in. All right. We're still in --
10 we're still in session everyone.

11 (Whereupon the forelady entered the courtroom)

12 **THE COURT:** Madam Forelady, we're going to break until
13 1:00. Once again, there's to be no discussion amongst
14 yourselves or with anyone else. Be back at 1:00, 1:00
15 sharp. And we'll stay here and work out some legal matters.

16 **MADAM FORELADY:** Okay.

17 **THE COURT:** And that way y'all can have a good, what we
18 call, executive lunch. How about that?

19 **MADAM FORELADY:** Thank you.

20 **THE COURT:** Very good. Thank you.

21 (Whereupon the forelady exited the courtroom)

22 **THE COURT:** We'll stand at ease until 1:00.

23 **MR. RICHEY:** Yes, sir.

24 **MR. McMASTER:** Thank you, Your Honor.

25 (Whereupon court was in recess at 11:32 am)

1 (Whereupon State's exhibits 25 - 52 were marked for
2 identification)

3 (Whereupon court reconvened at 12:55 pm)

4 **THE COURT:** Anything from Defense?

5 **MR. RICHEY:** No, sir.

6 **THE COURT:** All right. We're ready for the jury.

7 **MR. McMASTER:** If you want to read those stipulations
8 into the record now, we can do that, before the jury walks
9 in. It's up to you, how you'd prefer it.

10 **MR. CULBREATH:** Your Honor, in talking with the court
11 reporter, she felt that it may be helpful to go ahead and do
12 a summary outside the presence of the jury just to get all
13 of the numbers and exhibits on the record.

14 **THE COURT:** Okay.

15 **MR. CULBREATH:** And as we proceed through Investigator
16 Fortner and refer to those it will -- we'll have something
17 to refer back to on the record.

18 **THE COURT:** All right. Well, let's hold -- hold that
19 door until -- yeah, go ahead.

20 **MR. CULBREATH:** I'll make this very quick, Your Honor.
21 I will defer to the court reporter if I get these wrong, but
22 it looks like we're going to start with 25, State's 25 will
23 be next in sequence. And State's 25 will be the -- what's
24 NJD1, which is the sweatpants of the Defendant. State's 26
25 will be the left shoe of the Defendant. State's 27 will be

1 item NJD4, which is a long sleeve shirt collected from the
2 Defendant. State's 28 will be item NJD5, which is the right
3 hand O'Neal glove collected from the Defendant. State's 29
4 will be NJD6, which is a GSR kit collected from Defendant
5 Tristian Cummings.

6 State's 30 will be item NJD9, which is a Free Tech
7 jacket collected from the suspect or Defendant. 31 through
8 42 is a collection of photographs of the interior of the
9 residence.

10 43 would be item RRH, which is a black and silver
11 handgun inside the box here, Your Honor, along with the two
12 cartridges and the magazine. State's 44 will be RH4, which
13 is a cartridge casing collected from the hallway between the
14 bathroom and the kitchen. 45 is a cartridge casing, RH6,
15 collected from the bathroom floor.

16 State's 46 is called RH7, which is a projectile removed
17 from the bathroom floor. It was dug from the surface of the
18 floor. 47 is RRH8, which is a GSR Kit, collected from co-
19 defendant Simeon Williams.

20 48 is referred to as item 1. And that is a projectile
21 taken from the right arm of the deceased at the autopsy.
22 49, a red jacket with white stripes, which was collected
23 from co-defendant Simeon Williams.

24 Then, Your Honor, we have three reports. State's 50 is
25 a serology report. State's 51 is the DNA report. And

1 State's 52 is the firearms report.

2 **THE COURT:** All right. Any objection from Defense?

3 **MR. RICHEY:** None, Your Honor.

4 **THE COURT:** All right. They're into evidence.

5 (Whereupon State's exhibits 25 - 52 were admitted into
6 evidence)

7 **MR. CULBREATH:** And just to back up, Your Honor, on two
8 photographs, State's 21 and 22, the photographs taken from
9 the hospital of the suspect's glove and shoe.

10 **MR. RICHEY:** No objection, Your Honor.

11 **THE COURT:** All right. They're into evidence.

12 **MR. McMASTER:** Yes, sir.

13 (Whereupon State's exhibit 21 and 22 were admitted into
14 evidence)

15 **MR. CULBREATH:** That's all from the State.

16 (Whereupon the jury entered the courtroom at 1:00 pm)

17 **THE COURT:** Madam Forelady, ladies and gentlemen of the
18 jury, everyone looks very alert and very well fed. If you'd
19 please pay very close attention. Mr. McMaster.

20 **MR. McMASTER:** Thank you, Your Honor. The State calls
21 lead Investigator Mike Fortner.

22 **THE COURT:** Yes, sir. Please come forward. I'm going
23 to ask you, if you could, to take a moment, set your stuff
24 down and put your left hand on the Bible. Raise your right
25 hand as the clerk administers the oath.

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1 Michael Fortner, being

2 duly sworn testified as follows;

3 **MADAM CLERK:** Thank you.

4 **THE COURT:** Have a seat in the witness chair. Pull up
5 real close to that microphone. Speak loudly, clearly and
6 slowly in order that we can hear everything that you have to
7 say. And let's start with your full name, sir.

8 INVESTIGATOR FORTNER: Michael Eugene Fortner.

9 THE COURT: Very good.

10 Direct Examination by Mr. McMaster:

11 Q. Investigator Fortner, who do you work with?

12 A. Greenville County Sheriff's Office.

13 Q. And how long have you been with the Greenville County
14 Sheriff's Office?

15 A. Twenty-five years now.

16 Q. And you were -- and back in March of 2016 in what
17 capacity were you working there?

18 A. I was working in the Criminal Investigations Division
19 in the Homicide Unit at the time.

20 Q. And were you the on-call investigator on the night of
21 March the 6th, ---

22 A. I was.

23 Q. --- in the early morning hours of March the 6th?

24 A. I was. Yes, sir.

25 Q. And as a lead investigator can you tell the jury

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1 briefly what your duties are? What do you do?

2 A. As lead investigator -- as an investigator you cover
3 call after hours. In this case I was on-call. A call came
4 in around 1:40 in the morning. When you get the call, you
5 respond to the scene.

6 Once you get on the scene the important thing is just
7 make sure everything's still secure as far as crime scene's
8 concerned. Once forensics gets on the scene we do what we
9 call a walk-through with forensics. We'll walk through the
10 crime scene with them, look at everything that we can see
11 that's out and needs to be collected as evidence. Anything
12 that might need to be photographed, we work with forensics
13 on that.

14 Then once that's taken care of, we get forensics
15 started, if there are any witnesses that are maybe on-scene,
16 like in this case, April Green was on-scene still. I
17 interviewed her in my car while forensics was doing some of
18 the processing. Then once forensics gets done processing
19 the scene, we release the scene and go on from there.

20 Q. And what time did you get to the scene?

21 A. I arrived on the scene at about -- I'm going to say it
22 was about 2:20 in the morning.

23 Q. And was Defendant Cummings or Defendant Williams at the
24 scene at that time?

25 A. No, neither one of them are at the scene. Mr. Williams

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1 had already been taken down to the law enforcement center.

2 And Tristian Cummings was down at the hospital.

3 Q. At that point -- let's go through what you did, what
4 you were doing in the house at that point.

5 A. Again, we walk through the house with forensics as they
6 photograph, collect evidence. I make notes of what's being
7 collected, where it's collected from and that type of thing.
8 We just work with forensics as they process.

9 Q. And did you have a -- when forensics is processing the
10 scene, then they're not moving anything around at that
11 point? Not moving around any of the evidence in the -- on
12 the scene?

13 A. While we're doing the walk-through, no. At that point
14 in time we're just identifying what needs to be collected.
15 And then they come back through it and mark it with placards
16 and photograph it.

17 Q. Did they do that in this case?

18 A. Yes.

19 Q. What was the condition of 34 Burgess when you got in
20 there? Where did -- what do you remember seeing?

21 A. It had been -- appeared to have been ransacked, like
22 somebody was going through drawers in the kitchen, for
23 example. Furniture in the living room area was kind of
24 moved around, tossed around a little bit. And the door, the
25 side door was actually laying on the floor of the kitchen,

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1 had been literally -- had been kicked completely in.

2 Q. And we've talked a lot about side doors, and back doors
3 and front doors. In 34 Burgess are there just two doors?

4 A. Yes, there are.

5 Q. And so there's the front door and then the side door,
6 which you just referenced, that was laying on the floor ---

7 A. Yes.

8 Q. --- in the kitchen?

9 A. That's correct. Yes, sir.

10 Q. Okay. And is this a fairly small area?

11 A. It is. I mean, you've got the front door that leads
12 right into the living room. The living room and the kitchen
13 basically is like a great room. The kitchen's just
14 basically separated from the living room by a countertop.
15 And the very next room would be the bathroom, which shares a
16 wall with the kitchen. And then on the end of the house is
17 the bedroom where Ms. -- or April was lying underneath the
18 bed.

19 Q. Now is she still on-scene when you get there?

20 A. She is. She's actually sitting in the living room when
21 I get on-scene.

22 Q. And do you speak to her?

23 A. I do, yes, sir.

24 Q. Now, I know there's been some mention about a dog. Did
25 you ever establish any information about a dog or what

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1 happened with the dog?

2 A. I asked -- 'cause somebody had mentioned something
3 about a dog. There was a kennel in there. And I asked
4 about the dog or the whereabouts of it. And April told me
5 that she felt that it probably ran off maybe when the
6 gunshots went off 'cause she didn't -- never saw the dog,
7 you know, because she was inside the bedroom. So what
8 happened to it, she's not really sure either.

9 Q. All right.

10 **MR. McMASTER:** I'm going to -- Court's indulgence just
11 one second. I'm going to pull down the screen, Your Honor.

12 (Pause)

13 Q. Investigator Fortner, I'm going to show you a series of
14 photographs. Now, to -- let's see if this comes up to speed
15 here. Now, I want you to -- these have -- these have
16 previously been stipulated to and admitted into evidence.

17 A. Okay.

18 Q. And I want you to kind of -- I want you to explain to
19 the jury what we're looking at here.

20 A. Okay.

21 Q. Okay. Just a second just to auto-focus it. It should
22 be fine. All right. Can you explain what we're looking --
23 what we see here?

24 A. Yeah. We're actually standing inside the kitchen.

25 Right here to your right -- to the right side of the photo

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1 there would be the countertop I was talking about that
2 separates the kitchen from the living room area. There on
3 the countertop you can see the handgun that was placed there
4 by Tristian Cummings as he was running out the front door.

5 As you can see, the house has been ransacked. That's
6 not normal set-up for the house. It had been ransacked.
7 You can kind of see the dog kennel there. Up above the gun
8 ---

9 Q. What are we looking at right here? Can you see that?

10 A. Looks like drawers and stuff ---

11 Q. Right here.

12 A. Oh, okay. That looks like the door -- the door's been
13 lifted up off the floor now.

14 Q. And is that where it was kicked in there, the crack in
15 the door?

16 A. Correct. Yeah, that's where the door gave, yes.

17 Q. Okay. All right. And you've indicated that that is
18 the -- that's the pistol on the counter there. And at this
19 point in time it appears it has a placard beside it, is that
20 correct?

21 A. Yes, sir, it does.

22 Q. And would that have been placed by there by forensics?

23 A. Yes, it would have been.

24 Q. And to give you -- and that ---

25 **MR. McMASTER:** Just for reference to the Court, Your

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1 Honor, that's State's exhibit 31.

2 Q. And then we have State's exhibit 11. Is that another
3 picture? What is that telling -- showing us there?

4 A. All right. Here we're kind of standing right in the
5 hallway, kind of right there where the kitchen's at. Again,
6 there's the counter that separates the kitchen from the
7 living room area, the gun laying on top of the counter there
8 still. And then that would be the actual front door that
9 Mr. Cummings ran out of when the deputies arrived on the
10 scene.

11 Q. And that's the -- and that is the pistol that we're
12 talking about here today?

13 A. Yes, sir.

14 Q. All right. And I'm going to show you State's 43 that
15 has already been admitted into evidence, stipulated to as
16 well. Can you tell the jury and show the jury what is in
17 that box?

18 A. This is the Kahr .45 caliber handgun that was recovered
19 from the countertop there. It's got a magazine with it as
20 well as a couple of rounds with it.

21 Q. Are those -- those are live rounds that are found
22 there?

23 A. Yes, sir, they are.

24 Q. All right.

25 **THE COURT:** Might counsel approach the bench for a

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1 moment.

2 **MR. McMASTER:** Sir?

3 **THE COURT:** Might counsel approach the bench for a
4 moment.

5 **MR. McMASTER:** Yes, sir.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 Q. All right. Going back into our photographs that were
10 previously stipulated to, I'm going to show you a series of
11 photographs. And if you'll just describe what you -- what
12 these are for the jury, please. State's 39.

13 A. This would be the bedroom at the end of the hallway
14 where April Green was hiding at underneath the bed.

15 Q. And what would this be right here?

16 A. That right there would be the door that was removed
17 from the bathroom that had to be removed in order to get the
18 victim out of the bathroom so they could do first aid with
19 him.

20 Q. All right. And then this, State's 40?

21 A. All right. This is the bathroom door again. And right
22 there, kind of right there in the middle area right there,
23 that would be the bullet hole that was fired when the bullet
24 went through the door of the bathroom.

25 Q. Then we'll go to 41. Does that give a better

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1 perspective of what we're looking at there?

2 A. All right. Again, that's the door. Forensics has put
3 some measuring tape, I guess you'd say, on the door to kind
4 of show you about how high up off -- from the bottom of the
5 door the bullet ---

6 Q. So that's ---

7 A. --- was.

8 Q. --- about a mid-section of the door?

9 A. Yes, sir.

10 Q. All right. Mid-point of the door. That's -- if you
11 were standing behind that door, then you'd be right in the
12 middle of the door, is that -- is that safe to say?

13 A. Yes, sir. I would say so, yes.

14 Q. And 42, what is that?

15 A. Again, it's the door. It's just a closer shot of the
16 door and the bullet hole. They're indicating here that the
17 bullet hole was approximately thirty-seven and a half
18 (37 1/2) inches from the bottom of the door. And they're
19 just kind of giving you a little bit of a scale there so you
20 can tell about what size the hole is.

21 Q. I believe you've identified the actual item, but 32.

22 A. All right. This would be the handgun that was in the
23 box we just showed. It's a Kahr .45 caliber.

24 Q. This just shows it in a secure position?

25 A. Yes, sir.

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1 Q. It would not have been in this position at -- on the
2 scene, though, is that correct?

3 A. That's correct. It was fully loaded on the scene.

4 Q. Thank you. Would someone from law enforcement have
5 taken the -- taken the magazine out and put the gun in a
6 safe position? Is that -- is that part of their practice?

7 A. When forensics collects it, they would have done that.
8 Deputies who respond to the scene, unless there's just an
9 exigent circumstance of some sort, they're taught to leave
10 the guns alone, don't touch them, don't unload them, that
11 kind of thing, unless, of course, you just had like a crowd
12 of people around, he was worried about somebody maybe
13 picking it up and taking off with it or something.

14 Q. Okay. I'm going to show you some -- the next pictures,
15 a series of pictures. We're going to start with 35. I'd
16 like you to describe what -- where we are here in the house.

17 A. All right. Here is -- this is the bathroom. Again,
18 the door has been removed. Deputies did that when they
19 responded on-scene. You can see the obvious pool of blood.
20 And there's some markings there. I believe 1, that was for
21 a shell casing. I believe number 6 was for a shell casing.
22 And number 5, I believe, was for a hole in the floor from
23 the projectile.

24 Q. Okay. And we're going to go to 36. That appears -- is
25 that a little better picture of what number 6 placard was

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1 showing?

2 A. Yes. You can see the ---

3 Q. Right there?

4 A. --- the shell casing right there laying up against the
5 baseboard on the bathroom floor.

6 Q. Does that say to you that when that shot was fired that
7 the firearm had to have been or the pistol had to have been
8 inside the bathroom area?

9 A. Most likely. I mean, it's not to say that it couldn't
10 have been out in the hallway and someone kicked it into the
11 bathroom, but certain mostly likely it was fired inside the
12 bathroom.

13 Q. And I think you indicated -- on State's 37 can you tell
14 us what we're looking at there?

15 A. Yeah. I believe this is the hole in the floor.
16 Forensics looked at the hole and they did some work with it.
17 And they were able to recover a projectile from the hole in
18 the floor.

19 Q. All right. And to get ahead to 38, can you tell them
20 what that is at this time?

21 A. That looks like -- it's probably the hole in the floor.
22 And that would be the projectile in the -- in the subfloor.

23 Q. And forensics would have pulled that projectile out to
24 recover it?

25 A. Yes, they would have. Yes, sir.

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1 Q. And State's 34 we have here, can you talk about this --
2 these marks here, what these would have most likely come
3 from?

4 A. Yes. That's what we would refer to as drag marks in
5 blood. Mr. Jeryl White was lying there on the floor, no
6 doubt. And when the deputies responded and removed the
7 door, they then pulled him out into the kitchen area so they
8 could administer first aid. And when they drug him out of
9 the bathroom, that would have caused those drag marks.

10 Q. And State's 33, placard number 4 here, what are we
11 seeing here as well?

12 A. All right. This is another .45 caliber shell casing.
13 This was recovered out in the hallway, pretty much that
14 threshold right there that kind of starts the hallway
15 leading down to where the bathroom was at and then the
16 bedroom. And this is kind of like the kitchen area back
17 this way.

18 Q. And did -- did you ever see that shell casing on the
19 stove or was it on the floor the entire time that you --
20 when you got on the scene?

21 A. Yeah. When I arrived on the scene the shell casing was
22 already on the floor.

23 Q. And, obviously, when you arrived on the scene Mr. White
24 had already been moved around and had been transported out?

25 A. That's correct. Yes, sir.

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1 Q. All right. We're going to have you open some items
2 that have previously been admitted into evidence under
3 stipulation. I'm going to ask you to open State's 49, which
4 is in evidence.

5 (Pause)

6 Q. Can you read out what that -- what that is as well?

7 A. All right. Label on the bag has got item number RRH10.
8 And it says it's a Galaxy double XL red jacket with white
9 stripes.

10 Q. And who would that have been collected from?

11 A. This was collected from Simeon Williams.

12 Q. So this was the co-defendant?

13 A. Yes, sir, the co-defendant that testified earlier.

14 Q. So -- and this is what he would have had on when he was
15 booked into the LEC?

16 A. It is, yes, sir.

17 Q. And you actually saw him in this material, is that
18 correct?

19 A. I did, yes.

20 Q. Okay. All right. Try to get some of these all at one
21 time. These have all been stipulated into evidence.
22 State's 25, 28, and 27, will you open those up for the jury
23 and tell them what those are, please.

24 A. All right. This is a extra large American Stitch, gray
25 in color, sweatpants.

MICHAEL FORTNER - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And who was it taken from?

2 A. Doesn't indicate on here, but I believe these are going
3 to be what were taken from Mr. Cummings.

4 Q. Okay. Sweatpants?

5 A. Yes, sir.

6 Q. Is that them?

7 A. Yes, sir.

8 Q. All right. Which one are you opening now?

9 A. All right. This is going to be XL Tanu Harlem long
10 sleeve shirt collected from -- and I can't tell what it says
11 after that. It's kind of cut off.

12 Q. Okay. Appear to be a shirt, a black shirt?

13 A. A black shirt, yes, sir.

14 Q. And that was collected from?

15 A. I'm not sure. My guess would be this came from -- from
16 the victim, possibly. That's probably from Tristian
17 Cummings.

18 Q. All right.

19 A. Yeah, that's who that's going to be. That's going to
20 be Tristian Cummings.

21 Q. All right.

22 A. Those are cut outs from where they took the blood
23 samples.

24 Q. All right. Which one are you working on now?

25 A. All right. This is going to be a right hand O'Neal

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- 1 glove collected from suspect. And it says at -- probably
2 from the hospital.
- 3 Q. Who's that belong to?
- 4 A. This would be one of the gloves that Tristian Cummings
5 was also wearing or was wearing.
- 6 Q. All right. You got another bag here.
- 7 A. All right. This is going to be a -- let's see. Looks
8 like a medium Free Tech jacket collected from suspect at
9 GMH. That's going to be Tristian Cummings as well.
- 10 Q. And then if you'll open the last one.
- 11 A. All right. This is a -- it's an Adidas, eight and a
12 half (8 1/2) left shoe and one white in color sock.
- 13 Probably ---
- 14 Q. What number is it, please?
- 15 A. State's exhibit number 26.
- 16 Q. Thank you.
- 17 A. One shoe.
- 18 Q. And that is from -- that was collected at -- where?
- 19 A. Hospital.
- 20 Q. Hospital? So those would be from?
- 21 A. Mr. Cummings.
- 22 Q. Okay. We only have one, correct?
- 23 A. Correct. Yes, sir.
- 24 Q. All right. You can put that back in the bag. I'd like
25 for you to identify State's 48 and tell us what that is.

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1 A. State's exhibit 48, this is a projectile that was
2 recovered from the right arm of the victim during the course
3 of the autopsy.

4 Q. It's in a container?

5 A. Yes, it is.

6 Q. Okay. That's fine. Just put it back in the bag. And
7 then -- and that was number 48, State's exhibit 48. What
8 number is this?

9 A. All right. This is State's exhibit number 44. This is
10 going to be a Speer .45 auto caliber shell casing.

11 Q. And where would this have come from?

12 A. The shell casing would have come from the residence
13 during the course of the processing of the scene.

14 Q. All right. Thank you. If you'll call out what that
15 is.

16 A. All right. State's exhibit number 46, this is a
17 projectile that was removed from the bathroom floor that we
18 saw in the pictures that we were just looking at a few
19 minutes ago. One projectile.

20 Q. That's the projectile from the bathroom floor?

21 A. It would have been from the bathroom floor, yes, sir.

22 Q. Okay. And the next one. Please give us the number.

23 A. State's exhibit 45, this is a cartridge casing. Again,
24 Speer .45 auto caliber. One shell casing.

25 Q. And that was collected from?

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1 A. This would have been collected from the residence as
2 well.

3 Q. And can you look at -- you have previously looked at 43
4 and you indicated there were live ammunition in there. Can
5 you look at the heads of the live ammunition and tell us
6 what make they are?

7 A. All right. This one's a Speer. And this one is also
8 a Speer.

9 Q. Are those the same -- is that the same type of
10 ammunition -- the shell casings that were recovered from
11 inside the residence?

12 A. They are. Yes, they are.

13 Q. And the same caliber projectile as well? Does ---

14 A. Yes, sir.

15 Q. --- that appear to be?

16 A. Yes.

17 Q. I'm going to show you 47 and 29, too. And can you just
18 tell us what these are? They've previously been admitted
19 into evidence under stipulation.

20 A. These are gunshot residue collection kits.

21 Q. And ---

22 A. You need me to open them up?

23 Q. No, that's okay. That's all right. And did you also
24 receive a blood spot from the victim, Jeryl White, as well?

25 A. We did. We'll collect a blood spot. Generally it will

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1 come from the coroner's office. It gets used for DNA
2 comparisons typically.

3 Q. And is that generally consumed in testing as well?

4 A. Yes, sir.

5 Q. All right. Appreciate that. Thank you. After
6 investigating the case on the scene and looking at all the
7 evidence, did you -- what conclusions did you reach in your
8 investigation at that time?

9 A. Obviously a big part of this case was made by uniform
10 patrol deputies responding to the scene. They did a great
11 job getting there quickly like they did. April, obviously,
12 giving us a warning on it, I guess you could say, by giving
13 us a heads up and being able to get there and catch this
14 thing in the act. But after speaking with the deputies, and
15 what happened on-scene, and the evidence that we collected,
16 we concluded that Mr. Cummings was one of the two
17 individuals involved in this murder.

18 Q. And was anyone else, obviously, someone else was
19 charged as well?

20 A. Yes, sir.

21 Q. And -- Mr. Williams?

22 A. Mr. Williams. Simeon Williams was charged as well.

23 Q. And in June of '16 did Mr. Williams make a statement to
24 you?

25 A. Yes, sir, he did. I got contacted and met with Simeon

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1 Williams and his attorney, Joe Watson, at the law
2 enforcement center. And in the presence of Joe Watson, his
3 defense attorney, Mr. Williams provided us a statement.
4 Q. And did he give you -- did he tell you in his own words
5 what happened there that night?

6 A. Yes, he did.

7 Q. Based on hearing that information did you change
8 anything that you did in your investigation?

9 A. No, sir, it did not change anything for us.

10 Q. Please answer any questions Mr. Richey may have.

11 **THE COURT:** Mr. Richey, you're recognized. Cross-
12 examination.

13 **MR. RICHEY:** Thank you, Your Honor.

14 **Cross-Examination by Mr. Richey:**

15 Q. You're -- you're the leader of investigations. So
16 you're sort of like the vice control, right? You kind of
17 tell everybody what to do, kind of?

18 A. I guess you could put it that way, yes, sir.

19 Q. And so if there's any lead to be followed through, then
20 that -- you would tell them to do that, correct?

21 A. Yes, sir.

22 Q. And -- and based off that you actually do a report,
23 don't you?

24 A. Yes, sir.

25 Q. And in that report you kind of summarize all the stuff

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1 that happened, who did what, correct?

2 A. Yes, sir, we do.

3 Q. And -- you got a copy of your report up there?

4 A. Yes, sir, I do.

5 Q. Tell us -- on your report you have a Ms. Nichols on
6 there, correct?

7 A. I believe so, yes, sir.

8 Q. Do you -- who is that?

9 A. I believe she was the intern that was working with the
10 sheriff's office. She was riding with Robinson, Deputy
11 Robinson that night. When they got first on the scene, she
12 was riding with him.

13 Q. And -- and based off your investigation with her, at
14 the time of the shots, somebody with a red shirt came out
15 the house?

16 **MR. McMASTER:** Objection, Your Honor. He can't
17 speculate and give hearsay testimony, solicit hearsay
18 testimony.

19 **MR. RICHEY:** I'll rephrase it.

20 Q. During the course of your investigation did you ever
21 determine that someone with a red shirt came out of the
22 house after the firearm [sic]?

23 A. That's what Ms. Nichols had reported to us, yes.

24 Q. And she was the first one on the scene, correct?

25 A. As a ride-along intern that night, yes, sir.

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1 Q. Okay. And -- and did you all follow up on that
2 investigation as to who that person could be?

3 A. Nothing further than what we did at this point, no,
4 sir.

5 Q. And you don't have any reason to dispute what she said
6 as being correct, right?

7 A. A reason to dispute? No, I don't guess we got any
8 reason to dispute it, no, sir.

9 Q. Right. So she -- she told the truth, correct?

10 A. Yes, sir. She told the truth as far as what she felt
11 she saw that night, yes, sir.

12 Q. Okay. And she was one of the first ones there, right?
13 The ride-along?

14 A. The ride-along, yes, sir.

15 Q. Okay. And also during your investigation you also
16 found out that there was -- there were people outside with
17 orange shirts on and stuff at the time of the shooting,
18 correct?

19 A. A neighbor from across the street had called in a 911,
20 yes, sir.

21 Q. So there was people outside when all this happened,
22 right?

23 A. According to the people on the 911 from across the
24 street, yes.

25 Q. Okay. Okay. And -- and you didn't charge any of those

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1 folks? None of those folks were charged with this?

2 A. No, sir. The only two people who got charged are Mr.
3 Cummings and Mr. Williams.

4 Q. And -- and this picture -- this picture of the -- let
5 me see. That intern that night -- did you show her this
6 shirt?

7 A. No, I don't believe she saw the shirt once we collected
8 it, no, sir.

9 Q. Did you show her -- did you ask her whether the shirt
10 ---

11 A. I'm sorry, I didn't ---

12 Q. Did you ask her whether the shirt that the guy was
13 wearing at the time of the shooting had this type of shirt
14 on?

15 A. No, sir, we did not.

16 Q. And she was in a position to see that, correct?

17 A. She was, yes.

18 Q. Thank you.

19 A. Yes, sir.

20 **Redirect Examination by Mr. McMaster:**

21 Q. Do you know where Ms. Nichols would have been located?
22 You said she's a ride-along or where would she have been
23 located during this -- the time of this incident?

24 A. As a ride-along, an intern in her case, on particularly
25 a call like this, she would not have been permitted to have

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1 gotten out of the vehicle that she was riding in.

2 Q. So when she would have -- if she would have said that
3 she saw someone walking out of the home, it could have been
4 when Mr. Williams was being escorted out by law enforcement?

5 A. It could have been. It's one of the things that makes
6 investigations challenging. People see things and people
7 see things differently. You know, they may see the exact
8 same scenario taking place and they may interpret it
9 differently and maybe get things confused in their head, I
10 guess you could say, as far as the order -- order of events.

11 Q. That's not uncommon then?

12 A. No, it's not uncommon ---

13 Q. And you've ---

14 A. --- at all.

15 Q. --- investigated, I'd say, hundreds of homicides?

16 A. Well, I wouldn't say hundreds of homicides, but
17 hundreds of violent crime cases, robberies, and kidnappings
18 and homicides.

19 Q. Home invasions?

20 A. Yes, sir.

21 Q. Things like that. And based on your investigation, to
22 be clear, based on your investigation Simeon Williams was
23 taken into custody in that home?

24 A. Correct. He was, I mean, Deputy Robinson confronted
25 him right there at that side door in the kitchen. Mr.

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1 Williams immediately complied with verbal commands given by
2 Deputy Robinson, and he got down on the ground.

3 Q. And based on your investigation Mr. Cummings left that
4 front door area?

5 A. That's correct. He's the one that ran out the front
6 door.

7 Q. Is he, based on your investigation, is he also the one
8 that put down that pistol?

9 A. Yes, sir. It'd be the one -- the same that ran out of
10 the front door, yes, sir.

11 Q. And this is all close in time on this 911 call from
12 inside the house?

13 A. Right. I mean, I wasn't there, but I would imagine
14 that this whole thing from the time Deputy Robinson showed
15 up to the time Tristian Cummings runs out the front door was
16 probably seconds, within 30 seconds or less.

17 **MR. McMASTER:** Nothing further, Your Honor. Thank you.

18 **THE COURT:** All right. You may step down. You may
19 call your next witness.

20 **MR. CULBREATH:** Your Honor, the State would call Tyler
21 Sturkie.

22 **THE COURT:** Mr. Sturkie, please come forward. I'm
23 going to ask you, if you could, you can lay your -- set your
24 paperwork down. Place your left hand on the Bible. Raise
25 your right hand as the clerk administers the oath.

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1 specific duties are to analyze gunshot residue, fire debris
2 and glass evidence.

3 Q. Okay. And what type of educational background do you
4 have in order to do that?

5 A. I received a Bachelor of Science Degree in Chemistry
6 from Newberry College. When I was hired by SLED I began a
7 year-long training program in the analysis of gunshot
8 residue. This training consisted of written and practical
9 examinations on the theory and practice of gunshot residue.

10 I've also attended courses at the Hooke College of
11 Applied Sciences titled Gunshot Residue Identification,
12 Scanning Electron Microscopy and Advanced X-Ray
13 Microanalysis.

14 Q. Okay. And those are a lot of big terms. Is it fair to
15 say you've done some specialized training with regard to
16 gunshot residue analysis?

17 A. Yes, sir, I have.

18 Q. All right. Tell this jury just a little bit, and then
19 we'll move forward, a little bit about gunshot residue, what
20 it is, what causes it and how -- why you would test it.

21 A. Gunshot residue is composed of the burned and unburned
22 particles from the primer, the propellant and the projectile
23 when a firearm has been recently discharged. We are looking
24 specifically for particles from the primer. And they must
25 be round or molten in shape and contain the elements of

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1 lead, barium and antimony. When we find a particle through
2 our analysis that fits this shape and its elemental
3 composition, then that particle could have only come from a
4 fired weapon.

5 Q. Okay. All right. And so let me ask you in layman's
6 terms. We've seen a gun fired before and the cloud of smoke
7 comes out. Would that be GSR? Would that be gunshot
8 residue?

9 A. Typically when a gun is fired, any opening within that
10 weapon, gunshot residue can be expelled. That includes the
11 muzzle end, and if it is a revolver, typically the cylinder
12 gaps, or if it's a semiautomatic weapon, the ejection port.

13 Any opening in that gun, gunshot residue will form a
14 cloud or a plume we sometimes call it, around the weapon and
15 in that general vicinity. And then it will settle on the
16 shooter's hands, their clothing, any object within its
17 vicinity, gunshot residue has the potential to be there.

18 Q. Okay. Do you have a rough idea of the radius that it
19 can be spread within? Is it different if it's outdoors
20 versus indoors or a confined space?

21 A. There are a lot of factors that play into the distance
22 as far as how far gunshot residue can be found. In general
23 for a pistol, five to eight feet is a typical range in which
24 we like to say gunshot residue can be deposited. Some
25 studies show further. Some -- some studies show less.

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1 It certainly depends on the type of firearm,
2 environmental factors. If it's outside, wind can play into
3 effect or rain. If it's indoors, generally inside, not many
4 factors will play into where the GSR will be deposited. So
5 in a vicinity within an indoor setting, we're likely to find
6 GSR on those.

7 Q. Okay. And in doing the testing, do you have a
8 standardized way in which you test different materials that
9 are submitted to you?

10 A. Yes, sir. Typically a gunshot residue kit consists of
11 either two or four particle lifts. And a particle lift is
12 -- if you can imagine a roofing nail, has a larger head with
13 a smaller stem. And the head of this particle lift is
14 composed of a carbon sticky tab, essentially tape. And the
15 four particle lifts will be labeled on the exterior of its
16 enclosed case. These are labeled right palm, right back,
17 left palm and left back for the areas of the subject's
18 hands.

19 When an individual is suspected to have fired a weapon
20 or to have been around a weapon that has been fired, the
21 collecting officer will collect those specific areas that
22 read on the particle lifts. These will then be sent to the
23 laboratory, and I will analyze them using a scanning
24 electron microscope for an automated analysis. And when
25 that analysis is complete, I will manually search for the

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1 particles and confirm or confirm the presence or absence of
2 gunshot residue.

3 Q. Okay. And when you complete your testing do you reduce
4 those to a report, writing?

5 A. Yes, sir. We have, like I said, four, typically,
6 particle lifts that are collected. And we will analyze all
7 four. In the report I will include all four results for one
8 individual. So I will not outline specifically which
9 particle lift has how many number of particles. I will
10 analyze all four and give a summation of those particles and
11 report as one individual.

12 Q. Okay. And is any of your testing -- do you have it
13 peer reviewed? Is there anyone else there that assists you?

14 A. We do both a tech and admin review on each case that is
15 performed.

16 Q. Okay. And have you had an occasion to testify in court
17 before?

18 A. I have, yes.

19 Q. Have you been certified as an expert in GSR analysis in
20 other courts?

21 A. Yes, sir, I have.

22 Q. About how many times, roughly?

23 A. Nineteen.

24 **MR. CULBREATH:** Your Honor, at this time, based on the
25 testimony here, we would offer this individual as an expert

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1 in GSR analysis.

2 **THE COURT:** Any query with regard to his
3 qualifications?

4 **MR. RICHEY:** No objections, Your Honor.

5 **THE COURT:** All right. He is indeed qualified as an
6 expert in GSR analysis. Madam Forelady, ladies and
7 gentlemen of the jury, ordinarily a witness can only testify
8 as to things they heard, saw and felt. There is an
9 exception of this rule for witnesses that are qualified as
10 expert. If by reason of their experience or education they
11 have become expert in some field, then they can not only
12 testify as to what they heard, saw, and felt, but they can
13 render opinions in that field.

14 Just by virtue of the fact that a witness is an expert
15 doesn't mean that you have to believe them. You have to
16 apply the same rules to credibility of an expert witness
17 that you would an ordinary witness. And you don't have to
18 believe an expert witness' testimony even though it's
19 uncontradicted. I'll talk with you in greater detail about
20 that at the conclusion of the case. He is so qualified.

21 **MR. CULBREATH:** Thank you, Your Honor. May I approach,
22 Your Honor?

23 **THE COURT:** Yes.

24 **Direct Examination by Mr. Culbreath Continued:**

25 Q. Mr. Sturkie, let me show you what we've had previously

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1 marked and admitted into evidence as State's 24, 29 and 47.

2 Take a moment and see if you recognize those three.

3 (Pause)

4 A. I do recognize these State's exhibits. State's exhibit
5 24, 29 and 47 are gunshot residue collection kits that were
6 submitted to SLED's laboratory for analysis.

7 Q. Okay. And tell us just a little bit about what we kind
8 of talk about as the chain of custody. How do these things
9 get to you?

10 A. The submitting agency will submit these collection kits
11 to SLED's laboratory in our evidence control department.
12 The evidence control will assign a lab number. In this
13 specific case it was SLED's lab number L16-08798. From
14 there any items that are submitted with that case get
15 assigned an item number.

16 State's exhibit 24 was SLED's lab number L168798 item
17 1. State's exhibit 29 was item number 3. And State's
18 exhibit 47 was item number 2.

19 When all of these get assigned, they will remain in
20 evidence control until it is to be analyzed by myself. And
21 I will come down from the Trace Evidence Department, collect
22 the evidence that is stored in a secure location, and I will
23 bring them to the Trace Evidence Department in my custody or
24 in another secure location.

25 From there, when it is time to analyze, I will open the

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1 kits, inventory them, analyze them. When my analysis is
2 complete I will again store them in a secure location. And
3 when the case is closed, I will submit them for return.

4 Q. Okay. And were those -- would that packaging indicate
5 any type of tampering or would you -- would you receive it
6 in a secure condition when you test them?

7 A. These kits would have come in this envelope here, which
8 at the time was sealed and initialed. This is lab number
9 L168798, container A. All three items were contained in
10 this container. If the container was sealed or broken in
11 any fashion, I would not have analyzed the kits.

12 Q. Okay.

13 **MR. CULBREATH:** I'm going to ask this be marked as
14 State's 53.

15 (Whereupon State's exhibit 53 was marked for
16 identification)

17 **MR. CULBREATH:** Let me show this to Defense counsel.

18 **MR. RICHEY:** We'd have no objection to this, Your
19 Honor.

20 Q. State's 53, Mr. Sturkie, if you could take a look at
21 that for me and just tell the jury what that is.

22 A. State's exhibit 53 appears to be a copy of my final
23 report on this case.

24 Q. Okay. Does that appear to be an accurate reflection of
25 the findings that you made based on your testing of those

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1 three samples?

2 A. Yes, sir.

3 **MR. CULBREATH:** At this time, Your Honor, we'd like to
4 move that in as State's 53.

5 **THE COURT:** Any objection?

6 **MR. RICHEY:** No objection.

7 **THE COURT:** It's into evidence.

8 (Whereupon State's exhibit 53 was admitted into
9 evidence)

10 Q. All right. Mr. Sturkie, if you will, tell the jury
11 about your testing of these three samples and your findings.

12 A. The items are all automated analysis through a scanning
13 electron microscope. And this microscope is not your
14 typical light microscope that you may be used to. These
15 particle lifts will be placed in what we call a chamber.
16 And this chamber is then vacuum sealed.

17 The automated analysis portion uses an electron beam
18 and will scan the particle lift to look for gunshot residue
19 particles or any particles that may be on these particle
20 lifts. Whenever I set up an automated run, I am setting it
21 up to look for a specific shape and an elemental
22 composition. The elements that are needed to be found are
23 lead, barium and antimony within one particle.

24 As the automated analysis is performed, these particles
25 are collected as features within the system and database.

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1 However many particles are found once the automated analysis
2 is complete, I will manually check and go back to these
3 particles to confirm whether or not these features are, in
4 fact, gunshot residue.

5 For item 1, which was one GSR kit from Jeryl Lamar
6 White, the results were particles characteristic of gunshot
7 primer residue were found.

8 My item number 2, one GSR kit from Simeon Williams,
9 results were particles characteristic of gunshot primer
10 residue were found.

11 And my item number 3, one GSR kit from Tristian
12 Cummings, the results were particles characteristic of
13 gunshot primer residue were found.

14 Q. Okay. And those are summaries of the -- were there
15 four different swab areas that they submitted for each
16 individual?

17 A. Correct. Each individual had four particle lifts.
18 Each individual particle lift had enough between the four to
19 have at least two or more particles of gunshot residue
20 found. If only one particle were found, I would have
21 notated that in my results. However, due to time and space
22 on that final report, the particles that are found are
23 multiple if two or more are found.

24 Q. Two or more? Okay. And do you -- when you're doing
25 your testing of each one, do you keep your own internal

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1 notes and then provide as a collection or summary ---

2 A. Yes, sir, I do.

3 Q. Okay. So you're keeping track internally and then
4 creating a final report?

5 A. Correct. I have the case jacket with the exact number
6 of particles that I found.

7 Q. And you found particles on all three of the individuals
8 tested? Mr. ---

9 A. Correct.

10 Q. --- White, Mr. Cummings and Mr. Williams?

11 A. That is correct.

12 Q. Okay. How can or about how long -- is there a period
13 of time that you need to do testing for you to find that to
14 be reliable or you're comfortable with the findings?

15 A. For living individuals, from the time of shooting to
16 the time of collection, we will not analyze a kit that has
17 been collected beyond six hours. The reason being is after
18 six hours on a living individual the GSR particles are
19 negligible.

20 As time goes on, if particles are deposited onto the
21 hands, a lot of factors start coming into play, sweat,
22 rubbing of the hands, any potential factor to try to remove
23 those particles increases as time goes on. Six hours
24 appears to be about that time-frame in which we will no
25 longer analyze a gunshot residue kit.

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1 For a deceased individual, there is no time-frame.
2 That individual -- their bodily functions have ceased. So
3 they are not actively removing gunshot residue particles.
4 For inanimate clothing or inanimate objects such as
5 clothing, we also do not have a time-frame only because it
6 would have to be removed from an outside source.

7 Q. Okay. And with regard to the pattern of the spray of
8 GSR when a gunshot is fired, I'd assume clothing would in
9 some way prevent it from getting on skin, obviously. With
10 regard to, say, wearing gloves, can you -- if you're
11 undertaking the -- take the gloves off or manipulating the
12 gloves after having been exposed to GSR, will that also show
13 up?

14 A. During -- during the time of the shooting if there are
15 any objects such as gloves that are impeding factors in
16 between where the gunshot residue is expelled from, being
17 the gun, and then where it would be deposited, on gloves,
18 the gunshot residue would happen to land on the gloves if
19 the individual were wearing gloves.

20 I would not expect them to be on the hands at the time
21 of the shooting if that individual were wearing gloves.
22 However, gunshot residue is a very fragile piece of
23 evidence. It can be easily removed and transferred.

24 A visual I like to give sometimes is baking flour. If
25 you're in the kitchen and you have baking flour on your

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1 hands, if you go to pick up a spoon or a cup and then place
2 that cup down, that cup will have flour from your hands. So
3 whereas you cannot see gunshot residue, it still acts as the
4 same concept as baking flour. So the more anything is
5 utilized as far as movement or deposition, gunshot residue
6 has the potential to be transferred if deposited.

7 Q. Okay. And so if you had fired a gun two or three hours
8 before and then put on gloves, it's possible to still have
9 GSR on your hands?

10 A. It would be, yes.

11 Q. Okay. And if you fired a gun with gloves and then
12 tried to take those gloves off, you could have transferred
13 the GSR to your hand?

14 A. Potentially, yes, depending on how much movement has
15 been going on. The more things that are touched with
16 gunshot residue, the more potential it has to be
17 transferred.

18 Q. And if you were standing nearby, like with Mr.
19 Williams, standing nearby three or four feet, could you have
20 gotten GSR on you as well?

21 A. Yes, sir. When we find gunshot residue I can tell you
22 one of three things. One is that the individual fired a
23 weapon. Or, two, is that the individual was in the vicinity
24 when that weapon was fired. Or, three, the individual
25 touched an object that had GSR on it. I cannot identify

TYLER STURKIE - CROSS-EXAMINATION BY MR. RICHEY

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1 which of those three specifically, just that GSR is either
2 absent -- absent or present.

3 Q. And that is what's stated in your report, correct?

4 A. That is, yes.

5 **MR. CULBREATH:** Court's indulgence one moment.

6 (Pause)

7 Q. Mr. Sturkie, thank you. Please answer any questions
8 Defense counsel has for you.

9 **Cross-Examination by Mr. Richey:**

10 Q. Sir, do you know what items you tested? Did you test
11 -- did you test the gloves? Do you know the items you
12 actually tested?

13 A. Yes, sir. I only tested these three gunshot residue
14 kits here.

15 Q. Okay. And do you know where that came from?

16 A. According to the outside of the collection kits -- and
17 inside of these kits is an information form that labels the
18 subject in which the kits were taken from.

19 Q. Okay. And where were they taken from?

20 A. Item -- State's exhibit 24, which is my item number 1,
21 is taken from Jeryl White. State's exhibit 29, which is my
22 item number 3, was taken from Tristian Cummings. And
23 State's exhibit 47, which is my item number 2, collected
24 from Simeon Williams.

25 Q. And I want to ask you about -- the glove in this case

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1 is actually -- if somebody fired a gun and -- and put gloves
2 on, that would actually be a benefit to you, wouldn't it?

3 A. Depending on the type of glove or the material that it
4 is used. If it's plastic, plastic over your hand creates
5 humidity and sweat. Therefore, any sweat could potentially
6 remove any object or any GSR, excuse me. However, if a
7 glove were on the hand, anything could be preserved as well.

8 Q. We got one of these -- this is not plastic, right?

9 A. Does not appear to be, no, sir.

10 Q. Okay. And the reason why that glove benefits you in
11 your testing is -- and it's a bonus for you is because we
12 have a term we call this trace evidence, right? Trace
13 evidence, right?

14 A. Yes, sir.

15 Q. It's the kind of evidence that we don't see. Like I'm
16 standing here right now and my hair particles could be
17 falling on the floor, correct?

18 A. Correct.

19 Q. And -- and when I leave -- when I leave this area, you
20 folks or somebody could come, take the microscope, collect
21 the hair and can basically identify who was standing here,
22 correct?

23 A. Not particularly with your hair, but with any type of
24 trace evidence you can likely leave some behind to be found
25 later.

TYLER STURKIE - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. Right. It's the evidence -- it's the blind evidence,
2 right, that we can't see, but -- we can't see. That's ---

3 A. With the naked eye it is -- it is impossible to see,
4 generally. It usually requires some sort of magnification
5 ---

6 Q. Right.

7 A. --- instrumentation.

8 Q. So -- so if I fire a gun -- because we know -- we know
9 that these little particles get on our hand, right? We know
10 that. That's -- right?

11 A. Yes, sir.

12 Q. We can see them there. I mean, they're so small that
13 we can't see them, correct?

14 A. That is true.

15 Q. Okay. So if I fire a gun, okay, I got these particles
16 on my hand right here, right? I then immediately put on a
17 glove over them, right?

18 A. (Affirmative nod).

19 Q. Then we know that if those particles are on my hand and
20 I put that glove on, those particles can go one or two
21 places, right? They could go -- they could remain on my
22 hand, correct?

23 A. They could remain on the hand, yes.

24 Q. Or they could be on this glove?

25 A. They could be on the interior of the glove as -- in the

TYLER STURKIE - CROSS-EXAMINATION BY MR. RICHEY

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1 motion of removing that glove ---

2 Q. Right.

3 A. --- at that moment. Anything afterwards, it -- again,
4 GSR is very fragile. So depending on where those hands were
5 going or the glove would be going, wherever GSR was on it
6 could end up whatever else it touches.

7 Q. But we could catch you, can't we, by cutting this open,
8 right?

9 A. I'm sorry?

10 Q. This glove, we could -- we could take it and we could
11 cut it open, right?

12 A. Yes, sir.

13 Q. And we could take that same microscope and look on the
14 inside of this glove to see was there any particles, right?

15 A. We would use a particle lift ---

16 Q. Right.

17 A. --- such as the hands to collect the glove itself and
18 then analyze that particle lift.

19 Q. So the glove is a benefit?

20 A. My job is to analyze for gunshot residue for the items
21 that were submitted to the lab.

22 Q. And you said clothing -- it stays on clothing longer
23 than the skin, right?

24 A. In theory, yes.

25 Q. True? That would be an accurate ---

TYLER STURKIE - REDIRECT EXAMINATION BY MR. CULBREATH

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1 A. Yes, sir.

2 Q. Okay. So -- so that clothing is going to carry that
3 gunpowder residue for longer periods of time than the hand,
4 correct?

5 A. Yes.

6 Q. Okay. And so one could not necessarily, necessarily
7 shoot, fire a gun and have gunpowder residue on them,
8 correct?

9 A. Can you repeat that one more time?

10 Q. Okay. One cannot fire a gun, a person, I use the word
11 person, could not fire a gun and have gunpowder residue on
12 them, correct?

13 A. That is correct. If no one fires a weapon, it is
14 common to not have gunshot residue on you.

15 Q. So -- so the mere fact that you have gunpowder residue
16 on you does not determine whether you fired a gun in
17 absolute, correct?

18 A. That is true.

19 Q. Thank you.

20 **MR. CULBREATH:** Very briefly, Your Honor.

21 **THE COURT:** Yes, sir.

22 **Redirect Examination by Mr. Culbreath:**

23 Q. Mr. Sturkie, Jeryl White had gunshot residue on him,
24 correct?

25 A. That is correct.

TYLER STURKIE - REDIRECT EXAMINATION BY MR. CULBREATH

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1 Q. Any evidence that he fired a weapon that night other
2 than the fact that he had GSR on him?

3 A. No, sir. Generally with victims of gunshot wounds, we
4 expect gunshot residue simply because they have been shot
5 with a weapon. However, when we find gunshot residue, I can
6 tell you the individual fired was in the vicinity or touched
7 an object that had GSR.

8 Q. Right. And with regard to the glove or cutting it open
9 and testing it, that would show generally that the glove was
10 nearby or involved with a firearm being fired as opposed to
11 the testing of an individual's hands, correct?

12 A. They would -- they would be the same as far as my
13 analysis goes.

14 Q. So if we -- we test the hands, we show that the
15 individual was there?

16 A. Yes, sir.

17 Q. We test the glove, we show the glove was there?

18 A. That is correct.

19 Q. And the test kits that you got were hand swabbed?

20 A. Only hand kits only.

21 Q. Thank you. That's all I have.

22 **THE COURT:** All right. You may step down.

23 A. Thank you.

24 **THE COURT:** And you're free to leave. Madam Forelady,
25 ladies and gentlemen of the jury, we're going to take a

1 brief recess, allow you to refresh yourselves. Once again,
2 no discussion about the case whatsoever. Everyone remain
3 seated as the jury exits the courtroom.

4 (Whereupon the jury exited the courtroom at 2:03 pm)

5 **THE COURT:** Anything from the State before we recess
6 for a moment?

7 **MR. McMASTER:** Nothing from the State, Your Honor.

8 **THE COURT:** Anything from Defense?

9 **MR. RICHEY:** No, sir, Your Honor.

10 **THE COURT:** All right. We'll stand at ease for a
11 moment.

12 (Whereupon court was in recess at 2:04 pm)

13 (Whereupon court reconvened at 2:19 pm)

14 **THE COURT:** Anything from the State before we proceed?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Anything from Defense?

17 **MR. RICHEY:** Nothing, Your Honor.

18 **THE COURT:** All right. We're ready for the jury.

19 (Whereupon the jury entered the courtroom at 2:20 pm)

20 **THE COURT:** Mr. McMaster, you're recognized.

21 **MR. CULBREATH:** Thank you, Your Honor. May it please
22 the Court?

23 **THE COURT:** Yes, sir.

24 **MR. CULBREATH:** Your Honor, the next two witnesses on
25 the State's witness list are Timothy Nafzinger and Dr.

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. CULBREATH

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1 Kandala. We've talked with Defense counsel. We've
2 stipulated to the admissibility of those reports generated
3 by those two expert witnesses so that we can put those in
4 evidence. And we no longer have a need to call those two --
5 the two particular witnesses.

6 **THE COURT:** Very good.

7 **MR. RICHEY:** That's correct, Your Honor.

8 **MR. CULBREATH:** So at this time we'll call Mr. James
9 Armstrong.

10 **THE COURT:** Very good. Mr. Armstrong, please come
11 forward. You can put your paperwork down. Place your left
12 hand on the Bible and raise your right hand as the clerk
13 administers the oath.

14 **James Armstrong,** being
15 duly sworn testified as follows;

16 **MADAM CLERK:** Thank you.

17 **THE COURT:** Speak loudly, clearly and slowly in order
18 that we can hear everything that you have to say. And start
19 with your full name.

20 **MR. ARMSTRONG:** Yes, sir. James William Armstrong.

21 **Direct Examination by Mr. Culbreath:**

22 Q. Mr. Armstrong, good afternoon. Please tell this jury
23 where you work.

24 A. I'm employed with the Greenville County Department of
25 Public Safety, Forensics Division, Crime Laboratory.

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. CULBREATH

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1 Q. All right. And what does that mean for us in layman's
2 terms?

3 A. I personally have a dual responsibility as a forensic
4 drug chemist and a forensic firearm examiner.

5 Q. Okay. How long have you worked over at the Department
6 of Public Safety?

7 A. A little over 23 years.

8 Q. And in what capacity?

9 A. I worked in the drug chemistry for 23 years. And doing
10 firearm identification, a little over 19 years.

11 Q. Tell us a little bit about your educational background.

12 A. In which field?

13 Q. Well, from college, and then take us -- just go --
14 you're here today and your report has already been entered
15 into evidence. And that's the firearms expert -- so geared
16 towards that particular specialty.

17 A. I have a Bachelor of Science Degree in Chemistry from
18 Erskine College. I have trained in the area of firearm
19 identification approximately two years doing an
20 apprenticeship-style-training under the direction of a
21 retired firearm examiner from Philadelphia PD.

22 I'm a member of the Association of Firearm and Toolmark
23 Examiners. I have completed numerous firearm identification
24 schools sponsored by the Alcohol Tobacco and Firearms and
25 Explosives.

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1 I have been through 14 different manufacturing
2 facilities to see how the firearms are manufactured from raw
3 material to finish product. Went through four different
4 ammunition assembly plants to see how the ammunition is
5 manufactured and assembled. And I've testified in federal
6 and state court at least 67 times as an expert in the area
7 of firearm identification.

8 Q. All right. And is your work peer reviewed?

9 A. Yes, sir, it is.

10 **MR. CULBREATH:** Your Honor, at this time we'd offer
11 this witness as an expert in the field of firearms and
12 ballistics analysis.

13 **MR. RICHEY:** No objection.

14 **THE COURT:** All right. No query with regard to his
15 qualifications?

16 **MR. RICHEY:** None, Your Honor.

17 **THE COURT:** All right. He is so qualified.

18 **MR. CULBREATH:** Thank you, Your Honor.

19 Q. Mr. Armstrong, tell us a little bit about ballistics,
20 firearms analysis and in particular matching up firearm with
21 shell casings and projectiles. Just give us an overview.

22 A. Yes, sir. When you fire a firearm there are basically
23 anywhere from four to six fingerprints, as we can basically
24 say, that are left behind at a crime scene from that
25 particular firearm because when you pull a trigger of the

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1 firearm, the firing pin goes forward and strikes what we
2 call the primer region on the cartridge. That primer
3 section, once it is struck, now has an impression in it from
4 that firing pin.

5 Well, then there's a spark that's caused from that
6 striking, and it causes the powder inside the cartridge to
7 burn at a rapid rate causing the projectile to then go down
8 the barrel. Well, the barrel has what we call rifling in it
9 that has the spiral effect, that puts the spin on a bullet.
10 And it has different lands and grooves. And those lands and
11 grooves are impressed onto the projectile leaving a
12 fingerprint for the firearm.

13 Then on the shell casing, which actually holds the
14 projectile and everything together inside that -- the
15 firearm, it expands in all directions. As it expands it
16 leaves other marks on that casing called chamber marks.
17 That's the second fingerprint. Then we have the firing pin
18 impression as well, which is three.

19 Then we have what we call breech face comparison or
20 breech face marks. Those are about where the firing pin is
21 housed, there's an aperture or a hole, and when it goes
22 through, this entire face has imperfections there that are
23 transferred to that casing, breech face marks.

24 And you also have an extractor and ejection marks if
25 it's a semiautomatic. And those are unique to a particular

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1 firearm just like fingerprints are to individuals.

2 Q. All right. And in this particular case ---

3 **MR. CULBREATH:** Your Honor, if I may approach?

4 **THE COURT:** Yes.

5 Q. --- I'd like to show you is State's exhibit 52 to see
6 if you recognize that.

7 A. Yes, sir, I do.

8 Q. Okay. That's your report that you generated in this
9 case?

10 A. Yes, sir, it is.

11 Q. All right. And I'll show you some of the physical
12 evidence that's in evidence right now, State's 43, 44, 45,
13 46 and 48.

14 (Pause)

15 Q. And if you could look at those, we've obviously got
16 them marked as State's exhibits, but they've got barcoding
17 on them that indicates which particular forensic -- crime
18 scene technician admitted those into evidence. And if I
19 can, I'd like to put this report up.

20 And if you can just explain for the jury, talk us
21 through how you did an analysis in this case and what
22 exactly is reflected on your report. Well, I'm hoping you
23 can see that.

24 (Pause)

25 Q. That's not working out for us. Well, I'll tell you

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1 what, ---

2 **THE COURT:** I believe you've got some assistance.

3 (Pause)

4 **THE COURT:** These lawyers can't operate machinery.

5 **MR. CULBREATH:** Clearly.

6 Q. All right. Mr. Armstrong, after looking at that
7 physical evidence and looking at your report, just talk us
8 through, if you will, your test procedures.

9 A. Yes, sir. When I receive items from our Property and
10 Evidence room for testing, I take them back to my office and
11 inventory what I actually find out -- to make sure I have
12 everything the officer has requested for me to examine, such
13 as item number -- State's exhibit 48 was my item number 1.

14 When I take it out of the container I actually clean
15 the projectiles because it may have biologicals on it. I'm
16 trying to eliminate the potential threat of having any kind
17 of transfer. So I then clean the projectile, then I
18 identify it.

19 Like this one here, I actually wrote the item number,
20 item number 1, put my initials underneath it on the base so
21 I can identify it later and make sure I don't mix it up in
22 any other testing. And I count what we call the lands and
23 grooves.

24 And then I do a comparison to an actual piece of
25 evidence which I generate from actually firing the firearm

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1 so we can compare them side by side. So I go and take the
2 firearm itself, test fire it, collect that projectile and
3 compare it to this projectile under a comparison microscope
4 to see if I can line up what we call the striations or the
5 lands and grooves from the barrel to that -- to its own
6 projectile.

7 It's kind of like matching a puzzle together. To get
8 two pieces -- I get the puzzle and it kind of goes together
9 and all links together, then we know for certain this is a
10 match and we can go from there. The same concept with the
11 fired cartridge cases. But this item RH -- RRH7, which is
12 -- does not have a State's exhibit on it. It's another
13 projectile. And the same type examinations are done with
14 that one.

15 This is item RRH6, which is a caliber .45 auto fired
16 cartridge case. And it has the item number and my initials
17 on the inside where I've marked it. And these are compared
18 to known test shots that I have actually generated from the
19 firearm as well to make a -- do my findings.

20 And in doing the -- doing the examination on the
21 firearm I actually write down the serial number, the make
22 and model, the caliber, what country originated in. And
23 then I take it out and do a test fire and generate those
24 evidence pieces to compare to the unknowns that have come
25 from the crime scene.

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1 Q. And based on your analysis what were your findings in
2 this case?

3 A. The item RRH1 pistol, which is State's exhibit 43, it
4 was test fired, found to be operable. The items RRH4 and
5 RRH6, fired cartridge casings were fired in this pistol.
6 The items RRH7 and item 1, fired bullet specimens were fired
7 from the item RRH1, pistol.

8 Q. Okay. So the evidence that has been put in front of
9 you, the two shell casings collected from the scene, the
10 projectile dug from the floor of the bathroom, and the
11 projectile taken out of Mr. White at the autopsy, do all of
12 those match that firearm?

13 A. Yes, sir. Correct.

14 MR. CULBREATH: Court's indulgence one moment.

15 (Pause)

16 Q. That's all the questions I have. Please answer any
17 questions ---

18 THE COURT: Cross-examination.

19 MR. RICHEY: No questions.

20 THE COURT: You may step down.

21 A. Thank you.

22 THE COURT: You're free to leave.

23 A. Thank you.

24 THE COURT: You may call your next witness.

25 MR. CULBREATH: Your Honor, the State would call Dr.

MICHAEL WARD, M.D. - DIRECT EXAMINATION BY MR. CULBREATH

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1 Michael Ward.

2 THE COURT: Mr. Culbreath, ---

3 MR. CULBREATH: Yes, sir.

4 THE COURT: --- you might want to grab these envelopes
5 right here and put them over there in a pile so we don't
6 knock them over. Those envelopes on the side there.

7 MR. CULBREATH: Oh, yeah.

8 THE COURT: Let's do that.

9 Come forward. You can put your file down and place
10 your left hand on the Bible. Raise your right hand as the
11 clerk administers the oath.

12 Michael Ward, M.D., being
13 duly sworn testified as follows;

14 MADAM CLERK: Thank you.

15 THE COURT: Yes, sir. If you could have a seat in the
16 witness chair. Pull up real close to that microphone.
17 Speak loudly, clearly and slowly in order that we can hear
18 everything that you have to say. And let's start with your
19 full name, please, sir.

20 DR. WARD: My name is Michael Eugene Ward.

21 THE COURT: Thank you, Mr. Ward. Mr. Culbreath.

22 **Direct Examination by Mr. Culbreath:**

23 Q. Dr. Ward, good afternoon. Please tell the jury where
24 you work, and how long you've been there and what you do.

25 A. I'm employed by Pathology Associates of Greenville,

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1 which is a private practice pathology group here in
2 Greenville. I've been here for almost 24 years. I'm also
3 the Chief Medical Examiner for the County of Greenville. My
4 primary responsibilities are to investigate deaths that
5 occur in Greenville County, to determine cause and manner of
6 death.

7 Q. All right. And, I'm sorry, how long have you served in
8 that capacity?

9 A. Twenty-four years.

10 Q. Have you had the occasion to testify in court as an
11 expert witness in the area of forensic pathology?

12 A. Yes, I have.

13 Q. About how many times have you been certified ---

14 A. Well over a hundred times.

15 **MR. CULBREATH:** Your Honor, at this time I'd like to
16 offer the doctor as an expert ---

17 **THE COURT:** Any query with regard to his qualification?

18 **MR. RICHEY:** No objection.

19 **THE COURT:** All right. He is so qualified and allowed
20 to render his opinion in the field of forensic pathology.

21 **MR. CULBREATH:** Thank you, Your Honor.

22 Q. Dr. Ward, if you could just tell the jury generally
23 what an autopsy is, what its purpose is and how you conduct
24 one.

25 A. An autopsy is a detailed physical examination which is

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1 performed on someone who has died. Pathology, which is one
2 of the fields that I'm -- have education in is the study of
3 disease and disease processes and how they affect man.
4 Forensic pathology takes that one step further dealing
5 primary with disease, trauma or injuries and how persons
6 come to die, so how they -- how these injuries affect and
7 cause them to die, and then the presentation of that
8 information in the court of law.

9 Q. And in this particular case -- you were serving in that
10 capacity back on March 7th of 2016?

11 A. Yes, I was.

12 Q. And did you have occasion to conduct an autopsy on Mr.
13 Jeryl White?

14 A. Yes, I did.

15 Q. If you could tell this jury about that autopsy, and if
16 you recall, who was there with you. I think law enforcement
17 does attend in some cases. But just kind of generally tell
18 them how you conducted your autopsy on Mr. White.

19 A. So present at the time of the autopsy was Greenville
20 County Criminal Justice Support Department, Sergeant Dar
21 Shaw, that's forensics. Also present was Greenville City
22 Police, Detective Mike Fortner, and Greenville County Deputy
23 Coroner, Sonny Soler.

24 An autopsy basically begins with an external
25 examination looking at the outer portion of the body for any

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1 injuries that may be present, any identifying marks,
2 diagraming those injuries that are present, and then a
3 continuation of that examination on the inside of the body
4 to see what trauma that we noticed on the outside is also
5 present on the inside and then the recovery of any, in this
6 case, projectiles that may have been present.

7 Q. All right. And not to jump ahead too far, but when you
8 first bring -- have the individual brought in for the
9 autopsy, you identify them how?

10 A. Well, in this particular case, Deputy Coroner Soler was
11 present at the autopsy, so he was able to identify Mr.
12 White. But he also had an identification band that had been
13 placed by Deputy Coroner Soler when he was in the emergency
14 room on his -- one of his extremities. So we make sure that
15 the person that we're supposed to be autopsying has that
16 identification band present at the time of autopsy.

17 Q. Okay. Based on your examination of this particular
18 individual, Mr. White, did you observe any injuries? And if
19 you did, what were they and what -- were they likely to
20 cause death?

21 A. Mr. White had two gunshot wounds. The first was -- and
22 these are in no particular order. The first was a gunshot
23 wound to the front portion of his right thigh, what we would
24 call in the midline of his right thigh.

25 It passed from his front to his back and from his right

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1 to his left and exited the inner portion of his -- the back
2 portion of his right thigh. So it goes through the muscle,
3 does not strike bone, it enters on the front and exits out
4 the back. It goes from Mr. White's front to back and right
5 to left.

6 This very likely would not have been a fatal wound.
7 Any wound is potentially fatal, but more than likely this
8 would not have been a fatal wound if he had been able to
9 seek medical attention.

10 The second wound was a gunshot wound, which entered
11 literally the top of the left shoulder. It passed from Mr.
12 White's left to his right. It passed through his seventh
13 cervical vertebra.

14 So the vertebra are the bones that surround our spinal
15 cord and give us support and protect our spinal cord. It
16 passed through the seventh cervical vertebra. It transected
17 or cut the spinal cord at that level.

18 It then passed into his right neck where it cut or
19 transected his right carotid artery, passes through the
20 musculature of his shoulder into the arm and was recovered
21 almost at the angle of the elbow. So it passed from here
22 this way through his arm. And a projectile was recovered
23 from the deep musculature of his right upper arm.

24 Q. Would that particular injury be sufficient to cause
25 death?

MICHAEL WARD, M.D. - DIRECT EXAMINATION BY MR. CULBREATH

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1 A. Yes, it would.

2 Q. And was that the cause of death in this case?

3 A. Yeah, the cause of death to Mr. White in this case, I'm
4 sorry, didn't want to phrase it -- was a gunshot wound of
5 the chest in that the entrance wound began on the chest even
6 though the trauma is to the neck.

7 **MR. CULBREATH:** Your Honor, if I may?

8 **THE COURT:** Yes.

9 **MR. CULBREATH:** We'll mark this as State's 54.

10 (Whereupon State's exhibit 54 was marked for
11 identification)

12 Q. Let me show you that.

13 (Pause)

14 Q. Do you recognize that?

15 A. Yes, I do.

16 Q. Okay. And what is that?

17 A. This is a copy of my autopsy report generated on Mr.
18 White.

19 Q. All right. I'll have that marked, and I'll show you
20 this very briefly for demonstrative purposes.

21 (Whereupon State's exhibit 55 was marked for
22 identification)

23 Q. Do you recognize that?

24 A. Yes, I do.

25 Q. And what is that?

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1 A. This is a body diagram made at the time of autopsy
2 demonstrating the injuries that I described to you, which
3 was also generated at the time of autopsy.

4 Q. Okay. Thank you, sir.

5 MR. CULBREATH: Your Honor, at this time I'd like to go
6 ahead and move these, State's 54 and 55, into evidence.

7 MR. RICHEY: No objections.

8 THE COURT: They're into evidence.

9 (Whereupon State's exhibits 54 and 55 were admitted
10 into evidence)

11 Q. Doctor, let me show you -- I'm going to give you your
12 report, which is 54. If you could, we've got a full body
13 diagram that I believe you utilized in this particular
14 autopsy. And I show you this to ask you, if you can, I'll
15 give you a pointer, if you could describe for the jury
16 visually where you're talking about as far as the two
17 injuries, and the path of the two bullets and the trajectory
18 that they took.

19 A. So the first gunshot wound I described was a gunshot
20 wound to the front portion of Mr. White's right leg. It
21 entered here. This is the entrance wound. It passed from
22 his front to his back, so through the musculature of his
23 right leg.

24 Now looking from the back, this becomes the right leg,
25 and here's the exit wound. So you can see that initially it

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1 was in the midline. So it is now traveling from right to
2 left and from front to back with very little deviation
3 either up or down. It was -- it was basically on a level
4 plain, in this case, vertically.

5 The second gunshot wound is a little bit hard to see,
6 which enters here on the top of his left shoulder. It
7 passes from his left to his right transecting in this region
8 here, the spinal cord, at the level of the seventh cervical
9 vertebra. Right here would be the right carotid artery.

10 And it travels this way through the musculature. And
11 with his arm raised at the shoulder it then travels downward
12 and is recovered in this region here. So this arm would be
13 raised to the level of his shoulder for the bullet to be
14 able to do that.

15 Q. Okay. And so, doctor, let me ask you this. If an
16 individual were laying on the ground and someone stood over
17 them and fired into their leg, would that be consistent from
18 an angle or trajectory standpoint with the wound you
19 described on the right leg?

20 A. Yes, it would.

21 Q. All right. And with regard to the shoulder injury, if
22 you had an individual that may have been bracing up, putting
23 their hand, say, on a door and on the wall, would that be a
24 plausible way to have a bullet enter here and end or stopped
25 here as you mentioned by having your arm raised?

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1 A. Yes. That scenario would describe the position
2 necessary for that course of that bullet through the body.
3 With the arm raised to nearly 90 degrees at the shoulder, if
4 he were bracing this way, would be a scenario that would fit
5 that, yes.

6 Q. And then as the bullet entered and it transected and
7 cut the carotid artery, would death -- how quickly is onset
8 after an injury like that is sustained, if you know?

9 A. Well, I don't know. It would take certainly minutes
10 for him to -- basically he bleeds out from transection of
11 his coronary artery. So he, in this case, he had time to be
12 recovered and transported to a hospital before they
13 pronounced him dead.

14 Q. Okay. Just to summarize, the wounds that he suffered
15 from the firearm, that caused his death, correct?

16 A. Yes. His cause of death is a gunshot wound of the
17 chest.

18 **MR. CULBREATH:** The Court's indulgence for one moment,
19 Your Honor.

20 (Pause)

21 Q. That's all the questions I have, doctor. Thank you.

22 **MR. RICHEY:** No questions.

23 **THE COURT:** You may step down and you're free to leave.
24 Thank you, sir.

25 A. Thank you.

1 **THE COURT:** You may call your next witness.

2 **MR. McMASTER:** Your Honor, we -- at this time we'd like
3 to take up a matter of law with the Court.

4 **THE COURT:** Very good. Madam Forelady, ladies and
5 gentlemen of the jury, we're going to have to take up a
6 legal matter outside of your presence. I'm going to ask you
7 to retire to the jury room, but once again, do not discuss
8 the case. Everyone remain seated as the jury exits the
9 courtroom.

10 (Whereupon the jury exited the courtroom at 2:44 pm)

11 **THE COURT:** Yes, sir.

12 **MR. McMASTER:** Your Honor, the State will rest in just
13 a moment. We wanted to confer with the court reporter to
14 make sure that all items of evidence that has been marked
15 have been entered into evidence at this time. And then the
16 State will rest at that point.

17 **THE COURT:** All right. You feel free to do that.

18 **MR. McMASTER:** Thank you.

19 (Pause)

20 **THE COURT:** I want to ask maybe if the investigator can
21 ensure that the firearm -- there's no live rounds that are
22 going to go back with the evidence. And I think -- make
23 sure that the gun is not operational and that there are no
24 ---

25 **INVESTIGATOR FORTNER:** It's got a ---

1 **THE COURT:** Okay, good.

2 **INVESTIGATOR FORTNER:** --- lock on it.

3 **THE COURT:** All right. And there are no live rounds?

4 **INVESTIGATOR FORTNER:** These two right here, but I'll
5 take possession of them.

6 **THE COURT:** Okay. Well, I'll tell you what, let's let
7 the clerk hang on to them.

8 **INVESTIGATOR FORTNER:** Okay.

9 **THE COURT:** Let the clerk hang on to them. And if they
10 request to see the bullets, then we will get the gun back
11 and send the bullets back. How about that?

12 **MR. McMASTER:** Right. Yes, sir. And the clerk has
13 told us that she also has a laptop that has -- that is
14 provided by the clerk's office, if they would like to listen
15 to the 911 call, that would go back there in evidence.

16 **THE COURT:** No, we'll -- if they ask to hear that, we
17 would bring them back into the courtroom and play it again.
18 We don't want them playing with technology and playing stuff
19 that doesn't need to be played.

20 **MR. McMASTER:** Perfect.

21 **THE COURT:** They've heard it once. If they need to
22 hear it again, we can -- they can ask for it.

23 **MR. McMASTER:** Sure.

24 (Whereupon court was in recess at 2:48 pm)

25 (Whereupon court reconvened at 2:52 pm)

1 **THE COURT:** Yes, sir, you're recognized.

2 **MR. McMASTER:** Your Honor, we've reviewed the evidence.

3 And there's one photograph that -- State's exhibit 20 that
4 the Defense has stipulated that it can be entered into
5 evidence at this time.

6 **THE COURT:** Is that correct?

7 **MR. RICHEY:** That's correct, Your Honor.

8 (Whereupon State's exhibit 20 was admitted into
9 evidence)

10 **MR. McMASTER:** We've reviewed all other evidence,
11 though, with the clerk. It appears all evidence has been
12 properly admitted.

13 **THE COURT:** Very good. Anything from the State before
14 we bring the jury back out?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Anything from the Defense?

17 **MR. RICHEY:** Judge, do you want to do my directed
18 verdict motion at this point?

19 **THE COURT:** Yes, we can. If -- we can stipulate to
20 that. I understand the State has already stipulated. So we
21 can entertain motions at this time, however, I'm going to
22 give him an opportunity to rest on the record when the jury
23 comes out.

24 **MR. RICHEY:** Yes, sir.

25 **THE COURT:** And we'll entertain motions at this time.

1 **MR. RICHEY:** Your Honor, we'd ask the Court to grant a
2 directed verdict in looking at the evidence in the light
3 most favorable to the State. The State did not call any
4 witness to say my client actually shot this individual or
5 killed him. And it's our position there was no evidence to
6 show that. And we're asking the Court to grant us a
7 directed verdict as to all charges.

8 And as to the burglary, first, the State did not put in
9 any evidence that my client actually broke into the
10 gentleman's home or anything. So we're just ---

11 **THE COURT:** I think the testimony -- both of them were
12 on the porch and both of them were beating on the door,
13 weren't they?

14 **MR. RICHEY:** Your Honor, that was the testimony, but we
15 believe that that testimony is not credible. And we're
16 asking the Court to grant us a directed verdict.

17 **THE COURT:** Any further motions?

18 **MR. RICHEY:** No, sir.

19 **THE COURT:** All right. I'd be glad to hear from the
20 State in that regard.

21 **MR. McMASTER:** Your Honor, we believe we've met our
22 burden at this stage, that looking at the light most
23 favorable to the State we feel like we've met every element
24 to establish jurisdiction of this court, we've established
25 identification and each and every element of every charge

1 that he is -- that Mr. Cummings is currently charged with.
2 We've done that through testimony and through items that
3 have been entered into evidence at this time.

4 **THE COURT:** All right. I do, indeed, find that it's a
5 question of fact for the jury to resolve. But your motion
6 is noted for the record and you're protected on the record.

7 **MR. RICHEY:** Thank you, Your Honor.

8 **THE COURT:** Mr. Cummings, I'm going to ask if you could
9 stand where you are and raise your right hand as the clerk
10 administers the oath.

11 **MADAM CLERK:** Do you swear or affirm to tell the truth,
12 the whole truth and nothing but the truth so help you God?

13 **MR. CUMMINGS:** Yes, ma'am.

14 **THE COURT:** Mr. Cummings, at this time I'm going to
15 explain to you certain of your rights. If you do not
16 understand anything I say, please let me know. If you want
17 me to explain anything in more detail, let me know, and I'll
18 be happy to do so. Do you understand?

19 **MR. CUMMINGS:** Yes, sir.

20 **THE COURT:** All right. We have now reached the stage
21 of the trial where you may present your defense. You have
22 the right to claim the protections given to you by the Fifth
23 Amendment to the Constitution of the United States, which
24 provides in relevant part; No person shall be compelled in
25 any criminal case to be a witness against himself.

1 This means that you cannot be required to testify in
2 this case. You have the right to testify on your own
3 behalf, however, no one can make you testify. This is a
4 personal right and no one can waive this right except you.

5 If you decide to testify, you'll be subject to the same
6 rules that govern other witnesses and you may be examined
7 and cross-examined on any relevant issue in this case. In
8 addition, if you have any convictions involving dishonest or
9 false statements or for crimes punishable by imprisonment
10 for more than one year, if this Court determines that the
11 probative value of admitting this evidence outweighs its
12 prejudicial effect to you, the solicitor will be able to
13 introduce your record to attack your credibility.

14 If you decide to testify this decision on your part
15 must be freely, voluntarily and intelligently made, the
16 knowledge of the protections given to you by the Fifth
17 Amendment and the consequences of your decision to testify.
18 If you decide not to testify, I will instruct the jurors
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely
21 no prejudice to you because you did not testify.

22 It's left entirely up to you whether or not to testify.
23 You may talk with your attorney, your family members,
24 friends or anyone else, but the final decision will be left
25 entirely up to you. Do you understand what I've explained

1 to you?

2 **MR. CUMMINGS:** Yes, sir.

3 **THE COURT:** Do you have any questions about what I've
4 explained to you?

5 **MR. CUMMINGS:** No, sir.

6 **THE COURT:** Have you discussed this matter with your
7 lawyer?

8 **MR. CUMMINGS:** Yes, sir.

9 **THE COURT:** All right. Do you wish to talk with your
10 lawyer any more about this particular issue?

11 **MR. CUMMINGS:** No, sir.

12 **THE COURT:** Do you wish to testify?

13 **MR. CUMMINGS:** No, sir.

14 **THE COURT:** Very good. Thank you. We're ready for the
15 jury.

16 (Whereupon the jury entered the courtroom at 2:58 pm)

17 **THE COURT:** Mr. McMaster, you're recognized.

18 **MR. McMASTER:** Thank you, Your Honor. At this time the
19 State rests.

20 **THE COURT:** Very good. Mr. Richey, you're recognized.

21 **MR. RICHEY:** Thank you. The Defense rests, Your Honor.

22 **THE COURT:** Very good. Madam Forelady, ladies and

23 gentlemen of the jury, you have heard all the evidence

24 that's going to be presented in this case. We have some

25 legal matters that need to be -- we need to take up outside

1 of your presence.

2 We will reconvene in the morning. And in the morning
3 we'll engage in what's known as closing arguments. They're
4 very similar in form to opening statements, but they're
5 truly argumentative in nature because at this point in the
6 trial the lawyers will have an opportunity to point to the
7 evidence that's been put on this record and point to the
8 evidence that supports their relative theory in the case.

9 What they have to say is not -- is not evidence in and
10 of itself, but it will aid you immensely in your
11 deliberation process. So pay very close attention as we go
12 through that process in the morning. It will aid you
13 immensely.

14 And once again, do not discuss the case amongst
15 yourselves or with anyone else. Do not engage in any social
16 media. And if there's any articles written in the paper or
17 if there's any item on published news or any blog, divert
18 your attention from that. You need to base your decision on
19 what transpires here in this courtroom.

20 We're going to recess for the evening. We have a few
21 things that we need to tend to this afternoon. And then we
22 will reconvene at 9:30, 9:30 sharp. Thank you very much.

23 (Whereupon the jury exited the courtroom at 3:01 pm)

24 **THE COURT:** All right. I'd be happy to entertain
25 motions at this time.

1 **MR. McMASTER:** None from the State, Your Honor.

2 **MR. RICHEY:** We'd just renew our directed verdict
3 motion.

4 **THE COURT:** Very good. And you're protected on the
5 record. And all of your arguments have been preserved for
6 the record and, once again, have properly made the motion.

7 At this time I want to talk with you in some detail
8 about what I intend to charge. I'm just going to go through
9 it in summary fashion, obviously. After I charge the jury
10 tomorrow, you can have -- bring up objections or additional
11 requests.

12 And this is what I intend to charge in a very general
13 way. I'm going to charge the indictment is indeed not
14 evidence. I'm going to charge that each separate and
15 distinct offense is to be considered separately and
16 distinctly. I'm going to charge them the respective duties
17 of the jury and the trial judge.

18 I'm going to charge presumption of innocence,
19 reasonable doubt. I'm going to charge both reasonable doubt
20 is the kind of doubt that would cause a reasonable person to
21 hesitate to act. I will charge the longer version of that
22 as well so y'all can be aware of that for argument purposes.

23 I'm going to charge direct and circumstantial evidence.
24 I'm going to charge credibility of witnesses, aiding and
25 abetting and accomplice liability, expert witnesses, failure

1 of the Defendant to testify and how that cannot be used
2 against him, the hand of one is the hand of all, that
3 general concept of law.

4 What is the State's position and the Defendant's
5 position with regard for a charge on identification?

6 (Whereupon the attorneys were conferring)

7 **THE COURT:** What ---

8 **MR. McMASTER:** I couldn't hear ---

9 **THE COURT:** Well, my question to you, Mr. McMaster, is
10 ---

11 **MR. McMASTER:** Yes, sir.

12 **THE COURT:** --- do you want or requesting a charge on
13 identification?

14 The reason why I ask is that, you know, there are three
15 people and, perhaps, the mention of another that the
16 identification of those individuals was never in question.
17 The issue in this case is whether or not -- who they're
18 going to believe and who actually did the shooting is the
19 only issue. The identification of who the individuals are
20 are not at issue. So taking that into consideration, what
21 is your request?

22 **MR. McMASTER:** Well, I mean, we don't think we need it
23 at this time, Your Honor.

24 **THE COURT:** All right. And, Mr. Richey, what is your
25 position on that? If you want an identification charge,

1 I'll charge it. If you don't ---

2 **MR. RICHEY:** No, sir. No, sir.

3 **THE COURT:** You specifically request that I not charge
4 ---

5 **MR. RICHEY:** Yes, sir.

6 **THE COURT:** --- identification? Okay. Very good. All
7 right.

8 I'm going to charge the substantive law with regard to
9 murder. And with regard to the inference of malice, the
10 only malice I'm going to charge is malice may be inferred
11 from conduct showing a total disregard for human life.

12 You know, we're all familiar with the most recent case
13 dealing with a deadly weapon. And -- but regardless, I'm
14 not going to charge inference that's attached to a deadly
15 weapon.

16 The felony murder inference, I'm going to charge that.
17 Burglary, first degree, its substantive law with regard to
18 that. Attempted armed robbery. Bear with me just one
19 moment.

20 (Pause)

21 **THE COURT:** You know, the statute that deals with
22 attempted armed robbery really doesn't define what an
23 attempt is. I'm going to explain that in some detail, but
24 essentially charge what attempt means and the elements of
25 armed robbery. Not that it came to fruition, but that it

1 was attempted. And I'm going to explain that as best I can.

2 I'm going to charge conspiracy and the substantive law
3 with regard to that, possession of a weapon during the
4 commission of violent crime. And any additional requests
5 from the State?

6 **MR. McMASTER:** No, Your Honor.

7 **THE COURT:** Any additional requests from Defense?

8 **MR. RICHEY:** No, Your Honor.

9 **THE COURT:** All right. And, obviously, y'all have an
10 opportunity to hear the text of my charge. And if there are
11 any additional requests in the morning, I'll be happy to
12 entertain that. That gives you a good idea as to what --
13 what I'm going to be talking about.

14 Does anybody want to hear a particular charge and the
15 language of any of it? Since we have the luxury of time,
16 I'll be happy to share that with you, if you would like.

17 **MR. McMASTER:** Yes, Your Honor, just one second. Let
18 me finish referring right here to which one. I think we'd
19 -- definitely would like to hear the felony murder and the
20 hand of one.

21 **THE COURT:** All right. The hand of one is the hand of
22 all. If a crime is committed by two or more people who are
23 acting together in committing a crime, the act of one is the
24 act of all. A person who joins with another to commit an
25 unlawful act is criminally responsible for everything done

1 by the other person which happens as a probable or natural
2 consequence of the acts done in carrying out the common plan
3 and purpose. If two or more people are acting or together
4 acting together, assisting each other in attempting the
5 offense, the act of one is the act of all, or as it is
6 sometimes said, the hand of one is the hand of all.

7 Prior knowledge that the crime was going to be
8 committed without more is not sufficient to make a person
9 guilty of that crime. Mere knowledge that another person is
10 going to commit a crime, even if the Defendant is present
11 when the crime is committed, is not sufficient to convict
12 the Defendant as a principal.

13 Guilt as a principal is shown by actual or constructive
14 presence at the scene as a result of prior arrangement.
15 Therefore, a finding of a prior arranged plan or common
16 scheme is necessary for a finding of guilt as a principal.
17 The State must prove beyond a reasonable doubt by competent
18 evidence the theory of the hand of one is the hand of all.

19 A principal in a crime is one who either actually
20 commits the crime or who is present, aiding, abetting or
21 assisting in committing the crime. When a person does an
22 act in the presence of and with assistance of another, the
23 act is done by both. If there are two or more acting with a
24 common plan or intent or present at the commission of a
25 crime, it does not matter who actually commits the crime,

1 all are guilty. The hand of one is the hand of all.

2 Present at the commission of the crime means to be
3 sufficiently near or to aid, and abet and assist in the
4 commission of the crime. However, mere presence at the
5 scene of a crime is not sufficient to convict one as a
6 principal on the theory of aiding and abetting.

7 Intent is also a necessary element for there must have
8 been a common design or intent to commit the crime. The
9 crime must have been committed pursuant thereto with the
10 person aiding and abetting by some overt act. Intent means
11 intending the result which actually occurs not accidentally
12 or involuntarily. Intent may be shown by acts and conduct
13 of the Defendant and other circumstances from which you may
14 naturally and reasonably infer intent. The State must prove
15 these elements beyond a reasonable doubt.

16 If one intentionally kills another during the
17 commission of a felony, the inference of malice may arise.
18 If facts are proved beyond a reasonable doubt sufficient to
19 raise an inference of malice to your satisfaction, this
20 inference would simply be an evidentiary fact to be taken
21 into consideration by you along with all other evidence in
22 the case. You may give it the weight you decide it should
23 receive.

24 Anything else?

25 **MR. RICHEY:** What's the attempt charge, Your Honor?

1 You said ---

2 THE COURT: Pardon?

3 MR. RICHEY: The attempt.

4 THE COURT: All right. I will ---

5 MR. RICHEY: Just the attempt part.

6 THE COURT: Yes. I'm going to define attempt. An
7 attempt is an effort to accomplish a crime which does not
8 succeed. An attempt includes a specific intent to do a
9 particular crime, act -- criminal act along with an act
10 falling short of an act intended. The State must show more
11 than mere preparation of intent. There must be some overt
12 act committed in the effort to commit the crime. Is that --
13 is that what you wanted to hear?

14 MR. RICHEY: Yes, sir, it is. Thank you.

15 MR. McMASTER: I believe the State's ready to proceed
16 on those charges, Your Honor.

17 THE COURT: Okay. Any additional requests at this
18 time?

19 MR. McMASTER: None at this time.

20 THE COURT: Okay. Any objection to what I intend to
21 charge at this time?

22 MR. McMASTER: No objection at this time.

23 THE COURT: Mr. Richey.

24 MR. RICHEY: Yes, sir. No objection.

25 THE COURT: Okay.

1 **MR. RICHEY:** Thank you. And no additional ---

2 **THE COURT:** If there are additional requests, I'll
3 entertain those before the charge itself or after. And I'm
4 going to ask if y'all can come and view the verdict form.

5 (Pause)

6 **THE COURT:** Any objection to the verdict form from the
7 State?

8 **MR. McMASTER:** No, Your Honor.

9 **THE COURT:** Any from Defense?

10 **MR. RICHEY:** No, sir.

11 **THE COURT:** All right. Can y'all think of anything
12 else that we need to discuss before we recess for the
13 evening?

14 **MR. McMASTER:** No, Your Honor.

15 **MR. RICHEY:** (Negative nod).

16 **THE COURT:** Well, I expect y'all to start working on
17 some riveting closing arguments. Obviously, the State will
18 go first and open in full -- yes. The State will go forward
19 in full and Defense will have the closing argument.

20 **MR. McMASTER:** Yes, Your Honor.

21 **MR. RICHEY:** Yes, sir. Thank you, Your Honor.

22 **THE COURT:** All right. We'll stand at ease until 9:30,
23 9:30 sharp. And I'll be here a little bit earlier if y'all
24 need me.

25 **MR. RICHEY:** Yes, sir.

1

(Whereupon court was in recess at 3:16 pm)

1 Wednesday, April 10, 2019:

2 (Whereupon court reconvened at 9:25 am)

3 **THE COURT:** Is there anything from the State before we
4 proceed?

5 **MR. McMASTER:** No, Your Honor.

6 **THE COURT:** Anything from Defense?

7 **MR. RICHEY:** No, Your Honor.

8 (Whereupon the jury entered the courtroom at 9:29 am)

9 **THE COURT:** Madam Forelady, ladies and gentlemen of the
10 jury, thank you for being here and being here on time. As I
11 mentioned to you yesterday, this is the time where the
12 lawyers will have an opportunity to address you in summary
13 fashion very similar to the opening statements. Once again
14 these presentations are truly argumentative in nature.

15 Since you've already heard all the evidence, these very
16 fine lawyers, being the advocates for their relative
17 positions, will be able to point to the facts that supports
18 their relative theory of the case. Although what they say
19 is not evidence, it will aid you immensely in your
20 deliberation process.

21 These are very serious matters. Pay very close
22 attention. And under the circumstances the State goes
23 first. Mr. McMaster.

24 **MR. McMASTER:** May it please the Court?

25 **THE COURT:** Yes, sir.

CLOSING ARGUMENTS - MR. McMASTER

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1 (Whereupon a portion of the 911 call was played for the
2 jury)

3 **MR. McMASTER:** Ladies and gentlemen of the jury, there
4 are consequences for your actions. You think you found an
5 easy target, a drug dealer, cash and a supply of drugs on
6 hand. He's the perfect target. He would never call the
7 police because he wouldn't want them to come to his home.
8 This should be an easy lick. How did they ever get caught?
9 I'll tell you how they did, because of that 911 call right
10 there.

11 Now you've heard two days of testimony and you've seen
12 numerous items entered into evidence. I believe there are
13 many facts, and we can all agree there is no doubt that
14 occurred at 34 Burgess Avenue on March 6, 2016 in the early
15 morning hours. There's no doubt it was burglary, first, and
16 attempted armed robbery at 34 Burgess. How do we know? We
17 have the 911 call, a live recording of what was happening in
18 progress at 34 Burgess.

19 We don't need to guess. We have no doubt there's an
20 unlawful injury -- entry. We hear kicking. We hear banging
21 described in detail. We have pictures of the side door that
22 you've seen entered into evidence, literally kicked in and
23 is laying on the floor of the kitchen.

24 No doubt this burglary took place in the nighttime
25 hours. The 911 call establishes that. The officers, the

CLOSING ARGUMENTS - MR. McMASTER

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1 deputies on-scene confirm it.

2 We have an unlawful entry into 34 Burgess. That
3 unlawful entry was made to commit a crime. April Green
4 describes it in the 911 call. You just heard it. They're
5 ransacking the house. They're robbing us. They're
6 demanding money and hurting my boyfriend. Additionally, we
7 had Simeon Williams tell you that was the objective, money
8 and drugs.

9 We have attempted armed robbery, give us the money,
10 give us the money. How do we know he's armed? Because we
11 hear two shots on the 911 tape. There's no doubt, ladies
12 and gentlemen.

13 We have possession of a weapon during the commission of
14 a violent crime. The weapon was fired not once, but twice
15 during the burglary, attempted armed robbery and murder of
16 Jeryl White. There's no doubt the pistol recovered from the
17 scene on the counter, which was placed there by the
18 Defendant, Tristian Cummings, is the pistol that fired the
19 shots that killed Jeryl White. No doubt about it.

20 No doubt those shots were fired while in the commission
21 of a felony, attempted armed robbery and burglary. Those
22 shots were intentional and were made with malice. I'll
23 refer to it as meanness. Those shots were made with
24 malicious intent with a total disregard for human life.
25 There's no doubt. This was not an accident. This was

CLOSING ARGUMENTS - MR. McMASTER

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1 meanness.

2 You hear the screams of Jeryl White on the 911 tape.

3 You know from Dr. Ward, he's up against the door, he's got
4 his arm up, he's got his arm up like this. He's up against
5 the door. He's down.

6 And where does he get shot? Mid-section of the door,
7 right there. Thirty-seven and a half (37 1/2) inches, I
8 believe, is what it said. You can look at the pictures and
9 refresh your recollection of that, mid-part of the door. He
10 knew he was up against that door, and he wanted him off that
11 door. He wanted to get to him.

12 That shot is intentional, and it is with malice. This
13 is the true meanness because Tristian Cummings was getting
14 that money. Mr. White takes a round in the neck, likely is
15 paralyzed and bleeding out from the injury to his carotid
16 artery. That's what came from Dr. Ward.

17 But just to make him talk, Tristian Cummings goes in
18 and fires another round into his leg while he's on the
19 ground bleeding out. That's malice. That's intent. That's
20 meanness. That is a total disregard for human life.

21 We have the pistol, the projectiles and the shell
22 casings that all matched the weapon found on the counter
23 placed there by Tristian Cummings. There's no doubt that
24 the gun used to murder Jeryl White, that was it.

25 How do we know this? Because Deputy Robinson sees

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1 Tristian Cummings put that gun down on the counter just
2 before he goes out the front door. There is no doubt that
3 Jeryl White died from the gunshots. You heard Dr. Ward
4 confirm it.

5 There's no doubt we had two individuals in that house,
6 two individuals conspiring to commit these crimes and
7 working together to commit these crimes. You just heard
8 that on the 911 tape. April Green says all these things on
9 the 911 tape.

10 And I would ask you to listen to it. You'll have the
11 ability to listen to it as many times as you'd like. All
12 you have to do is inform the Court, and he'll allow you to
13 listen to the entire tape. It is in evidence. It is part
14 of this case.

15 Additionally we have eyewitness testimony that Deputy
16 Robinson sees both Tristian Cummings and Simeon Williams in
17 the house. So we know we've got two.

18 But there's also the section of the 911 tape you just
19 heard, and this establishes approximately 18 seconds into
20 that, 18 seconds in, that third segment, you're going to
21 hear screams of Jeryl White and then the first shot. You
22 can certainly listen to it again.

23 But you're going to hear that shot, and Jeryl goes
24 silent. You don't hear those screams any longer. Because
25 remember, he's been shot, likely paralyzed, carotid artery,

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1 shot in the neck.

2 At one minute and approximately 16 seconds into that
3 third segment that we just listened to, you're going to hear
4 a second shot. It's muffled because it's in the bathroom.
5 Remember? He's in the bathroom, he put the one in his leg.
6 He's got to be standing over him, because like Dr. Ward
7 said, it's through and through. You remember that.

8 But the part that will leave no doubt that Tristian
9 Cummings fired those shots is that less than seven seconds,
10 seven seconds after we hear that muffled shot in the
11 bathroom, what do we hear April Green say? The police are
12 here. The police are here. We know there was no time for
13 him to be anywhere but in that hallway. Because remember,
14 it's right after that the police are there in the doorway.

15 We know Simeon Williams could not have fired that shot
16 because the police are there instantaneously. Simeon
17 Williams would've been required to give the gun to Tristian
18 Cummings and get back to the cabinets in the kitchen before
19 the deputies got there, and that's impossible.

20 You've heard from Deputy Robinson, he's watching Simeon
21 from the corner. This is the doorway. He's over here. And
22 he can see him going through those cabinets. He can see him
23 rustling through there, slamming the doors. The same thing
24 Simeon Williams told you. He can't -- he could not have
25 fired that shot. It's impossible. It just doesn't -- the

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1 facts don't -- just don't fit.

2 Then we have Deputy Robinson holding Simeon Williams at
3 gunpoint. And Simeon says something to someone down the
4 hall, is what he said. And that person darts across behind
5 Simeon and slams the pistol on the counter in order to use
6 both hands to unlock the front door.

7 You remember, in the beginning of this they go to the
8 front door. They knock on that door. Jeryl White opens
9 that door and says, get out of here, get lost, I'm calling
10 the police. Locks that door back. So he's got to have two
11 hands to unlock that door.

12 But also, he's just committed a murder. He's trying to
13 distance himself from that firearm. He's trying to get out
14 of there, put that firearm away and get as far away from it
15 as possible.

16 What Tristian Cummings doesn't know, that you all do,
17 that who's standing out right around that front door?
18 Deputy Sandefur. He sees Tristian Cummings come out of that
19 front door, no doubt about it. He told you that. Saw it
20 with his own eyes. Not something he heard about, not
21 something he thinks he saw, he saw it.

22 Mr. Richey even cross-examined him. He saw him come
23 out of that door, wearing the same clothing that Robinson
24 had just described, just described as that guy's running.

25 The chase is continuous. He gets behind him. He never

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1 loses him. They run into vines, or briars, or, I think,
2 kudzu somebody used, but a lot of heavy brush. But he never
3 loses him.

4 In fact, he gets Tristian Cummings on the ground. But
5 if that's not good enough, he jumps back up. He continues
6 to run more. Again, no doubt that he has come from that
7 house. No doubt that's who they're chasing. No doubt
8 that's who's caught in those woods. There's no doubt about
9 that. This is not a who done it, folks. It just isn't.
10 There's not any doubt about what happened.

11 Now if you think there is some reasonable doubt whether
12 Mr. Cummings came out that front door, that would mean you
13 have a doubt. And that doubt has to have a reason you would
14 have it.

15 What reason would you have to find Tristian Cummings
16 running, wearing matching clothing, the same as has just
17 been described as the individual that has just been seen
18 leaving the front door of 34 Burgess? You'd have to believe
19 that Tristian Cummings just happened to be in the woods
20 wearing the same clothing. And don't forget, we didn't
21 mention, he also has gunshot residue on his hands. It's
22 just not plausible. That doesn't make sense.

23 You would also have to believe that Deputy Robinson and
24 Deputy Sandefur concocted this entire chain of events in a
25 matter of seconds. You would need to assign a reason or

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1 motivation of why they would do that. It's just not
2 reasonable.

3 What possible motivation would Robinson and Sandefur
4 have to make up this story? They both admitted, you never
5 get these types of cases -- get to these types of cases this
6 early. It just doesn't happen. There's never -- they're
7 always gone. Again, this is not a who done it. It's clear
8 from the facts that Tristian Cummings was an active
9 participant in these crimes.

10 And I'll give you another reason. Why would he be
11 running if he were not involved? Again, it just doesn't
12 make sense.

13 Now on cross-examination I believe Investigator Fortner
14 said something about a civilian ride-along with Deputy
15 Robinson, something about a red striped shirt and a doorway
16 -- in the front doorway. Who's wearing a red striped shirt?
17 Well, we know who it is, Simeon Williams.

18 But how could she see Simeon Williams in that front
19 door? Because remember, when they got there, the door was
20 closed. What she sees or what she thinks she sees, and I
21 submit to you, is that there's somebody in there because the
22 door is now open.

23 Remember the pictures, you've got a picture here,
24 State's 2, door is open. Remember where Deputy Robinson
25 said he parked? Right down from the front door. Why is

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1 that? Because I couldn't -- this door was not open. I
2 couldn't see any light coming from it. I didn't know what
3 was going on. So I pulled down until I saw the side door.

4 Sure she sees him. He's in the kitchen, hands up with
5 a big old red shirt. You'll have that red shirt. You've
6 got that picture.

7 And I'll submit to you, I think there was some mention
8 of something being orange. That could, I guess technically,
9 look orange, but you'll have the actual item. The evidence
10 doesn't support any of that information. That is a red
11 herring to get you off track.

12 The evidence is before you. You've heard it. You've
13 heard the testimony. You have heard and seen the items.
14 You can touch them. You can feel them. You can get a look
15 at them. You can listen to them.

16 Now, Simeon Williams, as he told you, only has a ninth
17 grade education. Mr. Richey tried to establish that law
18 enforcement has surrounded the house and Mr. Williams
19 somehow knew that. That makes no sense. Because Simeon
20 Williams is captured in the kitchen. He can't possibly know
21 who's outside. That's just not reasonable.

22 Plus, Robinson and Sandefur told you they were the only
23 units on the scene. Now they said there was more on the
24 way. And you'll hear that even on the 911 calls, there's
25 more on the way, we've got more coming. But again, they are

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1 the only two there.

2 Additionally, Mr. Richey asked questions about knowing
3 the area. And Simeon said clearly he would not run down
4 there in all this thick briars and brush. But who is not
5 from the area? Tristian Cummings. Didn't know which way to
6 go. So he runs down there and gets tangled up.

7 Well, let's talk a little bit more about Simeon
8 Williams. He came into court and he told you the same story
9 he told Investigator Fortner June of 2016, June of 2016.

10 Now, did he make a change? He did. And I think that's
11 how you can tell he's being truthful. He corrected his
12 statement. He said it was not originally supposed to be a
13 burglary with no one at home. It was actually supposed to
14 be an armed robbery because he knew Jeryl White was home.

15 And this change makes no difference because at the end
16 of the day they committed both acts, burglary, and in this
17 case, attempted armed robbery because they were not able to
18 complete their armed robbery because the police got there.
19 As Mr. Williams testified, we didn't get anything. We
20 didn't have long enough to get anything.

21 Additionally, Simeon Williams tells -- he came up with
22 the idea that he and Tristian planned it because both he and
23 Tristian needed the money. He talked about they both wanted
24 the money, they both needed the money.

25 He established where the pistol came from and that

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1 Tristian Cummings even fired that pistol earlier in the
2 night. He also says that Tristian was missing his teeth.
3 And I believe there's a picture that confirms that as well.

4 Now, if Mr. Williams wanted to come in here and lie, he
5 comes in here and what does he say? He did it all. I
6 didn't have anything to do with it. That's the lie. It'd
7 be easy to say that. That's what you would say. That's if
8 he wants that deal Mr. Richey was talking about. You would
9 agree that'd be the best way to handle that.

10 Additionally, he could have easily said that he saw
11 Tristian come and shoot Jeryl White. That would've been
12 easy to do, too. But he didn't say that. He told you what
13 he saw. He said, I was in the kitchen. But I'll tell you
14 this, he was down the hall and he had the pistol. He told
15 you that. We know that's true because remember, Deputy
16 Robinson gets to the door, the side door, he sees Simeon in
17 the kitchen, Tristian Cummings comes down the hall.

18 He talked about not seeing the gun put on the counter.
19 How could you not? Think about that. Deputy Robinson's got
20 a pistol pointed in your face. You were looking like this,
21 straight at him. You're probably worried a little bit more
22 about what you're looking at, that pistol pointing in your
23 face. He goes a step further, though. He confirms it's
24 just the two of us.

25 Now, Mr. Richey asked Simeon about pleading guilty to

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1 killing someone because he pled to a reduced charge of
2 voluntary manslaughter. And he pled to burglary, first.
3 And he received a deferred sentence. No question about
4 that. Mr. Williams pled to those charges.

5 Mr. Richey's a good lawyer. Mr. Richey knew that
6 Simeon Williams has a little bit of education. And he,
7 obviously, has no legal training. Simeon Williams could get
8 boxed in due to Mr. -- due to him pleading guilty to the
9 charge even though he didn't pull the trigger.

10 And out of nowhere, you remember, he's hammering,
11 repeating it, you pled guilty. You pled guilty. Why did
12 you plead guilty? Why did you plead guilty? You shot him.
13 You shot him.

14 And what does Simeon Williams say? What does he tell
15 you? You know what he says? A hand of one is the hand of
16 all. And you know what? He's right. You know what else?
17 The Judge is going instruct you on that charge.

18 But I'm going to tell you what I think it means. It's
19 accomplice liability. The hand of one is the hand of all.
20 What that means very simply is if two or more people agree
21 to commit a crime and agree to help each other, both of them
22 are guilty for the natural or foreseeable consequences of
23 that crime. Both are guilty.

24 Bank robbery is the common example everybody always
25 uses. If you're the getaway driver or you're the lookout,

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1 you're just as guilty as the person that goes into that bank
2 with a pistol and robs it. To push that statement even
3 further, if you plan a bank robbery, and you sit in the car,
4 but your co-conspirator goes into the bank and kills the
5 clerk, you're just as guilty, and you never pulled the
6 trigger.

7 You know, Mr. Richey talked a lot about you must pull
8 the trigger in his opening statement. That's not the case.
9 It's not what the Judge is going to tell you.

10 Now, we believe that Tristian Cummings pulled that
11 trigger intentionally and maliciously, but we don't have to
12 prove that. Because you are a part of the plan, part of the
13 robbery, when you go in with a gun, it is a natural
14 consequence that someone could get killed. It is
15 foreseeable.

16 So to break it down for you, even if we were to
17 consider that Mr. Cummings did not intentionally fire those
18 shots with malice, he is still just as guilty on all
19 charges, including murder, because the hand of one is the
20 hand of all. And if you take affirmative steps to carry out
21 these crimes, you're just as guilty as being a principal.
22 This is not a mere presence situation. This is active
23 participation.

24 To make it crystal clear, and I want you to think about
25 this example, if you switch places with Simeon Williams and

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1 Tristian Cummings, so now Tristian's in the kitchen and
2 Simeon runs by, it doesn't change a thing. They both can be
3 convicted of murder.

4 Now, I'm going to talk a little bit about GSR because I
5 mentioned earlier how ridiculous it would be for someone
6 running around the woods in the same clothes as Tristian and
7 the same person that ran out the front door and they all --
8 and they miraculously have GSR on their hands. Now everyone
9 involved in this case had GSR. You heard that. And I
10 believe Mr. Sturkie with SLED gave a sound explanation of
11 why that is.

12 But you could say, Mr. McMaster, Tristian had on
13 gloves. I don't get that. He did. Mr. Sturkie explained
14 that to you. Mr. Sturkie did. He's an expert on GSR, was
15 qualified without objection. And the Judge is going to tell
16 you about expert information, expert opinions.

17 He said that GSR could have been transferred from the
18 gloves to the hand. How do we know he was pulling on those
19 gloves with his bare hand? Got pictures of it. They are in
20 evidence. Got a picture of the glove in the bottom -- in
21 the car. We've got his hands behind his back pulling those
22 gloves off.

23 Think about that. You're in the car, those gloves are
24 down on the floorboard. Nunez, I believe it was, Deputy
25 Nunez said, oh yeah, he pulled them off, tried to take his

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1 pants off or something else. Is that uncommon?, No. No.
2 They try to get -- get rid of items on them. So again,
3 we've got documentation, photos.

4 He never considered he was rubbing that GSR all over
5 his hands, you know? You think you're wearing gloves,
6 you're going to be set.

7 Now those gloves were probably a good idea for one
8 thing, and you can probably guess the one thing they keep
9 from coming in, DNA from being transferred. There is no
10 information about DNA found. These gloves worked, but not
11 all the way. But again, if we assume no GSR at all was
12 found on Mr. Cummings and it was all found on Mr. Williams,
13 that still does not change a thing because if you apply
14 accomplice liability, felony murder, and the hand of one is
15 the hand of all, Tristian Cummings is still guilty.

16 Obviously, based on our facts and testimony and the
17 collection of any scientific evidence was not even
18 necessary, although it's standard practice in every murder
19 case because this is an eyewitness ID case. We have people,
20 actual people on the scene, there on the ground. Ladies and
21 gentlemen, remember if you take the facts in the light most
22 favorable to Mr. Cummings, he is still guilty.

23 Now, I believe I've shown you substantial compelling
24 evidence Mr. Cummings intentionally shot Mr. White with
25 malice. But if you still need more, please remember the

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1 hand of one is the hand of all. There's no doubt that Mr.
2 Cummings was actively involved in conspiring to commit
3 burglary, first, attempted armed robbery and murder while in
4 possession of a weapon on the night of March 6, 2016 at 34
5 Burgess Avenue where Jeryl White lost his life.

6 But you might say, Jeryl White sold drugs. And he did.
7 But the law fits everyone. The law doesn't come in and say
8 it is okay for Jeryl White to be murdered because he was
9 involved in drugs. If that were the case, we wouldn't be
10 sitting here. The law comes in one size, fits everyone.

11 The law does not allow for Tristian Cummings and Simeon
12 Williams to burglarize a home and attempt an armed robbery
13 because we have a particular type of victim. The law is for
14 everyone. If Jeryl White sold drugs, then he deserved to be
15 punished, but not murdered in his home.

16 Ladies and gentlemen, the Rules of Court do not allow
17 me to address you once I conclude. But I know Mr. Richey is
18 a very capable lawyer. And I expect a quite powerful
19 closing argument, but he cannot change the facts and the
20 evidence or the law.

21 And I submit to you if you look at all the evidence,
22 remember the testimony, and listen to the 911 call, there is
23 not a reasonable doubt about Mr. Cummings' guilt. This is
24 not a burglary that resulted in the murder. This is a
25 murder for the purpose of robbery and burglary.

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1 And we know that because Tristian Cummings
2 intentionally shot Jeryl before he robbed him. We know
3 that. That's on the 911 tape. You can hear it.

4 Mr. Richey talked about connecting the dots to make the
5 picture. And I think that's a way to look at this case, but
6 I don't think it's as dots. I look more of it as arrows.
7 And those arrows are all pointing to Tristian Cummings'
8 guilt on all charges, burglary, first, attempted armed
9 robbery, conspiracy, possession of a weapon during the
10 commission of a violent crime and murder. He is guilty of
11 all charges.

12 And after the Judge charges you on the law, I want you
13 to return a verdict of guilty on all charges, not because of
14 my argument, but because when you apply the law to the facts
15 that you have, and the evidence that you have, and the
16 eyewitness testimony that you have, there is overwhelming
17 evidence that Tristian Cummings is guilty on all charges.
18 Thank you.

19 **THE COURT:** Thank you, Mr. McMaster. Mr. Richey,
20 you're recognized for closing argument.

21 **MR. RICHEY:** Thank you, Your Honor. When I first
22 started practicing law a long time ago, you know, I went to
23 college and got all these fancy degrees and stuff and went
24 downstairs on a Monday, and I heard a judge say you have to
25 have a sixth grade education to be on a jury. And I

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1 thought, wait a minute, I got this law degree, sixth grade?

2 But then as I try these cases, you know, I realized
3 that's all it takes, really, because all of this is really
4 common sense. It's -- it's really -- it's really common
5 sense. And this case, it's -- it's all common sense.

6 And when you look at the facts that was presented by
7 the State and the State's refusal to present facts, you're
8 going to find that Tristian Cummings is not guilty. You're
9 gonna find that. And let me show you why.

10 Let's take this chart. We've got the house. And
11 everybody remember all -- the house. Let me make sure I'm
12 turning it the right way. Right here, Burgess Avenue,
13 right? Everybody remember the house, okay?

14 Here's what we know, facts is what we know. We know
15 that the cops said we got there faster than any other time
16 ever. This was bang, bang, we were there, okay?

17 We also know where they were positioned. You know how
18 we know that, how they were positioned? Because the cop
19 came in here, he told you, he said, look, we got this code
20 system that 22 means I'm on the left. 43 means I'm in the
21 center, all this stuff. So they had it -- they had the
22 place surrounded. We know that. They had the place
23 surrounded.

24 But there was one weak link to that. One weak link to
25 that surrounding. One weak link, okay? And that weak link,

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1 the State, they didn't address it. And they have to. They
2 cannot ask you to convict this man on murder and refuse to
3 produce that link. What that link -- I'm going to tell you
4 what that link was.

5 At that front door -- at that front door they had
6 somebody there. The reason why it's a weak link is because
7 that officer had that intern in that car. We know that. We
8 know he had an intern in that car. And that intern and that
9 officer, what did they -- what did they tell the
10 investigator? We saw a guy with a red shirt run out of the
11 house.

12 Not like Mr. McMaster said, that he was standing there
13 -- that's not what was said. We saw that guy in the red
14 shirt run out that house. We saw that. That's what they
15 told. We saw that, period. So we know that guy in that red
16 shirt got through that front door. We know that. That's a
17 fact. That was told -- that was the testimony.

18 Why didn't they chase him? Why didn't they chase him?
19 You know why that cop didn't chase him? Because he said, I
20 got this intern in this car, and I heard that gunshot, and
21 I'm not going to leave her. That was the one missing link
22 in this round. Gone. Gone. That's a fact.

23 Because if it wasn't a fact, why wouldn't the State --
24 see, when they -- when they bring Tristian Cummings to be
25 identified, why wouldn't they say, you know what, that cop

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1 and that intern, they sat right there at that front door.
2 Hey, look, cop and intern, here's the guy we got. Here's
3 the guy we got. Because, see, they're the ones that do the
4 identification because they're the ones that saw the guy.
5 They're standing there.

6 So why in the world would they not bring this guy,
7 Tristian Cummings, why wouldn't they bring him to the people
8 who was there and say, look, is this him? Is this him? Why
9 wouldn't they bring this intern into this court, put her on
10 that witness stand and say, look, is this the guy? Because
11 you were there. Why wouldn't they do that? Why?

12 But they come in here and say this guy committed a
13 murder. Hey, let's just get rid of him. That's what
14 they're telling you to do. But they could have sat that
15 intern and that cop on that witness stand and they could
16 have had her tell you whether that was Tristian Cummings or
17 not. Because she was clear, it was clear the guy that came
18 out of that house had a red shirt on running from that
19 house. It's clear. Clear as a bell. Clear as a bell.

20 And we know this house is surrounded. We all know
21 that. How in the world, if you believe this story, how in
22 the world does Tristian Cummings, with these side doors
23 right here, how in the world he gets back there with all
24 these cops around this house? How in the world does he get
25 there?

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1 'Cause if he comes out this front door like they said,
2 he's got to go make a loop around or go through there. And
3 we know he's not going there because the cop's standing
4 right there. So he's got to come out here, loop around and
5 go through there. Now does that make sense? No, it
6 doesn't. It doesn't make sense.

7 But you know what makes sense? You know what makes
8 sense? I'll tell you what makes sense. Mr. McMaster, what
9 makes sense is -- you remember when he's standing up here
10 and he said that orange shirt, whatever, orange shirt,
11 that's -- that's a big fact in this case. This is not the
12 only 911 call that was made. It's not. It's not. It's not
13 the only 911 tape that was -- that was called.

14 The investigator, he's testified, neighbors called and
15 said there's three guys outside with orange shirts on.
16 Three guys.

17 Do you know how we know there was other people outside?
18 You know how we know? Because that officer told you. He
19 said, I pulled my car -- remember he said -- he said I
20 turned the lights off. I put it in first, not to be
21 detected. Not to be detected. Because he didn't know what
22 he was walking into and he saw those folks there. So he
23 went dark on them. He went dark on them.

24 So we know this is not some scene where there's nobody
25 outside. We know there's people outside. We know that.

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1 This is not a case where there's two people inside the
2 house, everything is clear outside. That's not this case if
3 you believe what they tell you. If you believe that.

4 And what happened -- what happened when those fires --
5 when those shots went off, people ran. They ran. When
6 those shots went off, boom, they ran. They ran.

7 Because the State, they have -- you know why they have
8 the burden of proof? They have the burden of proof. This
9 is the State of South Carolina. They have the burden of
10 proof. They have researches -- resource. They have the
11 burden of proof. And when they have the burden of proof and
12 ask them -- ask a jury to do what they're asking you to do,
13 asking what you to do. They're asking -- asking the jury to
14 convict the guy for murder. That's what they're asking you
15 to do.

16 Why in the world are these people in here? Why in the
17 world is the neighbors not here to say these people with
18 orange shirt? Why she's not here? Because it doesn't fit
19 the narrative that they have set up. It doesn't. It
20 doesn't fit the narrative. Mr. McMaster says everything's
21 facts. Everything's facts. Everything is facts.

22 This is a case where we all talk about how fast the
23 cops got there. Oh, dah, dah, dah, dah, dah, dah. How in
24 the world does he get back here if they're already there?
25 If the cops are already there, they're already there, how in

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1 the world does he get back here in this kudzu? I mean, on
2 this route, if you believe them, on this route that he took,
3 on the route that Tristian Cummings took, cops, we know the
4 intern and the cop's there, one, two right here, they got
5 this house surrounded. Look how many people he got to run
6 through to get there.

7 And he's got to get there now. See, he's got to be
8 there now, now because they're already there. That's why we
9 know one fact here, he wasn't in that house because it would
10 have been impossible for him to get out of that house. He
11 was not in that house. No way.

12 If you believe -- if you believe the officers in this
13 case, if you believe how they was set up, if you -- if you
14 believe all that, if you believe they were there on time, if
15 you believe they had the house surrounded, if you believe
16 they had codes to tell everybody where everybody -- if you
17 believe all that, if you believe all that, you believe the
18 shot was fired, they were there right -- if you believe all
19 that, if you believe all that, there's no way possible that
20 Tristian Cummings could have been in that house and got out
21 of it. It's too much. Too many people. It's too many
22 people. Too many. Too many. Too many.

23 And see stuff that doesn't make common sense -- let me
24 tell you something that don't make common sense. So is --
25 prosecutor told you, oh, Tristian Cummings had gloves on.

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1 Oh, yeah, what's this gunpowder residue? He had gloves on.
2 He had gloves on. Oh, but, we didn't get the DNA because he
3 had gloves on.

4 You know he's -- here's what he's trying to get
5 everybody to believe. He's trying to get everybody to
6 believe that Tristian Cummings shot the gun, he shot the
7 gun, okay? He went over and put -- the officer didn't say
8 anything about, you know, he had gloves on, supposedly, put
9 the glove [sic] down and then he put the gloves on.

10 See, that's to try to evade the fact that we don't have
11 the DNA from Tristian Cummings on that gun. We ain't got
12 it. But see, they're in a box. You can't -- you can't --
13 you can't explain everything. You can't say, oh, he got
14 gunpowder residue. Oh, but he got these gloves, switcheroo,
15 no DNA. So we know -- they produced zero evidence that
16 Tristian Cummings had that gun. Zero. Okay?

17 Because he wants you to believe Simeon Williams. He
18 wants you to believe him. He said, hey, Simeon Williams
19 told the truth, gave a consistent statement. You know, hand
20 of one, hand of all. He's the truth-teller. So they want
21 us to believe him.

22 You know what? I believe him. You know why I believe
23 him? Because he told you he didn't see Tristian Cummings
24 with a gun. That's what he told you. That's what he told
25 you. So if we going to believe him, we going to believe

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1 him. We going to believe him.

2 Now, you know what reasonable doubt is? Reasonable
3 doubt, it's the kind of doubt -- it ain't, oh, no way
4 possible in this world. Reasonable doubt, that's not what
5 it is. Reasonable doubt is the kind of doubt to make you
6 hesitate to act. You know, you hesitate to act. That's
7 what reasonable doubt is, hesitate to act.

8 And I always say what makes you hesitate to convict
9 somebody? Well, what makes you hesitate to convict somebody
10 is you say, why that intern's not here? Why she's not here
11 with that officer? Why she's not here? Why? Why?

12 What makes you hesitate to convict is you say, no, they
13 know the neighbors told them that people are outside with
14 orange shirts on. We know that. Well, why wouldn't the
15 neighbor come here and say, we saw Tristian Cummings? Why
16 wouldn't they come here and say that? Why? They're the
17 neighbors. They make the 911 call. They're right there.
18 Why wouldn't they do that?

19 And that officer that went in that house and he looked
20 outside, we know one thing. We know it was at night. It
21 was dark, which they used to their benefit. It was dark.
22 No evidence that light was on in that house. And if that
23 light was on in that house, they would have told you it was.
24 See, they would have told you, he went in that kitchen and
25 that light was turned on, he saw everything. They didn't

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1 tell you that. They didn't tell you that.

2 So he sees two people in that house, outside in the
3 dark, we presume no light on in the kitchen, right? Two
4 people. They then double back around sometime, they bring
5 him a guy and said, we found this guy in the kudzu. Is this
6 the guy? Is this the guy? What do these folks say? What
7 is he supposed to say? They took the guy to the wrong
8 person. To the wrong person.

9 And so Tristian Cummings is not guilty. And based off
10 the evidence in this case, he's not in that house. Not even
11 close. Not even close.

12 And you would have to ignore -- you got to ignore
13 everything on here. For Tristian Cummings to do this, you'd
14 have to ignore this. You'd have to ignore it. You'd have
15 to ignore what the cops said. You'd have to say they didn't
16 have the house surrounded. You'd have to say they wasn't
17 there on time.

18 You'd have to ignore all that because then you would
19 have to tell yourselves something that's not the way it was,
20 that he weaved his way through all these people to get back
21 here. That's what you'd have to believe.

22 See, this is -- this is -- what we have -- what we have
23 here is a responsibility. See, we have a responsibility,
24 okay? We have a responsibility that when a person's accused
25 of a crime, when they're accused of a crime there's a

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1 responsibility there.

2 See, the police's responsibility is not always to get
3 the bad guy. It's not. That's not their total
4 responsibility. The prosecutor's responsibility is not
5 always to convict a guy. There's a responsibility to that
6 person, to that person. It's a responsibility to that
7 person that we have.

8 And that responsibility is that that intern was in that
9 car and he didn't bring her in here. If those neighbors are
10 out there, he'd bring them in here. That's a
11 responsibility. That's a responsibility. And that's why
12 the Defendant doesn't have the burden of proof. And that's
13 why Tristian Cummings is not guilty. Thank you.

14 **THE COURT:** Thank you, Mr. Richey.

15 Ladies and gentlemen of the jury, you've heard all the
16 evidence. You've heard the closing arguments. And now it's
17 time for me to charge you the law.

18 Y'all have paid very close attention to the evidence.
19 I've watched you throughout the trial. You have all the
20 wherewithal to determine the facts in the case. But your
21 responsibility is to take those facts and apply it to the
22 law.

23 And I kind of wish that there was an easy or an
24 entertaining way to charge you the law, but there's not.
25 But it's very important stuff. You've taken a solemn oath

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1 that you would do that, that you would determine what the
2 facts are and apply it to the law.

3 Y'all have been sitting here for about 45 minutes.
4 Before we launch into the law, I'm going to ask if y'all
5 could just stand up and stretch just a little bit. Stretch
6 after a little while, maybe that'll help us pay very close
7 attention.

8 (Pause)

9 **THE COURT:** All right. You may be seated.

10 Madam Forelady, ladies and gentlemen of the jury, the
11 indictments charge the Defendant with murder, burglary,
12 first degree, attempted armed robbery, conspiracy,
13 possession of a weapon during the commission of a violent
14 crime.

15 I'll remind you that the fact that the Defendant was
16 arrested, charged and indicted is not evidence and cannot be
17 considered by you as evidence of guilt, nor does it create
18 any presumption or inference of guilt. This document simply
19 is the formal instrument which contains the charges made
20 against the Defendant. It is the formal document that
21 brings this case to court.

22 The indictments in this case allege several different
23 offenses against the Defendant. Each indictment charges a
24 separate and distinct offense. You must decide each
25 indictment separately on the evidence and the law applicable

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1 to it uninfluenced by your decision as to any other
2 indictment.

3 The Defendant may be convicted or acquitted on any or
4 all of the offenses charged. You'll be asked to write a
5 separate verdict of guilty or not guilty for each
6 indictment.

7 Ladies and gentlemen of the jury, I'll remind you that
8 during this trial you and I have certain duties to perform.
9 As the trial judge it is my responsibility to preside over
10 the trial, but I also have the duty to rule on the
11 admissibility of evidence. You're to consider only the
12 competent evidence before you. You're to consider only the
13 testimony which has been presented from this witness stand
14 and exhibits which have been made a part of the record and
15 any stipulations of counsel.

16 I have the additional duty to charge you the law. As
17 the presiding judge I am the sole judge of the law. It is
18 your duty as jurors to accept and apply the law as I now
19 state it to you.

20 If you already have an idea as to what the law is or
21 what the law ought to be and it does not agree -- and it
22 does not agree with what I now tell you the law is, you must
23 abandon this idea because you were sworn to accept the law,
24 apply the law exactly as I state it to you.

25 In every case tried in this court before a jury the

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1 jury becomes the sole and exclusive judge of the facts. A
2 trial judge cannot intimate, state, comment on or make any
3 statements to a trial jury about the facts in a case.

4 Since you, the jury, are the sole judge of the facts,
5 you are not to infer from what I have said during the
6 progress of this trial in ruling upon the admissibility of
7 evidence, or otherwise, or anything that I say now during
8 the course of this instruction to you that I have any
9 opinion about the facts. The law simply does not allow me
10 to have an opinion about the facts. This is a matter solely
11 for you, the jury, to determine. And as jurors it is your
12 duty to determine the effect, value, weight and truth of the
13 evidence presented during this trial.

14 Ladies and gentlemen of the jury, this is a very
15 important concept of the law known as presumption of
16 innocence. The Defendant has pled not guilty to these
17 indictments. And that plea puts the burden of proof on --
18 the burden of proof on the State to prove the Defendant
19 guilty.

20 A person charged with committing a criminal offense in
21 South Carolina is never required to prove himself innocent.
22 I charge you that it is an important rule of law that a
23 defendant in a criminal trial, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which he -- which the

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1 indictment was issued unless guilt has been proven by
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt. Presumption of innocence does not end when you begin
4 your deliberations, but that accompanies the Defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant,
10 which remains with the Defendant until it has been stripped
11 from the Defendant by evidence satisfying you of the
12 Defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not a mere legal theory, it is
14 not just a legal phrase. It is a substantial right to which
15 every defendant is entitled as you, the jury, are satisfied
16 from the evidence of the Defendant's guilt beyond a
17 reasonable doubt.

18 What is reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. The State has the burden of
21 proving the Defendant guilty beyond a reasonable doubt.

22 Some of you may have served as jurors in a civil case
23 where you were told that it is only necessary to prove that
24 a fact is more likely true than not true, such as by a
25 greater weight or preponderance of the evidence. In

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1 criminal cases the State's proof must be more powerful than
2 that. It must be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the Defendant's guilt. There are
5 very few things in this world we know with absolute
6 certainty. And in criminal cases the law does not require
7 proof that overcomes every possible doubt.

8 If, based on your consideration of the evidence, you
9 are firmly convinced that the Defendant is guilty of the
10 crime charged, you must find the Defendant guilty. If, on
11 the other hand, you think there is a real possibility the
12 Defendant is not guilty, you must give the Defendant the
13 benefit of the doubt and find him not guilty.

14 Ladies and gentlemen of the jury, there are two types
15 of evidence which are generally presented during a trial,
16 direct evidence and circumstantial evidence. Direct
17 evidence directly proves the existence of a fact and does
18 not require deduction. Circumstantial evidence is proof of
19 a chain of facts and circumstances indicating the existence
20 of a fact.

21 Crimes may be proven by circumstantial evidence. The
22 law makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence. However,
24 to the extent the State relies on circumstantial evidence,
25 all of the circumstances must be consistent with each other

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1 and when taken together point conclusively to the guilt of
2 the accused beyond a reasonable doubt.

3 If these circumstances merely portray the Defendant's
4 behavior is suspicious, the proof has failed. The State has
5 the burden of proving the Defendant guilty beyond a
6 reasonable doubt. This burden rests with the State
7 regardless of whether the State relies on direct evidence,
8 circumstantial evidence or some combination of the two.

9 Ladies and gentlemen of the jury, necessarily you must
10 determine the credibility of witnesses who have testified.
11 Credibility simply means believability. It becomes your
12 duty as jurors to analyze and to evaluate the evidence and
13 determine which evidence convinces you of its truth.

14 In determining the believability of a witness who has
15 testified you may believe one witness over several witnesses
16 or several witnesses over one witness... You may believe a
17 part of the testimony of a witness and reject the remaining
18 part of the testimony of that same witness.

19 You may believe the testimony of a witness in its
20 entirety or reject the testimony of a witness in its
21 entirety. You may consider whether any witness has
22 exhibited to you any interest, bias, or prejudice or other
23 motive. You may also consider the appearance and the manner
24 of a witness while on the witness stand.

25 The Rules of Evidence ordinarily do not permit

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1 witnesses to testify to opinions or conclusions. An
2 exception to this rule exists for witnesses we call expert
3 witnesses.

4 A witness who by education and experience have become
5 expert in some art, science, profession, calling may state
6 an opinion as to relevant and material matter in which the
7 witness claims to be an expert and may also state the
8 reasons for the opinion. You should consider any expert
9 opinion received into evidence and like any other evidence
10 give it the weight you think it deserves.

11 If you decide the opinion of an expert is not based on
12 sufficient education and experience or if you conclude that
13 the reasons given in support of the opinion are not sound or
14 that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely. An expert witness'
16 testimony is to be given no greater weight than that of
17 other witnesses simply because the witness is an expert.
18 Further, you are not required to accept an expert's opinion
19 even though it is not contradicted.

20 Madame Forelady, ladies and gentlemen of the jury, I
21 instruct you and emphasize the fact that the Defendant did
22 not -- that the -- emphasize that the fact that the
23 Defendant did not testify is not a factor to be considered
24 by you in any way in your deliberation and in your
25 consideration on the question of guilt or innocence of the

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1 Defendant. It must not be considered by you in any manner
2 whatsoever.

3 A defendant has a constitutional right to remain
4 silent. And the assertion of this right must not be
5 considered by you in your deliberations. I'll repeat, under
6 your oath you are to draw no conclusion whatsoever from the
7 fact that the Defendant in this case did not testify.

8 The fact that this Defendant did not testify should not
9 even be discussed in the jury room. Madame Forelady, I'm
10 going to ask that you enforce that rule. There'll be no
11 discussion about whether or not the Defendant testified in
12 this case.

13 The burden of proof, as I have stated to you, is on the
14 State. The Defendant is not required to prove his
15 innocence. The burden of proof remains on the State to
16 prove guilt beyond a reasonable doubt.

17 Ladies and gentlemen of the jury, I'm going to charge
18 you the law with regard to accomplice liability. A person
19 who was present at the scene of the crime and intentionally
20 and through a common plan aided, abetted or assisted in the
21 commission of that crime through some overt act is guilty as
22 an accomplice. To be liable as an accomplice the Defendant
23 must have knowledge of the principal's criminal conduct.
24 Mere presence at the scene of the crime is not sufficient to
25 establish guilt as an accomplice. Intentionally means

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1 willfully intending the result which actually occurs, not
2 accidentally or involuntarily.

3 I want to charge you the concept and the law known as
4 the hand of one is the hand of all. A crime -- if a crime
5 is committed by two or more people who are acting together
6 in committing a crime, the act of one is the act of all.

7 A person who joins with another to commit an unlawful
8 act is criminally responsible for everything done by the
9 other person which happens as a probable and natural
10 consequence of the acts done in carrying out the common plan
11 and purpose. If two or more people are together, acting
12 together, assisting each other in committing the offense,
13 the act of one is the act of all, or as it is sometimes
14 said, the hand of one is the hand of all.

15 Prior knowledge that a crime is going to be committed
16 without more is not sufficient to make a person guilty of
17 that crime. Mere knowledge that another person is going to
18 commit a crime, even if the Defendant is present when the
19 crime is committed, is not sufficient to convict the
20 Defendant as a principal.

21 Guilt as a principal is shown by actual and
22 constructive presence at the scene as a result of prior
23 arrangement. Therefore, a finding of a prior arranged plan
24 or common scheme is necessary for a finding of guilt as a
25 principal. The State must prove beyond a reasonable doubt

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1 by competent evidence the theory of the hand of one is the
2 hand of all.

3 A principal in a crime is one who either actually
4 commits the crime or who is present, aiding, and abetting or
5 assisting in committing the crime. When a person does an
6 act in the presence of and with the assistance of another,
7 the act is done by both. Where two or more are acting with
8 a common plan or intent are present in the commission of a
9 crime, it does not matter who actually commits the crime,
10 all are guilty. The hand of one is the hand of all.

11 Present at the commission of a crime means to be
12 sufficiently near to aid, and abet and assist in the
13 commission of the crime. However mere presence at the scene
14 of a crime is not sufficient to convict one as a principal
15 on the theory of aiding and abetting.

16 Intent is also a necessary element, for there must have
17 been a common design or intent to commit the crime. The
18 crime must've been committed pursuant thereto with the
19 person aiding and abetting by some overt act. Intent means
20 intending the result which actually occurs, not accidentally
21 or involuntary. Intent may be shown by acts and conduct of
22 the Defendant and other circumstances from which you may
23 naturally and reasonably infer intent. The State must prove
24 these elements beyond a reasonable doubt.

25 Ladies and gentlemen of the jury, I'm going to charge

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1 you the substantive law with regard to the criminal offense
2 of murder. The Defendant is charged with murder. The State
3 must prove beyond a reasonable doubt the Defendant killed
4 another person with malice aforethought.

5 Malice is hatred, ill will or hostility toward another
6 person. That is the intentional doing of a wrongful act
7 without just cause or excuse with an intent to inflict an
8 injury or under circumstances that the law would infer evil
9 intent.

10 Malice aforethought does not require that malice exists
11 for any particular time before the act is committed, but
12 malice must exist in the mind of the Defendant just before
13 and at the time of the -- that the act is committed.
14 Therefore, there must be a combination of the previous evil
15 intent and the act.

16 Malice aforethought may be express or inferred. These
17 terms, express and inferred, do not mean different kinds of
18 malice, but merely the manner in which the malice may be
19 shown to exist, that is either by direct evidence or by
20 inference from the acts and circumstances which are proved.

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when the
23 person prepared beforehand to do an act which was later
24 accomplished. For example, lying in wait for a person or
25 any other act of preparation going to show that the deed was

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1 within the Defendant's mind would be express malice. Malice
2 may be inferred by conduct showing a total disregard for
3 human life.

4 Ladies and gentlemen of the jury, if one intentionally
5 kills another during the commission of a felony, the
6 inference of malice may arise. If facts are proved beyond a
7 reasonable doubt sufficient to raise an inference of malice
8 to your satisfaction, this inference would simply be an
9 evidentiary fact to be taken into consideration by you along
10 with all other evidence in the case. You may give it the
11 weight you think it deserves.

12 I charge you the substantive law with regard to
13 burglary. The Defendant is charged with first degree
14 burglary. The State must prove beyond a reasonable doubt
15 that the Defendant entered a dwelling without consent.

16 The dwelling is any building or portion of a building
17 in which a person ordinarily sleeps. A building constructed
18 as a dwelling that has never been occupied cannot be
19 considered a dwelling for purposes of burglary, but a
20 building is a dwelling even if the residents are temporarily
21 absent from the building.

22 In order to prove that the Defendant entered the
23 dwelling the State does not have to show that the
24 Defendant's entire body entered the dwelling. The smallest
25 entry is sufficient. It may be any part of the body such as

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1 a hand, or foot or even an instrument such as a hook or
2 other substance.

3 In addition, the State does not have to prove that
4 force was used to gain entry. If a person enters a building
5 by using deception, artifice, trick or misrepresentation to
6 get consent to enter, this is an entry without consent.

7 Next, the State must prove beyond a reasonable doubt
8 that the Defendant intended to commit a crime, either a
9 felony or a misdemeanor, at the time of the entry. The mere
10 entry into a dwelling without consent is not burglary.

11 If the intent to commit a crime is formed after the
12 entry, it is not burglary. On the other hand, if the
13 Defendant intended to commit a crime at that time of the
14 entry, it is burglary even if the intent was abandoned after
15 the entry. It does not matter that the intended crime was
16 not completed. Intent may be shown by acts and conduct of
17 the Defendant and other circumstances from which you may
18 naturally and reasonably infer intent.

19 Finally, the State must prove beyond a reasonable doubt
20 that when entering, while in the dwelling, or when fleeing
21 the Defendant or an accomplice was armed with a deadly
22 weapon or explosive. A deadly weapon is any article,
23 instrument or substance which is likely to cause death or
24 great bodily harm.

25 Whether an instrument has been used as a deadly weapon

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1 depends upon the facts and circumstances of each case. The
2 following are examples of instruments which may be deadly
3 weapons; A pistol, shotgun, rifle, dirk, dagger, knife,
4 slingshot, metal knuckles, a razor, gasoline, a firebomb,
5 Molotov cocktail or lighter fluid.

6 A gun may be a deadly weapon even if it is not
7 operating or when entering while -- while in the dwelling or
8 when fleeing the Defendant or an accomplice caused physical
9 injury to anyone not participating in the crime, or when
10 entering while in the dwelling or when fleeing the Defendant
11 or an accomplice displayed what was or appeared to be a
12 knife, pistol, revolver, rifle, shotgun, machine gun or
13 other firearm or the Defendant entered or remained in the
14 dwelling in the nighttime. Nighttime is the period between
15 sunset and sunrise in which there's not enough daylight to
16 recognize a person's face except by artificial light or
17 moonlight.

18 Ladies and gentlemen of the jury, I'm going to charge
19 you the substantive law with regard to attempted armed
20 robbery. The Defendant is charged with attempted armed
21 robbery. In order to prove this offense the State must
22 first prove beyond a reasonable doubt that the Defendant
23 acted with specific intent to take the personal property
24 from the person or presence of another person.

25 Property is in the presence of a person if it is within

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1 the person's reach, inspection, observation or control so
2 that the person could, if not overcome with violence or --
3 or prevented by fear, keep possession of the property. An
4 attempt is an effort to accomplish a crime which does not
5 succeed.

6 Attempt -- an attempt includes a specific intent to do
7 a particular criminal act along with an act falling short of
8 that -- of the act intended. There must be some overt act
9 committed in the effort to commit a crime. Intent means
10 intending the result which actually occurs, not accidentally
11 or involuntary. Intent may be shown by acts and conduct of
12 the Defendant and other circumstances from which you may
13 naturally or reasonably infer intent.

14 The State must also prove beyond a reasonable doubt
15 that the Defendant intended to carry the property away
16 intending to permanently deprive the owner of the property
17 to keep the property from the Defendant's [sic] own use.
18 The attempted taking and carrying away of the property must
19 have been done with violence or by putting the owner of the
20 property in fear of violence.

21 Finally, the State must prove beyond a reasonable doubt
22 that the Defendant was armed with a deadly weapon during the
23 robbery. A deadly weapon is any article, instrument or
24 substance which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a deadly

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1 weapon depends upon the facts and circumstances of the case.

2 The following are examples, once again, of a deadly
3 weapon; Pistol, shotgun, rifle, dirk, dagger, knife,
4 slingshot, metal knuckles, a razor, gasoline, firebomb,
5 Molotov cocktail and lighter fluid. A gun may be a deadly
6 weapon even if it is not operating.

7 I'm going to charge you the substantive law with regard
8 to conspiracy. The Defendant is charged with conspiracy.
9 The State must prove beyond a reasonable doubt that the
10 Defendant combined with one or more persons for the purpose
11 of committing an unlawful act or committing a lawful act by
12 unlawful means.

13 There must be a mutual understanding, agreement or
14 common intention and plan. Mere passive knowledge of or
15 consent to the criminal conduct of another is not enough to
16 make a person a conspirator. There must be guilty knowledge
17 and participation.

18 Similarly, the fact that the Defendant may have
19 associated with another person or met with another person
20 and discussed common aims and interests does not necessarily
21 establish proof of the existence of a conspiracy or that the
22 Defendant was involved in a conspiracy. On the other hand,
23 it is not necessary that the agreement be a formal one, that
24 it be in writing and that the person hold a meeting and
25 expressly state the terms of the common plan or that the

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1 agreement be stated in words between them.

2 The agreement of a criminal conspiracy may come into
3 being through an implied mutual understanding. Willful,
4 intentional and knowing adoption by two or more persons of a
5 common plan is sufficient. No overt acts need to be shown
6 to establish a conspiracy.

7 A conspiracy may be shown by circumstantial evidence
8 and the conduct of the parties. In order to convict the
9 Defendant of conspiracy the State must prove beyond a
10 reasonable doubt not only that the Defendant knew of the
11 unlawful conduct, but that the Defendant agreed to combine
12 with the other persons -- person or persons for the purpose
13 of accomplishing the unlawful conduct.

14 I'm going to charge you the law with regard to
15 possession of a weapon during the commission of a violent
16 crime. The Defendant is charged with possession of a weapon
17 during the commission of a violent crime. The State must
18 prove beyond a reasonable doubt that the Defendant was in
19 possession of a firearm or visibly displayed what appeared
20 to be a firearm during the commission of a violent crime.

21 A firearm means any machine gun, automatic rifle,
22 revolver, pistol or any weapon which will, is designed to or
23 may be readily converted to expel a projectile. In order to
24 find the Defendant guilty of possession of a weapon during
25 the commission of a violent crime you must first find the

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1 Defendant guilty of either committing a violent crime or
2 attempting to commit a violent crime.

3 Ladies and gentlemen of the jury, murder, burglary,
4 first degree, and attempted armed robbery are all violent
5 crimes. The State must prove beyond a reasonable doubt that
6 the weapon furthered, advanced or helped in the commission
7 of the crime.

8 Ladies and gentlemen of the jury, I'm going to come
9 forward and share with you the verdict form. Bear with me
10 just one moment.

11 (Pause)

12 **THE COURT:** Madam Forelady, I'm going to ask if you
13 could stand. I'm going to go over with you this verdict
14 form. It is a two-page document that's entitled verdict.
15 It's got the State of South Carolina, County of Greenville.
16 It's got the caption here and the indictments and the
17 numbers.

18 And for each charge it says as to the charge of murder,
19 we, the jury, unanimously find the Defendant not guilty or
20 guilty. And it goes through for burglary, first, attempted
21 armed robbery, conspiracy and possession of a weapon during
22 the commission of a violent crime.

23 The verdict form at the end reminds you, as I'm
24 charging you now, that the verdict must be unanimous. That
25 can't be 11 to one, six to six, eight to four. Everyone has

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1 to agree. And when you reach a verdict, I'm going to ask
2 that you date it, sign it, inform the bailiff and we'll
3 receive you back into the courtroom.

4 I'm going to ask if you could have a seat. I'm going
5 to talk with you a little bit about the deliberation
6 process.

7 Madam Forelady, you're going to be charged with the
8 responsibility of presiding over the deliberation process.
9 And that essentially means that you're to ensure that
10 everybody's voice is heard. Make sure that everybody has
11 input. I'm also going to mention to you that if anyone gets
12 up to use the bathroom, stop deliberations because everyone
13 has to participate in all of the deliberation process.

14 There might be questions that develop during the
15 process. And you've heard me charge the law. Really the
16 questions of fact, y'all are -- that's a hard question that
17 y'all are going to have to resolve. I can't help you in
18 that regard.

19 If there's a question with regard to the law, I can
20 help you with that, if there's some confusion in that
21 regard. However, I don't think there are going to be any
22 questions because y'all have paid close attention to the
23 evidence, y'all are armed with all the information that you
24 need to make a factual finding.

25 You paid very close attention to the law. So I don't

CHARGE OF THE COURT

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1 anticipate there is going to be any questions. If there's
2 some confusion in your mind, if there's a question that
3 comes up, and you don't know whether it's a question of fact
4 or law, write it down, and I'll help you if I can.

5 And every time I send you out to the jury room, I'll
6 tell you not to discuss the case, not to begin
7 deliberations. And once again I'm going to ask you to do
8 that because I'm going to have to talk to these very fine
9 lawyers to see whether or not they have an objection to the
10 manner in which I charged the law.

11 If I've inadvertently left something out or put
12 something in that wasn't supposed to be there, if there's
13 something that we need to straighten out in that regard, we
14 would bring you back in. And do not begin deliberations
15 until you receive instructions.

16 If, after I've discussed it with these lawyers, there's
17 no need for us to revisit the jury charge, then we will
18 gather up all the documentary evidence, the bailiff will
19 give you that, give you a pencil and some pads to aid you in
20 the deliberation process and will tell you to begin to
21 deliberate, but do not do that until then.

22 I believe our alternates are Jeffery Burnette and Lisa
23 Bishop, is that correct?

24 **MR. BURNETTE:** Yes, Your Honor.

25 **THE COURT:** I'm going to ask that y'all remain with us

CHARGE OF THE COURT

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1 here in the courtroom. I'll talk with you momentarily. And
2 I'm going to ask that everyone remain seated as the jury
3 exits the courtroom. But, once again, do not begin
4 deliberations until we tell you to do so. Thank you very
5 much.

6 (Whereupon the jury exited the courtroom at 10:46 am)

7 **THE COURT:** Mr. Burnette and Ms. Bishop, thank you so
8 much for your time. I know y'all feel like y'all have been
9 invited to a dance and didn't get to dance, but you are sort
10 of our insurance policy.

11 You know, we try cases throughout the year and it's
12 quite often, probably more often than not, that we have to
13 activate an alternate juror, particularly in a criminal case
14 it's necessary that you have twelve people deliberate in the
15 verdict. And quite often people get sick, sometimes they
16 get in a wreck on the way to court.

17 Sometimes they know a particular witness as Bubba, but
18 his name is Theodore, and they don't recognize that they are
19 very close with them until they testify. So a number of
20 different conflicts can come up. And if -- and if we didn't
21 have alternates, we'd just have to start the process all
22 over again. Have either of you ever served on a jury
23 before?

24 **MR. BURNETTE:** No, sir.

25 **MS. BISHOP:** No, sir.

1 **THE COURT:** Well, hopefully it's been a learning
2 process. Hopefully you've learned a little bit about how
3 our judicial system works. And I always like to ask jurors
4 if y'all have any questions, I'd be happy to answer them.
5 Do y'all have any questions?

6 **MR. BURNETTE:** No, sir.

7 **MS. BISHOP:** No.

8 **THE COURT:** Nobody ever asks me any questions. I was
9 hoping that y'all would ask me one that would be a
10 complicated one I could let my law clerk answer it for you.
11 But, nonetheless, thank y'all for being here.

12 I think there -- I wish I could excuse you for the
13 week, but it might be that we are going to try another case.
14 The bailiff will give you instructions with regard to how to
15 handle the balance of the week. Thank you so much. And
16 y'all are free to leave. The bailiff will assist you and
17 tell you when you need to report back. Thank you very much.
18 All right.

19 (Whereupon the alternates exited the courtroom)

20 **THE COURT:** Is there any objection to the jury charge
21 or any additional requests from the State?

22 **MR. McMASTER:** Nothing from the State, Your Honor.

23 **THE COURT:** Anything from Defense?

24 **MR. RICHEY:** Nothing, Your Honor.

25 **THE COURT:** I'm going to ask each of you to come

1 forward and to go through the -- I'm going to ask that all
2 of the evidence be placed, perhaps, on this table over here.
3 Make sure that all of it's together and that -- I'm going to
4 ask each of you once we get it in a pile, make sure that all
5 of the evidence is in that pile and there's not anything in
6 the pile that is not in evidence.

7 (Pause)

8 **THE COURT:** I'm going to ask the State, all the
9 evidence been placed on the cart, is everything on that cart
10 in evidence?

11 **MR. McMASTER:** Yes, Your Honor.

12 **THE COURT:** Is there anything on that cart that's not
13 in evidence?

14 **MR. McMASTER:** No, Your Honor.

15 **THE COURT:** All right. Mr. Richey, is everything --
16 are you satisfied that everything on that cart is in
17 evidence?

18 **MR. RICHEY:** Yes, sir.

19 **THE COURT:** Is there anything on the cart that's not in
20 evidence?

21 **MR. RICHEY:** No, sir.

22 **THE COURT:** I'm going to ask the bailiff, if they
23 would, carry the evidence to the -- to the jury room and
24 tell them to begin deliberations. Sir, I'm going to ask if
25 you could carry that in there, give them whatever paper and

VERDICT OF THE JURY

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1 writing utensils and tell them to begin deliberations.

2 **THE BAILIFF:** They've got a verdict form, right?

3 **THE COURT:** They do.

4 **THE BAILIFF:** How about these? Are they going?

5 **MADAM COURT REPORTER:** No.

6 **MR. McMASTER:** That is not in evidence.

7 **THE COURT:** Everything that's in evidence is on that
8 cart. All right. And we'll stand at ease.

9 (Whereupon the jury began deliberating at 10:54 am)

10 (Whereupon court was in recess at 10:54 am)

11 (Whereupon court reconvened at 11:48 am)

12 **THE COURT:** I understand they've reached a verdict.
13 Anything from the State before we receive the verdict?

14 **MR. McMASTER:** No, Your Honor.

15 **THE COURT:** Anything from Defense?

16 **MR. RICHEY:** No, sir.

17 **THE COURT:** We're ready for the jury.

18 (Whereupon the jury entered the courtroom at 11:49 am)

19 **THE COURT:** Madam Forelady, have you reached a verdict?

20 **MADAM FORELADY:** Yes, sir.

21 **THE COURT:** Is it unanimous?

22 **MADAM FORELADY:** Yes, sir.

23 **THE COURT:** I'm going to ask if you could give the
24 verdict form to the clerk -- to the bailiff and have the
25 bailiff present it to the clerk.

VERDICT OF THE JURY

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1 (Pause)

2 **THE COURT:** The verdict is in proper form. I'm going
3 to ask the clerk to publish the verdict. I'm going to ask
4 the Defendant if he will stand.

5 **MADAM CLERK:** The State of South Carolina versus
6 Tristian Xavier-Marian Cummings, on indictment numbers 2016-
7 GS-23-8778, 8782, 8780, 8773 and 8779, as to the charge of
8 murder, we, the jury, unanimously find the Defendant guilty.

9 As to the charge of burglary, first degree, we, the
10 jury, unanimously find the Defendant guilty.

11 As to the charge of attempted armed robbery, we, the
12 jury, unanimously find the Defendant guilty.

13 As to the charge of conspiracy, we, the jury,
14 unanimously find the Defendant guilty.

15 As to the charge of possession of a weapon during the
16 commission of a violent crime, we, the jury, unanimously
17 find the Defendant guilty.

18 And it is signed by Beverly Terlizzi, the jury
19 Forelady. If this is your verdict, so say you all. Please
20 signify by raising your right hand.

21 (Whereupon all jurors raised their right hand)

22 **THE COURT:** Very good. All right. Any additional
23 request for polling from the State?

24 **MR. McMASTER:** None from the State, Your Honor.

25 **THE COURT:** Any from Defense?

VERDICT OF THE JURY

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1 **MR. RICHEY:** No, Your Honor.

2 **THE COURT:** All right. Ladies and gentlemen -- Madam
3 Forelady, ladies and gentlemen of the jury, rules of ethics
4 do not allow me as the Judge to comment on a particular
5 verdict, but I can thank you for your time and your
6 consideration in this matter. How many of you have never
7 served on a jury before?

8 (Whereupon most jurors responded)

9 **THE COURT:** Quite a few. Hopefully it's been a
10 learning experience. And I know that when you came here
11 Monday you had no idea really what you were going to be
12 involved in. But the jury system that we have is a hallmark
13 of our democracy. And it's the best system ever devised to
14 resolve such disputes.

15 I know y'all had other places you would rather be, but
16 it's the only system -- and you were compelled to be here.
17 It wasn't really an invitation. You were subpoenaed to be
18 here and you had to show up. And if you think about it, we
19 would not be able to achieve the same sort of finality and
20 wisdom that members of the community are able to render this
21 system.

22 I think that these matters should not be resolved by
23 judges, it should not be resolved by professional jurors and
24 it should not be resolved by people who have absolutely
25 nothing better to do. People who are out working, regular

VERDICT OF THE JURY

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1 everyday citizens bring wisdom to these type things. And
2 for that I'm very appreciative.

3 I will ask the solicitor, is there other -- are there
4 other cases to be tried this week?

5 **MR. McMASTER:** There is one more on Thursday, Your
6 Honor.

7 **THE COURT:** Very good. I wish that I could turn you
8 loose for the week, but there's going to be one more. And
9 we'll select probably 14 more jurors. And you'll have to be
10 -- you'll be compelled to be there and participate in that
11 process.

12 I always ask jurors at the conclusion of the case if
13 there's any questions that you have about particular legal
14 rulings or any questions at all. Any questions from
15 anybody?

16 (No response)

17 **THE COURT:** All right. Thank you very much. You have
18 discharged your duty as the trier of fact. Now it's my job
19 as the judge of the law to render a sentence. You do not
20 have to participate in that or witness that. However, you
21 have time invested in it, and if you would like to, you can
22 -- you can go out into the audience, it's a public forum,
23 and you can watch that process if you would like.

24 But, otherwise, the bailiff will assist you in
25 returning to the jury room. Thank you very much. And we'll

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1 see you in the morning, perhaps. Thank you.

2 (Whereupon the jury exited the courtroom at 11:55 am)

3 **THE COURT:** Mr. Richey, I'm going to ask if you'd bring
4 Mr. Cummings before the Court. And I'll hear first from the
5 State with regard to sentencing.

6 **MR. RICHEY:** Judge, prior to that, I'd just renew my
7 motion for directed verdict. And I would ask the Court to
8 set aside his verdict and grant a new trial.

9 **THE COURT:** Okay. And your motions are noted for the
10 record and denied and ask that you bring your client
11 forward.

12 **MR. RICHEY:** Thank you, Your Honor.

13 **MR. McMASTER:** Your Honor, I'm going to give the
14 sentencing sheets to the clerk.

15 **THE COURT:** Very good.

16 (Pause)

17 **THE COURT:** Mr. McMaster, I'll be glad to hear from the
18 State with regard to sentencing.

19 **MR. McMASTER:** Your Honor, I think the evidence was
20 overwhelming due to the quick verdict by the jury of guilty
21 on all counts. I've spoken with Mr. White's mother, who is
22 here. She does not wish to address the Court at this time
23 although she has been properly notified to be here.

24 And we would ask that you impose a life sentence at
25 this time, Your Honor. We said that at the outset, that's

SENTENCE OF THE COURT

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1 what we were going to ask for if we got a conviction on all
2 charges. This is a very serious matter. And, Your Honor,
3 the client does have, I mean, the Defendant does have some
4 prior record that I could go into at the appropriate time.

5 **THE COURT:** Now would be the appropriate time.

6 **MR. McMASTER:** Your Honor, he has a possession with
7 intent to distribute marijuana, a discharging a firearm into
8 a vehicle in 2011. He also has a possession with intent to
9 distribute marijuana in 2013. He does have one thousand,
10 one hundred and thirty (1,130) days of credit.

11 **THE COURT:** One thousand (1000) ...

12 **MR. McMASTER:** One hundred and thirty (130) days. That
13 is as of today.

14 **THE COURT:** Anything further from the State?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Mr. Richey, you're recognized. I'll be
17 glad to hear from you, your client or anybody who would like
18 to speak on his behalf.

19 **MR. RICHEY:** Thank you, Your Honor. Your Honor, he is
20 27 years old, resides in Greenville. I would ask the Court
21 to consider in sentencing that under this murder charge he
22 would have to get at least 30 -- 30 years. And I want the
23 Court -- and I think the Court knows this, he'd have to do
24 that day for day.

25 I think that sentence in comparison with what the co-

SENTENCE OF THE COURT

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1 defendant would get -- I understand the co-defendant would
2 get some benefit from testifying, but the max that the co-
3 defendant would be 30 years under sentence, but at eighty-
4 five percent. In light of that, I believe 30 years would be
5 a substantial sentence for this Defendant.

6 As I said before, I believe the co-defendant's, the
7 benefit that he's getting out of it is not being under the
8 day for day. And my client -- I'd ask the Court to consider
9 concurrent sentences because he's going to have to do what
10 you give him.

11 I mean, it's not going to be any good time. It's not
12 going to be any of that. He's going to have to do what you
13 give him. And I'd ask the Court to consider concurrent
14 sentence in this case. We respect what the jury has issued,
15 but we'd ask the Court to consider that.

16 **THE COURT:** All right. Mr. Cummings, you don't have to
17 say anything, but if you'd like to, I'd be happy to hear
18 anything that you have to say.

19 **MR. CUMMINGS:** Yeah. First, I want to give my
20 condolences to the family and also to my family for what
21 happened here today.

22 And I also want to say that I did not do it. And I
23 want to let it be known that I put in motion after motion
24 for my representation because I wasn't happy of the things
25 that was going on and things that were being said to me

SENTENCE OF THE COURT

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1 during -- during this whole three years.

2 But other than that, like I said, I want to give my
3 condolences to the family and my family. I want to give my
4 condolences to the Court just for even being here in this
5 position.

6 **THE COURT:** All right. Anybody else would like to
7 speak on Mr. Cummings' behalf? Yeah, I'll be glad to hear
8 from anybody.

9 **MR. THOMPSON:** Yes, sir, Your Honor. My name is Thomas
10 Thompson. I'm the grandfather of his sons. And I just felt
11 compelled to speak up for him.

12 I've been knowing this young man, you know, since he's
13 -- since he's been a young man. He, you know, he hadn't had
14 a fair shake all the way around in life. And I know that
15 doesn't justify the outcome of what has happened here today
16 with the family. And I'm sorry to your family for the loss.

17 A lot of times young men are running around not
18 understanding the consequences of their actions. And the
19 magnitude smacks them in the face when they're standing here
20 facing you, Your Honor.

21 Your Honor, I'm asking you on behalf of my grandsons
22 for this man. I know he deserves whatever you hand him, but
23 I'm pleading on his behalf, his sons, for him another chance
24 at life.

25 If you give this man a life sentence, he's got no

SENTENCE OF THE COURT

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1 chance at life. But if you give him a number, he can redeem
2 himself. I promise you. I can't -- I can't guarantee
3 another man's actions, but I can guarantee his boys will be
4 okay. And I'll do everything in my power to help guide
5 them.

6 I'm a 50 year old man, and I understand what it means
7 to stand right here and fight for your life. And I'm
8 pleading. Somebody gave me another chance one day. So I'm
9 here asking for a young black man, got nothing to do with
10 color, but it's got to do with life and mercy. I'm asking
11 you for your mercy. I'm pleading for him.

12 If he don't have the words to say it, I'll say it for
13 him, save his life, please. Please. Give his children
14 another chance to have a father so they don't become a
15 statistic like this. I'm begging. I'm begging. I needed
16 it. He needs it. God in heaven knows I prayed for it today
17 for him.

18 I haven't spoken to him. I haven't heard from him.
19 All I know is his boys. All I know is mercy is needed. And
20 all I'm doing is pleading to the Court for mercy. That's
21 all I'm asking. Please. In the name of the Lord, in the
22 name of Jesus just give him one more chance to see life.
23 Please. Please. Please. That's all I have to say.

24 **THE COURT:** Very good. Anything else?

25 **MR. RICHEY:** No, Your Honor.

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1 (Pause)

2 **THE COURT:** Mr. Cummings, on indictment 2016-GS-23-
3 08778, murder, the sentence of the Court is you be committed
4 to the State Department of Corrections for a period of 35
5 years, sentence to run concurrent, credit for one thousand,
6 one hundred and thirty (1,130) days.

7 With regard to indictment 2016-GS-23-08782, burglary,
8 first degree, the sentence of the Court is you be committed
9 to the State Department of Corrections for a period of 35
10 years, sentence to run concurrent, credit for one thousand,
11 thirty [sic] (1,030) days.

12 With regard to indictment 2016-GS-23-08780, attempted
13 armed robbery, the sentence of the Court is you be committed
14 to the State Department of Corrections for a period of 20
15 years, sentence to run concurrent, credit for one thousand
16 and thirty [sic] (1,030) days.

17 With regard to indictment 2016-GS-23-08779, possession
18 of a weapon during the commission of a violent crime, the
19 sentence of the Court is you be committed to the State
20 Department of Corrections for a period of five years,
21 sentence to run concurrent, credit for one thousand, thirty
22 [sic] (1,030) days.

23 With regard to indictment 2016-GS-23-08773, conspiracy,
24 the sentence of the Court is you be committed to the State
25 Department of Corrections for a period of five years,

SENTENCE OF THE COURT

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1 sentence to run concurrent, credit for one thousand, thirty
2 [sic] (1,030) days. Good luck to you.

3 **MR. RICHEY:** Thank you.

4 (Hearing Ended at 12:06 pm)

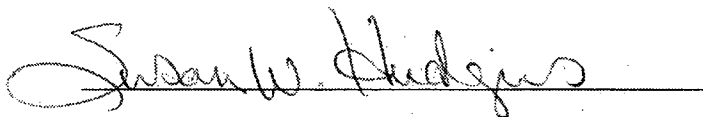
5 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th - 10th day of April 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 27, 2019

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201924

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

WCM

008773

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

**ENTERED
ACCT**

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

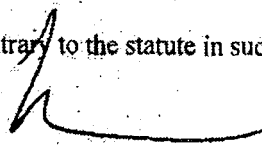
At a Court of General Sessions, convened on
County present upon their oath:

JUN 27 2017

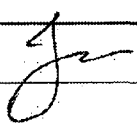
the Grand Jurors of Greenville

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March 2016, willfully and unlawfully combined with SIMEON TAFARI WILLIAMS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: murder and/or attempted armed robbery and/or burglary. This is in violation of §16-17-0410 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.


SOLICITOR11605
BAR # 11605

WITNESSES

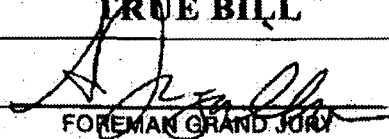
Michael Fortner 

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201920

ACTION OF GRAND JURY
TRUE BILL
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
WCM

008778

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016 ²⁰¹⁷

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for:

0116

MURDER

VIOLATION § 16-03-0010, 0020

ENTERED
ACCT 

FILED

OCT 03 2016

Clerk of Court
Greenville County

30-life

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

JUN 27 2017

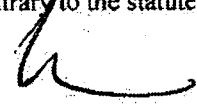
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March, 2016, unlawfully and with malice aforethought kill JERYL WHITE by means of shooting, and that JERYL WHITE died as a proximate result thereof. This is 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.


SOLICITOR11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201923

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-23-

WCM

008779

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2017
TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0549

ENTERED
ACCT

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on **JUN 27 2017** the Grand Jurors of Greenville
County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March,
2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to
wit: Murder, Burglary and Attempted Armed Robbery. This is in violation of §16-23-490 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.


SOLICITOR

11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201921

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2016-GS-23-
WCM

008780

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0026

ATTEMPTED
ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-20

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED
ARMED ROBBERY

At a Court of General Sessions, convened on

JUN 27 2017

the Grand Jurors of Greenville

County present upon their oath:

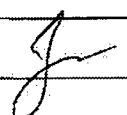
That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempted to take by means of force or intimidation, goods or monies described as: money from the person or presence of JERYL WHITE. This is in violation of §16-11-330 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.


SOLICITOR

11605
BAR # 11605

WITNESSES

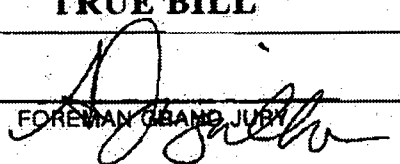
Michael Fortner 

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER
2016A2330201922

ACTION OF GRAND JURY
TRUE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-23-
WCM 008782

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM ²⁰¹⁷ 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

ENTERED
ACCT 

FILED

OCT 03 2016

Clerk of Court
Greenville County

15-11c

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

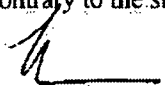
JUN 27 2017

the Grand Jurors of Greenville

County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March 2016, willfully and unlawfully enter the dwelling of JERYL WHITE located at 34 Burgess Avenue, Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: by being armed with a deadly weapon and/or did cause physical injury to the victim and/or displayed a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm and/or by entering and/or remaining did occur during the night time hours. This is in violation of §16-11-0311 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.


 SOLICITOR

11605
 BAR # 11605

360

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy, (gs)IN THE COURT OF GENERAL SESSIONS 0-54 *JV*INDICTMENT/CASE#: 2016GS2308773A/W#: 2016A2330201924Date of Offense: 3/6/2016S.C. Code § 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049 ✓
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or 2nd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 11605. 09506
McMaster, William SC Bar# [REDACTED] Defendant RICHEY, RODNEY SC Bar# [REDACTED]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-10-19☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. *1030 days*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCPPPS Recipient:

*Fine:	\$	
\$14-1-206 (Assessments 107.5 %)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk Paul B. WickensumerCourt Reporter: S. Hudgens

SCCA/217 (04/2018)

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]Judge Code: 2140Sentence Date: 4/10/19

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2308778A/W#: 2016A2330201920Date of Offense: 3/6/2016S.C. Code § 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

McMaster, William

11605

SC Bar#

Defendant

RICHEY, RODNEY
Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-10-19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 1130 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$

\$14-1-211(A)(1) (Conv. Surcharge)

\$100

\$14-1-211(A)(2) (DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$150

\$50-21-114(BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ca

3% to County (if paid in installments)

\$

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 2140Sentence Date: 4/10/19☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Tristian Xavier-Marian Cummings

AKA:
 Race: BLACK Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] Dr

City, State, Zip: Greenville, SC 29611-7447

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Poss. Weapon During Violent Crime

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2308779

A/W#: 2016A2330201923

Date of Offense: 3/6/2016

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lowd-Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 11605 Defendant RICHEY, RODNEY 09506
 McMaster, William SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-10-19

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1030 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Det/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL: \$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Wickens

Court Reporter: S. Hudgens

SCCA/217 (04/2018)

Presiding Judge: [Signature]

Judge Code: 2140

Sentence Date: 4/10/19

☐ Appointed PD or appointed other counsel.
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 28

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Dr

City, State, Zip: Greenville, SC 29611-7447

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery, Attempted Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2308780

A/W#: 2016A2330201921

Date of Offense: 3/6/2016

S.C. Code § 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code #: 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

McMaster, William

11605

SC Bar#

Defendant

RICHEY, RODNEY
Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-10-19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 10 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

\$

§14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100

§14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114(BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Paul B. Wickensmeyer

S. Hedges

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 2140

Sentence Date: 4/10/19

364

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, First DegreeIN THE COURT OF GENERAL SESSIONS 15mg - LifeINDICTMENT/CASE#: 2016GS2308782A/W#: 2016A2330201922Date of Offense: 3/6/2016S.C. Code § 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

McMaster, William

11605

SC Bar#

Defendant

RICHEY, RODNEY
Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-10-19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1030 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5 %)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk: Paul B. WickensmireCourt Reporter: S. HudginsPresiding Judge: [Signature]Judge Code: 240Sentence Date: 4/10/19

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,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of December, 2019.

RECEIVED
DEC 20 2019
SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tristian Cummings, Appellant.

Appellate Case No. 2019-000665

Appeal From Greenville County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2021-UP-266
Submitted June 1, 2021 – Filed July 14, 2021

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, and Tristian Cummings, pro se, both for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Melody Jane Brown,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

KONDUROS, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

V.

TRISTIAN CUMMINGS,

APPELLANT

APPELLATE CASE NO. 2019-000665

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

RECEIVED

DEC 20 2019

SC Court of Appeals

RESPONDENT,

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in instructing the jury that if one intentionally kills another during the commission of a felony, the inference of malice may arise because the instruction is an improper comment on the facts?

STATEMENT OF THE CASE

In June of 2017,¹ the Greenville County Grand Jury indicted Appellant, Tristian Cummings, for conspiracy, murder, possession of a weapon during the commission of a violent crime, attempted armed robbery and burglary first degree, indictments # 2016-GS-23-8773, 8778, 8779, 8780 and 8772. On April 8, 2019, Appellant proceeded to jury trial before the Honorable Michael G. Nettles. Rodney Richey represented Appellant. William McMaster and Andrew Culbreath prosecuted the case. The jury found Appellant guilty on all counts. Judge Nettles sentenced Appellant to thirty-five (35) years for murder, thirty-five (35) years concurrent for burglary first degree, twenty (20) years concurrent for attempted armed robbery, five (5) years concurrent for the weapon charge and five (5) years concurrent for conspiracy. A timely notice of intent to appeal was served on April 15, 2019. This appeal follows.

¹ The indictments appear to have originally been from the June 2016 term but 2016 is crossed out and 2017 is handwritten in. The date listed below the name of the witness is March 6, 2016. The date the indictment was stamped filed with the clerk's office is October 3, 2016.

STANDARD OF REVIEW

“In criminal cases an appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Id.

ARGUMENT

The trial judge erred in instructing the jury that if one intentionally kills another during the commission of a felony, the inference of malice may arise because the instruction is an improper comment on the facts.

The jury found Appellant guilty of the burglary, robbery and murder of Jeryl White in his home on Burgess Avenue in the early morning hours of March 6, 2016. White's girlfriend, April Green, was at the home at the time and called 911. (R. p. 61, lines 4-25). Green admitted that White sold drugs and was known to have drugs and money. (R. p. 74, lines 2-9). A co-defendant, Simeon Williams, testified at trial. According to Williams, earlier in the evening of March 5, 2016, he saw Appellant at Fleetwood. (R. p. 143, lines 2-22). Williams testified that he, Appellant, who he knew as Dula, Quan and Shaw rode back to Williams' house in a friend's car. (R. p. 145, line 14- p. 146, lines 1-5). Williams admitted that once they were back at his house, he decided to rob White, who he knew as Cincinnati. (R. pp. 148-149). White lived nearby and Williams admitted that he had purchased drugs from White in the past. (R. p. 148, lines 1-19). According to Williams, Appellant had a gun and agreed to the robbery. (R. p. 149, lines 10-19). Williams was not questioned about Quan and Shaw or their possible involvement in the robbery.

Officer Harold Robinson with the Greenville County Sheriff's Office was on patrol on March 6, 2016, when two calls came out about a disturbance on Burgess Avenue. (R. pp. 82-83). Officer Robinson was close by and arrived at White's house within twenty seconds. (R. p. 83, lines 5-22). When Officer Robinson arrived at White's house he saw a black male with a red striped shirt going through the cabinets and drawers in the kitchen. (R. p. 88, line 20 – p. 89, lines 1-17). This individual was arrested and identified as the co-defendant, Williams. (R. p. 90, lines 1-10).

Officer Robinson testified that when Williams saw him, he mumbled something and then another black male, dressed in all black, ran through the kitchen, slammed a gun down on the counter and ran out the front door. (R. p. 91, lines 2-19; p. 94, lines 13-19). Officer Kenneth Sandefur, also of the Greenville County Sheriff's Office, arrived at White's house right after Officer Robinson. (R. p. 107, line 1 – p. 108, lines 1-14). Officer Sandefur testified that he saw Appellant run out the front door. (R. p. 110, line 11 – p. 111, lines 1-13). Officer Sandefur chased Appellant and he was apprehended by another officer, Deputy Rodriguez. (R. p. 114, line 1 – p. 115, 116, lines 1-23).

Investigator Michael Fortner with the Greenville County Sheriff's Office confirmed that an intern riding with Officer Robinson, Ms. Nichols, reported seeing a man come out of the house at the time shots were fired wearing a red shirt. (R. p. 228, lines 5-23). Ms. Nichols did not testify a trial. Investigator Fortner also confirmed that a neighbor from across the street called 911 and reported seeing people outside wearing orange shirts. (R. p. 229, lines 15-24).

At the end of the trial the judge instructed the jury, "Ladies and gentlemen of the jury, if one intentionally kills another during the commission of a felony, the inference of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you along with all other evidence in the case. You may give it the weight you think it deserves."² (R. p. 326, lines 4-11). The trial judge erred.

While the charge in the present case did not improperly create a mandatory presumption of malice that shifted the burden of proof as in Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008), instructing the jury that malice may be inferred if one intentionally kills another during

² The charge is almost identical to the charge the Court noted was proper in State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985). Norris, however, was overruled by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Belcher was recently overruled by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019).

the commission of a felony is an improper charge on the facts. The South Carolina Supreme Court recently held in State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019), that, “. . . regardless of evidence presented at trial, a trial court shall not instruct the jury that it may infer malice when the deed was done with a deadly weapon.” In Burdette the Court wrote:

When the trial court tells the jury it may use evidence of the use of a deadly weapon to establish the existence of malice, a critical element of the charge of murder, the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury. Even telling the jury that it is to give evidence of the use of a deadly weapon only the weight the jury determines it should be given does not remove the taint of the trial court's injection of its commentary upon that evidence. Such an instruction is no different than an instruction that the jury may use evidence of flight as evidence of guilt. A jury instruction that malice may be inferred from the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence—that the deed was done with a deadly weapon—and it should no longer be permitted.

427 S.C.at 502–03, 832 S.E.2d at 582. Telling the jury that malice can be inferred if one intentionally kills another during the commission of a felony is an improper comment on the facts in the same way that telling the jury that malice can be inferred from the use of a deadly weapon is an improper comment on the facts.

S.C. Const. art. V, § 21 provides that “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” In State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), the South Carolina Supreme Court found that charging the jury, pursuant to S.C. Code §16-3-657, that a victim’s testimony need not be corroborated was an impermissible charge on the facts. In State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013), the Court found that in a drug trafficking case the trial court must not charge the jury that actual knowledge of the presence of a drug is strong evidence of a defendant's intent to control its disposition or use. The charges in both Stukes and in Cheeks, while proper for a judge to consider when deciding the sufficiency of the evidence, were not proper as instructions to the jury. The Court in Burdette noted, that, “. . .

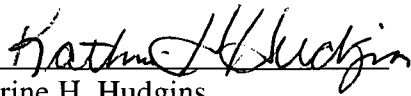
when ruling on a defendant's motion for directed verdict on the ground the State failed to prove the element of malice, a trial court may take into account the fact that the deed was done with a deadly weapon." 427 S.C. at 503-04, 832 S.E.2d at 583. While a trial judge may take into consideration the fact that one intentionally killed another during the commission of a felony as an inference of malice when ruling on a directed verdict motion, the inference should not be charged to the jury.

Additionally, with regard to arguments by counsel to the jury rather than instructions to the jury by the judge, the Court in Burdette, wrote, "Of course, whether the deed was done with a deadly weapon or not, the State and the defendant are free to argue the existence or nonexistence of malice based on the evidence in the record." 427 S.C. at 503, 832 S.E.2d at 582. (See also State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980) (While a charge on flight is improper, argument by counsel as to the inference of flight may be appropriate.). The same is true with regard to malice based on an intentional killing during the commission of a felony. The State may argue to the jury that malice existed because one intentionally killed another during the commission of a felony. The defense may argue that there was an absence of malice because the killing did not take place during the commission of a felony. The judge, however, should not instruct the jury that malice can be inferred if one intentionally kills another during the commission of a felony. As noted by the Court in Cheeks, 401 S.C. at 328, 737 S.E.2d at 484, "Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt. It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts." The trial judge erred in instructing the jury that

malice can be inferred if one intentionally kills another during the commission of a felony because it is an improper comment on the facts. The error is not harmless.

CONCLUSION

Based on the above argument, this Court should reverse the murder conviction and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Michael G. Nettles, Circuit Court Judge

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DEC 20 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRISTIAN CUMMINGS,

APPELLANT

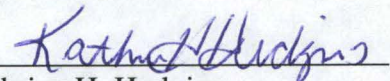
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tristian Xavier Cummings states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on April 8 - 9, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Tristian Xavier Cummings.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 20th day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Michael G. Nettles, Circuit Court Judge

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DEC 20 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRISTIAN CUMMINGS,

APPELLANT

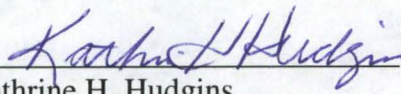
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Full trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 20, 2019


Kathrine H. Hudgins
Appellate Defender

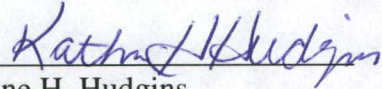
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 20, 2019.



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Michael G. Nettles, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

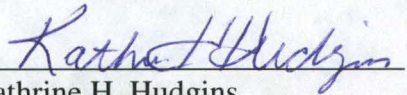
V.

TRISTIAN CUMMINGS,

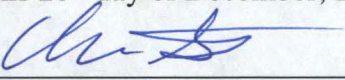
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Tristian Xavier Cummings, 344693, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of December, 2019.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of December, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029

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SC Court of Appeals

Petitioner argues that instructing the jury that malice may be inferred if one intentionally kills another during the commission of a felony is an improper comment on the facts." The instruction was burden-shifting in nature and violated his due process rights under federal and constitutions by presuming the malice element of murder. *Lowery v. State* 376 S.C. 499 657 S.E. 2d 76 2-11-08 "Courts Held Even viewing the supplemental charge in conjunction with the proper instruction on felony murder in the total courts initial charge does not rectify this patent

Constitutional error. language that merely contradicts and does not explain a constitutionally infirm instruction will not suffice to absolve the infirmity." *Francis*, 471 U.S. at 322, 105 S.Ct. 1965. in *507 fact, the contradictory instructions likely only exacerbated the error by confusing the jury as to its fact-finding duties with respect to petitioner's murder charge." Petitioner argues that it is confusing and misleading the jury also the judge had no right to instruct the jury that they can infer

malice if one intentionally kills another during the Commission of a felony for this is a charge on the facts contrary to the Constitution in that it undertakes to intimate to and instruct the jury what facts in the case are evidence of malice. Petitioner also argues it is also error, in that after all the evidence is out, the presumption of malice from the Commission of a felony fade from the case, and the jury must find malice if at all from the evidence without any aid from the Court as to what weight should be attached to Commission of a felony or what inference they may draw from such. State v. Morris 285 S.C. 86 (1986) "¶92" Court held in both instructions it was made clear that malice would not be presumed from the Commission of a felony, only that it could be inferred by the jury. The Charge could not reasonably have been understood by the jury as shifting the burden of proof to appellant to disprove malice or implication of malice. Petitioner argues the instructions was not made clear that malice would not be presumed from the Commission of a felony, only that malice can

be inferred by the jury. P. 326 4-11 Judge erred
"The court wrote in *Burdett v. State* 427 S.C. 490, 503,
832 S.E.2d 575, 582 (2019) of course whether the deed
was done with a deadly weapon or not, the state
and the defendant are free to argue the existence
or nonexistence of malice based on the evidence
in the record." 427 S.C. at 503, 832 S.E.2d at 582]

Petitioner argues that the same should be with
the instructions of if one intentionally kills another
during the commission of a felony. The state may
argue to the jury that malice existed because
facts in evidence and other overwhelming evidence
show that Petitioner intentionally killed deceased
during the commission of a felony. Petitioner
argues that there was no evidence also the defense
may argue that there was absence of malice. The
Judge however should not instruct the jury malice
can be inferred because that is speaking on facts
also the charge is confusing to the jury, also
Petitioner argues ~~state~~ failed to prove beyond a
reasonable doubt that the killing of the deceased
was accompanied by malice aforethought.

There was no facts presented at trial that petitioner killed the deceased or the deceased was intentionally killed. State v. Belcher 385 S.C 597 685 S.E 2d 802 "The Court wrote the standard implied malice charge remains valid as does the general permissive inference instruction: If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction this inference would be simply an evidentiary fact to be taken into consideration by you the jury along with other evidence in the case, and you may give it such weight as you determine it should receive," in addition, we neither restrict the State from arguing to the jury for a finding of malice from... nor restrict a defendant from arguing the absence of malice or the presence of reasonable doubt in this regard. It is axiomatic that some matters appropriate for jury argument are not proper for charging. [Petitioner argues that the judge had no right to instruct the jury that they can infer malice from the commission of a felony for this is a charge on the facts contrary

to the Constitution in that it undertakes to intimate to and instruct the jury what facts in the case are evidence of malice, it is also error, in that after all the evidence is out, the presumption of malice from the commission of a felony fade from the case, and the jury must find malice if at all from the evidence without any aid from the courts as to what weight should be attached to it if one intentionally kills another during the commission of a felony or what inference they may draw from such.] Yates v. Aiken 484 U.S. 211 108 S.Ct. 534 98 L.Ed.2d 546 U.S. Lw 4065. Court held "The due process clause of the fourteenth amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." in re Winship [397 U.S. 358, 364 90 S.Ct. 1068, 1072, 25 L.Ed.2d 3168 (1970) The BedRock, axiomatic and elementary "[constitutional] principle; id. at 363 [90 S.Ct. at 1072] Prohibits the State from using evidentiary presumption in a jury charge that have the effect of relieving the

State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime. *Sandstrom v. Montana*, 390 U.S. 642, 520-524; *Patterson v. New York*, 432 U.S. 197; *Mullaney v. Wilbur*, 421 U.S. 698-701, see also *Morissette v. United States*, 392 U.S. 246. The prohibition protects the fundamental value determination of our society, given voice in Justice Harlan's concurrence in *Winship*, that it is far worse to convict an innocent man than to let a guilty man go free! Petitioner argues that there was no overwhelming evidence that was presented to jury. Petitioner argues that the intern riding along with officer Robinson, Ms. Nichols reported seeing a man come out running from the house at the time shots were fired wearing a red shirt (p. 228 lines 5-23) Ms. Nichols was not allowed to testify at trial. Petitioner argues that Ms. Nichols was a witness with overwhelming evidence that would show that petitioner was not person that ran out the home. Petitioner also argues that officer Robinson said he saw suspect slam gun on counter but never saw anyone's face. (p. 91 lines 2-19 p. 94 13-19)

Petitioner argues that body cam footage from Officer Sandefur would show that petitioner didn't come running from home but that wasn't played during trial. (P. 120 5-18) Petitioner also argues this overwhelming evidence would have kept him from conviction along with the neighbor that called the police and said they saw three people outside of the deceased home at time of crime (P. 229 15-24) also Williams was not questioned about the involvement of other people mentioned. (P. 145 24) Petitioner argues that Williams changed statement more than once (p. 13 25) (P. 124 24) also another person was interviewed by Greenville County Sheriffs and the weapon used in the crime was owned by that person but still he wasn't at trial to testify to how the gun was received. (P. 14 1-8) Co-defendant was giving lighter sentence to testify but had the most involvement Petitioner argues evidence points to Williams and is overwhelming also there was no evidence to support malice or to say petitioner killed deceased in fact the evidence

Show there was a third party involved
petitioner argues there was no evidence that the
jury could consider to support malice nor to say
petitioner killed the deceased or intentionally
killed deceased during the commission of a
felony. It is always for the jury to determine
the facts, and the inferences that are to be
taken or drawn from the facts. The trial judge
erred in instructing the jury that malice can be
inferred if one intentionally kills another during the
commission of a felony because it is an improper
comment on the facts. The error is not harmless.

Respectfully,
s Tristian Cummings

Columbia, South Carolina

Dated: February 4, 2020

State of South Carolina

County of Richland

State of South Carolina,

Respondent,

v.

Tristan Cummings,

Appellant

) ~~Court Memorandum~~

) Appellate Case No. 2019-000665

)

) Proof of Service

)

)

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I certify that I have served this Appellant's Pro Se

Brief on the Honorable Jenny Abbott Kitchings, Clerk,

by depositing a copy of it in the U.S. Mail, postage prepaid,

on February 4, 2020, addressed to her office at Post

office Box 11629, Columbia, South Carolina 29211.

Tristan Cummings

Tristan Cummings 344693

Broad River C.I. / WA - 239

4460 Broad River Rd.

Columbia, S.C. 29210

Tristan Cummings 344693

Broad River C.I. / WA-239

4460 Broad River Rd

Columbia, S.C. 29210

February 4, 2020

Honorable Jenny Abbott Kitchings

Clerk

P.O. Box 11629

Columbia, S.C. 29211

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SC Court of Appeals

Re: State of South Carolina v. Tristan Cummings

Dear Ms. Kitchings,

Enclosed for Your file is an original copy of my Pro Se Brief,

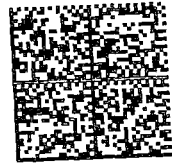
along with a:

1) Proof of Service

Respectfully,

St. Tristan Cummings

3 Broad River correctional institution
~~4460~~ 4460 Broad River road
Columbia SC 29210



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SC Court of Appeals

South Carolina Court of Appeals
Jenny ABBott Kitchings, Clerk
Post office Box 11629
Columbia, South Carolina 29211

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Case No. 2022-CP-23-2161
Tristian Xavier-Marian	)	
Cummings #344693,	)	
	)	
Applicant,	)	RETURN TO PCR APPLICATION
v.	)	(Hearing Requested)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Applicant, Tristian Xavier-Marian Cummings, is currently incarcerated in Broad River Correctional Institution on sentences imposed for criminal conspiracy, attempted armed robbery, murder, burglary first degree, and possession of a weapon during a violent crime. On April 26, 2022, Applicant initiated the captioned action by filing an application for post-conviction relief (PCR). Applicant is represented by J. Falkner Wilkes, Esq. Respondent now makes this Return.

Applicant has asserted five grounds for relief, all based on allegations of ineffective assistance of trial counsel. Respondent submits that the allegations will likely require an evidentiary hearing to adequately resolve. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”). However, Respondent relies on the established record and controlling law to assert that Applicant is not likely to be able to carry his burden of proof.

In support of its position, Respondent would respectfully show the court:

PROCEDURAL HISTORY

A Greenville County grand jury indicted Applicant in June 2017 for criminal conspiracy, attempted armed robbery, murder, burglary first degree, and possession of a weapon during a violent crime.¹ Rodney Wade Richey Esq., represented Applicant on the charges at trial. On April 8, 2019, the State called the above charges for trial and a jury was selected and impaneled. (Attachment 2, Tr. 23, 35-66). The Honorable Michael G. Nettles presided.

On April 10, 2019, the jury returned guilty verdicts on all counts as charged. (Attachment 2, Tr. 339). Judge Nettles sentenced Applicant to thirty-five years for murder, thirty-five years for burglary first degree, twenty years for attempted armed robbery, five years for possession of a weapon during a violent crime, and five years for criminal conspiracy. (Attachment 2, Tr. 347-48; *see also* Attachment 3, sentencing sheets). The sentences were to run concurrently, and Applicant was given credit for time served. (Attachment 2, Tr. 347-48). Applicant timely appealed.

Appellate Defender Katherine Haggard Hudgins of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Applicant on appeal. Appellate counsel perfected the appeal on December 20, 2019, by filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). (Attachment 4). Applicant filed a *pro se* response. (Attachment 5). The South Carolina Court of Appeals dismissed by unpublished opinion on July 14, 2021, (Attachment 6), and issued the remittitur on August 5, 2021, (Attachment 7). Applicant then filed the instant application.

ATTACHMENTS

Respondent attaches, and incorporates by reference, the following:

¹ Applicant's co-defendant, Simeon William was also indicted. Mr. Williams pled guilty to voluntary manslaughter and burglary first degree prior to Applicant's trial. His sentencing was deferred until after he testified at Applicant's trial. (Attachment 2, Tr. 160-164).

1. Indictments, (2016-GS-23-8778), (2016-GS-23-8779), (2016-GS-23-8782), (2016-GS-23-8773), (2016-GS-23-8780)
2. April 8-10, 2019, Trial Transcript;
3. Sentencing Sheets (murder, possession of a weapon during a violent crime, burglary first degree, and criminal conspiracy, and attempted armed robbery);
4. *Anders* Brief (direct appeal);
5. *Pro se Anders* response (direct appeal);
6. *State v. Cummings*, No. 2019-000665, 2021 WL 2947802 (S.C. Ct. App. July 14, 2021) (direct appeal);
7. August 5, 2021, Remittitur (direct appeal);
8. South Carolina Department of Corrections Record Summary Report dated May 6, 2022 (Redacted);
9. Motions to be Relieved, June 5, 2017, January 26, 2018, and April 17, 2018;
10. June 16, 2018 Order (granting motion to be relieved).

ALLEGATIONS

Applicant presents the following claims in his post-conviction relief application filed April 26, 2022:

1. Ineffective Assistance of Counsel with the supporting grounds:
 - a. Counsel failed to timely notify the Court that grounds existed for him to move to be relieved as counsel of record.
 - b. Counsel failed to adequately advise client sufficiently to make an informed decision relating to the decision whether the Applicant should proceed to trial, enter a plea, or accept plea offers.
 - c. Counsel failed to properly make, raise and preserve issues relating to severance and joint trial with co-defendant.
 - d. Counsel failed to adequately investigate the case, prepare and present a

defense, including the failure to subpoena and call as witnesses, including an intern officer present at the scene and a witness to relevant events, neighbors at the incident location that were witnesses to relevant events, witnesses that would establish ownership of the weapon found at the scene and its connection to the co-defendant, witnesses that were in the vehicle with the defendant and co-defendant prior to the incident that could testify to the co-defendant's possession of the firearm found at the scene.

e. Counsel failed to raise and preserve issues for direct appeal.

(PCR Application at 3).

DISCUSSION

Jurisdictional Limitations for PCR Actions

The scope of this Court's jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20(A). That section lists specific areas of review that may be considered cognizable for review. Section (B) further limits the jurisdiction by setting out that PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). Because a PCR action is not a substitute for other available proceedings and/or remedies, particularly those at trial and direct appeal, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal.

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520 ("Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel."). Ineffective assistance of counsel claims constitute the general nature of issues appropriate for post-conviction relief actions. See, e.g., *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(A), and finding "A typical PCR

claim of ineffective assistance of counsel falls into this category....”). Ineffective assistance claims are analyzed under the *Strickland* standard.

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant’s burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

Respondent submits that the trial court record, when considered in light of the relevant and controlling case law, demonstrates that Applicant likely cannot carry his burden.

Argument in Response to the Claims

As to Applicant’s allegation that counsel failed to timely notify the Court that grounds existed for him to move to be relieved as counsel of record, the record refutes Applicant’s claim. Applicant filed an initial motion to have former trial counsel, Ms. Ross, relieved on June 5, 2017. (Attachment 2, Tr. 12, *see also* Attachment 9). The motion was denied by Judge Young. (Attachment 2, Tr. 12). Applicant filed a second motion to have Ms. Ross relieved on January 26,

2018. (Attachment 2 Tr. 12, *see also* Attachment 9). Judge Vernin denied that motion. (Attachment 2, Tr. 12).

Then, counsel, Ms. Ross, filed a Motion to be Relieved on April 17, 2018, due to a “total breakdown in attorney/client relationship.” (Attachment 2, Tr. 12; *see also* Attachment 9). Judge Vernin granted that motion on June 16, 2018. (Attachment 2 Tr. 12; *see also* Attachment 10). After Ms. Ross was relieved, Mr. Richey was appointed. (Attachment 2, Tr. 12). On March 28, 2019, the parties appeared before Judge Verdin again and Mr. Richey indicated that it appeared Applicant wished to fire him. (Attachment 2, Tr. 13). Judge Verdin could keep Mr. Richey, represent himself or hire a new attorney of his choice, but the decision must be made prior to the April trial. (Attachment 2, Tr. 13). Prior to selecting the jury for the April trial, Judge Nettles asked Applicant if he would like his counsel, Mr. Richey, to proceed as his representation at trial or if he wanted to represent himself. (Attachment 2, Tr. 10). Applicant stated he did not have a choice but to have Mr. Richey represent him, but the court corrected him and instructed that he could choose to represent himself. (Attachment 2, Tr. 10). Applicant stated that he would prefer Mr. Richey remain as counsel. (Attachment 2, Tr. 10). Applicant chose to have counsel represent him at trial, it is unlikely that Applicant may meet his burden of proof under *Strickland*.

As to Applicant’s claim that counsel was ineffective in failing to adequately advise him to make an informed decision relating to whether he should proceed to trial, enter a plea, or accept plea offers, again, Applicant likely cannot show trial counsel’s performance deficiency. The State extended Applicant a plea offer on November 2, 2016, for a plea to murder with the State recommending thirty-five years. (Attachment 2, Tr. 11). After Ms. Ross was relieved and Mr. Richey was appointed, the State then extended another offer – voluntary manslaughter and burglary first degree, no recommendation and the remaining charges dismissed. (Attachment 2,

Tr. 12). Applicant rejected this offer. (Attachment 2, Tr. 12). Notably, this was the same offer extended to Applicant's co-defendant. (Attachment 2, Tr. 12). After the co-defendant accepted the offer, the offer was again extended to Applicant, and rejected. (Attachment 2, Tr. 12-13). At trial, Mr. Richey requested that the State reinstate the previous offer. (Attachment 2, Tr. 14-15). The State advised the Court that Mr. Richey had been notified that if the State obtained a conviction, it would be seeking a life sentence, and, though it generally was not the policy to revisit a plea offer that late, it would consider the option. (Attachment 2, Tr. 15). Mr. Richey then confirmed to the Court that he had gone over the offers, potential penalties, and the ramifications of his decisions with Applicant. (Attachment 2, Tr. 16). Mr. Richey noted that he had made recommendations to Applicant and went through different scenarios, but Applicant ultimately made his decision, though counsel did not "necessarily agree with" his decision. (Attachment 2, Tr. 16). After a break until the afternoon, the State noted in light of Mr. Richey's request, that it had extended a plea offer of voluntary manslaughter, burglary first degree, and attempted armed robbery, concurrent, with no recommendation. (Attachment 2, Tr. 17). Again, Applicant rejected this offer after discussion with counsel. (Attachment 2, Tr. 17). Though Applicant denied all of these listed offers, the record shows that counsel appropriately advised Applicant of the consequences of rejecting the offers. Even if Applicant could show error in counsel's performance, he can show no prejudice.

As to Applicant's claim that counsel failed to properly raise and preserve issues relating to severance and joint trial with co-defendant, Applicant's allegation has no merit as his co-defendant accepted a plea offer from the State. (Attachment 2, Tr. 12). The record shows counsel raised the issue that Applicant would like to be tried with his co-defendant, which the court explained that because Applicant's co-defendant has pled guilty, the rules of procedure do not allow someone to

be tried when they have already pled guilty. (Attachment 2, Tr. 17-18). As such, Applicant cannot show counsel acted deficiently.

As to Applicant's claim that counsel failed to adequately investigate the case, prepare and present a defense, including the failure to subpoena and call witnesses, again the record shows Applicant likely will not be able to carry his burden of proof to show deficient performance and resulting prejudice. The record shows in support of guilt the following facts:

In the early morning hours of March 6, 2016, Applicant and Williams approached Mr. Jeryl "Cincinnati" White's duplex having agreed to rob Mr. White. (Attachment 2, Tr. 149-150). Mr. Williams testified that he personally had purchased drugs from Mr. White previously. (Attachment 2, Tr. 148). Mr. White told the two to go away. (Attachment 2, Tr. 151). However, they discovered a side door which Applicant kicked in. (Attachment 2, Tr. 153). They entered. Applicant was armed with a gun. (Attachment 2, Tr. 153-154). The two began searching the home for drugs and money. (Attachment 2, Tr. 154). Mr. White was in a nearby bathroom with the door locked. (Attachment 2, Tr. 62). Applicant shot him several times through the door. (Attachment 2, Tr. 97 and 154). The police arrived quickly, while Mr. Williams was still in the kitchen. (Attachment 2, Tr. 156). Mr. White's girlfriend, April Green, who was seven months pregnant, was also living in the home at the time of the incident and had called the police. (Attachment 2, Tr. 60-62). Ms. Green hid behind the bed in the bedroom which had a shared wall with the bathroom where Mr. White was shot. (Attachment 2, Tr. 62, 72-73). Mr. White was shot twice, once in the front portion of his right thigh, and once in the shoulder area. (Attachment 2, Tr. 264-265). The shoulder area shot traveled through the vertebra, cut the spinal cord, continued through the neck and transected the carotid artery. (Attachment 2, Tr. 265). That shot was fatal. (Attachment 2, Tr. 265-266 and 269).

Deputy Harold Robinson responded to the disturbance call due to his close proximity to the address. (Attachment 2, Tr. 83). Deputy Kenneth Sandefur quickly arrived for backup. (Attachment 2, Tr. 85). Deputy Robinson and Deputy Sandefur approached the bottom door of the duplex where Applicant and Mr. Williams entered and were able to see Mr. Williams going through cabinet drawers. (Attachment 2, Tr. 87-90). Both Deputies announced their presence and told Mr. Williams "let me see your hands, get on the ground," and Mr. Williams complied. (Attachment 2, Tr. 90-91). Mr. Williams "mumble[d] something" to Applicant such as "let's go, or we got to get out of here, or something along that line," after which Applicant ran behind Mr. Williams with a silver metallic firearm in his hands, slams it on the counter, and runs out the front door. (Attachment 2, Tr. 91). Deputy Robinson held Mr. Williams at gunpoint for approximately eight minutes until backup arrived. (Attachment 2, Tr. 92.). Deputy Sandefur pursued Applicant. (Attachment 2, Tr. 92 and 112). Applicant ran from Deputy Sandefur into a thick briar patch where Deputy Sandefur and the Applicant struggled in the thick vegetation. (Attachment 2, Tr. 114-15). Eventually, backup arrived, and Deputy Ivan Rodriguez subdued Applicant, and held him until additional backup arrived to handcuff and place him in the police vehicle. (Attachment 2, Tr. 138-39).

Though Applicant alleges counsel's representation was deficient when he failed to call an "intern officer present at the scene and a witness to relevant events," as demonstrated, three Deputies testified to the events surrounding the incident, including the foot pursuit of Applicant through the briar patch, over the fence, and into a residential neighborhood. (Attachment 2, Tr. *see* testimony of Deputy Robinson, Sandefur and Rodriguez). Similarly, his allegation that counsel was ineffective in failing to call the neighbors as witnesses to the relevant events is likely without merit as Applicant was identified by the responding Deputies and pursued and arrested near the

scene. It is unlikely that neighboring witnesses would provide favorable testimony. The evidence as to Applicant's identity is overwhelming. Lastly, as to his claim that counsel was ineffective by failing to call witnesses that would establish ownership of the pistol, or witnesses that were in the vehicle prior to the incident who could testify to Mr. William's possession of the pistol found at the scene, again the record is against him in showing deficient representation and resulting prejudice. Mr. Williams testified that the pistol was fired by Applicant in the vehicle with himself, and two other individuals present. (Attachment 2, Tr. 146-47). And critically, Deputy Robinson testified that he saw Applicant run from the bathroom where Mr. White was shot, slam the gun on the counter, and run out the front door. (Attachment 2, Tr. 91-94). Further, Deputy Robinson confirmed Mr. Williams was not armed with a weapon at the time of his arrest. (Attachment 2, Tr. 91). Respondent will rely in large measure on these facts of record that plainly refute a basis for relief.

As to Applicant's claim that counsel was ineffective by failing to raise and preserve issues for direct appeal, Applicant has failed to specify the basis for this allegation. The Uniform Post-Conviction Procedure Act requires an applicant to specifically set forth the grounds upon which the application is based S.C. Code Ann. § 17-27-50. As the allegation presently stands, Applicant cannot even show a viable claim.

Even so, as the ineffective assistance allegations likely require the presentation of facts outside the existing record, a hearing is likely required for fair resolution. *Sharper, supra*.

CONCLUSION

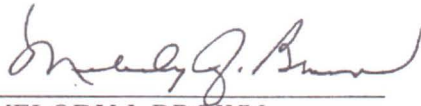
WHEREFORE, having made its Return, Respondent requests that this matter be scheduled for an evidentiary hearing pursuant to *Sharper*.

Respectfully submitted,

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