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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE DECEMBER 5-13, 2022 TRIAL: STATE’S EXHIBITS #20, 25, 27, 28
(PHOTOGRAPHS), STATE’S EXHIBIT #71 (DVD OF INTERVIEW), AND
DEFENDANT’S EXHIBIT #108 (DVD).**

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

600

1 like you were in danger but you were going towards the
2 danger, right?

3 A. Yeah, going towards the front room where I heard
4 the danger at, correct.

5 Q. All right, and how long, once you were in the
6 hallway, did you take to assess the situation?

7 A. I didn't take no time to assess the situation. I
8 had already ---

9 Q. No time?

10 A. --- assessed it when I was in the room.

11 Q. No time to assess. What could you see from your
12 bedroom?

13 A. Couldn't see nothing from my bedroom. Just heard
14 the noises that I thought was people breaking into my
15 house.

16 Q. Okay. Let me ask you this.

17 A. Uh-huh.

18 Q. I -- what if it had been the police there to
19 perform a search on you for all the weed that was there?

20 A. They would have -- the police beat on the door or
21 notified somebody first. They didn't. And even if it
22 -- if it would have been the police, then I would have
23 got killed.

24 Q. All right, and what -- you, you took no time to
25 assess the situation once you left your room. What did

1 you observe in your living room?

2 A. I didn't observe nothing. As soon as I got to the
3 hallway, to the end of the hallway and I heard where the
4 noise was coming from, I shot towards that area as I was
5 still moving.

6 Q. And you didn't, you didn't tell the officers you
7 saw two guys on top of one another fighting?

8 A. Yeah, that was simultaneously as I had already
9 started firing. So, as you -- if you see the corner
10 from the house, if you move and shooting, if you moving
11 around the corner, when you -- that corner isn't nothing
12 but a little edge right here. So, your body, as you
13 shooting, your body would have already been moved all
14 the way around. So, as you finish shooting, you have
15 seen people on the ground, yes, sir.

16 Q. Okay, and how are you shooting around a corner?
17 I'm just curious about that.

18 A. Well, as your body coming down the hallway, you --
19 what you seen with your own eyes, and I leaned around
20 covering myself because I thought somebody was around
21 there with guns. So, I shot to where I heard the
22 commotion from still using the wall as cover as I was
23 moving. Correct.

24 Q. Who taught you that move?

25 A. I just learned that from playing *Call of Duty*.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

602

1 Q. *Call of Duty*?

2 A. Yes, sir.

3 Q. Okay. You saw that in a video game and you thought
4 that's what you were going to do?

5 A. To protect my life, yes, sir.

6 Q. And now that you announce I've got a gun when you
7 see these two people on the ground ---

8 A. No.

9 Q. --- tussling around?

10 A. No, sir.

11 Q. You had two roommates on February 7, 2019, correct?

12 A. Uh-huh.

13 Q. You had two male roommates on February 7, 2019,
14 correct?

15 A. Correct.

16 Q. You had two Black male roommates on February 7,
17 2019, correct?

18 A. Correct.

19 Q. You had two Black male roommates in their early
20 twenties in 2007 -- 2019, correct?

21 A. Correct.

22 Q. And so when you see two Black males in their early
23 twenties on the floor wrestling ---

24 A. Well, I wouldn't be able -- I wouldn't be able to
25 see that. I wouldn't be able to see that, sir. How --

1 what of age they would have been, it could have been two
2 people in they sixties. How would I have been able to
3 know?

4 Q. All right. So, did you think you just got lucky
5 that you hit them every time you fired a shot?

6 A. Yes, sir.

7 Q. Because there's no shots in the walls or anything.

8 A. Yes, sir.

9 Q. You mean you, you hit them every time?

10 A. Yeah. I didn't say that I aimed towards the wall.
11 If I was coming around the corner, the only way I would
12 have been able to hit the wall is if I would had the gun
13 almost facing this way. That would then wouldn't make
14 sense.

15 Q. Why would two people who were doing a home invasion
16 be fighting one another in your living room?

17 A. Well, in the home -- once I heard the TV -- like I
18 said in my original testimony, when I heard the TV fall,
19 that's when I got up and acted because that was on the
20 side. My game's connected to it. So, that was my time
21 to act. I felt like that.

22 Q. All right.

23 A. I didn't know that they was fighting or didn't
24 think that they was fighting until I made it all the way
25 around the corner.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

604

1 Q. Why did you tell law enforcement there were two
2 guys fighting and they ---

3 A. Well, I was speculating on what happened. Once I
4 seen that two people that was on the ground and I was --
5 when I was in the interrogation room, I was speculating
6 to what possibly could have happened, why they could
7 have possibly been fighting. That's what I been doing
8 the whole time because I don't know. I was in the room.

9 Q. Well, would you be able to demonstrate the
10 maneuvers you took when you walked down the hall and how
11 you shot the people?

12 A. If you want me to.

13 Q. That's -- I would like you to. Would you mind?

14 A. Hu-uh.

15 (A PAUSE.)

16 MR. SCOTT: And with Your -- with Your Honor's
17 permission, maybe -- I've kind of laid out some of
18 your -- based on the dimensions of a defense exhibit,
19 the general dimensions of the room where the incident
20 occurred. I don't know if they can see from a seated
21 position. I'm going to attempt to have him demonstrate
22 how he went into the room before firing a weapon.

23 And, Judge, I have a prop gun. It is -- it's
24 incapable of firing. It's made out of plastic. Does
25 not have any ---

1 THE COURT: Okay.

2 MR. SCOTT: --- firing mechanism.

3 Q. All right. So, does this represent generally your
4 hallway?

5 A. Uh-huh.

6 Q. All right, and if we take a right right here,
7 that's your kitchen, correct?

8 A. No, it doesn't -- when you take a right when you
9 come out my room, that's the bathroom right there.

10 Q. Right behind you ---

11 A. On ---

12 Q. --- that's Tonio's room?

13 A. Correct.

14 Q. All right, and you look there and he's not there,
15 right?

16 A. Why would I look here?

17 Q. You've got to step over it basically to get to the
18 hallway, right?

19 A. No. I got to step over what?

20 Q. Your bedroom's right here. You stepped out in the
21 hall, right?

22 A. Uh-huh.

23 Q. Right there is an opening of his closet, correct?

24 A. Yeah.

25 Q. All right.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

606

1 A. I did not ---

2 Q. You didn't look at it?

3 A. No. Why would I look that way when the break in
4 coming from this way?

5 Q. You don't know if your roommate's there or not, do
6 you?

7 A. Yes, I know if he there. I said from the ---

8 THE COURT: Talk louder, please.

9 A. I said from the beginning I thought Tonio and Sam
10 was gone; I been saying that the whole time.

11 Q. You thought?

12 A. Exactly.

13 Q. Did you check to see if he was there?

14 A. No.

15 Q. Okay, and then you walk right here, and that's the
16 doorway that goes into Sam Thomas's room?

17 A. And I never looked there.

18 Q. Why not?

19 A. Because why would I do that?

20 Q. Because there's a noise coming out here and you
21 want to make sure ---

22 A. But ---

23 Q. --- it's not your roommate.

24 A. But they would have made a sound. They would have
25 yelled out something. I know both they voice. I been

1 living with them for a year. We already discussed that.

2 I testified to that, right?

3 Q. And you're 100 percent certain that they would have
4 made a sound?

5 A. Correct.

6 Q. Okay. You know that.

7 A. Uh-huh.

8 Q. All right. Show us -- and I guess this will be the
9 wall.

10 A. The line, the line is -- the line's the wall?

11 Q. Yeah.

12 A. Okay.

13 Q. All right.

14 A. So, I came down. I came around the corner, and
15 when I got right here, I started shooting. That's -- my
16 body's still moving like that.

17 Q. Okay.

18 A. And I ended up right here.

19 Q. All right. Then what did you do?

20 A. And that's when I seen what it was and so I really
21 -- oh, shit. I start panicking and just -- I was crying
22 and hysterical. So, I walked to the front door, which
23 would be this -- I viewed this as -- the front door
24 right here?

25 Q. That's your front door, correct.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

608

1 A. All right. So, I walked to the front door. When I
2 opened the front door, Ieasha and his mama was coming up
3 the stairs, which you would have to walk up this way
4 first and come up this way. So, they was already at the
5 top of the stairs and I let them in.

6 Q. All right, and how did the casings -- the two
7 casings were right here.

8 A. I have ---

9 Q. You know how they got there?

10 A. I have no clue.

11 Q. Were you shooting from over here?

12 A. No, sir.

13 Q. All right. You don't know how they got there?

14 A. No, sir.

15 Q. Your testimony is that you're shooting around that
16 corner before you even go?

17 A. Yes, sir, and my body was still moving, yes, sir.

18 Q. Your body's still moving. So, you're going out ---

19 A. Yeah.

20 Q. --- shooting at them like that?

21 A. Correct.

22 Q. Okay. Do you know why there weren't any casings in
23 the hallway?

24 A. No, sir, I never said I started shooting from the
25 hallway. I said I started shooting up behind this

1 corner right there.

2 Q. You're right there?

3 A. So, it in the -- the shells would have went out
4 this way. They wouldn't of came out this way back to
5 the hallway. They would have came out the other way ---

6 Q. Okay.

7 A. --- going towards the front door.

8 Q. Was there any reason there's no shells in the
9 kitchen?

10 A. No, sir.

11 Q. Well, you just told me they would be going out this
12 way.

13 A. Yeah, but the kitchen -- it's a wall right there.
14 The kitchen opening would be back here somewhere.

15 Q. Okay. The crime scene said all of the shell
16 casings are right here on the bodies.

17 A. Correct.

18 Q. And then there's two over here.

19 A. Yes.

20 Q. You don't know why?

21 A. No, sir.

22 Q. All right. Who was laying on their back when you
23 come around the corner?

24 A. Antonio.

25 Q. Tony. Eric's on top of him?

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

610

1 A. Correct.

2 Q. Okay. Show me how you pressed against Eric's head
3 before you shot him in the head.

4 A. I didn't press it against his head. Well, I don't
5 remember pressing it against his head. That's what it
6 saying -- that's what they -- the specialist did get up
7 here. But I don't remember doing that.

8 Q. Okay. Did you black out maybe or something?

9 A. No, sir.

10 Q. Okay. Did you see any singe marks? Did you see
11 the imprint of your pistol in the back of his head?

12 A. No, sir.

13 Q. You want to look at the pictures?

14 A. I seen them yesterday, but you can show them to me
15 again if you want to.

16 Q. Okay. You saw them yesterday, right?

17 A. Correct.

18 Q. So, why did you press the gun against Eric's head
19 when ---

20 MS. YOUNG: Your Honor, asked and answered.

21 Q. --- you pulled the trigger?

22 THE COURT: Objection's overruled.

23 Q. Why did you do that?

24 A. I don't remember doing that.

25 Q. You don't dispute the evidence then, do you?

1 A. No, sir.

2 Q. Do you see the singe marks on the back of Eric's
3 head, don't you?

4 A. Yes, sir.

5 Q. Was that your kill shot?

6 A. No, sir. But I don't, I don't know. I just was
7 trying to protect my life shooting towards people or
8 whatever.

9 Q. That's ---

10 A. Well ---

11 Q. --- a hell of a thing to forget, isn't it?

12 A. Yes, sir.

13 Q. But you don't remember it?

14 A. I don't remember doing that.

15 Q. Okay. You remember getting on your knees and
16 pressing down against his head?

17 A. No, sir.

18 Q. How could you forget something like that?

19 A. I know I didn't do that.

20 Q. Tell me how it happened.

21 A. I don't know how it happened. I told you exactly
22 what happened just now and I explained. Even
23 demonstrated it for you.

24 Q. You're not demonstrating how he got that contact
25 wound to the back of his head.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

612

1 A. I don't know how he got that.

2 Q. Okay. No explanation?

3 A. No, sir.

4 Q. You can take your seat.

5 All right. What did you do after you killed these
6 two young men?

7 A. As I was just telling you, I walked to the front
8 door and I let his mom and his girlfriend inside the
9 house.

10 Q. I heard that. Say -- something about it took you
11 two minutes to answer the door. Is that incorrect?

12 A. That's incorrect.

13 Q. All right. So, you went immediately up there?

14 A. Immediately to the door. I opened the front door.
15 His mom and his girlfriend was walking up the stairs.

16 Q. And where was your gun when you opened the door?

17 A. Still in my hand.

18 Q. Okay. Then what did you do with it?

19 A. As I let them in, she walked in, grabbed Eric off
20 the top of Antonio. I walked to the back to grab my
21 phone to call the police because I wasn't going to move
22 them until I call the police.

23 Q. Okay. So, when that expert was testifying about
24 the movement of your phone, that really doesn't tell us
25 anything because you didn't grab it until after all this

1 was over?

2 A. Correct.

3 Q. So, he testified basically for nothing?

4 A. Well, he testified that any way between ---

5 MS. YOUNG: Objection. Pitting.

6 THE COURT: The objection's sustained.

7 Q. All right. So, you leave what -- I'm sorry. When
8 do you leave the apartment?

9 A. Well, after I let them in and I called the police,
10 Shakihla, I believe she's suppose to be one of your
11 witnesses. I don't know what happened to her, but she
12 walked up inside the house. She knocked on the door.
13 It was her and the dude. I think Mr. Charles. The
14 other guy who you got up here to testify, he never
15 walked inside. But when she walked in, she seen them on
16 the ground.

17 At this time nobody knows what happened. They just
18 upset about the people on the ground that's dead. We
19 all sad. So, she seen me with the gun still in my hand,
20 and she walked over to me and grabbed it out my hand and
21 put it inside her pants and walked out.

22 Q. Okay. So, nobody at that point knew you were the
23 shooter?

24 A. No, sir.

25 Q. Why didn't you stay on the scene after law

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

614

1 enforcement had been called?

2 A. I'm called -- I'm the one who called law
3 enforcement, and I left out the apartment because it was
4 mostly people inside. Multiple ex-family members. I
5 didn't feel like that was a safe place to stay.

6 Q. Okay. Why didn't you stand down at the bottom of
7 the stairs and wait for police?

8 A. I did.

9 Q. You did?

10 A. Yes, sir.

11 Q. Okay. Let me show you -- well, you kind of have a
12 defense exhibit like this, but this is State's 77.

13 A. Uh-huh. Correct.

14 Q. You see yourself in that picture?

15 A. Yes, sir, right there.

16 Q. Okay, and that's at 9:02?

17 A. Uh-huh.

18 Q. Okay. So, Ieasha testified and we heard 8:55 is
19 when she calls ---

20 A. Uh-huh.

21 Q. --- Eric's phone after she heard the gunshots.

22 A. Uh-huh.

23 Q. So, do you agree or disagree, about 8:55 is when
24 you killed the two guys?

25 A. I can agree with that.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

615

1 Q. 8:55? All right. So, I've got you seven minutes
2 later out in the parking lot.

3 A. Uh-huh.

4 Q. Okay, and you remember when that officer got out.
5 Said where's the shooter, where's the shooter?

6 A. No, sir.

7 Q. You don't remember that?

8 A. I don't remember them saying that.

9 Q. Okay. You, you wouldn't disagree that this officer
10 was yelling where's the shooter when she got out of the
11 car?

12 A. When she got out the car?

13 Q. Yeah.

14 A. No, I, I never seen a female officer. The first
15 two officers on the scene was two males.

16 Q. Would it surprise you this is a shorthaired female?

17 A. Yeah, I don't see no shorthaired female.

18 Q. Well, this is body cam we're looking at.

19 A. Oh, yeah. Well, I don't -- no.

20 Q. All right. So, seven minutes later you're out in
21 the parking lot?

22 A. Correct.

23 Q. You don't disagree?

24 A. Yes, sir.

25 Q. And then, at 9:04, who's this you're out there

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

616

1 talking with?

2 A. That's Richard Hamilton. I think his name -- last
3 name Hamilton or Hamilton Jacobs.

4 Q. Who else?

5 A. Oh, that's the dude named Lando.

6 Q. Lando?

7 A. Uh-huh.

8 Q. That's at 9:04. So, you've moved from the parking
9 lot and this is State's 78. You moved from the parking
10 lot out into the road?

11 A. Uh-huh.

12 Q. Okay, and then at 9:05, this is -- you -- you're
13 kind of outside the parking lot in a little grassy area
14 between the road and the parking lot?

15 A. Yeah, that's, that's right in front of my
16 apartment, yes, sir.

17 Q. I'm sorry?

18 A. That's right in front of my apartment.

19 Q. All right. Who are you with?

20 A. Hamilton and Lando.

21 Q. What y'all talking about?

22 A. Well, Hamilton asked me -- was asking me what
23 happened. I really wasn't -- Lando came from inside my
24 house. So, he seen with his own eyes what happened and
25 I was telling Hamilton what happened.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

617

1 Q. State's 81 at 9:06. That's you outside by the
2 road?

3 A. Uh-huh.

4 Q. Okay. At this point law enforcement's starting to
5 saturate the area. They're all over the place, right?

6 A. Uh-huh.

7 Q. 9:06, this is you walking away with Lando. Is that
8 correct?

9 A. Uh-huh.

10 Q. And this is State's 80. Why are you walking away
11 from the scene?

12 A. That's me pacing back and forth.

13 Q. Okay. 86, State's 86, this is 9:05. Whose car are
14 you leaning into there?

15 A. Oh, bruh stayed in front of the building. He
16 stayed in front of my house. Like, I stay in 14-G. He
17 stay in 14-D.

18 Q. What's his name?

19 A. I can't remember. I think Main Main or something
20 like that. I can't remember.

21 Q. May May?

22 A. Main Main.

23 Q. You don't know his name?

24 A. No, sir.

25 Q. State's 85, you're leaning into the car. Are you

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

618

1 putting something in his car?

2 A. No, sir.

3 Q. What are you doing?

4 A. Talking to him because he stated he couldn't get to
5 his house. That's why he was parked right there. The
6 police was all up there. He couldn't even get into his
7 front door. So, that's why he was right there asking me
8 what happened.

9 Q. Okay. Let me ask you. Instead of talking with
10 Lando or Richard Jacobs or May May ---

11 A. Main Main.

12 Q. Can you spell that?

13 A. Main. Like main.

14 Q. M-A-I-N?

15 A. Yeah.

16 Q. Oh.

17 A. Correct.

18 Q. Okay. Main Main?

19 A. Correct.

20 Q. Instead of talking with Main Main and Mr. Jacobs
21 and Lando.

22 A. Correct.

23 Q. Why not go to the police and say ---

24 A. I had already been to the police.

25 Q. Okay. The first time you talked to police ---

1 A. Uh-huh.

2 Q. --- okay, you say I'm a resident?

3 A. I, I give them -- I tell them it's my house. I
4 give them my name, my date of birth, and my phone
5 number.

6 Q. Okay, and you just said nobody knows you're the
7 shooter at this point. They just know that the shooter
8 ---

9 A. Nobody except Hamilton. I told Hamilton because he
10 one of the first people I talked to and that's probably
11 about it.

12 Q. All right. Why not go to law enforcement and go
13 hey, hey, whoa, I'm the shooter, I need to explain what
14 happened?

15 A. Well, immediately when I start talking to the
16 police and I gave them my information, they told me to
17 step outside the tape.

18 Q. Okay. I'm the shooter. You don't think that would
19 have gotten their attention?

20 A. Maybe.

21 Q. Maybe? Why not do that, though? Okay, but instead
22 you're walking around. Who else did you talk to besides
23 Lando, Hamilton, and Main Main? Who else did you talk
24 to?

25 A. At that area right there?

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

620

1 Q. Just anywhere.

2 A. Oh. Nobody. I walked to Wesley's house, which is
3 a mutual friend, and that's who I communicate with.

4 Q. You walked to Wesley's house?

5 A. Uh-huh.

6 Q. How far away is he from the crime scene?

7 A. He two parking lots back. He stay in building 26.
8 I stay in 14.

9 Q. Okay. Did it occur to you that I just killed two
10 people, I should probably stay here and let the officers
11 know, and let me explain myself what happened?

12 A. Yes, sir, but I was so panicked and I needed people
13 to talk to. So, I had to call my family and my friends.
14 Well, all our friends that's all cool with all this so -
15 --

16 Q. And you ---

17 A. --- they can know how ---

18 Q. --- needed to figure out what you were going to say
19 when you talked to law enforcement I guess?

20 A. No.

21 Q. No. So, it only took you about two hours before
22 you finally come to the officers and go I'm the shooter?

23 A. No, sir. If I'm correct, it said an hour and 15
24 minutes.

25 Q. 10:46 sound right to you?

A. BARNES -- CROSS-EXAMINATION BY MR. SCOTT

621

1 A. I don't know.

2 Q. Huh?

3 A. I don't know. I'm just going off what it said on
4 the paperwork, sir.

5 Q. 10:47 AM, does that sound right?

6 A. It sound right about what?

7 Q. About the time you finally go in say I'm the
8 shooter.

9 A. I can't remember. I can't say.

10 Q. But you're not going to disagree with me if the, if
11 the time that interview started is 10:47, you agree with
12 me that's when you finally said I'm the shooter?

13 A. About 10:40. Correct.

14 Q. Okay. 47.

15 A. But I had to get my peoples to go find the
16 investigator first. So, you got to take away all that
17 time before I got to the investigator. But yeah.

18 Q. You ---

19 A. We can go to ---

20 Q. You've seen those body cams. There must have been
21 seventy officers right there. You had to go -- took you
22 two hours to find one?

23 A. No. I said the head investigator. I got my cousin
24 to go find the head investigator. That's how I talked
25 to the guy that you got up here yesterday.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

622

1 Q. He wasn't the head investigator. He was a gang
2 task force unit.

3 A. But that's who they brought to me ---

4 Q. Okay.

5 A. --- or brought me to.

6 Q. But -- so 8:55 you killed these two guys, and
7 10:47 you're finally saying it was me, I shot him?

8 A. Yes, sir.

9 Q. So those two hours, I guess you're kind of trying
10 to ---

11 A. But I had been let mostly people know what had
12 happened.

13 Q. And not ---

14 A. The people who -- Hamilton, I believe Hamilton
15 called the police as well after me. So, I had already
16 communicated with him what had happened. I never denied
17 being the shooter.

18 Q. No, but it took you two hours to come up with a
19 story that you were eventually going to tell law
20 enforcement.

21 A. No, sir.

22 Q. Didn't you ---

23 A. I told him the same exact story on the scene right
24 there.

25 Q. Okay, and you felt like, after killing the two

1 guys, you needed to go to the store and get some
2 cigarettes.

3 A. Yes, sir.

4 Q. Correct?

5 A. Because I just killed my two friends, correct.

6 Q. And nothing, nothing goes better after killing
7 people than a cigarette, right?

8 A. Nah. I just was so stressed out and all the phone
9 calls that I was having. It just stressing me out even
10 more. So, I needed cigarettes, yes, sir. I smoke
11 cigarettes. So ---

12 Q. Yeah.

13 MR. SCOTT: Before I forget, this is State's 77,
14 78, 79, 80, 81, 85, and 86 for admission into evidence.

15 MS. YOUNG: No objection.

16 THE COURT: They're admitted.

17 (PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBIT
18 NUMBERS 77, 78, 79, 80, 81, 85, AND 86 RECEIVED INTO
19 EVIDENCE.)

20 Q. All right, and during those two hours, you called
21 Shakihla Smalls. There was fifteen calls between you
22 two.

23 A. Yes, sir. I -- she never answered not one of them,
24 though.

25 Q. Okay. All right. So, we got Wesley. We got

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

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1 Hamilton Jacobs. We got Lando. We got Main Main. Do
2 you remember who else you called and talked to?

3 A. I talked to my grandma about Dash that morning. I
4 talked to my mama and Katerra. That's about it.

5 Q. All right, and, and you knew eventually you were
6 going to have to come forward and tell I'm the shooter,
7 right?

8 A. I never was running; I never was trying to hide.

9 Q. Well, you couldn't because Ieasha and Lando had
10 seen you come out of the apartment.

11 A. Yeah, but -- okay. Yes, sir.

12 Q. Right? I mean, three people were alive in there at
13 8:54 and only one walks out and that's you and they see
14 you walk out, correct?

15 A. Correct.

16 Q. So, you kind of knew I'm going to have to have a
17 story, right?

18 A. No, this the same thing I been saying from the
19 beginning, sir. My story never changed.

20 Q. Well, I, I heard that you told three different
21 stories to the one guy.

22 A. Well ---

23 MS. YOUNG: Objection. Pitting.

24 THE COURT: The objection's overruled.

25 A. Uh-huh.

1 Q. Yeah.

2 A. But you also heard that same guy get up here and
3 say that when he first opened the door, nobody else was
4 inside the house but me. But your two witnesses, Wanda
5 and Ieasha, said they was the first people in the house.
6 So, how would that be true?

7 Q. Well, the body cam comes up, they'd already gone
8 out and about.

9 A. Yeah, but he said he was one of the first people
10 upstairs and he testified to that yesterday.

11 Q. Okay, and then when, when you get in, you speak
12 with law enforcement, it's essentially I heard a noise.

13 A. Correct.

14 Q. I immediately think I'm getting robbed.

15 A. Correct. Not ---

16 Q. I heard ---

17 A. Not just heard any noise. I heard noises that
18 sounded like my house is getting broken into.

19 Q. Okay, and this is two days after you thought that
20 your home had gotten robbed of a gun?

21 A. Well, a gun had got stolen out of my home, yes.

22 Correct.

23 Q. Okay, and that was concerning to you. I mean, you
24 were texting ---

25 A. Not really concerning to me. In those same text

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

626

1 messages, I even said that it wasn't my gun. So, that
2 had nothing to do with me. I didn't have no issue with
3 the gun being stole. It wasn't mines.

4 Q. Well, let's see: Tell me why somebody stole one of
5 our guns today.

6 A. Correct.

7 Q. I don't know who, though.

8 A. Exactly.

9 Q. Right?

10 A. Uh-huh.

11 Q. And she says: Y'all be having too many people in
12 there.

13 A. Uh-huh.

14 Q. And then you say: Still trying to figure out who
15 took the gun.

16 A. Uh-huh. Correct.

17 Q. So, you're telling me it wasn't a concern to you to
18 figure out who took the gun?

19 A. That's only because me -- I was only saying that
20 because multiple people -- everybody that was inside are
21 friends that we cool with. So, if one of your friends
22 that -- you think one of your friends took something and
23 from inside your house, you want to be trying to figure
24 out who took it if all those same people going to be
25 around you.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

627

1 Q. No, and that was my question. You were -- that was
2 something of a concern to you to figure out who did it.

3 A. No, sir.

4 Q. It was or was not a concern?

5 A. It was a concern of Tonio's, though. It wasn't
6 mines. So, I had nothing to do with that.

7 Q. You were concerned with figuring out who did it,
8 though.

9 A. Correct.

10 Q. Okay.

11 MR. SCOTT: Your Honor, if, if -- I would just ask
12 to this -- question the video. Maybe if we can proffer
13 this outside the presence of the jury briefly.

14 THE COURT: All right, ladies and gentlemen, if
15 you'll go to the jury room. Please do not discuss the
16 case.

17 (THE JURY EXITS AT 3:20 PM.)

18 THE COURT: Mr. Scott, tell me again what you're
19 trying to do or want to do.

20 MR. SCOTT: So, I had some of the lyrics that we
21 interpreted. I listened to the track. He basically
22 said I had totally misinterpreted them. In fact, I had
23 added certain lyrics.

24 So, what I'd like to do is just proffer the video
25 to him and, and see what he thinks. I don't want to

A. BARNES - PROFFERED EXAMINATION BY MR. SCOTT

628

1 play it to the jury necessarily. But I, I want to be
2 clear on, on what the lyrics are with him.

3 THE COURT: All right. What says the defense?

4 MS. YOUNG: I mean, Your Honor, we object to it
5 coming in. Here is otherwise proffering the evidence.
6 We don't have an objection to that.

7 THE COURT: We're not talking about it coming in.
8 We're talking about what he proposed to do at this
9 moment.

10 MS. YOUNG: Yes, and no objection to that then.

11 THE COURT: All right. Thank you.
12 You may proceed.

13 PROFFERED EXAMINATION BY MR. SCOTT

14 (WHEREUPON, AUDIO FILE IS PLAYED FOR THE COURT.
15 AUDIO IS NOT TRANSCRIBED.)

16 A. Hey, make sure you turn this part up so you can
17 hear what I'm saying. Y'all turn this part up so you
18 can hear what I'm saying because this part you messed up
19 on for sure.

20 (PLAY RESUMES.)

21 A. For sure. You understand I'm business forever
22 and always. I slide like maybe that gangsta
23 shit be make believe. You gone call the
24 twelves. Okay.

25 Q. Okay: This gangsta shit that make me shoot these N

1 words.

2 A. So, that's not what I said?

3 Q. Yeah, that's what I heard.

4 A. I said: That gangster shit be make believe. Clear
5 as day. I didn't say that, what you just said.

6 Q. Gangsta shit be make believe.

7 A. Gangsta shit be make believe. Start it over.

8 (PLAY RESUMES.)

9 Q. Shoot a what? I hear it. I, I keep hearing shoot.

10 A. I said:

11 That gangster shit be make believe. I shoot a
12 nigga. He going to call the twelves.

13 Q. What's the twelves?

14 A. Police.

15 Q. Okay.

16 A. Okay.

17 Q. What does that -- what were you meaning by that?

18 A. If you shoot a nigga, he going to call the twelves.
19 That shit ain't real to me.

20 THE COURT: All right. So, so we're not going to
21 do cross-examination outside the presence of the jury.

22 MR. SCOTT: No, I have some, Your Honor.

23 THE COURT: All right.

24 MR. SCOTT: I think, I think, I think we can agree
25 on a couple of these lyrics that I'll stick to with him.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

630

1 And I, I don't intend on playing it, though.

2 THE COURT: All right. Well, we'll ---

3 MR. SCOTT: The song.

4 THE COURT: We'll go with what you all agreed with
5 and then ---

6 MR. SCOTT: Okay.

7 THE COURT: --- let that be that.

8 MR. SCOTT: All right. Thank you, Your Honor.

9 THE COURT: All right. How many, how many more
10 minutes or hours you have with this witness?

11 MR. SCOTT: Oh, I'm, I'm wrapping up, Judge.

12 THE COURT: Okay.

13 MR. SCOTT: So, maybe two minutes.

14 THE COURT: Okay. All right. We'll take a three
15 minute break and then we'll bring the jury back.

16 You can take a break. Don't talk to anybody.

17 (OFF THE RECORD.)

18 THE COURT: Let's bring the jury.

19 (THE JURY ENTERS AT 3:35 PM.)

20 THE COURT: All right. You may proceed.

21 MR. SCOTT: Thank you, Your Honor.

22 Q. When you get up and walk down that hallway, this
23 hallway, did you see whether or not your front door had
24 been kicked open?

25 A. I really wasn't paying attention.

1 Q. But it's right in front of you ---

2 A. Uh-huh.

3 Q. --- when you walk down the hallway.

4 A. Yeah, I never.

5 Q. Did you ---

6 A. I never looked at the front door.

7 Q. What were you looking at?

8 A. Just blind. I was just blind, bruh.

9 Q. You were blind?

10 A. Uh-huh. Going to ---

11 Q. How?

12 A. --- the front. Staying close to the wall. I just
13 staying close to the wall.

14 Q. You said you kind of do this, kind of do it here?

15 A. Yes, sir.

16 Q. All right. Let me ask you. Is that something that
17 a reasonable person should do, blindly shoot into a
18 room?

19 A. Well, if you think that you getting attacked, then
20 yes, sir.

21 Q. Okay. Is it reasonable -- do you think would a
22 reasonable person hearing a boom ---

23 A. And hearing ---

24 Q. --- in a living room ---

25 A. --- everything else that I heard, yes, sir.

A. BARNES - CROSS-EXAMINATION BY MR. SCOTT

632

1 Q. Okay. A reasonable person has two roommates and
2 they hear a noise in the front ---

3 A. Uh-huh.

4 Q. --- is it reasonable for them to blindly shoot into
5 the room knowing people are in there that could be their
6 roommate?

7 A. It's reasonable after you assess the situation like
8 I did in the room, yes, sir.

9 Q. Okay, and you think a full assessment ---

10 A. Will be listening to see if I heard voices that was
11 familiar, yes, that's correct.

12 Q. Okay. I got it. So, now that's what Antonio
13 Barnes thinks is a reasonable assessment, wait until you
14 hear a voice you recognize, but if you don't, just
15 blindly shoot, right?

16 A. Just go around there and protect yourself, yes,
17 sir.

18 Q. Go around and you kill people who are just in
19 there?

20 A. If they was intruders, yes, sir.

21 Q. Okay, but they weren't.

22 A. How would I be able to know that?

23 Q. Because -- I mean, there's a million ways really.
24 You could have stayed back there. You could have called
25 your roommates and said hey, man, is that y'all? You

1 could have called out Sam, Antonio, is that y'all? You
2 could have gone in this door, okay, the kitchen, and you
3 could have walked around to the other door and peeped
4 out while maintaining cover. You could have done a
5 million things. But you decide to blindly shoot.

6 A. Yeah.

7 Q. You hit them every time, by the way.

8 A. Uh-huh.

9 Q. Was that just luck on your part?

10 A. Yes, sir, I had already said that earlier. Yes,
11 sir.

12 Q. Okay. So, what are you shooting at, the noise
13 you're hearing?

14 A. Yes, sir.

15 Q. Okay, and ---

16 A. And I was using the wall because I was expecting
17 people to have guns around there. So, yeah.

18 Q. Because that's what you see in *Call of Duty*.

19 A. No. That's just what happens in real life. When
20 somebody break into your house, they coming in with a
21 gun.

22 Q. Which has never happened to you, though, in that
23 apartment.

24 A. No, sir. But we -- my friends did just get robbed
25 at gunpoint. So, that's what came to my mind.

A. BARNES -- CROSS-EXAMINATION BY MR. SCOTT

634

1 Q. But you weren't there, though, were you?

2 A. No, but I couldn't ---

3 Q. And ---

4 A. I could have easily been.

5 Q. Okay, but you weren't, though, were you?

6 A. No, sir.

7 Q. And it didn't happen in your apartment, did it?

8 A. Hu-uh.

9 Q. Is that a yes or no?

10 A. No, sir.

11 Q. Okay, but you're a barber with a cutter. You watch
12 them burn like alcohol.

13 A. That's what I said in my song, yes, sir.

14 Q. So, just to conclude, you only have to be a little
15 bit scared before you begin shooting people, correct?

16 It's what you testified to earlier.

17 A. Yes, sir, I said that earlier.

18 Q. All right, and you don't have to be certain that
19 you're in danger before shooting at people and killing
20 them?

21 A. Yeah. If you believe that they were intruders, you
22 don't have to.

23 Q. Okay. Would you, would you advise me tonight if I
24 hear a boom in my front living room to just go in there
25 blazing with guns?

1 A. Nah. To be honest, sir, I wouldn't advise you to
2 do anything.

3 Q. Okay, but you just said that's what reasonable
4 people should do.

5 A. Uh-huh. If you believe that you getting your home
6 intruded, yes, sir.

7 Q. Okay. So, if I hear ---

8 A. You didn't say if you was getting your home, home
9 intruded. You said if you just heard noises.

10 Q. But you weren't getting your home invaded.

11 A. Well, it sounded like it.

12 Q. Well, you base that on the TV falling over?

13 A. And the boom that I heard ---

14 Q. And the boom.

15 A. --- coming from the front room, yes, sir, and all
16 the movement that I heard from the feet, yes, sir.

17 Q. Okay, and one last time, Antonio.

18 A. Uh-huh.

19 Q. I want you to look at this jury in the face, and I
20 want you to tell them how Mr. Griffin got this wound
21 where a gun was pressed against his head ---

22 A. Uh-huh.

23 Q. -- and the trigger was pulled.

24 A. Yes, I don't remember doing that. I came around
25 shooting exactly like I demonstrated earlier, and I

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1 don't know how that happened.

2 Q. Well, you demonstrated. You didn't get down and
3 press it against somebody's head?

4 A. No, sir, I didn't.

5 Q. Okay.

6 A. So, that's not what I did.

7 Q. That's not what you did?

8 A. No, sir.

9 Q. But you've got no explanation for that?

10 A. No, sir.

11 Q. State's 57, do you see that?

12 A. Yes, sir.

13 Q. And you see the black ring around the bullet hole,
14 right?

15 A. Yes, sir.

16 Q. Okay. You're, you're not denying that's there,
17 right?

18 A. Yeah, I'm not denying that.

19 Q. And you heard that pathologist who's done thousands
20 of autopsies ---

21 A. Uh-huh.

22 Q. --- talk about that?

23 A. I heard him say a lot of things yesterday.

24 Q. Okay.

25 A. Uh-huh.

1 Q. All right. Did you -- do you dispute anything he
2 said?

3 A. No. He disputed some of his own things that he
4 said, but, no, I don't dispute anything that he said.
5 I'm not a specialist.

6 Q. You're not a medical doctor, right?

7 A. No, sir.

8 Q. Okay. So, you heard how he described those contact
9 wounds are identified, right?

10 A. Yes, sir.

11 Q. Okay, and you're not going to give this jury any
12 explanation how Mr. Griffin had that gun ---

13 A. Nah, I ---

14 Q. --- shot in the back of the head?

15 A. My explanation earlier was when I was showing you
16 how it happened. I don't -- no, sir, I don't know how
17 that happened. That's what the medical examiner said.
18 So, that's what we going with. But I don't remember
19 doing that.

20 Q. Okay. On your demonstration, you didn't get down
21 and put it against somebody's head?

22 A. I didn't get down. The medical, the medical
23 examiner didn't say that I got down on my knees and did
24 it. He ain't say that.

25 Q. Well -- and I, I know. I'm waiting for you to tell

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1 me how it happened.

2 A. I told you how it happened. I explained to you
3 when I just demonstrated it to you. That's what
4 happened.

5 Q. At what point did you press the gun down to his
6 head?

7 MS. YOUNG: Your Honor, asked and answered.

8 THE COURT: The objection's sustained.

9 Q. All right, and you saw that, right? You remember
10 that stippling? Look at it.

11 A. Yes, sir.

12 Q. Do you remember that?

13 A. Uh-huh.

14 Q. 6 inches to 3 and a half feet.

15 A. Uh-huh.

16 Q. So, you're not disputing that you were that close
17 to Antonio Dash when you were shooting him?

18 A. Yeah, it wouldn't be -- it would be possible for
19 them not to been that close from the way that I just
20 showed you when I demonstrated it. If -- from
21 shooting -- if you holding your hand out from the
22 ground, it wouldn't even be 3 and a half feet from
23 inside the house. So, yeah, I'm not 7-foot tall, sir.
24 I'm only 6-foot. So, that would be right around the
25 exact amount how far my arm, arm would be if I'm aiming

1 it.

2 Q. Okay. So, you don't dispute you were at close
3 range when you were shooting them?

4 A. Yes. I was inside the house.

5 Q. And you don't dispute, though, that you pressed the
6 gun up against Eric's head before you pulled the
7 trigger?

8 A. Yeah, I don't remember doing that.

9 Q. You don't dispute it? I'm sorry. Do you dispute
10 that or not dispute it?

11 A. No, I don't dispute it, but I do not remember doing
12 that.

13 Q. Okay. That's just the one thing you've forgot,
14 though. I wonder why.

15 A. That's just the one thing that I know, sir. I'm
16 telling you exactly what I seen, exactly what happened.
17 I don't have no reason to lie.

18 Q. Well, I'm just thinking I heard earlier you were
19 talking about, well, I remember Katerra put the shirt
20 over the gun.

21 A. Correct.

22 Q. Then he moved over where the gun was.

23 A. Correct.

24 Q. My brother called at 2:30. I remember that and my
25 brother called ---

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1 A. Because that's ---

2 Q. --- at 2:30.

3 A. That's his normal -- that's his normal routine. He
4 calls and asks for a ride probably, like, ten, fifteen
5 minutes before he go to work. He do this every day. So

6 ---

7 Q. Okay. Let me speak real quick, though.

8 A. Uh-huh.

9 Q. And then you remembered Sam got up to brush his
10 teeth. I remember that.

11 A. Uh-huh.

12 Q. And then I remember they left. And two to three
13 minutes went by and then Sam said the gun was missing.
14 Why do you remember all those details?

15 A. I didn't -- I never said two, three minutes before
16 Sam sat -- left or sat down. Whatever you just said is
17 no -- I didn't say that. I said when E came back to the
18 house, it was two, three minutes before Katerra left and
19 E sat in the same spot that Katerra left. And we
20 probably left probably like -- I can't really say. But
21 I know my little brother had to be to work at 3 o'clock
22 and Sam the one who took him. That's what I can vouch
23 for.

24 Q. You remember all those details, and you remember
25 Sam ---

1 A. Yes, sir.

2 Q. --- going to brush his teeth.

3 A. Uh-huh.

4 Q. You remember putting the shirt over a gun.

5 A. Yes, sir.

6 Q. And you remember who all was there.

7 A. Uh-huh.

8 Q. But you don't remember this one thing I'm asking
9 you about over and over?

10 A. Yeah, because, because I can't vouch for that.

11 What I can tell you -- what I can vouch for is how I
12 came around the corner shooting, and that's exactly what
13 happened.

14 Q. Okay, and, I mean, did you, did you try and render
15 any aid to the guys after you ---

16 A. No, I wasn't -- I wasn't going to touch them. I
17 was going to wait til the police got there. But his mom
18 touched him and moved Eric off the top of Antonio. So,
19 that's why and that's how -- why they was positioned
20 like that.

21 Q. Okay. You, you just kind of got out of the
22 apartment as quick as you could?

23 A. No, sir.

24 Q. How quickly did you try to get out the apartment?

25 A. I didn't just leave out of the apartment until

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1 multiple people started coming inside.

2 Q. Okay, and that's when you went off to go get a
3 cigarette?

4 A. That's when I walked downstairs. That's correct.

5 Q. All right.

6 MR. SCOTT: Thank you.

7 THE COURT: Any redirect?

8 MS. YOUNG: Thank you, Your Honor. Your Honor, as
9 a brief housekeeping matter, the court reporter let me
10 know that I inadvertently forgot to admit Defendant's
11 Exhibit 111, 112, 113, 117, 116, 115, and 114 earlier
12 during my direct. I don't believe that Mr. Scott has
13 any objection.

14 MR. SCOTT: No objection, Your Honor.

15 THE COURT: They're admitted.

16 (PHOTOGRAPHS INDIVIDUALLY MARKED AS DEFENDANT'S
17 EXHIBIT NUMBERS 111, 112, 113, 114, 115, 116, AND 117
18 RECEIVED INTO EVIDENCE.)

19 REDIRECT EXAMINATION BY MS. YOUNG:

20 Q. Antonio, was this a normal day for you?

21 A. No, not after what happened, no, ma'am.

22 Q. Were you in shock?

23 A. Yes, ma'am.

24 Q. And when -- you told Mr. Scott you don't dispute
25 the contact wound.

1 A. No, ma'am, but I do not remember doing that.

2 Q. You do not remember walking up and putting, putting
3 the gun to his head?

4 A. No, ma'am.

5 Q. But what you did demonstrate was coming around the
6 corner with the gun and firing and getting closer to
7 them as you fired?

8 A. Correct.

9 Q. And it's a pretty small apartment, right? It's not
10 big.

11 A. Yes.

12 Q. And the area isn't very big.

13 A. Yes.

14 Q. And I think Mr. Scott asked you about getting --
15 you know, could you tell that your door was kicked in.
16 Your door automatically shut, right?

17 A. Yes.

18 THE COURT: You can't ask, ask questions and then
19 answer your questions. So, let's pose questions.

20 Q. Did your door automatically ---

21 THE COURT: Do not lead the witness.

22 Q. Did your door automatically shut after you opened
23 it?

24 A. Yes.

25 Q. Did you think that your door was shut when you were

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1 coming down the hallway?

2 A. Yes.

3 Q. But you don't know whether it had been kicked in --
4 you -- do you know whether it had been kicked in?

5 A. No, ma'am.

6 Q. And I think you said earlier you -- did you call
7 911 at 8:55?

8 A. Yes.

9 Q. And you know that you're on a responding officer's
10 body-worn camera at 9:02, right?

11 A. Yeah.

12 Q. You saw that picture earlier.

13 A. Uh-huh.

14 Q. Do you know -- did you know that she was the first
15 responding officer on scene?

16 A. No.

17 Q. Okay. The two first officers you saw, what did
18 they look like?

19 A. It was a Hispanic guy and a white guy.

20 Q. Okay. You did not see a -- did you see a female,
21 short hair ---

22 A. No, I don't remember seeing her.

23 Q. So, when you saw the two officers, the white guy
24 and the Hispanic guy ---

25 A. Right.

- 1 Q. --- what did you do?
- 2 A. I walked over to them and I gave them all my
3 information.
- 4 Q. Okay. Now, Tony, we heard about some rap lyrics.
- 5 A. Correct.
- 6 Q. Are you a rapper?
- 7 A. Yes.
- 8 Q. Do you enjoying making music?
- 9 A. Yes.
- 10 Q. Why?
- 11 A. Just because I just like to do it. That's a good
12 way to express myself.
- 13 Q. Is it like your art?
- 14 A. Yes.
- 15 Q. Does it provide you some outlet for your -- what's
16 going on with you?
- 17 A. Somewhat.
- 18 Q. Do you rap about things that are true?
- 19 A. Sometimes.
- 20 Q. Do you rap about things that are not true?
- 21 A. Sometimes.
- 22 Q. Do you -- I mean, I think Mr. Scott asked about
23 pictures with you and some of your friends holding guns
24 and you said, you know, your, your friend gets a new
25 gun, you take a picture with it. Do you remember

A. BARNES - REDIRECT EXAMINATION BY MS. YOUNG

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1 telling him that, right?

2 A. Correct.

3 Q. And do rappers sometimes pose with guns?

4 A. Correct.

5 Q. Do rappers act in a bravado sort of way?

6 A. Yes. You have them in your videos. It's just part
7 of your image sometimes. It depends on what type of
8 music that you make.

9 Q. And you've only ever -- let me ask you this. How
10 many guns have you owned at one time?

11 A. The maximum amount of guns I owned at one time is
12 two.

13 Q. And you -- I think Mr. Scott asked you about not
14 reporting one stolen. I mean, you're aware -- are you
15 aware that they found a receipt from Academy Sports for
16 a .40 caliber Smith & Wesson in your apartment?

17 A. Correct.

18 Q. What happened to that gun?

19 A. Well, I, I had to report it stolen.

20 Q. When did it get stolen?

21 A. Prior to 2000 -- March, 2018.

22 Q. And did the police come out to your apartment?

23 A. Yeah, they -- well, they came to Wesley house
24 because that's where I was at when I reported it stolen.

25 Q. Okay. Took a report?

1 A. Yes.

2 Q. So, if you had a gun -- when you have a gun stolen,
3 you call and report it to the police?

4 A. Yes.

5 Q. Are you able to lawfully carry a gun?

6 A. Yes, ma'am.

7 Q. And you can buy a gun legally?

8 A. Buy it out the store, yes, ma'am.

9 Q. I think Mr. Scott was -- he tripped you up a little
10 bit with earlier with the selling weed question.

11 A. Uh-huh.

12 Q. Do you sell or did you, at the time, sell weed?

13 A. Yes.

14 Q. Were you making a lot of money doing that?

15 A. No, ma'am.

16 Q. Did you sell weed in order to support your habit?

17 MR. SCOTT: Objection. Leading.

18 THE COURT: Objection is sustained.

19 Q. Why did you sell weed?

20 A. Just to support my habit. I smoke a lot. So, I
21 don't feel like I should just keep going to the weed man
22 and spending a hundred dollars or \$50.00 because it's
23 not going to last.

24 Q. I think you also talked about some -- he talked
25 with you about some calls that you made to Shakihla ---

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1 A. Correct.

2 Q. -- or Shakihla. Do you know -- do you remember
3 calling her several times?

4 A. Yeah.

5 Q. Okay, and I think that you told Mr. Scott that she
6 didn't answer.

7 A. Yes, she didn't.

8 Q. Do you remember telling investigators during your
9 interview that you were trying to call her to find out
10 what happened to the gun?

11 A. Yes.

12 Q. And I believe Mr. Scott asked you about being
13 paranoid.

14 A. Uh-huh.

15 Q. Was that your words?

16 A. I don't believe so.

17 Q. Were you afraid on this day?

18 A. Yes.

19 Q. But you don't -- you're -- are you generally
20 paranoid?

21 A. No.

22 Q. Did Mr. Scott put that mouth in -- that word in
23 your mouth?

24 A. Yes.

25 Q. He also asked you about being a little bit scared.

1 Were you a little bit scared that morning?

2 A. No.

3 Q. How scared were you?

4 A. I was scared as hell.

5 Q. And he asked you about certainty. Were you a

6 little bit certain that you were in danger ---

7 A. Yes.

8 Q. -- or did you feel, like, certain that someone was
9 breaking into your house at the time?

10 A. I just knew I was going to die if they made it to
11 the back room. That's all I could tell you.

12 Q. And I asked you this earlier. Are you sorry for
13 what happened?

14 A. Yes, ma'am.

15 Q. Do you recall giving an interview to Investigator
16 Gilliam? I think we talked about it on direct. It was
17 about six hours.

18 A. Correct.

19 Q. And you -- do you remember sitting in there and
20 making some phone calls?

21 A. Yeah, I called my mom. I talked to a lot of people
22 in the investigation room.

23 MS. YOUNG: Your Honor, at this time I'd like to
24 play an excerpt from that -- I'd like to play an excerpt
25 from that video.

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1 THE COURT: What says the state?

2 MR. SCOTT: The objection would be to relevance.
3 My prediction is that they are going to show an excerpt
4 of him getting emotional. They can ask him about the
5 thing. I do the same thing. But it's already in
6 evidence. That's fine. But it's opening the door for
7 recross on this if they want to keep talking about his
8 emotional reaction to this.

9 THE COURT: What says the defense?

10 MS. YOUNG: Your Honor, under 801(d)(1)(A) -- I'm
11 sorry, (1)(B), it's consistent with Mr. Barnes's
12 testimony that has been attacked. Mr. Scott brought his
13 remorse into play. Mr. Scott attacked his consistency
14 about what he told people. He told -- brought up
15 Mr. Archie saying that he said three different things.
16 This is a prior consistent statement after his -- after
17 their -- to express an implied -- express or imply a
18 charge against the declarant of recent fabrications or
19 improper influence.

20 THE COURT: What says the state?

21 MR. SCOTT: The direct examination question you
22 recall of remorse and how he's sorry he did it, I
23 crossed him briefly on that. But I raised no additional
24 issues as to his remorsefulness. They're, they're
25 treading over ground they covered during the direct.

1 THE COURT: I sustain the objection.

2 MR. SCOTT: Thank you, Your Honor.

3 MS. YOUNG: Your Honor, we'd like to proffer it.

4 THE COURT: Does -- is it -- it will be marked as a
5 State's Exhibit or a Defense Exhibit, Exhibit and you
6 may proceed.

7 MS. YOUNG: Your Honor, it's Defense Exhibit 108.

8 Q. Antonio.

9 MR. SCOTT: Your Honor, I'm just confused. If, if
10 the objection was sustained and now they're playing the
11 video.

12 MS. YOUNG: We're -- no, no. We just want to enter
13 it as a Court's Exhibit ---

14 MR. SCOTT: Oh. Oh.

15 MS. YOUNG: --- for a proffer -- proffered it. I'm
16 sorry. Court's Exhibit.

17 MR. SCOTT: I saw the screen. That's all.

18 (A PAUSE.)

19 (TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER
20 128 FOR IDENTIFICATION.)

21 MR. SCOTT: So, Your Honor, this, this is
22 pertaining to something -- nothing new that was raised
23 in cross-examination. This is a text they're purporting
24 to enter.

25 THE COURT: Pardon?

A. BARNES - REDIRECT EXAMINATION BY MS. YOUNG

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1 MR. SCOTT: There's a text message they're
2 purporting to enter. But I don't see that it pertains
3 to any new evidence or any new information brought up
4 during cross-examination.

5 MS. YOUNG: Your Honor, he asked on
6 cross-examination about a text message exchange that
7 Tony was having about our gun, and this is a text
8 message where Tony said not his gun. So, it directly
9 addresses something he brought out on cross.

10 THE COURT: I overrule the objection.

11 Q. Tony, what does that text message right there say?

12 A. It had to be one of your suppose to be
13 friends. I don't know. It wasn't my gun.
14 But still, how the fuck.

15 MS. YOUNG: Your Honor, at -- I probably should
16 have admitted it first, but that's Defense Exhibit 128.

17 THE COURT: Proceed.

18 (TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER
19 128 RECEIVED INTO EVIDENCE.)

20 Q. Tony, can you tell me about the tattoo you have
21 behind your ear?

22 A. Oh, I got a tattoo right there that say long live
23 T.O.

24 Q. What else is it?

25 A. Two bird.

1 Q. And what do those birds represent?

2 A. That is one for T.O. and one for my peoples.

3 Q. Are you sorry for what happened?

4 A. Yeah.

5 MS. YOUNG: Beg the court's indulgence.

6 (A PAUSE.)

7 MS. YOUNG: Nothing further, Your Honor.

8 THE COURT: Any further questioning of this
9 witness?

10 RECROSS EXAMINATION BY MR. SCOTT:

11 Q. You sorry that you're here today. I know that,
12 right?

13 A. No, sir.

14 Q. You're not sorry? You're not sorry?

15 A. You asked me was I sorry if I was here. I
16 responded to your question no.

17 Q. You sorry you got arrested for the murder of these
18 two, aren't you?

19 A. No, sir.

20 Q. No, you're not. You think you deserve to get
21 arrested for it then?

22 A. No, sir.

23 Q. Okay. You're so sorry and you're so remorseful
24 that you put pen to paper and then you sing about
25 killing these two, and you don't even ask the family for

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1 permission. You don't even tell them you're about to do
2 this for clout.

3 A. I didn't put pen and paper -- pen to paper and
4 write a song about killing them.

5 Q. You put ---

6 A. In the song I referenced my homeboy, which is like
7 my brother. I -- did I have to ask them to get his
8 tattoo name -- his name tattooed on my neck? I didn't.
9 That being my friend, regardless of what his people have
10 to say. So, that's what I'm saying. I can't answer
11 that, sir.

12 Q. You don't think that's disrespectful not to ask ---

13 A. No, sir.

14 Q. --- T.O.'s mom ---

15 A. That's really ---

16 Q. Let me ---

17 A. --- my friend.

18 Q. Let me ask you a question. To ask T.O.'s mom,
19 before you put on YouTube details about killing her son
20 ---

21 A. No, sir.

22 Q. --- or Ms. Wanda Griffin? You don't think that's
23 disrespectful ---

24 A. No, sir, them really my friend.

25 Q. --- to put on YouTube videos about killing her son

1 point blank range? You don't think that's
2 disrespectful?

3 A. No, sir, because that's not what I said in the
4 song. I said nothing -- I didn't use E name not one
5 time, and we had already talked about this in the cross
6 earlier. You didn't say that. So, I didn't say nothing
7 about Eric Griffin at all in that song. You -- we
8 already discussed that and I spoke about T.O. in that
9 song because that's like my brother, and I even said but
10 T.O. like my brother in the song. So, I don't see how
11 you confused with that.

12 Q. You get some kind of clout when people know you
13 kill people?

14 A. Clout for what? These my friends. I never asked
15 for clout for this.

16 Q. You get some views, though, when you post videos.

17 A. No, I got views before this. So, I don't even need
18 that.

19 Q. All right. How many other rap songs you put out
20 since then?

21 A. I done put out most of the rap songs. I can't
22 really sing.

23 Q. All right. So sorry you, write about killing these
24 two?

25 A. Never wrote a song about killing them.

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1 Q. Sounds real remorseful.

2 A. I never wrote a song about killing them.

3 Q. Who sang it?

4 A. Huh?

5 Q. Who sang it?

6 A. I, I rapped the song.

7 Q. What?

8 A. I rapped it, the song, yes, sir.

9 Q. Okay, and you downloaded it or uploaded it to
10 YouTube, right?

11 A. Correct.

12 Q. And then you put it out there for the world to see?

13 A. Uh-huh.

14 Q. And you never asked Antonio -- Tonio's mom or Ms.
15 Wanda Griffin ---

16 MS. YOUNG: Objection. Asked and answered.

17 A. I didn't speak on Eric name in that song anyway
18 period. So, I didn't have to ask her nothing. I didn't
19 speak on his name and Antonio's like my brother. Once
20 again, I already said that. That's my real friend. So,
21 I didn't get -- ask them for permission to get his name
22 tattooed on my body. So, I feel like I have to do that
23 to do a song.

24 Q. Okay.

25 A. Well, I clearly said that's like my brother and how

1 much I love him.

2 Q. Yeah.

3 A. I don't see how that was the issue.

4 Q. And you, you gone cut him down.

5 A. I never said that. I never said I was going to cut
6 Antonio down. I said T.O. like my brother.

7 Q. Tell me about the thing about: I'm going to make
8 them fall like leaves ---

9 A. Yes, that ---

10 Q. --- and you're not talking about leaves.

11 A. Yeah, that was the next line, correct.

12 Q. All right: Everybody say they ---

13 A. The next two lines to be exact.

14 Q. All right.

15 A. We listened to it earlier.

16 MS. YOUNG: Your Honor, I'm going to object. This
17 is exceeding the scope of my redirect.

18 THE COURT: I sustain the objection.

19 Q. All right, and in the same song you're talking
20 about these guys:

21 I'm a barber with a cutter. Watch me burn
22 them like alcohol.

23 A. First of all, it's a rap song. So, I don't know
24 why you making every song -- every line in the song has
25 to be about them when I clearly said one line that was

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1 about them, which says T.O. like my brother. All the
2 rest of that is speculations on your part. You don't
3 know what I was talking about.

4 MS. YOUNG: Your Honor, I'm going to object again.
5 It's outside the scope of my redirect.

6 THE COURT: Is that the next question or to the
7 last question?

8 MS. YOUNG: Last -- to the last question but I
9 believe he's about to follow up.

10 THE COURT: Well, it was asked and answered.

11 Q. So, so, you were remorseful, though, and you're
12 sorry?

13 A. Yes, sir, that's my dawg.

14 Q. You going to put out any more rap songs about
15 killing them?

16 A. I didn't put out rap songs about killing them.

17 Q. Okay, but you talk about killing people in the rap
18 song with them.

19 A. If that's what you want to say, yes, sir.

20 Q. There's no -- you have any good reason why they're
21 not here right now, Antonio Dash and Eric Griffin, alive
22 and well?

23 A. Well, like I told you before, I thought my house
24 was getting broke into. I thought my home was being
25 invaded. So, that's why they not here. I wish they was

1 but ---

2 Q. What did they do to deserve to die that day?

3 A. Well, they didn't do nothing. I thought my house
4 was being broken into, but I wasn't the cause of that,
5 so I can't say.

6 Q. You weren't the cause of killing them?

7 A. I wasn't the cause of thinking that my house was
8 being broke into. I didn't bust a hole in the wall; I
9 didn't knock my TV down. All that happened before I
10 came out the room. So, I don't know what was the cause
11 of that.

12 Q. Are you saying they deserved to die because they
13 may have done that?

14 A. The intruders that I thought was in my house had
15 deserved to die.

16 Q. So, your testimony is Eric Griffin and Antonio Dash
17 did not deserve to die that day.

18 A. Correct.

19 MR. SCOTT: Thank you.

20 THE COURT: You may step down.

21 MS. YOUNG: Your Honor, before we leave the
22 witness, we have a matter of law.

23 THE COURT: You may step down.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: Call your next witness.

1 MS. YOUNG: The defense would call Sara Goodman,
2 call Sara Goodman.

3 THE COURT: While she's coming up, counsel
4 approach.

5 Everybody stand for a moment.

6 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH
7 OUTSIDE THE HEARING OF THE JURY.)

8 MS. YOUNG: Well, Your Honor, I'd like to play the
9 video proffered. Mr. Scott got up on recross ---

10 THE COURT: Well, you have direct, cross, redirect,
11 cross.

12 MS. YOUNG: Your Honor.

13 THE COURT: That's it for the witness. You can't
14 put up evidence during the end of testimony of the
15 witness.

16 MS. YOUNG: During his recross, he directly
17 attacked his remorse again right after we had just
18 brought that up.

19 THE COURT: That's it.

20 MS. YOUNG: And, Your Honor ---

21 THE COURT: That's the way the process is.

22 MS. YOUNG: --- the video goes directly to that
23 issue.

24 THE COURT: They get the last word on that with
25 cross-examination. You don't get a chance to -- he's

1 still arguing the same thing. Let me ask him one
2 question. Let me introduce more evidence through the
3 witness. He's through his cross-examination for the
4 second time. That's the end of it for that witness.
5 You don't get a chance to get a third bite at the apple.

6 MS. YOUNG: Well, Your Honor, he went right back
7 ---

8 THE COURT: Okay, that's not a real matter of law.
9 So, we're going to proceed. At the end of the day, you
10 can put whatever else you want on the record. But
11 that's not a matter of law.

12 MS. YOUNG: Thank you, Your Honor.

13 (END OF CONFERENCE AT THE BENCH.)

14 THE COURT: You may be seated.

15 SARA GOODMAN, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 CLERK OF COURT: Please have a seat. State your
18 full name for the record.

19 WITNESS: My name is Sara Goodman. Last name is
20 G-O-O-D-M-A-N.

21 VOIR DIRE EXAMINATION BY MS. YOUNG:

22 Q. Good afternoon, Ms. Goodman.

23 A. Afternoon.

24 Q. Where do you work?

25 A. I work at the South Carolina Law Enforcement

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1 Division, commonly referred to as SLED.

2 Q. And what is your title?

3 A. I am a forensic scientist assigned to the DNA
4 casework department.

5 Q. How long have you worked there?

6 A. Approximately seven years.

7 Q. And what are some of your duties at SLED?

8 A. I do DNA casework analysis. So, I will receive
9 items of evidence and known standards from law
10 enforcement agencies throughout the state and perform
11 requested DNA analyses on those items, write up a report
12 based on my findings, and testify in court as necessary.

13 Q. And where did you attend school?

14 A. I attended school at Erskine College where I
15 received a bachelor of science in biology, and I also
16 have a master's of science in forensic science from
17 Arcadia University in Pennsylvania.

18 Q. Okay.

19 MS. YOUNG: Your Honor, at, at this time I would
20 offer Sara Goodman as an expert in DNA analysis.

21 MR. SCOTT: Your Honor, without objection.

22 THE COURT: She's so qualified.

23 DIRECT EXAMINATION BY MS. YOUNG:

24 Q. Can you please tell us what STRmix and how -- is
25 and how it's used?

1 A. Yes. STRmix is a statistics or mathematics
2 computer program. It is used after our analyses. So,
3 when we create DNA profiles from items of evidence, and
4 then from known standards, to give a weight to our
5 conclusions, we will calculate statistics. So, STRmix
6 is the computer program that helps us calculate those
7 statistics.

8 So, we will put in the DNA profiles from the
9 evidence. It will break it down into the different
10 possibilities of DNA profiles or contributors to that
11 profile, and we will then verify that the program
12 functioned correctly, and then we will input DNA
13 profiles from known standards and it will calculate the
14 statistic for each of those known standards.

15 Q. And were you asked to analyze DNA in this case?

16 A. Yes, I was.

17 Q. What, what were you given to analyze?

18 A. So, I was given four known standards, which were
19 Buccal swabs from four different individuals -- Antonio
20 Dash, Eric Griffin, Antonio Barnes, Jr., and Shakihla
21 Smalls -- and then I was also given some items of
22 evidence. I had left-hand and right-hand fingernail
23 scraping from Eric Griffin, left-hand and right-hand
24 fingernail scrapings from Antonio Dash, swabs from the
25 exterior of a .9 millimeter cartridge casing, and then

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1 an impact collection from Items 14, 27 through 30, and
2 32, which were .9 millimeter cartridge casings.

3 Q. So, I'm going to walk through your report now a
4 little bit, okay?

5 A. Okay.

6 Q. Direct your attention to Item Number 9. What,
7 what -- or 9.1 I guess. What, what is Item 9.1?

8 A. Item 9.1 is the left-hand fingernail scrapings from
9 Eric Griffin.

10 Q. And what did you do with those scrapings?

11 A. So, I took it through our normal processes to
12 develop a DNA profile off of that item. Once I did my
13 analysis for that DNA profile, I calculated likelihood
14 ratios using STRmix.

15 Q. And how do you do that?

16 A. So, calculating likelihood ratios is what the
17 computer program, STRmix, that's the type of statistic
18 it is calculating. And what a likelihood ratio is, is
19 that it's comparing two different possible scenarios to
20 explain the DNA profile. And the result tells you which
21 of those is more likely.

22 Q. And what were your findings as to Item 9.1?

23 A. So, for my first proposition set, which is -- each
24 proposition set is one of the sets of likelihood ratios.
25 So, typically we do one for each known standard that we

1 have in the case. We can sometimes group them together
2 as well.

3 But for the first proposition set, the DNA profile
4 was interpreted as a mixture originating from three
5 individuals. Eric Griffin is contributing to the
6 mixture. So, the first scenario is that Eric Griffin,
7 Antonio Dash, and an unidentified, unrelated individual
8 contributed to the mixture versus the second scenario of
9 Eric Griffin and two unidentified, unrelated individuals
10 contributed. The result is that the DNA profile is
11 approximately 13 trillion times more likely is Eric
12 Griffin, Antonio Dash, and an unattended -- excuse me,
13 unidentified, unrelated individual contributed to the
14 mixture than if Eric Griffin and two unidentified,
15 unrelated individuals contributed.

16 For Proposition Set 2, it is similar to set one in
17 the difference scenarios that it's setting up. So,
18 again, Eric Griffin is contributing to this three person
19 mixture. And then, for this one, Eric Griffin, the
20 person of interest, and an unidentified, unrelated
21 individual contributed to the mixture. Person of
22 interest for us is just anyone whose known standard has
23 been submitted for analyses. And then the second
24 scenario again is Eric Griffin and two unidentified,
25 unrelated individuals contributed. And the result for

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1 that is that Antonio Barnes, Jr., and Shakihla Smalls
2 are excluded as contributors to the mixture under the
3 listed propositions.

4 Q. Okay. So, I'm going to boil that down a little
5 bit. So, is it fair to say that it's likely that
6 there's DNA from Antonio Dash in the fingernail
7 scrapings of Eric Griffin's left hand?

8 A. Yes, that -- it is likely that Eric Griffin,
9 Antonio Dash, and an unidentified individual contributed
10 versus if it were two unidentified and Eric Griffin.

11 Q. Okay. I'm going to move you to Item 9.2. What was
12 that?

13 A. That was the right-hand fingernail scrapings from
14 Eric Griffin.

15 Q. And were you able to get a sufficient profile for
16 the comparison?

17 A. No, the partial DNA profile developed was
18 insufficient for interpretation.

19 Q. So, moving then to Mr. Dash in 10.1.

20 A. Uh-huh.

21 Q. What is Item 10.1?

22 A. Item 10.1 is the left-hand fingernail scrapings
23 from Antonio Dash.

24 Q. Okay. What were your findings for that?

25 A. For this item, a DNA profile suitable for

1 comparison was developed and likelihood ratios for this
2 profile were calculated using STRmix. For this item, I
3 had three different proposition sets, all very similar
4 again.

5 But for the first proposition set, the DNA profile
6 was interpreted as a mixture originating from two
7 individuals. The first scenario is that Antonio Dash
8 and an unidentified, unrelated individual contributed
9 versus if two unidentified, unrelated individuals
10 contributed. And the result is that the DNA profile is
11 approximately 12,000 times more likely if Antonio Dash
12 and an unidentified, unrelated individual contributed
13 than if two unidentified, unrelated individuals
14 contributed.

15 For Proposition Set 2, again, it's a mixture
16 originating from two individuals. This time I am
17 assuming that Antonio Dash is contributing to the
18 mixture based off of the first proposition set. So for
19 this set, the scenarios are that Antonio Dash and Eric
20 Griffin contributed to the mixture versus if it's
21 Antonio Dash and an unidentified, unrelated individual.
22 And that result is that the DNA profile is approximately
23 2.6 octillion times more likely if Antonio Dash and Eric
24 Griffin contributed to the mixture than if Antonio Dash
25 and an unidentified, unrelated individual contributed.

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1 And then for the final proposition set, again,
2 assuming that Antonio Dash is contributing, the
3 scenarios are that Antonio Dash and the person of
4 interest contributed versus Antonio Dash and an
5 unidentified, unrelated individual. And the result for
6 that is that Antonio Barnes, Jr., and Shakihla Smalls
7 are excluded to -- as contributors to the mixture under
8 the listed propositions.

9 Q. Okay. So, again, just to boil it down a little
10 bit. This is Antonio Dash's left hand. And so it's
11 likely that there's DNA from Eric Griffin under the --
12 in the fingernail scrapings of Mr. Dash's left hand?

13 A. Correct versus if it were an unidentified
14 individual.

15 Q. And, again, just like on the first one, Mr. Barnes
16 and Ms. Smalls were eliminated as contributors?

17 A. That's correct.

18 Q. And then moving to Item 10.2. What is that?

19 A. That is the right-hand fingernail scrapings from
20 Antonio Dash.

21 Q. And what did you find with -- what were your
22 results with that?

23 A. So, for this item, a DNA profile suitable for
24 comparison was developed and likelihood ratios were
25 calculated using STRmix. For the first proposition set,

1 the DNA profile was interpreted as a mixture originating
2 from two individuals. The first scenario is that
3 Antonio Dash and an unidentified, unrelated individual
4 contributed versus two unidentified, unrelated
5 individuals. And the result is that the DNA profile is
6 approximately 170 times more likely if Antonio Dash and
7 an unidentified, unrelated individual contributed versus
8 if two unidentified, unrelated contributed.

9 The second proposition set is comparing the
10 scenarios of Eric Griffin and an unidentified, unrelated
11 individual contributing versus two unidentified,
12 unrelated individuals, and that result is that the DNA
13 profile is approximately 1.6 octillion times more likely
14 if Eric Griffin and an unidentified, unrelated
15 individual contributed versus two unidentified,
16 unrelated individuals.

17 The third proposition set is comparing whether
18 Antonio Dash and Eric Griffin contributed to the mixture
19 versus two unidentified, unrelated individuals, and that
20 result is that the DNA profile is approximately
21 720 octillion times more likely if Antonio Dash and Eric
22 Griffin contributed than if two unidentified, unrelated
23 individuals contributed.

24 And then I have an extra statement here that says
25 that the LR for Proposition Set 3 was calculated to

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1 confirm that the mixture can be explained by the
2 contribution of DNA from all individuals listed under
3 HP. Due to the disparity in the individual LRs between
4 the contributors for this item, it is recommended to put
5 more weight on the results of Proposition Set 1 rather
6 than the, the result of Proposition Set 3 when
7 considering Antonio Dash as a possible contributor to
8 the mixture.

9 And then for my final proposition set for this
10 item, I'm comparing whether the person of interest and
11 an unidentified, unrelated individual contributed versus
12 two unidentified, unrelated and the result is that
13 Antonio Barnes, Jr., and Shakihla Smalls are excluded as
14 contributors to the mixture.

15 Q. Okay. So, again, on Antonio Dash's right hand, it
16 was fair to say that there's very likely DNA from
17 Mr. Griffin in Mr. Dash's fingernail scrapings?

18 A. Yes, there is very strong likelihood that Eric
19 Griffin and an unidentified individual contributed
20 versus two unidentified.

21 Q. And, again, Ms. Smalls and Ms. Barnes were
22 eliminated ---

23 A. Correct.

24 Q. --- as contributors? Okay, and I think then you
25 did one more thing, which was a 31.1, Item 31.1?

1 A. Correct.

2 Q. What was that?

3 A. That was swabs from the exterior of a .9 millimeter
4 cartridge casing.

5 Q. Okay. Did you -- what did you find on that?

6 A. For this item, a DNA profile suitable for
7 comparison was developed and likelihood ratios were
8 calculated using STRmix. This profile was interpreted
9 as a mixture originating from two individuals for all of
10 the proposition sets.

11 For the first set, Antonio Dash and an
12 unidentified, unrelated individual contributed versus
13 two unidentified, unrelated individuals are in the
14 scenarios, and the result is that the DNA profile is
15 approximately 62 quintillion times more likely if
16 Antonio Dash and an unidentified, unrelated individual
17 contributed versus two identified individuals.

18 For the second proposition set, in comparing
19 whether Eric Griffin and an unidentified individual
20 contributed versus two unidentified individuals, and the
21 result is that the DNA profile is approximately 84
22 trillion times more likely if Eric Griffin and an
23 unidentified individual contributed versus two
24 unidentified individuals.

25 And then for Set 3, I'm comparing whether Antonio

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1 Dash and Eric Griffin contributed to the mixture
2 together versus two unidentified individuals. And that
3 result is that the DNA profile is approximately 280
4 undecillion times more likely if Antonio Dash and Eric
5 Griffin contributed than if two unidentified, unrelated
6 individuals contributed.

7 And then for the final proposition set, I'm
8 comparing whether the person of interest and an
9 unidentified individual contributed versus two on
10 unidentified. And the result is that Antonio Barnes,
11 Jr., and Shakhila Smalls are excluded as contributors to
12 the mixture.

13 Q. And that was a really big number, the 280
14 undecillion. Would it surprise you to learn that
15 that -- you know, given your findings, would it surprise
16 you to learn that that cartridge casing had been located
17 in his blood?

18 A. That would not be unsurprising, no.

19 Q. And just because DNA is present, you don't know how
20 it -- do you know how it got there?

21 A. I do not.

22 Q. Okay, and when you get fingernail scrapings, what
23 kinds of -- what kinds of things do people have in their
24 fingernails that might provide DNA?

25 A. Any bodily fluids have DNA to them. So, if they

1 have anything like that under their fingernails. Also
2 your skin cells have DNA as well. So, just the skin
3 cells from under the fingernails would have DNA. They
4 could also have DNA from any item that they touched
5 underneath their DNA -- or, excuse me, underneath their
6 fingernails.

7 Q. Could you find tissue under there?

8 A. You could, yes.

9 Q. And when you get fingernail scrapings, do you have
10 any way of knowing what the source of the DNA is that
11 you're testing?

12 A. Not typically, no.

13 Q. Did you here?

14 A. I did not. We received incident reports sometimes,
15 but as far as determining when or where the DNA came
16 from, I can never say that.

17 Q. But it -- is it fair to say that your report finds
18 that Eric Griffin and Antonio Dash had each other's DNA
19 under their fingernails?

20 A. There was a likelihood of that, yes.

21 MS. YOUNG: Beg the Court's indulgence.

22 (A PAUSE.)

23 MS. YOUNG: Nothing further at this time, Your
24 Honor.

25 THE COURT: By the state.

S. GOODMAN - CROSS-EXAMINATION BY MR. SCOTT

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1 MR. SCOTT: Just briefly, Your Honor.

2 CROSS-EXAMINATION BY MR. SCOTT:

3 Q. Special Agent Goodman, so you can pretty much
4 safely say that Antonio Dash had some DNA that's
5 associated with Eric Griffin under his fingernails,
6 correct?

7 A. Yeah.

8 Q. And vice versa. Eric Griffin had some DNA
9 associated with Antonio Dash under his fingernails.

10 A. Yes, there's a strong likelihood of that.

11 Q. And then you talked about a casing that you test --
12 was it one casing you tested with some DNA on it?

13 A. For Item 31.1, yeah. I also had some -- an in vat
14 collection from some cartridge casings from 32.1.

15 Q. I want to show you State's 25. What, what do you
16 see there?

17 A. It appears to be a picture of two individuals lying
18 on the ground in a red substance.

19 Q. A red substance?

20 A. Yes, sir.

21 Q. Does it appear to be a solid or a liquid?

22 A. It's hard to tell from the photograph. It looks
23 like it could have been a liquid.

24 Q. Okay. If I were to tell you that was blood, and
25 there were a lot of casings found in that pool of blood,

1 would that be an explanation for one of their DNA being
2 found on the casing?

3 A. That could be a possible explanation, yes.

4 Q. Okay, and if they're both lying in each other's
5 blood because one was shot six times, the other was shot
6 seven times, could that possibly explain why they have
7 each other's DNA under each other's fingernails?

8 A. That could be a possible explanation, yes.

9 Q. Okay, and you're not making -- you're not here
10 to -- they may have been fighting with one another,
11 right?

12 A. I couldn't say, but it's possible.

13 Q. You don't know or it could be there's just so much
14 of each other's blood all over the place and it's
15 getting everywhere that that could account for why they
16 have each other's DNA on each other?

17 A. It could be a possibility.

18 Q. Okay.

19 MR. SCOTT: Thank you, Ms. Goodman.

20 THE COURT: Anything further?

21 MS. YOUNG: No, Your Honor.

22 THE COURT: Thank you. You may step down.

23 WITNESS: Thank you.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: Your next witness.

1 MS. YOUNG: Your Honor, the defense rests.

2 THE COURT: All right, ladies and gentlemen,
3 there's -- the defense has rested. You've now heard the
4 defense's case. We need you to take another break.
5 Please do not discuss the case.

6 (THE JURY EXITS AT 4:27 PM.)

7 THE COURT: Is there any matters of law?

8 MR. LUKE SHEALEY: Yes, Your Honor. May it please
9 the court?

10 THE COURT: Yes, sir.

11 MR. LUKE SHEALEY: Defense would once again move
12 for directed ---

13 BAILIFF: Quiet please.

14 (A PAUSE.)

15 MR. LUKE SHEALEY: Your Honor, may it please the
16 court? The defense would once again move for
17 self-defense -- or directed verdict in this case due to
18 the overwhelming evidence of self-defense. Really
19 there's not a whole lot of inconsistency between the,
20 the state and the defense in this case regarding what
21 happened.

22 It seems that both agree that a terrible fight
23 ensued in the living room of Mr. Barnes's home. No one
24 disputes that he was in bed sleeping. I think that
25 would be additionally corroborated by some cell phone

1 data that we provided through an expert.

2 No one disputes his account is that he was lying in
3 bed and hears this loud boom consistent with what he
4 believed is a home invasion. He's given several reasons
5 why he believes that. One is the quality of his
6 neighborhood being what he would call a bad neighbor, a
7 dangerous neighborhood. It happens all the time. He
8 was very much aware of recently his two roommates being
9 robbed at gunpoint just down at The Corner Store. That
10 is very much in his, in his mind.

11 On the other hand, he's also questioned and admits
12 that because he sells marijuana to help support his
13 smoking marijuana habit, that it could be that people
14 just want to take his stuff. But he lies in bed and he
15 doesn't hear any noise that he's familiar with such as
16 his roommates. He knows for a fact that they were at
17 work that day. He was talking to, he testified,
18 Mr. Dash, who informed him of that. He knows that --
19 the habit and routine in the house, given that they have
20 one car. It's for Mr. Sam Thomas to drive Mr. Dash to
21 work and that was what he expected at that time of day.
22 There's no other evidence to dispute that.

23 We heard from Sam Thomas. The state called him.
24 Hears those noises, listening for approximately two
25 minutes, only hearing violent feet, violent noises, his

1 own TV crash. He assesses that situation and believes
2 that he's being home invaded.

3 We know today that he assessed that incorrectly,
4 that it, for unknown reasons, reasons that we can
5 speculate upon regarding a stolen gun allegation between
6 Mr. Dash and Mr. Griffin, that Mr. Griffin was in the
7 home and objectively those gentlemen are engaged in a
8 violent altercation with each other, unexpectedly to our
9 clients.

10 We know that the law of self-defense does not
11 require a refined assessment of the dangers. We know
12 that the law of self-defense embraces the concept that
13 you're entitled to act and seek -- and take preemptive
14 measures to end a threat in your own habitation as long
15 as it's a reasonable belief. There's a lot of
16 questioning about the reasonableness, reasonableness of
17 that. But I don't think that even there's a question of
18 the jury when you hear the type of violence in the home.
19 I don't think a citizen of South Carolina is required to
20 ask twenty questions of would-be intruders about whether
21 they're armed or what their true intentions are. It's a
22 tragic mistake.

23 But I do believe that the state has not, even light
24 most favorable to them, they don't have any direct
25 evidence or substantial circumstantial evidence of

1 malice, which would be required to get to a jury on
2 these charges. You can no longer infer malice in the
3 State of South Carolina through the use of a deadly
4 weapon, as Your Honor well knows. So, respectfully, I'd
5 ask that you do not allow this case to get to the jury
6 and you grant our, our motion.

7 THE COURT: I'll deny the motion for the reasons
8 stated at the end of the state's case, including
9 considering any claim of self-defense. It's matters for
10 the jury, and given the inferences that can favor the
11 state's version or view of the evidence, the motion is
12 denied.

13 MR. LUKE SHEALEY: Yes, Your Honor.

14 THE COURT: Defense has rested. Any other --
15 regarding the matter of law that Ms. Young attempted to
16 do in objecting to the witness coming down from the
17 witness stand, the -- state that on the record.

18 MS. YOUNG: Sorry, Your Honor. Yes, this is
19 regarding -- let me -- I think it's been marked as
20 Defendant's Exhibit 108. Let me double-check so I can
21 be clear for the record.

22 (A PAUSE.)

23 MS. YOUNG: That is correct. It's Defense Exhibit
24 108. We attempted on -- during -- I guess, I guess it
25 was during cross to -- or redirect, to enter exhibits or

1 excerpts of the videos from our client's statement in
2 the interrogation room where he is -- expressed a great
3 deal of remorse.

4 THE COURT: When you said redirect, you're
5 referring to what you attempted to do?

6 MS. YOUNG: Yes, Your Honor.

7 THE COURT: All right.

8 MS. YOUNG: Yes. Again ---

9 THE COURT: And you attempted to offer a video?

10 MS. YOUNG: I did, Your Honor ---

11 THE COURT: Yes, ma'am.

12 MS. YOUNG: --- of my client's ---

13 THE COURT: Yes, ma'am.

14 MS. YOUNG: --- confession. Yes, and he's
15 expressing a great deal of remorse. He's sobbing to his
16 mother. He's bringing ---

17 THE COURT: I understand all that, but you objected
18 after you've had direct. State re -- cross-examined.
19 You did redirect. The state recrossed testimony over --
20 the witness is through testifying, and you objected to
21 him leaving the witness stand. And then you indicate
22 you have a matter of law, and what is the matter of law?

23 MS. YOUNG: Well, Your Honor, you, you denied my
24 request to admit that video.

25 THE COURT: Yes.

1 MS. YOUNG: Based on a rebuttal of his implied ---
2 you know, he's just now making it up ---

3 THE COURT: Yes.

4 MS. YOUNG: --- that he's remorseful.

5 THE COURT: Well, the court ruled on the objection,
6 yes.

7 MS. YOUNG: That's correct. And then on recross,
8 he got up and did -- he said I wasn't attacking him and
9 being, you know, not remorseful.

10 THE COURT: Well, did you object to that testimony?

11 MS. YOUNG: I believe that I did.

12 THE COURT: And did the court rule on that
13 objection?

14 MS. YOUNG: I don't know, Your Honor. I don't, I
15 don't -- what I'm saying is he went right back to the
16 remorse issue, and yet I do believe that I objected and
17 then ---

18 THE COURT: What is it that you were trying to do
19 then?

20 MS. YOUNG: Well, he went right back to what you
21 just denied ---

22 THE COURT: Were you trying to ask more questions
23 of the witness?

24 MS. YOUNG: No. I wanted to play the video, Your
25 Honor.

1 THE COURT: Well, that would be introducing more
2 evidence.

3 MS. YOUNG: Yes.

4 THE COURT: That would be, in effect ---

5 MS. YOUNG: Yes, I ---

6 THE COURT: In effect, that would be a third direct
7 examination.

8 MS. YOUNG: Your Honor, he made an expressed
9 accusation that his remorse was being feigned and that
10 it was new. We had evidence that should of come in
11 under Rule 801.

12 THE COURT: All right. So, you object to the
13 court's ruling.

14 MS. YOUNG: And we ---

15 THE COURT: I understand that.

16 MS. YOUNG: Yes, and then I guess he argued that he
17 wasn't saying that he wasn't remorseful, and then he got
18 up and attacked him for not being remorseful.

19 THE COURT: All right.

20 MS. YOUNG: He opened the door back up to being
21 able to present ---

22 THE COURT: Yeah. So, I -- at what point do we end
23 this with the back and forth?

24 MS. YOUNG: Well, Your Honor, obviously you decide
25 that.

1 THE COURT: Okay.

2 MS. YOUNG: I have to make my record and I have to
3 try to get it in.

4 THE COURT: But your record is not based on any
5 rule or procedure. You're, you're arguing, in effect,
6 that you have the right to do a, a, a third direct
7 examination or that you have the right to introduce
8 exhibits through the state's cross-examination.

9 MS. YOUNG: Well, Your Honor ---

10 THE COURT: When the state gets through
11 cross-examining the witness, that's it. You don't get a
12 third time to ask more questions.

13 MS. YOUNG: Well, Your Honor, I think what I'm
14 arguing is that we're entitled to a full and -- full and
15 fair defense in this case.

16 THE COURT: Oh, you don't need to argue that.

17 MS. YOUNG: Yes.

18 THE COURT: That's without saying.

19 MS. YOUNG: Right, and I believe that this
20 prevented us from being able ---

21 THE COURT: So, you object to the court's ruling
22 and, and, and the record will reflect the court's
23 ruling. I'm trying to understand why you're objecting
24 to a person who has had two direct examinations, two
25 cross-examinations, they're through testifying, and

1 you're objecting to them leaving the witness stand.

2 MS. YOUNG: Your Honor, I believe that Mr. Scott
3 opened the door back up to be able to bring that
4 evidence in, and his right to a full and complete ---

5 THE COURT: Yeah.

6 MS. YOUNG: --- defense ---

7 THE COURT: All right.

8 MS. YOUNG: --- under the U.S. Constitution
9 allowed -- it trumps the court rules.

10 THE COURT: All right.

11 MS. YOUNG: And not your ruling.

12 THE COURT: So, that's your ---

13 MS. YOUNG: But ---

14 THE COURT: You've made a record.

15 MS. YOUNG: Thank you, Your Honor.

16 THE COURT: I don't think it makes any -- I
17 don't -- there's no precedence and rule of procedure and
18 any examination under Rule 611 is subject to the
19 discretion of the court to present a needless waste of
20 time. The parties have had full opportunities to
21 question the witnesses in a -- repeatedly had that
22 opportunity to do so and, and through the numerous
23 questions, many of which were quite repetitive, and I
24 find that the mode and order of interrogation and
25 presentation of evidence under Rule 611 has been

1 complied with, and your matter of law that you call a
2 matter of law is noted for the record.

3 MS. YOUNG: Thank you, Your Honor.

4 THE COURT: All right. What else? We're through
5 with all the testimony. I've denied directed verdict
6 motions. I'm ready to let the jury go til 9:30 tomorrow
7 morning, and we will stay and discuss any requested jury
8 charges that you all might have.

9 Aside from that, any other comment at this time?

10 MR. SCOTT: Not from the state, Your Honor.

11 MS. YOUNG: Nothing from the defense, Your Honor.

12 THE COURT: Okay. Bring the jury, please.

13 (THE JURY ENTERS AT 4:39 PM.)

14 THE COURT: Ladies and gentlemen, you have now
15 heard all of the testimony in the case; you've now
16 received all of the evidence in the case. The next
17 thing will be closing arguments, which we will do at
18 9:30 tomorrow morning.

19 So, we're done for the day. Please do not discuss
20 the case with anyone, and we'll see you at 9:30 tomorrow
21 morning.

22 (THE JURY EXITS AT 4:40 PM.)

23 THE COURT: Do you all have requested jury charges
24 for me to look over?

25 MR. LUKE SHEALEY: Yes, Your Honor. May I

1 charge this.

2 THE COURT: Yeah, it's highly unlikely that I will
3 charge the, the jury this. The jury is to evaluate
4 credibility of witnesses and not just generally did the
5 police do a good job or bad job or whether or not they
6 were good witnesses or bad witnesses.

7 All right, what's the next one?

8 MR. LUKE SHEALEY: Would you like -- we'll, we'll
9 email you the cite anyway.

10 THE COURT: Okay.

11 MR. LUKE SHEALEY: And if you choose not to grant,
12 we'll just have to ---

13 THE COURT: All right.

14 MR. LUKE SHEALEY: --- make a record on it.

15 Number 5. Some of these are a little out of order.
16 We've got self-defense generally in a couple like acting
17 on appearance, imminent danger. 5 is acting on
18 appearance. That's just the state of the law that, you
19 know, is encompassed through cases like *State v.*
20 *Sullivan, Rash, Starnes, Jackson*. I don't see a cite on
21 that one. I could probably take out the last paragraph.
22 That looks to be a -- we were kind of rushed doing this
23 at lunch given that things were ---

24 THE COURT: The last paragraph of which one?

25 MR. LUKE SHEALEY: On, on acting on appearances.

1 That, that would not apply to this case, that last
2 paragraph. Those are particular factors from a
3 different case.

4 But the important thing -- this is probably the
5 most important jury charge you might consider -- is that
6 the law of our land is that, you know, you are allowed
7 in the concept of self-defense to act on appearance.
8 You may indeed mistaken. That is what our case law
9 says.

10 THE COURT: All right.

11 MR. LUKE SHEALEY: And you're not held to a refined
12 assessment of the danger as long as you're acting on --
13 as that reasonable person of ordinary coolness and
14 courage would have acted in reading the appearance of
15 danger. So, that is, that is longstanding jurist,
16 jurist prudence and we request that it be charged.

17 THE COURT: What says the state?

18 MR. SCOTT: I think the defendant testified he
19 didn't act on any appearances. He heard a boom and then
20 blindly shot into a room.

21 (A PAUSE.)

22 THE COURT: All right, self-defense. He's without
23 fault in bringing on the difficulty. Second possibility
24 is contentious language, which is -- there's no
25 language. Mutual combat. There's no mutual combat.

1 Let me see. And battered person's syndrome. That
2 doesn't apply. The second element is being in imminent
3 danger:

4 Person of ordinary firmness would be -- would
5 strike the fatal blow to prevent death or
6 serious bodily injury. If he believes that he
7 was in imminent danger, must be shown that a
8 reasonably prudent person of ordinary firmness
9 would have the same belief. He should
10 consider all the facts and circumstances,
11 including the physical condition and the
12 characteristics of the defendant and the
13 victims. Defendant does not have to show that
14 he was actually in danger. It is enough if he
15 believed he was in imminent danger and a
16 reasonably prudent person of ordinary firmness
17 and courage would have had the same belief,
18 and defendant has the right to act on
19 appearances even though the defendant's belief
20 may have been mistaken. It's up for you to
21 decide whether the defendant's fear of
22 immediate danger of death or serious bodily
23 injury was reasonable and would have been felt
24 by an ordinary person in the same situation.

25 And I think this is probably everything you said

1 other than using the word preventive action and refining
2 assessment.

3 MR. LUKE SHEALEY: And those are very important
4 words in the context of this case, Your Honor, and
5 that's from the case law.

6 THE COURT: What says the state?

7 MR. SCOTT: Just what is the case law that talks
8 about refined? That -- that's not ---

9 THE COURT: Pardon?

10 MR. SCOTT: I was just asking what was the cite of
11 the case that says that -- discusses refined assessment?

12 MR. LUKE SHEALEY: Beg the court's indulgence.

13 (A PAUSE.)

14 MR. LUKE SHEALEY: That will be *State v. Rash*, 182
15 S.C. 42, 1936. *State v. Starnes*, 340 S.C. 312. It's a
16 2000 case. *State v. Jackson*, 277 S.C. 271. It's a 1955
17 case:

18 One may act on appearance. He may be
19 mistaken. The law does not hold him to a
20 refined assessment of the danger provided, of
21 course, he acted as a person of ordinary
22 coolness and courage would have acted and
23 should of acted in meeting the appearance of
24 danger. He does not have to wait until his
25 assailant gets the drop on him. He has the

1 right to act on the law of self-preservation
2 and prevent his assailant getting the drop on
3 him. If it is apparent or reasonably apparent
4 his assailant was taking steps to get the drop
5 on him, he must take steps first to prevent
6 such assailant from getting the drop on him.

7 And I think I can even add some interesting oral
8 argument. I'll add the oral argument from *State v.*
9 *Dickey* with Justice James during oral argument. He
10 asks:

11 Does he have to interview?

12 Regarding defendant.

13 I'm not being facetious. Does he have to
14 interview the perpetrators or ask which one of
15 you fired that shot so I can fire my shot
16 accordingly? The answer is no because a
17 person has the right to act on appearances
18 even if the person's belief is ultimately
19 mistaken.

20 And that's a direct quote from Justice James.

21 MR. SCOTT: What was the cite for *Starnes*?

22 MR. LUKE SHEALEY: I said -- ask the court
23 reporter.

24 Your Honor, it's the law of our land.

25 THE COURT: And what word are you using, *Starne*?

1 MR. LUKE SHEALEY: *Starnes*.

2 THE COURT: Oh, is that that death case out of ---

3 MR. LUKE SHEALEY: Yes.

4 THE COURT: --- out of Conway, Horry County?

5 MR. LUKE SHEALEY: I believe, yes, sir. 340 S.C.

6 312. It's a 2000 case. I cited *State v. Jackson*, 277

7 S.C. 271, 1955 case.

8 THE COURT: We don't want to go back to 1955.

9 MR. LUKE SHEALEY: Well, I know you're a *Mouzon*

10 man, but *State v. Hendrix*. We can just go back as old

11 as I am, 1978. 270 S.C. 653. *State v. Davis* is an '84

12 case. The list goes on and on, Your Honor. It's a very

13 standard charge.

14 THE COURT: Well, I think the standard charge is

15 the charge that I've just read to you.

16 MR. LUKE SHEALEY: Well, okay. Then it's not so

17 standard, but it's very grounded in our jurisprudence

18 and very applicable, applicable to this case.

19 THE COURT: It's a different, different *Starnes*

20 than a -- this *Starnes* is a Lexington case.

21 MR. SCOTT: They're telling me refined assessment

22 doesn't even show up in that *Starnes* case. They did a,

23 a search for that term. It's not popping up.

24 MR. LUKE SHEALEY: Well, we'll let the court do his

25 own research. I can send you my -- a brief on it

1 tonight if you'd like, Your Honor.

2 MR. FOWLER: Is there a pin cite for refined
3 assessment? Do you have a page number that it goes to?

4 MR. LUKE SHEALEY: I don't, but you have my
5 proposed order. It's all in that.

6 MR. SCOTT: Yeah, we, we object to that, that jury
7 charge, Judge.

8 MR. LUKE SHEALEY: I'll email you all the cites
9 tonight, Your Honor, specifically.

10 THE COURT: So in this *Starnes*, it says a:

11 Murder defendant who claims self-defense was
12 entitled to an appearance charge with respect
13 to one shooting. According to the defendant,
14 immediately prior to the shooting, the
15 defendant observed the victim hold a gun to a
16 third person's head and threaten to shoot
17 third person apparently because intended drug
18 dealing had gone bad. Fourth person then
19 pointed a gun at defendant and threatened to
20 kill him and defendant, unaware the victim had
21 passed his weapon to fourth person,
22 erroneously believed the victim was armed and
23 intended to kill defendant.

24 And in that case, the conviction was reversed
25 because the court did not instruct on the right to act

1 on appearance. The right to act on appearance is now a
2 part of the standard self-defense charge, or the defense
3 wants me to take certain words that, including this
4 refined assessment, which has been given to me in bold,
5 and we'll, we'll look at it and, and with anything else
6 that's submitted and let you all know in the morning.

7 All right. That's that.

8 Imminent danger.

9 MR. LUKE SHEALEY: Yes, sir, and there's a little
10 overlap there, but some of the acting on appearance does
11 encompass the imminent danger. But I think it's
12 appropriate to have a specific definition of what
13 imminent danger might be in the, in the context of a
14 reasonable, prudent man of ordinary firmness. And that
15 just goes -- cite of *State v. Jackson*, *State v. Rivers*.

16 It's important, again, to recognize that you don't
17 have to wait until your assailant gets the drop on you.
18 You have the right to act on the law of
19 self-preservation to prevent that. So, there's a little
20 overlap. But imminent danger is another kind of
21 subcategory because that is, you know, you have to be
22 reasonably believing you're in imminent danger. So, I
23 think it is appropriate to flesh that out.

24 THE COURT: All right. What says the state?

25 MR. SCOTT: Just, Your Honor, imminent danger is

1 covered in your self-defense charge. This, this is
2 more -- almost identical to the acting on appearances
3 jury charge. And, again, it's -- imminent danger is
4 covered in the standard self-defense.

5 THE COURT: Well, it says:

6 The defendant has the right to act on
7 appearances even though the defendant's belief
8 may have been mistaken. It is up for you to
9 decide whether defendant's fear of imminent
10 danger of death or serious bodily injury was
11 reasonable and would have been felt by an
12 ordinary person in the same situation. He
13 doesn't have to wait until his assailant ---

14 Who are the assailants here?

15 MR. LUKE SHEALEY: The would be assailants are the
16 home invaders that he reasonably believed would come
17 into his home based on the crashing TV, the loud bang,
18 the violent noises, the loud ---

19 THE COURT: The assailant is his roommate?

20 MR. LUKE SHEALEY: No, sir, it's who he reasonably
21 believed were his assailants.

22 THE COURT: Okay.

23 MR. LUKE SHEALEY: Unfortunately, they're not
24 applicable, but the record is replete with information
25 that he, thinking his roommates were not there based on

1 their usual habit and the course of going to work that
2 morning, and based on what he heard, he didn't -- and
3 his wife thought he was being home invaded.

4 And if Your Honor remembers the day before where
5 Sam Thomas testified, the state witness, and my client
6 testified there was an argument as well. But because
7 he -- they -- our client was in his room sleeping, but
8 because he heard his, his, his roommate's voices, he
9 didn't go out with guns blazing.

10 THE COURT: Yeah.

11 MR. LUKE SHEALEY: So, it's -- he certainly has, at
12 least in the record, he shows the ability to assess the
13 threat and re -- and even in our final case it's not
14 required. So ---

15 THE COURT: Yeah, I see here you have *State v.*
16 *Jackson*, 1955; *Rivers*, 1938; *Rash*, 1936; and then
17 *Starnes*, 2000. I'll look at it. But I believe the
18 standard charge is, is sufficient on right, right to act
19 on appearances. It's up for the jury ---

20 MR. LUKE SHEALEY: I've got ---

21 THE COURT: --- to decide based on their view of
22 the evidence.

23 MR. LUKE SHEALEY: I think that was the imminent
24 danger charge, Your Honor.

25 THE COURT: Well, part of the imminent danger

1 charge is the right to act on appearances. That's part
2 of the same charge. These two charges are, are, are
3 combined.

4 All right, no duty to retreat in one's own home,
5 number 7.

6 MR. LUKE SHEALEY: Yes, Your Honor. That is the
7 state of, of the law even against a co-occupant. *State*
8 *v. Grambling*.

9 THE COURT: What says the state?

10 MR. SCOTT: You know, I'm -- I'll leave that to
11 Your Honor's discretion.

12 THE COURT: It's part of the standard charge.

13 MR. SCOTT: Yes, sir.

14 THE COURT: And defense of habitation.

15 MR. LUKE SHEALEY: Yes, Your Honor, and that is
16 very important in this -- to this case and that -- and
17 analogous yet distinct from self-defense, as you know,
18 but it doesn't require an attack. It just requires an
19 intrusion or a trespass and that's the law extending
20 back from -- to *State v. Bradley*, 1923, allows a man to,
21 to take reasonable means, means to expel the intrusion
22 or end the obstruction, including deadly force. There's
23 numerous cases regarding the defense of habitation and
24 failure to give that instruction when it is warranted.
25 So, we would -- we do believe it's warranted here, given

1 that he was defending his habitation and reasonably
2 believed that he was being home invaded.

3 THE COURT: What says the state?

4 MR. SCOTT: The first thing that occurs is the guy
5 challenged me for a '57 case. Then he presents one
6 thirty-four years older.

7 THE COURT: Say what now?

8 MR. SCOTT: I said he, he gets on to me about a
9 1957 case, and this one's thirty-four years older. But
10 this, this is inapplicable, Your Honor. There's,
11 there's been no evidence of any kind of trespass.
12 The -- no evidence of any kind of a forceful entry that
13 was testified to.

14 Eric Griffin was known as a frequent guest at the
15 house. Testimony from the witnesses outside was that
16 they heard him go up to the second level and knock on
17 the door. Of course, Mr. Dash was a occupant of the
18 apartment. I don't -- he -- I, I don't think this
19 applies to our particular case, Your Honor.

20 MR. LUKE SHEALEY: And, Your Honor, I would
21 disagree and it's, it's very important to note that what
22 my client testified to and what is in the evidence is
23 he's awakened to a loud bang. Yes, this door jam is not
24 broken, but we're dealing with a metal door.

25 We know that Mr. Dash and Mr. Griffin appear to

1 have this animosity about a stolen gun. It doesn't
2 require necessarily trespass. It requires an -- it can
3 be a trespass. But it could be an intrusion into the
4 home. He's -- this is my -- this is the original Castle
5 Doctrine which is evolved into our stand-your-ground
6 laws and it's defense of habitation.

7 It, it re -- it's important here because it doesn't
8 require an attack. When you're in your own home and you
9 feel reasonably that there's an intrusion and attack on
10 your home, you don't have to first show that you were
11 lunged at or someone pulled a gun on you. You have
12 every right in your home to then end that intrusion,
13 including to the point of deadly force. *Bradley* is just
14 an example. It's a seminal case where in that case,
15 someone was asked to leave and they refused.

16 So, this case, which I would respectfully ask the
17 court to err on the side of caution because there is
18 evidence of that, it should be charged and it's a
19 distinct defense from self-defense.

20 THE COURT: The standard charge says that:

21 The defense of habitation is a separate and
22 distinct defense from self-defense. If the
23 defendant or a member of the defendant's
24 household is attacked in the defendant's own
25 home, the defendant may use a force which

1 appears to be needed to protect himself or his
2 household from death or serious bodily injury.
3 If a trespasser refused to leave the home when
4 asked to leave, the defendant may use the
5 necessary force to eject the trespasser.
6 Defendant -- the effort to eject the
7 trespasser, the life or safety of the
8 defendant or a member of the household is
9 jeopardized, the defendant may take the life
10 of the trespasser. The kind of degree of
11 force which are justified depends on the
12 conduct of the trespasser. If a person
13 entered the dwelling at the invitation of a
14 member of the household, the person becomes a
15 trespasser when asked to leave. If while
16 legitimately exercising in good faith the
17 right to eject a trespasser the defendant is
18 assaulted by the trespasser and fears death or
19 serious bodily harm, the defendant would be
20 without fault in bringing on the difficulty.
21 Whether the defendant was acting in good faith
22 in attempting to eject the victim and was
23 assaulted in the process is a question for you
24 to determine.

25 (A PAUSE.)

1 THE COURT: As part of the duty to ---

2 MR. LUKE SHEALEY: May I ---

3 THE COURT: --- retreat involves increased risk of
4 harm, the defendant had no duty to retreat if,
5 by doing so, the danger of being killed or
6 suffering serious bodily injury was increased,
7 and if the person defended was on his or her
8 own premises as defending a third party,
9 there'd be no duty to retreat. And where the
10 person ---

11 There's some general stuff on duty to retreat.

12 MR. LUKE SHEALEY: I, I would, I would like to -- I
13 would love to look at your defense of habitation charge,
14 but I think we do need to add the charge.

15 THE COURT: We're going to send you the --

16 MR. LUKE SHEALEY: Thank you.

17 THE COURT: --- the standard charges on that. The
18 one you've given me about ejecting a trespasser, this
19 is, you know, in -- South Carolina has kind of affirmed
20 pretty much the right to kill someone if you're trying
21 to get them off your property and they won't leave.
22 Very liberal with allowing people to kill people who
23 won't leave when, when you're trying to get them to
24 leave seemingly. That's sort of like forceful
25 ejectment, the defense of habitation including using

1 deadly force, if necessary.

2 We're back in 1923:

3 A man who attempts to force himself in
4 another's dwelling or, or being in the
5 dwelling by invitation refuses to leave when
6 an owner makes that demand is a trespasser,
7 and the law permits the owner to use as much
8 force, even the taking of his life, as may be
9 reasonably necessary to prevent the intrusion
10 or the accomplishment or to accomplish the
11 expulsion.

12 So ---

13 MR. LUKE SHEALEY: Okay, and Your Honor mentioned
14 in -- within that charge an attack on a co-occupant or
15 someone else who resides there, to defend against that.
16 I mean, it's undisputed that Mr. Dash and Mr. Griffin
17 were engaged in some type of a physical altercation,
18 including ripping out of earrings, blunt force trauma to
19 Mr. Dash's head.

20 Now, I don't -- there's no evidence that Mr. Barnes
21 was aware of an attack against Mr. Dash because he just
22 didn't think anybody was home. But he, he viewed this
23 as being an attack on his habitation, an intrusion to
24 the safety of his home, which does not require for you
25 to first show that you were attacked. That's the main

1 difference between defense of habitation. So, he was
2 using his powers as a citizen of South Carolina to end
3 that intrusion, eject the problem, which you're allowed
4 to use with deadly force.

5 Now, he's not sitting there saying he's saying
6 leave, leave, leave. That's not in this case. But he's
7 ending an intrusion into his home.

8 THE COURT: I mean, I think when he gets the, the
9 self-defense charge that he can write -- that he can act
10 on appearances, and that's what he testified to, I think
11 that addresses that issue and, and this defense of
12 habitation is not a separate charge that he's entitled
13 to.

14 MR. LUKE SHEALEY: I respectfully disagree on that.

15 THE COURT: All right. Yeah, that's why ---

16 MR. LUKE SHEALEY: All right.

17 THE COURT: You know, whatever you've given me will
18 be given to the jury, and whether you agree or disagree,
19 you know, that's -- that will be a matter of record
20 because I'm not going to charge every requested charge.
21 So, you don't have to hit me over the head on this
22 disagreement.

23 MR. LUKE SHEALEY: I'm not going to do that.

24 THE COURT: All right.

25 MR. LUKE SHEALEY: Going in order.

1 THE COURT: Yeah. Well, wait a minute. I'm going
2 in order.

3 MR. LUKE SHEALEY: Okay.

4 THE COURT: You follow along.

5 MR. LUKE SHEALEY: The order may be a little messed
6 up because I did withdraw one. So, forgive me.

7 THE COURT: Where are we now? All right, which one
8 you want to go to next then?

9 MR. LUKE SHEALEY: Well, if we're going in order, I
10 guess we're on Number 9.

11 THE COURT: All right:

12 A person can be acting lawfully even if he is
13 in unlawful possession of a weapon at the time
14 of the shooting.

15 MR. LUKE SHEALEY: Yes, Your Honor, that's --
16 obviously my client has no record. He's not precluded
17 from owning a gun.

18 THE COURT: All right. We understand that.

19 Is there an objection to this charge?

20 MR. SCOTT: If they want it, that's fine. I mean,
21 it seems to insinuate he was in unlawful possession.
22 So, that sounds good to me.

23 MR. LUKE SHEALEY: Well, Your Honor, I just -- I
24 have to bring it up because I -- there's a lot of
25 testimony about drug dealing and acting unlawfully, and

1 I just think if it's not addressed, it will probably be
2 argued -- it could be argued by Mr. Scott and I just
3 don't want the record -- you know, the instructions ---

4 THE COURT: Do you want me to give this charge?

5 MR. LUKE SHEALEY: I do.

6 THE COURT: All right:

7 A person can be acting lawfully even if he is
8 in lawful -- in unlawful possession of a
9 weapon if he was entitled to arm himself at
10 the time of the shooting.

11 So, the state does not object. That's what you
12 want. We'll give that charge.

13 MR. LUKE SHEALEY: Thank you, Your Honor.

14 THE COURT: Number 10, use ---

15 MR. LUKE SHEALEY: And that ---

16 THE COURT: --- of force.

17 MR. LUKE SHEALEY: Yes, sir. This is, again,
18 coming from some of these cases I've been citing,
19 particularly *State v. Hendrix*.

20 THE COURT: Oh, it's a standard charge on ---

21 MR. LUKE SHEALEY: It is.

22 THE COURT: --- this, of course.

23 MR. LUKE SHEALEY: It is. If you have that
24 identical charge, then I won't ---

25 THE COURT: All right.

1 MR. LUKE SHEALEY: --- dicker over it as long as it
2 has that language until ---

3 THE COURT: Yeah, once you -- if you have a right
4 to shoot, you can keep shooting.

5 MR. LUKE SHEALEY: Yes, sir.

6 THE COURT: All right. If you're in imminent
7 danger.

8 MR. LUKE SHEALEY: All right.

9 THE COURT: Number 11, malice.

10 MR. LUKE SHEALEY: I submitted this in anticipation
11 of the *Mouzon* argument. I think I -- I think we settled
12 that. I'm okay with your standard.

13 THE COURT: All right, statements of counsel.
14 That's standard.

15 MR. LUKE SHEALEY: Yes, sir.

16 THE COURT: The statements of counsel do not
17 constitute evidence and that's -- I love to tell them
18 that.

19 Number 14, self-defense generally.

20 MR. LUKE SHEALEY: That's just a general
21 self-defense charge, Your Honor, which I'm sure you have
22 it.

23 THE COURT: All right. I'll give them that.
24 Failure to produce a witness.

25 MR. LUKE SHEALEY: Yes, sir, Your Honor. There's

1 Four.

2 MR. LUKE SHEALEY: I think that will probably be
3 me, Your Honor.

4 THE COURT: Okay.

5 MR. LUKE SHEALEY: I can't imagine any more than
6 thirty, forty minutes.

7 THE COURT: All right.

8 MR. LUKE SHEALEY: I'll say.

9 THE COURT: We, we expect the jury to get this case
10 by 11:30 or a little later, and we shall see because the
11 charge is not that long on a murder case.

12 All right. See y'all tomorrow. Get some rest. Be
13 at your best.

14 (WHEREUPON, THE CASE IS AT EASE.)

15 *THURSDAY, DECEMBER 8, 2022*

16 (COURT RESUMES AT 9:42 AM.)

17 THE COURT: Before we get a little further, I want
18 to address first of all regarding the charges that I
19 sent to you all last night. Any comment on any of these
20 charges?

21 MR. LUKE SHEALEY: Your Honor, yes. Charges you
22 have included, I find nothing wrong with those charges.
23 The only thing I do find wrong is that it failed to
24 include particularly the defense of habitation charge
25 that we discussed.

1 THE COURT: Yes, sir.

2 MR. LUKE SHEALEY: And I would cite for the record
3 *State v. Bryant*.

4 THE COURT: *Bryant*?

5 MR. LUKE SHEALEY: Yes, sir, 391 SC 225, Court of
6 Appeals opinion regarding it being reversible error to
7 not give the defense of habitation charge as well as a
8 self-defense charge.

9 THE COURT: What were the circumstances?

10 MR. LUKE SHEALEY: That was a pretty famous case
11 that also had a Supreme Court opinion about a different
12 issue. This gentleman was in a wheelchair and was
13 getting drunk at a bar and met a friend who the state
14 believed he lured back to his hotel and killed by
15 shooting him with a gun. He testified and said that he
16 was being pestered; he was being hounded. The guy did
17 come into his room without his permit -- his permission,
18 and so he shot him, even though he wasn't being
19 attacked, to end that unwanted intrusion into his ---

20 THE COURT: He was aware that the person was in his
21 room and was trying to get the person to leave or what?

22 MR. LUKE SHEALEY: That, that is his testimony. He
23 was aware, and I think -- I understand what Your Honor
24 -- the distinction what I think in Your Honor's mind is
25 again we have -- we have discussions about what we

1 reasonably believe for these matters. *State v. Rye*, the
2 defense of habitation charge was given. It was just
3 incorrect. But I would just cite those for the record,
4 Your Honor, just to preserve it.

5 THE COURT: Well, I'd like to see it. Let me --
6 you can pass it up to me. I'll take a quick look at it.

7 MR. LUKE SHEALEY: Yes, sir.

8 (A PAUSE.)

9 THE COURT: Bryant is a paraplegic confined to a
10 wheelchair living at the Days Inn. Let's see, where was
11 this? Living at the Days Inn.

12 MR. LUKE SHEALEY: Richland County, I believe, Your
13 Honor.

14 THE COURT: Richland?

15 MR. LUKE SHEALEY: Yes, sir.

16 THE COURT: Yeah, this is really amazing, the
17 volume of cases that make it in the records from
18 Richland County.

19 MR. LUKE SHEALEY: Yes, sir.

20 THE COURT: These appellate cases, and Lexington
21 County. Seems to be 60 or 70 percent of the total.

22 So, he's a paraplegic living at the Days Inn 150
23 yards from the Bottoms Up Nightclub. He met Austin, was
24 at the club with another man from North Carolina. They
25 became friendly and they became intoxicated. There was

1 conflicting evidence on the relationship of the two men
2 that evening and what occurred between them. People at
3 the club characterized them as being very chummy.
4 According to Bryant, Austin and two other men with
5 Austin pressed Bryant to get some marijuana. He told
6 him he did not do that. He didn't know where to get
7 any. Left the club at 3:30 AM.

8 Before they left the club, Bryant had fallen out of his
9 wheelchair. Austin helped him back in the wheelchair.

10 Let's see. Night auditor at the Days Inn was
11 working. She observed a gentlemen pushing Bryant in the
12 wheelchair and laughing and talked like buddies. Bryant
13 testified he repeatedly told Austin he did not need
14 help. He continued. Bryant stopped his chair. Told
15 Austin he did not want his help, and he should leave him
16 along. Austin then pushed Bryant, causing him to fall
17 and swinging at each other, knocking his chair. Austin
18 then picked Bryant up, put him back in the chair.
19 Bryant attempted to roll away. He grabbed the back of
20 the chair, kept arguing.

21 Bryant claimed he was scared to open the door to
22 the room with Austin standing there because Austin had
23 been pressing him for marijuana and they had been
24 fighting. He attempted to stall opening the door and
25 Austin tried to snatch a pouch from him, causing the

1 contents to fall.

2 Let's see. Bryant testified at the time he saw
3 Austin in the breezeway angry:

4 I am done. I'm seeing red. I'm very angry.

5 I was doing like this. I was doing like this.

6 When I seen him, I started shooting him and I
7 just shot. Shot until shotgun was empty.

8 Died of birdshot.

9 So, the issue at the trial was whether the judge
10 erred by refusing to instruct the jury on the defense
11 because a self-defense instruction was not sufficient to
12 cover the separate and distinct offense -- defense and
13 Bryant testified he was threatened being around his
14 hotel room, and Bryant was entitled to this instruction
15 under the facts of this case.

16 On appeal, Bryant asserts the defense of
17 habitation provides that defending one's home
18 or premises means ending an unwarranted
19 intrusion through the use of reasonably
20 necessary force to eject -- eject the person.
21 That instruction that the same elements
22 required by law to establish self-defense
23 apply to defense of habitation with the
24 exception of duty to retreat is an improper
25 charge as it incorrectly implies the defense

1 of habitation requires the defendant to
2 establish his person or property was in danger
3 of injury or harm for the defense of
4 habitation to apply. A defendant need only
5 establish a trespass has occurred and the
6 chosen means of ejection were reasonable.
7 And the defense of habitation is analogous to
8 self-defense and should be charged when the
9 defendant presents evidence that he was
10 defending himself from imminent attack on his
11 own premises. For the defense of habitation
12 to apply, a defendant need only establish that
13 a trespass has occurred and that his chosen
14 means of ejection were reasonable under the
15 circumstances. Unlike the defense of
16 self-defense, defense of habitation does not
17 require that a defendant reasonably believe he
18 or his property was in imminent danger.
19 Although self-defense and habitation are
20 analogous, they are not identical. When one
21 becomes a trespasser, the law presents the
22 owner of the home to employ such force as
23 reasonable necessary to eject the person.

24 Let's see.

25 (A PAUSE.)

1 THE COURT: There is evidence that when Bryant
2 fired

3 the fatal shot attempting to eject Austin as a
4 trespasser from his home, accordingly the
5 fatal shot, based on his testimony, occurred
6 while Austin was in Bryant's room and Bryant
7 was attempting to eject him as a trespasser.
8 We find such determinations for the jury, as
9 there was evidence produced at trial from
10 which the jury could find Bryant was
11 attempting to eject a trespassing Austin from
12 his home. Self-defense is an insufficient
13 charge. It is insufficient to charge only
14 self-defense when the charge of defense of
15 habitation is warranted.

16 All right. What says the state?

17 MR. SCOTT: It's inapplicable to our case.

18 THE COURT: Okay.

19 MR. SCOTT: There's no evidence of trespass.

20 There's no evidence of any kind of effort to eject a
21 trespasser. It occurs to me this is a self-defense type
22 defense by the defense. I don't think habitation in
23 that respect applies to our facts, Your Honor. I think
24 it's an inappropriate charge.

25 THE COURT: Yes, sir.

1 MR. LUKE SHEALEY: And, and what we're talking
2 about here is a trespass for an intrusion into one's
3 home. And, and what the law through *Bradley* on up to
4 *Bryant* says is that you can use reasonable means to
5 eject or end the intrusion, including deadly force.

6 So, obviously the benefit as distinguished from
7 self-defense is you don't have to show you're under
8 attack. You get the benefit from being in your own
9 home, but it encompasses the idea that deadly force can
10 be used to end the trespass upon someone's property, as
11 our client reasonable believed he was being home
12 invaded. So, it contemplates that there will and can be
13 a death, but it doesn't necessarily mean that you have
14 to say sir, please leave. I would like to tug you --
15 tug you by the ear out the front door. That is not
16 what's required. I think we should err on the side of
17 caution here. I think it is appropriate.

18 THE COURT: I tend to err on the side of caution
19 because I think the juries typically, they correctly
20 view the evidence regardless of the jury charge.

21 MR. SCOTT: In this, this case, Your Honor, you've
22 got one person who's an invitee. No evidence to the
23 contrary. No evidence of forced entry. Testimony was
24 that Eric Griffin would visit the house on an almost
25 daily basis. And of course we know Antonio Dash was a

1 resident who had been living there for one year.

2 Any concern as far as using deadly force to meet a
3 threat is covered in the self-defense instructions. I
4 just find it inapplicable based on the reading or
5 listening to Your Honor read that particular case. It
6 envisions the ejection of a trespasser.

7 This testimony here by the defense is I heard a
8 bang. I think it was a home intrusion. I felt in fear
9 of my life, so I felt the only reasonable means to
10 extinguish the threat was firing blindly into a room. I
11 heard no evidence of any effort to eject. I only heard
12 an effort to extinguish a threat, and I heard no
13 evidence whatsoever of any kind of trespass.

14 MR. LUKE SHEALEY: And I don't think there's any
15 evidence in the record in this case of Mr. Griffin being
16 invited that day to this home, Your Honor.

17 THE COURT: Under your theory, Mr. Shealey, Dash
18 was just collateral damage, or he was being ejected,
19 too?

20 MR. LUKE SHEALEY: Well, our client had a
21 reasonable belief he was being home invaded. His, his
22 ---

23 THE COURT: I understand that.

24 MR. LUKE SHEALEY: Right.

25 THE COURT: My question, was Dash collateral damage

1 under your theory?

2 MR. LUKE SHEALEY: He believed that he had a right
3 to end the intrusion and eject whoever was in there. He
4 was mistaken about both. So, under the law of defense
5 of habitation, as long as he's acting reasonably, it
6 should be a question for the jury. I mean, everybody's
7 collateral damage unfortunately. It's what the -- what
8 law should be given to the jury and what was reasonable
9 by Mr. Barnes that day.

10 THE COURT: I'm going to charge this habitation.
11 Weighing everything I've said that -- all these cases
12 all say that the charge should be based, uniquely based
13 on circumstances of every case if the jury, they could
14 possibly believe the defense's theory. So, I'm going to
15 charge it, let you all ---

16 MR. LUKE SHEALEY: Thank you, Your Honor.

17 THE COURT: Pardon?

18 MR. LUKE SHEALEY: Are you charging from ---

19 THE COURT: I'm charging the standard habitation
20 charge.

21 MR. LUKE SHEALEY: Yes, Your Honor.

22 THE COURT: And let you all argue it back and forth
23 to the jury.

24 Anything else regarding the ---

25 MS. YOUNG: Your Honor, just very briefly? I was

1 tasked with reading over what you sent last night this
2 morning. On page 8, I think it's the first sentence.
3 Mr. Barnes's last name is accidentally left off. It
4 just has his first and middle name. And then the second
5 sentence it says it's a murder charge and it actually
6 has Mr. Barnes listed instead of Antonio Dash. Just the
7 last names got mixed up.

8 THE COURT: Okay. We'll be sure that it's clear.

9 (A PAUSE.)

10 THE COURT: All right, should intent be charged,
11 criminal intent? Y'all have not requested it. Should
12 it be charged?

13 MR. LUKE SHEALEY: Your Honor, I guess forgive our
14 oversight for that. In thinking about that yesterday, I
15 don't -- I defer to you on that. I would say yes. I
16 haven't looked at your charge on that, but I'm sure it's
17 standard. I'm sure I've heard it before.

18 THE COURT: As many cases as you've charged --
19 you've tried, I'm sure you've seen it.

20 MR. LUKE SHEALEY: Yes, Your Honor. I have no, no
21 problem with that. I would agree with it.

22 THE COURT: Says the state.

23 MR. SCOTT: Well, Your Honor, I can't really think
24 of a case I haven't seen intent charged. I guess murder
25 is a general intent crime. Of course, intent is covered

1 in degrees of malice, but I don't see a reason to argue
2 against the charge criminal intent.

3 THE COURT: All right, I'm going to charge intent.

4 Now, regarding this charge or not charging
5 manslaughter, there's been an abundance of testimony by
6 the defendant saying, well, I loved him like a brother.
7 I didn't -- I wouldn't hurt him, et cetera, et cetera,
8 and that he had no malice toward him even, even though
9 he shot him the many times that he did.

10 Yesterday, you all had indicated that you --
11 neither side requested a charge on manslaughter. Sort
12 of like all or nothing, role the dice type of approach.
13 I heard from Mr. Shealey speaking for Mr. Barnes, but
14 this is a matter that I have to hear from Mr. Barnes to
15 be sure that he fully understands that murder is
16 punishable by thirty years to life. Manslaughter is
17 punishable by two years up to thirty years. Of course,
18 not guilty means you go out that back door.

19 So, Mr. Barnes appears to be a quite intelligent
20 young man. Regardless -- certainly if it's a guilty
21 verdict, he will be -- there will be more papers filed
22 on this case beyond this verdict today, including PCRs.
23 So, I want to be sure if he is fully informed and that
24 he's conferred or counsel has conferred with him because
25 it's his case.

1 MR. LUKE SHEALEY: May we confer again with him
2 briefly?

3 THE COURT: Yes, sir.

4 (COUNSELORS CONFER WITH DEFENDANT.)

5 MR. LUKE SHEALEY: Your Honor, we have consulted
6 again with him, and he does still confirm our strategy
7 to not seek voluntary manslaughter. I don't think
8 there's much evidence of that personally, but he, he
9 does not want us to ask for that instruction.

10 THE COURT: Is that correct, Mr. Barnes?

11 DEFENDANT: Yes, sir.

12 THE COURT: Sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Very well.

15 Anything else before the jury comes?

16 MR. SCOTT: Nothing from the state.

17 MR. LUKE SHEALEY: Not from the defense. I assume
18 we'll be opening with the law. Then I'll go, and then
19 the facts.

20 MR. SCOTT: That's not how I understand the --
21 pursuant to *Beatty*, I will argue the facts and the law.
22 Pursuant to *Beatty*, Mr. Shealey will make his case, and
23 then I will have any responding closing argument based
24 on any new issue he raises.

25 MR. LUKE SHEALEY: And I will formally object to

1 Beatty for the record.

2 THE COURT: Object to the Supreme Court? Say what?

3 MR. LUKE SHEALEY: I object to that case. I don't
4 think it's appropriate. I think it burden shifts.

5 THE COURT: I don't think the state is restricted
6 in opening to just talking about the law. He must talk
7 about the facts and argue his case.

8 You can bring the jury.

9 (A PAUSE.)

10 THE COURT: Mr. Bowen, just one more second, Mr.
11 Bowen. Go right back out for just a second.

12 (A PAUSE.)

13 THE COURT: This is -- this is further on this
14 issue of self-defense and defense of habitation. The
15 cases that I've reviewed indicate that where there is a
16 claim of defense of habitation, that the duty of retreat
17 does not apply because you -- if you have a right to
18 defend your habitation, then the jury shouldn't say you
19 have an obligation to retreat.

20 MR. LUKE SHEALEY: And that's correct, Your Honor,
21 and also you also have that charge in your self-defense
22 because he's in his own home even as to self-defense.

23 THE COURT: But it also includes, as we discussed
24 yesterday, there is no duty to retreat. But do you all
25 want me to mention anything about duty of retreat as an

1 element or just ignore that part?

2 MR. LUKE SHEALEY: I think it needs to be made
3 clear there is no duty to retreat in one's own home even
4 as to defense of habitation just in case there's any
5 confusion.

6 THE COURT: Mr. Scott.

7 MR. SCOTT: Judge, I'm not going to argue with the
8 court. I know better than that, but I find habitation
9 completely inapplicable. We're confusing the jury now,
10 blurring lines between self-defense.

11 THE COURT: The jury will be told about the fact
12 that I have charged them on many things is not an
13 indication of what their finding should be or what they
14 should believe to be the facts.

15 MR. SCOTT: I, I find that confusion abounds
16 whenever we start blending all these different legal
17 theories that I don't find applicable. However, I'm
18 going to just count on them using their common sense and
19 judging the facts, and hopefully they go our way but if
20 they don't, so be it.

21 THE COURT: On the question or whether not as part
22 of the self-defense charge the court should tell the
23 jury that, you know, given the various elements of
24 self-defense, the duty of retreat, it says if a
25 defendant was on his own premises, defendant had no duty

1 to retreat ---

2 MR. SCOTT: When we did ---

3 THE COURT: --- before acting in self-defense, is
4 that given where defense of habitation is given?

5 MR. SCOTT: Your Honor, we had the Castle doctrine
6 hearing back in March, and I remember at that point had
7 no duty to retreat in that particular aspect of the
8 case.

9 Honestly, candidly, I don't know. I haven't
10 studied the law of habitation. It was brought up this
11 morning while I was preparing my closing argument. I
12 defer to the court.

13 MR. LUKE SHEALEY: That is the law of defense of
14 habitation. There is no duty to retreat.

15 THE COURT: You said that's the law of defense of
16 habitation. My question is is it part of the law of
17 self-defense if you charge defense of habitation?

18 MR. LUKE SHEALEY: It does because we know
19 self-defense can happen outside the home, but
20 self-defense can also happen inside the home. Let's say
21 amongst roommates fighting at a card table or game. In
22 that scenario, via *State v. Grantham* you would have no
23 duty to retreat in your own home even against a
24 co-occupant. That's why you gave -- my understanding
25 was you were giving that charge, and it was produced to

1 us as part of your instructions yesterday. So, yes, it
2 applied. You have no duty to retreat for self-defense
3 or defense of habitation if you're in your own home.

4 THE COURT: What's his position? You really have
5 no position on that?

6 MR. SCOTT: Well, my position is ---

7 THE COURT: That none of them apply.

8 MR. SCOTT: Well, that is of course, and as I said,
9 Mr. Griffin, the evidence that we heard was that he was
10 over there almost every day. The evidence we heard was
11 that he knocked on the door. The evidence we saw was
12 there was no damage to the door. Of course, Mr. Dash
13 lived there. Self-defense, there's no other probable or
14 reasonable means to avoid the conflict. I just think
15 it's almost -- under this theory, every time there's a
16 self-defense claim that happens in someone's residence,
17 they're going to get a habitation charge, and I just
18 don't find a path.

19 THE COURT: I'm not -- I'm not making any eternal
20 precedent here. I'm just dealing with the peculiar
21 facts and claims of this case. Mr. Barnes said he's
22 been reading a lot of law lately, so.

23 Well, I'm going to give the standard self-defense,
24 which includes no duty to retreat.

25 MR. SCOTT: Okay, and no other probable -- or

1 likely means to avoid the...

2 THE COURT: Well, I'll give the -- give the charge
3 that I sent to you all.

4 MR. SCOTT: Okay. Thank you.

5 THE COURT: All right, they can come now. Thank
6 you.

7 (THE JURY ENTERS AT 10:13 AM.)

8 THE COURT: Good morning.

9 JURY [EN MASSE] Good morning.

10 THE COURT: So, ladies and gentlemen, you've heard
11 all of the testimony, received all of the evidence.
12 It's time for closing arguments. First by the state.

13 Mr. Scott.

14 MR. SCOTT: Thank you, Your Honor. May it please
15 the court?

16 Antonio Dash and Eric Griffin should not be dead.
17 They were mowed down in the prime of their lives.
18 You've not heard one reasonable, justifiable, logical
19 explanation for them to have been taken from their loved
20 ones. The only mistake they made was associating with
21 Antonio Barnes. That's the only thing they did wrong
22 that day, but they did not deserve to die, certainly not
23 this way.

24 We will follow the evidence. On November 7, 2019,
25 Eric Griffin was employed at a hotel, and you heard

1 about that. On November 7, 2019, Antonio Dash was
2 employed at a restaurant. On November 7, 2019, Antonio
3 Barnes's sole occupation was a weed dealer.

4 On November 7, 2019, Eric Griffin had plans. He
5 had the day off work. He was going to drop his mother
6 off at work, Wanda, as he normally did. He was going to
7 drop the baby off at the babysitter's, and then he and
8 Ieasha Washington, his girlfriend, were going to go do
9 some furniture shopping.

10 Antonio Dash was at the apartment, up early getting
11 ready for work as usual. Antonio Dash at the time had
12 been living in that particular apartment, 14-G, at the
13 Willow Run Apartments for about a year. He, Sam Thomas,
14 and Antonio Barnes all lived together there. You heard
15 about that.

16 Sam Thomas would have normally been home that
17 morning. However, Sam Thomas gone to the doctor's
18 office. It was an appointment that he didn't share with
19 Mr. Barnes or anybody else because it was of a personal
20 nature, so Mr. Barnes would not have known that he would
21 be gone that morning.

22 Eric Griffith -- Griffin, rather, sat in the front
23 passenger's seat of Ieasha's car. Ieasha drove. Wanda
24 was in the backseat as they dropped Bailey off, the
25 one-year-old daughter, over here at the Hillandale

1 Apartments. It was shortly before 9 o'clock. Hardly a
2 cloud in the sky. Sun was out. Beautiful February
3 morning.

4 As they were leaving Hillandale, rather
5 unexpectedly Mr. Griffin asked Ieasha pull in real
6 quick. Let me talk to my -- let me talk to my friend.
7 Talking about Antonio Barnes. This would -- was
8 unexpected but would not necessarily have been out of
9 the ordinary. Ieasha had just dropped him off there two
10 days earlier, and there was some testimony from, I
11 think, Sam Thomas that there were times he was over
12 there every day. He, he was friends with those guys.
13 He -- it would need to be a quick stop, though, because
14 Wanda needed to be at work at 9:30, and so again this is
15 just before 9.

16 With those car, car windows down, Ieasha and Wanda
17 watched Eric go up the stairs, turn to the left, and go
18 to 14-G. That was the last time they would ever see
19 Eric Griffin alive. They heard him knock on the door,
20 and that would be the last time anybody would ever hear
21 from Eric Griffin outside of that apartment.

22 About seven minutes went by. Ieasha and Wanda are
23 out in the car and maybe getting a little antsy because,
24 again, she's got to be at work at 9:30. We know they
25 didn't hear anything because they testified to that

1 until they did hear something, something. Gunshots,
2 pause, and then more gunshots. Ieasha thought was that
3 gunshots or was it not? You probably don't want to
4 believe that gunshots are coming from the apartment that
5 your boyfriend just went into.

6 She called Eric 8:54 AM. We know this because her
7 phone shows that. 8:54, she's calling Eric. Of course,
8 he doesn't answer and that's when Eric Griffin and
9 Antonio Dash were shot that led to their deaths, 8:54
10 February 7, 2019, apartment 14-G at the Willow Run
11 Apartments. The sun was bright; there was hardly a
12 cloud in the sky. Gunshots interrupted what had been a
13 beautiful morning.

14 When Eric didn't answer, of course we heard Ieasha
15 and Wanda climbed the stairs to the apartment. They
16 knocked and knocked. There was no answer. They said
17 about two minutes went by. Both of them said that, two
18 minutes. That's a long time for somebody to answer a
19 door when you're knocking on it.

20 Antonio Barnes finally comes to the door. He opens
21 it just enough to slide out and closes it behind him,
22 walks straight past Wanda, Eric Griffin's mother, and he
23 confronts Ieasha. Why are -- why are they in here
24 fighting is what he's asking her, which is confusing to
25 her. Who is they? Eric and them are fighting. Of

1 course, she doesn't know who they are. He's a little
2 bit surprised, he says, because he didn't expect anybody
3 to be out there, but now he's got Ieasha and Wanda who
4 are identifying him coming out of the apartment.

5 He stammering about for little bit. He certainly
6 doesn't indicate that he's just killed the two. He's
7 just saying why are they fighting, Eric and them. It
8 wasn't until Wanda finally grows impatient and goes
9 inside the apartment that the truth is known. Eric
10 Griffin was dead. So was Antonio Dash. There they lie
11 in that enormous pool of blood.

12 (WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED
13 FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

14 MR. SCOTT: Officers respond. A lot of officers
15 respond. There is not a lot of information at first.
16 Of course they find the two bodies, and they quickly
17 realize that they died of gunshot wounds, but they don't
18 have the identity of the shooter. Of course Ieasha and
19 Wanda are hysterical. They're in shock and of course
20 Barnes hadn't told them anything of what had happened.

21 He's milling around the parking lot, a lot at
22 first. He then begins drifting away from the scene as
23 more and more officers show up and they're trying to
24 piece everything together.

25 Here we have Mr. Barnes. You see the officer go in

1 about 9:02. We talked about 8:54 is when the gunshots
2 were first heard, okay? Now, eight minutes later,
3 here's Mr. Barnes out in the parking lot, okay? When
4 the officers get there, where is the shooter? Where is
5 the shooter? You're not seeing Mr. Barnes right here,
6 and I've got an explanation for you. You know, he's,
7 he's milling about, weighing his options, trying to
8 figure out what exactly the story needs to be.

9 9:02, he's talking to people. 9:04 and he's
10 smoking a cigarette. 9:05, almost 9:06, and then he's
11 kind of hightailing it away from the scene with other
12 people, 9:06. Again, this is Mr. Barnes at 9:06, okay?
13 So, this is him about ten minutes after he kills two
14 people, and he's out there hobnobbing around. He's
15 smoking cigarettes. He's doing things in cars.
16 Main-Main, the first time we heard about Main-Main was
17 yesterday, but apparently that's Main-Main's car he's
18 leaning into at 9:06, almost 9:07.

19 He's talking with people. He's going to other
20 people's homes. He's driving around with people. He's
21 going to the store, all the while trying to figure what
22 his story is going to be. Again, he knows that
23 apartment is going to be linked to him, and he knows
24 that Wanda and Ieasha saw him come out. So, he's got to
25 figure out what the story is going to be. He can't say

1 I didn't do it, right? His name is on the lease on that
2 apartment. Wanda and Ieasha see him come out, the only
3 living person in the apartment, when they go up those
4 stairs.

5 He's formulating what his version of events is
6 going to be. So, when Javontae Davis sees him and asked
7 what happened, he says I don't know. I was asleep. I
8 woke up, and they was dead. Okay, that's the first
9 story.

10 But then he's got to tinker with it a little bit
11 more because when he talks with Kevin Archer -- Archie,
12 he tells him I don't know what happened. Archie presses
13 him. Come on, man. You know. You were in there,
14 right? He said, well, they tried to rob me, and he
15 says, well, that doesn't make sense. One of them's your
16 homeboy. The other's your roommate. He says, okay,
17 they were on the ground fighting, and I shot them. So,
18 you see kind of, like, the evolution of this story as
19 he's walking around, as he's talking with other people,
20 as he's thinking about the case.

21 At 10:47 AM, about two hours after killing these
22 two, he finally tells the police he shot Antonio Dash
23 and Eric Griffin. All right, so this is about two hours
24 of wandering the parking lot, observing what's going on
25 with law enforcement, then leaving and talking with God

1 knows who and going God knows where. He finally says it
2 was me, 10:47.

3 Of course, he thought other people had already gone
4 to the police. He was concerned, you know, when he goes
5 in there. Y'all have the interview. He thought
6 Shakihla Smalls has already gone and talked to the
7 police. So, this is his version of trying to get ahead
8 of the story, or his attempt to.

9 He goes in. He says he saw two people in his
10 living room fighting, and he shot them. All right, he
11 says he thought Sam was there, too. None of this made
12 any sense at all. Antonio Dash and Eric Griffin's
13 bodies were taken for an autopsy. Antonio Barnes was
14 arrested. We will follow the evidence.

15 This is Antonio Dash's left arm. Antonio Dash had
16 every right in the world to be in that apartment.
17 Antonio Dash had lived there a year. Antonio Dash was
18 killed in his living room at almost 9 AM February 7,
19 2019. Antonio Dash was shot between 6 inches and 3 and
20 a half feet from the gunman. Antonio Dash had four
21 bullet holes in his left arm.

22 You can see the stippling, and you heard Dr. Monroe
23 said that this was a close range shooting. Stippling
24 occurs 6 inches to 3 and a half feet away, and that was
25 how Antonio Dash met his end, I guess. Close range by

1 somebody he thought was a friend.

2 This is Antonio Dash's left arm. You see the
3 bullets were such close range and it was such a high
4 caliber cartridge that it went cleanly through his left
5 arm. This is Antonio Dash's right arm. This is Antonio
6 Dash's right scalp, okay? He was shot in his head.

7 Bring those dummies over here, y'all.

8 (A PAUSE.)

9 MR. SCOTT: Antonio was shot in his right scalp,
10 and for good measure, Antonio Barnes went over to the
11 other side of him and shot him in his left temple for
12 good measure.

13 I want y'all to look at these gunshot wounds.
14 Rather thorough, wouldn't you say? I mean, every part
15 of these men's bodies from the waist up are, are riddled
16 with bullets. It's not from one side. It's from all
17 angles.

18 You saw the autopsy pictures, you guys. You got,
19 on his right arm, you've got an entry wound to the
20 elbow, okay? You got an exit out at the right elbow.
21 Again, you've got this gunshot wound to the right scalp.
22 You've got a gunshot wound to the left temple. This is
23 where he's peppered on his left arm. All these on the
24 outside of his left arm are entry wounds; all of these
25 you see on the inside are exit wounds.

1 Mr. Barnes was thorough. We give him that, and he
2 does carry a gun that holds up to eighteen rounds at a
3 time. This is malice, ladies and gentlemen. This is
4 what malice looks like, this shooting somebody you claim
5 to be your friend in both sides of the head.

6 Eric Griffin had a similar fate. Of course, you've
7 got him being shot in the back twice. You see these on
8 our mannequin here. You remember the pathologist, Dr.
9 Monroe, showing you generally where these wounds were.
10 The mannequin is helpful because you get to see instead
11 of picture by picture of the wounds how they all look in
12 conjunction with one another and their general positions
13 on the body.

14 It's noteworthy and it's compelling because the man
15 was shot twice in the back. He was shot in his left
16 elbow. That's an entry and exit. He was shot in his
17 right shoulder. And the coup de grace, of course, is
18 going up to the man, putting that gun against the back
19 of his head, pulling the trigger. That's the kill shot.

20 You heard the pathologist, who's done thousands and
21 thousands of these autopsies. He said you know what I
22 noticed, one of the first things I noticed about that
23 particular wound is the contact nature. He explained
24 this grayish color of the skin around the bullet hole.
25 He describes that gas is being pushed in and mushrooming

1 out the actual wound. You see the hair's been pushed
2 into the wound, it was such close range. He described
3 these marks here where the chamber slaps against the gun
4 and then the barrel was pressed against the head,
5 causing those wounds.

6 Let's call this murder what it is. This is an
7 execution. That's what this is. This is not, oops.
8 Sorry, Ms. Griffin. Sorry, Ms. Dash. It was a goof.
9 It was an accident because isn't that what they're
10 telling you? Isn't that what they're saying to you
11 guys? Anybody could do this, right, Mr. Barnes? Any
12 reasonable person would do this. That's the story.

13 We, we're going to follow all the evidence, right?
14 CSI went. They kind of did a sketch of some of their
15 findings, and it's helpful for us because we are
16 interested in following the evidence.

17 And you heard from their CSI investigator from the
18 police department that this was Mr. Barnes's bedroom,
19 and the infamous hall is located right down the middle,
20 okay, and the front door is right here, the door he was
21 so worried that somebody had busted open, okay? You
22 can't go down this hall without seeing that door.

23 At any rate, his story is this. I was in my bed.
24 I knew with 100 percent certainty that my roommates
25 weren't home. Well, if you listen to his interview with

1 the police, he says I thought Sam Thomas was going to be
2 home at the time, okay? He somehow knew with 100
3 percent certainty at the trial that nobody was going to
4 be home, but his story is there's a boom, bang. And
5 he's a dope dealer, so the first thing he says comes to
6 his mind, because he has a lot of traffic in there, was
7 that somebody had to be breaking into his house, okay,
8 and he heard footsteps in the apartment, okay? He
9 didn't say he heard multiple people. He heard
10 footsteps. Is it so hard to imagine that was Sam Thomas
11 out there? I don't know. Not to him. He just knew it
12 was home invaders. He heard the TV fall.

13 And he didn't call the police, and he didn't lock
14 his bedroom door. He just ran down the hall and started
15 shooting indiscriminately. That's his story, and we'll
16 talk a little bit more about that later.

17 He did a demonstration yesterday. I hope you guys
18 were able to see the demonstration, but his story was as
19 he goes down this hall -- of course, this is where
20 Antonio Dash lives. He said didn't bother to look in
21 there to see if he was in there. Didn't even bother.
22 He passed by the open door of Sam Thomas. Didn't bother
23 to look in there to see if Sam was in there. He just
24 comes around and shoot, shoot, shoot, shoot, shoots.

25 And I say, okay, is that reasonable? He said yeah,

1 any reasonable person would do that. That -- that's
2 what you do if you hear something from your bedroom.
3 You just start shooting. Even though you live in a
4 house with two other people, that's what you do. I said
5 is that -- is that right? That's what you think is
6 reasonable? He said yeah. To me, that's very
7 reasonable. I say All right. Okay. Well, if that's
8 what you believe, you know, and I say, well, you know,
9 what is your interpretation of how certain you need to
10 be before you start shooting at people and killing them?
11 I said do you need to be a thousand percent certain of
12 your danger? He said no, just a little bit. I said,
13 well, how scared do you have to be before you start
14 shooting at people who are your friends and your
15 roommates? He said just a little bit scared is fine.

16 And that is his understanding, but that is not a
17 reasonable, prudent person's interpretation. God, I
18 hope not. I really hope not, and I hope people don't go
19 around with the understanding that if you live in a home
20 with people and you hear a sound up front, you should
21 just run up there and start shooting because it's
22 terrifying, but I guess some people may believe that. I
23 don't really think so because, you know, again I'll say
24 okay, if that's what you believe, that's fine, whatever.

25 But tell me this. How did Mr. Griffin come to be

1 executed with a .9 millimeter pressed up against the
2 back of his head? And he says oh. I forgot doing that.
3 You remember everything else in detail. You remember
4 hearing the boom, and then you remember waiting the two
5 minutes, and remember a TV falling. And even before
6 that, two days before you remember Katerra being at your
7 house. You remember Sam Thomas being at your house.
8 You remember Eric being there. You remember Sam Thomas
9 getting up to brush his teeth. You remember Katerra
10 putting her shirt over a gun. You remember your brother
11 called you at 2:30.

12 You remember all these things, but when Mr. Scott
13 asked you about how Mr. Griffin came to die that way
14 with a gun pressed against the back of his head, I can't
15 remember. I said please tell this jury how you did it.
16 Explain to them. You've taken the stand. You've
17 explained a lot of things. Now explain to these people,
18 these twelve people, these fourteen people. He looked
19 at you and said I don't remember that.

20 I can ask the questions as many times -- and I
21 tried to. I tried to keep asking until finally it was
22 clear to me I needed to move on because he didn't really
23 want to give y'all that answer. But we, we're going to
24 follow the evidence. That's what we do.

25 His, his story doesn't make sense. Never will.

1 Never has made any sense, and it never will. We could
2 -- we could give him another year to think about it and
3 try to see if he can ---

4 MR. LUKE SHEALEY: Objection, Your Honor.

5 MR. SCOTT: What's the objection?

6 MR. LUKE SHEALEY: Objection, Your Honor, under
7 Sixth Amendment. Impugn my client's right to present a
8 complete and full defense. He is mischaracterizing the
9 evidence. Talking about giving him another year to
10 think about it.

11 THE COURT: Objection is overruled.

12 MR. SCOTT: We could give him another year to think
13 about it. He could try his darndest to come up with a
14 version of evidence that somehow fit this, somehow make
15 it justifiable, but he's never going to be able to do
16 it. He spent two hours that morning trying to come up
17 with something. He tried to sell it to y'all yesterday,
18 a version of it that he's modified to some degree, and
19 it still doesn't make any sense because we're going to
20 follow the evidence, but we're also going to call this
21 murder, these two murders, what they are, and they're
22 executions.

23 People with roommates do not run into rooms during
24 the daylight blindly firing their guns. If they do,
25 that is a level of recklessness and total disregard for

1 human life that is really off the charts. People don't
2 do that. You know, you don't hear a unfamiliar noise
3 living with two people, okay?

4 Let's suppose you have a family. You live in a
5 home. You hear a noise during the morning time in the
6 front that you don't recognize. Okay, you just run up
7 there and start shooting. You kill your family members
8 and then say oh. Oops. I thought I was getting my
9 house broken into. Never mind the door is closed. It's
10 not -- it's not broken in. You know, I thought somebody
11 was breaking into my house, but as I come down this
12 hall, it's very clear that my door is intact.

13 You know, no other probable means of -- you're
14 going to hear about self-defense, that he had no other
15 means to avoid this outcome. I said why not lock your
16 door, call the police? You got a pistol. Just sit
17 there and aim it at the door if you're so worried about
18 somebody coming because he never testified that anybody
19 was coming down the hallway towards him. It was all in
20 the front of the house. Could've done that, right?
21 That would have been a probable, reasonable way to
22 handle that.

23 Perhaps he could've opened this door, used this as
24 cover, and aimed down the hallway waiting for somebody
25 to approach him. That would have been reasonable.

1 Perhaps he could have said Sam, is that you and Tony?
2 Is that you? That would have been reasonable.

3 Tell you what is not reasonable. Running down the
4 hallway and blindly shooting, knowing you have two
5 roommates. Why not even just go into the kitchen and
6 look over here to see what going on? There's, there's
7 -- there is infinite, infinite other ways to have
8 handled this, but he's saying this is the only way it
9 could have ever gone down.

10 So, what his story is that he's come up with and
11 he's tinkered with to some degree because he tried three
12 different stories with Kevin Archie, tried a different
13 one with Javontae. You'll hear his story he was telling
14 the officers in the -- in the manager's office on the
15 day of the incident. The day of the incident he says I
16 see two people on the ground. I, I just start shooting,
17 think it's a home invasion. Yesterday it was I, I just
18 was blindly shooting around the corner until I got over
19 them.

20 He did a 360 around these people, by the way.

21 Going back here, another thing I want y'all to look
22 at, his story is that this corner is where he's reaching
23 around firing, right? What do you see? What don't you
24 see? I asked were there any shell casings in the
25 hallway? I asked were there any shell casings over here

1 in the kitchen? These are where the shell casings were
2 located, okay? Two by the door and the rest of them
3 right around the victims, okay. And we got those
4 pictures where they're all in between their legs and all
5 around them. Of course, we have the close contact
6 shooting. Some of it here on the far side of the
7 victims over here, but there are absolutely none in this
8 vicinity where he's saying all the shooting takes place.
9 We were going to follow the evidence, okay?

10 Self-defense, for a valid self-defense -- and the
11 judge is going to explain this to you -- first of all,
12 Antonio Barnes must be without fault in bringing on the
13 difficulty. He can't have any fault in bringing on this
14 difficulty and shooting these guys.

15 Second, Antonio Barnes must have been in actual
16 imminent danger of losing his life or sustaining serious
17 bodily injury, or he must have actually believed he was
18 in such danger, okay? There's been no evidence
19 whatsoever that he was in any imminent danger.

20 Again, Eric Griffin was a buddy of his, supposed,
21 supposed. The one he thought had stolen a gun that he
22 shared with roommates. Antonio Dash was a friend
23 supposedly, but I don't do this kind of stuff to my
24 friends. Anyway, he was never in any imminent danger
25 from these two guys.

1 Their theory is the two of them were fighting one
2 another. How is he in any danger, and I was wondering.
3 What kind of home invasion happens when the two guys
4 break in and start fighting one another? How are you in
5 any danger if they're on the floor wrestling? I'm sure
6 that occurred to you, too. But anyway, he's not in any
7 imminent danger.

8 If he believed he was in imminent, here, here,
9 here's what the issue is. He's saying I believed I was
10 in imminent danger, okay, but he can't show that he was.
11 I believed I was. If that's his theory, then it must be
12 shown that a reasonably prudent person of ordinary
13 courage would have had the same belief. So, that's what
14 he's trying to sell you guys. Anybody, any of you
15 would've done the same thing. You know, if you hear
16 something in the front room, every reasonable person
17 does this. Every prudent person does this. They go run
18 in the room and blindly shoot even if it could have been
19 their roommates. That's just what reasonable people do,
20 and that's what he's trying to sell y'all.

21 Finally, Antonio Barnes for a self-defense, for a
22 valid self-defense -- and this is his defense. It was
23 self-defense, guys. Never mind I made a whoopsie. It
24 was self-defense. Any reasonable person would do it.
25 Finally, if you were to believe his story, you also must

1 find that -- or he must be shown to have had no other
2 probable means of avoiding the danger. In other words,
3 this is about his only option. My only option was to
4 kill these people by shooting blindly into the room.
5 That's the law. That's what the judge is going to read
6 to you all, but that's his story. I mean, that's the
7 gist of his story. Any reasonable person would do this.

8 Let's call it what it is. It is an execution-style
9 murder. His story doesn't make sense because that ain't
10 how it happened. He is in that room. He's shooting
11 around them, and he's going all the way 360 around these
12 guys as he's doing it. And again the final shot, the
13 one that I can't really remember. I remember all the
14 rest of them, but this right here where I pressed the
15 gun to the back of Eric's head and fired, I can't
16 remember that.

17 But that's why even if you, you know, you give any
18 kind of credence to his story, that -- that's not what
19 happened. He didn't blindly shoot into that room. He
20 knew what he was doing. He was in that room. The
21 casings show he was in that room; the nature of the
22 victims' wounds and the placement of their wounds show
23 he was in that room. He was certainly with them while
24 he was shooting. That's how you get gunshots all around
25 your body like that, right? You don't just stand on one

1 side and fire at them.

2 We're going to follow the evidence, and we're going
3 to use common sense. We're not going to take Mr.
4 Barnes's word for it.

5 State must prove beyond a reasonable doubt that the
6 defendant killed another person -- in this case, Mr.
7 Barnes killed two people, right, we know that -- with
8 malice aforethought. What is malice aforethought? How
9 can malice be shown? There's -- there are different
10 ways. Expressed malice. Sometimes we get these kind of
11 cases, not often. Expressed malice is before you pull
12 the trigger, you say I'm going to kill you, Eric. He is
13 stating expressly what his intent is: to kill. And more
14 often we have what's called an implied malice, and they
15 do not mean different kinds of malice. They merely talk
16 about the manner in which malice may be shown to exist
17 either by direct evidence or by inference from facts and
18 circumstances which are proved. Again, expressed malice
19 is shown when a person speaks words which express hatred
20 or ill will for another person, or when the person
21 prepared beforehand to do the act which was later
22 accomplished.

23 We're not talking about this expressed malice in
24 this case. We're talking about inferred malice.

25 Inferred malice may be shown ---

1 MR. LUKE SHEALEY: Objection, Your Honor. He's
2 publishing to the jury a malice charge that you
3 expressly did not include in your instructions.

4 THE COURT: The court will charge the jury on the
5 law.

6 MR. SCOTT: Sorry.

7 Malice may be inferred from conduct showing a total
8 disregard for human life. That's the one they want to
9 kind of just glaze over, okay? Listen to the judge's
10 charges. Total disregard for human life, he's going to
11 tell you that, okay, because that's why -- you know,
12 when Assembly is simply blocked off and I'm trying to
13 get to work, you know, and I say I don't care if it's
14 blocked off and there's a parade, I'm going down
15 Assembly anyway and I'm driving 60 miles an hour because
16 I'm in a hurry to get to work and, oops, I just hit and
17 killed two people who were in the parade. Didn't mean
18 to. Well, really, wasn't my behavior just a total and
19 reckless disregard for ---

20 MR. LUKE SHEALEY: Objection, Your Honor. That's
21 not what malice is. That's ---

22 THE COURT: Objection is overruled.

23 MR. SCOTT: I'm telling you, okay? That's why
24 you're going to listen to the judge.

25 That would be a total and reckless disregard for

1 human life. Even if you were to believe his story, that
2 is a total and reckless disregard for human life.

3 But I submit to you we're dealing with something
4 much more sinister. We're dealing with cold blooded,
5 cold, black hearted, evil, execution-style murder. So,
6 when you look at the evidence, that's malice. That's
7 hatred. That's ill will. That's an execution murder.
8 Or if you believe his story about blindly shooting,
9 that's still malice because it's a total disregard for
10 the value of human life.

11 What I'm telling you now is even if you believe his
12 story and you ignore the evidence, it is still malice.
13 It is a total reckless disregard for the value of human
14 life. There's no other way to put it when you go
15 shooting into crowds of people or into two people who
16 are in your living room.

17 I've got to prove my case beyond a reasonable
18 doubt, okay? I don't know what this guy is going to
19 tell you reasonable doubt is, but ---

20 MR. LUKE SHEALEY: Objection, Your Honor. Attack
21 on counsel. Sixth Amendment. I would cite *Fortune v.*
22 *State*.

23 THE COURT: The reference is to parties by name and
24 not this guy. Go ahead.

25 MR. LUKE SHEALEY: 428 SE 545.

1 MR. SCOTT: I don't know what Mr. Shealey is going
2 to tell you reasonable doubt is, but here's the way I
3 interpret reasonable doubt. And of course the judge is
4 going to give you instructions, but I submit to you this
5 is essentially what he's going to tell you beyond a
6 reasonable doubt is.

7 What does it mean? Does it mean beyond all doubt?
8 No, and the judge is going to tell you this. It means
9 if you have a doubt that is reasonable based on logic,
10 you should find him not guilty. If you think his story
11 is reasonable, you think reasonable people would behave
12 the way he did, then you should find him not guilty.
13 That's what the law is. I can't make it up and, you
14 know, I can't misstate it because he's going to tell you
15 what it is. If I do have anything different than what
16 he says, always obey the judge's jury charge. But I
17 submit to you this is essentially what he's going to
18 tell you because this is well settled law.

19 But if your doubt is not reasonable, or your doubt
20 is not really logical, you should find the defendant
21 guilty, okay? If based on the facts you are firmly
22 convinced of his guilt, you must find him guilty.
23 That's what the law is.

24 Does that mean you have to be 100 percent certain
25 of everything involved in the case? No, and the judge

1 is going to tell you there are very few things in this
2 world we know with absolute certainty. In criminal
3 cases, the law does not require proof that overcomes
4 every possible doubt. If based on your consideration of
5 the evidence you are firmly convinced -- I believe the
6 judge will use that term twice, firmly convinced, in his
7 instructions -- you must find him guilty. That's what
8 reasonable doubt is.

9 If you are firmly convinced that he killed these
10 people in a reckless disregard for human life, or he
11 killed these people in a cold-blooded manner, that
12 execution-style shooting we talk about, he's guilty of
13 murder.

14 Used a weapon to do it. These are violent crimes.
15 So, he's also been indicted for possession of a weapon
16 during the commission of a violent crime. So, all that
17 is is did he use a gun to kill these two people? He
18 said yeah, I did. So, that -- that's what that charge
19 is. You must find him guilty if you are firmly
20 convinced that he used that gun to kill these two
21 people. Malice aforethought, you must find him guilty
22 of that charge, too.

23 Why did he -- why did the execution murder of these
24 two men happen? Why did it happen? Why are those
25 families about to spend the fourth Christmas without

1 their loved ones? Why do we have any of these killings
2 we have to hear about day in and day out? It's rarely
3 any kind of justifiable good reason that we feel good
4 about. I mean, is it an odd fascination with guns? Is
5 it the glorification of violence? Is it anger? Is it
6 for clout? Is it for views? Is it for likes? Does it
7 make a good lyric later on? Something to brag about
8 maybe? Is it just a devaluation of other people's right
9 to live? Is it utter disregard for the really priceless
10 value of human life?

11 Something seems to me that we've gotten away from a
12 little bit. You know, we only get one shot here, and
13 life is just so precious, but it just doesn't seem that
14 way to some people where they can't grasp the priceless
15 value of a human life. It's been devalued. Is it all
16 of the above sometimes? I told you there is no good,
17 logical reason Antonio Dash and Eric Griffin aren't here
18 today. They did not deserve to die; they did not
19 deserve to die this way.

20 We're going to ask you to do what Paul, my
21 co-counsel, did, he asked you to do in his opening
22 statement, and I want you to use common sense. And I
23 want you to ask yourself if I'm being logical and I'm
24 using common sense, what makes sense and what doesn't
25 make sense? What's reasonable and what's unreasonable?

1 And I do ask you to think about everything you've heard
2 and everything you've seen. And I ask you to render the
3 only verdict that speaks the truth in this case and fits
4 the evidence. I ask you to find Mr. Barnes guilty of
5 what he is guilty of, and that is murdering these two
6 young men. Cut them down in the prime of their lives.

7 I ask you at the end of the closure of this case to
8 deliberate. Look at the evidence. Talk amongst
9 yourselves. What makes sense? What doesn't? The only
10 verdict that speaks the truth is a verdict of guilty:
11 two counts of murder, one for Eric Griffin, one for
12 Antonio Dash, and then the accompanying charge, the
13 possession of a weapon during the commission of a
14 violent crime. Thank you.

15 THE COURT: Ladies and gentlemen, I'm going to have
16 you go to the jury room for a short break. Please do
17 not discuss the case.

18 (THE JURY EXITS AT 10:57 AM.)

19 THE COURT: Take about five minutes.

20 (OFF THE RECORD.)

21 THE COURT: Bring the jury.

22 (THE JURY ENTERS AT 11:07 AM.)

23 THE COURT: Mr. Shealey.

24 MR. LUKE SHEALEY: Thank you, Your Honor. May it
25 please the court?

1 Boom. What's that? What's going on? My roommates
2 are not here. I know they're at work. That's what they
3 always do. What's that rumble? Were those footsteps?
4 Crash. That's my TV.

5 I live in Willow Run Apartments. My roommates were
6 robbed not two weeks ago. I'm being home invaded.
7 People come in here trying to take my stuff, trying to
8 kill me. What do I do? What do I do? Do I stay in
9 this bed? Do I let them get back here? Is it fight or
10 flight? I'm scared. I'm not going to stay in my bed
11 and get killed.

12 That was my, as best as I could, rendition of what
13 was going on in Tony's mind the morning of this
14 incident.

15 We've heard a lot of evidence in this case. We've
16 got a lot of facts. At the end, the judge is going to
17 tell you what the law is. It's your job to apply the
18 law to the facts as you've heard them.

19 This is a tragedy; this is a tragedy. No one is
20 disputing that. Two young men died that day, a best
21 friend of Tony and a good friend. Nothing that you
22 twelve jurors do today can ever bring them back.
23 Nothing. But we cannot turn a tragedy into a travesty
24 by misapplying the facts in this case by not
25 understanding what was going on in Tony's mind.

1 One of my favorite movies is *Twelve Angry Men*.
2 It's a 1950s black-and-white classic starring Henry
3 Fonda. He's the star of the show, of course, and it's
4 all about the deliberation process. You have twelve
5 jurors, and the start of the movie is they're back in
6 the deliberation room. And, of course, back in the
7 '50s, they're all white men, right, and they're all
8 sitting there and it's a murder case, and they've been
9 whipped up and they're angry. And as soon as they get
10 back in the room, one of them raises their hand. Let's
11 take a vote. Guilty, right?

12 And Henry Fonda, of course being the hero, says no.
13 Our job is to apply the facts to the law. We need to
14 deliberate. That is our duty as jurors. We have been
15 tasked with this enormous responsibility. We are going
16 to do this, this. Come over here, guys. Look at this
17 evidence. Remember what we heard from that witness
18 stand?

19 And, of course, at the end of the day he prevails.
20 He convinces them to do their duty. He encourages them
21 to not decide this case based on passion or their own
22 internal bias, their prejudices, but to deliberate and
23 render a true verdict in this case.

24 I'm going to ask you to do the same. I have some
25 concerns that there are attempts to bring you down to a

1 sinkhole of thinking about executions, of thinking about
2 drug dealing that had nothing to do with what happened
3 in that living room, to thinking about a young Black man
4 who happens to own a lawful firearm, and maybe he
5 owned two more previously. Nothing to do with this case
6 except to say Black young men shouldn't own guns, Black
7 young men shouldn't smoke weed and sell a little. That
8 has nothing to do with this case. That is the prejudice
9 that I'm asking you, that is the sinkhole that I'm
10 asking you to avoid going down. Facts from this stand
11 as applied to the law that His Honor gives you, I'm
12 counting on you. I want to help you get through this.

13 The Supreme Court says that Tony is cloaked in a
14 robe of righteousness. The only way to remove that,
15 because he's innocent with that cloaked robe, is to find
16 that the state has proven his guilt beyond a reasonable
17 doubt. The state has that burden. Tony doesn't have to
18 prove anything; I am not required to prove anything.
19 The state has all the burden in this case. He remains
20 innocent if and until the state meets their burden, if
21 they can.

22 We are going to hear about evidence of self-defense
23 in this case. We're also going to hear about something
24 from the judge calls a defense of habitation, meaning
25 defending your own home. They are similar defenses yet

1 they are distinctly different. I want you to listen,
2 and I know you will listen to the judge as he describes
3 those. They are complete defenses to any -- to the
4 crime of murder. Only if the state can disprove the
5 evidence of self-defense that you have heard can you
6 even consider the charge of murder. That is the law as
7 you will be instructed by Judge Newman.

8 What is proof beyond a reasonable doubt? I've got
9 a couple of different ways I like to talk about it.
10 Everybody knows football. To meet the burden, the state
11 would have to drive all the way through the back of the
12 end zone proving their case. Probable cause where
13 Investigator Gilliam charged Tony is basically about
14 right here. To get a conviction, they have to drive,
15 prove, drive, and prove their case all the way right
16 here almost to the end because right at the end is where
17 doubt exists and reasonable doubt exists and lives right
18 there.

19 We have this -- the criminal justice system in our
20 country is the best in the world. We are the envy of
21 the world because we don't just whip up a lynch mob and
22 go find somebody, say you're guilty of something, and
23 sentence them. No. We have due process. We have
24 rights. We have the privilege of having people like
25 yourself hear these cases. The system is designed to

1 prefer that there is not a conviction if it would mean a
2 wrongful conviction. Let me say that again. The system
3 is designed for the burden to be hard for the state. It
4 would much rather prefer that we not have that travesty
5 of justice. This case is a tragedy. Let's not have a
6 travesty.

7 You've heard a lot about Tony's account, and I
8 submit to you it's been consistent and constant and true
9 from the moment that people approached that apartment
10 all the way into the interrogation room. There have
11 been attempts to say that he took his time to try to
12 figure out what to say, that he had to talk to people.
13 This is not a case of Monday morning quarterbacking. It
14 is extremely hard to put yourself in Antonio Barnes's
15 shoes, young man who lived in a bad neighborhood, who
16 may not have had great perception of police. They were
17 always at his apartment. It's a high-crime area. Not
18 at his apartment. His community.

19 He just killed his best friend and another good
20 friend, and he realizes it after the fact. He's in
21 shock. His family members are pouring in. The whole
22 apartment is in the parking lot. People are coming over
23 from Hillandale. It's chaotic, it's stressful, but we
24 want to Monday morning quarterback this and say that
25 Tony didn't do well enough. He should have stood there

1 to the grieving family members of Mr. Griffin and said
2 guys, well, let me tell you what happened. This was a
3 real tragedy. No. It's chaotic. It was chaos.

4 You heard him from the stand. He was -- they were
5 losing their minds in there. This is the ultimate
6 epitome of shock and grief, yet the State of South
7 Carolina in this case thinks that Tony should have done
8 better in how he told his statement completely there.
9 He should have taken one step in the parking lot and
10 told his statement completely there. He should have
11 told his statement completely there. Tony was as
12 consistent as he humanly could be under the
13 circumstances.

14 But just so you can help understand that -- because
15 here's the thing. This is why the state wants to tell
16 you this. Generally when someone is consistent, that
17 means they're telling the truth, right, because the
18 truth really only has one version. That's something we
19 can all understand. But why the state wants to tell you
20 he was inconsistent is because that is indicative
21 perhaps of not truth. So, they want to make you think
22 he's being inconsistent.

23 Wanda Griffin, a grieving mother. You heard it
24 from here and testified from this stand. She was there
25 with Ieasha Washington. Eric, for reasons unknown to

1 this day, quickly wanted to pull over and go to that
2 apartment. No one knows why, but even what you heard,
3 as the grieving mother has heard, shots and runs up
4 there to see what's going on with her baby, upon direct
5 and thorough cross-examination, you heard her say that
6 Tony even admitted to her they was in there fighting.
7 She told you that Eric was known to carry a gun before.
8 She's here as a grieving mother. She wants to help the
9 state. I understand that.

10 She recalls, if you remember, just this being
11 traumatic and three years, and she doesn't remember a
12 lot of things. But she remembers Tony discussing they
13 were there fighting.

14 Ms. Washington remembers more. She says that when
15 she arrived, he came out and said what are they doing
16 here? They were fighting. Who let them in? I was in
17 bed sleep. That came out through her testimony. That
18 is a shocked, condensed, just verbal expression from
19 Tony Barnes right after this happened, not expecting to
20 even see anybody at his door after realizing he'd just
21 killed his friends.

22 Kevin Archie, we heard from him, a state witness.
23 Tony says I never talked to that guy, but even given
24 Kevin, who the state used to try to say three different
25 stories -- you recall that? Through Kevin they say Tony

1 said three different stories. One was man, I don't know
2 what happened, story number 1. Story number 2, I was in
3 there sleep. Story number 3, thought somebody was
4 trying to rob me, so I started spraying. Does that make
5 sense to you? Let me help you out. That is one story.

6 Man, I don't know what happened. I was in there
7 asleep. I thought someone was trying to rob me, so I
8 started spraying. That is one account, the same account
9 he has given time and time again in this case in the
10 manager's apartment, which you have a video of, later
11 when he was interviewed at police headquarters. Time
12 and time again.

13 What we also heard was I'm going to change my
14 shirt. That -- Mr. Archie was questioned about that.
15 That's not in the statement. He did admit that he used
16 to work with Eric. He's a friend of Eric's. Change my
17 shirt. What's he talking about? It's an attempt by the
18 state to insinuate that he was trying to hide something.

19 Tony was wearing the same clothes all day. He
20 testified that he got up. He was wearing a tank top
21 that night when he slept. Went to bed late talking to
22 his girlfriend. Gray sweat shorts. And after the
23 shooting, he went back to his room. He called -- he
24 grabbed his phone to call 911, which he did which you
25 have direct evidence of. State didn't mention that.

1 Put on that jacket and put on some non-slip shoes, I
2 think as he said, just his sandals. That is directly
3 from the dashcam of the officer that's driving up.

4 The apartment is, like, right here. Everybody's
5 pointing. He's standing there, Tony, wearing the same
6 outfit when he's at the apartment manager's office.
7 Tony wearing the same outfit at 9:05.

8 Mind you, also Mr. Scott didn't mention this in his
9 first closing to you. You have a photo in evidence of
10 Tony talking to the officers, providing his birth date,
11 his name, his identification. They weren't asking his
12 whole story. He was providing his info. They said step
13 on the other side of the tape. He said I live there.
14 That was testified to. That is in evidence. Look at
15 the picture. Again, still wearing the same clothes.
16 And then later in the interview room -- this picture is
17 in evidence -- still wearing the same clothes.

18 Tony didn't change his clothes. He didn't have a
19 need to change his clothes. He wasn't covered in blood.
20 He didn't get any blood on him from shooting behind that
21 wall. The only person who had blood on them were the
22 people that rushed in there.

23 You heard from Javontae Davis. He was a strange
24 witness, very monotone, but there's pictures in evidence
25 of him with blood on his white T-shirt and his

1 basketball shorts and his sandals. Maybe that's the
2 confusion with Kevin Archie. Man, I'm going to change
3 my shirt. Maybe he was talking to a Javontae. I don't
4 know. But what I do know and what you know is Tony
5 didn't -- did not change his clothes. He had nothing to
6 hide.

7 So, after he takes a moment to talk to his mother,
8 takes a moment to go talk to his friend, get his
9 cigarette -- Tony smokes. He needed a cigarette. It
10 wasn't a gratuitous thing as it was inferred on
11 cross-examination. He's panicking. He's shaking. He's
12 in shock. He killed his best friend.

13 He came back, grabbed the first police investigator
14 that they could find, and said look, it was me. He sat
15 down immediately, talking about what had happened. That
16 you heard from Officer McIntyre. He was right there
17 wearing the same clothes.

18 Tony told them that this woman named Shakihla
19 Smalls just came in. This was an apartment with people
20 flooding in. Everybody's coming to the commotion. She
21 just snatched the gun out of his hand. He's trying to
22 help them get it back. He's showing them who she is
23 through Facebook, telling them where she lives, what
24 apartment number. This is not the man that's trying to
25 hide something. He's trying to provide them the gun of

1 his that killed his friends. If he were looking to
2 hide, he would have tossed that gun in the gutter.

3 Do we hear from Shakihla Smalls this week? No, we
4 did not, and I'm going to ask you to draw an inference
5 from that. Again, the state has the entire burden of
6 proof in this case. Why did they not bring Shakihla
7 Smalls? Because that would not have been very good for
8 them. Because that story would not be good. Tony's
9 story is the truth.

10 Why did they not bring in Investigator Gilliam?
11 The lead investigator on this case sat here all week.
12 He's the one who signed off on those warrants, who swore
13 an oath to a magistrate judge saying this is a murder
14 case. There was malice aforethought. Why didn't we
15 hear from Investigator Gilliam? Think about that.

16 We didn't hear one word from Investigator Gilliam
17 about that six hour encounter at the police station that
18 was recorded on video that you heard Tony testify about
19 where he told him what happened and Gilliam didn't want
20 to believe him, where he told him there was a whole
21 beast of stuff going on in my apartment, that I was
22 scared, that I was sleep. I thought I was being home
23 invaded. There's a whole record of that, a wealth of
24 information that Gilliam could've provided on that.

25 Now, the state doesn't have to call every witness.

1 Mr. Scott will tell you that, but to not call the lead
2 investigator on a case that had that interaction with
3 the man they want you to convict on murder,
4 unconscionable.

5 But we did hear from this more, more or less
6 informal encounter where Tony's talking to McIntyre. He
7 said he was emotional. He said that he -- again, the
8 direct quotes from Officer McIntyre. He told me he was
9 asleep, awakened by a loud bang, heard a commotion,
10 listened, listened for his roommates, heard the TV
11 crash, got up from bed, and discharged rounds. Yeah,
12 that's what he told the police as soon as he's having
13 that formal sit down. Same morning.

14 And you have in evidence and you will hear it, too.

15 (WHEREUPON, A VIDEO OF INTERVIEW IS PLAYED FOR THE
16 JURY. AUDIO IS NOT INCLUDED.)

17 MR. LUKE SHEALEY: This is my homeboy.

18 Now, Tony, he's rough around the edges. He may not
19 be from the same places some of y'all are from. He's
20 definitely different to lots of members of law
21 enforcement and people that are prosecuting this case.
22 He calls his friends bruh. He curses a lot, but that is
23 real emotion the first time he encounters the police,
24 real sincerity about what happened.

25 Prosecution wants you to think that he's just got

1 this manipulative -- manipulation going on of some magic
2 story that he has finally concocted. No. Let me help
3 you out again. Pull yourselves up by your bootstraps as
4 he tries to tell that to you again. Do not decide this
5 case on passion and prejudice but the facts. Your sense
6 of logic and reason tells you that this man is deeply
7 emotional, distraught about what just happened:

8 And you heard from him. He broke down crying
9 talking about killing his friends. You think that was
10 scripted? You think that was something that I could
11 engineer? This man with the tough exterior who's
12 sitting here talking about the worst day of his life to
13 a bunch of strangers in a courtroom of people, half of
14 which love him, half of which hate him, is there any
15 dispute that that was not sincere? No. No.

16 The state called Sam Thomas, and I was surprised by
17 that. Tony's roommate, his other good, long, best
18 friend, the other man on the lease. He's got nothing to
19 hide. He confirmed to you several very important
20 things, and there's a picture of him that's in evidence
21 of him talking to Investigator Gilliam when he got back.

22 He was not there that day, and they confirmed that
23 it was their routine and habit, given that he -- that
24 they had one car between them, Sam's car, to have Sam
25 drive Dash to work every day where he worked at Wendy's.

1 Tony was not working at that time. He had recently
2 quit his job; he didn't like it. He was in the process
3 of looking for new work. Did you hear the state say his
4 job was to be a drug dealer? How did that make y'all
5 feel? Did that make you feel like he wants you to
6 decide this case for an appropriate reason, or does he
7 just want to call a young Black man a drug dealer and
8 make you mad at him? Yeah.

9 He confirms the apartment would have been empty.
10 Tony would have thought no one was there because that's
11 the way it was during that time of day with their habit
12 and routine.

13 He talks about two days prior a gun going missing.
14 Let me tell you why this is important to this case. Let
15 me tell you why we bring this up. We bring it up
16 because it was brought up to police when Tony was
17 arrested by Tony. He speculated. He has no idea why
18 the people he now knows as Dash and Griffin laying dead
19 on the ground, why would they have been locked into that
20 fight to the death. He has no idea why. That is --
21 that's why he thought he was being home invaded. He
22 tells that to McIntyre. He tells that to Gilliam. They
23 don't believe that. They don't want to believe that.
24 You got two bodies. You are getting locked up, young
25 man. We don't believe this.

1 Tony's telling them. Did they follow up on it?
2 Did they look into it? Did you hear anything about it
3 other than through us? No. Did they try to find the
4 gun? Would that gun that's missing have matched some of
5 the evidence in this case? I don't know, but he told
6 them at least to try to explain because them fighting to
7 the death in his living room is why he thinks he's being
8 home invaded. It's why he thinks all this crashing and
9 holes in the wall -- that's why we wanted you to
10 understand that there was this brewing conflict between
11 Dash and Eric. He recalls that encounter, that
12 accusation, not by -- it wasn't Tony's beef.

13 You've got some text messages in here. Mr. Scott
14 tried very hard to get Tony to say it was his beef.
15 They don't have a motive in this case. They don't need
16 a motive, but it certainly helps paint a real story, so
17 they're trying to make it like it's his gun. It's not
18 his gun. We responded and put in a different text that
19 shows that Tony's talking about it being Dash's gun, but
20 it is a gun from the apartment, and Dash is upset.

21 You heard from Sam, the state's witness, that one
22 day prior to this that there was a direct confrontation
23 by Dash against Eric accusing him of this, saying you
24 stole my gun and that he actually had Tony's gun in his
25 hand while he was arguing about this. Tony talked about

1 this.

2 Listen to this. As the state tries to fill you
3 with the concept that Tony is a young man, a drug dealer
4 who's incapable of reason, the day prior, Tony testified
5 he's awakened, this time not to the sounds of a home
6 invasion but to the sounds of his familiar roommate
7 voices arguing. So, he doesn't just go out blasting as
8 the state would have you suspect that he, he might do
9 any time there's a noise in his house. He hears it and
10 goes uh-oh. My roommates are arguing. So, he gets up.
11 It wakes him up. He walks down the hall. He testified,
12 consistent with Sam, that Dash was present, Eric was
13 present, a young woman named Kattera, and Sam was there.
14 And Tony walked up and saw this argument getting heated,
15 this confrontation from Dash to Eric, and Dash had his
16 gun at his side, Tony's gun. Tony grabbed that gun,
17 de-escalated the situation, showing immense restraint,
18 reason, and, in his words, tried to play the peacemaker.
19 Y'all talk it out. It wasn't talked out, though. It
20 was left unfinished with Eric leaving basically with no
21 plans to come back because he's been accused of stealing
22 something of value from his roommate -- or from a friend
23 of his.

24 And the next day during the encounter, you have to
25 think about what Dash would be feeling after that the

1 very next day. Now, mind you, his schedule was to go to
2 Wendy's, but he had called in sick for unknown reasons.
3 He didn't go. No one knows. Tony thought he was going
4 to be gone. He's there and when Eric knocks and Dash
5 answers, that conflict is raw, and the rest unfolds in
6 that living room.

7 Sam also confirms the other thing that is going on
8 in Toby's mind is that there was a robbery of Sam and
9 Dash very recently prior to this. We bring that up
10 because Tony told that to police. Tony told that to
11 Investigator Gilliam, saying he was scared. We know
12 that this is what happens in our neighborhood. It's not
13 the best neighborhood. It would be unsafe to not be
14 armed in that neighborhood. It happens all the time.

15 Sam told them. He told them. They didn't care
16 because there's two bodies, and, son, you're going to
17 jail and we're going to ask for a murder conviction on
18 you. We're going to call you a drug dealer and say
19 that's all you care about. It has nothing to do with
20 the nature of your neighborhood and what you know to be
21 the reality in your neighborhood if you are not vigilant
22 in your own home, in your own bed, while you're walking
23 to The Corner Store. That's why we brought that
24 information to you. Follow the facts, I think we just
25 heard.

1 I want to tell you what murder is. You're going to
2 be asked to consider that. Murder is the unlawful
3 killing of another human being with malice aforethought.
4 Malice is hatred, ill will, hostility towards another
5 person. It's not recklessness; it's not a general
6 disregard. It's evil in your heart for that person in
7 that moment.

8 Sometimes I go deer hunting. Not often but when I
9 do and I see a deer that I want to kill, I train my
10 sites on that deer, and I think should I kill it? Did
11 you need the meat? Is it big enough? Has it lived
12 enough? And if I decide I need that meat and it's a big
13 enough deer, I'll make that calculated decision to
14 shoot. That's malice. That's malice in my heart for
15 that deer.

16 Tony, as you heard, had fear in his heart, panic,
17 not malice, not hatred. Fear in his heart at the time
18 he pulled the trigger. That is all you're asked to
19 decide. At the time he turns that corner pulling the
20 trigger, what is in his heart? Is it a calculated evil
21 for something, or is it fear of being home invaded?
22 Fear is self-defense. Fear is not compatible with
23 malice.

24 I want to talk to you about self-defense, but
25 before I talk to you about self-defense, I want to talk

1 to you about the law of defense of your own habitation,
2 defense of where you live. Judge Newman is going to
3 give you a separate instruction on that, and I didn't
4 have enough time to put it on my slide. Let me tell you
5 what that is.

6 In the world of what you have to decide, you must
7 first feel that the state has disproved defense of
8 habitation. Put that to the side, that they have
9 disproven self-defense beyond a reasonable doubt. Put
10 that to the side. And then you have to dig into the
11 meat of whether they've proven a case of unlawful
12 killing with that evil, that malice. Only then could
13 you possibly convict in this case.

14 So in the hierarchy defense of habitation is the
15 ultimate defense. You're going to hear how it's
16 different. In self-defense, you have to show that you
17 didn't start some trouble, you didn't bring about the
18 difficulty, that you were in danger, or reasonably
19 thought you were, and that you had no other means to
20 avoid the problem, and we'll talk about that.

21 But for defense of your own habitation, when
22 someone is in their home, the key distinction is that
23 you do not have to show that you were attacked. You do
24 not have to show a reasonable belief that you were about
25 to be attacked, okay? I'm going to say it to you again

1 because this is important.

2 Defense of your home -- because we have special
3 duties when we're in our own beds at night, special
4 protections for what should be the safest place in our
5 whole universe -- you don't have to show that you were
6 under attack. You don't even have to show that it was a
7 reasonable belief that you were under attack. That is
8 defense of habitation. And if there is a trespass or an
9 intrusion into your home, you are allowed to end that
10 intrusion through the use of deadly force if necessary.
11 That is what the law of South Carolina says about what
12 citizens are entitled to do.

13 Now, I'll tell you this. You have a duty to follow
14 the law. It may not be what you like in your heart of
15 hearts, but it is the law as the judge will tell you,
16 and you have a duty to apply the facts that came out of
17 this case to that evidence. Tony does not need to show
18 that he was under attack, just that he was in his own
19 home, and that there was an intrusion into the sanctity
20 of his home, and he decided to use deadly force to end
21 that intrusion.

22 If you can get past that beyond a reasonable doubt,
23 which I would submit you will not, you consider
24 self-defense. Self-defense also applies in someone's
25 home, but it can apply elsewhere, but here, because this

1 incident happened in the home, it applies in Tony's home
2 that he didn't bring about this conflict. Classic
3 example of that, someone can't go rob a liquor store and
4 when the clerk pulls out a gun to defend his liquor
5 store, you can't shoot him and claim self-defense is the
6 example of bringing about the difficulty.

7 Tony selling weed occasionally to support his
8 smoking habit is not bringing about the difficulty,
9 okay? There's been no evidence of that in this case.
10 If it is mentioned to you again, it's to drag you down
11 to a sinkhole to decide this case on an inappropriate
12 fact. You cannot bring about the difficulty if you're
13 lying asleep in your bed.

14 Was he either in actual imminent danger, or did he
15 believe he was in imminent danger of death or great
16 bodily injury? In this case, Tony reasonably believed
17 he was in imminent danger of death or great bodily
18 injury. From what he heard waking up in his bed --
19 knowing his roommates should not be there, listening,
20 being reasonable, listening, doesn't hear familiar
21 voices like he did the day before, crash of the TV,
22 rumbling, violent sounds -- he had the right to act on
23 appearances.

24 Mr. Scott left this out for you. The judge will
25 tell you when you're considering self-defense, this is

1 the key to this case. We're spending so much time
2 talking about if Tony is reasonable. You heard the
3 testimony on the stand. Tony, are you paranoid? Are
4 you paranoid, man? Do you think -- how much -- how much
5 do you think is required to be scared? A little bit?
6 Little more? Huh? Huh? You're unreasonable. Tony
7 told you I was scared as hell. Those were his exact
8 words. You have to decide if that's reasonable under
9 those circumstances for Tony.

10 But he may be mistaken. It is enough if the
11 defendant believed he was in imminent danger, and a
12 reasonably prudent person of ordinary firmness and
13 courage would have the same belief. Fancy legal words:
14 average folks. Reasonably prudent, ordinary folks just
15 like Tony. Would you have had the same belief if you're
16 lying in bed and heard boom and crash and rumbling?
17 Yes. The defendant has the act -- has the right to act
18 on that appearance. He doesn't have to have eyes on the
19 situation. On the appearance of that that, based on
20 what he's hearing in his room, knowing his roommates
21 aren't there.

22 Even though the beliefs of this defendant or a
23 defendant may have been mistaken, most crucial thing.
24 If you -- if you somehow get past the defense of
25 habitation and you're analyzing self-defense, he's

1 allowed to be mistaken as long as -- as long as his
2 belief was reasonable in the first case, okay? He's
3 allowed to be mistaken.

4 Our law understands the world is not black or
5 white, good or bad. There are not perfectly scripted
6 self-defense situations. People encounter all kinds of
7 stuff in this world that don't fit into a neat, little
8 box. And our law understands that they should not be
9 punished for not fitting in somebody's neat, little box.

10 The last prong is that there is no other way to
11 avoid the danger. Well, you can't avoid the danger if
12 you're in your bed. Again, you heard some more Monday
13 morning quarterbacking from Mr. Scott through the
14 prosecution. Well, could he have locked his door? Well,
15 could he have pushed the mattress up and maybe hid there
16 for awhile? In that neighborhood, if Tony lets the
17 intruders who he thinks are there get back to his room,
18 he's going to get smoked. Those are his words. Killed.
19 You don't have to wait.

20 You're going to hear from the judge that you're
21 allowed to meet the threat. Self-defense is the law of
22 self-preservation. You do not have an obligation to
23 wait in your bed cowering. That's an attempt to confuse
24 you with what the law is and Monday morning quarterback.
25 But you have no duty to retreat in your own home, not

1 even against somebody who lives there as well. That's
2 critical. Don't be confused. You don't have a duty to
3 retreat in your own home. All the elements of
4 self-defense have been met if somehow you get past
5 defense of habitation.

6 Spent so much time trying to have you think about
7 Tony being unreasonable. What he heard produced that
8 hole in the wall with the busted phone jack. Think
9 about the immense amount of power and force it took for
10 a body to be slammed into that wall. That's what was
11 going on in his living room. That's why he reasonably
12 believed he was home invaded.

13 There is his TV just like he told police day one
14 soon as he talked to them. Crashed. He referenced how
15 he liked to play video games. There they all are.
16 There's the table the TV was sitting on. Crashed.
17 There's no other furniture in that apartment other than
18 two foldout church chairs. He would have heard every
19 bit of that echoing through the apartment. That is why
20 he reasonably believed he was being home invaded.

21 Why did we talk so much with the SLED agent Paul
22 Greer, the firearms analyst? Why the talk and spend so
23 much time with Dr. Monroe, the pathologist? Because
24 they have facts and data and facts and data do not lie.
25 There's no bias in facts and data in science. And all

1 the objective evidence in this case showed that there is
2 another gun involved in this case. The state does not
3 submit that Tony has two guns that day. They just don't
4 want you to think about it.

5 We have thirteen distinct bullet wounds that you
6 heard from Dr. Monroe in this case, seven on one, six on
7 the other. That's thirteen. There's only seven shell
8 casings. The .9 millimeters semiautomatic gun that Tony
9 fired that day seven times each time would have ejected
10 a shell casing onto the ground, and they collected all
11 of them. This was in a enclosed apartment living room
12 when those shell casings were put out on that floor.

13 Yes, there was traffic. EMS came. Family came.
14 Curious onlookers came, but no one picked up the
15 remaining six shell casings. That did not happen. It's
16 feasible that maybe one might have gotten kicked off the
17 balcony, but six? That does not pass the smell test,
18 ladies and gentlemen.

19 We are missing a gun that shot six times. I bring
20 that to you. I don't have enough information to blame
21 someone else for a killing in this case, but I bring it
22 to you because police should have looked into that. It
23 helps to corroborate that it was a deadly struggle in
24 that living room between Eric Griffin and Mr. Dash.

25 I talked to Paul Greer. Two, we have two entry

1 wounds into Mr. Dash's head. They did not exit. Mr.
2 Scott's right. One is right here on the left temple.
3 The other is back here. Each one are immediately
4 incapacitating. Dr. Monroe told you that. Instantly
5 someone would not be able to function. It does not
6 stand to any kind of reason that someone would need to
7 be shot another time after taking one of those shots.
8 They come from different directions. The same gun did
9 not shoot both of those bullets.

10 You have this in evidence, item 22. I talked a lot
11 about that with Paul Greer. It was inconclusive. We
12 talked about the different terms, whether something was
13 a hard positive match, an absolute negative match.
14 Something might be unsuitable, meaning just can't get
15 any data off of it. Inconclusive means they don't know.
16 It could -- that's what the report said and I asked him
17 -- have matched another gun. It could have been
18 identified to another gun that they did not have in
19 evidence. It was not so damaged that they couldn't pull
20 identifying data off of it. And what you heard is that
21 it could have belonged to another .9 millimeter, a .38
22 Special, a .357 Magnum, and that that last
23 characteristic -- and we use that term a lot -- could
24 easily have been fired by a revolver, okay?

25 For those of you that don't know much about guns,

1 when you shoot a revolver, it does not eject shells like
2 a semiautomatic. Paul Greer talked about that. They
3 stay in that little wheel, that little cylinder unless
4 you take the time to empty them, and that's not very
5 prudent in the middle of a heated fight to take the time
6 to unload your shells.

7 Common revolvers hold six. We have thirteen
8 distinct bullet wounds, seven shell casings. We're
9 missing six. You guys understand what I'm saying?

10 Here's how we know that Tony's gun did not fire all
11 of these. Wounds. You have the pictures. You've heard
12 the testimony. When Tony's gun was recovered from
13 Shakihla Smalls's apartment where she had quickly tucked
14 it under her mattress, it was recovered with six live
15 rounds in what we call the magazine, and one was in the
16 chamber, meaning it had already been cycled up and was
17 resting there. Police being prudent, they took that out
18 when they seized it, and you see that picture that you
19 will have, and I want you to look at one hand of
20 Investigator Smith who collected that gun holding six
21 and one to the side. That's seven total.

22 All right, so I did a lot of that math with Paul
23 Greer, and you guys might have been going why does he
24 keep talking about this? Maybe some of you were on to
25 it at the time. But knowing that there's thirteen shots

1 here and then his full magazine capacity, had it been
2 loaded to the absolute maximum, would be seventeen in
3 that magazine, and it has the listed numbers, one
4 through seventeen. That's all it can hold and one in
5 the chamber. That's eighteen total. So, if we have
6 thirteen shots, seventeen -- seven, which is what was
7 left in the gun, considering the thirteen shots they
8 claim was fired by that gun, equals twenty. The gun
9 only holds eighteen maximum.

10 Even if they want to take away one of those wounds,
11 I talked to Paul -- I mean, Dr. Monroe. He mentioned
12 his report. He never, as scientific as he is, he never
13 said that any of those wounds, as he said, were slam
14 dunk through and through from one body to the next.
15 Otherwise, he would have noted it. He kind of
16 equivocated and on -- you know, thinking now upon
17 testimony here, maybe one, although he wasn't certain
18 enough to state it in the report.

19 Well, let's do the math on maybe one. Maybe one
20 means let's just say twelve wounds because one's a pass
21 through. Still, the gun was found with seven bullets
22 that only holds eighteen maximum. That's nineteen. The
23 math doesn't work. That gun would be impossible to
24 shoot all those rounds and still be left with that level
25 of bullets in it. There's only seven shell casings.

1 They don't even want you to think about the shell
2 casings. They don't even want you to wonder where the
3 other six shell casings are.

4 I don't bring this up because I have conclusive
5 evidence, but I want you to consider what was in the
6 heart and mind of Tony. We have brought you all the
7 evidence of this conflict between Mr. Dash and Mr.
8 Griffin about the missing gun that was so heated the day
9 before, Mr. Dash had to have a gun snatched from his
10 hand in the middle of an argument.

11 Now, no one knows why Eric said turn over there
12 that day. No one knows, but they only shared one car.
13 That car was gone with Sam at the doctor's appointment.
14 So, if you're driving by and you don't see the car that
15 you know they all share, maybe you think you can talk to
16 Tony alone, and you can tell him your side of the story
17 again about the gun. But what he didn't expect to
18 encounter was a still angry Dash who didn't expect this
19 man to be at his door, the man that he had a gun in his
20 hand while heatedly discussing this situation the day
21 prior, and it was on.

22 I don't think there was a whole lot of discussion.
23 Why the F are you back over here is what I think
24 happened. And you had this brutal fight unfold,
25 including tearing out of earrings. And I think Dash was

1 losing that fight. We talked about the wound to the
2 back of his head. Somebody hit him with something
3 extremely hard. Dr. Monroe said it could be from a
4 pistol butt. It could be from any hard, hard object.
5 It's not from your hand. He had blunt force trauma over
6 his left eyebrow. I submit to you I think Dash was
7 losing that fight, and Eric was on top of him, and we're
8 missing shell casings and projectiles, and there's a gun
9 in Mr. Dash's head that does not belong to Tony -- or
10 bullet in his head that does not belong to Tony. I
11 think it's quite possible by the time Tony got out to
12 end this threat, Mr. Dash might have already just been
13 killed.

14 But regardless of that evidence, I can't say that
15 for sure, but I know police didn't look into it. And I
16 know they laughed at the idea that he thought something
17 was so terrible going on in his living room that he just
18 should have done better. He just should have sat around
19 a little more, assessed it.

20 We've got these mannequins over here, and I'm not
21 going to hurt them in any way, but I think they are
22 illustrative of this case. Tony told you that when he
23 came out after realizing that the threat he thought was
24 home invaders were actually his good friends, and Mr.
25 Dash was lying on the ground face up and that Mr.

1 Griffin was on top of him with his back exposed almost
2 -- Tony's words were like they were kissing. That was
3 kind of strange, but that's what he said.

4 (A PAUSE.)

5 MR. LUKE SHEALEY: Now, does this make sense for
6 these wounds? Mr. Scott is counting on your passion and
7 your prejudice regarding this contact wound.

8 Sorry, Mr. Bowen.

9 He's counting on that. He's forcing you to stare
10 into the hole of a young man's head just so he can rile
11 you up. There is no more malice in that wound than any
12 other wound, but it's sexy. We get to talk about
13 execution and really drag you down into that swamp.

14 But Tony told you that when he walked down that
15 hall against the wall and turned the corner, that he
16 just started shooting. Actually, he said he started
17 shooting before because he was fearful of what was
18 there, and it was against the wall, and was moving
19 forward. That is not inconceivable. He didn't remember
20 the mechanics of this white hot moment of fear and panic
21 in the twilight hours of his home. He's not expected
22 to. He just knows he shot.

23 There's no evidence that this was some kind of
24 cartel execution, stand up kill shot. Dr. Monroe told
25 you, and I know you were listening. All I can tell is

1 that the barrel of a gun was pressed up on the skin. He
2 can't tell you the position of anybody. He only knows
3 about this. He doesn't know the position, but this is
4 entirely consistent with what Tony said.

5 But is it consistent that Mr. Dash would have this
6 left temple wound coming in like that from that position
7 and also have a head wound on the other side of his
8 body? No. No.

9 (A PAUSE.)

10 MR. LUKE SHEALEY: Apologize, gentlemen. Not
11 trying to break your props.

12 Sometimes when you hear about red herrings, I don't
13 want you to be fooled by that. In the old common
14 phrase, the red herring is something that misleads or
15 distracts from a relevant or important question. It
16 might be a logical fallacy or a literal -- literary
17 device that leads readers or audiences towards a false
18 conclusion. It may be used intentionally as in a
19 mystery fiction or as part of a rhetorical strategy. It
20 may be used in argument. This is a red herring.

21 You know what a red herring is? A picture in
22 evidence of Tony posing with guns, guns that had nothing
23 to do with this, guns that are being only sent to your
24 viewing faces to say he's a young Black man in America,
25 and we need to get him off the streets. He's a bad guy.

1 You heard Mr. Scott up here talking about crime in
2 our community. Yes, we do have crime in our community.
3 That is not your task today. Do not go down that
4 sinkhole. You have one job at hand: that is to decide
5 the facts and the law of this case.

6 The red herring is the fact that Tony sold drugs to
7 support his habit. It has nothing to do with this case.
8 This was not a drug deal gone bad. Just to make you
9 hate a young Black man so that we will lessen him,
10 debase him so that you will be okay thinking that he
11 doesn't enjoy the same protections and defenses as the
12 rest of our state. You're not going to fall for that
13 trap.

14 The state has the awesome power of proving their
15 case beyond a reasonable doubt, and it is such a
16 squishy, hard thing for good folks who have never sat on
17 a jury. This is it. This is it. Guilt beyond a
18 reasonable doubt. All the rest will equate to a not
19 guilty verdict. He's proven not guilty. We have no
20 burden in this case. If the evidence proves to you that
21 he is not guilty because of defense of habitation,
22 self-defense, or the fact that they have not proved
23 malice, sure. That's not guilty. Highly unlikely?
24 That's a not guilty verdict. Less than likely? A not
25 guilty verdict. Probably not? That's not guilty.

1 Unlikely is not guilty. Possibly not is a not guilty.
2 May not be is a not guilty. Perhaps, suspected,
3 possibly guilty? Still not guilty. Probably guilty?
4 Not guilty. You sit there and think guilt is likely,
5 you wrestling with that means you have doubt because
6 only likely, that's a not guilty. Guilt highly likely?
7 Still not guilty. Only here with guilt proven beyond a
8 reasonable doubt in our system that prefers a lack of
9 conviction over an innocent man being convicted, only
10 then could you find him guilty, only then.

11 I leave you now. Our system is set up where Mr.
12 Scott is going to have the last word to you, but I ask
13 you to consider what I've said. I want, I hope that
14 I've given you some strength and some power and some
15 tools to resist against what you will hear: that he's a
16 drug dealer, that he should have done better, some
17 Monday morning quarterbacking. If Mr. Scott stands up
18 behind that mannequin again, standing like this, in your
19 minds ask why. There's no evidence of that. Tony,
20 whatever mental state he had when he shot, was the same
21 for all of it.

22 Pull yourself up by your emotional and mental
23 bootstraps and hold strong. You have an awesome
24 responsibility, and I know you will do your duty. I
25 know you have listened this whole week. You will apply

1 the facts to the law as Judge Newman tells you, and if
2 you do that, you will find Tony not guilty in this case.

3 THE COURT: Let's all stand for a moment.

4 (A PAUSE.)

5 THE COURT: All right. Mr. Scott.

6 MR. SCOTT: When Mr. Shealey kind of had his
7 dramatic moment where he sat with his eyes closed for
8 some period of time and then he screamed as loud as he
9 could, was anybody tempted to grab a gun and start
10 shooting? I didn't see anybody do that. Mr. Shealey
11 also said sometimes he looks at deer and he makes a
12 decision whether they have lived long enough. We don't
13 do that with humans. We don't look at another human and
14 say, you know, I think Eric Griffin's lived long enough.
15 I'm going to shoot him in the back of the head.

16 And they don't like me talking about that. They
17 say there's no evidence of it. I just heard him say
18 that, but y'all heard a pathologist talk at length about
19 that wound. It's an inconvenient fact for them. They
20 don't want me to talk about it. I get it. I would not
21 be doing my job if I didn't talk about it. My job is to
22 give you the evidence, not to hide it.

23 Most of his closing argument was Mr. Scott is the
24 boogie man because all Mr. Scott wants to do is tarnish
25 the image of a young Black man. You heard that. That

1 is not my job. My job is to see that there's some
2 justice for two dead Black men who didn't deserve to die
3 this way. I do not put words in Mr. Barnes's mouth.
4 When he tells me I'm a drug dealer, I sell drugs, and
5 there are people in and out of my house all the time
6 because of it, and I choose to do it in a dangerous
7 neighborhood, I'm going to tell you guys what he said.
8 This is my job.

9 If he says I like having guns and posing with them,
10 this is something I think is cool, and they say guns
11 have nothing to do with this case, well, what were all
12 these bullets we were pulling out of these two men?
13 Guns have everything to do with this case.

14 And isn't that part of his story? A gun was
15 stolen. And isn't that their theory, that's what this
16 fight was about? I would not be doing my job if I
17 didn't produce evidence for you people. That's what I
18 do; that's my job.

19 I know you were paying attention, and what we say
20 is not evidence, okay, but what you just saw was a
21 defense attorney giving you theories that there was
22 absolutely no evidence of, no evidence. He just did a
23 demonstration with my manikins that I've worked so hard
24 to put together and he broke them, but let me show you
25 what he just did to mislead you all, okay?

1 This is Mr. Dwyer's body cam footage, All right?
2 You saw what he did. He laid Mr. Dash on his back, and
3 then he put Mr. Eric Griffin on top. Wonder why he did
4 that. Was it to explain the injuries when there is no
5 explanation? I can't answer that for him, but I can
6 assure you.

7 (WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED
8 FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

9 MR. SCOTT: We will follow the evidence. Not what
10 a defense attorney tells us because when we look, we see
11 Antonio Dash lying on top of Mr. Eric Griffin.

12 (PLAY RESUMES. AUDIO IS NOT TRANSCRIBED.)

13 MR. SCOTT: The person on top is Antonio Dash. Of
14 course, you'll have still shots as well. The person on
15 the bottom is Mr. Eric Griffin. I don't know why he
16 reversed it. Was his attempt to explain the injuries?
17 I don't know what his motivation was, but what you just
18 saw was a mischaracterization of the evidence in front
19 of you. We're going to choose to follow the evidence,
20 and it's ---

21 MR. LUKE SHEALEY: Your Honor, I object. *State v.*
22 *Parker*, 391 SE 606.

23 THE COURT: Sir.

24 MR. SCOTT: I don't know what the objection, *State*
25 *v. Parker*, is.

1 THE COURT: I don't know your -- Mr. Shealey, I
2 don't know what you're talking about.

3 MR. LUKE SHEALEY: That's just where the Supreme
4 Court says it's generally improper for the prosecutor to
5 denigrate or accuse defense counsel of fabricating a
6 defense. That's what I'm talking about.

7 THE COURT: Objection is overruled.

8 MR. SCOTT: Thank you, Your Honor.

9 As you see, when you put the manikins -- he
10 reversed them, and we don't know why he did that. Was
11 it to explain the injuries? I don't know, but it's rich
12 that he had this slide about a red herring. It's rich
13 because a red herring, what he describes, is an attempt
14 to mislead or distract.

15 A red herring would be, I don't know, continually
16 harping on your client's emotion that day, talking
17 about, well, he cried. And maybe yesterday I think
18 there was some attempt for him to show emotion on the
19 stand, too, but you guys get to judge credibility.

20 I submit to you harping on defendant's emotion,
21 you've got the still shots of him minutes after this.
22 You can judge for yourself. That would be a red
23 herring. That would be a distraction from the evidence
24 and the facts, okay?

25 Wild speculations, talking about evidence that's

1 not in the record, talking about a revolver and bullets
2 he said come from another gun when you heard the expert
3 said no. We were inconclusive on a couple fragments,
4 and the reason was that there just wasn't enough to come
5 up with a yes or no answer, and he characterized as
6 definitely coming from another gun. That's not what
7 that SLED agent said. It's inconclusive. He said
8 otherwise.

9 Now, he did kind of back down a little bit, and I
10 think he said I can't -- I have no conclusive evidence,
11 but he's spitting it out to you anyway. That is a red
12 herring. Commenting on Eric Griffin owning a gun in the
13 past, that is a red herring. That has absolutely
14 nothing to do with this case. I would have thought Mr.
15 Antonio Barnes, when he heard a gunshot, would have told
16 you. Are they saying Antonio Barnes had two guns? I
17 don't know what they're talking about. There's no
18 evidence of it. I don't have any evidence Mr. Barnes
19 had two guns. If he did, he was able to get rid of it
20 because we only have one. That was the one that ended
21 up under Shakihla Smalls's bed. The only cases we have
22 come from that gun. The identifiable bullets, including
23 the one that came out of Eric Griffin's head, go back to
24 that gun. So, it's rather rich when he brings up the
25 slide about a red herring.

1 I submit to you those arguments were to distract
2 you from the inconvenient truth. We're going to follow
3 the evidence.

4 What do you see in this picture? You come out of
5 this back room, you walk down the hall. How are these
6 bodies positioned? Of course, we saw whenever Mr. Dwyer
7 comes in, Dash is on top of Griffin, but look at their
8 positions. What do you see? I don't disagree with Mr.
9 Shealey that at some point when an officer stops and he
10 does give -- Mr. Barnes does give his name and his date
11 of birth. He says he lives in the apartment but, as he
12 said, there are residents all over the place that live
13 in the apartment. I'll tell you what he did not say.
14 He didn't say I'm the shooter until two hours later.

15 In his analogy -- he says I knew my roommates are
16 not there. Listen to the recording of him when he's
17 talking in the manager's office. He says I thought Sam
18 Thomas should have been there, but then on the stand
19 yesterday he says I don't think Sam Thomas would be
20 there. Look at what he's saying during the time. There
21 is -- there is inconsistencies in his statements. He
22 tells a Javontae Davis I wake up, there's two dead
23 bodies. I don't know what's going on.

24 This fighting to the death, that is a term coined
25 by the Shealey Law Firm that is never offered up in

1 evidence. Nobody ever said anything about fighting to
2 the death. The evidence we have of fighting to the
3 death is an overturned TV and a bit of sheetrock that
4 has been dented in. A fight to the death, I don't know
5 how many times I heard him say that.

6 He doesn't tell me what witnesses I call. He's
7 right. I don't tell him what witnesses he calls. Each
8 side gets to pick the witnesses they call. Of course,
9 Investigator Gilliam's right there, All right? Each one
10 of us decided to call some law enforcement agent. He's
11 right there. Nobody's hiding anything. Unconscionable,
12 he calls it.

13 You know, I'm thinking about these inconsistencies,
14 and they are noteworthy. He just brought -- reminded me
15 when he played the video. You know, yesterday Mr.
16 Barnes had great detail about the day that that gun went
17 missing, and he talked about little bit about it
18 earlier, and he remembers Katerra being there, putting
19 the shirt over the gun. Remembers who all was there,
20 and he remembers what time his brother called. He
21 remembers that Sam Thomas went to brush his teeth. But
22 if you just listen to the video that he played from the
23 office manager, he said I wasn't there when the gun was
24 taken.

25 What is it? I mean, that's the problem here, you

1 know. I would like a consistent version of the defense.
2 I don't always get that. I'm just saying that, but I
3 would like some consistency. Is that so wrong? And if
4 there are inconsistencies, again it's my job to bring
5 that to your attention. I mean, geez, don't beat on me
6 too much for doing my job. It's what I do. I am tasked
7 by this court to present evidence to you and if he
8 doesn't like it, I'm sorry.

9 You know, he, he gave you his definition of malice,
10 and again that's the inconvenient part about it. He
11 leaves out the fact that malice can be a complete
12 disregard for human life. He didn't include that in his
13 malice definition. I don't know why, but when this
14 judge tells you about malice, he's going to tell you
15 malice can be shown from hatred and ill will, but it can
16 also be inferred from the complete disregard for the
17 value of human life. Ask yourselves why he left that
18 out of his definition when he described malice to you.

19 Some things are inconvenient, but we got to follow
20 the evidence, and we're going to listen to this judge.
21 I tell you what. He's not going to talk about football
22 when he talks about reasonable doubt, I promise you
23 that. He's not going to show you a diagram of a
24 football field. He's going to tell you reasonable doubt
25 means you are firmly convinced of guilt. He's not going

1 to give you a cute diagram like this. He's going to
2 tell you reasonable doubt is being firmly convinced and
3 being reasonable.

4 I'm going to sit down, you guys. I just -- when
5 you sit down, the worst feeling is oh, I forgot to say
6 that one thing, but -- and I know y'all are probably, I
7 know, you're a dead horse now, but it's just, this is an
8 important case. I mean, clearly. Any time there are
9 two dead bodies and any time there is somebody accused
10 of killing those two people, it's important. It goes
11 without saying. There's a lot of people in this
12 courtroom that find this important. I don't envy you
13 guys, but I just, I plead with you. Use common sense.
14 Use reason.

15 What does that picture show you when you look at
16 his version of events? What does those wounds show you?
17 I mean, I hate to keep harping on this thing, but that
18 is highly, highly relevant. This is Eric Griffin right
19 here. The wounds to his right -- the back of his right
20 head. The only verdict, the only verdict that speaks the
21 truth, the only verdict that fits the evidence -- and we
22 all said we were going to follow the evidence. That's
23 all I can ask you to do. The only verdict that is just
24 and speaks the truth is a verdict of guilt on the murder
25 of Eric Griffin, on the murder of Antonio Dash, and then

1 the weapons charge. Thank you.

2 THE COURT: Ladies and gentlemen, I'm going to send
3 you to the jury room for another break, about five
4 minutes. Do not discuss the case.

5 (THE JURY EXITS AT 12:28 PM.)

6 THE COURT: We'll take a five minute break. When
7 we start, the doors will be locked, so don't think you
8 can come wandering. If you're going to be in, be in and
9 in your seats in five minutes.

10 (OFF THE RECORD.)

11 (COURT REPORTER REVIEWS EXHIBITS WITH COUNSEL
12 DURING THE BREAK.)

13 THE COURT: You may be seated.

14 If you will bring the jury.

15 (THE JURY ENTERS AT 12:38 PM.)

16 JURY CHARGE

17 THE COURT: Madame Forelady and members of the
18 jury, you heard the testimony, received the evidence,
19 and heard the arguments of the state and the defendant.
20 I will now explain to you the law that applies to this
21 case.

22 Under the constitution and laws of South Carolina,
23 you are the finders of the facts. I do not have the
24 right to pass upon the facts or even to express any
25 opinion that I might have as to them because this is a

1 matter solely for you go, the jury, to determine. As
2 jurors, then, it is your duty to determine the effect,
3 the value, and the weight of the evidence presented
4 during this trial.

5 As the trial judge, it is my responsibility to
6 preside over the case and to rule upon the admissibility
7 of evidence offered during the trial. You are to
8 consider only the testimony which has been presented
9 from this witness stand, together with any other
10 exhibits which have been made part of the record, as
11 well as any stipulations of counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. And as the presiding judge, I
14 am the sole judge of the law of this case. It is your
15 duty as jurors to accept and apply the law as I now
16 state it to you, then deliberate in an effort to reach
17 your verdict.

18 And finally, I charge you in this regard that you should
19 not be concerned with what you think the law ought to be
20 but what I tell you that the law is.

21 You are also the judges, the sole judges of the
22 credibility -- that is, the believability -- of the
23 witnesses who have testified and of the evidence
24 offered. In considering credibility, you may take into
25 consideration many things such as the demeanor or manner

1 of testifying, whether the witness had reason to be
2 biased or prejudiced, and whether a testimony was
3 contradicted on the one hand or supported and
4 corroborated on the other hand. You may believe a small
5 portion of a witness's testimony and disregard the
6 larger or vice versa. All these things you will
7 consider, bearing in mind that you should give the
8 defendant the benefit of any reasonable doubt. It
9 becomes your duty as jurors to analyze and to evaluate
10 the evidence and determine that evidence which convinces
11 you of its truth.

12 Now, normally a person cannot give opinion
13 testimony. When a person testifies, they must testify
14 as to what they either saw, heard, or sensed by smell,
15 or something of that nature. However, there is an
16 exception when someone is qualified because of education
17 or experience as an expert witness. These expert
18 witnesses are permitted to give their opinion in certain
19 areas if the court qualifies them in that way. To give
20 opinion testimony in that area does not mean that you
21 must accept the opinion, but it is evidence for you to
22 use in any way you see fit and give it the weight you
23 believe is appropriate.

24 Now, the fact that the defendant was arrested,
25 charged, and indicted in this case is not evidence and

1 cannot be considered by you as evidence of guilt. Nor
2 does it create any presumption or inference of guilt.
3 The indictments are simply the formal written
4 instruments which contain the charges made against the
5 defendant. The indictments are the formal documents by
6 which this case is brought into court.

7 The defendant, Antonio Vashon Barnes, Jr., has pled
8 not guilty to the indictments, and that plea puts the
9 burden on the state to prove the defendant guilty. A
10 person charged with committing a criminal offense in
11 South Carolina is never required to prove himself
12 innocent. I charge you that it is an important rule of
13 the law that the defendant in a criminal trial, no
14 matter what the seriousness of the charge may be, will
15 always be presumed to be innocent of the crime for which
16 the indictment was issued unless guilt has been proven
17 by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the
21 defendant throughout the trial until you reach a verdict
22 of guilt based on evidence satisfying you of that guilt
23 beyond a reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 defendant which remains with the defendant until it has
2 been stripped from the defendant by evidence satisfying
3 you of the defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not a mere legal
5 theory; it's not just a legal phrase. It is a
6 substantial right to which every defendant is entitled
7 unless you, the jury, are satisfied from the evidence of
8 guilt of the defendant beyond a reasonable doubt. The
9 state must prove the defendant guilty beyond a
10 reasonable doubt.

11 So, what is a reasonable doubt in the law? A
12 reasonable doubt is a doubt which makes a reasonable,
13 honest, sincere, and conscientious juror to hesitate to
14 act. Proof beyond a reasonable doubt must, therefore,
15 be proof of such a convincing character that a
16 reasonable person would not hesitate to rely and act
17 upon it in the most important of his or her own affairs.
18 Proof beyond a reasonable doubt can also be described as
19 proof that leaves you firmly convinced of the guilt of
20 the defendant.

21 Now, there are very few things in this world that
22 we know with absolute certainty, and in criminal cases
23 the law does not require proof that overcomes every
24 possible doubt. If based on your consideration of the
25 evidence you are firmly convinced that the defendant is

1 guilty of the crime charged, you must find him guilty.
2 If, on the other hand, you think there is a real
3 possibility that he is not guilty, you must then give
4 him the benefit of the doubt and find him not guilty.

5 The indictments in this case allege three separate
6 offenses against the defendant. The indictments are,
7 number one, murder of Antonio Dash; indictment number
8 two, murder of Eric Griffin; indictment number three,
9 possession of a weapon during the commission of a
10 violent crime. Each indictment charges a separate and
11 distinct offense. You must decide each indictment
12 separately on the evidence and the law applicable to it,
13 uninfluenced by your decision as to any other
14 indictment. The defendant may be convicted or acquitted
15 on any or all of the offenses charged. You will be
16 asked to write a separate verdict of guilty or not
17 guilty for each indictment.

18 The defendant, Antonio Vashon Barnes, Jr., is
19 charged with murder of -- with the murder of Antonio
20 Dash and Eric Griffin. The state must prove beyond a
21 reasonable doubt that the defendant killed -- the state
22 must prove beyond a reasonable doubt that the defendant
23 killed Antonio Dash and Eric Griffin with murder -- with
24 malice aforethought.

25 Malice is hatred, ill will, or hostility towards

1 another person. It is the intentional doing of a
2 wrongful act without just cause or excuse, and with an
3 intent to inflict an injury, or under circumstances that
4 the law will infer evil intent.

5 Malice aforethought does not require that malice
6 exist for any particular time before the act is
7 committed, but malice must exist in the mind of the
8 defendant just before and at the time the act is
9 committed. Therefore, there must be a combination of
10 the previous evil intent and the act.

11 Malice aforethought may be expressed or inferred.
12 These terms expressed and inferred do not mean different
13 kinds of malice but merely the manner in which malice
14 may be shown to exist. That is either by direct
15 evidence or by inference from the facts and
16 circumstances which are proven.

17 Expressed malice is shown when a person speaks
18 words which express hatred or ill will for another, or
19 when the person prepared beforehand to do the act which
20 was later accomplished. For example, lying in wait for
21 a person or any other acts of preparation going to show
22 that the deed was within the mind of the defendant would
23 be expressed malice. Malice may be inferred from
24 conduct showing total disregard for human life.

25 The defendant is also charged with possession of a

1 weapon during the commission of a violent crime. The
2 state must prove beyond a reasonable doubt that the
3 defendant was in possession of firearm during the
4 commission of a violent crime. A firearm means any
5 weapon which will, is designed to, or may be readily
6 converted to expel a projectile.

7 In order to find the defendant guilty of possession
8 of a weapon during the commission of a violent crime,
9 you must first find the defendant guilty of committing a
10 violent crime. Murder is a violent crime. The state
11 must prove beyond a reasonable doubt that the weapon
12 furthered, advanced, or helped in the commission of the
13 crime.

14 The defendant has raised the defense of
15 self-defense. Self-defense is a complete defense and if
16 it is established, you must find the defendant not
17 guilty. The state has the burden of disproving
18 self-defense beyond a reasonable doubt.

19 If you have a reasonable doubt of the guilt of the
20 defendant after considering all the evidence, including
21 the evidence of self-defense, then you must find the
22 defendant not guilty. On the other hand, if you have no
23 reasonable doubt of the guilt of the defendant after
24 considering, considering all the evidence, including the
25 evidence of self-defense, then you must find the

1 defendant guilty.

2 The following elements are required to establish
3 self-defense. First, the defendant must be without
4 fault in bringing on the difficulty. If the conduct of
5 defendant was the type which was reasonably calculated
6 to and did provoke a deadly or serious assault, the
7 defendant would be at fault in bringing on the
8 difficulty and would not be entitled to an acquittal
9 based on self-defense.

10 The second element of defense is that the defendant
11 was actually in imminent danger of death or serious
12 bodily injury, or that the defendant actually believed
13 he was in imminent danger of death or serious bodily,
14 bodily injury.

15 If the defendant was actually in imminent danger,
16 it must be shown that the circumstances would have
17 warranted a person of ordinary firmness and courage to
18 strike the fatal blow to prevent death or serious bodily
19 injury. If the defendant believed he was in imminent
20 danger of death or serious bodily injury, it must be
21 shown that a reasonably prudent person of ordinary
22 firmness and courage would have had the same belief.

23 In deciding whether the defendant actually was or
24 believed he was in imminent danger of death or serious
25 bodily injury, you should consider all the facts and

1 circumstances surrounding the crime, including the
2 physical condition and characteristics of the defendant
3 and the victims.

4 The defendant does not have to show that he was
5 actually in danger. It is enough if the defendant
6 believed he was in imminent danger and a reasonably
7 prudent person of ordinary firmness and courage would
8 have had the same belief. A defendant has the right to
9 act on appearances even though the beliefs of the
10 defendant may have been mistaken. It is for you to
11 decide whether the fear of defendant of immediate danger
12 of death or serious bodily injury was reasonable and
13 would have been felt by an ordinary person in the same
14 situation.

15 The final element of self-defense is that the
16 defendant had no other probable way to avoid the danger
17 of death or serious bodily injury than to act as the
18 defendant did in this particular instance. If the
19 defendant was on his own premises, the defendant had no
20 duty to retreat before acting in self-defense.

21 A person cannot be required to make an exact
22 calculation as to the degree or amount of force which
23 may be needed to avoid death or serious bodily injury.
24 Therefore, in self-defense the defendant has the right
25 to use the force necessary to avoid death or serious

1 bodily harm.

2 The force used in self-defense does not have to be
3 limited to the degree or amount -- or amount of force
4 used by the victim or victims. The defendant has a
5 right to use so much force as appeared to be necessary
6 for complete self-protection and which a person of
7 ordinary reason and firmness would have believed to be
8 needed to prevent death or serious bodily harm.

9 If the defendant is justified in defending himself,
10 then the defendant is also justified in continuing to
11 defend until it is apparent that the danger of death or
12 serious bodily injury has completely ended.

13 A person can be acting lawfully even if he is in
14 unlawful possession of a weapon if he was entitled to
15 arm himself in self-defense at the time of the shooting.

16 If the defendant or a member of defendant's
17 household is attacked in the defendant's own home, the
18 defendant may use the force which appears to be needed
19 to protect himself or his household from death or
20 serious bodily injury. If a trespasser refuses to leave
21 the home when asked to leave, the defendant may use the
22 necessary force to eject the trespasser. If in the
23 effort to eject the trespasser the life or safety of the
24 defendant or member of the defendant's household is
25 jeopardized, the defendant may take the life of the

1 trespasser. The kind and degree of force which are
2 justified depend on the conduct of the trespasser. If a
3 person entered the dwelling at the invitation of a
4 member of the household, the person becomes a trespasser
5 if the person refuses to leave when asked.

6 If while legitimately exercising in good faith the
7 right to eject a trespasser the defendant is assaulted
8 by the trespasser and fears death or serious bodily
9 harm, the defendant would be entitled -- the defendant
10 would be without fault in bringing on the difficulty.
11 Whether the defendant was acting in good faith in
12 attempting to eject the victim or victims and was
13 assaulted in the process is a question for you to
14 determine.

15 In order to establish criminal liability, criminal
16 intent is required. For example, the mental state
17 required to be proven by the state for a particular
18 crime might be purpose, intent, knowledge, recklessness,
19 or criminal negligence. Criminal intent must be proven
20 by the state beyond a reasonable doubt. Criminal intent
21 is always a matter that must be determined by the jury
22 from the circumstances surrounding the situation. There
23 is no way to prove intent with a mathematical certainty.
24 There is no way medical science can dissect a person's
25 brain and determine what the person had in mind, so the

1 law says criminal intent may be inferred from the
2 circumstances shown to have existed.

3 This is how you make a determination of whether or
4 not the element requiring intent was present. It is not
5 necessary to establish intent by direct and positive
6 evidence, but intent may be established by inference in
7 the same way as any other fact, taking into
8 consideration the acts of the parties and all of the
9 facts and circumstances of the case.

10 Criminal intent is a mental state, a conscious
11 wrongdoing. It is up to you to determine what the
12 defendant intended to do based on the circumstances
13 shown to have existed. Criminal intent can arise from
14 action or failure to act. It may arise from negligence,
15 recklessness, or an indifference to duty, or to
16 consequences that is considered by the law to be the
17 equivalent of criminal intent.

18 Now, while the arguments of counsel are a
19 beneficial part of every trial, you should remember that
20 the statements made by counsel are not evidence. In
21 presenting their arguments, counsel often refer to the
22 evidence. However, you should base your verdict on the
23 evidence as you remember it. If there are any conflicts
24 between the recollection of counsel about the evidence
25 and your own recollection, you should rely on your own

1 understanding of the evidence.

2 Madame Forelady and members of the jury, I am
3 required to charge you the law as I have done through
4 these instructions now being given to help guide you to
5 a just and lawful verdict. Whether some of these
6 instructions apply will depend upon what you find to be
7 the facts. The fact that I have instructed you on
8 various subjects must not be considered as indicating an
9 opinion of this court as to what you should find to be
10 the facts or what your verdict should be.

11 Now, you've been chosen and sworn to give the
12 parties a fair and impartial trial. When you have done
13 so, you will have complied with your oath, and no one
14 will have a right to criticize your verdict.

15 You must not be influenced by opinions or
16 expression of opinions you may have heard outside of the
17 courtroom but rather should base your verdict solely on
18 the testimony of the sworn witnesses who took stand, the
19 exhibits received into evidence, and the law which I
20 have stated. You should not be swayed by caprice,
21 passion, prejudice, or improper sympathy for or against
22 anyone. Remember you have no friends to reward or
23 enemies to punish, and all parties are entitled to a
24 fair and impartial trial.

25 It is your duty as jurors to consult with one

1 another and to deliberate in an effort to reach an
2 agreement. Each of you must decide this case for
3 yourself but only after impartial consideration of all
4 the evidence with your fellow jurors.

5 In the course of your deliberation, do not hesitate
6 to re-examine your own views and change your opinion if
7 you become convinced it is erroneous. However, do not
8 surrender your honest convictions as to the weight or
9 effect of the evidence solely because of the opinion of
10 your fellow jurors or for the mere purpose of returning
11 a verdict.

12 As I stated earlier, you are the judges, the judges
13 of the facts, but your verdict must represent the
14 considered judgment of each of you. In other words,
15 your verdict must be unanimous.

16 Now, you may have noticed that I have read these
17 instructions. I do so to give you the law as accurately
18 as possible. I will give you a copy of these
19 instructions to have in the jury room. You may refer to
20 these instructions to assist you in your deliberations.
21 You must consider the instructions as a whole and not --
22 and may not follow some and ignore others.

23 And, Madame Foreperson, it will be your duty to
24 preside over the deliberations of the jury.

25 If during your deliberations you should desire to

1 communicate with the court, please reduce your message
2 or question to writing sign by your foreperson and the
3 foreperson only and pass the note to the bailiff, who
4 will bring it to my attention. I will then respond as
5 promptly as possible either in writing by having you
6 return to the courtroom. I caution you, however, with
7 regard to any message or question you might send that
8 you should never state or specify your numerical
9 division at the time.

10 Now you've heard the evidence and you have heard
11 the law. Whatever your verdict, Madame Forelady, you
12 will indicate the verdict on the back of each
13 indictment. There are three indictments and on the back
14 of each indictment, there's a place on the left side of
15 the bottom, verdict. On each indictment, you write the
16 verdict of guilty or not guilty and then sign and date
17 the verdict.

18 Remember that although the foreperson is the only
19 juror who writes the verdict, it is not hers alone. The
20 verdict has to be unanimous.

21 Madame Foreperson, you are not authorized to write
22 the verdict until all of you have agreed on the verdict.

23 Now, we have selected fourteen jurors, but we can
24 only use twelve to deliberate, and we have two
25 alternates on the back row. So, out of the first twelve

1 jurors selected, if any of you cannot continue with
2 deliberations for whatever reason, for whatever reason
3 under the sun, if any of you cannot continue and
4 participate in deliberations, please let me know by
5 raising your hand.

6 (THERE IS NO RESPONSE.)

7 THE COURT: All right, that means that each of the
8 first twelve jurors are good to go, which means that the
9 two alternates will remain with us when the others go to
10 the jury room. Certainly we'll have them retrieve your
11 lunch. Otherwise, you will remain with us while the
12 others go to the jury room.

13 So, ladies and gentlemen, I will now send you to
14 your jury room, but do not begin deliberations until you
15 have received a copy of this jury charge, the
16 indictments, and the exhibits. Once you receive these
17 things, that will be your signal to begin your
18 deliberations. Once you begin deliberations, you will
19 deliberate until you have reached a verdict, at which
20 time you will knock on the door, advise the bailiff, and
21 we will bring you out to receive your verdict.

22 Yes, sir, come forward.

23 (WHEREUPON, A JUROR HAS A PRIVATE BENCH CONFERENCE
24 WITH THE JUDGE.)

25 THE COURT: Counsel approach.

1 (THE FOLLOWING BENCH CONFERENCE IS IN WITH THE
2 PRESENCE OF COUNSEL.)

3 THE COURT: Mr. Bowen, I will use you as a clerk.
4 Mr. Bowen, I'm going to use you as a clerk.

5 BAILIFF: All right.

6 THE COURT: Ladies and gentlemen, we're going to
7 select one of the alternates to serve and participate in
8 deliberations, Juror number 41 or 297. Are those your
9 numbers? On the back row, 297 and 41? All right.

10 So in selecting an alternate, the process is you
11 put the numbers of the alternates in a box and randomly
12 select one. We've put their numbers in a box, the two
13 numbers.

14 We've done that, Mr. Bowen. Mr. Bowen, we've put
15 them in a box already.

16 Any objection to Mr. Bowen serving the role as the
17 selector?

18 MS. YOUNG: No, Your Honor.

19 THE COURT: All right. All right, if you'll pick
20 one out.

21 (A PAUSE.)

22 THE COURT: All right. So, Juror number 297, you
23 will become -- if you'll change seats with the gentleman
24 ahead of you.

25 (A PAUSE.)

1 THE COURT: So, you, you become a regular member
2 the jury panel and will participate in the deliberation.
3 Certainly you have been here and listened to all the
4 evidence, and you are now a member of the regular panel.

5 So as the parties go, the remaining two jurors will
6 stay with us. If you all will go now to the jury room
7 and wait for the exhibits and indictments before
8 beginning deliberations, and certainly we have your
9 lunch back there, and how you manage that is totally up
10 to you all, but you will deliberate until you reach a
11 verdict.

12 (THE JURY EXITS AT 1:13 PM.)

13 THE COURT: Are there any additions or exceptions
14 to the charge?

15 MR. SCOTT: None from the state, Your Honor.

16 MR. LUKE SHEALEY: There is one from the defense,
17 Your Honor, regarding the defense of habitation charge.
18 I was listening very carefully. I know this is kind of
19 more of a last-minute one, but it did omit -- was a very
20 critical part of that was that unlike defense of
21 self-defense, the defense of habitation does not require
22 that a defendant reasonably believe that he or his
23 property was in imminent danger of sustaining serious
24 injury or damage. Rather, defense of habitation
25 provides when one attempts to force himself into a

1 dwelling, the law permits an owner to use reasonable
2 force to expel the trespasser. I did hear the language
3 about invitees being transformed into trespasser and
4 what it means, but I did not hear that critical
5 distinction about not requiring an attack or imminent
6 threat. So, I just -- to be complete, I think it would
7 be that, Your Honor.

8 THE COURT: The court is satisfied that the
9 instruction was the proper instruction, and you can make
10 your additional request part of the record.

11 MR. LUKE SHEALEY: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. SCOTT: Not from the state.

14 THE COURT: All right, the exhibits, are they
15 together?

16 COURT REPORTER: Yes, sir.

17 THE COURT: Together already?

18 COURT REPORTER: Yes, sir.

19 THE COURT: Okay. Well, you can make this note a
20 part of the record, and jurors can begin deliberating.

21 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 2
22 RECEIVED INTO EVIDENCE.)

23 (WHEREUPON, JURY DELIBERATIONS BEGIN AT 1:18 PM.)

24 THE COURT: All right let's come to order. Come to
25 order. Court is still in session.

1 Sir, you guys can go.

2 I want to thank you all for your service on the
3 case. The one juror -- sir, I'm talking to you
4 primarily, the two of you. They will get your things
5 out of the jury room.

6 JUROR: You want us to leave?

7 THE COURT: Pardon?

8 JUROR: Did you say to leave?

9 THE COURT: No. I'm talking to you all. You can't
10 leave while I'm talking to you. I'm thanking you for
11 your jury service, and now you're released from jury
12 duty. You can discuss the case with anyone that you
13 might want to, but it's advisable to not disclose what
14 you think the verdict should be or should have been
15 until you hear a verdict from the jury. Other than
16 that, you are now released from jury service. They will
17 get whatever you have put in the jury room. They'll
18 bring it out for you, including your lunch and any
19 personal items and give you your cell phones and all
20 that. I want to thank you on behalf of the state and
21 defendant and the citizens of this county. So, thank
22 you all.

23 And we will be at ease.

24 (OFF THE RECORD.)

25 THE COURT: I understand that the jury has a

1 verdict. I want to remind everyone that the decorum of
2 the court must be maintained at all times. No outbursts
3 allowed.

4 You can bring the jury.

5 (THE JURY ENTERS AT 4:14 PM.)

6 THE COURT: Madame Forelady, if you will stand for
7 me. Have you reached a verdict?

8 FOREPERSON: We have.

9 THE COURT: Is it unanimous?

10 FOREPERSON: It is.

11 THE COURT: All right. If you will pass it up, and
12 you may be seated.

13 The defendant will rise.

14 (A PAUSE.)

15 THE COURT: All right, Madame Clerk, you may
16 publish the verdict.

17 VERDICT

18 CLERK OF COURT: Indictment number 2021-GS-40-1294,
19 *The State v. Antonio Vashon Barnes, Jr.* This is an
20 indictment for possession of a weapon during, during a
21 violent crime. We, the jury, find the defendant guilty.
22 It's signed foreperson, Juror number 156, December 8,
23 2022.

24 Indictment number 2021-GS-40-1292, *The State v.*
25 *Antonio Vashon Barnes, Jr.* This is an indictment for

1 murder.

2 THE COURT: Of?

3 CLERK OF COURT: Murder of Eric Griffin. We, the
4 jury, find the defendant guilty. This is signed
5 foreperson, Juror number 156, December 8, 2022.

6 Indictment number 2021-GS-40-1293, *The State of*
7 *South Carolina v. Antonio Vashon Barnes, Jr.* This is an
8 indictment for the murder of Antonio Dash. We, the
9 jury, find the defendant not guilty. This is signed by
10 foreperson, Juror number 156 December 8, 2022.

11 Madame Foreperson, are these your verdicts and the
12 verdicts of the entire jury?

13 FOREPERSON: They are.

14 THE COURT: Thank you.

15 Any individual polling requested?

16 MR. LUKE SHEALEY: Yes, Your Honor.

17 THE COURT: If you will poll the jurors
18 individually, please.

19 CLERK OF COURT: Yes, Your Honor.

20 JURY POLLING

21 CLERK OF COURT: Ladies and gentlemen of the jury,
22 I'm going to ask you two questions regarding each
23 verdict, and if you will answer yes or no to these
24 questions.

25 Juror number 156.

1 THE COURT: Thank you.

2 Anything else by the state? Mr. Walton?

3 MR. WALTON: I concur with Mr. Scott, Mr. Gilliam.

4 What happened is heinous, and just leave it in Your

5 Honor's discretion. You know the facts, and we trust in

6 your judgment.

7 THE COURT: Mr. Fowler.

8 MR. FOWLER: Your Honor, I would just concur with

9 the wishes of the family that suffered the most in all

10 of this.

11 THE COURT: Anything else, Mr. Scott?

12 MR. SCOTT: Nothing else, Your Honor.

13 THE COURT: Mr. Barnes, if you will come around

14 here for sentencing.

15 (A PAUSE.)

16 THE COURT: Anything you'd like to say, Mr. Barnes?

17 DEFENDANT: No, sir.

18 THE COURT: Mr. Barnes, you, you engage in a very

19 high risk lifestyle where you said you were selling

20 marijuana to support your habit. Had a lot of marijuana

21 in your house. You had a lot of guns in your house, and

22 when you say that you were sound asleep and were -- I

23 imagine you slept with one eyes -- one eye open based on

24 your lifestyle.

25 I see nothing in this case but just a totally

1 senseless killing. My evaluation of the case, listening
2 to the testimony, is not the same as your lawyers. I
3 don't see anything that was unique about this case. For
4 you to jump up with a loaded gun and just at 9 o'clock
5 in the morning, at 8:46 in the morning, 8:51, whatever
6 it was and just start blindly firing your gun, knowing
7 that you had roommates, without even attempting to
8 ascertain any significant degree of danger. I imagine
9 that had to have been the quietest tussle that ever
10 existed for you to be in one room in an apartment when
11 someone else is creating this thunderous, dangerous
12 noise that you think is somebody breaking in without
13 them otherwise making a sound.

14 And the jury did wrestle with this case, and I
15 would think that they wrestled with the fact that
16 neither side wanted the jury to be instructed on
17 manslaughter. The jury had to find malice in order to
18 find you guilty of killing Mr. Dash, and they could not
19 find that beyond a reasonable doubt. You indicated how
20 you loved him like a brother and how sorry you were
21 after the shooting, and you rolled the dice on both
22 charges. Did not want an instructions on manslaughter
23 and maybe you -- you roll the dice and won on that one.

24 But you at no time expressed any regard for the
25 life of Mr. Griffin during the police interrogation,

1 during your testimony, and most importantly during the
2 time you put that gun to his head at close range and
3 basically blew his brains out. As much malice as one
4 can ever imagine at the time that you killed him. So,
5 I, I don't buy the notion that this was a tragic
6 misunderstanding.

7 You, during your testimony, talked about playing
8 the video games and you approached this situation, it
9 appeared, as if it was a video game where you could fire
10 all these shoots as if it were a video game. Then at
11 the end of it, they all would get up and just walk
12 around as if you hadn't pulled the trigger.

13 So, there's nothing unique about that these days.
14 You know, I see it all the time consistently by people
15 your age, just a total reckless regard -- disregard for
16 human life, reckless use of guns, reckless shooting,
17 reckless killing, and yours just happened to be just one
18 more. Two more in this instance. Three more including
19 you, and it's just so sad.

20 I'm impressed by one thing in this trial, and that
21 is your level of intelligence. The way you were be able
22 to confront and face the cross-examination by the
23 solicitor, you, you could match him word for word,
24 thought for thought. You know, you, you displayed such
25 a high level of intelligence, and that's why I could see

1 how your lawyers would be so impressed with you and
2 maybe with your version of things because you're an
3 extremely intelligent person. And for you to engage in
4 the lifestyle you did and to commit the crime that you
5 did, such a -- such a tragedy for you, in addition to a
6 tragedy for everyone else, including all of the victims.

7 SENTENCE OF THE COURT

8 THE COURT: So, you've been convicted of murder,
9 carrying thirty years to life. You've been convicted of
10 possession of a weapon during the commission of a
11 violent crime, which carries five years. I imagine you
12 see Mr. Dash and Mr. Griffin for most days during your
13 -- during your life from henceforth, if not from then
14 til now.

15 On murder, the sentence is thirty-five years. The
16 weapon charge, the sentence is five years to run
17 concurrent with credit for any time that you are due. I
18 hope you make the best of your time, the best of your
19 life. Good luck to you.

20 MR. LUKE SHEALEY: Your Honor, I'd requested ten
21 days for posttrial motions. Can we clarify that
22 deadline? By my count, that would be the 22nd.

23 THE COURT: I haven't been counting. So, you can
24 count to ten, whatever that is.

25 MS. YOUNG: Should that include weekends?

1221



Type	Time stamp (New York)	Details	Content
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:51 PM (UTC-5) Delivered: 02/05/2019 06:03:52 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Tell me y sumbody stole 1 of our guns today
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:53 PM (UTC-5) Delivered: 02/05/2019 06:03:56 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Idk who doe
iMessage	2/5/2019 18:04	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:04:09 PM (UTC-5) Read: 02/05/2019 06:08:37 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: How that happen

iMessage 2/5/2019 18:08 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:08:38 PM (UTC-5) Delivered: 02/05/2019 06:08:41 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: Idek

iMessage 2/5/2019 18:14 Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:14:35 PM (UTC-5) Read: 02/05/2019 06:58:08 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage Text: Y'all be having to many ppl in there chillin and shit.

iMessage 2/6/2019 12:24 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 12:24:27 PM (UTC-5) Delivered: 02/06/2019 12:24:28 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: Still tryna figure out who took dha gun

iMessage 2/6/2019 12:54 Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 12:54:05 PM (UTC-5) Read: 02/06/2019 01:21:55 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage Text: I thought y'all fighter that out last night

iMessage 2/6/2019 13:22 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:03 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: Naw we never did

iMessage 2/6/2019 13:22 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:06 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: Shit crazy

iMessage 2/6/2019 13:26 Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:26:36 PM (UTC-5) Read: 02/06/2019 01:38:27 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage Text: Where was it at

iMessage 2/6/2019 13:38 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:38:57 PM (UTC-5) Delivered: 02/06/2019 01:38:59 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: On dha lul table in dha corner Nd shit so crazy is we was all in dha same plac

iMessage 2/6/2019 13:39 Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:39:07 PM (UTC-5) Delivered: 02/06/2019 01:39:08 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage Text: Like right in front our face type shit

iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:05 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Y'all asses must been playing the game and not paying attention
iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:22 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: You think it was somebody you be serving to ?
iMessage	2/6/2019 13:42	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:42:08 PM (UTC-5) Delivered: 02/06/2019 01:42:09 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: It had to be one of our supposed to be friends idk it wasn't my gun but still how

iMessage 2/6/2019 13:46 Source: Apple Messages Direction: Incoming message Status: Read Text: Smh 
Time stamp: 02/06/2019 01:46:19 PM (UTC-5)
Read: 02/06/2019 02:08:23 PM (UTC-5)
Remote party: +18034798007
From: +18034798007
To: +18035698986
Type: iMessage

iMessage 2/6/2019 14:09 Source: Apple Messages Direction: Outgoing message Status: Unread Text: lkr juss gotta keep Mfs from Round
Time stamp: 02/06/2019 02:09:43 PM (UTC-5)
Delivered: 02/06/2019 02:09:44 PM (UTC-5)
Remote party: +18034798007
From: +18035698986
To: +18034798007
Type: iMessage

iMessage 2/6/2019 14:28 Source: Apple Messages Direction: Incoming message Status: Read Text: That's so true
Time stamp: 02/06/2019 02:28:44 PM (UTC-5)
Read: 02/06/2019 02:29:16 PM (UTC-5)
Remote party: +18034798007
From: +18034798007
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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN GENERAL SESSIONS COURT
 Warrant Nos: 2019A4021600441,
 2019A4021600442, 2019A4021600444

The State of South Carolina,)

vs.)

DEFENDANT'S REQUEST TO
 CHARGE # 8

Antonio Vashon Barnes, Jr.)
Defendant.)

Defense of Habitation

The defense of habitation is the defense of one's dwelling house. Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force:

*A man who attempts to force himself into another's dwelling, or who, **being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

State v. Bradley, 126 S.C. 528 (1923).

[Signature page to follow]

Laura Young
Attorney for the Defense

Brian R. Shealey
Attorney for the Defense

Luke A. Shealey
Attorney for the Defense

December __, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 The State of South Carolina,)
)
 vs.)
)
 Antonio Vashon Barnes, Jr.)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Numbers: 2019A4021600441,
 2019A4021600442, 2019A4021600444

2022 DEC -5 AM 8:56
 JEANETTE W. MORRIS
 C.P., G.S., & S.P.D.

RICHLAND COUNTY
 FILED

MOTION TO EXCLUDE PHOTOS OF
 GUNS AND EVIDENCE OF DRUG
 USE AND/OR DEALING

The above-captioned defendant, Antonio Vashon Barnes, Jr. (“Barnes”), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding prejudicial evidence of marijuana and guns. Pursuant to Rules of the South Carolina Rules of Evidence, Defendant requests that the Court prohibit a picture of Barnes’ holding a gun and any evidence of marijuana possession or dealing as irrelevant, more prejudicial than probative and improper character evidence.

FACTS

The morning of February 7, 2019, Barnes was asleep in his bed, which is substantiated by the lack of activity on Barnes’ phone that morning, when he heard a loud commotion coming from his living room. Barnes believed that both of his roommates would not be in the apartment that morning because one roommate, Antonio Dash (“Dash”), was supposed to go to work and the other roommate, Samuel Thomas (“Thomas”), was supposed to go to a doctor’s appointment. Barnes further believed that the large commotion was due to unknown individuals attempting to rob his apartment. Believing that his apartment was being robbed, Barnes grabbed a gun from his room, entered the short narrow hallway of the apartment which led into the apartment’s living room and shot towards the loud commotion. Barnes shortly discovered that the individuals making

the loud commotion were Dash and an acquittance, Eric Griffin (“Griffin”). Both Griffin and Dash suffered from gunshot wounds and died as a result of those gunshot wounds. Evidence of a fight or commotion is present in the apartment where a table is turned over, a hole is in the wall and one of the decedents potentially had an earring ripped out of their ear. The gun that Barnes possessed at the time of the shooting was recovered by law enforcement.

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes’ motion asserting statutory immunity from prosecution (“Immunity Hearing”), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.*). At the Immunity Hearing, the State presented a photo of Barnes with a gun and photos of guns. The State also presented evidence of a gun going missing a few days before the shooting. The missing gun was Antonio Dash’s (“Dash”), one of the roommates and decedents, gun. Around the time the gun allegedly went missing, on or about February 4, 2019, Dash, Barnes, Thomas, Griffin and another individual were present at Dash’s, Barnes’ and Thomas’ apartment. Additionally, over the Defenses’ objection, evidence of marijuana dealing and marijuana being found in the apartment were presented where Barnes, in an interview after the shooting, admitted to dealing marijuana.

DISCUSSION

I. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Irrelevant

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

Evidence of Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or possessing a gun prior to the shooting is irrelevant to any fact in issue where Barnes

admits to possessing a gun at the time of the shooting and said gun was recovered by law enforcement.

Additionally, evidence of any marijuana dealing by Barnes is not relevant where there is no evidence, circumstantial or direct, that Barnes was attempting to sell marijuana that morning. Evidence of prior marijuana dealing or possession is not relevant to any fact at issue in this case where circumstantial evidence supports Barnes' consistent account to law enforcement and witnesses that he was asleep prior to hearing the commotion in the living room. Therefore, any evidence of prior marijuana dealing or possession should be properly excluded.

II. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Photos of Barnes holding a gun would present unfair prejudice because it would lead the jury to rely on their emotional dislike for Barnes to be holding a gun, possessing a gun or being around a gun. The imagery of Barnes being around copious amounts of guns, even though there is no substantial evidence to support that assertion, would incite the emotions of the jury where Barnes is alleged to have shot Dash and Griffin and has admitted to shooting Dash and Griffin. This imagery the evidence would create outweighs any probative value of the images where Barnes admits to possessing a gun and using a gun on the day of the perceived robbery and shooting.

Evidence of Barnes prior marijuana dealing and/or possession would be more prejudicial because it would incite strong emotions in the jury surrounding drug use, possession and dealing.

This prejudicial effect would outweigh any probative effect, if any exists. As previously argued, marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Furthermore, such evidence does not possess any probative value where Barnes asserts that he was asleep at the time of the commotion and did not have knowledge of who the individuals in the living room were. Subsequently, evidence of prior marijuana dealing or possession should properly be excluded as more prejudicial than probative.

III. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Improper Character Evidence

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b), SCRE.

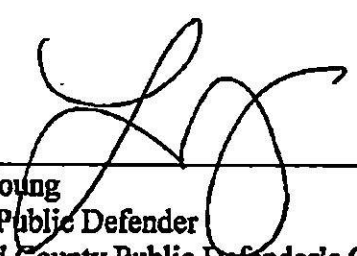
The presentation of Barnes holding a gun and possession of pictures of guns will only be presented as improper character evidence because, being devoid of any real probative value or relevance in this case as argued above, the images will be presented to show the jury that Barnes may have possessed or been around guns or possessed pictures of guns and therefore he possessed a gun the morning of February 7, 2019, which is not in dispute, and used that gun with some malicious intent, which is in dispute where Barnes states he believed his apartment was being robbed and had no idea of the identity of the individuals fighting in the apartment living room. Evidence that Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, any evidence that Barnes may have previously sold marijuana or possessed marijuana has no probative value or relevance to Barnes motive, intent or mistake of fact on February 7, 2019, where forensic evidence of Barnes' cell phone is circumstantial evidence supporting Barnes' account of being asleep that morning and being unaware of Griffin and Dash in the living room. The introduction of such evidence would be presented to suggest that because Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and/or possession should be properly excluded.

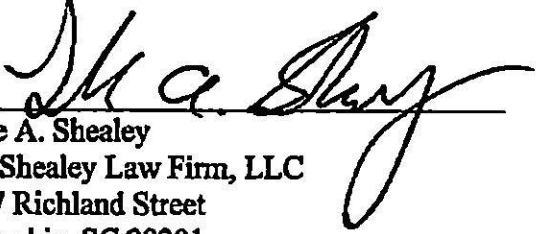
CONCLUSION

The admission of photos of Barnes holding a gun and pictures of guns as well as evidence of marijuana dealing and/or consumption should be excluded as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

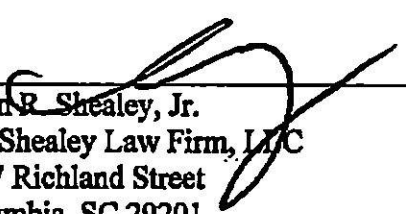
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Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 The State of South Carolina,)
)
 vs.)
)
 Antonio Vashon Barnes, Jr.)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Numbers: 2019A4021600441
 2019A4021600442, 2019A4021600443

2022 DEC -5 AM 9:11
 JEANETTE W. MCBRIDE
 C.L.P., G.S., & C.

RICHLAND COUNTY
 FILED

MOTION TO EXCLUDE RAP LYRICS

The above-captioned defendant, Antonio Vashon Barnes, Jr. (“Barnes”), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding the introduction of a rap video downloaded to Barnes’ phone on or about January 18, 2019 into evidence because of the State’s inability to authenticate the video, the video’s lack of relevance, the prejudicial effect of the protected speech outweighing its probative value, and the video’s presentation of improper character evidence.

FACTS

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes’ motion asserting statutory immunity from prosecution (“Immunity Hearing”), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq*). At the Immunity Hearing, the State elicited testimony from the Defense’s cell phone forensics expert, Christopher Watkins (“Watkins”), who analyzed Barnes’ cell phone about text messages sent and received February 6, 2019, about a missing gun, and about a rap video downloaded from Barnes’ Instagram account on January 18, 2019, which was excluded from evidence. Watkins testified at the Immunity Hearing that the video was downloaded from Instagram and therefore,

originated from another device. Watkins further testified that, “any media content that’s indicated by Instagram will be stripped of its original meta data so I cannot see the exact date and time it was created.” Immunity Hearing Transcript, Pg 274, lines 24-25 & pg 275, lines 1-2. All Watkins was able to testify to was the time the video was downloaded, not the time the video was created or received. The rap video generally references killing an individual that attempts to steal. The text messages about the missing gun discussed a gun belonging to Dash that Dash had not seen since on or about February 4, 2019. No other evidence of Barnes being the victim of a theft was presented.

DISCUSSION

I. The Admission of the Rap Video is Barred by Basic Rules of Evidence Principles

Many courts, including South Carolina’s Supreme Court¹, have come to realize the inequity with which Rap lyrics, a protected form of speech, are being presented in criminal cases in violation of basic Rules of Evidence prohibiting irrelevant evidence, evidence that is more prejudicial than prohibitive and improper character evidence².

¹ *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) (prohibiting a song lyric referencing leaving no prints and bodies left in a pool of blood written by the defendant as more prejudicial than prohibitive).

² *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021) (excluding videos of raps about past drug dealings, trafficking in narcotics and possessing a firearm as more prejudicial than prohibitive where the defendant was facing drug and firearm charges); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019) (excluding lyrics from a rap video presented by the State to show gang affiliation as unfairly prejudicial); *People v. Connal*, 254 Cal. Rptr. 3d 653 (2019) (excluding rap videos because the videos were cumulative of other, less prejudicial evidence, and their probative value depended on construing the lyrics as literal statements of fact or intent commenting that “[a]bsent some meaningful method to determine which lyrics represent real versus made up events, or some persuasive basis to construe specific lyrics literally, the probative value of lyrics as evidence of their truth is minimal”); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017) (finding that the admission of rap lyrics for three songs was an abuse of discretion where the song was recorded three years before the events at issue in the prosecution and did not reference the victim nor reference the particular facts of the crime); *United States v. Felix*, 663 F. App’x 557 (9th Cir. 2016) (excluding rap videos on the grounds that the rap lyrics are not admissible as party admissions, are not inextricably intertwined with charged crimes, are not evidence of other acts relevant to establish motive or knowledge, and danger of unfair prejudicial effect substantially outweighs any probative value); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014) (holding that “[c]onsidering the content of these lyrics...there is no question that Evidence Rule 404(b)’s purpose was implicated. It is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in addressing people who crossed him by killing them but also had done that in the past as he so vividly describes in his lyrics...”); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011) (excluding rap lyrics as “inadmissible works of fiction”).

a. The State Cannot Properly Authenticate the Rap Video

Rule 901 of the South Carolina Rules of Evidence provides that, “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Proper foundation establishing the authenticity of a piece of evidence is required prior to a determination of admissibility. *See State v. Rich*, 293 S.C. 172, 359 S.E.2d 281 (1987).

A cell phone forensic analyst has testified that due to the platform from which the rap video was downloaded the creation date of the rap video cannot be established. The only evidence of the creation date is the download date which was in January of 2019. Without additional supporting evidence, it is impossible to establish whether the video was created weeks, months, or years prior to January of 2019. Therefore, the authenticity, a precedent to determining its’ relevance, probative and prejudicial value, of the rap video cannot be established without supporting evidence of its creation date. The rap video should properly be excluded for lack of evidence of authenticity.

b. The Rap Video is Irrelevant to the Shooting for Which Barnes is Charged

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

“Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence...of the intent to commit the crime when intent or state of mind is in issue.” (quoting, Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000)). “State of mind is an issue any time malice or willfulness is an element of the crime.” *Id.* at 124-125. Malice is an element of murder. S.C. Code Ann. § 16-3-10.

The Defense anticipates that the State intends to introduce the rap video into evidence as circumstantial evidence of motive. While the exact date of creation is unable to be established, the rap video was created prior to Dash's gun allegedly going missing and any conversations about Dash's gun allegedly going missing where the gun allegedly went missing on or about February 4, 2019. Therefore, the rap is not relevant to motive or intent because the alleged theft of the gun had not yet occurred and a vague reference to violence is not admissible. See *Cheeseboro*, S.C. 526, S.E.2d 300. The rap video should properly be excluded as irrelevant evidence.

c. The Rap Video is More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. In *State v. Cheeseboro*, the South Carolina Supreme court considered whether the following rap lyrics were properly admitted by the trial court:

Ruckus, I believe you're a perpetrator, gold and platinum hater, cause me and J.D. is a force like Dark Vador. Who do you despise a strong enterprise? Do the greed in your eyes lead you to tell lies? Victimize me and Jermain Dupri, don't let me see or else there'll be death in this industry. Want let go, set it fo'sho', I get hype like Mike put yo' blood on the dance flo'. Blow fo' blow, toe to toe, with that no mo'. Like the 4th of July, I spray fire in the sky. If I hear your voice, better run like horses or like metamorphis, turn all y'all to corpses. No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail [of] bodies on the ground. Your whole click ain't nothing but tricks, bitch pulling sticks, grown men sucking dicks. No one bring ruckus like King Justice, but toughest the So So Def most corruptest.

S.C. 549-550 (). The trial court admitted the rap lyrics as an admission against interest due to their reference to leaving no prints and bodies left in a pool of blood where the defendant was being accused of an armed robbery and the murder of three individuals in an execution style shooting. The South Carolina Supreme Court found the admission to be in error because the prejudicial value of the rap lyrics far outweighed its probative value.

Much like *Cheeseboro*, the rap lyrics in this case are vague in context and much like *Cheeseboro*, “[t]he minimal probative value...is far outweighed by its unfair prejudicial impact as evidence of...bad character, *i.e.* his propensity for violence...” *Cheeseboro*, S.C. 550. Additionally, much like *Skinner*, there is no question that the prejudicial effect of these lyrics referencing theft well before any allegations of theft had occurred and a general claim of violence, normally used in rap lyrics as a metaphor for bravado, far outweighs any probative value, if any in fact exists. *Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video should properly be excluded as more prejudicial than probative.

d. The Rap Video Would be Improper Character Evidence

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b), SCRE.

It is indisputable that rap videos have been presented in criminal trials as evidence of connections to gangs, drugs, violence, etc. without any legitimate reason other than as ‘bad guy’ evidence³. In this case, there is no legitimate connection to any motive, identity, the existence of a common scheme or plan, an absence of mistake or accident or intent where the rap was created prior to any alleged theft, the alleged theft was not of Barnes’ gun, one of the victims of the alleged theft is a decedent, and the reference to theft and violence is vague and does not identify the decedents. Much like the rap lyrics in *Skinner*, “[i]t is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in

³ *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019); *People v. Coneal*, 254 Cal. Rptr. 3d 653 (2019); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017); *United States v. Felix*, 663 F. App’x 557 (9th Cir. 2016); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011).

addressing people who cross him by killing them...” 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video and the lyric it contains is merely being presented as evidence that because Barnes rapped a general lyric about theft and violence, before ever personally experiencing theft, he intentionally shot Dash and Griffin because of an alleged theft of one of the decedent’s gun. The rap should properly be excluded as improper character evidence where no circumstantial evidence supports an assertion that the rap is evidence of motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

II. Use of the Rap Video Will Violate Barnes’ First Amendment Right to Free Expression

Rap music is an artistic expression protected under the First Amendment. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) (“Music, as a form of expression and communication, is protected under the First Amendment.”). Rap music, like other forms of art, has its own “artistic or poetic conventions.” Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 20 (2007). Like other fiction authors, rap artists use “constructed images, metaphor, braggadocio, or exaggerated storylines” meant to “stretch and shatter credibility” where “[h]omocide serves as a frequent metaphor.” *Id.* at 22-23, 25. Rap artists will “adopt mythical or real-life characters as alter egos or fictional personas,” becoming a “thug, gangster...and hustler” when they rap. *Id.* at 23. Therefore, rap lyrics “may falsely or inaccurately depict the occurrence of events,” and are not necessarily autobiographical statements. *Id.* at 24.

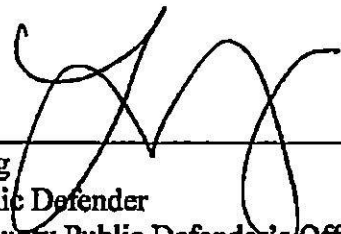
Importantly, the South Carolina Supreme Court ruled in *Cheeseboro* the admission of rap lyrics making a vague reference to violence, leaving no prints and bodies left in a pool of blood, where the appellant was charged with armed robbery and execution-style shooting of three

victims was more prejudicial than prohibitive considering the commonly violent nature of rap lyrics. *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001). Similarly, the rap lyrics at issue in this case, which inception was before any alleged theft of Dash's gun, merely contains a vague reference to theft and homicide, a common metaphor in rap lyrics. The use of the rap video would violate Barnes' First Amendment right to free speech where the rap lyrics have no bearing on Barnes' state of mind at the time of the shooting and would further have a chilling effect on an entire genre of music.

CONCLUSION

The admission of the rap video would violate Barnes' First Amendment right to expression and should further be excluded for the State's inability to authenticate the video and as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

[Signature page to follow]



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Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 The State of South Carolina,)
)
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 vs.)
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 Antonio Vashon Barnes, Jr.)
Defendant.)

IN GENERAL SESSIONS COURT
 Warrant Nos: 2019A4021600441,
 2019A4021600442, 2019A4021600444

JEANNETTE W. NICHOLS
 C.P., G.S.
 2022 DEC -5 AM 8:58
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RICHLAND COUNTY
 FILED

**MEMORANDUM OF LAW SUPPORTING
 ADMISSION OF CERTAIN EVIDENCE
 AND CERTAIN LINES OF EXAMINATION**

Comes now, the Defendant, by and through his undersigned attorney, providing the Court and opposing counsel a memorandum of law in support of the admission of certain evidence and the relevancy of certain lines of examination. Defense counsel has prepared this memorandum in anticipation of possible objections by the State regarding certain evidence and lines of examination.

Anticipating possible objections from the State, the Defendant provides the Court with this memorandum of law in support of his right to present and utilize certain evidence in presenting a full and complete defense.

ARGUMENT

I. THE DEFENDANT HAS CONSTITUTIONALLY PROTECTED RIGHTS UNDER THE 5th, 6th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §3 AND §14 OF THE CONSTITUTION OF SOUTH CAROLINA TO CONFRONT WITNESSES UNDER OATH AND TO HAVE A MEANINGFUL OPPORTUNITY TO PRESENT A FULL AND COMPLETE DEFENSE.

The Defendant has a constitutionally protected “right to present a defense,” a right enumerated via the 6th Amendment to the Constitution of the United States and recognized by the Supreme Court of the United States in Washington v. Texas, 388 U.S. 14 (1967).

In *Washington*, the Supreme Court recognized that the compulsory process clause was designed to secure more than the presence of the defendant’s witnesses:

The right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present the defense, **the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.** Washington at 19, emphasis added.

In reversing a South Carolina conviction based on the right to present a defense, the United States Supreme Court stated that “the Constitution guarantees criminal defendants ‘a meaningful opportunity to present **a complete defense.**’” Holmes v. South Carolina, 547 U.S. 319, 331 (2006), emphasis added. In quoting that language, the *Holmes* court cited to previous decisions. The full quote is actually:

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.” Crane v. Kentucky, 476 U.S. 683, 689 (1986), quoting California v. Trombetta, 476 U.S. 479, 485 (1984).

This concept is also firmly rooted in the Constitution of South Carolina. In a section titled “Trial by Jury; Witnesses; Defense,” our State constitution reads:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to be fully heard in his defense by himself or by his counsel or by both.** Art. I, Sec. 14 S.C. Constitution, (emphasis added).

The Supreme Court of South Carolina has embraced the “right to present a defense,” specifically quoting the language from *Washington* cited above and further citing *Washington* in stating that, “This right is a fundamental element of due process of law.” State v. Inman, 395 S.C. 539, 561 (2011), quoting Washington at 19. This right gains special importance when the evidence is critical of the accused’s defense and, as argued below, state courts may not impinge a defendant’s fundamental constitutional rights by relying on state evidentiary or court rules. Pettijohn v. Hall, 599 F.2d 476 (1st Cir. 1979), citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

Furthermore, once a sixth amendment right is implicated, the state must offer a sufficiently compelling purpose to justify the practice. Various state evidentiary rules which advanced legitimate state interests have bowed to the defendant’s right to let the jury hear relevant evidence. See, e.g., Washington v. Texas, *supra*, (state interest in avoiding perjured

testimony did not justify its ruling barring co-conspirators from testifying); Chambers v. Mississippi, *supra*, (state law excluding third party hearsay confessions did not justify exclusion). Cf. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) (confrontation right prevails over juvenile proceedings privilege statute); United States v. Nixon, 418 U.S. 683, 709; 94 S.Ct. 3090 (1974) (executive privilege yields to need for criminal evidence). Any reason offered for exclusions in this case would be likewise insufficient.

II. THE EVIDENCE AND EXAMINATION SOUGHT IS RELEVANT AND ADMISSIBLE.

For evidence to be admissible, there must be a logical or rational connection between the fact sought to be presented and a matter of fact in issue at trial. Gause v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968). Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012), citing SCRE 401. Any evidence that assists the court in getting at the truth of an issue will be deemed relevant and admissible unless the evidence is incompetent because of some legal rule. Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967).

In Kyles v. Whitley, the United States Supreme Court reversed a murder conviction and death sentence based on the prosecution's failure to disclose material evidence favorable to the accused. In doing so, the Kyles court devoted an entire section of their opinion (section IV, B) to the defense of attacking "the thoroughness and even the good faith of the investigation." Kyles v. Whitley, 514 U.S. 419, 445 (1995).

A common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant, and we may consider such use in assessing a possible *Brady* violation. Kyles at 446, quoting Bowen v. Maynard, 799 F.2d 593, 613 (CA10 1986), emphasis added.

Kyles makes clear that attacking the investigation and decision to charge the accused is a valid defense. Evidence and examination that speaks to those defenses are wholly relevant and admissible.

Additionally, the South Carolina Rules of Evidence specifically afford the Defendants the right to present evidence of bias, prejudice or motive in examining and impeaching witnesses. **This evidence can be provided by examination or by evidence otherwise adduced.** SCRE 608(c), emphasis added. "Anything having a legitimate tendency to throw light on the accuracy,

truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." State v. Saltz, 346 S.C. 114, 131-132; 551 S.E.2d 240, 250 (2011), emphasis added.

All of the authority cited above makes clear that the Defendant is entitled to present this evidence in his defense. The Court cannot restrict the Defendant's constitutionally protected right to present material and relevant evidence to a jury that goes to directly undermining the credibility of the State's investigation and decisions to charge.

Even if the Court were to find an evidentiary reason to exclude such evidence and examination, the Defendant would be entitled to an *Offer of Proof* under Rule 103(a)(2) SCRE in order to protect the record for appeal. In fact, failure to make an offer of proof would preclude consideration of the matter on appeal. Carson v. SCDNR, 371 S.C. 144, 638 S.E.2d 45 (2002).

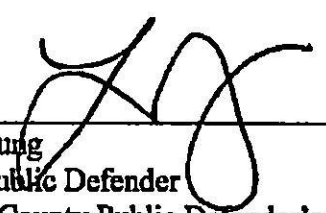
CONCLUSION

It is clear from the facts and law set out in this memorandum that the Defendant has protected rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and Article I and Article V of the Constitution of South Carolina to confront witnesses against her and to present a full and complete defense. The evidence and testimony sought would be material and relevant to the Defendant's defense and would assist the finder of fact in getting at the truth of this contested criminal matter.

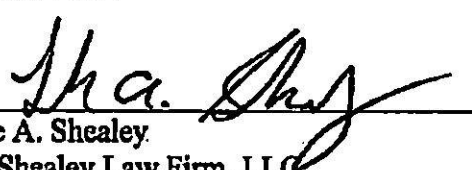
As such, the Constitutions of both the United States and South Carolina, as well as case law and the rules of evidence demand that the Court allow this evidence and examination.

Respectfully submitted,

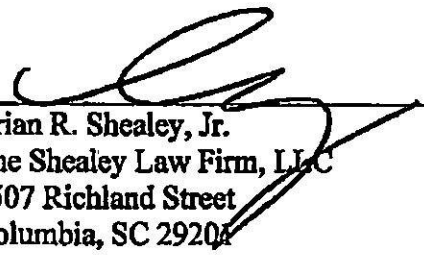
(Signature page to follow)



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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2019A4021600442,
2021GS4001294; 2019A4021600444,
2021GS4001292

The State of South Carolina)

vs.)

Antonio Barnes,)
Defendant.)

MOTION FOR A NEW TRIAL

RICHLAND COUNTY
FILED
2022 DEC 22 PM 4:14
JEANETTE W. MCPRICE
C.C.P., G.S., & F.C.

On December 8, 2022 Antonio Barnes was found guilty at trial on one charge of murder (Eric Griffin) and one charge of possession of a weapon during a violent crime. He was found not guilty on the remaining charge of murder (Antonio Dash). He was sentenced to thirty-five years in prison on December 13, 2022. At this time, the defense renews all previous motions and objections and respectfully requests that a new trial be granted in this case. The denial of the following motions prevented Mr. Barnes from receiving a fair trial:

- (1) **The Defense Motion for Immunity on the murder charge should have been granted pursuant to the Protections of Persons and Property Act**

An evidentiary hearing was held in front of the Honorable Judge DeAndrea Benjamin on March 30 and 31, 2022 to determine whether Mr. Barnes was immune from prosecution, and the Court later denied immunity by written order on June 14, 2022. Defense counsel filed a proposed order prior to the Court issuing its order denying immunity and believes that the Court misapprehended the facts and the law in this case, and believes immunity should have been granted as to the charges of murder.

Specifically, when the Court denied immunity under § 16-11-440(A) and § 16-11-440(C) it relied heavily on an account of events provided by Shakihla Smalls. Ms. Smalls was a resident

at the apartment complex where the shooting occurred and Mr. Barnes' gun was recovered at her home pursuant to a search warrant. At the immunity hearing, Investigator Emmitt Gilliam testified that Ms. Smalls was at Mr. Barnes' apartment just prior to the shooting the morning of February 7, 2019. She stated that she went there to purchase marijuana. She saw Mr. Dash and Mr. Griffin in the living room together and told investigators that she saw Mr. Barnes come out of his bedroom and acknowledge the people in the living room, completely contradicting Mr. Barnes' statements that he had been asleep in his bed, believed that no one else was at home at the time and was awoken by a loud noise.

Throughout the written order denying immunity the Court references Ms. Smalls' version of events as support for its ruling. The order states that Ms. Smalls' testimony proves that Mr. Griffin was a social guest and did not make unlawful entry into the apartment, and that Mr. Barnes was aware of his presence and therefore was not entitled to a presumption of reasonable fear. Furthermore, Ms. Smalls' claim that she went there to purchase marijuana also meant that the residence was being used to further an unlawful activity very close to the time of the shooting.

The problem with Ms. Smalls' account of events is that it is demonstrably untrue and the State knew, or should have known, it was untrue at the time it was asserted to the Court as evidence. Ms. Smalls' statement about being at Mr. Barnes' apartment prior to the shooting that morning was not disclosed to defense counsel until Sunday, March 20, 2022 – over three years after her initial statement to law enforcement immediately following the shooting (which did not include anything about buying marijuana or being at Mr. Barnes' apartment beforehand). At the immunity hearing, defense counsel questioned Investigator Gilliam about surveillance video footage of the apartment complex showing Ms. Smalls at her apartment at Building 17 during the

exact timeframe that she said she was at Mr. Barnes' apartment at Building 14. Investigator Gilliam agreed that she could not be in two places at one time. *See Attachment 1 (Portion of Transcript)*. He also agreed that two other witnesses stated multiple times that no one entered or left Mr. Barnes' apartment after Eric Griffin went inside, indicating that it would not be possible for Ms. Smalls to have seen Mr. Griffin that morning.

In addition to the witnesses' testimony and video surveillance footage, at the time of the shooting Ms. Smalls was out on bond and wearing an ankle monitor pursuant to a bond condition. On March 18, 2022 Assistant Solicitor Dale Scott contacted Offender Management Services (OMS) to inquire about Ms. Smalls' ankle monitor data on the date of the incident and whether it would show her at Mr. Barnes' apartment that morning. *See Attachment 2 (Emails)*. Additionally, defense counsel requested Ms. Smalls' ankle monitor data from OMS (including geolocation information) on March 31, 2022 and Mr. Scott was included on the same day response that contained the requested information. *See Attachment 3 (Emails)*. Defense counsel provided that data to a digital forensic expert who was able to track Ms. Smalls' location the morning of the shooting. It definitively shows that Ms. Smalls was not at Mr. Barnes' apartment when she claimed to be there before the shooting. *See Attachment 4 (Affidavit)*.

The State had the OMS data from Ms. Smalls' ankle monitor by March 31, 2022 and knew, or should have known, what that data revealed. On April 19, 2022 the State submitted a proposed order to the Court, almost entirely adopted into the Court's final order denying immunity. The proposed order contained the statements from Ms. Smalls as a basis for denying immunity, statements which the OMS data proves are untrue. *See Attachment 5 (Proposed Order)*. A prosecutor's failure to correct knowingly false testimony is a due process violation. *Napue v. Illinois*, 360 U.S. 264 (1959). In this case, the prosecutor not only failed to correct

false testimony, he provided it to the Court as a basis for denial of immunity. The State did not call Ms. Smalls as a witness at the trial, leading to a presumption that the State is aware of her credibility issues. However, as of the time of this filing no correction to the prior testimony provided at the immunity hearing has been made and the Court's ruling relied heavily on it. Had the Court been aware of the fact that Ms. Smalls was not in fact at Mr. Barnes' apartment that morning, did not see Mr. Griffin, Mr. Dash or Mr. Barnes, and did not purchase marijuana that morning, the request for immunity would have been granted.

(2) Admission of Defendant's statements about selling marijuana out of his home, pictures of ammunition found in the home and Mr. Barnes' prior possession of unrelated guns was error under SCRE 403, 404(b)

At trial, and over defense objections, the State cross-examined Mr. Barnes about photos in his phone of him holding unrelated guns and admitted a photo of unrelated ammunition that was recovered in Mr. Barnes' apartment by Investigator McIntyre. Mr. Barnes was also questioned about his admission to law enforcement that he sold marijuana. Evidence of Mr. Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or ammunition found in his apartment was irrelevant to any fact in issue in this case. Mr. Barnes admitted to possessing a gun at the time of the shooting and that gun was recovered by law enforcement. Additionally, evidence of any marijuana dealing by Mr. Barnes was not relevant where there was no evidence, circumstantial or direct, that Mr. Barnes was attempting to sell marijuana on the morning of the shooting.

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to

suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. I, 7,545 S.E.2d 827, 830 (2001)

This presented unfair prejudice because it led the jury to rely on their emotional dislike for Mr. Barnes holding other guns, possessing a gun or being around a gun and ammunition as a basis for finding him guilty of murder. The imagery of Mr. Barnes being around copious amounts of guns, even though there was no substantial evidence to support that assertion, incited the emotions of the jury where Mr. Barnes admitted to shooting Mr. Dash and Mr. Griffin. This imagery the evidence created outweighed any probative value of the images where Mr. Barnes admitted to possessing a gun and using a gun on the day of the perceived robbery and shooting. This prejudicial effect was demonstrated during the sentencing proceeding when the Court referenced Mr. Barnes living a dangerous lifestyle and possessing many weapons, when in fact, the evidence was that Mr. Barnes only ever owned two guns at one time, and was lawfully allowed to own guns.

Furthermore, evidence of Mr. Barnes' prior marijuana dealing and possession was more prejudicial than probative. Marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Such evidence possessed no probative value as Mr. Barnes was asleep at the time of the disturbance in his apartment and did not have knowledge of who was in his living room. Subsequently, evidence of prior marijuana dealing or possession should have been excluded as more prejudicial than probative and its admission denied Mr. Barnes' a fair trial.

Lastly, presentation of Mr. Barnes holding unrelated guns and ammunition was improper character evidence, devoid of any real probative value or relevance in this case.

Evidence that Mr. Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, evidence that Mr. Barnes previously sold marijuana or possessed marijuana had no probative value or relevance to this case, Mr. Barnes' motive, intent or mistake of fact on the date of the incident where forensic evidence of Mr. Barnes' cell phone supported Mr. Barnes' testimony that he was asleep that morning and unaware of Mr. Griffin and Mr. Dash in the living room. The introduction of such evidence simply suggested to the jury that because Mr. Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and possession should have been excluded and its admission denied Mr. Barnes a fair trial.

(3) Admission of Defendant's rap lyrics was error under SCRE 403, 404(b), the U.S. Const. amend I and SCRCrimP 5(a)(1)(C)

While Mr. Barnes was testifying about the events of February 7, 2019, the State, over defense objection, elicited testimony from Mr. Barnes about rap lyrics from a music video that Mr. Barnes posted to his SoundCloud account. The lyrics were from a song titled "Let Me Explain" and the State argued it was a song about the shooting of Mr. Dash and Mr. Griffin.

The lyrics were not turned over to defense counsel prior to the State's questioning of Mr. Barnes which is a clear violation of SCRCrimP 5 (Rule 5). In response, the State argued that the song was contained on Mr. Barnes' cell phone extraction that defense counsel had provided to the State; a clear impossibility since Mr. Barnes did not possess his phone after his arrest.

Allowing the State to cross-examine Mr. Barnes about rap lyrics that were not turned over pursuant to Rule 5 was an error.

While there are no cases directly on point for Rule 5(a)(1)(C), in *State v. Lawton*, 675 S.E.2d 454 (S.C. App. 2009), the Court of Appeals explicitly held that there is no distinction regarding the State's obligations to provide materials it uses for impeachment purposes versus materials it uses in its case-in-chief under Rule 5(a)(1)(A). The Court of Appeals reversed the trial court for allowing the use of materials that had not been turned over to the Defense, but which the State used for impeachment purposes under Rule 5(a)(1)(A), without ruling on the Rule 5(a)(1)(C) issue. The late disclosure in this case prevented the defense from examining the video, investigating its origin, and reviewing the lyrics with Mr. Barnes prior to his testimony.

Additionally, the rap lyrics should have been excluded because the probative value was substantially outweighed by the danger of unfair prejudice, the lyrics were used as improper character evidence and their use against Mr. Barnes was a violation of his right to free expression under the First Amendment of the United States Constitution. Defense counsel adopts and asserts the same arguments from its pretrial motion to exclude, and asserts those grounds as a reason for a new trial.

- (4) The Court's refusal to admit the Defendant's prior consistent statement, contained in the police interview room was error and denied his right to present a complete and full defense, as well as to rebut the charge of fabrication under SCRE 801(d)(1)(B)**

The State seized upon the Court's error allowing Mr. Barnes to be questioned about rap lyrics, and accused Mr. Barnes of fabricating his account of what happened on the morning of the shooting. He also accused Mr. Barnes of faking the remorse he expressed on the stand while testifying, by referencing the rap lyrics. In addition to the use of the rap lyrics, the State used a lay witness, Kevin Archie, to argue that Mr. Barnes gave three different accounts of what

occurred in his apartment on the morning of the shooting.

To rebut the State's efforts to attack Mr. Barnes' credibility, defense counsel on re-direct attempted to admit portions of Mr. Barnes' videotaped confession to law enforcement conducted a couple of hours after the shooting. Pursuant to SCRE 801(d)(1)(B), Mr. Barnes' prior consistent statement should have been admitted as non-hearsay because it was offered to rebut the State's charge that Mr. Barnes had fabricated his account of events. However, the Court denied admitting that evidence.

The State then seized upon that error and immediately on re-cross examination attacked Mr. Barnes' lack of remorse and accused him of manufacturing remorse on the stand. Defense counsel again tried to admit the prior statements to law enforcement which contained sobbing, crying, pained accounts of the shooting of his friends. The Court again denied admission of the statements. The prejudice of this error was demonstrated during sentencing when the Court mistakenly stated that Mr. Barnes did not show remorse for the killing of Mr. Griffin. In fact, the prior consistent statements reflected a great deal of remorse for the killings of both Mr. Dash and Mr. Griffin.

(5) The Court's jury instruction regarding defense of habitation was inadequate and erroneous

There was ample evidence submitted during the trial to warrant both a self-defense jury instruction, as well as the analogous yet distinct instruction of defense of habitation. Testimony from state witnesses as well as defense witnesses described the condition of the apartment, objectively indicating that Mr. Dash and Mr. Griffin were engaged in a violent physical altercation just prior to the shooting. Evidence of damaged walls, tables, overturned television, blunt force trauma and torn earrings is consistent with the same. Testimony from state witness

Samuel Thomas, as well as the Defendant, established that it was the schedule and routine of the occupants for Mr. Thomas and Mr. Dash to be gone from the apartment and at work during the time of the incident. The Defendant testified extensively that given his reasonable belief that his apartment was empty that morning, coupled with the violent noises he heard coming from his living room, that he believed he was being home invaded the morning of the incident.

At the end of the third day of trial, during a charging conference, defense counsel submitted request to charge number 8, which was the Defense of Habitation. This charge, citing the seminal case of *State v. Bradley*, 126 S.C. 528 (1923), was requested as distinct to the defense of self-defense, as "defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force, including deadly force, to expel the trespasser." *State v. Sullivan*, 345 S.C. 169, 173 (2001). The Court refused to grant this request to charge at that time. The following morning the Court sought any additional comment concerning jury charges prior to the beginning of closing arguments, and once again defense counsel implored the court to consider charging on Defense of Habitation. After hearing further argument on this subject, the Court agreed that it should err on the side of caution and charge on Defense of Habitation. The Court refused to charge based on defense counsel's submitted charge number 8, but instead announced it would charge from its standard Defense of Habitation charge. After closing arguments, the Court charged the jury, and then outside of the presence of the jury the Court inquired of counsel whether there were any exceptions to the charges. Defense counsel immediately objected to the Court's charge regarding Defense of Habitation, as it did not make any mention of the charge being distinct from Self-Defense, and the charge was incomplete as it

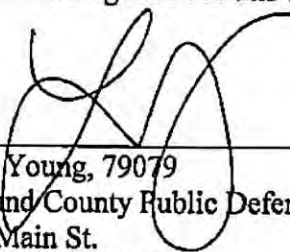
did not include the required language concerning how Defense of Habitation does not require a showing of imminent danger to person or property prior to taking measures to use force to end the obtrusion into one's home. Defense counsel asked the Court to recharge Defense of Habitation to include the previously omitted language and the Court declined this request.

State v. Rye, 357 S.C. 119 (2007) is instructive regarding the error caused by an incomplete Defense of Habitations charge. The Court in *Rye*, in refusing to instruct on defense counsel's proposed charge, ended up charging an incomplete Defense of Habitation charge, thereby depriving the jury of the critical language that *"unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser"* *Id.* at 124 (emphasis added). Like the incomplete charge in *Rye*, the charge in Mr. Barnes' case incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm. This is reversible error and grounds for a new trial.

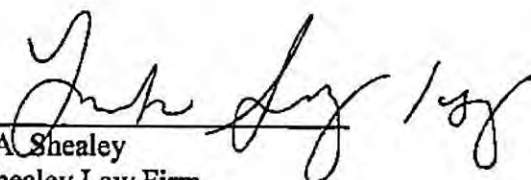
(6) All issue raised pretrial, during trial and in this motion, upon which the Court did not rule for the defense or provide an adequate remedy have resulted in cumulative error and prejudice, the result of which required a new trial as the only remedy

Defense counsel moves for a new trial because the cumulative effect of all of the issues raised by counsel has resulted in cumulative prejudice and a cumulative violation of Mr. Barnes' right to a fair and impartial trial under the United Constitution and the South Carolina Constitution. U.S. Const. amend. VI; S.C. Const. art 1, section 14. The only remedy is for the court to grant a new trial.

For all of the aforementioned reasons a new trial should be granted in this case.



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This 22nd day of December, 2022
Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NOS: 2021GS4001294;
2021GS4001294

STATE OF SOUTH CAROLINA)
)
)
VS.)
)
Antonio Barnes,)
)
DEFENDANT,)
_____)

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

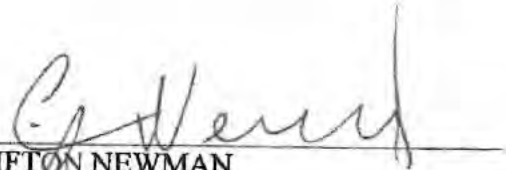
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CLERK OF COURT

This matter is before the Court upon motion of the Defendant for a new trial.

Having fully considered the motion and the arguments made therein, the motion is hereby denied.

AND IT IS SO ORDERED.



CLIFTON NEWMAN
PRESIDING JUDGE

August 25, 2023

RECEIVED

Sep 07 2023

SC Court of Appeals

WITNESSES

(S) Emmit D Gilliam

- Columbia Police Department

ARREST WARRANT NUMBER

2019A4021600444

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 14 2021

VERDICT

GUILTY

Foreperson of Petit Jury

Date: **12/8/22**

SCANNED

DOCKET NO. 2021GS4001292

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

THE STATE

vs.

Antonio Vashon Barnes Jr

**Indictment for
MURDER / MURDER**

SC Code: **16-03-0010**

CDR Code: **0116**

SCANNED

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1260

WITNESSES

(S) **Emmit D Gilliam**
- **Columbia Police Department**

ARREST WARRANT NUMBER

2019A4021600442

ACTION OF GRAND JURY

TRUE BILL

Wanda R...
Foreperson of Grand Jury
Date: **APR 14 2021**

VERDICT

GUILTY

Foreperson of Petit Jury
Date: **12/8/22**

DOCKET NO. 2021GS4001294

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

**THE STATE
vs.**

Antonio Vashon Barnes Jr

**Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH**

SC Code: **16-23-0490**
CDR Code: **0549**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1262

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13th 2021, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Antonio Vashon Barnes Jr did in Richland County, on or about
February 7, 2019, possess a firearm, or visibly display what appeared to
be a firearm, or visibly displayed a knife, during the commission or
attempted commission of a violent crime, in violation of Section 16-23-
0490, S. C. 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.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Antonio Vashon Barnes Jr

AKA: _____
Race: BLACK Sex: M Age: 28
DOB: [REDACTED]-1994 SS#: _____
Address: [REDACTED]
City, State, Zip: Columbia, SC 29203
DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 40 - 1292

A/W#: 2019A4021600444
Date of Offense: 2/7/2019
S.C. Code § 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 73081 Defendant [Signature] 79079 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Correction, County Detention Center, for a determinate term of 35 days/months/years/Time Served Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ____; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

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. 576 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SCANNED

STATE VS. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1292

SPECIAL CONDITIONS:

- PTUP** after _____ months/years
- And Other Terms Listed Below:**
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: **Deferred** **Def. Waives Hearing** **Ordered**

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly prmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5 %)				\$ _____
§14-1-211(A)(1) (Conv. Surcharge)			\$100	\$ <u>100</u>
§14-1-211(A)(2) (DUI Surcharge)			\$100	\$ _____
§56-5-2995 (DUI Assessment)			\$12	\$ _____
§56-1-286 (DUI Breath Test)			\$25	\$ _____
§14-1-212 (Law Enforce. Funding)			\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)			\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$41	\$ _____
§50-21-114(BUI Breath Test Fee)			\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$40/ea	\$ _____
3% to County (if paid in installments)			TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.			\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund			TBD	\$ _____
TOTAL				\$ <u>128.75</u>

Clerk of Court/ Deputy Clerk:
Court Reporter:

Suzanne W. McBride
NAWS

Presiding Judge:
Judge Code:
Sentence Date:

G. Warner
2127
Dec 13, 2022

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Antonio Vashon Barnes Jr

AKA: _____

Race: BLACK Sex: M Age: 28

DOB: 1994 SS#: _____

Address: _____

City, State, Zip: Columbia, SC 29203

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 40 - 1294

A/W#: 2019A4021600442

Date of Offense: 2/7/2019

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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 §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] 73081
Scott, Dale SC Bar # Defendant

[Signature] 79079
SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Correction, County Detention Center,

for a determinate term of 5 days/months/years/Time Served Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served 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.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

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. 576 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1294

SPECIAL CONDITIONS:

- PTUP** after _____ months/years
- And Other Terms Listed Below:**
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

- RESTITUTION:** **Deferred** **Def. Waives Hearing** **Ordered**

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
§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
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	TBD
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:

Jeanette W. McBricker
NEWS

Presiding Judge:
Judge Code:
Sentence Date:

C. News
2129
Dec 13, 2022

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Apr 09 2025

SC Court of Appeals



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of April, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Apr 09 2025

SC Court of Appeals

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 9th day of April, 2025.



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

From: [Mcinnis, Sara](#)
To: jmaye@scag.gov
Cc: [Donna D'Alessio](#); [Caudy, Lara](#)
Subject: 2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol. 3
Date: Wednesday, April 9, 2025 10:11:00 AM
Attachments: 2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol 3 of 3.pdf

Good Morning Mr. Maye,

Attached for service in the above-referenced case is volume 3 of the record on appeal.

Thank you,

Sara McInnis

Administrative Assistant

South Carolina Commission on Indigent Defense

Appellate Division

(803) 734-1330