

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAJON MALIK LAVERN GRATE,

APPELLANT

APPELLATE CASE NO. 2024-001477

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[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT 5 (ENLARGED MAP OF VEHICLE), STATE’S EXHIBIT 6 (ENLARGED MAP OF SCENE), STATE’S EXHIBIT 7 (ENLARGED MAP OF GPS (SMALLER)), STATE’S EXHIBIT 40 (VIDEO), STATE’S EXHIBIT 42 (SUNHOUSE STILL PHOTOGRAPH), STATE’S EXHIBIT 43 (SUNHOUSE STILL PHOTOGRAPH), STATE’S EXHIBIT 44 (SUNHOUSE STILL PHOTOGRAPH), STATE’S EXHIBIT 45 (SUNHOUSE STILL PHOTOGRAPH), STATE’S EXHIBIT 46 (N. GRATE PHOTO), STATE’S EXHIBIT 48 (TODD FRY PHOTO), STATE’S EXHIBIT 50 (D. GRATE PHOTO), STATE’S EXHIBIT 62 (BODY CAM VIDEO), STATE’S EXHIBIT 63 (PHOTO STILL FROM BODY CAM), STATE’S EXHIBIT 87-184 (SCENE PHOTOGRAPHS), STATE’S EXHIBIT 190 (CRIME SCENE PHOTOGRAPH), STATE’S EXHIBIT 191 (CRIME SCENE PHOTOGRAPH), STATE’S EXHIBIT 199A (REDACTED CELL PHONE PRESENTATION), STATE’S EXHIBIT 226 (ENLARGED DIAGRAM OF BODY).]

1 comprehensive of everything that I have learned to be
2 necessary for a DNA analyst. So, all that goes into what
3 is necessary to become qualified as an analyst.

4 Q And did you pass those exams?

5 A Yes, I did.

6 COURT STENOGRAPHER: Can I interrupt? Can you speak
7 into the microphone?

8 THE WITNESS: Oh, I apologize.

9 COURT STENOGRAPHER: Thank you.

10 BY MS. MARTIN:

11 Q Let's talk about DNA. So, can you tell the jury
12 what DNA is?

13 A Yes. DNA stands for deoxyribonucleic acid. It is
14 the genetic material that's found in each and every
15 individual and is responsible for certain traits, such as
16 our eye and our hair color.

17 DNA is contained into dense packets, known as
18 chromosomes. Those are found in every cell in the human
19 body except for red blood cells. You receive half of your
20 chromosomes from your mother and the other half from your
21 father.

22 On those chromosomes, we target certain locations
23 known as STRs. That stands for short tandem repeats.
24 And, as an analyst, we compile 21 of those STR locations
25 that are found on your various chromosomes, along with

1 three gender markers, to develop what is known as a DNA
2 profile. And then we can then use that DNA to profile to
3 identify one individual from another, excluding identical
4 siblings, such as twins or triplets.

5 Q So, does DNA differ from person to person?

6 A It does except for those identical siblings; they
7 would have the same DNA profile.

8 Q So, is it unique to each person other than identical
9 twins?

10 A That is correct.

11 Q Okay. Now, does DNA remain constant throughout the
12 life span of a person?

13 A Yes. Your DNA profile would not change throughout
14 your life span.

15 Q So, the heel print that a little baby gets at the
16 hospital right after we're born is going to contain the
17 same DNA as a 35-year-old?

18 A Yes. That same DNA profile that we would develop
19 would be the same.

20 Q Is there a way to change it?

21 A Not that I'm familiar with.

22 Q Okay. And if you find DNA on an item, is there a
23 way to tell when that DNA was left?

24 A No, there is not.

25 Q Okay. So, what type of substances can be tested for

1 DNA?

2 A Commonly, bodily fluids: Blood, semen, and saliva.
3 We can get DNA from that. We can also get DNA from your
4 hair. The current method that we utilize at the DNA
5 Casework Department at SLED, we need root material from
6 that hair. That root material has the genetic information
7 necessary for us to develop a DNA profile, and skin cells,
8 which is commonly known as touch DNA. We're also able to
9 get DNA from that, if enough genetic information is
10 available from those skin cells.

11 Q Blood, hair, semen, saliva, touch DNA.

12 Can we break down the hair real quick? So, if I
13 chop off this much of my hair right now and I give you
14 just this part, can you get DNA from just this bottom
15 part?

16 A I cannot. It needs to be the actual portion of the
17 hair that has the root material.

18 Q So, I'd have to pull out my hair from the very top
19 of my scalp and get that little white thing at the very
20 base of it?

21 A That is correct. That's the genetic information
22 that is necessary for us to get the DNA profile.

23 Q Okay. And so, when a baby is born, where do they
24 get their DNA?

25 A So, you get half of your DNA from your mother and

1 half from your father. Those are the chromosomes. 46
2 chromosomes in all. 23 from your mother and 23 from your
3 father.

4 Q Okay. Is there a process for developing a DNA
5 sample?

6 A Yes. So, as I stated earlier, we have four major
7 steps that we go through. And I'll just go through them
8 in a bit more in depth.

9 The extraction portion is when we're trying to
10 extract that DNA from the substance that it may have been
11 on. Normally, I get the substance from a swab or from a
12 cutting. We put those items into a tube with special
13 reagents, and that actually starts the extraction portion
14 of trying to get that DNA from that substrate.

15 Once we have properly extracted that item, next we
16 move on to quantitation. Quantitation is where we try to
17 determine how much DNA we have on this item. This part is
18 vital and essential because we need to find out exactly
19 how much DNA we have. Too much or too little DNA will not
20 give me a viable or a DNA profile that can interpret
21 downstream. So, that's why that step is very important.

22 Once we have found out how much DNA we have, the
23 next step is amplification. This is where we make many,
24 many copies of that DNA that is there. Essentially, this
25 is another step to help in trying to get a viable DNA

1 profile downstream.

2 And the last step is separation. Separation is when
3 we actually separate the DNA types into those different 21
4 different locations that we can then possibly use for
5 interpretation and comparison purposes.

6 Q Now, this four-step methodology, has it been
7 accepted in the scientific community as being
8 scientifically reliable?

9 A Yes, it has. This is the four basic steps that
10 mostly all forensic DNA labs follow and has been widely
11 accepted within the forensic community.

12 Q Now, is SLED accredited by any organizations?

13 A Yes, it is. SLED is accredited by ANAB. ANAB
14 stands for the ANSI National Accreditation Board. And
15 accreditation is important because it gives a kind of a
16 seal of approval that you can trust the quality and the
17 work that's done by that lab.

18 So, we do go through an accreditation portion to try
19 to maintain that to show that the work that we have and
20 the work that we produce is above board and is of the
21 highest quality.

22 Q And during this accreditation process, are there
23 quality assurance methods to assure that SLED is
24 accredited -- I mean accredited?

25 A Yes. So, they come in and they look at our

1 personnel. They come look at management. They come look
2 at our instrumentation. They come and look at our
3 training program to make sure that that's being done
4 properly. They also come and they look at our reporting,
5 and they also look at our interpretations.

6 So, they look at a number of different factors that
7 go into the lab portion of it and just to make sure that
8 everything that we're doing is we're outstanding, we're
9 following our standard operating procedures and policies.

10 Q And have you ever testified as an expert in forensic
11 DNA analysis before?

12 A Yes, I have.

13 Q Okay. Approximately how many times?

14 A 54 times.

15 Q Okay. And any of those times in General Sessions?

16 A All in General Sessions.

17 Q Okay. And that would be the criminal court that
18 we're in here in today?

19 A That is correct.

20 MS. MARTIN: Your Honor, at this time, the State
21 seeks to proffer this witness as an expert in forensic DNA
22 analysis.

23 THE COURT: All right.

24 MR. WILSON: I have no objection.

25 THE COURT: Mr. Galmore?

1 MR. GALMORE: No objection, Your Honor.

2 THE COURT: All right. I find this witness to be an
3 expert in the field of forensic DNA analysis.

4 BY MS. MARTIN:

5 Q Now, were you assigned to perform DNA analysis in
6 SLED No. L2209603?

7 A Yes, I was.

8 Q Okay. And did you perform analysis in this case?

9 A Yes, I did.

10 Q And did you receive items to analyze?

11 A Yes, I did.

12 Q And when you analyze items, do you memorialize your
13 findings in a report?

14 A That is correct. Once our items are analyzed and I
15 have done my interpretation and I've generated my results,
16 those results are put into a report. And the report is
17 then given to the submitting agency once it has been
18 properly reviewed.

19 MS. MARTIN: I'm approaching the witness with
20 State's 272 -- 27 [verbatim], and 228.

21 BY MS. MARTIN:

22 Q Mr. Stewart, what did I just hand you?

23 A This is my report. I'm just going to verify, making
24 sure --

25 Q Absolutely.

1 A Yes, these are my reports that I generated. And I
2 generated two reports for this case.

3 Q Two reports. Have those -- is that a fair and
4 accurate copy of your reports?

5 A Yes, it is.

6 Q Have they been altered?

7 A They have not.

8 Q Those are your reports?

9 A That is correct.

10 MS. MARTIN: Your Honor, at this time, the State
11 seeks to admit 227 and 228 into evidence.

12 THE COURT: All right.

13 MR. WILSON: Without objection.

14 MR. GALMORE: No objection, sir.

15 THE COURT: All right. State's Exhibit 227 and 228
16 admitted into evidence without objection.

17 (State's Exhibit Nos. 227 and 228 were received into
18 evidence.)

19 BY MS. MARTIN:

20 Q Now, you did just say that you created two reports
21 in this case?

22 A That is correct.

23 Q Okay. The first report, however, State's Exhibit
24 227; is that right?

25 A Yes, that is correct.

1 Q Actually, before I get into that, when you receive a
2 case, when a case is assigned to you, what do you first
3 do?

4 A I look at the packing slip. That's what we call it.
5 It has the list of items and the request that each item
6 has and which departments are requesting to perform
7 analysis on those items. So, I do that. I take inventory
8 of all the items for that case. And once I can verify
9 that each item matches up with the item description that
10 it was submitted with, I can then move forward with
11 performing the analysis portion of it.

12 Q Now, with DNA -- we have talked about types of DNA,
13 but can you tell me what single source DNA is?

14 A So, we can classify different DNA profiles based
15 upon the number of contributors. A single-source profile
16 would be a DNA profile that's only originated from one
17 individual so that only one person contributed their DNA
18 to that DNA profile.

19 But, also, DNA can be a mixture, which is when we
20 have more than one individual contributing their DNA to an
21 item. And so, we have training to determine and we can
22 approximate or say what -- how many individuals are
23 contributing to that mixture based on our training.

24 So, those are the different kind of -- different
25 classifications, let's say, for a DNA profile.

1 Q And so, with a mixture and with single-source, do
2 you utilize a program to assist you in your analysis of
3 DNA?

4 A Yes. Once I have done my own interpretation, we
5 have a software tool that can aid in the interpretation of
6 those profiles. That software is known as STRmix.

7 What STRmix does, it can break down the profile for
8 us, and it can also assign statistical weight whenever
9 we're making comparison of our known standard to the DNA
10 profile from the evidence. And that statistical weight
11 comes in the form of a likelihood ratio, which you'll hear
12 me mention in my report.

13 And what a likelihood ratio typically is, is a
14 numeral value that can get context or weight to two
15 varying or opposing views to a scenario. So, if I may
16 give an example: A scenario is where are you more likely
17 to see a lion? Are you more likely to see it at the zoo,
18 or are you more likely to see a lion walking down the
19 street? And so, obviously, it's more likely to see the
20 lion at the zoo than walking down the street.

21 And so, we have that same -- we apply that same
22 principle to when we're making comparisons to our DNA
23 profile. Given a DNA profile from that evidence, is it
24 more likely that this known individual that we have a
25 standard for contributed that DNA, or given that same DNA

1 profile from the evidence, is it more likely that an
2 unidentified, unrelated individual contributed DNA to that
3 item?

4 Q Let's talk about known individuals real quick. So,
5 what is a known standard?

6 A So, a known standard is -- comes in the form of
7 either blood or cheek swabs, which we normally describe as
8 buccal swabs. They come from an individual. So, we know
9 that it came from this person and so that we can see they
10 have taken it from that person, and so we label that as a
11 known standard, that we know it came from this individual,
12 and so we develop a DNA profile from that known standard,
13 which can be blood or a buccal swab, and we can use that
14 for comparison purposes to the DNA profile that we
15 generate from the evidence.

16 Q And so, in this case, did you have any known
17 standards?

18 A Yes, I did.

19 Q And can we look at -- I believe it's SLED Item
20 No. 1. Is that a known standard?

21 A Yes. Oral swabs from Dajon Grate, that was a known
22 standard. Item 20, buccal swabs from Kalik Conn; that was
23 a known standard from him. My Item 27, buccal swabs from
24 Jeremiah Dicker. And my Item 44, buccal swabs from
25 Nasireia Grate.

1 Q Okay. And before you get some of your items --
2 showing 35 and '4. Before you get some of your items,
3 does it go to serology or does it go to get swabbed?

4 A Yes. So, these items were processed by forensic
5 analyst Cameron Wisniewski, but I never saw the items.
6 She does the evidence processing of those items, so I
7 never physically see those items. I only get the swabs
8 that she collected from them for me to then take it on for
9 DNA analysis.

10 Q Now, other than swabs that Cameron would also give
11 to you after she's done them, do you receive items from
12 law enforcement?

13 A Yes, we did. So, not only did these items come in
14 but we also got some swabs from different areas that were
15 also submitted for analysis.

16 Q Okay. Now, does DNA, when you were creating this
17 profile to compare, does it have to meet a certain type of
18 standard before you can compare it?

19 A Yes. So, each and every profile I develop from the
20 evidence, I look at it and I determine whether or not it's
21 suitable for comparison. Sometimes DNA profiles, we don't
22 get enough genetic information to make any kind of
23 comparisons to it, but all of that is done on the front
24 end.

25 So, all of the evidence that I generate DNA profiles

1 from, I evaluate them and I determine whether or not
2 they're suitable for comparison before comparing any known
3 standards to them. Once I've determined whether or not
4 they're suitable for comparison, I also determine a number
5 of contributors as well. So, both of those things take
6 place before any comparisons are done to the known
7 standards.

8 Q So, if you get a swab -- like, we'll just cut ahead
9 and go, like, Item No. 17, a swab from a red stain on the
10 driver's side rear wheel/rim of an Acura. Okay? Before
11 you even will make a comparison, do you have to first
12 determine whether or not there's DNA on that swab?

13 A Yes, that's correct.

14 Q Okay. And how do you do that?

15 A That's from generating the DNA profile from the four
16 major steps that we go through. And then once I see the
17 results after the separation portion, I determine whether
18 or not it's suitable for comparison.

19 Q And once you determine whether or not the item is
20 suitable for comparison, what do you do?

21 A Then, once I've decided it is suitable, then and
22 only then can I compare the known standards to that DNA
23 profile.

24 Q Okay. So, I think the best way to just do this is
25 just go down what you tested. And so, let's go to SLED

1 Item No. 17. Can you tell the jury what SLED Item No. 17
2 is?

3 A Item 17 from swab from red stain on driver's side
4 rear/rim of Acura.

5 Q Okay. And then was that item suitable for
6 comparison?

7 A Yes, it was. It was also presumptive testing for
8 blood was positive.

9 Q So, the presumptive test for blood was positive?

10 A That is correct.

11 Q Okay. And so, who did you -- let me ask you this:
12 Was this a single source?

13 A Yes, a single-source profile was developed from this
14 item.

15 Q Okay. And what's your proposition say about that
16 single-source DNA sample?

17 A Yeah. So, the proposition set is essentially when
18 I'm comparing that known individual to the DNA profile
19 from the evidence. We do that essentially separate for
20 each and every person. So, typically, you would have a
21 proposition set for each individual that's being compared
22 to that DNA profile. But for a single-source profile like
23 this, I did not -- I can see that certain individuals are
24 already excluded because I was only expecting one person's
25 DNA profile from it.

1 Q So, who was excluded?

2 A So, Kalik Conn, Jeremiah Dicker, and Nasirea Grate
3 are excluded as the contributor to this profile.

4 Q And who was included as a contributor to this
5 profile?

6 A So, the proposition will read that it was comparing
7 as either Dajon Grate contributed to the DNA profile or an
8 unidentified, unrelated individual contributed to the DNA
9 profile.

10 And so, my results are that the DNA profile is
11 approximately 1.45 nonillion times more likely if Dajon
12 Grate contributed to the profile than if an unidentified,
13 unrelated individual contributed to the profile.

14 Q Okay. I can go up to a million, I can go up a
15 billion, but I have absolutely no clue what a nonillion
16 is. So, what is 1.5 nonillion?

17 A So, essentially, it's 30 zeros behind -- or 30
18 zeroes behind a million.

19 Q Okay. Is that a large number?

20 A Yes, it is.

21 Q Okay. And, you know, at the back of your -- at the
22 back of your report, page 12, you have a supported
23 proposition list. Okay? What would a nonillion -- would
24 that be strong support? Would that be very strong? What
25 would that be?

1 A That would be considered very strong support. And
2 I'm glad you brought up the verbal scale. The verbal
3 scale kind of gives context to those numbers. We
4 understand these numbers sometimes can be huge. Sometimes
5 they're not. But we want to try to give more context to
6 what those numbers actually mean. So, yeah, a value with
7 a likelihood of 1.5 nonillion, that would be considered
8 very strong support.

9 Q Now, as to Item No. 33, swab of red stain from
10 interior driver rear seat pillar moulding, now, can you
11 tell the jury whether that was presumptive positive for
12 blood?

13 A Yes, presumptive testing for blood was positive.

14 Q Okay. And, in that case, was there a single source
15 or was there a mixture?

16 A The DNA profile generated from that item was single
17 source.

18 Q And can you tell me what your conclusion was there?

19 A Yes. So, Kalik Conn, Jeremiah Dicker, and Nasirea
20 Grate are excluded as the contributor. And once again, I
21 was comparing Dajon Grate as a contributor and an
22 unidentified, unrelated individual. And the result is
23 that the DNA profile is approximately 1.5 nonillion times
24 more likely if Dajon Grate contributed to the profile than
25 if an unidentified, unrelated individual contributed to

1 the profile.

2 Q So, one-five, 30 zeros behind that times more likely
3 that Dajon Grate contributed to this profile, is that --
4 than if an unidentified, unrelated individual did?

5 A That is correct.

6 Q Okay. Now, let's go with Item No. 34, a swab of red
7 stain from interior of backseat or of a rear seat
8 backrest. Okay. Can you tell me if that is a
9 single-source profile?

10 A Yes, it was.

11 Q Okay. What about the presumptive positive for
12 blood. Was there any presumptive testing?

13 A Yes. Presumptive testing for blood was positive.

14 Q Okay. And then, with this additional single-source
15 DNA, can you tell me what your conclusion was?

16 A Once again, Kalik Conn, Jeremiah Dicker, and Nasirea
17 Grate are excluded as the contributor. Once again, I
18 considered Dajon Grate as a contributor versus an
19 unidentified, unrelated individual. And the DNA profile
20 is 1.5 nonillion times more likely if Dajon Grate
21 contributed to the profile than if an unidentified,
22 unrelated individual contributed to the profile.

23 Q Okay. Now, we've got 35, swabs of red stain from
24 passenger rear seat near center. Okay. Can you tell me
25 if that was presumptive positive for blood?

1 A Yes. Presumptive testing for blood was positive.

2 Q Okay. Was this a single-source DNA source?

3 A Yes. The DNA profile generated from this item was
4 single source.

5 Q And what was your conclusion there?

6 A Kalik Conn, Jeremiah Dicker, and Nasirea Grate are
7 excluded as the contributor. Once again, Dajon Grate was
8 compared to this profile, versus an unidentified,
9 unrelated individual. And the results are that the DNA
10 profile is approximately 1.5 nonillion times more likely
11 if Dajon Grate contributed to the profile than if an
12 unidentified, unrelated individual contributed to the
13 profile.

14 Q So, with 36, the next one, swabs of red stain from
15 rear center seat, now, do we also have a single source
16 with this one, or do we have a mixture?

17 A This profile generated was a mixture originating
18 from two individuals.

19 Q Okay. So, was there presumptive testing for blood?

20 A Yes. Presumptive testing for blood was positive.

21 Q Okay. So, with a mixture, do we have more than just
22 one proposition set? So, the others have been one
23 proposition set?

24 A That's correct.

25 Q Okay. So, in this case, do we have more than one?

1 A Yes, we do.

2 Q And why do we have more than one?

3 A Because more than one individual is being considered
4 for this profile, so that we have proposition for each
5 individual that's being compared to the DNA profile from
6 the evidence.

7 Q Okay. And so, can you tell the jury what your
8 conclusion was on Item No. 36 -- SLED Item No. 36, swab
9 from red stain in the rear center seat?

10 A So, for the first proposition, I'm comparing Dajon
11 Grate and an unidentified, unrelated individual
12 contributed to the mixture or if two unidentified,
13 unrelated individuals contributed to the mixture. And my
14 result for that is that the DNA profile is approximately
15 740 octillion times more likely if Dajon Grate and an
16 unidentified, unrelated individual contributed to the
17 mixture than if two unidentified, unrelated individuals
18 contributed to the mixture.

19 Q Okay. So, we have heard about nonillions. Now,
20 we're hearing about octillions. What is that?

21 A This is 29 zeros after the 7 --

22 Q Seven-four and then 29 zeros behind it?

23 A That is correct.

24 Q More likely if Dajon Grate than an unidentified,
25 unrelated individual contributed to this mixture?

1 A That is correct.

2 Q Okay. So, we have a bloodstain or presumptive
3 positive for being blood; is that fair?

4 A That is correct.

5 Q Okay. How can that be a mixture?

6 A So, when the item is collected, we do try to attempt
7 to get it from blood, but from these surfaces, there also
8 could be either a mixture of blood or blood and touch. I
9 can't specify on the source of the DNA, but I can only
10 tell you that that can be the possible reason for a
11 mixture. It probably is not just blood. It's blood and
12 maybe something else, like skin cells or possibly two
13 types of blood can be there. But, like I say, I can't
14 specify on the origin of the DNA.

15 Q Okay. All right. Now, we have got Item No. 45.
16 And what is Item No. 45?

17 A I'm sorry; can I finish?

18 Q Oh, yeah. Of course. Please, please, please. I'm
19 sorry.

20 A In the second proposition, when we have similar
21 results, we can kind of group them together. It just
22 helps make the report a less lot longer than what it is.

23 And so, for Proposition Set 2, I'm comparing Kalik
24 Conn, Jeremiah Dicker, and Nasirea Great, and all of those
25 individuals are excluded as contributors to the mixture

1 under the list of propositions.

2 Q Okay. I did not mean to cut you off.

3 A No. That's fine. That's okay.

4 Q So, can we go to 45?

5 A Yes.

6 Q And what is that?

7 A Item 45 was a black face mask.

8 Q And then right under there, we have a 45.1. Can you
9 explain to me what these .1s, twos, 2.1s, what is all of
10 that about?

11 A No problem. So, whenever an item like this comes in
12 to SLED and has multiple requests, such as maybe blood or
13 touch or ownership, what we do is we sub-item it so that
14 it can be something -- each item is its own separate
15 entity so we can keep track of it and be able to give the
16 results for each and every item.

17 So, for this item, 45.1 is a sub-item of that black
18 face mask, and it's the swab from the scraping of the
19 entire interior of that black face mask. So, essentially,
20 we're kind of separating it out so that we can distinguish
21 the two types of items. So, that's why we sub-item those
22 items out.

23 Q Okay. And so, 45 is a black face mask, and 45.1 is
24 what?

25 A The swab and scraping of the entire interior of the

1 black face mask.

2 Q Okay. And can you tell me if this is a mixture?

3 A Yes. This item is originating from three
4 individuals.

5 Q Okay. And can you tell me what your conclusions
6 are?

7 A Yes. So, in my first proposition, I'm comparing
8 Nasirea Grate and two unidentified, unrelated individuals
9 contributed to the mixture or was it three unidentified,
10 unrelated individuals contributed to the mixture? And my
11 result is that the DNA profile is approximately
12 1.5 octillion times more likely if Nasirea Grate and two
13 unidentified, unrelated individuals contributed to the
14 mixture than if three unidentified, unrelated individuals
15 contributed to the mixture.

16 Q And so, you would have done a second proposition set
17 to compare the other known standards; is that right?

18 A That is correct. And as I stated before, because
19 they had similar results, I was able to group them all
20 within a proposition set too. So, my results for that is
21 that Dajon Grate, Kalik Conn, and Jeremiah Dicker are
22 excluded as contributing to the mixture under the listed
23 propositions.

24 Q So, for this scraping, it's 1.5 octillion times --
25 so 27 zeros -- times more likely if Nasirea Grate and two

1 unidentified individuals contributed to this mixture than
2 if three people that we don't know did?

3 A That's correct.

4 Q Okay. Now, we get down to 45.2 and 45.21. Can we
5 talk about 45.21?

6 A Yes. So, 45.2 is a kind of sub-item from the black
7 face mask to account for all the hairs. There were
8 several hairs that were collected from this item. So,
9 45.2 was collected to establish that hairs were collected.
10 And then each and every hair that was collected from that
11 item also got its own sub-item. So, we have sub-item
12 45.2.1 is a hair, and we have about 15 other hairs that
13 were collected from the ski mask.

14 Q So, with 45.2.1, was a partial DNA profile
15 developed?

16 A Yes. A partial DNA profile was developed, but due
17 to the limited information obtained and the inability to
18 determine the number of contributors, no further
19 interpretation will be offered.

20 So, if I may expand upon that statement.

21 Q Please.

22 A It just means that I just got a very limited, very
23 low DNA profile. There just wasn't enough genetic DNA
24 information there for me to be able to deem it suitable
25 for comparison purposes.

1 Another aspect is that, whenever we're trying to
2 determine whether or not a profile is suitable, a number
3 of contributors -- I have to be able to establish a number
4 of contributors. So, if I have limited amount of
5 information and I can't establish the number of
6 contributors, that profile is deemed not suitable for
7 comparison.

8 Q Now, let's go to 45.2.2, which is also hair, and
9 45.2.3, which is also hair. Can you tell me about those?

10 A Both of those came back with similar results. The
11 partial DNA profile developed is insufficient for
12 interpretation. And once again, that just means I have a
13 limited amount of DNA that was developed from that item,
14 so it's not suitable for comparison.

15 Q If you have limited DNA profile that has been
16 developed, are you going to try to guess at that or will
17 you just not even test it?

18 A That is correct. Yeah, we won't try to guess.
19 That's not what part of my job is. So, if I can't
20 determine or if it's just a low amount of DNA that's
21 present on that item, we're just going to deem it not
22 suitable for interpretation.

23 And that's pretty common with hairs. Hairs are very
24 variable as far as, like, trying to get that root
25 material. The root material is just very sensitive. And

1 so, if it's any kind of breakage or a limited amount of
2 that root material there, then it is very possible to
3 either get a partial DNA profile or no DNA profile
4 whatsoever from those items.

5 Q So, then we have 45.2.4 through 15. So, 4 through
6 15 of the 45.2s?

7 A That's right. 45.2.4 through 45.2.15. Those are
8 all hairs.

9 Q Okay. And were you able to get any DNA developed
10 off of those?

11 A No DNA profile was developed from any of those
12 items.

13 Q Okay. And, again, we're talking about hair.

14 And so, what do you need for hair to be -- for a DNA
15 profile to be developed from hair?

16 A I need a very strong root material.

17 Q Okay. So, now we get into 46, which are going to be
18 swabs from the pink sandals. So, we start with the left
19 pink sandal. So, we have -- once again, we have a 46.1.
20 Why do we have a point one?

21 A That's the sub-item from that sandal. So, the
22 sandal itself is not Item 46 -- or the left pink sandal is
23 Item 46, but the swabs from the top strap of the left pink
24 sandal, that's my Item 46.1. And, once again, that's just
25 to differentiate between the different items that we are

1 testing.

2 Q Okay. And so, it's a swab from the top of the left
3 pink sandal that you're testing?

4 A The top of the strap of the left pink sandal, that's
5 correct.

6 Q Okay. And now, was that presumptive positive for
7 blood?

8 A Yes, presumptive testing for blood was positive.

9 Q Was this a mixture or was it single source?

10 A This one was a mixture originating from two
11 individuals.

12 Q Can you tell me what your conclusion was?

13 A For the first proposition, I'm comparing Dajon Grate
14 and an unidentified, unrelated individual versus two
15 unidentified, unrelated individuals. And my result is
16 that the DNA profile is approximately 910 octillion times
17 more likely if Dajon Grate and an unidentified, unrelated
18 individual contributed to the mixture than if two
19 unidentified, unrelated individuals contributed to the
20 mixture.

21 Q Will you remind the jury what 910 octillion means?

22 A 9.1 with 29 zeros behind it.

23 Q Okay. Times more likely if Dajon Grate and an
24 unrelated, unidentified contributed to this mixture?

25 A Than if two unidentified, unrelated individuals,

1 that is correct.

2 Q Okay. And then, of course, because we have a
3 mixture, we did a -- you did a second proposition set?

4 A That is correct, when I was comparing the other
5 individuals that I have. And my result for that is that
6 Kalik Conn, Jeremiah Dicker, and Nasirea Grate are
7 excluded as contributors to the mixture under the list of
8 propositions.

9 Q So, it looks like it was also swabbed -- the left
10 sandal was also swabbed from the left toe area. And that
11 would be 46.2. Is that what your report says?

12 A That is correct.

13 Q Okay. Was that presumptive positive for blood?

14 A Yes. Presumptive testing for blood was positive.

15 Q Okay. Can you tell me if that was single source?

16 A Yes. This item originated from just one individual,
17 so single source.

18 Q Okay. Can you tell me what that single source DNA
19 profile, what your conclusion was?

20 A Yes. For this profile, I compared Dajon Grate to
21 this profile versus an unidentified, unrelated individual,
22 and the result is that the DNA profile is approximately
23 1.5 nonillion times more likely if Dajon Grate contributed
24 to the profile than if an unidentified, unrelated
25 individual contributed to the profile.

1 Kalik Conn, Jeremiah Dicker, and Nasirea Grate are
2 excluded as the contributor.

3 Q Okay. Okay. Now, we have got a swab from the toe
4 of the -- that was the right one; is that right? And so,
5 now we have the left pink sandal toe swab. Am I wrong?

6 A Item 46 was swab from the toe of the left pink
7 sandal, and 46.2 is also swabs from the toe of the left
8 pink sandal. So, we took two swabs.

9 Q Two swabs of the left pink sandal toe area?

10 A That's correct.

11 Q Okay. And was that presumptive positive for blood?

12 A Yes, it was.

13 Q Okay. And can you tell me if that was a single
14 source or if it was a mixture?

15 A This item was a single-source profile.

16 Q Okay. Will you tell the jury what your conclusion
17 of that single-source DNA profile was?

18 A Presumptive testing for blood was positive. The DNA
19 profile as stated was interpreted as single source. I'm
20 comparing Dajon Grate to that profile versus an
21 unidentified, unrelated individual contributed to the
22 profile, and my result is that the DNA profile is
23 approximately 1.5 nonillion times more likely if Dajon
24 Grate contributed to the profile than if an unidentified,
25 unrelated individual.

1 Kalik Conn, Jeremiah Dicker, and Nasirea Grate are
2 excluded as a contributor.

3 Q So, now, we get into 46.4, a swab from the buckle of
4 the left pink sandal. So, tell me about that one.

5 A Yes. The results for that is no human blood was
6 identified and no DNA profile was developed.

7 Q Okay. So -- I get my lefts and my rights mixed up.
8 All right. So, we have multiple swabs before this --
9 before .4?

10 A That's correct.

11 Q With a DNA profile, either a mixture or a
12 single-source DNA profile?

13 A That is correct.

14 Q Okay. Off of this same left pink sandal?

15 A That is correct.

16 Q Okay. And no DNA profile was able to be developed?

17 A From the buckle of the left pink sandal, that is
18 correct.

19 Q From the buckle of the left pink sandal?

20 A Yes. That's the area that was notated on the
21 sandal.

22 Q All right. I'm going to come back to that.

23 Let's move on, and I'll come back to that in a
24 minute. So, 46.5, what is that?

25 A This is swabs from the top of the strap of the left

1 pink sandal.

2 Q Okay. And was that presumptive positive for blood?

3 A Yes, it was.

4 Q Okay. And was that a mixture or was that a single
5 source?

6 A The DNA profile originating from this item was a
7 mixture of three individuals.

8 Q And can you tell the jury what your conclusion of
9 that mixture was?

10 A Yes. For my first proposition, I'm comparing Dajon
11 Grate and two unidentified, unrelated individuals
12 contributed to the mixture, or was it three unidentified,
13 unrelated individuals contributed to the mixture.

14 My result is that the DNA profile is approximately
15 520 octillion times more likely if Dajon Grate and two
16 unidentified, unrelated individuals contributed to the
17 mixture than if three unidentified, unrelated individuals
18 contributed to the mixture.

19 Q And was anybody excluded in your second proposition
20 set?

21 A Yes. In my second proposition set, Kalik Conn,
22 Jeremiah Dicker, and Nasirea Grate are excluded as
23 contributors to the mixture under the listed propositions.

24 Q But Dajon Grate was not excluded?

25 A No, he was not.

1 Q In fact, it was 520 octillion times more likely if
2 he and two unidentified, unrelated individuals contributed
3 than if three unidentified, unrelated individuals
4 contributed?

5 A That is correct.

6 Q Okay. So, then we get to 46.6. What do we have
7 here?

8 A This was swabs from the interior of sole and strap
9 of left pink sandal, trying to avoid any of the staining.

10 Q Okay. And what happened with this?

11 A I did develop a DNA profile, but due to the
12 inability to determine the number of contributors, no
13 further interpretation will be offered. So, as I stated
14 earlier, once I'm making my interpretation of the profile,
15 if I can't establish a number of contributors, then I will
16 not deem it suitable for comparison purposes.

17 Q Okay. Is that all y'all did -- all the swabs that
18 y'all did on the left pink sandal?

19 A Yes, it was.

20 Q Okay. What about the right pink sandal? Did y'all
21 swab and test for DNA on the right pink sandal?

22 A Yes. So, the right pink sandal was our Item 47.
23 So, we took two different swab from that item. Those were
24 47.1 and 47.2.

25 Q All right. And so, can you talk to me first about

1 47.1?

2 A Yes. 47.1 was swabs from the toe of pink right
3 sandal. Presumptive testing for blood was positive. The
4 DNA profile originated from a single-source, meaning one
5 individual. And I'm comparing Dajon Grate contributed to
6 the DNA profile or if an unidentified, unrelated
7 individual contributed to the profile.

8 Q Okay. And why didn't you compare Kalik Conn,
9 Jeremiah Dicker, and Nasirea Grate?

10 A I did, but they were all excluded.

11 Q Okay. So, they were excluded, so then you went to
12 Dajon Grate?

13 A That is correct.

14 Q Okay. And once you got to Dajon Grate to compare
15 his DNA -- his known standard to the profile that you
16 developed, what was your result?

17 A The DNA profile is approximately 1.5 nonillion times
18 more likely if Dajon Grate contributed to the profile than
19 if an unidentified, unrelated individual contributed to
20 the profile.

21 Q Okay. So, 1.5, 30 zeros, more likely if Dajon Grate
22 contributed than an unidentified, unrelated individual
23 contributed?

24 A That is correct.

25 Q Okay. So, now we have a 47.2, and that's going to

1 be the swab from interior of sole and strap of the right
2 pink sandal. What happened with that?

3 A For this item, a DNA profile was developed, but due
4 to inability to determine the number of contributors, no
5 further interpretation will be offered.

6 Q Okay. Is that it for the sandals?

7 A Yes, it is.

8 Q Okay. So, then you get Item 48 -- SLED Item 48.
9 Let me be clear. And we got a swab from a gear shifter
10 from the Acura. What happened with that?

11 A No analysis was performed on this item.

12 Q Why?

13 A It was instructed that DNA was not necessary for
14 that item, so we did not perform any analysis on it.

15 Q Okay. And then for 49?

16 A 49 -- Item 49 was swabs from interior driver rear
17 door handle.

18 Q Okay. And with that, what was your conclusion, if
19 anything?

20 A A DNA profile was developed, but due to the
21 inability to determine a number of contributors, no
22 further interpretation will be offered.

23 Q Okay. With Item 50?

24 A Item 50 was swabs from interior passenger rear door
25 handle. For that item, no DNA profile was developed.

1 Q Okay. And Item 51?

2 A Our Item 51 was swabs from the interior passenger
3 front door handle. A partial DNA profile was developed,
4 but due to the limited information obtained and the
5 inability to determine the number of contributors, no
6 further interpretation will be offered.

7 Q Now, DNA on an item, if I touch this picture, how
8 long can my DNA last on that picture?

9 A It just depends. It's so variable.

10 And if I can discuss about touch DNA. Essentially,
11 as we stated, it's your skin cells, but skin cells vary
12 from person to person. Some individuals are heavy
13 shedders or some individuals are light shedders. And it's
14 not consistent for an individual for day to day.

15 And individual could be a heavy shedder one day and
16 a light shedder the next. It just depends upon their
17 daily habits, daily routine, washing routines. So it --
18 and there's no really way to quantify that amount of how
19 much an individual is going to shed skin cells on a given
20 day.

21 So, that's why touch DNA, it can -- sometimes we can
22 get profiles suitable and sometimes we can't. There's
23 just so much variability that goes into and involved with
24 getting DNA profiles and touch DNA items.

25 Q So, if I give you an old sneaker that I wore, I

1 don't know, before I got pregnant, is there a chance that
2 you wouldn't get my DNA?

3 A It's possible. It just depends upon how the item
4 was kept. You know, was it washed? Was it exposed to
5 kind of any kind of heat, air, moisture? Those
6 environmental factors, those can break down DNA, as well
7 as bacteria. If any kind of bacteria gets to the DNA, it
8 can break it down too.

9 So, it just depends upon how that item is kept and
10 where it is kept. It can kind of also decide whether or
11 not, you know, can we get touch DNA from it, as well as a
12 person's shedding qualities.

13 Q Can I direct your attention back to the left pink
14 sandal real quick, which would be SLED Item 46? And
15 particularly can we talk about 46.4?

16 A Yes.

17 Q So, with SLED item, the left pink sandal, a DNA
18 profile was developed in 46.1, swab from top strap of left
19 pink sandal; is that right?

20 A That is correct.

21 Q And was a DNA standard developed -- that was
22 suitable for comparison -- developed for 46.2?

23 A That is correct.

24 Q Swab from toe of left pink sandal.

25 And then 46.3, swab of the toe of the left pink

1 sandal. Was a DNA profile developed for comparison there?

2 A That's correct, there was.

3 Q Okay. But then we get -- this is all the same left
4 pink sandal?

5 A That is correct.

6 Q Okay. Kalik Conn, Jeremiah Dicker, and Nasirea
7 Grate were all excluded as contributors to the DNA
8 profile?

9 A That is correct.

10 Q And Dajon Grate was included in your proposition
11 sets as a contributor to all of those?

12 A Yes, that is correct.

13 Q Okay. Now, with 46.4, we have got no DNA profile.

14 A That is correct.

15 Q Okay. How can that be?

16 A My understanding is that there was not any genetic
17 material there for me to develop a DNA profile from.

18 Q Now, is that -- could that be the same thing if I
19 take this off, wash it, and -- or something like that? I
20 mean, obviously, I'm wearing it.

21 A I mean, yes, washing can definitely degrade or take
22 away any kind of possible DNA on there. Yeah, I just
23 can't speak to why there isn't any kind of genetic
24 information there, but there was nothing there for me to
25 be able to develop a DNA profile from.

1 Q So, DNA could last years or we couldn't develop a
2 profile at all, either way?

3 A That is correct.

4 Q Now, your lab report from September 14th, 2023, is
5 all of this to a reasonable degree of scientific
6 certainty?

7 A We don't testify to that statement anymore.

8 Q Okay.

9 A But I can attest to the results that's generated in
10 this report, not only myself but our results are also
11 reviewed by two senior analysts as well. So, they look at
12 my results independently.

13 They come to the agreement -- they agreed with my
14 findings and my results, and they sign off on it. And
15 this is a practice that's done with any and all DNA
16 assignments or any kind of reports generated before it's
17 released to the submitting agencies.

18 Q So, in your expert opinion, you created these
19 results. This is -- and you wrote it down in this report,
20 and then other people go and peer-review you?

21 A Yes. Two other court-qualified analysts peer review
22 my work, and they have to agree to the findings that I
23 generated before it is issued.

24 Q Okay. And then why don't we go to -- so, we have a
25 secondary report. Can we talk about that?

1 A Yes, I have that.

2 Q Okay. And what's the date on that report?

3 A This report is dated June 10th, 2024.

4 Q Okay. Why would there be two reports in this case?

5 A This is what happens when additional items of
6 evidence are submitted to the laboratory for further
7 testing after the first round has been submitted.

8 So, essentially, the first round of evidence is
9 submitted, I generate a report, but more evidence is
10 submitted for this same case. And so, a supplemental
11 report is generated for any supplemental items that are
12 being tested for that same case.

13 Q Okay. And so, are you testing for DNA again?

14 A Yes, I am.

15 Q Okay. And you still have those known standards?

16 A Yes. We still keep those known standards or at
17 least the profiles from those known standards so that we
18 can compare to any other items that may be submitted.

19 Q And whose known standards did you have?

20 A Once again, I had the known standards from Dajon
21 Grate, Kalik Conn, Jeremiah Dicker, and Nasirea Grate.

22 Q Okay. And I'm showing you State's Exhibit 39. That
23 is going to be SLED Exhibit 53 and Horry County Police
24 No. 16, a swab from the Cadillac.

25 Now, is that -- that's going to be SLED Item No. 53,

1 swab from a red stain from the driver's rear backseat
2 seatbelt. Is that --

3 A Yes, this is correct. I recognize it because, once
4 again, it has the unique SLED number, it has the item
5 number, and it also has my initials and date when I
6 entered and exited the heat-sealed pouch to perform
7 analysis on this item.

8 Q And so -- and we can agree that that's a backwards
9 Cadillac?

10 A It does appear to look like it says "Cadillac."

11 Q Okay. And so, what is 53?

12 A Swabs of red stain from driver rear back seatbelt.

13 Q Okay. And did you do an analysis on this?

14 A Yes, I did.

15 Q Okay. And on this analysis, was it presumptive
16 positive for blood?

17 A Yes, presumptive testing for blood was positive.

18 Q Okay. Was this DNA profile a single source?

19 A Yes. The DNA profile developed from this item was
20 single source.

21 Q And can you tell me what your analysis -- what your
22 conclusion is?

23 A For this profile, I'm comparing Dajon Grate to this
24 profile versus an unidentified, unrelated individual. And
25 my result is that the DNA profile is approximately

1 1.5 nonillion times more likely if Dajon Grate contributed
2 to the profile than if an unidentified, unrelated
3 individual contributed to the profile.

4 Kalik Conn, Jeremiah Dicker, and Nasirea Grate are
5 excluded as the contributor.

6 Q And I am so sorry but I think I misheard you. So,
7 it is how many times more likely if Dajon Grate
8 contributed? Was it million or was it --

9 A I apologize; it's 1.5 nonillion.

10 Q And that would be how many zeros?

11 A 30 zeros.

12 MS. MARTIN: Your Honor, I beg the Court's
13 indulgence --

14 BY MS. MARTIN:

15 Q Oh, let me -- we talked about your other report from
16 September 14th of 2023 and then June 10th of 2024. Does
17 this go through the exact same peer review as your
18 other -- I'm going to steal these. Does this go through
19 the same peer review as the September 14th, 2023, report?

20 A Yes, it does. Once again, once I generate my report
21 and put my findings into it, it is then once again
22 peer-reviewed by two court-qualified analysts to look at
23 my work, and they need to agree with my results and
24 findings before the report is issued to the submitting
25 agency.

1 Q Okay. And was that done in this case?

2 A Yes, it was.

3 Q Okay. And did they agree with your conclusions?

4 A Yes, they did.

5 Q Give me one second.

6 MS. MARTIN: Beg the Court's indulgence.

7 THE COURT: All right.

8 MS. MARTIN: No further questions for this witness.

9 THE COURT: All right.

10 MR. WILSON: Your Honor, could I wait until the jury
11 finishes with the report that she handed them?

12 THE COURT: Yes. Once they finish reviewing that,
13 then you can do your cross-examination.

14 MS. MARTIN: Sorry, Ralph.

15 MR. WILSON: That's okay. That's okay.

16 (Pause in the proceedings while the jury reviews a
17 document.)

18 THE COURT: All right. Mr. Wilson,
19 cross-examination.

20 MR. WILSON: Thank you very much, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WILSON:

23 Q Agent Stewart --

24 A Good afternoon.

25 Q Good afternoon to you, sir.

1 Let me ask you: You talked about mixtures from DNA,
2 and that means a mixture of different substances that you
3 found which may have been blood or saliva or whatever the
4 substance was but there was a mixture. And I think you
5 said that, on two or three different occasions, that you
6 found that there was a mixture; right?

7 A That is correct.

8 Q And that mixture means that somebody else's DNA was
9 present as well?

10 A That is correct.

11 Q In fact, the black mask that you talked about, you
12 said there was at least two different DNAs -- or at least
13 there was a mixture of DNA; fair?

14 A It was a mixture -- well, the swabs from the black
15 face mask, there was a mixture of three, that is correct.

16 Q Okay. And can you tell me -- you have told us that
17 one of these people would have been Nasirea Grate based on
18 the swabs that you received; right?

19 A My reporting is Nasirea Grate and two unidentified,
20 unrelated individuals.

21 Q And that's my question.

22 A Yes, sir.

23 Q Do you know who those two other individuals were?

24 A I do not.

25 Q I noticed that you were given four sets of swabs;

1 right?

2 A As far as known standards?

3 Q Yes, sir.

4 A That is correct.

5 Q Not five?

6 A No, sir.

7 Q Only four?

8 A That is correct.

9 Q And the one that you did not get is Todd Fry?

10 A I do not have a known standard from Todd Fry.

11 Q In fact, on your report -- on page 1 of your report,
12 Todd Fry is listed as a suspect?

13 A That is correct.

14 Q But you didn't get any DNA swabs from Todd Fry;
15 right?

16 A I did not.

17 Q You did not.

18 So, if those mixtures happened to belong to Todd
19 Fry, you wouldn't be able to tell, would you?

20 A Without a known standard, I can't make comparisons
21 for that individual.

22 Q And the State, for whatever its reasons, didn't send
23 you that, did they?

24 A It was not submitted to me.

25 Q No, it wasn't submitted.

1 There was a second set of DNA -- you said that
2 Nasirea Grate was one, and then there was a second one;
3 right? At least one other?

4 A Are you still with the swabs from the interior of
5 the black face mask?

6 Q Yes, sir.

7 A I did say there was a mixture of three, and I did
8 compare Nasirea Grate with the inclusionary likelihood,
9 that's correct.

10 Q A mixture of three individuals; right?

11 A That is correct.

12 Q All right. And we don't know who the other two
13 individuals are?

14 A I do not.

15 Q We do not. Because you didn't have any standards to
16 compare other than Nasirea Grate; right?

17 A I did have Dajon Grate, Kalik Conn, and Jeremiah
18 Dicker.

19 Q Yeah, but you didn't have Mr. Todd, did you?

20 A No, sir, I did not.

21 Q And you know that other person on here are not those
22 three because you had their DNA so you could test and tell
23 it wasn't them?

24 A I was able to exclude those individuals.

25 Q That's right.

1 But you hadn't excluded Todd Fry; right?

2 A No, sir. I did not get his standard.

3 Q No.

4 Did they give you any reason that they didn't send
5 you -- four or five suspects listed on here. Any reason
6 that they didn't -- did they give you any reason as to why
7 they didn't send you Todd Fry's swabs?

8 A No reason was given to me.

9 Q No reason was given to you.

10 There were a couple of times -- let me find it
11 here -- I think where you said in the vehicle. Let's look
12 at No. 36 on your list. It says, "Swabs of red stain from
13 rear center seat."

14 A That is correct. Item 36.

15 Q And you said that that's a mixture?

16 A It's a mixture originating from two individuals,
17 that is correct.

18 Q And Dajon Grate is one of those individuals?

19 A I did include Dajon Grate and an unidentified,
20 unrelated individual contributed to the mixture than if
21 two unidentified, unrelated individuals.

22 Q But we don't know who the other individual is?

23 A I do not.

24 Q We do not.

25 And then we go over to swabs from scrapings from the

1 entire interior of the black mask. We already talked
2 about that.

3 And then we go to No. 46.1.

4 A The swabs from the top of strap of left pink sandal.

5 Q Okay. Now, is that a mixture?

6 A Yes. This one was a mixture originating from two
7 individuals.

8 Q Okay. And we know one of the individuals you said,
9 based on your analysis, was Dajon Grate; right?

10 A Yes, I did have it in there inclusion for Dajon
11 Grate and an unidentified, unrelated individual
12 contributed to the mixture than two unidentified,
13 unrelated individuals.

14 Q But you can't tell us who that other individual was
15 because you didn't get a standard for whoever that other
16 individual may or may not have been?

17 A That is correct.

18 Q That is correct.

19 Did you find -- well, let me ask it a different way:
20 Is Nasirea Grate excluded from every piece of everything
21 they sent you except for this mask they got from his
22 house?

23 A Just bear with me.

24 Q Find anywhere in your records where he is identified
25 as it being his DNA other than there, which is No. 45 on

1 your sheet.

2 A That is correct. Nasirea Grate is excluded from all
3 the other DNA profiles I had suitable for comparison,
4 except for Item 45.1, which is swabs from the black mask.

5 Q Except for 45, he is completely excluded from
6 everything they sent you.

7 But I'll tell you who is not excluded, is he, is
8 Todd Fry. He's not excluded, is he?

9 A I could not compare his profile because I did not
10 have it.

11 Q Well, if you had it -- if you had it, could you tell
12 us whether it matched the second person that's on this
13 DNA?

14 A If I had Mr. Fry's standard, I would have been able
15 to compare him to all the other profiles, including that
16 one.

17 Q That's right. And then you could tell us whether he
18 had on that mask or not. But the State refused to send it
19 to you.

20 I don't have any other questions.

21 THE COURT: Mr. Galmore?

22 CROSS-EXAMINATION

23 BY MR. GALMORE:

24 Q So, Agent Stewart, as I understand it, you were
25 given four known samples; is that correct?

1 A Known standards.

2 Q Known standards, yes.

3 A That is correct.

4 Q And that would have been Dajon Grate, Nasirea Grate,
5 Malik [sic] Conn, and Jeremiah Dicker?

6 A It's Kalik Conn, but yeah, that had those four
7 individuals, yes, that's correct.

8 Q And you were not given a known standard for Todd
9 Fry?

10 A That is correct.

11 Q You don't collect these standards yourself, do you?

12 A I do not.

13 Q They're collected by local officers and transported
14 to you?

15 A That is correct.

16 Q And that's the same for the samples that you're
17 comparing the standards to?

18 A Aside from the ones that were processed and
19 collected by forensic scientist, Cameron Wisniewski, yes,
20 the other swabs, they were submitted to me from the
21 submitting agency.

22 Q Okay. So, if it was, say, a sample on a firearm,
23 would that have been a sample that SLED would have
24 collected, or would that have been a sample that the local
25 police department would have collected?

1 A I have no -- I guess no -- I don't have anything
2 about a firearm, so it would have had to come from the
3 submitting agency.

4 Q Okay. So, the samples in this case, you did not
5 collect them?

6 A I did not.

7 Q All right. But you did the comparisons?

8 A I generated DNA profiles, and I did the comparisons.

9 Q And the samples from the Cadillac came back as being
10 Dajon Grate?

11 A I don't -- I didn't know the make and model of the
12 car. I just know that I had got swabs from a car, and I
13 made the comparisons to them.

14 Q Now, the samples for the pink sandals, some were
15 Dajon Grate and some were a mixture; is that correct?

16 A That is correct.

17 Q And the samples that were drawn from the passenger
18 door handle and the rear door handle, you were not able to
19 make a -- draw a conclusion on those?

20 A I'm sorry, yes. The swabs -- Item 49, swabs from
21 the interior driver rear door handle, yeah, the profile I
22 deemed it not suitable for comparison because I could not
23 determine the number of contributors.

24 And in Item 51, swabs from the interior passenger
25 door handle, once again, a partial DNA profile was

1 developed, but because of the limited information obtained
2 and the inability to determine number of contributors, no
3 further interpretation was offered for that item.

4 Q For those two samples? Were they blood?

5 A They did not come with a blood request, so we did
6 not test for any blood on those items.

7 Q So, you don't even know if that was blood or not?

8 A I do not.

9 MR. GALMORE: No further questions.

10 THE COURT: Redirect?

11 MS. MARTIN: Beg the Court's indulgence.

12 THE COURT: All right.

13 MS. MARTIN: Nothing from the State.

14 THE COURT: All right. You may step down.

15 MS. MARTIN: Can he be excused?

16 THE COURT: Any objection?

17 MR. WILSON: No objection, Your Honor.

18 MR. GALMORE: No objection, sir.

19 THE COURT: He's free to go. Thank you very much.

20 MS. MARTIN: Your Honor, we forgot to ask if

21 Christian Fletcher could be excused. I know it's been a
22 while but --

23 MR. WILSON: I have no objection.

24 MR. GALMORE: No objection, sir.

25 THE COURT: He's free to go as well.

1 MS. MARTIN: Just to let him know.

2 THE COURT: All right. The State can call your next
3 witness.

4 MS. LIVESAY: At this time, the State rests.

5 THE COURT: All right. Ladies and gentlemen, the
6 State has rested their case. And this happens in every
7 trial; now is the time of the trial where I have to take
8 up a matter of law with the attorneys.

9 And I tell you why we do it outside the presence of
10 the jury. It's not that we're trying to hide anything
11 from you or keep anything from you, but as I told you at
12 the opening of this trial, you and you alone decide the
13 facts of this case, and you decide the facts based upon
14 the testimony and evidence presented during the trial.

15 Well, now is the time of the trial where I have to
16 discuss the law to be applied with the attorneys. And
17 often when we discuss the law, it requires me and the
18 attorneys to reference factual issues. But what we say is
19 not evidence, and so we don't want you to be influenced by
20 anything I might say or anything the attorneys say when we
21 discuss the law. We don't want that to influence your
22 decision on what the facts of this case are. And that's
23 why we excuse you while we discuss these matters of law.

24 So, I'm going to excuse you back to the jury room
25 for just a few minutes. Leave your notepads here in the

1 jury box. Do not discuss the case. It's still too early
2 for deliberations, and we'll bring you back out in just a
3 minute. Thank you very much.

4 (The jury exited the courtroom at 4:07 p.m.)

5 THE COURT: All right. Any motions?

6 MR. WILSON: Your Honor, we would generally make
7 motions at this time. I would ask the Court to allow us
8 to make the motions tomorrow morning. I know it's late.
9 It's 4:00. And, personally, I would rather wait until in
10 the morning. And then, if we decide not to put up any
11 case -- we'll be ready to go forward either way, as soon
12 as we do that.

13 THE COURT: Well, having said that, if the
14 anticipated motions are denied and the defense does put up
15 a defense, are we going to be able to finish this by
16 Friday?

17 MR. WILSON: Yes, sir, I can assure you of that.

18 THE COURT: We have got two defendants and we've got
19 three charges per defendant. I can pretty much guarantee
20 you that closing charges -- I mean, closing arguments,
21 charges, and deliberations is going to take a full day.

22 MR. WILSON: Yes, sir. I can assure you we will
23 finish tomorrow. I can assure you that part for the
24 defense. Now, I can't go beyond that, but I can certainly
25 assure you that we will finish the defense tomorrow.

1 THE COURT: Mr. Galmore, what's your position?

2 MR. GALMORE: I agree with Mr. Wilson. I do not
3 anticipate that we will take very long. The jury has been
4 deliberate and attentive throughout, and it would just
5 be -- I don't think we're, you know, wasting any time. We
6 will definitely be finished by the end of this week, sir.

7 THE COURT: All right. Does the State have any
8 problem with waiting until tomorrow morning to hear
9 defense motions or any motions at that time? Of course,
10 typically, it's the defense motions at this time.

11 MS. LIVESAY: Whatever is fine. I mean, I don't
12 know what -- why they need the delay, but honestly, if we
13 can get it done today -- I don't know how they feel, but I
14 would think the best time to start close -- if they're not
15 going to put up anything -- and I don't know if they are
16 or they aren't, but I think the preference would be to
17 start right when the jury gets here and they're fresh.
18 Because it sounds like we're going to bring them back, and
19 then they're going to sit around for at least 30 or 45
20 minutes.

21 I don't know if they plan on putting anything up or
22 not, but if they are, that's just going to then kind of
23 just delay us on. I mean, if they're not going to put
24 anything up, I would like to just go ahead in the morning
25 and start with close.

1 THE COURT: Well, let's do this. Let me bring the
2 jury back in. I'm going to go ahead and give you time.

3 However, Mr. Wilson and Mr. Galmore, be sure you
4 speak with your clients regarding their rights to testify
5 because I'm going to go over their rights with them. And
6 there again, I'm not prejudging any motions.

7 MR. WILSON: I understand.

8 THE COURT: But if we get to that point and I have
9 to explain to them their rights to testify or not to
10 testify, they're not going to have long tomorrow to make a
11 decision.

12 MR. WILSON: I understand.

13 THE COURT: They need to have their decision in
14 place. Okay?

15 MR. WILSON: We will have it in place.

16 THE COURT: All right. I'm going to bring the jury
17 back in. I'm going to cut them loose until 10:00 tomorrow
18 morning. I'll take -- as a matter of fact, I'll take the
19 bench at 9:15.

20 MR. WILSON: We'll be here.

21 THE COURT: And we'll go ahead and get started at
22 9:15, but I'll have the jury come in at 10:00.

23 MR. GALMORE: Thank you.

24 MR. WILSON: Appreciate it.

25 MS. MARTIN: Not trying to jump the gun at all, but

1 I mean, assuming -- you know, assuming that we get past
2 motions and everything else, when do you expect that we
3 would have maybe a copy of the charges or anything like
4 that? I mean -- so that we can be prepared to argue them?

5 THE COURT: If we wind up tomorrow, probably
6 Thursday, because --

7 MS. MARTIN: So, we would not charge the jury until
8 Thursday if we -- even if we do any motions and --

9 THE COURT: Well, we have got to have motions. I
10 mean, the charges depend upon whether they -- whether a
11 motion is granted, whether a motion is denied, whether the
12 defendants put up a defense, whether the defendants
13 testify.

14 MS. MARTIN: Absolutely.

15 THE COURT: I mean, I can't finalize anything until
16 we get through that. So, you have got two defendants.
17 You've got six indictments. Three charges per defendant.
18 So, you're probably looking at 25, 30 pages of charges
19 that I have got to formulate to get to you.

20 And so, I -- depending on what happens tomorrow
21 morning, possibly tomorrow afternoon, but I would say
22 probably within a half a day of whenever we finish the
23 testimony and everything. All right?

24 MS. LIVESAY: That's right, Judge. We're closing
25 Thursday?

1 THE COURT: Well, I don't know. Certainly if I deny
2 the defendants' motions and both the defendants testify
3 and both the defendants put up a defense, then you're
4 probably looking at Friday.

5 MS. LIVESAY: Okay.

6 THE COURT: If you have got one defendant putting up
7 a defense, one defendant testifying, rebuttal -- any type
8 of rebuttal you put up, you're probably looking at
9 Thursday or Friday.

10 MS. LIVESAY: Okay.

11 THE COURT: I mean, I can tell you, closing
12 arguments, jury charges, and deliberations is going to
13 take a full day. I'm assuming you probably don't want to
14 make your closing arguments until you get a copy of my
15 charges. And that just takes time.

16 If you want to go ahead and make your closing
17 arguments before you get my charges, then that will
18 certainly cut down on the time. But we'll just deal with
19 it tomorrow morning.

20 MS. LIVESAY: So, we'll just start tomorrow and go
21 from there.

22 THE COURT: That's right. I mean, I don't want
23 to -- I don't want to anticipate what the defense is going
24 to do or what their motions are or what the ruling is
25 going to be, and so, I can't give you that at this time.

1 MS. LIVESAY: That's fine.

2 MS. MARTIN: Thank you.

3 THE COURT: Because, like I say, let's say they put
4 something up and you have a rebuttal. Well, your rebuttal
5 might take a full day. We don't know.

6 All right. Let's bring the jury back in.

7 (The jury entered the courtroom at 4:20 p.m.)

8 THE COURT: All right, ladies and gentlemen.
9 Welcome back. I apologize for bringing you back like
10 this, because we're going to go ahead and break for the
11 day. I'm going to have you please be back tomorrow
12 morning at 10:00. We're going to get started a little bit
13 later because we have to get some things lined up.

14 So, I'm going to excuse you until 10:00 tomorrow.
15 Leave your notepads in the jury box. Do not discuss the
16 case. Hope you have a good evening, and we'll see you
17 back at 10:00 tomorrow morning. Thank you very much.

18 (The jury exited the courtroom at 4:20 p.m.).

19 THE COURT: All right. Anything from the State
20 before we recess?

21 MS. LIVESAY: No, sir.

22 MR. WILSON: Nothing, Your Honor.

23 MR. GALMORE: No, sir.

24 THE COURT: I'll take the bench at 9:15 tomorrow
25 morning. All right? Thank you very much.

1 (The trial adjourned for the day at 4:21 p.m.).

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1 CERTIFICATE OF COURT REPORTER

2 *****

3 CASE NAME/NUMBER: State v. Grate and Grate

4 DATE OF HEARING: August 27, 2024 (Trial Day 6)

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings to the best of my ability, and that I
9 am neither counsel for, related to, nor employed by any of
10 the parties to this case, and I have no interest,
11 financial or otherwise, in its outcome.

12
13 14 /s/ Bobbi Fisher

15 Bobbi Fisher, RPR, Court Reporter III

16 Date Submitted: 12/16/24

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1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
2 COUNTY OF HORRY * TRANSCRIPT OF RECORD
3 -----X
4 STATE OF SOUTH CAROLINA, *
5 State, *
6 vs. * Case No. 2023-GS-26-00422
7 * 2023-GS-26-00423
8 * 2023-GS-26-00453
9 DAJON MALIK LAVERN GRATE, *
10 Defendant. *
11 -----X
12 STATE OF SOUTH CAROLINA, *
13 State, *
14 vs. * Case No. 2023-GS-26-00424
15 * 2023-GS-26-00425
16 * 2023-GS-26-00452
17 NASIREA BREWNOPLIS JEROME *
18 GRATE, *
19 Defendant. *
20 -----X

August 19-28, 2024

TRIAL - VOLUME 7
Wednesday, August 28, 2024

B E F O R E:

The Honorable Benjamin Culbertson, Presiding Judge;
and a jury.

Court Stenographer: Bobbi Fisher, RPR
SC Official Court Reporter III

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Attorney for Defendant Nasirea Grate

I N D E X

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Charge Conference

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Closing Argument on Behalf of the State

1347

Closing Argument on Behalf of Defendant Nasirea

1377

Grate

Closing Argument on Behalf of Defendant Dajon Grate

1398

Jury Charge

1421

Jury Question

1445

Verdict

1457

E X H I B I T S

(None.)

P R O C E E D I N G S

(9:33 a.m.)

THE COURT: All right. Any motions by the defense?

MOTION/MATTER OF LAW

MR. WILSON: Yes, sir. Your Honor, I have several motions. The first one that I want to do is -- just for the record anyway -- is I'm making a motion for a mistrial on the collective objections and problems that have occurred during the course of this trial.

And the first one is is that, at the very beginning of this trial, there was an issue about whether or not Josh Smith was going to testify or not testify. We had been provided copies of a redacted statement, and three pages of it was redacted. There was a page and a half, I think, that was not redacted.

And when we were making opening statements -- and that was my concern at that time is is that it prevented me, in opening, from talking about Josh Smith or what he might say or might do or might not do; one, because we didn't have all the information, so we didn't even know what he was going to really testify to.

And I understand that the Court ruled that they weren't going to be able to put him up unless we got that information. So, I'm good on that except, as I'm saying, we should have had that prior to the start of the trial so

1 that we could have made whatever statements we wanted to
2 regarding it, because I don't know what he was going to
3 say or what's in the rest of the statement, is what the
4 problem is. So, that's one of the things.

5 The second thing is is that we had made a motion --
6 I think, actually, Mr. Galmore made it and I kind of
7 seconded it, but we made a motion to recuse Ms. Livesay
8 because of her involvement with Mr. Graham. I'm sorry.
9 Robert Graham -- with Mr. Robert Graham.

10 And our position was that she put herself in a
11 position where she became a witness in the case because
12 she was there. And so -- and even in her examination of
13 him, she's asking him, well, didn't you say this to me, or
14 didn't you tell me this, didn't you say this to me.

15 All of these things were outside the presence of the
16 Court. These things were done apparently in preparation
17 for this trial. They weren't done in this courtroom.

18 And then, on top of that, they brought in their own
19 investigator, put him on the stand, and had him try to
20 repute or dispute, if I will, the statement of Mr. Graham.

21 So -- and then the third thing is is that earlier in
22 the case -- and His Honor had an in camera hearing where
23 there was nobody else present but myself, the Court, and
24 the defendant, and where we discussed the fact that I had
25 been in the consultation room for defense attorneys, which

1 is right here outside the courtroom door, and that one of
2 the solicitor's employees overheard all my discussions or
3 at least -- I don't know what part of it because we never
4 did really got to know how much of it she heard. But she
5 heard enough of it that she was concerned enough that she
6 had -- that she'd gone to her superiors to discuss it or
7 to talk about it, even though my understanding from her
8 and from them is that she only told one other person, and
9 she only told that person a part of what she said she
10 heard.

11 My concern with that, Your Honor, which is why I'm
12 asking for the mistrial on that as well, is is that she
13 also told us that she had been in that office for two
14 years and that she heard other attorneys having
15 discussions, even though they were civil in nature; that
16 this was the first time that she heard a criminal defense
17 attorney talking to his client.

18 And whether I believe that or don't believe that is
19 not really important. The problem for me is is this: For
20 two years -- for two years, they knew or she knew that she
21 could overhear the conversations.

22 The other concern that I have is is that the
23 Solicitor's Office specifically took the far-away room and
24 put defense counsel next to her wall, which is the other
25 thing that concerns me. And this has been going on for at

1 least two years.

2 So, collectively -- collectively, I'm asking the
3 Court, when you look at all of these things collectively,
4 that I think that they deprive this defendant of a fair
5 and impartial trial, and therefore, I would ask the Court
6 to grant the mistrial on those things and the objections
7 that I made during the course of the trial collectively.
8 That's the first motion.

9 THE COURT: All right. We'll do them one at a time.

10 Mr. Galmore, any argument one way or the other on
11 that motion?

12 MR. WILSON: Yes, Your Honor. I would agree and I
13 would also move for a mistrial. And I guess the argument
14 is the cumulative effect of these various actions that
15 have taken place here. Part of it is, you know, the
16 Court's rulings, the abuse of discretion. And, you know,
17 I understand the judge has to run a courtroom but, you
18 know, the repeated nature of what has occurred here has
19 become problematic for me.

20 We have got the motion to sever and, again, that's
21 an abuse of discretion; I understand how the appellate
22 courts are going to look at that. But when you put it in
23 context and have the issue with the U.S. attorney, we had
24 the issue about -- testimony about trajectory rods, we had
25 the Jackson v. Denno. We also made a motion to recuse the

1 Solicitor's Office. And, you know, just cumulatively,
2 when you add all this stuff up, it's a problem for my
3 defendant where he doesn't get a fair and impartial trial.

4 Also, Your Honor, there are repeated instances of
5 abuse of -- I'm not even sure what to call it -- abuse of
6 process by the Solicitor's Office. We have the Jackson v.
7 Denno where the Solicitor's Office attempted to introduce
8 my client's statement, and they gave us a 15-minute
9 recitation by Detective Jones.

10 Now, to hear them tell it, you know, it was a walk
11 in the park; however, once the Court inquired and
12 basically instructed them to play the entire tape, we
13 learned it's a 3-1/2-hour tape where my client is drugged,
14 he's injured, and he's repeatedly cursed at by the police
15 officers.

16 So, you know, at the time, I said that the behavior
17 of the Solicitor's Office was borderline malfeasance. I
18 probably should have took the word "borderline" out of it
19 just because, you know, it was a totally different --
20 totally different than what the testimony was.

21 And just to be clear, the Solicitor's Office argued
22 to the Court that they intended to use Detective Jones's
23 statement without introducing the client's 3-1/2-hour
24 tape.

25 Your Honor, they also did the same thing with the

1 picture of my client holding a firearm on their PowerPoint
2 presentation. They told the Court that the picture was
3 necessary in order to -- in order to prove ownership of
4 the phone. And it turns out, the very next slide on the
5 PowerPoint presentation showed that it was not necessary.
6 So, their PowerPoint belie the truth of what was actually
7 going on. Their own presentation showed that it was not
8 necessary to have that photo.

9 And the Court, you know, ruled that the photo was
10 excluded, and we certainly appreciate and respect the
11 ruling, but at the same time, it's just another example of
12 going too far.

13 Your Honor, they tried to introduce a snitch
14 statement without introducing the snitch himself, and we
15 had to go through a day of dealing with the U.S. Attorney
16 on that issue. And then, just yesterday or the day
17 before, we had the issue with the Solicitor's Office
18 attempting to interview Mr. Graham.

19 I have never been a solicitor, but I have been told
20 that, yeah, this is the reason why you don't go to the
21 crime scene because you could end up being called as a
22 fact witness.

23 Your Honor, I think, added together, this is just
24 too much to -- for a defendant to bear. We would ask that
25 the Court entertain our motion for a dismissal just based

1 on the cumulative effect of all of these abuses by the
2 Solicitor's Office. Thank you.

3 THE COURT: All right. State's position?

4 MS. LIVESAY: Thank you, Your Honor. First of all,
5 the State would like to try to address these one at a
6 time. If I miss anything, Judge, let me know. The first
7 issue I'm going to address -- I'm going to start with
8 Mr. Wilson's issues and go through those and then
9 Mr. Galmore's.

10 The first issue was regarding Josh Smith. First of
11 all, as to whether or not Mr. Wilson should be able to
12 address that in opening statements, I think it needs to be
13 apparent that the State turns over a potential witness
14 list. We don't have to call any of those people, and if
15 the defense assumes wrongly and goes up in here and
16 mentions a witness that we don't call, then he would turn
17 around and ask for a mistrial for that purpose.

18 The fact that we could call or not call this witness
19 as to his opening is irrelevant. Those are merely
20 potential witnesses. Trials are fluid. Sometimes that
21 witness may need to be called. Sometimes things happen
22 and that witness does not need to be called.

23 So, to argue that he was prejudiced by the fact that
24 we didn't know if we were going to be able to call him or
25 not, he's no more prejudiced than if he knows if we're

1 going to call any particular witness on the list, and all
2 of that is potential. It is never that we hand over a
3 list of concrete people that we have to call.

4 Second of all, the State turned over what we had
5 available to us. The U.S. Attorney's Office showed up and
6 they made a motion after Your Honor ruled that it should
7 be turned over. They came in and still said, "I'm not
8 turning it over." The Solicitor's Office does not have,
9 certainly, more power than the Court does. The Court
10 couldn't get it, and the Solicitor's Office couldn't get
11 it. I did all I could do to get it.

12 Now, we did turn over what we had, and I do think
13 it's important -- sometimes these things, you feel like no
14 good deed goes unpunished in here. Under the rules of
15 5(a) disclosure in criminal cases, the rule is clear that
16 we do not have to turn a statement over of a potential
17 witness until after that witness testifies. We don't have
18 to turn it over in advance. Our office normally does turn
19 it over in advance because we think that's the best
20 practice, but the rules do not require it.

21 Now, in saying that, the rules know that the
22 Solicitor's Office goes out and meets with witnesses and
23 prepares for trial. That's my ethical obligation. I have
24 to vet this information. I just can't put anything up.

25 And the rules are prepared for that because the rule

1 says that I don't have to turn over my conversations with
2 those witnesses until after that witness testifies, unless
3 it's something exculpatory. If it's something
4 exculpatory, yes, I have to turn it over in advance. But
5 the rules acknowledge that the solicitor is out there
6 talking to these witnesses and taking notes and preparing
7 for trial, and the rule says I didn't have to turn that
8 over until after Mr. Smith testified. I turned it over in
9 advance.

10 Now, what was turned over was what Mr. Smith had
11 told an officer. That was never at issue in here. What
12 was at issue was what he told regarding other defendants.

13 Now, this Court ruled that they needed to turn that
14 over. Ultimately, it was not turned over. Ultimately, we
15 were not allowed to use the witness. If anybody was
16 punished, it was us. That guy would have said -- talking
17 about a fraud to the jury, that guy would have come in
18 here and said Nasirea Grate said he was there, said he
19 fired, said he hit Jeremiah Dicker. That's where he got
20 the wound on the head. He even told the guy, "I shot him
21 in the head."

22 So, if anybody was prejudiced by the fact that that
23 didn't come in, it was the State. And for no wrongdoing
24 on our part. That testimony was suppressed even though we
25 did, as the Solicitor's Office, everything we could do.

1 We got -- any piece of paper we had, we turned it over.
2 And, ultimately, even though it was out of our control as
3 to the other documents, ultimately, we were punished.
4 Ultimately, these victims back here were punished because
5 now that information doesn't get to come out, and now
6 Mr. Wilson gets to get up there and act like the victim
7 shot him where he knows there's already a statement out
8 there where his client admits to shooting Jeremiah Dicker.

9 So, if there's any prejudice, it is clearly to the
10 State, because that was a material piece of evidence that
11 was suppressed at no fault of the State. And, normally,
12 suppression is used to punish the State. "I'm not going
13 to let you use this because you have gained it either from
14 fruit of the poisonous tree or you have done something
15 wrong, and so I'm not going to let you use it. I'm trying
16 to detour this behavior from the prosecution's office."
17 And we did nothing wrong. Nothing. And the evidence was
18 still suppressed. So, if anybody was prejudiced from how
19 things went on with Mr. Smith, it was the State.

20 Now, as to my recusal during Robert Graham's
21 testimony, the reason we carry an investigator out there
22 is so we are not a witness. Mr. Brown is out there, I'm
23 out there, Ms. Martin is out there, and Mr. Brown takes
24 notes for just what happened today, so I'm not a witness,
25 so we can call Mr. Brown and question him about anything

1 that was said in that interaction.

2 And, again, under the rules, I didn't even have turn
3 that statement over until after Mr. Graham testified. I
4 turned it over in advance. The statement that Ralph was
5 swinging around in here hollering was what I gave him. I
6 went out there, Steve Brown went out there. Steve Brown
7 wrote it down and gave it to Mr. Wilson and Mr. Galmore.

8 The State is going over and above what the rules
9 even demand. The rules don't even demand it to be turned
10 over until after the guy testifies. We go over and
11 beyond.

12 So, the fact to recuse or even ask for a recusal
13 would mean that the State would never be able to interview
14 any witnesses pretrial. It would be to say we don't want
15 you to have preparation, we don't want to give the victims
16 a fair trial. You can believe they're over there talking
17 to their defendants. They're over there talking to
18 whoever they're going to call, and we have the same right.
19 And that is, obviously, our ethical obligation to vet this
20 information before we come in here and try two people for
21 murder. We are trying to vet the information to put up
22 the facts.

23 If there was something nefarious, Steve Brown
24 wouldn't have wrote it down, and I wouldn't have turned it
25 over. We're over there telling you we went out there and

1 talked to them and this is what he says: Use it in your
2 pretrial preparation. I want you to have everything that
3 you need.

4 So, to say that a solicitor -- any solicitor should
5 be recused for talking to witnesses in trial preparation,
6 that's just ludicrous.

7 Now, the overheard conversation as to Mr. Wilson and
8 the young lady from the Solicitor's Office, first of all,
9 this is a public building. To say that we have forced
10 Mr. Wilson to use that room, there's all kind of rooms all
11 along here. There's all kind of rooms on the second
12 floor. Nobody has forced him to use that room. There are
13 rooms in front of the hallway or anywhere else.

14 Clearly, this young lady did not mean to overhear
15 this conversation. She overheard it. It was a mistake.
16 But as soon as she overheard it, she did everything right.
17 She went and told Mr. Richardson, ultimately. She never
18 told me. She never told him the contents, just "I
19 overheard this conversation."

20 As soon as Mr. Richardson found out -- Solicitor
21 Richardson, he told me. I immediately told Mr. Wilson.
22 He hadn't even got to his office yet when I called him and
23 I said, "Hey, look, you need to know this conversation had
24 been overheard. I'm letting you know now. You know, I
25 know we start back court tomorrow. You're probably going

1 to have some motions." He said we need to have an
2 in camera hearing. I said, "Absolutely; I'll have the
3 people up there."

4 I don't know what else we can do is turn it over
5 immediately and try to do everything we can to contain the
6 information. And this is not the first time this has
7 happened. We have had defendants and defense attorneys be
8 overheard in bathrooms in courthouses and different rooms.
9 These things happen in a public building. But nothing
10 happened to prejudice Mr. Wilson's client, because I don't
11 have the information. No attorney has the information.
12 So, it is not to my advantage or his disadvantage.

13 And Quattlebaum says either it's got to be
14 misconduct or it's got to be something to prejudice his
15 client. There was clearly no misconduct. We immediately
16 called him and told him. Then -- and I submitted
17 affidavits to the Court and to Mr. Wilson, so when we came
18 in here, everybody would be on the same page.

19 I don't have the information. So, in no way does it
20 prejudice his client. It's not to my advantage or his
21 disadvantage. So, I think, under Quattlebaum, there's
22 been nothing here to cause a mistrial or any kind of
23 recusal.

24 Now, as to Mr. Galmore's motions, first, he talked
25 about severance, which I think was covered pretrial. I

1 think the evidence here is clear that we have put these
2 people together before, during, and after, which shows
3 severance should not have been granted.

4 As to his motion regarding Jackson v. Denno and his
5 accusations that the State has done something in some way
6 to abuse the process, the appellate court has already
7 ruled on that, and that was State v. Worthy, and the
8 federal court has already ruled on it.

9 This is not the first time when a defense attorney
10 has tried to force the prosecution to use the recording.
11 And that went up on appeal, that very issue. And the
12 appellate court came down and said, Look, the testimony of
13 the witness who took the statement is just as good as the
14 video. We are not going to say one is better than the
15 other. And they upheld in that case that the witness
16 testified, and the audio and video was not played. This
17 is not the first time that a defense attorney has tried to
18 force the State to play the video or to dictate the
19 prosecution of the case.

20 Now, the appellate court has disagreed. So, this
21 idea that the State is abusing the process, the State is
22 abiding by the rules that the appellate court has put out,
23 and the appellate court has said that the witness
24 statement is equal to the audio/video. One is no better
25 than the other. Both are best evidence. In fact, they

1 said you cannot certainly say that the video is any better
2 than the guy that went in there and either overheard the
3 statement or took the statement. So, the rules have
4 already decided that. This issue has already been worked
5 out, like, 20 years ago.

6 Now, as to the firearm in the PowerPoint, I want it
7 crystal clear: What got put up originally was a picture
8 associated with a health identification in the phone. It
9 was not the name of the phone. The picture of the gun had
10 the name that was associated with the phone. Nasirea
11 Grate's phone was named Nasirea Grate. Kalik Conn's phone
12 was named KalikConn@gmail.com.

13 Dajon Grate's phone was not named Dajon Grate. It
14 had another nickname, and that other nickname was also his
15 Snapchat name. So, Detective Marcus said the only
16 conclusive way is to say, hey, this is his Snapchat name.
17 He put that picture of himself up on Snapchat. We didn't
18 go out and find it. Dajon Grate posted that picture to
19 the world for anybody to see on Snapchat, and on it, it
20 had his name, and that name matched the name of the phone.

21 Once Mr. Galmore -- and we have to prove beyond a
22 reasonable doubt. These will be the same people up there
23 telling them that we have the highest burden of any case
24 and that they can't even match the name to the phone.
25 That's what it would be argued to the jury.

1 Now, ultimately, Mr. Galmore stipulated that that
2 was Dajon Grate's phone. This Court is aware, just like I
3 am -- we were all here. As soon as he stipulated, I said
4 okay. We went over here and took the picture out. The
5 only reason we were using the picture was because the
6 phone was in the back of the car, and the phone location
7 was at the Sunhouse and then at the crime scene. It was
8 imperative that we put forth that that phone was Dajon
9 Grate's phone.

10 Once he stipulated, we came over here and took the
11 picture out. Nobody was trying to do anything wrong. We
12 were just trying to prove our case. Once it was
13 stipulated, there is not one argument on the record that
14 we continued to want the picture in. We took a
15 five-minute break, took it out, and rebooted. So, nobody
16 is trying to do anything wrong. But yes, we are trying to
17 put forth a case that proves it beyond a reasonable doubt.

18 Now, as to the accusations that the State has
19 somehow tried to do anything other than put forth the
20 facts of the case is disingenuous, and I want them to make
21 the motions they need to make. Their job is to be a
22 zealous advocate for their client. I want them to do
23 that. But I want the record crystal clear that the State
24 has done everything, even over and beyond the rules, to
25 ensure these people get a fair trial and Nasirea Grate and

1 Dajon Grate get a fair trial. We have turned everything
2 over. We took these two fellows out to M.L. Brown to look
3 at the evidence with them.

4 When Mr. Wilson couldn't look at the phone dumps,
5 Ms. Martin went over to his office, opened them up, showed
6 him how to use it. The State is not doing anything
7 nefarious. We are doing everything we can to ensure
8 everybody gets a fair trial. I can't bend to the victims.
9 I can't bend to Mr. Wilson or Mr. Galmore. My job is to
10 follow the rules, and that's what the State has done every
11 step of the way, and at times, over and beyond what the
12 rules require.

13 Thank you, Your Honor.

14 THE COURT: Mr. Wilson, anything in reply?

15 MR. WILSON: No, sir, I don't have anything in
16 reply.

17 THE COURT: All right. I'm going to deny Defendant
18 Nasirea Grate's motion for mistrial based upon my prior
19 rulings. Also denying Defendant Dajon Grate's motion for
20 mistrial and motion to dismiss.

21 Mr. Wilson, any other --

22 MR. WILSON: Yes, sir. Your Honor, my next motion
23 is a motion to -- for the Court to grant us a directed
24 verdict on the crime of armed robbery.

25 Armed robbery, Your Honor, is when a person is in

1 possession of a weapon of some type, whether it's a
2 slingshot or dirk or a gun or even a knife. And during
3 the course of having that or pretending that they have
4 that through their actions or words, take the property of
5 another in the presence of that individual or person.
6 There is nothing in this record about an armed robbery.
7 In fact, the word hasn't even been mentioned during the
8 course of this trial.

9 Throughout the course of this trial, there is no
10 showing whatsoever that Mr. Nasirea Grate had a weapon of
11 any type. Not one single person, not one piece of
12 evidence in this record that he had a weapon. And the
13 witnesses who -- even if you take everything that the
14 State has put up as being absolutely perfectly true and --
15 let's say that they say that there is a witness who says,
16 "Yeah, it was a man with a mask," but even those people,
17 not one of them -- in fact, they say, no, they didn't see
18 any kind of weapon on the man that I assume that they're
19 claiming is Mr. Nasirea Grate.

20 There is no mention of a weapon in his hand. And
21 the witness was asked, "Did you see him with a weapon?"

22 "No, I did not see the man with the mask with a
23 weapon." And I assume that's who they're claiming was
24 him. The lady, Ms. Berenice, she said the same thing,
25 "No, didn't see it." So, there is absolutely no evidence.

1 The other thing that is true here, Your Honor, is is
2 that no witness -- and there's not even circumstantial
3 evidence of a robbery. Nobody has testified that
4 something was removed from that car, from that white
5 Acura. Nobody has testified to that. There is no
6 inference from that, that I know of, from all of the stuff
7 that was introduced into evidence. There is absolutely no
8 information suggesting that there could have been a
9 robbery. There is nothing.

10 And the State has the burden of at least offering
11 something to suggest that there was a robbery, even if
12 they don't have strong proof of it. They at least have to
13 offer something to show that there was a robbery or some
14 kind of robbery or taking occurred during the course of
15 the killings that were out there. Just the fact that
16 there was a killing doesn't mean that there was an armed
17 robbery.

18 And so, my position is is that I don't know if any
19 evidence in this record would support a verdict for armed
20 robbery. So, I would ask the Court to dismiss or grant us
21 a -- to dismiss the indictment on the armed robbery or
22 grant us a directed verdict as to the charge of armed
23 robbery.

24 THE COURT: All right. Mr. Galmore, any argument?

25 MR. GALMORE: Yes, sir, Your Honor. I would move

1 for a directed verdict as to Dajon Grate. There is -- I
2 guess the standard is a defendant is entitled to a
3 directed verdict when the State fails to produce evidence
4 of the offense charged. I think this is very similar to
5 Mr. Wilson's argument. The State has not presented any
6 direct evidence that Mr. Grate committed a murder of
7 either one of these individuals.

8 There is no evidence that Mr. Grate conspired with
9 anyone to commit an armed robbery. And like Mr. Wilson
10 said, the robbery is not even mentioned in the State's
11 presentation to the jury.

12 Your Honor, where the evidence presented merely
13 raises a suspicion of the accused's guilt, the trial court
14 should not refuse to grant the directed verdict motion.
15 The Court must submit the case to the jury if there's any
16 substantial evidence which reasonably tends to prove the
17 guilt of the accused.

18 Just taking that standard into consideration, again,
19 there's no direct evidence of a murder, there's no
20 evidence at all for an armed robbery, and for those
21 reasons, we would ask the Court to grant directed verdict.

22 THE COURT: All right. State's position?

23 MS. LIVESAY: Thank you, Your Honor.

24 The State's position is there is, without a doubt,
25 inference that this -- this killing was clearly a part of

1 an armed robbery. You see all of them at the Sunhouse.
2 You see Nasirea Grate make contact with the victim --
3 well, really, the victim makes contact with him. He's
4 walking out the door, and you see the victim. They
5 exchange words. And they don't know each other because,
6 by Sabrina Bryant, she had never seen this guy, and she
7 worked at the store eight years.

8 The evidence was that he had a license plate from
9 New Jersey. So, the evidence is this guy is not from
10 around here, and she had never seen him at the Sunhouse.
11 And he approaches Nasirea Grate. A few words are
12 exchanged. You see Nasirea Grate, who is wearing a
13 rolled-up thing on his head that says "RedHead" and a
14 black T-shirt with a red logo on the back.

15 He goes to the Cadillac. They all get in there.
16 And then, lo and behold, you see Jeremiah Dicker get out,
17 and then you see him knock on the window of the Acura.
18 The two of them clearly are talking, the victim and
19 Jeremiah Dicker. They're talking about something. Right?
20 They're talking about something. Something is being said
21 up there. There's some sort of exchange.

22 Clearly, Jeremiah Dicker wants something from this
23 victim. There's no doubt about that. They don't know
24 each other. They don't have each other's phone number,
25 because the first time you see an exchange is when those

1 phones leave the Sunhouse and go to the crime scene and
2 they're all there. Jeremiah Dicker then messages the
3 victim. Here comes the victim. Now, he's coming down the
4 road. He says, "Hey, I'm on the way."

5 The victim gets down there. The evidence is clear
6 that Jeremiah Dicker gets in the car with the victim. No
7 doubt about it. Jeremiah Dicker is armed. No doubt about
8 it. His fingerprint is on the Canik that fired at least
9 three or four times.

10 Dajon Grate gets in the back of the car. No doubt
11 about it. His shoes are back there, his phone is back
12 there, and his blood is back there. So, there's no doubt
13 that he is behind the victim.

14 There are four shell casings belonging to a separate
15 gun in the backseat. That is a third gun -- not the
16 victim's, not Jeremiah Dicker's -- in the backseat right
17 with the flip-flops, the blood, and the phone. So, we
18 know Dajon Grate is the guy firing from the back.

19 We also know that there's a third guy -- because
20 there's a total of four guns. So, the fact that they're
21 armed, that is -- there's no doubt they're armed. There's
22 four guns out there. Jeremiah Dicker's got one, Dajon
23 Grate's got one, and Nasirea Grate is shooting with a .45.

24 Now, how do we know it's Nasirea Grate? Because
25 it's the guy with a black ski mask. Berenice said he was

1 wearing a black cloth mask and so did Mr. Martinez. I'm
2 uncertain how to say his first name, but he came up here
3 and said, "black mask, I could only see his eyes."

4 So, there is no doubt that is the guy that's running
5 around outside. Ultimately, that mask was found along
6 with his driver's license and his phone. And all the
7 phones are also at the crime scene. So, there is no doubt
8 they get there first, and there is no doubt they have got
9 this victim surrounded. They're all armed, and they have
10 all surrounded the victim.

11 Now, what is the other evidence to show that there
12 was a taking or an attempted of the taking? Both
13 Mr. Wilson and Mr. Galmore pointed out the marijuana was
14 in a torn bag, a pile of marijuana, in the backseat. It
15 was in the backseat along with Dajon Grate's phone,
16 flip-flops, and glove. Dajon Grate had already taken that
17 man's marijuana. It was right in the backseat with him.
18 Nobody would be wondering if it was his wallet back there.
19 Right? It only makes sense you took it from the man. You
20 got a gun. You're in the backseat. Your co-defendant's
21 got a gun sitting in the front seat, and all of a sudden
22 now, the man's marijuana is in the backseat with you. If
23 it was his wallet, it would be no doubt that he took it.
24 If it was the man's phone, there's no doubt you took it
25 from the man. And you took the man's marijuana from him,

1 and you had it in the backseat with you.

2 Clearly, that victim had lost control of something
3 of his, and it was sitting back there with the defendant,
4 who was armed. Who was armed. And Jeremiah Dicker was
5 armed. And Nasirea Grate is out there wearing -- I mean,
6 it is unbelievable -- out there wearing a black ski mask.

7 I'm just here to tell folks, if you see a man with a
8 black ski mask and a gun, you're getting robbed. Nobody
9 -- no normal person outside the confines of this courtroom
10 is wondering what's going on. You're getting robbed.
11 That's 110. People don't get a gun and put on a ski mask
12 just to run around for no reason. You are getting robbed.

13 And it's in the middle of the day. It's 2:00 in the
14 afternoon. There is no doubt these three were armed, and
15 they were taking that man's marijuana. That's why it was
16 in the backseat. That's why you got a ski mask on.

17 And, ultimately, something happened and the man was
18 killed. He was killed either over the marijuana or
19 something happened in the car, but ultimately, that man
20 had already lost control of that marijuana. Dajon Grate
21 had it right there in the backseat. And he left it
22 because he was shot. He left it with his shoes and he
23 left it with his phone.

24 But he had it and he had it in his control as good
25 as he had those flip-flops and that phone in his control

1 at that point. So, it was an armed robbery. When you
2 have got three guns against one, and you have got the man
3 surrounded and one of y'all is wearing a ski mask and, all
4 of a sudden, his marijuana is torn open in the back of the
5 car with the defendant's stuff, a robbery has occurred.
6 That is the inference. There's no doubt about it.

7 When you start talking about surrounding somebody,
8 putting on a ski mask, everybody is armed, the man's
9 marijuana is tore up in the back of the car, he was
10 robbed.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: I don't know where she's getting these
13 fanciful facts from. There's absolutely nothing in this
14 record anywhere which says that Nasirea Grate had a
15 weapon. Absolutely nothing in the record.

16 There's absolutely nothing in this record to say
17 that that marijuana in the backseat belonged to the driver
18 of the car. There's absolutely nothing in this record to
19 say that. There is zero evidence of any kind of armed
20 robbery or any kind of robbery, period. There is no proof
21 in this record, not one iota of it.

22 And I think that's really a fanciful thought that
23 she has about what she says may have happened, but it is
24 not supported by what's in this record. Nobody says he
25 had a gun. Nobody says that they saw him shoot anybody.

1 Nobody says that that marijuana belonged to the driver.
2 There's nothing in this record about that.

3 THE COURT: All right. Mr. Galmore, anything in
4 reply?

5 MR. GALMORE: I would just point the Court to the
6 standard once again. There has to be substantial
7 circumstantial evidence which reasonably intends to prove
8 the guilt of the accused.

9 In this case, there is no comment from any witness
10 on direct that there was a robbery attempt. There's no
11 comment from any witness that Dajon Grate had a firearm.
12 Thank you.

13 THE COURT: All right. I'm going to deny the
14 motion. I'll admit it is circumstantial. I think there
15 is circumstantial evidence that gets it past a directed
16 verdict.

17 All right, Mr. Wilson. Anything else?

18 MR. WILSON: Yes, sir. Your Honor, at this time, I
19 would make a -- and based on the Court's ruling on the
20 armed robbery, I don't know that it makes any sense, but
21 I'm making a motion at this time for a directed verdict as
22 to murder.

23 Your Honor, one of the things that the State must
24 prove, either by circumstantial evidence or by direct
25 evidence, but that -- is that the killing was wrongful.

1 Not that it happened. Every killing is not murder. There
2 has to be a showing by the State that the killing was
3 wrongful.

4 There is nothing in this record, Your Honor --
5 nothing -- that says that this wasn't self-defense or
6 defense of another or that this victim is the one who
7 started it all by shooting somebody in the backseat.
8 There is nothing. And that's what we're left with here.

9 So, we're left with the understanding that the jury
10 has to speculate about, "Well, what happened? Who shot
11 first?" There is nothing in this record about that.
12 Nothing.

13 And the solicitor would have you believe that,
14 simply because they were there, that they must be guilty
15 of something, because that's their theory of this case is
16 is that, if they were in the car -- and His Honor is well
17 aware, just being present -- even if you were present,
18 just that alone is not enough. And not one single person
19 has put this young man in that car. Not one person has
20 testified that he fired a shot. Not one person has said,
21 "I saw him with a gun." Nobody. Nothing.

22 And the solicitor made every effort to mislead the
23 jury by telling them that, "Oh, well, we found his mask at
24 the scene," which was a lie -- absolute lie, and she knew
25 it was a lie when she was saying it. And it's wrong.

1 It's wrong.

2 And when a defendant is on trial for his life
3 literally and the State does that, that is wrong. That is
4 wrong. And I find it egregious. I do. I find that
5 extremely egregious. It's hard enough when the defendant
6 is trying to defend himself against allegations for which
7 he says he's not guilty, but then when the State, with all
8 of its power and all of its authority, gets in front of 12
9 people who are going to decide the fate of the individual
10 and say to that jury, "Oh, yeah" -- mislead them by saying
11 the evidence shows that he was at the scene and that this
12 T-shirt that they said they found, or mask, was somehow
13 placing him at the scene, which they know is not true.

14 In fact, Your Honor, it wasn't even at his house.
15 It wasn't even at his house, and they knew that. This was
16 found at some third person's house.

17 The DNA on this mask says that it could have easily
18 been somebody else's DNA because there's two -- at least
19 two people's DNA, including his, on the mask, which was
20 found at the other person's house. Now, we don't know
21 when that other person had it or if that other person had
22 it or if Todd Fry had it. We don't know. We don't know.

23 And I think that there is just nothing -- there is
24 just nothing to suggest that he committed a murder, that
25 he ever fired a gun. You know, and so we're leaving the

1 jury to speculate about what happened and whether or not
2 he was there, whether or not he had a gun, whether or not
3 he's the man with the mask, whether or not he is the man
4 that had the T-shirt on. All of that is speculation. Not
5 one person has identified him. There's no blood
6 information. There is nothing which places him at the
7 scene of the crime.

8 So, Your Honor, I would ask for a directed verdict
9 as to murder. As I said, the most important element is
10 the State has to prove that the killing was wrong, that it
11 was a wrongful, unlawful killing. They have not even come
12 close to that in this case. There is nothing here to
13 suggest that it was unlawful. We just don't know. We
14 just don't know.

15 And I will say this, that it leave it totally for
16 speculation as to what happened, and that's the position
17 that we're going to be in if the Court denies this motion,
18 is that the jury has now got to speculate about to what
19 they think may or may not have happened. Because the
20 solicitor doesn't know, I don't know, and no witness has
21 testified to it.

22 So, I would ask the Court to grant us a directed
23 verdict as to murder.

24 THE COURT: All right. Mr. Galmore?

25 MR. GALMORE: I would agree with Mr. Wilson's

1 motion. I think I already indicated there's no direct
2 evidence involving Mr. Dajon Grate's involvement, and the
3 standard is that there has to be substantial evidence
4 which reasonably tends to prove the guilt of the accused.
5 There's absolutely no witness that has come forward to say
6 that Mr. Grate had a firearm. There's no witness that's
7 come forward to say Mr. Grate shot anybody.

8 So, yes, specifically on the charge of murder, I
9 would ask for the Court to grant a directed verdict.

10 THE COURT: All right. State's position?

11 MS. LIVESAY: Thank you, Your Honor. Very briefly.

12 The evidence shows that they had some sort of
13 conversation with the victim, and they left, and the
14 victim leaves. Clearly, they're at the crime scene first.
15 They tell him the location. So, clearly, they have
16 already picked the location. They have already gotten
17 down there. They've already gotten their plan worked out.

18 This young man comes down and says, "Hey, I'm on the
19 way," and he comes down. He backs his car in. They
20 completely surround him. Completely surround him. All of
21 them are armed. The man was shot with a .45 hollow point
22 at least in the head because that was the evidence that
23 came from Paul Greer. There are .45 shell casings, that
24 caliber, outside the car, and there's bullet holes all in
25 the man's back through the seat, the backseat, and there's

1 shots to the front. He was taking fire from the front and
2 the back. All three of those guys were surrounding this
3 young man, and all three of them were firing at him. He
4 had no way out his door. His door was the only one that
5 never even got open. His door was the only one.

6 Dajon Grate got out the back. Jeremiah Dicker got
7 out the front. He couldn't even open the door. Couldn't
8 even put the car in drive. Trapped in a vehicle, can't go
9 anywhere, and three people just peppering him with
10 bullets. That is a murder.

11 When you look at his car, all the bullet holes are
12 in his side of the car and in the back of his seat.
13 Clearly -- clearly, this was an intentional act amongst
14 all three of them to kill this young man. And,
15 ultimately, Dajon Grate got shot because his brother was
16 firing into the car at the victim. So, he got grazed on
17 the left arm and the left leg, where one of them was
18 shooting inside the car.

19 Clearly, this was a malicious act, and it was
20 preplanned because they were all armed. And Nasirea
21 Grate -- Mr. Wilson can say what he wants. That guy is
22 the one with the mask on. He had the mask on minutes
23 before in the Sunhouse when they met the man.

24 They go out there and preplan and surround him and
25 just -- I mean, pepper him with bullets from both sides.

1 And Mr. Wilson wants to say that there's no evidence,
2 that's a wrongful act. That can't be anything but wrong.
3 We can't accept that kind of thing in Horry County, two
4 people getting in a car with a man, one sitting outside,
5 and all three of them just filling him full of holes.
6 That's a murder. Every day of the week, that's a murder.

7 And then they flee the scene. You get to look at
8 their actions after to figure out whether or not they're
9 guilty. Flight is something. They all leave the scene.
10 They leave Jeremiah Dicker, who is their friend, out there
11 dead. They didn't even pick him up. They got gone and
12 left.

13 This boy went to the ER. Todd Fry is out there
14 taking his license plate off his car, cleaning his car,
15 while Kalik Conn is laying in his car deceased, trapped.
16 And one is over there trying to clean his car out and
17 change the license plate, and the other one is doing
18 everything he can to stay alive, and Nasirea Grate is over
19 there getting rid of the two guns that we never found.

20 So, yes, this is a murder. This is a wrongful
21 killing. This is something that is not accepted by the
22 rules of the law. So, the State feels like there is more
23 than conjecture here.

24 And Mr. Wilson's big contention is the mask wasn't
25 found at his house. The mask was found at the same place

1 with his wallet and his phone. So, certainly one can
2 conclude this is -- these are his items.

3 And then, that's the whole reason it got sent off
4 for DNA. Then if you're wondering well, it is with his
5 phone, it is with his wallet, well, guess what? His DNA
6 is also on the mask. So, clearly, this is ownership.
7 This is ownership.

8 THE COURT: All right. Mr. Wilson, anything in
9 reply?

10 MR. WILSON: Nothing further, Your Honor.

11 THE COURT: All right. Mr. Galmore?

12 MR. GALMORE: Nothing further, sir.

13 THE COURT: All right. I'm going to deny the
14 motion. I have already denied Defendant Dajon Grate's
15 motion for directed verdict on that charge.

16 All right. Mr. Wilson, anything else?

17 MR. WILSON: No, sir, not from me, Your Honor.

18 THE COURT: Mr. Galmore, anything else?

19 MR. GALMORE: No, sir.

20 THE COURT: All right. Do we want to go ahead --
21 anything motion-wise from the State at this point?

22 MS. LIVESAY: We don't have anything, Judge.

23 THE COURT: All right. Y'all ready for me to go
24 ahead and question your clients on their rights to
25 testify?

1 MR. WILSON: Yes, sir.

2 MR. GALMORE: Yes, sir.

3 DEFENDANTS' RIGHTS

4 THE COURT: All right. If I could get you gentlemen
5 to stand. Please raise your right hand.

6 NASIREA GRATE and DAJON GRATE,
7 after having been duly sworn, was examined and
8 testified to as follows:

9 THE COURT: Sir, your name is Nasirea Brewnoplis
10 Jerome Grate?

11 DEFENDANT N. GRATE: Nasirea Brewnoplis Jerome
12 Grate.

13 THE COURT: All right, sir. I apologize.

14 Sir, your name is Dajon Malik Lavern Grate?

15 DEFENDANT D. GRATE: Yes, sir.

16 THE COURT: All right. Mr. Grate and Mr. Grate, at
17 this time, I'm going to explain to you certain rights that
18 you have. If you do not understand anything I say, please
19 let me know. If you want me to explain anything in more
20 detail, please let me know.

21 Now, do you understand that, Mr. Nasirea Grate?

22 DEFENDANT N. GRATE: Yes, sir.

23 THE COURT: And do you understand that, Mr. Dajon
24 Grate?

25 DEFENDANT D. GRATE: Yes, sir.

1 THE COURT: All right. We have now reached the
2 stage of the trial where you may present your defense.
3 You have the right to claim the protections given to you
4 by the Fifth Amendment to the Constitution of the United
5 States. This amendment states in part that no person
6 shall be compelled in any criminal case to be a witness
7 against himself. This means that you cannot be required
8 to testify in this case. You have the right to testify on
9 your own behalf; however, no one can make you testify.
10 This is a personal right, and no one can waive this right
11 except you.

12 If you decide to testify, you will be subject to the
13 same rules that govern other witnesses, and you may be
14 examined and cross-examined on any relevant issue in this
15 case. In addition, if you have any convictions involving
16 dishonesty or false statement or for crimes punishable by
17 imprisonment for more than one year and this Court
18 determines that the probative value of admitting this
19 evidence outweighs its prejudicial effect to you, the
20 solicitor will be able to introduce your record to attack
21 your credibility.

22 At this time, does the State have any prior
23 convictions of either of these defendants that they would
24 use to impeach their credibility?

25 MS. LIVESAY: No, sir.

1 THE COURT: All right. If you decide to testify,
2 this decision on your part must be freely, voluntarily,
3 and intelligently made with the knowledge of the
4 protections given to you by the Fifth Amendment to the
5 United States Constitution and the consequences of your
6 decision to testify.

7 If you decide not to testify, I will instruct the
8 jurors that they cannot give the fact that you did not
9 testify any consideration whatsoever and that there is to
10 be absolutely no prejudice to you because you did not
11 testify.

12 It's left entirely up to you whether or not you
13 testify. You may talk with your attorney, your family,
14 and friends or anyone else, but the final decision is left
15 entirely up to you.

16 Now, do you understand what I have explained to you,
17 Mr. Nasirea Grate?

18 DEFENDANT N. GRATE: Yes, sir.

19 THE COURT: And do you understand what I have
20 explained to you, Mr. Dajon Grate?

21 DEFENDANT D. GRATE: Yes, sir.

22 THE COURT: All right. Do you have any questions,
23 Mr. Nasirea Grate?

24 DEFENDANT N. GRATE: No, sir.

25 THE COURT: Do you have any questions, Mr. Dajon

1 Grate?

2 DEFENDANT D. GRATE: No, sir.

3 THE COURT: All right. Have you had an opportunity
4 to discuss this with your attorney, Mr. Nasirea Grate?

5 DEFENDANT N. GRATE: Yes, sir.

6 THE COURT: And Mr. Dajon Grate?

7 DEFENDANT D. GRATE: Yes, sir.

8 THE COURT: All right. Do you need to talk to your
9 attorney anymore, Mr. Nasirea Grate?

10 DEFENDANT N. GRATE: No, sir.

11 THE COURT: Mr. Dajon Grate?

12 DEFENDANT D. GRATE: No, sir.

13 THE COURT: All right. Do you wish to testify in
14 this case, Mr. Nasirea Grate?

15 DEFENDANT N. GRATE: No, sir.

16 THE COURT: Do you wish to testify in this case,
17 Mr. Dajon Grate?

18 DEFENDANT D. GRATE: No, sir.

19 THE COURT: All right. Is this your personal
20 decision, Mr. Nasirea Grate?

21 DEFENDANT N. GRATE: Yes, sir.

22 THE COURT: Is this your personal decision,
23 Mr. Dajon Grate?

24 DEFENDANT D. GRATE: Yes, sir.

25 THE COURT: All right. Anything further you want on

1 the record, Mr. Wilson?

2 MR. WILSON: No, sir, Your Honor.

3 THE COURT: Anything further you want on the record?

4 MR. GALMORE: No, sir.

5 THE COURT: Anything further the State wants on the
6 record?

7 MS. LIVESAY: No, sir.

8 THE COURT: All right. Does the defendant, Nasirea
9 Grate, intend to put up any defense in this case?

10 MR. WILSON: No, sir.

11 THE COURT: All right. Does the defendant, Dajon
12 Grate, intend to put up any --

13 MR. GALMORE: No, sir.

14 THE COURT: Okay. All right. So, the only thing
15 left will be closing arguments and jury charge and
16 deliberations. I have got to tweak my charges a little
17 bit. I'm wondering if -- what are y'all's position on
18 cutting the jury loose until about 12:30, let them go eat
19 lunch on their own, and then come back at 12:30, and we'll
20 go ahead and -- I should have my charges done by then, and
21 then we'll go into closing arguments, charges, and
22 deliberations. Is that agreeable with the State?

23 MS. LIVESAY: I think so, because if we start now,
24 we're going to have run into an awkward lunchtime.

25 THE COURT: Exactly. I think so too. All right.

1 MR. WILSON: That's fine with us.

2 THE COURT: All right. Let's do that first and then
3 I need to go over with you.

4 All right. Anything from the State before we bring
5 the jury in?

6 MS. LIVESAY: No, sir.

7 THE COURT: Anything?

8 MR. WILSON: Nothing, Your Honor.

9 MR. GALMORE: No, sir.

10 THE COURT: All right. What we'll do is we'll bring
11 the jury back in. The State has rested their case.

12 Mr. Wilson, I'll let you go ahead and rest on the
13 record.

14 MR. WILSON: Yes, sir.

15 THE COURT: Mr. Galmore, I'll let you go ahead and
16 rest on the record, and then we'll cut them loose for
17 lunch. Okay?

18 MR. WILSON: Yes, sir.

19 THE COURT: All right. Thank you.

20 Let's bring the jury in.

21 (The jury entered the courtroom at 10:34 a.m.)

22 THE COURT: All right, ladies and gentlemen.
23 Welcome back. Please make sure you have your own note
24 cards [sic] and nobody else's pads. I appreciate you
25 being on time again this morning; that's of great

1 assistance to the Court.

2 Now, when we left yesterday, the State had rested
3 their case. Now is the time where the defense can present
4 a defense if they choose to, although they are not
5 required to.

6 All right. Mr. Wilson, does the defendant, Nasirea
7 Grate, wish to present a defense?

8 MR. WILSON: We do not, Your Honor.

9 THE COURT: All right. Mr. Galmore -- I'm sorry --
10 does the defendant, Dajon Grate, wish to make -- present a
11 defense?

12 MR. GALMORE: No, sir. We rest on the record.

13 THE COURT: All right. So, now the defense has
14 rested on the record. So, the only thing remaining is for
15 the attorneys to make their closing arguments and to
16 charge you with the law of the case.

17 Given the time, it's going to take us a while to get
18 this set up for that. So, I'm going to go ahead and
19 excuse you to go to lunch on your own today. I'm going to
20 ask that you please be back at 12:30, and we'll resume the
21 trial of the case at that time.

22 Leave your notepads in the jury box. Do not discuss
23 the case even among yourselves. Don't conduct any
24 independent investigations.

25 I hope you have a good lunch, and we'll see you back

1 at 12:30. Thank you very much.

2 (The jury exited the courtroom at 10:35 a.m.)

3 THE COURT: All right. Mr. Galmore, I apologize. I
4 got the name Grate stuck in my mind, and I couldn't get
5 past Grate, and I couldn't bring up Galmore. I apologize.

6 CHARGE CONFERENCE

7 THE COURT: All right. I have been working on some
8 charges. Anything special the State wants in there?

9 MS. MARTIN: Your Honor, there's nothing from the
10 State.

11 THE COURT: Okay. I have got the standard charges.
12 Mr. Wilson? Mr. Galmore?

13 MR. WILSON: I don't have anything in particular.
14 I'm sure there's something in His Honor's charge that each
15 individual is to be considered separately.

16 THE COURT: Yeah, I have got that.

17 MR. WILSON: But other than that --

18 THE COURT: I guess my question is, do I charge
19 voluntary manslaughter or do I just charge murder?

20 MR. WILSON: I hadn't given that any thought either.

21 MR. GALMORE: Well, I guess, Your Honor, the
22 evidence could be interpreted to be a case of voluntary
23 manslaughter if the jury determines that Mr. Conn fired
24 first. So, under those circumstances, we would ask for a
25 voluntary charge instruction.

1 MR. WILSON: I do agree with him, Your Honor. I
2 think that one of the things that came out with the
3 pathologist is is that Mr. Dicker -- Mr. Dicker --
4 Mr. Dicker had defensive wounds or at least what might be
5 considered defensive wounds on him on -- with the shot to
6 the elbow indicating that he may have been throwing his
7 hand up to prevent himself from being shot. So, I guess
8 then manslaughter probably would be appropriate.

9 THE COURT: All right. I will charge voluntary
10 manslaughter.

11 MS. LIVESAY: I mean, the rule has kind of turned
12 into if the defense wants it.

13 THE COURT: Yeah. And then I'll be the first --

14 MS. LIVESAY: If I'm being honest.

15 THE COURT: I'll be the first to admit, every time
16 it's gone up -- I have had a case go up on appeal, they
17 have come back and basically said that same thing, if
18 there's anything.

19 Now, I did have one where the Court of Appeals
20 reversed me and then the Supreme Court reversed them and
21 said I had it right, that there was no evidence of -- and
22 that was a murder and voluntarily manslaughter charge.

23 Okay. What I'll do, let me go finish -- since I
24 will charge voluntary manslaughter, rather than sending
25 the indictments, I'll probably come up with a verdict

1 form, guilty of murder, guilty of voluntary manslaughter,
2 not guilty, and then armed robbery, guilty or not guilty,
3 and do it that way, but I'll give you -- get you a copy of
4 my charges. It will probably take me 30, 45 minutes.
5 I'll bring the proposed charges and proposed verdict forms
6 out here and put them on your tables so you can look at
7 them.

8 When we come back -- I'll give you two opportunities
9 to raise any objections. Number one is when you read it;
10 number two is after I charge the jury, because sometimes,
11 it does sound differently when you hear it charged versus
12 when you read it on paper.

13 The State will close in full.

14 MS. LIVESAY: That's right.

15 THE COURT: Who wants to go first in closing?

16 MR. WILSON: I'll go first.

17 THE COURT: Okay. Mr. Wilson, you go first in
18 closing. Mr. Galmore, then you close.

19 Everybody must close in full. No reply to anyone.
20 Okay?

21 Anything from the State before we recess?

22 MS. LIVESAY: No, sir.

23 THE COURT: Mr. Wilson?

24 MR. WILSON: No, sir.

25 THE COURT: Mr. Galmore?

1 MR. GALMORE: Yes, sir, Judge. Regarding the
2 circumstantial evidence charge, we would just ask the
3 Court to charge the language that the jury's focus is on
4 determining whether every circumstance relied on by the
5 State is proven beyond a reasonable doubt and that all the
6 circumstances be consistent with each other and, taken
7 together, point conclusively to the guilt of the accused
8 to the exclusion of every other reasonable hypothesis.
9 I'm citing State v. Littlejohn, 89 S.E.2d 924 (1955).

10 THE COURT: All right. Well, I can tell you this is
11 what I have got on here. This is my charge on
12 circumstantial evidence. It says, "Two types of evidence
13 are generally presented during a trial: direct evidence
14 and circumstantial evidence. Direct evidence directly
15 proves the existence of a fact and does not require
16 deduction, such as the testimony of an eyewitness who
17 claims to have actual knowledge of a fact.

18 "Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. Crimes may be proven by circumstantial evidence.
21 The law makes absolutely no distinction between the weight
22 or value to be given to either direct or circumstantial
23 evidence nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. However,
25 to the extent the State relies on circumstantial evidence,

1 the circumstances must be consistent with each other and,
2 when taken together, point conclusively to the guilt of
3 the accused beyond a reasonable doubt.

4 "If these circumstances merely portray the
5 defendant's behavior as suspicious, the proof has failed.
6 The State has the burden of proving the defendant guilty
7 beyond a reasonable doubt. This burden rests with the
8 State regardless of whether the State relies on direct
9 evidence, circumstantial evidence, or some combination of
10 the two.

11 "You should weigh all of the evidence in the case.
12 After weighing all of the evidence, if you are not
13 convinced of the guilt of the defendant beyond a
14 reasonable doubt, you must find the defendant not guilty.
15 On the other hand, after weighing all of the evidence, if
16 you are convinced of the defendant's guilt beyond a
17 reasonable doubt, you must find the defendant guilty."

18 I think I have got that in there, what you
19 requested.

20 MS. LIVESAY: State v. Logan, I think that's where
21 that charge comes from.

22 THE COURT: Yeah, that's where it comes from, that
23 part that says, "To the extent the State relies on
24 circumstantial evidence, all of the evidence must be
25 consistent with each other."

1 MS. LIVESAY: That's right.

2 THE COURT: "And point towards the guilt of the
3 defendant."

4 MR. GALMORE: Yes, sir. I understand the Court's
5 position. Littlejohn does specifically say "to the
6 exclusion of every other reasonable hypothesis," and I
7 think that is still good law.

8 MS. MARTIN: Your Honor --

9 MS. LIVESAY: That's not what's in the case.

10 THE COURT: Well, you have got it on the record.
11 I'm going to go ahead and go with what I have got.

12 MR. GALMORE: Yes, sir.

13 THE COURT: All right. Anything else?

14 MR. GALMORE: No, sir.

15 THE COURT: All right. We'll be in recess until
16 12:30, but prior to that, I will have my charges out here
17 for y'all to take a look at.

18 MS. MARTIN: Thank you.

19 THE COURT: As a matter of fact, if you want to give
20 my law clerk your contact information, I can just have him
21 call y'all when he brings it out here.

22 MS. MARTIN: Yes, sir.

23 (A lunch recess was taken from 10:44 a.m. to 12:34 p.m.)

24 THE COURT: All right. I have provided you with my
25 proposed charges and proposed verdict form. As I said,

1 I'll give you two opportunities to raise any objections:
2 One is now and then again after I charge the jury.

3 So, at this point in time, are there any challenges
4 to the proposed charges or verdict forms by the State?

5 MS. MARTIN: Your Honor, recently, a case came out.
6 It's called Nyquan Brown. It just came out on July the
7 17th. I do think, ethically, we are going to have to take
8 out the felony murder, which is going to be on page 19.
9 And I do have a copy, if you'd like to see it.

10 THE COURT: Well, if y'all want it removed and the
11 defense doesn't object, then I'll go ahead and take it
12 out.

13 MR. WILSON: Without objection.

14 MR. GALMORE: No objection, sir.

15 THE COURT: You're talking -- what was that page?

16 MS. MARTIN: 19.

17 THE COURT: So, the felony murder inference?

18 MS. MARTIN: Yes, sir. I do believe that that will
19 have to be taken out.

20 THE COURT: Okay. I'll strike that.

21 MS. MARTIN: Thank you.

22 MS. LIVESAY: Did you put the cite on the record?

23 MS. MARTIN: Oh, and, Your Honor, that would be
24 State v. Nyquan Brown. 224 Westlaw 3435520. This was
25 decided by the Supreme Court and filed -- the Supreme

1 Court of South Carolina and filed on July 17th of 2024.

2 THE COURT: All right. Now, what does it say?

3 MS. MARTIN: That it's an improper -- while the
4 State or the defense may argue felony murder, it's an
5 improper comment on the law for the judge to do so -- or
6 is an improper comment on the facts of the case. Excuse
7 me.

8 THE COURT: All right. Well, then I'll delete that.
9 Anything else from the State?

10 MS. MARTIN: Nothing from the State.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: No, sir.

13 THE COURT: Mr. Galmore?

14 MR. WILSON: No, sir.

15 THE COURT: All right. We'll bring the jury in.
16 Who is going to close from the State?

17 MS. MARTIN: Ms. Livesay will.

18 THE COURT: All right. Ms. Livesay will close in
19 full, and then Mr. Wilson will close in full, and Mr.
20 Galmore will close in full, and then I'll charge and then
21 we'll send out for deliberations; correct?

22 MR. WILSON: Yes, sir.

23 MR. GALMORE: Yes, sir.

24 THE COURT: All right. Anything before we bring the
25 jury in?

1 MS. LIVESAY: No, sir.

2 MR. WILSON: No, sir.

3 MR. GALMORE: No, sir.

4 THE COURT: All right. Let's bring the jury in.

5 (The jury entered the courtroom at 12:41 p.m.)

6 THE COURT: All right. Ladies and gentlemen, I can
7 see some of you. Welcome back. Thank you for your
8 returning on time. I hope everybody had a good lunch.
9 Make sure you have your own notepads and do not have
10 anybody else's notepads.

11 Now, the State has presented their case, the defense
12 has presented theirs, and now is the time of the trial
13 where the attorneys will make their closing arguments.
14 Just like their opening statements, these closing
15 arguments are not evidence in this case. It is simply the
16 attorneys' contention as to what they think the evidence
17 has shown and the law to be applied.

18 If, at any time, an attorney references a factual
19 issue that is different from the facts as you find them to
20 be or references the law that is different from the law as
21 I will charge you at the end of their arguments, then
22 you're to disregard that portion of their closing
23 arguments, because this is simply their contention as to
24 what the facts are and the law to be applied and it is not
25 evidence or a charge on the law in this case.

1 All right. State's closing arguments.

2 MS. LIVESAY: Thanks, Judge.

3 CLOSING ARGUMENT ON BEHALF OF THE STATE

4 MS. LIVESAY: Ladies and gentlemen of the jury, by
5 now, you guys know who I am. We have been together for a
6 long two weeks, probably longer than y'all wanted. But I
7 do stress to you this is really important. I know we are
8 now into Week 2, and as things drag on, we all get a
9 little tired. I'm a little tired, I'll be the first to
10 admit, but this is really important, so I'm asking you to
11 kind of, if you can, stay with me until the end, because
12 two people have been killed and two people are charged
13 with murder.

14 So, what's going on in here is extremely important,
15 and these closing arguments and the judge's instructions
16 will be the last thing you hear before you go back and
17 ultimately make your decision. So, I ask you to please
18 stay attentive, stay with me. I know you're tired. We
19 have been through a lot.

20 So, we're here today to figure out whether or not
21 Dajon Grate and Nasirea Grate are guilty of two counts of
22 murder and one count of armed robbery. Sometimes that
23 gets lost in all of this, in numerous witnesses, but we
24 are here for two counts of attempted murder.

25 Now, who are the two counts of murder? Kalik Conn.

1 That's an easy one. That's the young man that is in that
2 white Acura, slumped over with the gunshot wounds.
3 He's -- without a doubt, that young man is a victim.

4 Now, Jeremiah Dicker. I want to talk to you a
5 little bit about that before we even get started. In
6 South Carolina, if co-defendants combine, get together,
7 make a plan to commit a felony -- whether it's murder,
8 robbing a bank, anything like that -- those co-defendants
9 are responsible for everything that happens during the
10 course of that act. Okay?

11 So, if me and Lacey get together, and we go to rob a
12 bank, and in the course of robbing the bank, I'm killed,
13 regardless of how I'm killed, Ms. Miller is responsible,
14 because she combined with me to commit this act. And when
15 she did that, she said that I know things may happen in
16 the course of this act, and I'm responsible for it. By
17 the sheer fact she got together with me and planned it, we
18 are both equally responsible for everything that happens
19 in the course of that act.

20 Why? Because when you get a gun and you go rob a
21 bank or you go rob an individual, it is implied that
22 things happen like people being killed, so you are held
23 responsible for that in the State of South Carolina. It
24 is called felony murder. The fact that we are acting
25 together, we are both responsible. So, that is the

1 statute of felony murder.

2 So, Jeremiah Dicker was killed in the course of this
3 act. Now, it gets kind of shady, don't it? Because,
4 clearly, Jeremiah Dicker did not start off as a victim.
5 Okay? I'm not going to tell you he did. That's not what
6 the evidence shows. But, ultimately, he was killed. And
7 because he was killed, he is a victim. And because they
8 all got together for this, these two are responsible.

9 Now, armed robbery. What is that? That is taking
10 away from somebody else, using a gun, a knife, being
11 armed. It's just what you would think. Me walking up to
12 Ms. Miller with a gun and saying, "Give me all your
13 money," that's armed robbery. Okay?

14 So, murder is going to be malice aforethought,
15 killing another, having some kind of malice and act with
16 that malice that kills another.

17 Armed robbery is just what I have said: Going up to
18 Lacey with a weapon, "Give me all your money," that's
19 armed robbery. So, those are the crimes we're looking
20 for. We're trying to figure out did these guys first rob
21 Kalik Conn. And in the course of this robbery, did they
22 kill Kalik Conn? Because if that is what it is, they are
23 guilty of both.

24 As to Jeremiah Dicker, if they got together to
25 commit an armed robbery and murder, if that was the plan,

1 and in the course of that, Jeremiah Dicker was killed,
2 they are guilty for Jeremiah Dicker's death.

3 So, let's start talking about what the evidence is,
4 so we can figure out is this a murder, is this an armed
5 robbery?

6 Now, we have got a ton of evidence in this case,
7 which is why it took a while, and the type of evidence,
8 there's a lot of technicalities to get into: DNA,
9 fingerprints, ballistics, phone locations, witness
10 testimony. These are all things that show that Nasirea
11 Grate and Dajon Grate committed the crime.

12 So, first day when Mr. Wilson was asking Sabrina,
13 nothing different about the day. Just a normal day at the
14 Sunhouse. I don't remember if y'all remember that or not.
15 Everything was different about that day, because Kalik
16 Conn came in contact with Nasirea Grate and Jeremiah
17 Dicker and those guys.

18 The time -- May 31st. The time is 1:24.

19 (Video plays.)

20 Lacey, can you take it back just a notch?

21 (Video plays.)

22 Can you hit pause?

23 MS. MILLER: No.

24 MS. LIVESAY: That's okay.

25 So, what you see on the video is (A) they're all

1 together. (B) what is Dajon Grate wearing? Pink
2 flip-flops. And when you see him the whole time in the
3 video, he's on that phone. So, we already know what he's
4 wearing, and we already know he's got his phone with him.

5 Nasirea Grate, what do you see him wearing? You see
6 him wearing a black T-shirt with a red logo, with a mask
7 on his head. That is what that is. There is no doubt
8 about that.

9 They are together, and that is what they are
10 wearing.

11 (Video continues to play.)

12 Can you hit pause or no?

13 So, now what do we see? Nasirea Grate talking to
14 Kalik Conn. What did Sabrina tell you? Kalik Conn, first
15 time she had ever seen him was that day. He had a New
16 Jersey plate on his car. This is a guy that is not
17 familiar with the area. This is a guy that has lived in
18 the area his whole life right up the road, [REDACTED] Road.
19 So, for the first time we see now the victim making
20 contact with Nasirea Grate.

21 (Video continues to play.)

22 We know this is the victim's car, because you're
23 going to see him walk to that Acura that is found at the
24 crime scene.

25 (Video continues to play.)

1 So, now we already know that is the victim's car.
2 He's in the driver's seat, and we know now, at 1:31, some
3 contact happens now between Nasirea Grate and the victim.
4 And whatever that contact was was extremely interesting to
5 the people in the car, because you see Jeremiah Dicker
6 strike out and go and have a conversation with Kalik Conn.

7 (Video continues to play.)

8 And notice: He gets out of the Cadillac. He is in
9 the Cadillac with Nasirea Grate, Todd Fry, and Dajon.

10 (Video continues to play.)

11 Now, can you hit pause?

12 Clearly, there's some conversation going on in the
13 car. It's right on surveillance. And clearly, he's
14 looking at something that the victim has in the car. And
15 whatever it is, the victim has got it in the driver's side
16 portion of the car. You see him talking. You see him
17 leaning down, looking at something in the car.

18 (Video continues to play.)

19 This conversation is at 1:33. See him walk back to
20 the car, get back in the car with Dajon Grate, Nasirea
21 Grate, and Todd Fry. He's just talked to the victim. Now
22 he's going to get in the car and talk to these fellas.
23 Clearly, something transpired during the course of that
24 conversation, because you're going to see the Cadillac
25 leave.

1 And Sabrina tells you that the victim had been there
2 all morning. He was there all morning, right up until the
3 point he talked to these fellas. They leave, two minutes
4 later, there they go. Two or three minutes later, all of
5 a sudden now, the victim leaves.

6 Now, whatever was going to be transacted, whatever
7 this conversation was about, clearly was something that
8 they didn't want to happen on camera. They knew that this
9 gas station had cameras, or at least they probably thought
10 it because it was a gas station. So, they wanted to meet
11 this young man somewhere where there was no cameras, and
12 they were hoping nobody was around. So, they lure him
13 from the gas station to the second location, which is the
14 crime scene, which is a rural area out in Loris.

15 Now, the question is: When they lure him out there,
16 what happens? When they lure him out to the crime scene,
17 did a crime occur? Because there is no crime at the
18 Sunhouse. They're just talking at the Sunhouse. Clearly,
19 there's some meeting of the minds because they leave, then
20 the victim leaves, and we ultimately know from the phones,
21 they all end up at the crime scene.

22 So, the question is: What happens at this crime
23 scene? Did a crime occur?

24 First of all, we have got to figure out -- this is
25 the Acura. The question is: Who all gets in the Acura?

1 Who is in the Acura? Does a crime occur? That's the big
2 question. So we know, without a doubt, Kalik Conn is
3 here.

4 How do we know that? We know that because he's
5 found dead. He's found on the driver's side, slumped
6 over.

7 So, who else got car, if anybody? Because that's
8 need-to-know evidence. This guy here, Jeremiah Dicker,
9 his flip-flop was found in the Acura. Found in the Acura
10 in the passenger floorboard. Y'all saw that picture.

11 You also saw this gun sitting outside the Acura.

12 Now, Robert Bauman, that was tough; I ain't going to
13 lie to y'all. But he stumbled on a lot of evidence. And
14 one of the things he stumbled on was fingerprinting this
15 gun that was sitting -- laying right outside the passenger
16 seat.

17 And whose fingerprints were on the gun? Jeremiah
18 Dicker. His other flip-flop is in the floorboard. This
19 gun is laying outside the passenger side with his
20 fingerprints.

21 So, we know that Mr. Dicker is sitting in the
22 passenger seat. His flip-flop is in the passenger seat
23 and his gun with his fingerprints is outside the
24 passenger. So, we know he's here.

25 The door is open. Right? Because he did get out

1 and run. We know he got out and run because he was found
2 over here with the other flip-flop. So, we know he got
3 out and ran to this location. We know that one flip-flop
4 is here, we know one is in the Acura, and we know the gun
5 outside the Acura had his fingerprints. So, we know he
6 got out of that Acura and ran. Dropped his gun, left his
7 flip-flop.

8 And there's his phone. And we're going to talk a
9 lot more about that more later, but the location of the
10 phone is found here, and lo and behold, the location
11 showing on the phone is at the crime scene. So, we know
12 he's at the crime scene, and we know he is beside
13 Mr. Conn. So, we know he got in the car. We know he got
14 in the car.

15 Now, one guy getting in the car is one thing, but
16 did a second guy get in the car? That's the question.

17 Now, here's Dajon Grate. There's no doubt about
18 that. Here's his picture here. She told you it was Dajon
19 Grate. And here's his picture in the store.

20 So, like Mr. Dicker, he got shot. Right? We all
21 know he got shot. He was up here getting wrapped up.
22 This is him here getting wrapped up at the fire station.
23 So, we know he too was shot. And he left his blood in the
24 back of the car, and along with the blood, he left his --
25 look, look, there are his pink flip-flops. And there,

1 he's wearing them right there. And here they are,
2 recovered from the backseat, with his DNA on it.

3 So, we know Dajon Grate got behind the victim.
4 There's his flip-flops and there's his phone. And the
5 phone location, that geofencing location, that little
6 circle, guess where that said he was? Said he was at the
7 crime scene. So, we know he got in the car, and we know
8 he got behind the victim, Kalik Conn. There's no doubt
9 about it. Flip-flops and phone and blood where he was
10 shot. So, we know that he's sitting behind Kalik Conn.

11 So, we know now that Mr. Dicker is sitting over here
12 beside him, and we know Dajon Grate is behind him. No
13 doubt about it. No doubt about it. The blood, the
14 flip-flops, all that tell the story.

15 Now, this is also in the backseat, this right here.
16 This is the marijuana. Now, that didn't belong to
17 Mr. Grate, but somehow it found its way in the backseat
18 with the flip-flops and the phone and the shell casings.
19 That shows, at some point, these two guys got that
20 marijuana from Kalik Conn. He lost custody of it, and
21 it's in here in the backseat.

22 If his wallet was back there, nobody would be
23 wondering if they took the wallet from him. If his phone
24 was back there, nobody would be wondering if they took the
25 phone. They didn't want the phone. They didn't want the

1 wallet. This is what they wanted. This is what they
2 wanted (indicating).

3 I'm going to suggest to you this is what Jeremiah
4 Dicker was looking at when he had his head in the Acura
5 down there looking. I'm sure he wanted to make sure that
6 this boy had something before he went through the trouble
7 of going down there to the crime scene and calling ol' boy
8 down there. He wanted to make sure it was going to be
9 worth his while.

10 This, this marijuana in the course of this was just
11 as much in custody of Dajon Grate as the phone and the
12 flip-flops. That's what they came for.

13 Now -- so, we know Dajon Grate is in the backseat.
14 So, now they already got two people in the car with the
15 victim.

16 Now, let's talk about Nasirea Grate. This is him
17 here. This is him. And this is the back of his T-shirt
18 and there's the mask. And I love -- I love it when
19 Mr. Wilson came up here and asked Sabrina, "Did you see
20 anybody wearing a mask?" "Yes, yes, this guy right here
21 wearing one." This is it right here. This is the mask
22 they found with his license and his cell phone. This is
23 what they found.

24 Now, when you look at it like this, tricky-tricky,
25 it don't look like a mask. He thinks he's got somebody

1 fooled. But when you turn it down, look what we got here.
2 Then you got you a mask. Then you got yourself a mask.

3 This is what he was wearing in the Sunhouse. It
4 didn't need to be rolled down then, but it got rolled down
5 later in the day.

6 And look, say it ain't so; it only shows the eyes,
7 just like Mr. Martinez told you, "All I could see was the
8 eyes." And -- and guess what it? It had Nasirea Grate's
9 DNA on it. It's found with his license, his gun, with his
10 DNA on it. This is his mask.

11 Now -- and this is going to become important, this
12 RedHead here in a second.

13 Now, Mr. Wilson came up here and told you about Todd
14 Fry. "It's a mixture. Why can't it be Todd Fry? Why
15 can't it be Todd Fry?" Here's why it can't be Todd Fry.
16 Mr. Martinez told you, "I saw the one boy fall. I saw
17 another guy with a mask only showing the eyes."

18 What color was he? He said he was Black. That's
19 what Mr. Martinez said, "From looking here, it was a Black
20 male."

21 Todd Fry, nobody is going to tell you this is a
22 Black guy. This is Todd Fry. That's why we put his
23 picture up here. I knew this nonsense was coming. And he
24 wants to tell you maybe it was Todd Fry. It can't be Todd
25 Fry. Todd Fry does not even look Black. And Martinez

1 said it was a Black male. Black male. And they're up
2 here trying to throw it on Todd Fry.

3 Now, this mask is important because Berenice told
4 you it was a black cloth mask and Isidiro told you it was
5 a black cloth mask. Now, the thing is going to be: But
6 how do you know it's Nasirea Grate's black cloth mask?
7 How did you know he was the one there wearing this black
8 cloth mask; right? That's the question. They told you it
9 was a black cloth mask.

10 Now, this is a close-up of what he was wearing at
11 the Sunhouse, and it was found with his license. Okay?
12 This is him. They're in evidence so you're going to be
13 able to put your hand on it. It was found in the same bag
14 as his wallet with his license. It was found in that
15 bookbag with some other cash.

16 So, when you look at this mask, RedHead; right?
17 That might just be a hat. But, ironically, when you fold
18 this one down, this ski mask with his DNA, look down
19 there. RedHead. This is it. This is the same mask.

20 And how do you know this is the guy at the scene who
21 was wearing the mask? Because Berenice told you it was a
22 black T-shirt with a red logo. Go back and listen to it.
23 She didn't say Nike shirt. She didn't say orange shirt.
24 She didn't say South Carolina Gamecocks. She was very
25 specific that the shirt was black and it had a red logo.

1 And lo and behold, the guy, just minutes -- minutes
2 before, is wearing a black T-shirt with a red logo with
3 the mask on. Minutes -- minutes before.

4 So, we know that Nasirea Grate was out there. Now,
5 there's no evidence that he got in the car. All of the
6 evidence is that he was outside the car.

7 Now, what is the evidence that he was outside the
8 car? (A) The fact that Isidro and Berenice saw him out
9 there. He's outside the car. (B) There are .45 shell
10 casings -- only .45 shell casings, caliber, outside. One,
11 two, three. And they all came from the same gun. And
12 there are bullet holes in the Acura, in the driver's side
13 going from out to in. Dajon Grate got shot because his
14 brother was firing into the car at the victim.

15 The fragment from the victim's brain, Kalik Conn,
16 was a .45 caliber hollow point. Nasirea Grate was
17 standing outside the car with that black mask on, firing
18 inside the car, and he hit Kalik Conn, who he intended to
19 hit, but he also hit Dajon Grate because Dajon was sitting
20 right behind the boy. So, he got grazed.

21 You look -- you look at these pictures. All the
22 injuries are on the left side: Here and on the leg. Do
23 you know why? Because when you are sitting behind the
24 driver and somebody is firing into the car, it's only
25 going to hit the left side. It's not going to hit the

1 right side.

2 So, when Nasirea is firing in the car, he hits Kalik
3 -- because we know the fragments a .45 -- and he hit Dajon
4 Grate. He hit both of them, firing into that car.

5 Now that we know that all three of them are
6 surrounding this victim right here, the question is: Are
7 they armed? Are they armed? Are they the reason that
8 that man is dead? That is the question. Surrounding the
9 man is not enough.

10 When you look at this, it's color-coded. So, you
11 know, the red is one gun, these gray shell casings are a
12 second gun, the blue is a third gun, and that's the fourth
13 gun.

14 So, we know, other than the victim, three guns were
15 out there. Three guns were out there. And we know one
16 was in the backseat because all the gray shell casings
17 belonged to one gun, and they're in the backseat with
18 Dajon's phone and with his flip-flops.

19 We know he's firing. How do we know he's firing?
20 Because there are bullet holes going through the back of
21 the driver's seat. And he was shot in the back and it hit
22 his spine. And the lady told you, once that happened, he
23 was paralyzed. So, we know one of them is nailing him
24 from the back and there are the shell casings. We know
25 another one is nailing him from outside the Acura, because

1 there are bullet holes going through nothing but the
2 driver's side of the Acura, and ultimately, one caught him
3 in the head and it was a .45.

4 So, he's being shot from behind and he's being shot
5 from outside the car. That's two. But is Jeremiah Dicker
6 firing? Of course he is. How do you know? Because one
7 of them got jammed. One of them got jammed. This man is
8 being fired from this angle, the back, and outside the
9 car.

10 Mr. Wilson and Mr. Galmore were telling you, "Well,
11 didn't the victim have a hollow point?" Those are bullets
12 that -- the hollow point slows the bullet down so it does
13 more damage. But I bet it was a surprise to hear that the
14 .45 that killed Kalik Conn was also a hollow point, so the
15 victim wasn't the only one.

16 And whether the victim had a hollow point or not is
17 irrelevant when you got -- three people got you surrounded
18 and firing. Three against one. That's what they planned
19 to make sure it was executed successfully. Three against
20 one.

21 And, you know, this nonsense of who fired first,
22 asked the pathologist, "Do you know who fired first?"
23 Look -- look, folks. You got two guys in the car with
24 this victim, and then you got Nasirea Grate outside the
25 car with a ski mask on. With a ski mask on. Is anybody

1 wondering who the bad guys are? Is anybody wondering who
2 the bad guys are when they have him surrounded, and one of
3 them is firing into the car? Talking about shooting fish
4 in a barrel. Shooting inside the car, out there with a
5 ski mask on. And they're coming in here, "Who fired
6 first? Who fired first?" What a world we live in when
7 somebody in Horry County is surrounded, and one of them's
8 got a ski mask and it's "Who is the bad guy?" Doesn't
9 that tell us who the bad guy is?

10 I mean, let's get real. Who, in their right mind,
11 in a car surrounded by three guys with guns -- you look in
12 a mirror and you see this third guy running around with
13 this on, what does anybody believe is going to happen to
14 Kalik Conn? What does anybody believe?

15 And why do you even put this on other than not be
16 identified? And that's something else. Mr. Wilson was up
17 here, "Can you identify him?" The guy has a mask on. Why
18 do you think he's got a mask on? So, you can't identify
19 him.

20 This was planned. This was premeditated. I cannot
21 imagine what it would feel like to be in that car and be
22 surrounded by three people with guns, and you look back
23 and you see one of them wearing this. I cannot fathom
24 what that would feel like.

25 Now, did a crime occur? Yes. And it was

1 premeditated. They got that boy away from cameras, got
2 him down there to that crime scene. They were there
3 first. They were there first. They lived in the
4 neighborhood. They knew that area.

5 The map -- when you look at that map, [REDACTED] Road,
6 the Sunhouse, all of it is right there together. Right
7 there together. And they took this boy that nobody had
8 seen, with a New Jersey plate, and led him down there,
9 surrounded him, took the marijuana from him, and then
10 something clearly went astray. Right? And those bullets
11 started flying. But there was no way Kalik Conn was
12 coming out of that. That is unfortunate.

13 Now, this phone is Nasirea Grate's phone. Okay? It
14 was found in the dishwasher. So, is that important? I
15 think it is because who keeps their phone in a dishwasher?
16 This phone was found in the same house with the license
17 and the mask. And it's in the dishwasher. Isn't it
18 strikingly strange that, all of a sudden, when the police
19 come up on him, he's got a mask, some cash, and he's got
20 his phone in the dishwasher?

21 Now, this is the Cadillac. All these pictures are
22 going back with you. Okay? This is the back of the
23 Cadillac. Why is this important? Okay. The Cadillac
24 belonged to Todd Fry. And when we showed you when Todd
25 Fry, on that Ring camera -- oh, boy, and that was on week

1 one -- what was he doing? Cleaning the car out. Changing
2 the license plate. Backing it into the driveway.

3 Why do all that? Why do all that? If nothing has
4 happened and you have done nothing wrong, why are you
5 changing the license plate and cleaning the car? Because
6 he knew -- he already knew that they had killed that guy
7 and he knew they had left Jeremiah Dicker down. And that
8 happened at, like, 3:00 or 3:30. That boy was shot,
9 killed, paralyzed, drowning on his own blood at 2:07. And
10 in no time -- the sun hadn't even gone down -- and Todd
11 Fry was out there changing the license plate, backing in
12 the car, and cleaning it out.

13 Obviously -- obviously, they knew the police were
14 coming, they knew they had done something wrong, and now
15 it was "cover up, save myself" mode. This fluoresce here
16 is to indicate blood when you cannot see it with the naked
17 eye. That's because Todd Fry is not the first person to
18 clean blood out of his car and somebody found a solution
19 to say, "Hey, Horry County Police, you can't see it with
20 your eye, but I'm turning it purple, swab here." And,
21 ultimately, it was swabbed, and you have got the report
22 that says the blood came back to Dajon Grate because he
23 was shot at the scene.

24 Now, this pizza and these Pringles. Nasirea Grate,
25 that's what he bought from the Sunhouse. That's him in

1 the Sunhouse when you watch the video. And this is in the
2 car of the Cadillac on June 1st. It happened May 31st.
3 This is June 1st. There's the pizza he bought and there
4 it is still in the Cadillac. Do you know why? Because
5 when he got out of the Cadillac, his brother had been
6 shot. Jeremiah Dicker, his friend, had been killed. A
7 lot had happened. All of a sudden, this was not important
8 anymore. All of a sudden, hiding guns is important. All
9 of a sudden, changing the license plate is important.

10 There was no time -- he didn't get out until the
11 deed had happened, and then there was no time to grab
12 marijuana. There was no time for any of that, including
13 this.

14 That's him purchasing the Pringles, and there they
15 are right there. It's still left in there because they
16 went straight from the Sunhouse, just like the phone told
17 you, straight to the crime scene.

18 What they didn't anticipate was Jeremiah Dicker
19 getting killed and Dajon Grate getting shot. That's why
20 this stuff is still in the car, because they never got out
21 of the car until Dajon Grate had been shot and they were
22 sitting back on [REDACTED] Road. And then this wasn't
23 important anymore.

24 Now, the phone stuff is important because that tells
25 us where their phones were. That tells us where they

1 were. Most people keep their phone on them 24/7.

2 (Video plays.)

3 Now, stop there.

4 And this right here is going to be Jeremiah Dicker.

5 Okay? He's over here hitting -- say it ain't so -- [REDACTED]

6 [REDACTED] Road. Say it ain't so. It ain't like he's sitting
7 in Conway. He's sitting right down the street on [REDACTED]

8 [REDACTED] Road.

9 The blue is going to be Kalik Conn. He's sitting
10 right here at the Sunhouse. Just what Sabrina said --

11 Shit, I hope that didn't do anything. Um....

12 The phone is going to show you that Jeremiah Dicker,
13 Dajon Grate, and Nasirea Grate were all sitting there at
14 [REDACTED] Road. Not just anywhere. Not in Conway.
15 Not in North Myrtle Beach. [REDACTED] Road. And it's
16 going to show you the blue is Kalik Conn, and it's going
17 to show you Kalik Conn was right there at the Sunhouse
18 where Sabrina told you.

19 I apologize. Oops. Stop. Start it back again,
20 please. I apologize.

21 When you see those arches, that's Nasirea Grate.
22 When you see that line go across. This is Kalik Conn here
23 hitting at the Sunhouse in blue. The purple is Jeremiah
24 Dicker hitting right there at [REDACTED] Road. And say
25 it ain't so. Nasirea Grate hitting right there at [REDACTED]

1 [REDACTED] Road.

2 Can you pause?

3 If you notice, Nasirea Grate is the orange. His
4 phone record is the one where the line arches; right?
5 Where the arch is is where the phone is. And if you'll
6 watch, that phone is going to go from [REDACTED] Road
7 right here to the Sunhouse. So, you can literally follow
8 right along to see him at the Sunhouse. Everybody at the
9 Sunhouse.

10 Now, here's Nasirea Grate. The purple is Jeremiah
11 Dicker. The blue is Kalik Conn. And now everybody is at
12 the Sunhouse. And if you notice this arch moves because
13 the phone moves.

14 (Video continues to play.)

15 Now, the blue is the victim. He's here. These boys
16 have already left. They have gone past [REDACTED]
17 Road, and they're heading to the crime scene. I
18 apologize -- heading to the Sunhouse. Okay.

19 Now, is this the next one? You're going to watch
20 them now go from the Sunhouse right to the crime scene.

21 (Video continues to plays.)

22 Can we get the next -- there we go.

23 (Video continues to play.)

24 Now, if you noticed, everywhere you see those dots,
25 that's Dajon Grate in red, Jeremiah Dicker in the purple.

1 It's no time after that you see this arch come straight
2 through. There you go. That's Nasirea Grate. All three
3 phones are together for the entire time. There's Dajon
4 Grate. And then you see shortly after, there's Nasirea
5 Grate, hitting at the same location, all of them sitting
6 there.

7 Now, when they're sitting there, the victim is still
8 at the Sunhouse. So, they have already gotten there to
9 kind of preplan. So, is it premeditated? Yes, it's
10 premeditated. It's premeditated when they pick the
11 location, they got down there, and then they lured ol' boy
12 down to that location.

13 (Video continues to play.)

14 MS. LIVESAY: Now, you see Nasirea Grate back at
15 [REDACTED] Road, back home. Now, his phone is the only one
16 back at [REDACTED] Road because all the other phones -- Dajon
17 Grate, Kalik, and Jeremiah -- were left at the crime
18 scene.

19 Now, who saw him at [REDACTED] Road? Robert Graham, the
20 grand daddy. Now, when he came in here, he didn't want to
21 tell you that, but Steve Brown got up and told you, "When
22 we talked to him at the house and these boys weren't
23 around, he said they came back." It was Dajon, Nasirea
24 Grate, and Todd Fry right there at [REDACTED] Road right
25 where the phone took them. Right where the phone took

1 them. They were together the whole day through this
2 entire crime.

3 Now, is that the last one? Thank you.

4 Now, the question is, you got all this evidence --
5 and I'm going to leave this right here.

6 Is it murder? Is it armed robbery? They picked the
7 location. They got there early. They sent it to the
8 victim. All of them are armed. All three of them are
9 armed. Surrounded the victim. Got the marijuana.
10 Something happened. All three of them fired. All three
11 of them fired at the victim. All three of them had guns
12 versus Kalik Conn. And, ultimately, Dicker was killed.

13 But when they picked that location, when they got in
14 the car with him and surrounded him, when Nasirea Grate
15 pulled that mask down, all of that is premeditation. When
16 they got there, they sat there, surrounded him one side,
17 one behind him, one standing outside with the mask, that's
18 premeditation. As soon as they got in that car and as
19 soon as Nasirea Grate pulled the mask down, premeditation.

20 Now, in criminal law, there's "hand of one, hand of
21 all." That means, when you get together and you plan
22 something with somebody -- me and Lacey get together --
23 everybody is equally as responsible.

24 The fragment that was recovered from the .45, but
25 there's holes in the back showing Dajon Grate was firing

1 in the back. In fact, in one picture, there's a dark
2 circle. Do you know why? That's gunshot residue from
3 where it's so close to the backseat when he was firing it.
4 And then Nasirea Grate was firing from the outside. All
5 of them were working together, and the "hand of one is the
6 hand of all." They are all equally guilty regardless of
7 who fired the fatal shot.

8 Now, they're going to make a big deal that the
9 victim fired ten times. The victim did fire ten times.
10 It's on the board.

11 Uh-oh, I pulled it too hard. Will you hold this?

12 Kalik Conn had two choices. Two choices. Like
13 everybody, he had two choices. When something like this
14 happens, you either are going to fight or you're going to
15 run. Fight or flight. And flight was not an option. He
16 had two people in the car with him. One standing outside
17 the car. There was nowhere to run. If ol' boy put the
18 car in drive and took off, he was getting killed. If he
19 got out of the car and ran, he was getting killed. So, he
20 only had one option, and that was this one right here.
21 They gave him one option.

22 And then they're mad because he tried to fight back.
23 What a wild world we live in. Three people surround you
24 and they're peppering you -- this man was shot -- look at
25 this -- shots coming from the front and the back. These

1 are nothing but entrance wounds. I didn't even put the
2 exit wounds up there. He was shot in the front and the
3 back of the head. Lookey here: Five times. Three times
4 in the front, twice in the back. And they're over there,
5 "Can you believe he fired back? He fired ten times."
6 What else was there going to be? He had one guy, Jeremiah
7 Dicker, firing. The only thing that stopped that gun with
8 Jeremiah Dicker was the gun jammed, and then he found
9 himself fight or flight. When that gun jammed, it's
10 flight or flight. Ol' boy got up out of that car and ran,
11 and then he was put in that spot.

12 But Kalik Conn had no other option. He could not
13 run. They had him surrounded in the car and outside the
14 car. Three people firing. Shot from the front and the
15 back. And they want to get up here and tell you, "Well,
16 he fired ten times." He didn't have a choice. He didn't
17 have a choice.

18 And he had already given the marijuana up because it
19 was in the backseat. Nobody is putting -- just throwing
20 some marijuana like that in the backseat no more than I
21 throw my wallet back there or my phone. They took it from
22 him. They took it from him. And clearly, something
23 happened after they got it.

24 He wasn't firing over the marijuana. The marijuana
25 had been taken. That marijuana was as much in Dajon

1 Grate's custody and control as the flip-flops and phone
2 back there. He had all of it back there. So, he wasn't
3 firing over the marijuana. That had been taken. He was
4 firing then to save his life. He was firing then because
5 there was no other option.

6 In all of us there is something that wants to stay
7 alive. That's why Jeremiah Dicker was out there running,
8 "Shit, shit, shit." Something -- our bodies are built to
9 stay alive. He was firing out there, trying to survive.
10 He was trapped. There was not another option.

11 And then they want to get mad because he fired back
12 because he tried to live. That's what they're up there
13 telling you, "Can you believe he fired ten times?" Yes.
14 Yes. He is trying to live, and that is okay in the State
15 of South Carolina.

16 If someone sees people starting to surround somebody
17 and they pull the mask down, that's the time to fire. If
18 you have got it, use it, because you're not getting out
19 any other way.

20 He was trapped. Yes, he fired ten times, trying to
21 save his life. And even then, he didn't live. Even then.
22 The man is trapped in the car, and they're mad he fired
23 back. They're mad he fired back ten times. He fired back
24 trying to live.

25 Let me tell y'all something -- and then I'm going to

1 sit down so Mr. Wilson can talk to you, and Mr. Galmore.
2 When I was in high school -- a senior in high school,
3 there was this other -- you know, groups of girls in high
4 school. I'm telling you, groups of girls are worse than
5 groups of boys. And this other group of girls, they
6 didn't like my little friend group. Now, it was nothing
7 real severe, I didn't think. So, anyway, I played sports,
8 and when you played sports, you had to participate in
9 community stuff, collecting things, give it to the
10 Salvation Army, etc.

11 And this girl -- I still remember her name was
12 April. She had blonde hair. I'm just telling y'all, she
13 was scary. I was not trying to mess with her; trying to
14 stay out of her way. And she said, "Come over to my
15 house; I got some things I want to donate." And I thought
16 like, dang, this is a good moment here; we're coming
17 together.

18 So, I go over to the girl's house, and I get out of
19 the car -- and she lives kind of on the outskirts of town.
20 And I went over there by myself. Mistake. Mistake. And
21 I get out of the car to walk up to the door. She comes
22 out of the door. Okay? And the yard is pretty big. I'd
23 say it was from there to here.

24 Now, she comes out, and she's kind of coming out in
25 an aggressive way, like, towards me, and she's saying

1 something, but I can't half hear, so I can't hear what
2 she's saying, but I see her coming towards me in kind of
3 an aggressive way. So, I was like, "I don't know about
4 this."

5 By the time she gets close enough and I can hear
6 what she's saying, I can't run; she's too close to me.
7 But what she's saying to me is, "I'm going to whip your
8 tail." Now, some more words were in there, but that was
9 definitely the gist. That was definitely the gist of it.

10 And I'm not going to lie, I was afraid, I was
11 scared, I was not accustom to this kind of situation, and
12 she definitely looked like a fighter, and I was definitely
13 not.

14 So -- and I can't run; she's too close to me. But
15 she's saying, "I'm going to whip your tail." So, she gets
16 close to me. As soon as she gets in my face, I cannot to
17 this day tell you or explain to you how that all unfolded,
18 but what I can tell you, as soon as she got in my face and
19 was saying, "I'm going to whip your tail," and I was
20 afraid, I went to swinging like a lunatic. I mean,
21 honestly, I cannot -- I'm not even sure how it all
22 unfolded, but as soon as she got close, I just remember
23 just swinging like a crazy person.

24 And somehow, ultimately, I did get on top of her.
25 At the end of the day, it was fine. I survived. But I

1 say that to say, all of us -- all of us, when we're in
2 situations and we're afraid, I'm not -- and to this day, I
3 can't quite tell you -- I don't even know I realized until
4 it started happening, but when you're only given two
5 choices and you can't run, that's all you really can do is
6 stay there and just swing like a crazy person and try to
7 survive. And that's what Kalik Conn did. And that's what
8 he had the right to do. And that's what all of us have a
9 right to do.

10 When you go back in there, I want you to look at all
11 this. And there's only one answer that speaks the truth,
12 and that is Dajon Grate and Nasirea Grate are guilty.
13 They were out there, one of them wearing this mask.
14 Mr. Wilson can say whatever he wants to, but the boy had
15 the mask on at the Sunhouse minutes before, and the phone
16 tracks right with the other boys, and the logo is the
17 same, and his DNA is on it. He was out there wearing that
18 mask and he was out there firing from outside the car.
19 They ain't picked up another guy just lightning fast that
20 was dressed like Nasirea Grate and had a mask. That ain't
21 happening.

22 And Sabrina told you they're always together. If
23 they're always together at the Sunhouse, you better
24 believe they're always together sitting out there in that
25 Cadillac.

1 And let me tell you something, folks, this is a
2 tough, tough topic. It is. Because two people have been
3 killed. But the two people that killed them are sitting
4 right there. Kalik Conn is deceased, but that is not the
5 end of this story. This doesn't end until the 12 of you
6 come out and decide how it ends. Does it get the right
7 ending? And I'm asking you to give it the right ending,
8 to give Kalik Conn's story and Jeremiah Dicker justice and
9 come back with a guilty on all three charges.

10 Thank you.

11 THE COURT: All right. Mr. Wilson, closing
12 arguments?

13 MR. WILSON: Thank you very much, Your Honor.

14 CLOSING ARGUMENT ON BEHALF OF DEFENDANT NASIREA GRATE

15 MR. WILSON: Madam Forelady and ladies and
16 gentlemen, we have been here now for eight days, I guess,
17 and you've heard witness after witness come into this
18 courtroom and testify to one thing or another.
19 Ultimately, you, the 12 of you, will decide what the truth
20 is in this case.

21 I like to think of these trials as the State is
22 actually on trial. The reason for that is that they have
23 the burden of proof. When they bring an indictment, which
24 is how they bring a person to court, when they file an
25 indictment and bring a person to this courtroom, the

1 burden is on them. And it's on them because they chose to
2 bring the case, and they, then, have the burden of proving
3 it not just by a preponderance of the evidence or maybe
4 more likely it happened that way or maybe probably it
5 didn't happen that way because that is not the test. If
6 they only get to that point, then they have lost, because
7 that is not the law.

8 The law -- and His Honor is going to instruct you as
9 to what the law is. They must prove to you beyond a
10 reasonable doubt that it happened and it happened just as
11 they claim. Didn't happen any other way. It happened
12 just as they're claiming it happened.

13 In this case, there is no direct evidence. There's
14 none. Nobody saw the shooting. Nobody's testified that
15 "I saw this person pull a gun and fire a shot." Not
16 happened. There's no witness to that. So, there's no
17 direct proof. They're relying on what we call
18 circumstantial evidence, and circumstantial evidence is
19 good evidence. I'm not saying it's not. It is. But when
20 they rely on circumstantial evidence, then they have got
21 to prove the circumstances on which they rely beyond a
22 reasonable doubt, and they must prove each element of the
23 crime, whatever that crime is. Whether it's the armed
24 robbery, whether it's murder. They have got to prove each
25 element.

1 The first problem that they're going to have in this
2 case is that they must prove in a murder that the killing
3 was wrong, it was wrongful, it was unlawful. If they
4 can't prove that, then they don't even get to the first
5 step.

6 What evidence -- what evidence have they brought you
7 in these eight days that we have been here that shows that
8 there was an unlawful killing? Name me one witness that
9 has brought you some testimony or some evidence to show
10 you that the killing was unlawful. Not a single witness.
11 None. And the reason for that is they don't know what
12 happened at the scene.

13 So, she can have all the theories she wants. I got
14 some theories, and I'm going to tell you about them, too.
15 And mine is just as good as hers. As my mama used to say,
16 six in one and half a dozen in the other. But all it is
17 is my opinion about what I say happened. I wasn't there.
18 But neither was the solicitor. She wasn't there. She has
19 absolutely no more idea of what happened there than I do.
20 None.

21 We're advocates as lawyers. And as advocates, it's
22 our job, our responsibility to represent our clients,
23 especially when you're a defense lawyer. With
24 prosecutors, that's not true. And I was one --- an
25 elected one for eight years and a chief deputy for four

1 years before that. Their responsibility is to find the
2 truth and to not prosecute people that they don't have the
3 evidence against.

4 So, let's talk about that. Let's talk about
5 theories. Because the first thing that you notice,
6 remember who -- remember the pathologist said that
7 Mr. Conn, after he was shot in the back of the head, he
8 couldn't shoot anybody else? He couldn't harm anybody
9 else at that point because he was going to probably be
10 paralyzed. Right? Yeah. So, whatever shots he fired had
11 to have been fired when? Prior to him getting shot.
12 Plain and simple. There's no other way, because she
13 clearly says he couldn't have fired that gun after that.

14 So, what does that mean then? That means that he
15 had already fired his ten shots. He had a 27-round
16 magazine. He was loaded for bear. He didn't come there
17 to preach a sermon.

18 What I will tell you -- and the evidence supports
19 this -- think about it for a second. Who gets shot in the
20 back running away from the car? Right? Who gets shot in
21 the back running away from the car? According to the
22 solicitor, he's in the front seat. Right? Mr. Dickers is
23 in the front seat of the car. That's her version of the
24 facts.

25 And if he's in the front seat of the car and if that

1 gun -- remember the one that jammed that's on the ground?
2 If that's his gun, he ain't in no ability to shoot. But
3 what happens to him? He gets shot in the back. By who?
4 By who? Mr. Conn. Because he's the one with the gun, the
5 ten shots that he fired away. Two of them found their way
6 into the body of Mr. Dickers.

7 And you know how he got shot in the back? Remember
8 the pathologist says that he had a defensive wound? What
9 that means is he was trying to defend himself from Conn,
10 because he's sitting in the front seat with Conn,
11 according to her story. And he gets shot in the elbow
12 because when Conn raises this gun to shoot him -- and I
13 don't know what the argument was about -- she doesn't
14 either. I don't know what the argument was about. But if
15 Conn pulled a gun and fired first, then they had every
16 right to defend themselves. All of us do.

17 And there is no question -- no question that he's
18 defending himself because the pathologist told us that.
19 She has absolutely no reason to come in here and lie to
20 help the defense.

21 Not only is he shot in the elbow as he turns to run
22 and he gets shot in the back and then he drops his gun on
23 the ground because it's jammed, he can't even fire back.
24 And then he walks off and he dies.

25 Remember she brings this question about, "Well, you

1 know, there were some shots in the backseat of the car."
2 Who made those shots? Mr. Conn. And remember when the
3 officer got up -- I think it was Bauman or whatever his
4 name is -- he got up and he said, "Well, I had all these
5 rods, and I ran all these rods in the back of the seat of
6 the driver, which was Mr. Conn, so you can see the angle
7 of the bullets that went to the backseat" -- or, I'm
8 sorry, the back headrest of Mr. Conn.

9 And when I asked him, I said, "Well, weren't there
10 shots from the front to the back? Did you run any rods in
11 them?" No.

12 Well, first, he said, "I don't really remember."
13 And then when I reminded him that there were two slugs in
14 the trunk, which went through the backseat and they were
15 9mms, then all of a sudden, it was, "Well, no, we didn't
16 do it." No, they didn't do it, because they didn't want
17 to know. They didn't want to know. And they didn't want
18 to tell you that Mr. Conn fired at whoever was in that
19 backseat.

20 And you know how you know that? Because he's hit in
21 the left side. He's hit in the left side. The only
22 person who could do that would be the driver. He's
23 hitting the left side, because he's sitting on the
24 passenger side of the car, slides over, and he's shot in
25 the left side by Mr. Conn.

1 The other thing, they try to convince you that
2 Mr. Conn had all this marijuana and that they were trying
3 to take it from him. Folks, tell me one person -- one
4 witness -- law enforcement, independent witness, anybody
5 -- first of all, who says that that marijuana belonged to
6 Mr. Conn. Who says that? The solicitor says it. I
7 didn't hear any testimony from this stand that he had a
8 bunch of marijuana. It's in his car, but it's in his car
9 after the fact, after this is all over. How it got there,
10 we don't know. Were they trying to sell him marijuana and
11 he shot them? Or were they trying to take his marijuana?
12 We don't know.

13 And what they want you to do is say, "Well, it don't
14 matter, somebody got killed, so let's just convict
15 somebody because it doesn't matter who started it." Well,
16 it does matter. It does. It makes a difference.

17 You know, they say -- and I stand corrected -- the
18 solicitor says, "Well, you know, they were all together at
19 the Sunhouse store." Well, lolly gag, lolly doo, lolly
20 doo. That ain't a crime. If it is, I'd be in jail a long
21 time. I go to Sunhouse all the time. There ain't nothing
22 wrong with going to the Sunhouse.

23 There is nothing, not one shred of evidence that
24 puts Nasirea Grate at this location. Nothing. Not one
25 single thing. And they came in here and they tried to

1 convince you -- Ms. Livesay did -- to convince you that,
2 "Oh, well, we found this mask at the crime scene. We
3 found this mask," No. 4 -- it's on that? That's okay.
4 You remember it. "Oh, well, we found that mask at the
5 crime scene." No, they didn't. That's just not true.

6 So, will they mislead you? Oh, absolutely. That
7 mask was found at another residence. It was not found at
8 the home of Mr. Grate. It wasn't found at [REDACTED].

9 Did any witness get up here and tell you, "I can
10 identify him as being there"? Not a single one. None.
11 Nobody. Nobody says that, except for the solicitor.
12 That's what she said. No witness says it.

13 Now, it is sometimes almost impossible to prove that
14 you did not do something. And I don't know those of you
15 who have kids like I do -- well, they ain't kids anymore;
16 my kids are all grown. But you ask them a question, and
17 say, "Well, did you do such and such?" And they say, "No,
18 Daddy." Now, most of the time, I know when they're
19 telling me the truth and when they're not, but the problem
20 is, there are times when, even though they say no, I can't
21 disprove what they're saying, the fact that they told me
22 no or they told me yeah. I can't disprove it, and they
23 can't prove that they didn't do it.

24 So, that is true here. How do you prove you didn't
25 do something? You can say it. I can say all I want to

1 that I didn't do this and I don't know who did. How am I
2 going to prove it?

3 Give you an example. Let's say there's a robbery at
4 Conway National Bank, and somebody says, "Well, I saw a
5 fellow that looks just like Ralph Wilson and he was coming
6 out of that bank and he had some money in his hand." And
7 I'm at home. It's 11:00 in the morning and I'm home by
8 myself. How am I going to prove that it wasn't me?
9 Nobody there with me. I say I didn't do it. They say,
10 "Well, yeah, we got a witness who said it was somebody who
11 looked like you, a tall, fat, Black guy." Right? How am
12 I going to prove it? You can't. And under the
13 solicitor's theory, I'd just have to go to jail. Well,
14 that's not the law, folks. That's not the law. It is not
15 now and never has been.

16 One of the things is is that every defendant, from
17 the moment they are charged and indicted to the moment
18 they're brought into this court, they're presumed to be
19 innocent. That's not a light thing. The presumption of
20 innocence is something that we all as citizens enjoy. And
21 it doesn't matter if you're guilty or not guilty, because
22 that's not the question. The question is, you're presumed
23 innocent until and unless the State can offer you proof,
24 the 12 of you, to convince you beyond a reasonable doubt
25 that the person did the crime.

1 Now, let's talk some more about this whole theory
2 that the State has. Let's talk about a missing link here.
3 Mr. Conn wasn't known. Right? He was from another place,
4 and what we know about him is that he was up at the
5 Sunhouse, and the lady I think testified that he had been
6 up there most of the day, stopping people. People coming
7 in and out. He was stopping. What he was doing, I don't
8 know. And they don't know either. But he was up there.

9 And he stopped these guys. Whoever was at the
10 Sunhouse, he was stopping them. That ain't a crime.
11 There's nothing wrong with that. That's fine if that's
12 what you want to do.

13 But then what we know is -- about Mr. Conn is is
14 that, for whatever his reasons were, he did leave the
15 Sunhouse. He left the Sunhouse. Why he left? I don't
16 know. They don't know either. But they want you to guess
17 about it. Say, "Well, he must have" -- and this is what
18 she says, "Oh, he must have been looking in the car and
19 saw something that he wanted so then they invited him to
20 come and meet them at some other location." That's pure
21 speculation. Who testified to that? Tell me one witness
22 that said that. Didn't happen. There is no such person
23 who said that.

24 We ask ourselves then -- well, let me back up and
25 let me talk for a minute about Todd Fry, because that's

1 the missing link here. Now, think about it for a second.
2 This Mr. Todd Fry, there's no question about one thing.
3 Right? He owned the car. That's undisputed in the trial
4 of this case. He owned the Cadillac. No dispute about
5 that. I haven't heard anything that says he wasn't
6 driving the Cadillac.

7 But, see, the State's theory is they need four
8 people, they don't need five, to make this work for them.
9 They need four people, not five. So, we have got to get
10 rid of Todd Fry because then their equation won't work.
11 We need -- because, remember, they got four guns; right?
12 So, they got to have four people, not five.

13 Just happens so that they said that Mr. Grate here,
14 who is the brother of Dajon Grate, well, if his brother
15 was there, he must have been there with him, so we can
16 just include him too.

17 Every expert who got up there -- the fingerprint
18 people, the DNA people -- not one of them said there was a
19 single iota of evidence which put Mr. Nasirea Grate at
20 that crime scene. Not a one. Not a one. The only person
21 who puts him there is the solicitor, in her theory. The
22 only one.

23 The other thing that's interesting in this case is
24 remember she's talking about the -- well, the mask. Well,
25 you know, we found this mask and at first she said it was

1 at the crime scene, which wasn't true. But then, when the
2 DNA person testified, what did he say? There were two --
3 at least two different mixtures of DNA on that mask. But
4 not only are there two; they never sent what? They never
5 sent the swabs from Todd Fry to DNA. They never sent
6 them. Why?

7 Now, he's clearly the driver of the car; right? So
8 wouldn't you want to know? Well, maybe he had that mask
9 on. I don't know. Or maybe it was some other mask.
10 Because originally what they said was a COVID mask. That
11 was their original version. Two years later now, they're
12 saying, "Oh, no, no, no, no, it was a cloth mask that you
13 pull over your face." That's happened two years later.

14 The other thing, you know, there is always these 911
15 calls -- right? -- where, when a 911 call comes in, you
16 can get that 911 call, and that people that call in -- and
17 Ms. Berenice said she called 911. Well, they record it.
18 So, if you want to confirm her story about what she's
19 saying about the mask, what would you do? Put up the 911
20 tape. Because it confirms everything she says. If you
21 don't put it up, what does that mean? It doesn't confirm
22 what she said, so why would we put it up?

23 Sometimes, folks, it's the little things. Right?
24 One of my old mentors used to say, if you want to know
25 where the wind is blowing, you don't look at the root of

1 the tree, you look at the leaves, the little tiny things,
2 because that will tell you where the wind is blowing. And
3 all these little things add up, and all these little
4 things make a difference.

5 So, they don't send Todd Fry's swabs to be tested.

6 Remember in the back of the car they said that there
7 was a mixture of blood? Right? Do we know whether Todd
8 Fry's blood is back there? No. We don't know. We don't
9 know. Why? Why don't we know? Because they decided --
10 and you heard him. He said, "Look, they never asked me to
11 do it. Would I have done it if they asked me?
12 Absolutely. Did they ask me to do it? No. No."

13 Why do you want to convict somebody and hide stuff
14 in the process? Why would you want to do that? These
15 young men are on trial for their very lives. Where is the
16 gamemanship in hiding stuff? Where is that? What's that
17 about? Win at all costs. It doesn't matter. Let's just
18 win. Well, no, that is not the role of a prosecutor.
19 It's not.

20 Let me talk to you for a minute now about Mr. Conn.
21 One of the things that the solicitor wanted you to believe
22 was that Nasirea Grate was out there and he had a .45
23 caliber pistol and he was outside and he was shooting in
24 the car. Because, if you remember, if you recall, the DNA
25 says Mr. Conn was shot in the back of the head with a .45

1 caliber pistol. Right?

2 The problem is, according to their chart, if you
3 remember, all he was -- according to them -- he would have
4 been in the front of the car and that the three shell
5 casings that were found was to the left side of the front
6 of the car. How can he then shoot him in the back of the
7 head? How?

8 Folks, these are not questions that you ought to
9 have to wrestle with. When the State brings a case to
10 you, they're supposed to bring you these facts so that you
11 can make a rational decision based on the facts and the
12 evidence, not on some cockamamie theory that they come up
13 with.

14 So, tell me when it was that this .45 caliber pistol
15 that they have been talking about got into the backseat of
16 the car to shoot him from the back? They forgot that
17 little detail.

18 It's the little things. The little things.

19 Let me say, folks -- because one of the things that
20 the State's contending here is is that -- well, let me
21 rephrase that.

22 The problem for the State is this: They don't know
23 what happened at the crime scene. They don't know. Up
24 until that -- up until whatever shooting occurred, there
25 is no crime. Whatever crime there was happened right

1 there at that car, if a crime occurred. But we don't know
2 because nobody knows what happened there. The solicitor
3 doesn't know. We don't know what happened.

4 And so, what they're asking you is, "Well, we don't
5 know happened. We have got a theory, so just go ahead and
6 convict them and then we don't have to worry about that."
7 Somebody got killed. Well, yeah, two people got killed.
8 Who? And another got seriously injured. But that is not
9 murder.

10 Murder is the killing -- the unlawful, the wrongful
11 killing of one person by another with what we call malice
12 aforethought. They didn't even come close to proving
13 that. Because it's not unlawful if you defend yourself.
14 I don't care who you are. And I don't care what kind of
15 weapon you have got. You have a right to defend yourself
16 to the point of taking another person's life if they're
17 trying to take yours. And there ain't no question about
18 the fact -- no question about the fact that Mr. Conn was
19 trying to take the life of -- and did. Not only did he
20 try, he took the life of Mr. Dickers. There ain't no
21 question about that. There's no -- have you heard anybody
22 dispute that? Shot him in the back as he's trying to
23 flee.

24 His gun is jammed so he can't defend himself even
25 though he had tried. And for his attempt, he got shot in

1 the arm.

2 Let me talk for a minute about Mr. Graham. And you
3 heard it. You heard the testimony. And Mr. Graham is the
4 significant other of the grandmother of these young men.
5 And the solicitor goes out to talk to him. Nothing wrong
6 with that. In fact, that's a good thing. Should talk to
7 witnesses. But now, you have got a 24-year investigator,
8 a seasoned -- two seasoned prosecutors, two of them. And
9 they said, "Well, we didn't expect that he might change
10 his story." These are his step-grandchildren, if you
11 will. All right? So, we didn't think he'd change his
12 story.

13 You've been an investigator for 24 years. You know
14 good and well, when you go to somebody's house and you're
15 talking about their kids, they ain't trying to come up
16 here and help you. That is just not reasonable or
17 rational. It ain't happening.

18 But that ain't my point. My point is that this
19 24-year-old -- this 24-year investigator and two assistant
20 solicitors, who have been doing this for a long time, they
21 go out there with pencil and paper. And then they take a
22 statement; right? But they don't even write it word for
23 word. What do they do? They do a summary. And the
24 reason they do a summary is because you can't dispute a
25 summary. How am I going to dispute what you wrote on your

1 paper? I can say I didn't say it. And y'all ain't got no
2 recording devices there? You ain't got no video cameras?

3 They brought us all these other videos from
4 everywhere. They went canvassing the community to find
5 video footage. But they go out to talk to this man
6 because he's important to them. Why? To put Nasirea
7 Grate and his brother and Todd Fry together at the house,
8 which would have been immediately after this alleged
9 shooting. And they wanted to connect them to the car.
10 So, that's why they -- it was important for them to try to
11 get him to say that. And he said, "I didn't say that."
12 But that's what -- so, they bring in their own
13 investigator.

14 Now, you're talking about tainted testimony. You're
15 the prosecutor, and you're going to bring in your own
16 investigator to dispute a witness who you went out and
17 interviewed. I mean, how bad does it get? How bad does
18 it get?

19 All they had to do even, if they wrote it out, say,
20 "Okay, we'll write it out, we'll read it to you, and have
21 you sign it and date it." Uh-uh, no.

22 "Okay. Well, we'll bring an audio recorder, and you
23 just tell us what happened and then we'll have it on this
24 recording device." Uh-uh.

25 "Well, then what about we'll take an officer with us

1 who has got one of these cameras on his lapel, and then he
2 can record it while we talk to you?" Uh-uh.

3 Why? Because the cameras don't lie. The written
4 statement don't lie. The written statement ain't going to
5 change if I sign it. The written statement ain't going to
6 change if I video-record it. But if I can just bring my
7 investigator in, then he can say whatever I need him to
8 say.

9 Even if that's not true, why would you put yourself
10 in that position, in a murder trial -- double murder
11 trial? Why would you do that?

12 That's what I'm talking about, folks. The little
13 things.

14 Let me leave you -- and let me say this: I grew up
15 here. Born and raised in Conway. Lived here all my life.
16 Wouldn't live anywhere else. And I tell this story almost
17 every time I have a trial, and it's a true story. When I
18 was a little boy, 10, 11 years old, my mom, we didn't have
19 a vehicle, so we would walk from our house, which was on
20 Racepath Street up to the -- where now Vanite Fair is. I
21 think it's Vanite something. Right there on the corner of
22 Main and 3rd Avenue, I think it is. There was an
23 insurance agency up at the top of that building back then,
24 and we used to go up there to clean up. And my mama would
25 take me with her.

1 Well, in the route here, we had to pass this
2 courthouse, and actually, it wasn't this one; it was the
3 old one, which is on Third Avenue. Beautiful building
4 with the magnificent white columns. And I was always so
5 impressed with that building. And every time I would
6 pass, with the flags flying, the big white columns
7 standing there, and I would just get chills because I
8 always thought, man, that's where you get justice. That's
9 where you're treated fairly. That's where your rights are
10 protected. That's what I thought. That's what I thought.

11 As I got older and went to college and law school, I
12 came back and then I realized that's not true at all.
13 That's not true at all. Justice only lives in the hearts
14 and the minds of jurors. You. You're it. You're
15 justice. It doesn't exist in these walls. It doesn't
16 exist necessarily in His Honor's -- the bench that he's
17 sitting on. It's not there. It's with you.

18 Justice is only as good as you are. Fairness is
19 only as good as you are. And it only exists if it's in
20 your hearts and in your minds.

21 And one last thing I want you to remember is that,
22 if you are in your jury room and you're saying to
23 yourself, "Well, maybe the solicitor is right. Well,
24 maybe it happened the way she said it," then you have
25 already reached a verdict and that should be not guilty,

1 because that is not the test. And she would have failed.

2 It has to be beyond a reasonable doubt. Not a
3 probability, not a likelihood, not "well, it could have
4 been." None of that is sufficient. And listen to Your
5 Honor's charge because he's going to tell you that too.
6 That is the burden that they carry.

7 I know that over the last eight days you have
8 listened. You have been very attentive. I have certainly
9 paid attention to that, and I appreciate that on behalf of
10 my defendant, Nasirea Grate, and I appreciate that on
11 behalf of his brother, who is sitting over there with him,
12 and on behalf of the State, because this process would not
13 work without you. It would not work without you.

14 And now, is it perfect? Is our jury system perfect?
15 Absolutely not. But it's better than anything anyone else
16 I know anywhere, in any other country anywhere. If I've
17 got to take my chances, I would take it with a jury any
18 day over any other system I'm aware of.

19 So, I thank you for your time and for your
20 attention, and I ask you to find Nasirea Grate not guilty
21 of these charges. Thank you so much.

22 THE COURT: Mr. Galmore?

23 MR. GALMORE: Your Honor, could we have a quick
24 break? We have been going since 12:30.

25 THE COURT: All right. That will be fine.

1 Ladies and gentlemen, we'll take about a 10- or
2 15-minute break to give you an opportunity to stretch your
3 legs. Do not discuss the case. Leave your notepads in
4 the jury box, and we'll bring you back in just a minute.
5 Thank you very much.

6 (The jury exited the courtroom at 2:21 p.m.)

7 THE COURT: All right. Anything from the State
8 before we take a short recess?

9 MS. MARTIN: Nothing from the State, Your Honor.

10 THE COURT: Mr. Wilson?

11 MR. WILSON: Nothing, Your Honor.

12 THE COURT: Mr. Galmore?

13 MR. GALMORE: Nothing, sir.

14 THE COURT: All right. Let's take about a 10- or
15 15-minute break.

16 (A recess was taken from 2:22 p.m. to 2:40 p.m.)

17 THE COURT: Anything from the State before we bring
18 the jury in?

19 MS. MARTIN: No, sir.

20 MS. LIVESAY: No, sir.

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Nothing, Your Honor.

23 THE COURT: Mr. Galmore?

24 MR. GALMORE: No, sir.

25 THE COURT: All right. Let's bring the jury in.

1 (The jury entered the courtroom at 2:43 p.m.)

2 THE COURT: All right, ladies and gentlemen.

3 Welcome back. Please make sure you have your own notepads
4 and no one else's notepads.

5 All right, Mr. Galmore. Closing arguments.

6 MR. GALMORE: Yes, sir.

7 CLOSING ARGUMENT ON BEHALF OF DEFENDANT DAJON GRATE

8 MR. GALMORE: When I talked to you last Tuesday
9 during the opening statements, I told you that this was
10 going to be a dog-and-pony show. Let me explain to you
11 what I meant by that.

12 I told you you were going to get a lot of fancy
13 evidence. You were going to get PowerPoint presentations,
14 eyewitnesss, charts, and graphs, and all that
15 pretty-looking stuff. But what the State has done, they
16 have brought you overwhelming evidence of nothing.

17 Now, on the critical issues -- and I'm going to go
18 through them -- you will see that there is no evidence.

19 Issue No. 1. They have Dajon Grate charged with two
20 counts of murder. The State has not brought you a single
21 witness who got on that witness stand and said, "I saw
22 Dajon shoot Dicker. I saw Dajon shoot Conn."

23 Now, when we read the witness list to you on Monday,
24 when His Honor read it to you, there were 71 names. They
25 didn't bring you 71 witnesses. I can go back and count,

1 but maybe they brought you 30.

2 But of those 30 witnesses, not a single soul saw
3 Dajon do anything. And I made sure to ask. And I asked
4 and I asked to the point that it got repetitive. Every
5 single witness, the detectives, the SLED agents, I asked
6 them all: "You didn't see the shooter, did you?" The
7 answer from every single person was no.

8 Why is that important? Because that is what's
9 called direct evidence. Your Honor will tell you about
10 evidence and tell you that there are two kinds of
11 evidence, and that's in this case and in every case.
12 Direct evidence and circumstantial evidence.

13 Direct evidence is easy. Direct evidence is the
14 evidence that you perceive with your five senses. I know
15 this is true because I saw it. Again, lack of evidence.
16 No one said, "I saw Dajon with a gun." No one says, "I
17 saw Dajon shoot anyone."

18 So, we move to circumstantial evidence. Now, I'll
19 give you a law school example of circumstantial evidence.
20 Two men go into a shed. One man comes out of the shed.
21 The other man is in the shed, shot dead. Well, you can
22 conclude that the one man that's alive shot the one that's
23 dead. But that's not necessarily true. It could be just
24 as possible that these two men are in the shed, one man
25 commits suicide, and the other man comes out of the shed.

1 Not a case of murder. It could be either the two men are
2 in the shed and the gun goes off accidentally, accidental
3 discharge. Again, not a case of murder. That's the
4 problem with circumstantial evidence. They want you to
5 assume things. They'll give you a piece of evidence and
6 ask you to assume the rest, which is what has been done in
7 this case.

8 The videos they showed us, surveillance from the
9 Sunhouse. I swear if I see that surveillance tape again,
10 I was going to choke. What does it show us? It shows us
11 that these four guys jumped out of the Cadillac and went
12 in the Sunhouse and bought some potato chips. That is
13 truly what it showed us. They want you to take it to the
14 next step: "Therefore, they conspired to rob Kalik Conn."

15 Well, that's not what the video says. We even had
16 Ms. Bryant, the cashier, testify that the video came with
17 audio. She did say that. The State didn't produce you
18 any audio. I would have like to have heard, "All right,
19 guys. Let's take him around the corner. You block this
20 way, you go that way, and I'll get the cash." That's a
21 conspiracy.

22 They're in the store. They're buying items. It
23 seems to me like they're regular customers that come all
24 the time, nice young men. No evidence of a conspiracy.

25 Why is that important? "Hand of one is the hand of

1 all." That's a nice way of saying accomplice liability.
2 This is the situation when you go rob a bank and the
3 get-away driver is in the car and never goes in the bank,
4 but the guy inside the bank starts shooting people. The
5 get-away driver is still responsible even though he never
6 entered the bank.

7 The problem here, there is no conspiracy. Or that
8 hasn't been proven to be a conspiracy.

9 The State showed you surveillance videos repeatedly
10 over and over incessantly. Why? To try to get you to buy
11 their bill of goods, to try to make you believe that,
12 because the four guys went to the store together, they
13 must have conspired together. That's the problem with
14 circumstantial evidence. It doesn't add up.

15 Now, Your Honor is going to give you the law, so if
16 there's anything that I say about the law that is
17 inconsistent with anything that he says about the law, go
18 with what he says. He's the judge. I'm a public
19 defender.

20 Now, the theory is if Dajon shot. I think I have
21 shown you that they haven't presented any evidence to that
22 effect. So, the next theory is, "Well, these guys
23 conspired together to commit a robbery, and therefore, it
24 doesn't matter if Dajon shot. If any of them shot 'em,
25 then Dajon is still responsible."

1 Well, what proof is there that there was a robbery
2 and what proof is there that there was a conspiracy? What
3 proof we have is on all these cell phones. The good news
4 about the cell phones, they can tell you exactly where you
5 went. If you use your cell phones when you drive past
6 McDonald's, you're going to get McDonald's ads because the
7 phone knows you're near a McDonald's. That's a whole
8 'nother story.

9 But these cell phones told us the location of the
10 owners. And that's fine. We stipulated that Dajon's
11 phone was in the back of the white Acura. So, to show us
12 back and forth phones driving up and down the street, the
13 phone going past the Sunhouse, the phone going to [REDACTED]
14 Road, you haven't told us anything. You haven't told us
15 proof of a conspiracy. What you have shown us is these
16 four guys are riding in the Cadillac together. I'm going
17 to give you that. That does not equal a conspiracy to rob
18 anyone.

19 Now, Mr. Dicker's phone -- I don't know which one it
20 is. Whichever one is Mr. Dicker's phone, we had a text
21 message with an address: "Meet us on Highway [REDACTED]." And
22 the response that came back from Conn's phone was, "On the
23 way." That does not make a conspiracy. At best, that is
24 one person saying meet me at such-and-such a location.

25 Now, the State will have you believe that Mr. Conn

1 was selling marijuana. They didn't put any testimony on
2 that he was selling marijuana, but they want you to draw
3 another conclusion. The testimony was his car is parked
4 at the Sunhouse, set there all day, talked to this person,
5 talked to that person; therefore, he must have been
6 selling weed.

7 Well, if Kalik Conn was selling marijuana, it would
8 have been simple enough for the Horry County detectives to
9 get that surveillance video of his car that was sitting
10 there all day and find just one person who bought a bag of
11 weed from the man. Bring that person to court, put him on
12 the witness stand, and let him say, "Yeah, I bought a bag
13 of weed from the guy in the white Acura. He was out there
14 selling weed all day." But they didn't. You did hear
15 they went and got the surveillance, but they didn't get
16 anything that actually helps prove the case.

17 So, they want you to run with the theory that he's
18 selling marijuana. Once we're out on [REDACTED] [sic] -- and
19 again, Dajon Grate does not deny he was at [REDACTED] [sic]. He
20 doesn't deny that he was in Mr. Dicker's car -- I mean,
21 Mr. Conn's car.

22 They put on extensive amount of evidence to show
23 that these shoes were in the back of Acura; right?

24 State's Exhibit 128 shows us the shoes in the back
25 of the Acura. Very clearly, there are two pairs of shoes.

1 And, actually, this is important, because you have shoes
2 on each side of the car. There's blood here. We don't
3 know whose blood that is. However, with shoes on both
4 sides of the car, we're not sure what side of the car
5 Mr. Dicker was sitting on. Why do I say that? Because we
6 know that Mr. Conn fired ten rounds from an extended mag,
7 a GLOCK Generation 4 with hollow points.

8 Now, you got to remember what the State pathologist
9 said. This shot was a fatal shot, which means he's not
10 shooting after he's shot in the head. He, therefore; must
11 have fired those ten shots before he was shot.

12 Now, they gave us trajectory rods showing the angles
13 of certain shots. The problem with that, they didn't show
14 the angle of every shot. They only showed the angles of
15 the shots they wanted you to see.

16 Mr. Wilson talked about the shots that went into the
17 trunk. No trajectory rods for that.

18 I'm talking about the shots that Mr. Dicker fired.
19 No trajectory rods for that. But we don't need them. We
20 know that Mr. Conn is the person that saw Dicker in the
21 passenger seat. Driver's seat. Passenger seat. He was
22 shot with defensive wounds, and he was shot in the back.
23 That's coming from Malik [sic] Conn. And then he turns to
24 my client, who is in the backseat, and starts shooting at
25 him.

1 Now, State's Exhibit 63, my client's injuries. My
2 client is shot in the left arm and the left leg. And I
3 took a minute to really have to look at that real close to
4 make sure it wasn't his right leg. It's not. It is his
5 left leg.

6 If you're sitting in the back passenger seat of the
7 white Acura and a driver is in the driver's seat turned to
8 shoot towards the passenger and then turns and shooting
9 towards you, that's where you get shot.

10 And, again, this man is not doing any shooting after
11 he is shot in the head. So, I just want to make clear
12 that what happened -- and these people said they can't
13 tell us the sequence of events, but yeah, they can.
14 Again, we know Mr. Conn didn't do any shooting after he
15 was shot in the head, so we know Conn fired these shots.

16 Now, I want to talk to you about this evidence that
17 they brought you, and we can start right here. I asked
18 the detective about these because we have a picture of
19 them. And the picture has them lined up. And I said,
20 "Detective, were they, like, just laying there on the bed
21 lined up like that?" And he said, "No, they were in the
22 wallet. We took them out of the wallet. We lined them up
23 and then we took a picture of them."

24 It's one of the little things but it's a
25 manipulation of the evidence to try to influence your

1 decision.

2 Another manipulation is when the State takes these
3 surveillance photos and takes these booking photos and
4 sticks them on the board and leaves the board hanging up
5 here in front of you the whole time. And you-all saw me,
6 I would kind of come up here and drag it and take it back
7 over there. I was doing that on purpose, because I wanted
8 to highlight to you what they were doing. They were
9 showing you these pictures and trying to say, "Okay, I
10 showed you these pictures; therefore, he's guilty." No,
11 this picture just means that he was arrested and took a
12 mug shot.

13 These pictures show clearly that they were in the
14 Sunhouse. Again, nobody is contesting that. And being in
15 the Sunhouse is not the same as conspiring to rob someone.

16 They thought you wouldn't notice. But it's the lack
17 of evidence. It's "we're going to overwhelm you with what
18 we have and we're just not going to pay attention to what
19 we don't have."

20 52. Picture of the crime scene general location.

21 53. General location.

22 54. Doesn't exactly tell us much.

23 55. Okay. I see bullet holes there, here, and
24 here. Thank you for that.

25 56. Doesn't tell us much.

1 57. Picture of Mr. Conn slumped over in the
2 driver's seat. Seems to be a bag of marijuana right there
3 next to him.

4 58. Doesn't show us much.

5 59. Okay. We need a picture of Mr. Dicker. I get
6 it.

7 60. Closer picture of Mr. Dicker. I understand
8 that.

9 61. Closer picture of Mr. Conn. I appreciate that.
10 Picture of my client's injuries. Again, he's shot
11 on the left side. I'm sorry; this is the body cam from
12 which they got the picture of my client's injuries.

13 Another picture of my client's injuries.

14 Ring doorbell from whoever that guy was, the
15 neighbor. I'm not even sure why that was here. Okay. It
16 shows us that Todd Fry pulled up to his house. We can
17 recognize it was Todd Fry. He's a light-skinned fellow.
18 There were some other people with him. Could not tell who
19 those people were. Could not tell what they were doing.
20 Solicitor says cleaning the car out, changing the license
21 plate. I don't know. Maybe we should ask Todd Fry. All
22 I can tell you is it came with audio but we didn't hear
23 anything. That's why I said, "No, Your Honor, I don't
24 object to the wind," because all it was doing was playing
25 the wind. If it was anybody saying, "Yo, man, we just got

1 away with that robbery," but no, it wasn't. So thank you
2 for bringing us this. Thank you for wasting 20 more
3 minutes of my time.

4 Bill of Sale for the Cadillac. Don't know why we
5 had to have that guy here. I really don't. Didn't add
6 anything new. The actual issue with the Cadillac is
7 Ms. Berenice, the one that called 911, said it was tan.
8 We got silver. Nobody is even contesting that fact, but
9 you bring us overwhelming evidence of what you do have to
10 try to cover up what you don't have. The dog-and-pony
11 show. Look over here. Don't pay attention to this.

12 Todd Fry's house. Thanks for that.

13 Todd Fry's Cadillac. Thanks for that.

14 Todd Fry's Cadillac with the tag different. So
15 what? VIN number on the tag. So what? Ask Todd Fry why
16 he changed his tag. I don't know.

17 Todd Fry's Air Jordans. I don't even know if any
18 evidence was collected off of these things. Nobody says
19 they got DNA or anything from them. I'm not sure why they
20 were bagged, but we have pictures of them. Thank you for
21 that.

22 Todd Fry's shorts. Again, I don't know why we put
23 this into evidence; however, the good news is these do
24 look like the shorts he was wearing on that surveillance
25 camera, so maybe these actually had some evidentiary

1 value.

2 Todd Fry's bedroom. I get it. You take a close-up
3 picture, you take a distance picture, etc., etc. Another
4 picture, slightly closer. A very, very close picture. I
5 guess this one shows the credit card.

6 State's Exhibit 79, a very close-up picture of the
7 credit card. That shows us that Todd Fry's room has a
8 credit card in it.

9 State's Exhibit No. 80, Jack Smith body cam, first
10 officer on the scene. Didn't really tell us anything but
11 I appreciated it.

12 82. Picture of the Cadillac. Looks like the box of
13 pizza is there and some Pringles are there and some
14 bloodstains. We don't deny that that's Dajon Grate's
15 blood in the back of the Cadillac. After he's shot in the
16 Acura, he gets in the Cadillac. They took him to the
17 house. Mr. Graham testified he didn't know he was shot.
18 All he said was there's three carloads of boys, and he
19 asked them to keep it down.

20 Now, we went down a rabbit hole on all of this.
21 Solicitor is trying to put the investigator up to say that
22 he didn't say what he said. Well, the best evidence would
23 have been to have Mr. Graham on tape. You mean to tell me
24 that you're prosecuting cases in Horry and Georgetown
25 County and this man's got 24 years of experience and

1 doesn't know how to tape-record a witness?

2 And if you do pay attention to the summary that he
3 submitted, it was a summary for a single interview. It
4 then came out after the fact that there were two
5 interviews. Then it came out that the solicitor took some
6 pictures out there and photos. We don't have those
7 photos. We don't know what she tried to show him. I
8 don't know why we went through any of that, but we did.

9 Now, they're drawing conclusions based on a piece of
10 pizza. The pizza isn't moldy, so it was just put there
11 yesterday, and we have got the video of the man buying the
12 pizza. Nobody is arguing that these guys were at the
13 store.

14 The Cadillac. Appreciate that.

15 87. General crime scene area. I appreciate that.

16 88. General crime scene area. I appreciate that.

17 89. Picture of Mr. Dicker. Can't really -- yeah,
18 you can see the wound to his back.

19 90. Another picture of Mr. Dicker with the wound to
20 his back.

21 Distance picture of Mr. Dicker. Close-up picture of
22 Mr. Dicker. General crime scene area. Photos of the
23 Acura.

24 Now, the testimony on State's Exhibit 99, the
25 testimony was there's a shot into the driver's side

1 window. And I think the testimony was that this other
2 shot was coming out of the driver's side window. That's
3 Mr. Conn shooting.

4 Another picture of the Acura with the door open. I
5 asked specifically if they got any fingerprints off of
6 this door. The testimony was that no, they did not.

7 State's Exhibit 103, the passenger side door of the
8 Acura is open. There's some blood in the area. This is
9 where Mr. Dicker -- and this is circumstantial evidence.
10 I can assume that Mr. Dicker got out of his car and went
11 in that direction. There's blood here. We have got a
12 bloody flip-flop that's in the car in the passenger area.
13 That is circumstantial evidence. I'm not asking you to
14 draw any ridiculous conclusions.

15 Let's see. State's Exhibit 105, close up of
16 Mr. Conn. Picture of the interior of the car. More Acura
17 photos.

18 This Canik, State's Exhibit 108, if you look
19 closely, you can see where the bullet is stuck in there.
20 That's what they call stove-topping because what happens
21 is the bullet kind of turns up this way, and therefore,
22 the gun jams.

23 We got testimony that this Canik had fingerprints
24 that belonged to Mr. Dicker. So, we know that he had a
25 firearm.

1 More pictures. What's important about the shell
2 casings is that none of the shell casings had Malik -- I'm
3 sorry; his middle name is Malik -- had Dajon Grate's
4 fingerprints on them. Not a one.

5 State's Exhibit 114. No Dajon Grate fingerprints.

6 State's Exhibit 115. No Dajon Grate fingerprints.

7 State's Exhibit 116, that's the Canik again.

8 117, 118, they're both the Canik again.

9 Bloodstains that were tested for DNA. It is
10 whatever the DNA SLED agent said it was.

11 State's Exhibit 121, no Dajon Grate fingerprints.

12 State's Exhibit 122, no Dajon Grate fingerprints.

13 State's Exhibit 123, no Dajon Grate fingerprints.

14 State's Exhibit 124, no Dajon Grate fingerprints.

15 State's Exhibit 125, that's Mr. Conn. As you can
16 clearly, see he has the firearm in his lap. It has an
17 extended clip.

18 State's Exhibit 126, the close-up of the extended
19 clip with the firearm.

20 State's Exhibit 22, this is a GLOCK Generation 4,
21 27-round extended clip. I think the testimony was hollow
22 point rounds in this firearm -- this is the firearm that
23 Mr. Conn had in his possession. This is the firearm
24 that's in his lap. In addition, he has a magazine and a
25 knife in his back pocket, and the magazine in his back

1 pocket is fully loaded as well.

2 These are pictures of entrance shots to the
3 backseat. The problem with this is the problem with the
4 State's case. When I asked, "Can you tell us the sequence
5 of events? Can you tell us who fired first?" the
6 solicitor tries to make light of it, but that is the
7 issue, because their theory is that these young men went
8 to try to rob Mr. Conn.

9 Now, if Mr. Conn fired first, then that puts their
10 theory on its head. We have seen the flip-flops and shell
11 casing. No fingerprints that belong to my client. No
12 fingerprints that belong to my client. No fingerprints
13 that belong to my client.

14 Flip-flops on both sides of the car, so they want
15 you to try to draw a conclusion as to where he was
16 sitting. Their conclusion is he was sitting behind the
17 driver. My conclusion is he's sitting behind he
18 passenger. I think actually I'm correct because I told
19 you about him getting shot on the left side of his body.

20 State's Exhibit 135 is some marijuana.

21 136. Now, nobody has given you any testimony that
22 my client's fingerprints are on that bag. The State wants
23 you to believe that. The bag is in the backseat. Dajon
24 in the backseat. They robbed him of his bag of marijuana.
25 Well, we don't even know whose bag of marijuana that is.

1 There's been no testimony that Mr. Conn was actually
2 selling marijuana. The point is, they want you to assume
3 that too, and that's the problem with circumstantial
4 evidence.

5 Not my client's fingerprints. Not my client's
6 fingerprints. Not my client's fingerprints. Not my
7 client's fingerprint. This is my client's phone. We did
8 not deny that Dajon Grate was in the backseat of that car.
9 Doesn't mean that anybody conspired to rob Mr. Conn.

10 Not my client's fingerprints. Again, another shot
11 of my client's shoes. Not my client's fingerprints. Not
12 my client's fingerprints on that shell casing. Not my
13 client's fingerprints. Not my client's fingerprints.

14 Let's see if I can save you some time here. Now,
15 Detective May said that she had 500 pages of evidence. I
16 think that was her testimony. I would certainly like to
17 see 500 pages of evidence if I was a juror to try to draw
18 a conclusion as to whether these young men are guilty or
19 not. Instead, what they give you is maybe 20 pages, and
20 they ask you to make that conclusion.

21 I'm trying to save you some time here. I don't want
22 you to think that I'm skipping over any bad evidence. I
23 just don't want to keep repeating evidence.

24 This mask -- well, what they claim to be a mask,
25 State's Exhibit 197, I believe the testimony from

1 Ms. Berenice was a black COVID mask. Just so happens that
2 I have a black COVID mask. This is a black COVID mask.

3 I'm not sure what this is; however, it was not a --
4 nobody testified that the person we saw with the mask was
5 wearing this type of mask. The only testimony was black
6 COVID mask. This mask also has two different forms of DNA
7 on it. I think Mr. Wilson gave you-all ample evidence
8 regarding the failure to send Mr. Fry's DNA to be compared
9 to that mask.

10 State's Exhibit 212, the chair full of money. I
11 specifically asked if this money belonged to Mr. Dicker --
12 or, excuse me, Mr. Conn. Were any fingerprints on this
13 money that belonged to Mr. Conn, and the answer was no.

14 I have already covered the ski mask.

15 This is the .45 caliber bullet that was found on the
16 search warrant. They found a single bullet in the house.
17 I asked did this bullet match with those three that you
18 found out on the crime scene. The answer was no. You can
19 ask the court reporter to play back any testimony if my
20 answer is not accurate or if you heard something
21 different.

22 Spent shell casings. We have already demonstrated
23 not a single casing has Mr. Dajon Grate's DNA or Mr. Dajon
24 Grate's fingerprints on them.

25 Surveillance footage. I'm not going to belabor the

1 point. You-all have seen the surveillance footage ad
2 nauseam.

3 Spent shell casing. Ruger, passenger rear door
4 pocket. Exhibit No. 195. Did not have my client's
5 fingerprints on it. Did not have my client's DNA on it.

6 Exhibit 40, compilation video. I guess that's just
7 showing those boys riding around together again. I don't
8 know.

9 Exhibit 39 is the buccal swab, so that's the
10 standard that was used for comparison.

11 More DNA swabs.

12 I forget whose shirt this is supposed to be. From
13 Victim 1. Okay. It's Mr. Conn's shirt.

14 Latent prints. Again, my client's fingerprints were
15 not on any weapon, not on any ammunition, not on any
16 magazine.

17 Ring doorbell camera video. We have already
18 discussed that.

19 The GLOCK box. They tried to make a big deal out of
20 this box. Here's the thing about this box. It has a
21 serial number on it. The police traced the serial number.
22 The gun did not come back stolen. If this was a stolen
23 handgun, we would have had the owner of the firearm on the
24 witness stand saying, "Hey, my gun is missing."

25 There's no indication that my client touched this

1 box. There's no indication who touched this box, and it
2 was found in a backpack in an abandoned vehicle on the
3 back of the property, and it does not have any
4 fingerprints or DNA associated with it.

5 Lastly, we have Ken Marcus's presentation that was
6 the cell phone thing that we saw. Again, that shows that
7 these young men were together. It does not show that
8 anyone conspired to rob Mr. Conn.

9 T-Mobile records. Phone records, Verizon. More
10 telephone records. More telephone records. iPhone
11 records.

12 And the point of this, again, was the dog-and-pony
13 show where they will show you something repeatedly to try
14 to distract you from the fact of what they don't have.

15 Now, the State's given you a theory about what they
16 think happened in this case, and I'd like to give you a
17 theory as well and it goes like this: Dajon Grate is a
18 ride-along. He's riding with his brother. He's riding
19 with his friend, Mr. Dicker.

20 Dicker comes across Malik [sic] Conn. They clearly
21 meet each other on surveillance video. They must have
22 exchanged phone numbers because Dicker calls Conn at some
23 point. None of that implicates either of these young men
24 in anything.

25 For whatever reason, Mr. Conn meets with Mr. Dicker

1 out there on Highway [REDACTED] and shooting starts. We know
2 that Mr. Conn had a firearm. We know that Mr. Dicker had
3 a firearm. We know that Mr. Conn shot nine -- excuse me,
4 ten times. We know that Mr. Dicker shot four times. Do
5 we know why they were shooting? No. Do we know who shot
6 first? Well, we know that, at a certain point, Mr. Conn
7 was not able to shoot anymore, so we know when his shots
8 took place.

9 There's no evidence that Dajon Grate ever met with
10 Kalik Conn. There's no evidence that Dajon Grate
11 communicated with Kalik Conn. The evidence is that Dajon
12 Grate sat in the backseat of the car when the shooting
13 started.

14 Now, they want to take these videos and they want to
15 impute or they want to drag it from Dicker meeting Conn at
16 the store, and they want to turn it into it was done with
17 a conspiracy to rob Mr. Dicker -- Mr. Conn. The truth is,
18 there is no testimony about a robbery. There is no
19 evidence of a robbery. There is no testimony about a
20 conspiracy. Todd Fry didn't come in here and say, "Hey,
21 the four of us decided we were going to rob him. I didn't
22 want no part of it. I let them use my car." There was no
23 testimony.

24 None of the individuals involved has any evidence on
25 their phones, on their persons that said we conspired to

1 rob anyone. All I can tell you is that, for some reason,
2 Mr. Conn started shooting, and there was shots returned.

3 Now, these young men are charged with murder. And
4 murder is taking of a human life with malice aforethought.
5 If you look at this evidence and you're in the back of the
6 jury room wondering to yourself what happened -- what
7 really did go on, if that goes through your head in the
8 jury room, then you must find these young men not guilty.
9 You see, the definition of "reasonable doubt" is the kind
10 of doubt that would cause a reasonable person to hesitate
11 to act.

12 So, if you're in the jury room and you're saying to
13 yourself, "Well, I don't know what happened," that is
14 hesitation to act. That's hesitation to convict.

15 Said another way, you must be firmly convinced of
16 the guilt of the accused, or if there is a real
17 possibility that the defendant is not guilty, you must
18 give the defendant the benefit of that doubt and find him
19 not guilty.

20 The State gave you a story. They gave you a theory.
21 They gave you some evidence, and they have asked you to
22 extrapolate the rest of that evidence. I come to you to
23 say I don't know what happened in that car. I don't know
24 why a shooting started. All I know is that Conn had to
25 fire first because he couldn't fire second.

1 Let me just address the issue that has come up of
2 Todd Fry's phone. Why is that important? Because it's
3 Todd Fry's Cadillac. It was allegedly used in this
4 conspiracy. If we had Todd Fry's phone, we could have
5 downloaded it and gotten the messages off of it, just like
6 we got off of Mr. Dicker's phone.

7 Had those messages said, "Okay, guys, you can use my
8 car, but I don't want to be a part of this," that might be
9 proof of a conspiracy. But, in truth, we do not have that
10 phone, and we do not have those messages. What we have is
11 a prosecutor that's asking you to make those assumptions.

12 Now, the judge will tell you, to the extent the
13 State relies on circumstantial evidence -- and this is a
14 circumstantial evidence case -- the circumstances must be
15 consistent with each other and, when taken together, point
16 conclusively to the guilt of the accused beyond a
17 reasonable doubt.

18 So, I take you back to the definition of "beyond a
19 reasonable doubt." You have got to take the State's story
20 and you have to be firmly convinced of the guilt of these
21 young men. If, on the other hand, there's a real
22 possibility that these young men did not go to rob anyone,
23 there's a real possibility that maybe they were being
24 robbed. Any benefit of a doubt, you have to give to the
25 defendant, and you have to find the defendant not guilty.

1 Thank you.

2 JURY CHARGE

3 THE COURT: All right. Ladies and gentlemen, all of
4 the testimony and other evidence in this case has been
5 presented to you. The attorneys have made their closing
6 arguments, and now it is the time of the trial when I
7 charge you with the law to be applied in this case.

8 The State has brought this case against two
9 defendants. Each defendant is charged with two counts of
10 murder and one count of armed robbery. The case of each
11 defendant and the evidence and the law concerning that
12 defendant should be considered separately and individually
13 from the evidence and law concerning the other defendant.
14 Your verdict does not have to be the same for both
15 defendants. The fact that you may find one defendant
16 guilty or not guilty does not control your verdict as to
17 the other defendant.

18 When more than one person is charged with a crime,
19 if the evidence warrants it, you may convict one and
20 acquit the other or you may acquit both or you may convict
21 both. Your decision as to each defendant depends upon
22 your view of the testimony and evidence as to each
23 defendant. You must take each defendant and consider the
24 evidence as to that defendant and my instructions to you
25 on the law. You will then write a separate verdict of

1 guilty or not guilty for each individual defendant.

2 Also, three indictments have been issued against
3 each defendant. Each defendant is alleged to have
4 committed two murders and one armed robbery. The fact
5 that a defendant is arrested, charged, and indicted in
6 this case is not evidence in this case. It cannot be
7 considered by you as evidence of guilt in this case, nor
8 does the defendant's arrest, charge, and indictment create
9 any presumption or inference of guilt. These indictments
10 are simply the formal written instruments which contain
11 the charges made against the defendant. They are the
12 formal documents by which this case is brought into this
13 court.

14 Also, each indictment charges a separate and
15 distinct offense. You must decide each indictment
16 separately on the evidence and the law applicable to it,
17 uninfluenced by your decision as to any other indictment.
18 A defendant may be convicted or acquitted on any or all of
19 the offenses charged. You will be asked to write a
20 separate verdict of guilty or not guilty for each
21 indictment.

22 The defendants plead not guilty to all indictments.
23 That plea puts the burden on the State to prove the
24 defendants guilty. A person charged with committing a
25 criminal offense in South Carolina is never required to

1 prove his innocence.

2 I charge you that an important rule of the law is
3 that the defendant in a criminal trial, no matter what the
4 seriousness of the charge may be, will always be presumed
5 to be innocent of the crime for which the indictment was
6 issued unless guilt has been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the defendant
15 which remains with the defendant until it has been
16 stripped from the defendant by evidence satisfying you of
17 the defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It's not just a legal phrase. The presumption of
20 evidence [sic] is a substantial right to which every
21 defendant is entitled unless you, the jury, are satisfied
22 from the evidence of the defendant's guilt beyond a
23 reasonable doubt.

24 Now, what is a reasonable doubt in the law? A
25 reasonable doubt is the kind of doubt that would cause a

1 reasonable person to hesitate to act. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced
3 of the defendants' guilt.

4 We know very few things in this world with absolute
5 certainty, and in criminal cases, the law does not require
6 proof that overcomes every possible doubt. If, based on
7 your consideration of the evidence, you are firmly
8 convinced that the defendant is guilty of the crime
9 charged, you must find the defendant guilty.

10 On the other hand, if you think a real possibility
11 exists that the defendant is not guilty, you must give the
12 defendant the benefit of that doubt and find him not
13 guilty.

14 I remind you that, during this trial, you and I have
15 certain duties to perform. As the trial judge, my
16 responsibility is to preside over the trial of this case.
17 I also have the duty to rule on the admissibility of
18 evidence offered during this trial. You are to consider
19 only the competent evidence before you. If any testimony
20 was ordered stricken from the record in this case during
21 this trial, you must disregard that testimony. You are to
22 consider only the testimony which has been presented from
23 the witness stand, any exhibits which have been made a
24 part of the record in this case, and any stipulations of
25 counsel.

1 I have the additional duty to charge you the law
2 applicable to this case. As the presiding judge, I am the
3 sole judge of the law of this case. Your duties as jurors
4 is to accept and apply the law as I now state it to you.
5 If you have any idea as to what the law is or what the law
6 ought to be and your idea is different from what I now
7 tell you the law is, you must disregard your idea of what
8 the law is or ought to be because you were sworn to accept
9 the law and apply the law exactly as I state it to you.

10 In any every case tried in this court before a jury,
11 the jury is the sole and exclusive judge of the facts in a
12 case. A trial judge cannot intimate, state, comment on,
13 or make any statement to a trial jury about the facts in a
14 case.

15 Since you, the jury, are the sole judge of the facts
16 in this case, do not infer from what I have said during
17 the progress of this trial in ruling upon the
18 admissibility of evidence or otherwise or anything that I
19 say now during the course of this instruction to you that
20 I have any opinion about the facts in this case. The law
21 does not allow me to have an opinion about the facts of
22 this case. This is a matter solely for you, the jury, to
23 determine. As jurors, your duty is to determine the
24 effect, value, weight, and truth of the evidence presented
25 during this trial.

1 Now, two types of evidence are generally presented
2 during a trial: direct evidence and circumstantial
3 evidence. Direct evidence directly proves the existence
4 of a fact and does not require deduction, such as the
5 testimony of an eyewitness who claims to have actual
6 knowledge of a fact. Circumstantial evidence is proof of
7 a chain of facts and circumstances indicating the
8 existence of a fact.

9 Crimes may be proven by circumstantial evidence.
10 The law makes absolutely no distinction between the weight
11 or value to be given to either direct or circumstantial
12 evidence nor is a greater degree of certainty required of
13 circumstantial evidence than of direct evidence.

14 However, to the extent the State relies on
15 circumstantial evidence, the circumstances must be
16 consistent with each other and, when taken together, point
17 conclusively to the guilt of the accused beyond a
18 reasonable doubt. If these circumstances merely portray
19 the defendant's behavior as suspicious, the proof has
20 failed.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt. This burden rests with
23 the State regardless of whether the State relies on direct
24 evidence, circumstantial evidence, or some combination of
25 the two.

1 You should weigh all of the evidence in the case.
2 After weighing all the evidence, if you are not convinced
3 of the guilt of the defendant beyond a reasonable doubt,
4 you must find the defendant not guilty.

5 On the other hand, after weighing all of the
6 evidence, if you are convinced of the defendant's guilt
7 beyond a reasonable doubt, you must find the defendant
8 guilty. Necessarily, you must determine the credibility
9 of witnesses who have testified in this case. Credibility
10 simply means believability.

11 Your duty as jurors is to analyze and to evaluate
12 the evidence and determine which evidence convinces you of
13 its truth. In determining the believability of witnesses
14 who have testified in this case, you may believe one
15 witness over several witnesses or several witnesses over
16 one witness. You may believe a part of the testimony of a
17 witness and reject the remaining part of the testimony of
18 that same witness. You may believe the testimony of a
19 witness in its entirety or reject the testimony of a
20 witness in its entirety. You may consider whether any
21 witness has exhibited to you any interest, bias,
22 prejudice, or other motive in this case. You may also
23 consider the appearance and manner of the witness while on
24 the witness stand.

25 The rules of evidence ordinarily do not permit

1 witnesses to testify to opinions or conclusions. An
2 exception to the rule exists for witnesses we call expert
3 witnesses. A witness who, by education and experience,
4 has become expert in some art, science, profession, or
5 calling may state an opinion as to the relevant and
6 material matter in which the witness claims to be an
7 expert and may also state the reasons for the opinion.

8 You should consider any expert opinion received in
9 evidence in this case and, like any other evidence, give
10 it the weight you think it deserves. If you decide that
11 the opinion of an expert witness is not based on
12 sufficient education and experience or if you conclude
13 that the reasons given in support of the opinion are not
14 sound or that the opinion is outweighed by other evidence,
15 you may disregard the opinion entirely.

16 An expert witness's testimony is to be given no
17 greater weight than that of other witnesses simply because
18 the witness is an expert. Further, you're not required to
19 accept an expert's opinion even though it is not
20 contradicted.

21 Evidence has been presented that a witness may have
22 made a prior statement which is not consistent with the
23 witness's present testimony. You may use this evidence to
24 decide whether to believe the witness. You may also use
25 the evidence of the earlier statement to determine the

1 truth of that statement. You must decide whether to
2 believe the earlier statement or the testimony given at
3 trial.

4 If a witness is shown to have knowingly testified
5 untruthfully concerning any material matter, you may
6 consider this in determining whether to trust the
7 witness's testimony as to other matters. You may reject
8 all the testimony of that witness or give all or part of
9 the testimony the weight you think it deserves.

10 You heard the testimony of a witness who testified
11 in Spanish and testified through an interpreter. Some of
12 you may have some knowledge of Spanish; however, you
13 cannot rely on your own knowledge of Spanish. Even if you
14 disagree with the interpreter's translation, you must
15 accept the witness's testimony as it was translated by the
16 interpreter.

17 I instruct you and emphasize that the fact that the
18 defendants did not testify in this case is not a factor to
19 be considered by you in any way in your deliberation and
20 in your consideration on the question of the guilt or
21 innocence of the defendant. A defendant's failure to
22 testify must not be considered by you in any manner
23 whatsoever.

24 A defendant has the constitutional right to remain
25 silent, and the assertion of this right must not be

1 considered by you in your deliberations. I repeat: Under
2 your oath, you are to draw no conclusion whatsoever from
3 the fact that the defendants in this case did not testify.
4 The fact that a defendant did not testify should not even
5 be discussed in the jury room.

6 The burden of proof, as I have stated to you, is on
7 the State. A defendant is not required to prove his
8 innocence. The burden of proof remains on the State to
9 prove guilt beyond a reasonable doubt.

10 Now, in order to establish criminal liability,
11 criminal intent is required. For example, the mental
12 state required to be proven by the State for a particular
13 crime might be purpose, intent, knowledge, recklessness,
14 or criminal negligence. Criminal intent must be proven by
15 the State beyond a reasonable doubt.

16 Criminal intent is always a matter that must be
17 determined by the jury from the circumstances surrounding
18 the situation. Intent cannot be proven to a mathematical
19 certainty. Medical science cannot dissect a person's
20 brain and determine what the person had in mind. So, the
21 law says that criminal intent may be proved from the
22 circumstances shown to have existed. In other words, the
23 State must show that the circumstances in this case
24 indicate beyond a reasonable doubt that the defendant had
25 criminal intent.

1 Intent does not have to be established by direct and
2 positive evidence. Intent may be established like any
3 other fact, by taking into consideration the acts of the
4 parties and all the other facts and circumstances in the
5 case.

6 Criminal intent is a mental state, a conscious
7 wrongdoing. You must determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed. Criminal intent can arise from action or a
10 failure to act. It may arise from negligence,
11 recklessness, or an indifference to duty or to
12 consequences that is considered by law to be the
13 equivalent of criminal intent.

14 Now, if a crime is committed by two or more people
15 who are acting together in committing a crime, the act of
16 one is the act of all. A person who joins with another to
17 commit an unlawful act is criminally responsible for
18 everything done by the other person which happens as a
19 probable or natural consequence of acts done in carrying
20 out the common plan and purpose.

21 For example, two people can be guilty of arson when
22 only one of the two lit the match that started the fire
23 while the other poured gasoline on the house and acted as
24 a lookout. If two or more people are together, acting
25 together, and assisting each other in committing the

1 offense, the act of one is the act of all, or as it is
2 sometimes said "the hand of one is the hand of all."

3 Prior knowledge that a crime is going to be
4 committed without more is not sufficient to make a person
5 guilty of that crime. Mere knowledge that another person
6 is going to commit a crime, even if the defendant is
7 present when the crime is committed, is not sufficient to
8 convict the defendant as a principle.

9 Guilt as a principle is shown by actual or
10 constructive presence at the scene as a result of a prior
11 arrangement. Therefore, a finding of a prior arranged
12 plan or common scheme is necessary for a finding of guilt
13 as a principle. The State must prove beyond a reasonable
14 doubt, by competent evidence, that the theory of "the hand
15 of one is the hand of all."

16 A principal in a crime is one who either actually
17 commits the crime or who is present, aiding, abetting, or
18 assisting in committing the crime. When a person doesn't
19 act in the presence of and with the assistance of another,
20 the act is done by both. Where two or more are acting
21 with a common plan or intent or present at the commission
22 of a crime, it does not matter who actually commits the
23 crime; all are guilty. "The hand of one is the hand of
24 all."

25 Present at the commission of a crime means to be

1 sufficiently near to aid and abet and assist in the
2 commission of the crime. However, mere presence at the
3 scene of a crime is not sufficient to convict one as a
4 principle on the theory of aiding and abetting. Intent is
5 also a necessary element, for there must have been a
6 common design or intent to commit the crime, and the crime
7 must have been committed pursuant thereto with the person
8 aiding and abetting by some overt act.

9 Intent means intending the result which actually
10 occurs, not accidentally or involuntarily. Intent may be
11 shown by acts and conduct of the defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent. The State must prove these elements beyond
14 a reasonable doubt.

15 Now, mere presence at the scene of a crime is not
16 sufficient to prove someone guilty of a crime. A
17 defendant's presence where a crime is being committed or
18 mere association with a person who commits a crime does
19 not make a defendant an accomplice or an aider and abetter
20 of the person committing the crime.

21 The burden is on the State to prove every element of
22 the crime charged. If you find, after reviewing all of
23 the evidence, that the State has proved that the defendant
24 was only present at the scene of a crime and that the
25 State has not proved beyond a reasonable doubt any other

1 participation in the crime, then you must find that
2 defendant not guilty.

3 The law is that proof of the defendant's presence at
4 the scene of the crime alone is not sufficient to find
5 that defendant guilty.

6 Now, each defendant is charged with committing two
7 murders. To convict a defendant of murder, the State must
8 prove beyond a reasonable doubt that the defendant killed
9 another person with malice aforethought. "Malice" is
10 hatred, ill will, or hostility towards another person. It
11 is the intentional doing of a wrongful act without just
12 cause or excuse and with an intent to inflict an injury or
13 under such circumstances that the law will infer an evil
14 intent.

15 Malice aforethought does not require that malice
16 exists for any particular time before the act is
17 committed, but malice must exist in the mind of the
18 defendant just before and at the time the act is
19 committed. Therefore, a combination of the previous evil
20 intent and the act itself must exist.

21 Malice aforethought may be expressed or inferred.
22 These terms "expressed" and "inferred" do not mean
23 different kinds of malice but merely the manner in which
24 malice may be shown to exist; that is, either by direct
25 evidence or by inference from the facts and circumstances

1 which are proved.

2 Expressed malice is shown when a person speaks words
3 which express hatred or ill will for another or when the
4 person prepared beforehand to do the act which was later
5 accomplished. For example, lying in wait for a person or
6 any other act of preparation only to show that the deed
7 was within the defendant's mind would be expressed malice.
8 Excuse me. Malice may be inferred from conduct showing a
9 total disregard for human life.

10 If a defendant, with malice aforethought, attempts
11 to kill another person but, by mistake, injures or kills a
12 different person, the defendant still has the intent to
13 kill. The intent to kill is merely transferred from the
14 original person the defendant attempted to kill to the
15 actual person killed or injured. The defendant would be
16 guilty of murder as if the attempt had resulted in the
17 death or injury of the person the defendant attempted to
18 kill.

19 If you find that the State has failed to prove
20 beyond a reasonable doubt that the defendant committed
21 murder, you may then consider whether the State has proved
22 beyond a reasonable doubt that the defendant committed
23 voluntary manslaughter. Included within the offense of
24 murder is the lesser offense of voluntary manslaughter.

25 To convict a defendant of voluntary manslaughter,

1 the State must prove beyond a reasonable doubt that the
2 defendant took the life of another in a sudden heat of
3 passion based on sufficient legal provocation. Both heat
4 of passion and sufficient legal provocation must be
5 present at the time of the killing to constitute voluntary
6 manslaughter.

7 Sudden heat of passion may, for a time, effect a
8 person's self-control and temporarily disturb a person's
9 reason. Sudden heat of passion must be the type that
10 would make an ordinary person unable to coolly reflect on
11 his actions and would produce an uncontrollable impulse to
12 do violence.

13 Sufficient legal provocation must be the type that
14 would make a person of ordinary reason and caution become
15 enraged and to lose control temporarily. The provocation
16 needed for voluntary manslaughter must come from some act
17 or related to the victim.

18 Words alone, however vulgar or insulting, are not
19 enough to be legal provocation. The words must be
20 accompanied by some overt threatening act which could have
21 produced the heat of passion.

22 The exercise of a legal right, no matter how
23 offensive it is to another, is never sufficient legal
24 provocation for voluntary manslaughter. If the heat of
25 passion had cooled or if there was enough time between the

1 provocation, if any, and the killing for the passion of a
2 reasonable person to cool, the killing would not be
3 voluntary manslaughter.

4 In deciding whether a reasonable person would have
5 had enough time to cool off, you should consider all the
6 circumstances surrounding the killing. You may consider
7 the nature of the provocation, if any; the defendant's
8 mental and physical state; and the circumstances and
9 relationships between the parties.

10 The defendants are also charged with armed robbery.
11 To convict a defendant of armed robbery, the State must
12 first prove beyond a reasonable doubt that the defendant
13 took personal property from the person or presence of
14 another person. Property is in the presence of a person
15 if it is within the person's reach, inspection,
16 observation, or control so that the person could, if not
17 overcome with violence or prevented by fear, keep
18 possession of the property.

19 The State must also prove beyond a reasonable doubt
20 that the defendant carried the property away, intending to
21 permanently deprive the owner of the property and to keep
22 the property for the defendant's own use. The slightest
23 removal of the property or the complete possession of the
24 property, even for an instant, by the defendant is
25 sufficient to show a taking and carrying away of the

1 property.

2 The taking and carrying away of the property must
3 have been done with violence or by putting the owner of
4 the property in fear of violence.

5 Finally, the State must prove beyond a reasonable
6 doubt that the defendant was armed with a deadly weapon
7 during the robbery. A deadly weapon is any article,
8 instrument, or substance which is likely to cause death or
9 great bodily harm. Whether an instrument has been used as
10 a deadly weapon depends on the facts and circumstances of
11 each case.

12 The following are examples of which may be deadly
13 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger,
14 a knife, a slingshot, metal knuckles, a razor, gasoline, a
15 fire bomb or Molotov cocktail, and lighter fluid. A gun
16 may be a deadly weapon even if it does not operate.

17 Now, as to the indictments charging the defendants
18 with murder, you must find one of three possible verdicts
19 for each indictment. No significance is to be given to
20 the order in which I state these possible verdicts to you;
21 I simply must state one first, one second, and one third.

22 The possible verdicts for each indictment for murder
23 are (1) We, the jury, find the defendant guilty of murder;
24 or (2) We, the jury, find the defendant guilty of
25 voluntary manslaughter; or (3) We, the jury, find the

1 defendant not guilty.

2 The possible verdicts for each indictment charging
3 the defendant with armed robbery are either guilty or not
4 guilty.

5 Ladies and gentlemen, your verdict for each
6 indictment must be unanimous. As I previously instructed
7 you, the case of each defendant and the evidence and the
8 law concerning that defendant should be considered
9 separately and individually from the evidence and law
10 concerning the other defendant.

11 Also, as I previously instructed you, you must
12 decide each indictment separately on the evidence and the
13 law applicable to it, uninfluenced by your decision as to
14 the other indictments.

15 Ms. Gore, as foreperson, when the jury agrees on a
16 verdict, you will check the appropriate verdict on the
17 verdict form and then sign your name as foreperson. When
18 the jury has reached a unanimous verdict on each
19 indictment and you have completed the verdict form, you
20 can then knock on the door and let the bailiff know that
21 you have reached a verdict and we'll bring you back into
22 the courtroom at that time.

23 Now, you have been allowed to take notes during the
24 trial of this case if you wanted to, and I will now allow
25 you to take your notes with you into the jury room while

1 you deliberate on your verdict. However, note-taking is
2 not required.

3 Please remember that some people are better
4 note-takers than others. Juror notes should not be given
5 any greater weight than the recollection of other jurors.
6 The recollection of individual jurors should be considered
7 as reliable as notes taken by any other jurors.

8 Now, I'm going to ask that you return to the jury
9 room. You can take your notepads with you, but please do
10 not begin your deliberations. I have to check with the
11 attorneys to see if they have any additional charges or
12 corrections to my charge on the law. If they do and I
13 deem them appropriate, I'll bring you back into the
14 courtroom to make whatever corrections or additional
15 charges are warranted.

16 If there are none, then the exhibits will be brought
17 back to you in the jury room, and the bailiff will
18 instruct you to begin your deliberations; however, do not
19 begin your deliberations until the bailiff instructs you
20 to do so. Okay?

21 Thank you very much. You're excused to the jury
22 room.

23 (The jury exited the courtroom at 4:01 p.m.)

24 THE COURT: All right. Any exceptions to the jury
25 charge or additional charges from the State?

1 MS. MARTIN: Nothing from the State.

2 THE COURT: Mr. Wilson?

3 MR. WILSON: Your Honor, I don't have any objections
4 to anything. The only thing I would say is that, on
5 page 4 of the Court's charge, it says, "The presumption of
6 evidence." I think that that was a scrivener's error and
7 it meant "presumption of innocence," second paragraph.

8 THE COURT: Page 4?

9 MR. WILSON: Yes, sir.

10 THE COURT: The presumption of innocence --

11 MR. WILSON: It's at the bottom of -- it's the
12 second full paragraph in your charge on page 4 on -- I
13 guess that's the reasonable doubt. It's actually under
14 presumption of innocence.

15 THE COURT: Okay. Mine says the -- page 4,
16 "Presumption of innocence is like a robe of righteousness
17 placed about the shoulders of the defendant which remains
18 with the defendant until it has been stripped from the
19 defendant by evidence satisfying you of the defendant's
20 guilt beyond a reasonable doubt. Presumption of innocence
21 is not a mere theory. It is not just a legal phrase. The
22 presumption of" -- oh, I see.

23 MR. WILSON: Yes, sir.

24 THE COURT: Okay. I see where it says "evidence,"
25 but I'm thinking I said "innocence."

1 MS. LIVESAY: I thought you said "innocence."

2 MR. WILSON: No, you said "evidence." I was
3 listening very closely, and that's why I made the note.

4 MS. LIVESAY: Bobbi can read it back. Do you want
5 to go back and see?

6 THE COURT: Well, what do you want me to do?

7 MR. WILSON: Well, I don't -- I mean, I don't think
8 I have a problem with it. I'm just pointing it out so
9 that, you know, in the future, we would have it corrected
10 but -- because you clearly said "presumption of innocence"
11 earlier. I mean, there's no question about that.

12 THE COURT: Yes.

13 MR. WILSON: And it was just that that's a typo
14 somebody put in.

15 THE COURT: All right. Well, I thank you for
16 bringing that to my attention.

17 All right. Anything further, Mr. Wilson?

18 MR. WILSON: No, sir.

19 THE COURT: Mr. Galmore?

20 MR. GALMORE: No, sir.

21 THE COURT: All right. Let's make sure we have got
22 all the exhibits.

23 Are the verdict forms agreeable with everyone?

24 MS. MARTIN: Yes, Your Honor.

25 MR. WILSON: Yes, sir.

1 MR. GALMORE: Yes, sir.

2 THE COURT: Here are the verdict forms. Let's make
3 sure we have got all the exhibits, and we can take the
4 exhibits and the verdict forms back, and the bailiff can
5 instruct the jury to begin their deliberations.

6 MS. MARTIN: And, Your Honor, will you also make a
7 finding -- just because there is an old case that says we
8 need to do it -- will you make a finding that the guns are
9 safe for the jury for -- to go back to the jury?

10 THE COURT: Well, y'all tell me. I haven't even
11 looked at them.

12 MS. MARTIN: It's an obscure thing that I read years
13 ago, but still...

14 THE COURT: Well, let's get everybody to take a look
15 at it and see if anybody thinks they're unsafe.

16 MS. MARTIN: Y'all okay with that? There is a live
17 casing. The .45. I do not believe that -- at least the
18 GLOCK won't shoot it.

19 (A discussion was held off the record.)

20 THE COURT: Does everybody agree they're safe to
21 take back?

22 MR. GALMORE: Yes, sir.

23 MS. MARTIN: Would you like to see?

24 THE COURT: Y'all tell me. Y'all know more about it
25 than I do. That looks fine to me.

1 MS. MARTIN: Thank you, Your Honor.

2 THE COURT: All right. That's fine to take back.

3 While they're getting this evidence together, if you
4 want to go ahead and get Mr. Bellamy and Ms. Carleton, our
5 alternates, and bring them out.

6 (The alternates entered the courtroom at 4:07 p.m.)

7 THE COURT: Ms. Carleton and Mr. Bellamy, this is
8 the part of the trial I hate because, as alternates, since
9 we still have our 12 jurors, the law says that you cannot
10 participate in the deliberations. And I hate that because
11 we make you sit through the whole trial, come back, do
12 everything a juror does, but then we don't let you
13 participate in the decision. But I want to thank you for
14 your service.

15 This concludes your duties as jurors not only for
16 this case but for this term. You have got a one-year
17 disqualification from serving jury duty. You've got a
18 three-year exemption. I hope you don't exercise your
19 exemption because we need good jurors. And I want to
20 thank you your service.

21 You're at liberty to go or if you want to stay and
22 see what happens with the outcome, you're at liberty to do
23 that, whichever you prefer.

24 Do either one of you have anything in the jury room?

25 JUROR: No, sir.

1 THE COURT: All right. Well, as I said, you're at
2 liberty to go if you want to or if you want to stay and
3 see what happens, you can do that. If you want to stay a
4 while and go, you can do that as well. Okay?

5 Thank you very much. I appreciate it.

6 JUROR: You're welcome, Your Honor.

7 (The evidence went back to jury room at 4:17 p.m.).

8 (A recess was taken from 4:17 p.m. to 5:20 p.m.
9 while the jury deliberates.)

10 JURY QUESTION

11 THE COURT: Ladies and gentlemen, I have got two
12 questions from the jury. It says, "What is the law of (1)
13 self-defense if they leave, and (2) What is the definition
14 of voluntary manslaughter?"

15 Now, I was thinking of -- this is what I think I
16 should do and then I'll get your comments in just a minute
17 -- bring them back in and to tell the jury that, "I have
18 ruled as a matter of law that self-defense is not an
19 available offense in this case; therefore, the sole
20 consideration on the indictments for murder is whether or
21 not the State has proved beyond -- has proved murder
22 beyond a reasonable doubt. If you find that the State has
23 not proved murder beyond a reasonable doubt, then you must
24 consider or decide whether or not the State has proved
25 voluntary manslaughter beyond a reasonable doubt.

1 Voluntary manslaughter is the killing of another person in
2 the sudden heat of passion based on sufficient legal
3 provocation. Both heat of passion and sufficient legal
4 provocation must be present at the time of the killing.
5 To constitute voluntary manslaughter and sudden heat of
6 passion may for a time" -- well, no. "Sufficient legal
7 provocation must be the type that would make a person of
8 ordinary reason and caution become enraged and to lose
9 control temporarily. Then, if you find that the State has
10 failed to prove murder and voluntary manslaughter beyond a
11 reasonable doubt, you must find the defendants not guilty
12 -- or find the defendant not guilty on the indictment for
13 murder."

14 What's the State's position?

15 MS. LIVESAY: I think whatever we read to them
16 originally on voluntary manslaughter is what I say read
17 again.

18 THE COURT: The whole charge on voluntary
19 manslaughter?

20 MS. LIVESAY: I think so. I mean, just as an
21 abundance of caution.

22 And as to the self-defense, I think we need to make
23 it clear that it's been ruled that the defendants in this
24 case legally -- whatever you were going to say -- don't
25 have the right to self-defense or whatever, because I

1 think it needs to be clear that self-defense as to the
2 charge is pertaining to the defendants, not the victim.

3 THE COURT: Well, that's why I said my curative
4 instruction would be, "I have ruled as a matter of law
5 that self-defense is not an available defense to the
6 defendants in this case."

7 MS. LIVESAY: Yes, yes.

8 THE COURT: All right. Mr. Wilson?

9 MR. WILSON: Your Honor, I would object to that.
10 And the reason being, if the Court recalls, the
11 pathologist testified that there were defensive wounds on
12 Mr. Dicker as he left. The State's whole theory of this
13 case is that these were all people together and that they
14 were acting in concert together. So, there's no way that,
15 if Mr. Dicker has a right to self-defense, that they --
16 that these defendants would not then have that same right.

17 I think a better charge would be to charge the jury
18 that the State has to prove -- disprove all the elements
19 of self-defense in proving their -- to meet their burden
20 of proof; that they have to prove it. They have to
21 disprove all the elements of self-defense in order to
22 sustain their burden. I think that's a better charge in
23 this case than -- because this is tantamount to a comment
24 on the facts, is what my concern is, for the Court to say
25 to the jury, "Well, they can't claim self-defense,"

1 because that's what you're saying -- that's what that
2 charge would be saying.

3 And I think that's clearly a comment on the facts,
4 because this jury -- obviously, somebody, on this jury has
5 a question, and that question was clearly raised on
6 cross-examination through the pathologist about whether or
7 not they were defending themselves.

8 And I went at great length in explaining it, how he
9 was defending himself. And I say again, the whole theory
10 of their case was, was that these guys were acting in
11 concert. So, if they're acting in concert, how can one
12 claim self-defense and be defending himself and not all?

13 THE COURT: Yeah, but your -- the problem I have
14 with that, I don't know that I have ever had a case where
15 the defendant is basically asserting an alternative
16 defense. I mean, this whole case, there's -- there are
17 no -- there's no evidence certainly that the defendants
18 were defending themselves. So, all you have got is the
19 defense of others.

20 The defendants the whole time have asserted, "We
21 didn't do it. We don't think the State has even proved,
22 you know, these elements of murder. We didn't do it. We
23 weren't there. We didn't participate. But, if we were,
24 then we acted in self-defense."

25 I don't know that that's proper, and I don't -- and

1 I have not -- I have never had a case -- typically, every
2 time I have charged a jury on self-defense, there has been
3 some evidence that the defendant was present at the scene,
4 participated in the killing but said they were not guilty
5 of murder because they were acting in self-defense.

6 Now, I understand the State has to disprove that,
7 but I don't know that the fact that you have got
8 Mr. Dicker with a gunshot in the elbow entitles these
9 defendants to a charge of self-defense when there's
10 nothing to indicate that they were acting in defense of
11 someone else. They're not -- their defense is they
12 weren't acting, period.

13 MR. WILSON: Yeah, but -- but, Your Honor, the
14 problem is -- the problem is the State's theory of this
15 case is that these gentlemen, including Mr. Dicker, was
16 acting in concert. She said it multiple times.

17 There's no way to say that one of them, Mr. Dicker,
18 who ended up dying, could have claimed it if he had lived
19 but then the other two, because he didn't live and he got
20 killed, that they can't now claim that.

21 And then to go the next step and say to them that
22 they can't claim self-defense. I have never seen a Court
23 do that where they tell the jury you can't claim -- they
24 can't claim self-defense when the jury clearly has an
25 issue about whether they were defending themselves based

1 on their question in general. That's just my position.

2 THE COURT: All right. Mr. Galmore?

3 MR. GALMORE: Your Honor, I don't believe there has
4 been an actual ruling that self-defense was not available
5 to these defendants. I know we have gone nine days and
6 I'm thinking back to last week, but I don't think the
7 issue ever came up. So, I don't think the Court said
8 self-defense is not available.

9 With that said, I would object to the language that
10 the Court said, "I rule as a matter of law that
11 self-defense is not available." Maybe perhaps the Court
12 could simply say that, "You have the evidence and you have
13 the legal standards that I have given you," and then
14 reiterate the voluntary manslaughter.

15 But to say that self-defense is not available as a
16 matter of law, it was not an issue that was discussed.
17 And I think that does intrude into the jury's purview of
18 the evidence. They saw something that none of us saw. I
19 guess they're entitled to that if that's obviously the
20 evidence, sir.

21 THE COURT: All right. Let me hear from the State.
22 If I just tell them, "I charged you with the law in this
23 case, and the law that I have charged you is the only law
24 that you can consider," and then just not address ---

25 MS. LIVESAY: I mean...

1 THE COURT: --- the question on self-defense.

2 MS. MARTIN: Well, I think that it's already been
3 ruled upon by the Supreme Court. Justice Few has been
4 very, very clear that self-defense is not available in
5 situations such as this because there is such a nexus
6 between guns and drugs.

7 And I think that this is absolutely parallel to the
8 case. And you'll give me just a second, Your Honor, I do
9 have -- let me find it. I do have the case, but Justice
10 Few maybe like in 2019 --

11 MS. LIVESAY: Yes.

12 THE COURT: That was an appeal of a
13 stand-your-ground ruling?

14 MS. LIVESAY: No, Your Honor. It was actually -- in
15 that case, it was a charge that was given and Justice Few
16 said that's not correct. So -- that self-defense was not
17 an appropriate charge to give the jury because there is --
18 the defendants were not entitled to a charge of
19 self-defense when they brought guns to a drug deal. If
20 so, you'll give me one second, let me find that case. I
21 believe it's State v. Wallace.

22 THE COURT: Well, the fact of the matter is, is I'm
23 not going to charge them. I don't know that I'm violating
24 -- I'm not going to charge them on self-defense. That's
25 why, rather than even raising the issue of self-defense to

1 the jury, just say, "I have charged you on the law, and
2 the law that I have charged you is the only law you can
3 consider."

4 MS. LIVESAY: Yeah, I think where -- it's a weird
5 place because the jury instructions have to talk to
6 whatever the evidence is, and the defense kind of got up
7 there and said we weren't there, but in a slight -- it was
8 also kind of Kalik Conn was firing and kind of trying to
9 put out self-defense, even though there was no evidence of
10 self-defense. So, I think that's where the question comes
11 into play.

12 MR. WILSON: But the whole case here is
13 circumstantial. And just like the solicitor was arguing
14 that she thought these circumstances pointed to the guilt
15 of these defendants, we were saying that these
16 circumstances actually point to Mr. Conn being the
17 initiator of this. And the jury, apparently -- somebody
18 on that jury, apparently, believes that and understands
19 that. That's why that question is coming up.

20 And so -- and that was confirmed with the
21 pathologist, as I said, who clearly says that was -- in
22 her opinion, that was consistent with a defensive wound.

23 MS. LIVESAY: That's not what she said.

24 THE COURT: Well, I don't know, but you have got
25 your point on the record. I'm not going to charge

1 self-defense. I'm not going to say that I have ruled as a
2 matter of law that self-defense is not available. I'm
3 just going to say I have charged you the law to be applied
4 in this case, and that is the only law that you can
5 consider. And then I'm going to recharge them on
6 voluntary manslaughter.

7 MR. WILSON: Yes, sir.

8 MR. GALMORE: Yes, sir.

9 THE COURT: All right?

10 Anything from the State before we bring the jury in?

11 MS. LIVESAY: No, sir.

12 THE COURT: Anything, Mr. Wilson?

13 MR. WILSON: Nothing further.

14 MR. GALMORE: No, sir.

15 THE COURT: All right. Let's bring the jury in.

16 MR. GALMORE: Your Honor, do you maybe want to
17 inquire about how long they're going to go this evening,
18 as long as we have them coming in and we're at a breaking
19 point?

20 THE COURT: Well, typically -- I know what you're
21 talking about and what I'll generally do is just let the
22 jury decide when it starts getting a little bit later, if
23 they want to stay and continue to deliberate or if they
24 want to break until tomorrow morning.

25 I hesitate to bring it up now because I don't know

1 how quickly or whether these -- I mean, this -- answering
2 this question is going to drag it out or whether it's
3 going to end the deliberations quicker. Number one.

4 Number two, I'll let y'all kind of approach me when
5 y'all think it's getting -- when I need to question them.

6 (The jury entered the courtroom at 5:34 p.m.)

7 THE COURT: All right, ladies and gentlemen.
8 Welcome back.

9 Ms. Gore, I have gotten the question from the jury
10 that says, "What is the law of self-defense if they leave,
11 and what is the definition of the voluntary manslaughter."
12 Is that correct?

13 JURY FORELADY: Yes.

14 THE COURT: All right. As to your first question,
15 all I can tell you is that I have charged you with the law
16 in this case, and the law that I charged you is the only
17 law that you can consider. Okay? You can't consider
18 anything that I haven't charged you.

19 As to voluntary manslaughter, I will charge you
20 again that, if you find that the State has failed to prove
21 beyond a reasonable doubt that a defendant committed
22 murder, you may then consider whether the State has proved
23 beyond a reasonable doubt that the defendant committed
24 voluntary manslaughter. Included within the offense of
25 murder is the lesser offense of voluntary manslaughter.

1 To convict a defendant of voluntary manslaughter, the
2 State must prove beyond a reasonable doubt that the
3 defendant took the life of another in the sudden heat of
4 passion based on sufficient legal provocation. Both heat
5 of passion and sufficient legal provocation must be
6 present at the time of the killing to constitute voluntary
7 manslaughter. Sudden heat of passion may, for a time,
8 affect a person's self-control and temporarily disturb a
9 person's reason. The sudden heat of passion must be the
10 type that would make an ordinary person unable to coolly
11 reflect on his actions and would produce an uncontrollable
12 impulse to do violence.

13 Sufficient legal provocation must be the type that
14 would make a person of ordinary reason and caution become
15 enraged and to lose control temporarily. Provocation
16 needed for voluntary manslaughter must come from some act
17 of or related to the victim. Words alone, however vulgar
18 or insulting, are not enough to be legal provocation. The
19 words must be accompanied by some overt, threatening act
20 which could have produced the heat of passion.

21 The exercise of a legal right, no matter how
22 offensive it is to another, is never sufficient legal
23 provocation for voluntary manslaughter. If the heat of
24 passion had cooled or if there was enough time between the
25 provocation, if any, and the killing for the passion of a

1 reasonable person to cool, the killing would not be the
2 voluntary manslaughter.

3 In deciding whether a reasonable person would have
4 had enough time to cool off, you should consider all of
5 the circumstances surrounding the killing. You may
6 consider the nature of the provocation, if any, the
7 defendant's mental and physical state, and the
8 circumstances and relationships between the parties.

9 All right. I'm going to return you to the jury room
10 to continue your deliberations. All right?

11 (The jury exited the courtroom at 5:37 p.m.)

12 THE COURT: All right. I'm going to mark this
13 question. This will be Court's Exhibit ---

14 COURT STENOGRAPHER: Two.

15 THE COURT: --- 2.

16 (Court's Exhibit No. 2, Jury Question/Note was
17 marked for identification.)

18 THE COURT: Anything further the State wants to put
19 on the record?

20 MS. MARTIN: Nothing from the State.

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Nothing further, Your Honor.

23 THE COURT: Mr. Galmore?

24 MR. GALMORE: No, sir.

25 THE COURT: Thank you very much. We'll be in recess

1 until we hear from the jury.

2 MS. MARTIN: Yes, sir.

3 (A recess was taken from 5:38 p.m. to 7:08 p.m.)

4 VERDICT

5 THE COURT: All right. I understand the jury has
6 reached a verdict.

7 Anything from the State before we bring the jury in?

8 MS. LIVESAY: No, sir.

9 THE COURT: Mr. Wilson, anything from your client
10 before we bring the jury in?

11 MR. WILSON: No, sir.

12 THE COURT: Mr. Galmore?

13 MR. GALMORE: No, sir.

14 THE COURT: All right. Let's bring the jury in.

15 (The jury entered the courtroom at 7:13 p.m.)

16 THE COURT: All right. Ladies and gentlemen,
17 welcome back.

18 Madam Forelady, has the jury reached a unanimous
19 verdict on all indictments?

20 JURY FORELADY: Yes, sir.

21 THE COURT: And have you completed the verdict forms
22 and signed it?

23 JURY FORELADY: Yes, sir.

24 THE COURT: All right. If you'd please hand them to
25 the bailiff. Thank you.

1 All right. I'll ask the clerk to please publish the
2 verdict.

3 THE CLERK: State of South Carolina, County of
4 Horry, versus Nasirea Brewnoplis Jerome Grate as to
5 Indictment No. 2023-GS-26-00424, charging the defendant
6 with murder of Kalik Conn, we, the jury, by unanimous
7 consent, find the defendant guilty of voluntary
8 manslaughter.

9 As to Indictment No. 2023-GS-26-00425, charging the
10 defendant of murder of Jeremiah Dicker, we, the jury, by
11 unanimous consent, find the defendant not guilty.

12 As to Indictment No. 2023-GS-26-00452 [sic],
13 charging the defendant with armed robbery, we, the jury,
14 by unanimous consent, find the defendant not guilty.

15 Dated August 28, 2024, signed by Foreperson Victoria
16 Gore.

17 State of South Carolina, County of Horry, versus
18 Dajon Malik Laverne Grate, as to Indictment No.
19 2023-GS-26-00422, charging the defendant with murder of
20 Kalik Conn, we, the jury, find the defendant guilty on
21 voluntary manslaughter.

22 As to Indictment No. 2023-GS-26-00423, charging the
23 defendant with murder of Jeremiah Dicker, we, the jury, by
24 unanimous consent, find the defendant not guilty.

25 As to Indictment No. 2023-GS-26-00453, charging the

1 defendant with armed robbery, we, the jury, by unanimous
2 consent, find the defendant not guilty.

3 Dated August 28, 2024, signed by the Foreperson
4 Victoria Gore.

5 Ladies and gentlemen of the jury, if this your
6 verdict, so signify by raising your right hand.

7 (All jurors raised their right hand.)

8 THE CLERK: Thank you.

9 THE COURT: All right. Let the record reflect that
10 all jurors raised their right hand.

11 Any polling of the jury? Mr. Wilson?

12 MR. WILSON: Nothing further in polling, Your Honor.

13 THE COURT: Any polling, Mr. Galmore?

14 THE WITNESS: No, sir.

15 THE COURT: All right. Ladies and gentlemen, I want
16 to thank you for your service. That will conclude your
17 duties as jurors not only in this case but for this term
18 of court. You have got a one-year disqualification from
19 serving jury in state circuit court. You've got a
20 three-year exemption. I hope you don't exercise your
21 exemptions because we do need good jurors. And I want to
22 thank you for your service in this case.

23 So, you're free to go for the remainder of the day,
24 remainder of the term. I hope everyone has a good day.
25 Thank you very much.

1 (The jury exited the courtroom at 7:17 p.m.)

2 THE COURT: All right. It's 7:15. Do we want to go
3 ahead and address post-trial motions and sentencing now,
4 or do y'all want to come back tomorrow morning?

5 MR. WILSON: Tomorrow morning is fine with me.

6 THE COURT: Is that agreeable? We'll come back 9:30
7 tomorrow morning?

8 MS. LIVESAY: Yeah, but we have to have some sort of
9 paperwork. I don't know what the sheriff's office is
10 going to need.

11 THE COURT: Well, they have got Mr. Dajon Grate.
12 We'll need something to take, Mr. Wilson, your client into
13 custody.

14 MR. WILSON: Yes, sir.

15 MS. LIVESAY: What y'all need from us? Anything?

16 THE DEPUTY: Yeah, we need the paperwork on that.

17 THE COURT: I mean, what paperwork? We're going to
18 be sentencing tomorrow morning.

19 I tell you what, he's out on -- he's on ankle
20 monitoring?

21 MR. WILSON: He is.

22 THE COURT: What I'm saying is, can we just revoke
23 bond? But I guess bond is already ---

24 MS. LIVESAY: Revoked.

25 THE COURT: --- revoked.

1 MS. LIVESAY: When we started the trial. We can
2 just do that now, if you want to.

3 MS. MARTIN: Or can we do a Form 4, Your Honor? I
4 believe that they said if we do a Form 4 --

5 THE COURT: That just says to take Mr. Wilson's
6 client into custody? That will suffice?

7 THE DEPUTY: Yes, sir.

8 THE COURT: Okay. We'll do that. And then we'll
9 come back tomorrow morning to do any post-trial motions.

10 Now, you don't have to make post-trial motions
11 tomorrow morning. I know the Rules of Criminal Procedure
12 give you a certain time limit. If you want to make them
13 tomorrow morning, I'll hear them. If you want to do --
14 exercise the time limits provided by the Rules of Criminal
15 Procedure, I'll let you do that, but at the least, we'll
16 come back tomorrow morning for the sentencing ---

17 MR. WILSON: That's fair enough.

18 THE COURT: -- assuming if you want a delay on your
19 motions. Okay?

20 MR. WILSON: Thank you, sir.

21 THE COURT: Can somebody get me an order to sign?
22 Okay. You can do that?

23 We'll need to take both defendants into custody.
24 I'll get that order to you right now, and then we'll come
25 back tomorrow.

1 Have them back what time? I guess y'all bring them
2 back at 9:00 tomorrow morning?

3 MR. GALMORE: 9:30.

4 THE COURT: I mean, I'll take the bench at 9:30.

5 MR. GALMORE: Yes, sir. That'll be fine.

6 MR. WILSON: If they could be here at 9:00, because
7 I need a few minutes to talk to him before the sentencing.

8 THE COURT: All right. Anything from the State at
9 this time?

10 MS. LIVESAY: No, sir. We're doing this order.

11 THE COURT: Okay. That will be fine.

12 MR. WILSON: Your Honor, are we finished?

13 THE COURT: Yes. I'm just filling out this Form 4
14 now.

15 All right. The Form 4 just said the defendant is to
16 be taken into custody due to jury verdict of guilty for
17 voluntary manslaughter.

18 MR. WILSON: Yes, sir.

19 THE COURT: Who do I give this to?

20 Anything from the State until tomorrow morning?

21 MS. LIVESAY: No, sir.

22 MR. WILSON: No, sir.

23 MR. GALMORE: No, sir.

24 THE COURT: All right. We'll be in recess until
25 9:30 tomorrow.

1 (The trial adjourned for the day at 7:25 p.m.)
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1 CERTIFICATE OF COURT REPORTER

2 *****

3 CASE NAME/NUMBER: State v. Grate and Grate

4 DATE OF HEARING: August 28, 2024 (Trial Day 7)

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings to the best of my ability, and that I
9 am neither counsel for, related to, nor employed by any of
10 the parties to this case, and I have no interest,
11 financial or otherwise, in its outcome.

12
13 14 /s/ Bobbi Fisher

15 Bobbi Fisher, RPR, Court Reporter III

16 Date Submitted: 12/16/24

17
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1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
2 COUNTY OF HORRY * TRANSCRIPT OF RECORD
3 -----X
4 STATE OF SOUTH CAROLINA, *
5 State, *
6 vs. * Case No. 2023-GS-26-00422
7 * 2023-GS-26-00423
8 * 2023-GS-26-00453
9 DAJON MALIK LAVERN GRATE, *
10 Defendant. *
11 -----X
12 STATE OF SOUTH CAROLINA, *
13 State, *
14 vs. * Case No. 2023-GS-26-00424
15 * 2023-GS-26-00425
16 * 2023-GS-26-00452
17 NASIREA BREWNOPLIS JEROME *
18 GRATE, *
19 Defendant. *
20 -----X

August 19-28, 2024

TRIAL - VOLUME 8
Thursday, August 29, 2024

B E F O R E:

The Honorable Benjamin Culbertson, Presiding Judge;
and a jury.

Court Stenographer: Bobbi Fisher, RPR
SC Official Court Reporter III

A P P E A R A N C E S:

Nancy Livesay, Esq.

Liz Martin, Esq.

Assistant Solicitors for the State

James Galmore, Esq.

Attorney for Defendant Dajon Grate

Ralph Wilson, Sr., Esq.

Attorney for Defendant Nasirea Grate

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I N D E X

WITNESS/DESCRIPTIONPAGE

Post-Trial Motion

1468

Sentencing the Court

1484

E X H I B I T S

(None.)

P R O C E E D I N G S

(9:33 a.m.)

THE COURT: All right. Are we ready to move forward?

MR. WILSON: Yes, sir.

THE COURT: All right. Any post-trial motions at this time? As I said yesterday, I know the Rules of Criminal Procedure give you a time limit. You can exercise that time limit, or if you want to go ahead and make a motion at this time.

MR. WILSON: We will go ahead and do it today, Judge.

THE COURT: All right.

MR. WILSON: There's no point in delaying it.

P O S T - T R I A L M O T I O N

MR. WILSON: Your Honor, at this point, we make a motion for a judgment of acquittal notwithstanding the verdict and ask for a new trial in this matter. And I'm basing that, Your Honor, on the motions that we made at the end of the State's case and our motion that we made at the end of the State's case for a mistrial.

In addition to that, I think we made a motion for a directed verdict on the issue of armed robbery and on the issue of murder or the charge of murder. And, of course, the Court denied both those motions. And I think that the

1 jury -- I think it's evident that, from their verdict,
2 that, obviously, they didn't believe that the testimony
3 was sufficient for either of those charges.

4 So, collectively, I think I'm asking the Court to
5 grant us an acquittal based on that or, in the
6 alternative, for the Court to grant us a new trial on
7 those issues. And, as I said, all of those issues that we
8 raised during the -- at the end of the State's case,
9 including the mistrial.

10 So, that would be my motion, Your Honor.

11 THE COURT: All right. I'm going to deny the
12 motion. I'm going to stick by my prior rulings.

13 MR. WILSON: Thank you.

14 THE COURT: Anything further?

15 MR. WILSON: Nothing further from me, Your Honor.

16 THE COURT: Mr. Galmore?

17 MR. GALMORE: Yes, sir, Your Honor. I would make a
18 motion for an order in arrest of judgment and a motion for
19 a new trial just based on the insufficiency of the
20 indictment and the insufficiency of the evidence.

21 I would point out to the Court, for both of these
22 young men, that the jury has spoken. The jury listened to
23 all of the evidence, and they did not convict either of
24 these young men on any of the charges in the indictments.
25 And that says a lot.

1 They were found guilty of a lesser included offense
2 and, even with the jury question, we understand that the
3 jury gave strong consideration to a self-defense charge.

4 Regarding the evidence, again, there's no direct
5 evidence that any of these young men were involved in
6 anything. The jury has spoken on that too. They did come
7 back with a conviction.

8 But I think that conviction was kind of a
9 compromised verdict because they didn't know the
10 circumstances of what happened, the Solicitor's Office
11 didn't know the circumstances of what happened. They
12 alleged a robbery but clearly the jury found them not
13 guilty of that, and it appears, again, that the jury was
14 looking at some degree of self-defense involved in this
15 case.

16 For those reasons, we would ask the Court to grant
17 our motion in arrest of judgment and our motion for a new
18 trial.

19 THE COURT: All right. Your motion is noted. I'm
20 going to deny that.

21 All right? Anything further?

22 MR. WILSON: Nothing further, Your Honor.

23 THE COURT: Do we have sentencing sheets?

24 MS. MARTIN: Yes, Your Honor.

25 And I'm also passing to the defense a firearms

1 prohibition -- federal firearms prohibition sheet for each
2 defendant. If they refuse to sign, we do ask that you
3 make a finding on the record and review this as well.

4 THE COURT: All right. On this -- on your
5 sentencing sheet, I think you have got the wrong CDR code.

6 MS. MARTIN: May I approach?

7 THE COURT: According to my Strickler, it should be
8 CDR 217. 55 is voluntary manslaughter, traffic-related
9 only.

10 MS. MARTIN: Okay. I apologize. If you'll give me
11 one second, I can --

12 THE COURT: Well, I can just strike through it.

13 MS. MARTIN: Thank you.

14 THE COURT: All right. Any reason we should not go
15 ahead with the sentencing at this time?

16 MR. WILSON: No, sir. No reason.

17 THE COURT: Mr. Galmore?

18 MR. GALMORE: Yes, sir. We're ready to proceed,
19 sir.

20 THE COURT: Mr. Wilson, anything in mitigation?

21 MR. WILSON: Yes, sir. Just briefly.

22 Your Honor, I would like to say that Nasirea -- I
23 have been working with him now for going on two years, and
24 he has been very dedicated. When I asked him to come,
25 he's always been there. He's always engaged with me and

1 discussed his case with me. I have not had any difficulty
2 whatsoever with him. He was out on bond for most of this
3 time, and while he was out on bond, he hadn't violated the
4 terms and conditions of his bond.

5 And he has an 11th grade education, or at least he
6 started the 11th grade; I don't know that he actually
7 finished the 11th grade in terms of his education. And he
8 had been trying to work on getting his GED so he could get
9 his diploma.

10 He had been working. He was gainfully employed. In
11 fact, his boss, Mr. Decario (ph) was here and had been
12 here actually every day. He was supposed to be here this
13 morning. I haven't seen him in here this morning. And he
14 did give me a letter to the Court basically saying that he
15 valued -- highly valued him as an employee; that he was
16 reliable; that he was always on time for work; and that he
17 had been working for him for a couple of years; and that
18 he was, to him, a very valuable employee, which is why he
19 was here every day this week. In fact, I think he was
20 here most of last week. So I'm really surprised that he's
21 not here this morning.

22 Be that as it may, Your Honor, Nasirea has lived
23 here in Horry County all his life. And I'm not going to
24 stand here and rehash all of the facts and issues in this
25 case because His Honor heard every one of them, and --

1 just as I did, so there's nothing I can tell you about
2 these facts and circumstances that you don't already know.

3 What I will say is is that I -- the jury has made a
4 decision. I respect that. Whether we agree with it or
5 disagree with it is not even important. They have made
6 their decision. I do believe that there were facts which,
7 if believed, could support this verdict, so I'm not going
8 to argue that that's not true either.

9 What I will say is is that -- and I understand that
10 he is facing 30 years. He understands that. And I know
11 this is a serious case, and I know that the Court takes
12 that very seriously.

13 I don't believe, in my heart, that a maximum
14 sentence is what is appropriate here simply because (1) of
15 his age; (2) that he has no prior criminal history; (3)
16 that one of the victims in this case was their relative
17 and friend, and so there's been some degree of punishment
18 already. In fact, his brother was shot as well.

19 So, this is an all-around bad situation for
20 everybody. You've got two dead people and now you got two
21 young men, who just turned 20 and 21, who is actually
22 going to be going to jail for a long, long time. So,
23 either way it's bad. There's no winner here. You have
24 two dead people and then two young men who are going to
25 spend most of the rest of their lives in prison. We

1 understand that, and Lord knows I have explained that and
2 talked to him about that before this trial and then during
3 the trial and again this morning.

4 So, I ask the Court to have mercy under these
5 circumstances as much as you can. I understand that you
6 have a responsibility as well, but we are asking the Court
7 to give him as much mercy as you can under these
8 circumstances. Thank you.

9 THE COURT: All right. Mr. Galmore?

10 Well, I'll give him an opportunity in just a minute.

11 Mr. Galmore, anything you want to say on behalf of
12 your client?

13 MR. GALMORE: Yes, sir, Your Honor. Dajon Grate is
14 20 years old. He's engaged. He has one child and one
15 child on the way.

16 Your Honor, his daughter has kidney issues, and she
17 routinely has to go down to MUSC for treatment. I know
18 the Court -- I don't know if it was Your Honor
19 specifically, but the Court has signed a couple of
20 different orders allowing him to go down to MUSC while he
21 was on home detention, and there was no violation in that
22 regard.

23 Your Honor, Mr. Grate is from the community here in
24 Horry County. He has a 9th grade education, and he most
25 recently was working at Twin Peaks Restaurant.

1 As far as his credit for time served, we'd just ask
2 that you grant that because there was a period when he was
3 first arrested that he got out on home detention for a
4 period and then violated and ended up going back to
5 J. Reuben Long, but we'd just ask for credit for time
6 served.

7 Your Honor, as you can see from the people in the
8 courtroom, he has a strong family support, both of these
9 young men, and I would just point out that they did not,
10 you know, wake up with any kind of common scheme or plan
11 to commit a robbery. You may see from the video, they
12 were just going to the store, buying some chips, and
13 things of that nature.

14 He is very sorry for what happened. I know Your
15 Honor did not see the first video that Mr. Dajon Grate
16 made from the hospital when the officers interviewed him,
17 but he expressed extreme remorse. They were informing him
18 that his cousin, Jeremiah Dicker, was deceased and, you
19 know, he took that very seriously. Took that really hard.

20 This was just a situation where things went bad,
21 Your Honor. Again, you can tell with the jury questions
22 that they looked at the possibility of self-defense, and
23 we understand their verdict and we respect their verdict
24 and we appreciate that they did consider that as an option
25 for Mr. Grate.

1 Your Honor, I think the plea offer was made for 25,
2 30 years, something along those lines, but I believe that,
3 after looking at the jury and letting the jury look at
4 this case, that I believe that that plea offer was kind of
5 out of proportion with what happened here.

6 Mr. Grate, even in being convicted, has been humble
7 throughout this trial. He signed the ammunition form
8 without difficulty, and he hasn't had any difficulty on
9 home detention. I think the actual violation was for
10 marijuana.

11 Your Honor, he is going to grow up in SCDC. He is
12 going to have life after this conviction, and I think the
13 best thing that the Court can do is to give him a chance
14 to mature, give him a chance to grow, give him a chance to
15 get his education and some job skills.

16 We would respectfully ask the Court, taking into
17 account all of the evidence presented, to sentence
18 Mr. Grate to ten years and to let him work on parole after
19 he finishes that active sentence.

20 Your Honor, we're just asking for any leniency that
21 the Court could allow.

22 THE COURT: All right. Mr. Nasirea Grate, anything
23 you want to say, or does anyone want to speak on your
24 behalf?

25 MS. MARTIN: Yes, sir. I want to say something.

1 THE COURT: All right. I'll hear from you.

2 DEFENDANT N. GRATE: All I want to say is I respect
3 whatever decision you make. And I'm sorry everybody have
4 to be here today on my behalf or whatnot. But like I
5 said, I respect whatever decision you got to make. And
6 that's it.

7 THE COURT: Mr. Dajon Grate, anything you want to
8 say or does anyone want to speak on your behalf?

9 DEFENDANT D. GRATE: I respect whatever decision you
10 make, and I want to say I apologize to the family over
11 there and I apologize to my family that they got to be
12 here today. And I want to say God bless everybody that's
13 in here.

14 THE COURT: All right. Anything further from either
15 defendant?

16 MR. WILSON: No, sir.

17 MR. GALMORE: No, sir.

18 MR. WILSON: Your Honor, one last thing.

19 Mr. Nasirea Grate spent 11 months in confinement prior to
20 his getting out on bond.

21 THE COURT: All right. Any victims present or wish
22 to speak?

23 MS. LIVESAY: Yes, sir.

24 THE COURT: You need to come forward to a microphone
25 and give the court reporter your name.

1 Yes, ma'am. Your name?

2 MS. TOWNSEND: Summer Townsend. S-u-m-m-e-r
3 T-o-w-n-s-e-n-d.

4 THE COURT: And you are related to which -- okay,
5 this would be for --

6 MS. MARTIN: Kalik.

7 MS. LIVESAY: Kalik Conn.

8 THE COURT: Mr. Conn?

9 MS. MARTIN: Yes, Your Honor.

10 THE COURT: And what is your relationship to
11 Mr. Conn?

12 MS. TOWNSEND: I'm his son's mother, yes.

13 THE COURT: All right. Let me hear from you.

14 MS. TOWNSEND: All right. I met Kalik Conn March
15 3rd of 2022. We met on Facebook, and his profile really
16 caught my eye. So, I swiped right, not thinking much of
17 it. About ten minutes later, he messaged me, and we ended
18 up meeting about a day later. He came to my house in his
19 white Acura, and I remember getting in his car and we just
20 talked all night. And it was just kind of like we had
21 known each other for years. We just had a connection.

22 He told me about himself, and he said that he came
23 down here from New Jersey and that he was homeless at the
24 time, but he was in the process of trying to work and
25 trying to get a place of his own.

1 We ended up hanging out every day after that, and we
2 talked on the phone all day, whether it was calling,
3 texting, coming over to my house.

4 He eventually moved in with me for a little while.
5 At the time, I was living with my mother, and she wasn't
6 okay at first with him moving in because she wasn't okay
7 with boyfriends living with us. But she ended up really
8 liking Kalik. He was the most respectful person I've ever
9 met when it came to him respecting elders.

10 My mom would ask him to go do anything, whether it
11 was house work, outside work, work in general, going to
12 run an errand. He would do anything, and he wouldn't
13 complain. He was a very respectful guy.

14 Our relationship grew significantly whenever he
15 moved in with me. We laughed a lot, we made memories
16 together, and we cooked together. We had a really deep
17 conversation. So we fell in love with each other.

18 On March 2nd -- oh, God, excuse me -- on April 2nd
19 of 2022, I noticed that I was late and I noticed that I
20 wasn't feeling good and so I decided to take a pregnancy
21 test. The first person I told was Kalik, and I told him
22 that it was positive. He wasn't happy at first about the
23 pregnancy, but he came around eventually.

24 The last day I saw Kalik was on May 31st of 2022.
25 He called me really early in the morning, around 8 a.m.,

1 and he asked me if he could come over and see me. And I
2 said yeah.

3 We were talking about the baby and everything, and
4 he said that he finally accepted that he was going to be a
5 father and that we were going to be a family. He wanted
6 to be involved in his son's life. He wanted him to have
7 his last name. He wanted to be a part of his life, and he
8 wanted Kaiser to be successful.

9 I tried messaging -- after he left that day, I tried
10 messaging him to come back over because he had planned to
11 come back over later that day, and he never messaged me
12 back, which I thought was weird, but it wasn't out of the
13 ordinary.

14 The next day, the FBI came to my house and told me
15 he had passed away. And that was whenever my life had
16 changed.

17 I tried to be -- I tried to be strong for my son and
18 myself, but sometimes, I just broke down. I miss Kalik
19 every single day and I still do to this day. I blame
20 myself a lot for letting him leave that day and not
21 stopping him and none of this would have happened.

22 But after I had my son, Kaiser -- I had him on
23 November 17th of 2022. That was the best day of my life.
24 He was the best thing that ever happened to me. It was
25 very hard being a single mom and doing it all on my own.

1 Kalik should have been around to experience the birth of
2 his son and raising his son, but that was taken away from
3 him. Kalik had dreams of going away to the Army and
4 taking me and Kaiser with him. Kalik he wanted to get off
5 the streets and get his life straightened out and have a
6 successful life with us, but that was taken away from him.

7 Kalik did not deserve what happened to him. Kalik
8 should be with his family right now, not in a grave. My
9 son deserved to have a dad, but now he never will. I will
10 always love Kalik, and I will never forget about him.
11 Even though we only knew each other for a short time, it
12 was like we knew each other forever. He was like my
13 soulmate, and he will always be my soulmate.

14 That's all.

15 THE COURT: Thank you, ma'am.

16 Any other victims wish to speak?

17 MS. MARTIN: No, Your Honor. I do want to point
18 out, though, that Mr. Dicker's family is here and present
19 in the courtroom in support of the State.

20 THE COURT: Any prior records of either defendant?

21 MS. MARTIN: Your Honor, Dajon Grate does not have
22 an adult record. Mr. Nasirea Grate does have a record.
23 It is for unlawful carrying of a pistol.

24 THE COURT: All right. Anything further from the
25 State?

1 MS. MARTIN: Yes, Your Honor. We are in a very
2 unique position as attorneys, as we know we're able to
3 better understand the facts, we're better able to
4 understand the law, and here, we have a situation where,
5 at this point, the jury has spoken, but at the end of the
6 day, the jury found that there was an unlawful killing.
7 There was an unlawful killing of another. And because of
8 the action of these two men, not only is Kalik Conn dead
9 but also Jeremiah Dicker.

10 We're able to understand, we're able to know that
11 they met that day at the gas station. They planned to
12 meet back up. And when they did meet up, everybody did
13 have guns. We know that. We're not -- there's nothing
14 that we can argue or complain about or anything like
15 that.

16 There was a drug deal that went bad. It was three
17 versus one in this situation, and yes, Kalik Conn did fire
18 nine times. And there was a big deal made about him
19 having 27 other rounds in his gun. But you know what
20 those 27 rounds didn't do? Help bring him out of that
21 alive.

22 Your Honor, the robe of righteousness, the robe of
23 innocence of these two individuals, it's been removed.
24 The jury has spoken. The jury has said that they are
25 guilty of voluntary manslaughter of Kalik Conn, and we're

1 asking for the Court to impose a sentence that makes a
2 statement to others in this area that even -- Your Honor,
3 we prosecute drug dealers. We do. That is a part of our
4 job. But prosecution means jail time in those situations.
5 It does not mean an execution.

6 We are asking for the maximum penalty to be imposed
7 upon both gentlemen. We're asking for 30 years.

8 Your Honor, we're also asking that Mr. Nasirea Grate
9 does not get credit for any of the time on an ankle
10 monitor. Your Honor, we do not believe, based on the new
11 laws, the bond reform laws, that he is entitled to any of
12 that time.

13 As to Mr. Dajon Grate, the new bond reform statute
14 specifically points out that, if your bond is revoked, if
15 you are put back in jail, you are not entitled to any of
16 the time that you were served. He is back in jail. He
17 was revoked on his home detention. We are asking the
18 Court to follow the new laws and to not give him credit
19 for any of the time he has served so far.

20 Your Honor, I respect that there are apologies, but
21 apologies 2-1/2 years later, too little, too late.
22 Because of these gentlemen, their cousin is dead and
23 Mr. Kalik Conn is dead. She has to raise a baby all by
24 herself.

25 Your Honor, we are asking, at the end of the day,

1 that you do sentence them to 30 years apiece.

2 SENTENCING

3 THE COURT: All right, gentlemen. You have been
4 found guilty of voluntary manslaughter in the death of
5 Mr. Conn. Sentence of the Court, for Mr. Dajon Grate, is
6 that you be confined to the State Department of
7 Corrections for 30 years. Mr. Nasirea Grate, sentence of
8 the Court is that you be confined to the State Department
9 of Corrections for 30 years.

10 You will receive credit for any time served thus
11 far, but that does not include any time spent on ankle
12 monitoring, home detention, or GPS monitoring, only for
13 pretrial detention. And I'm going to let the Department
14 of Corrections compute that.

15 All right. Anything further?

16 MS. LIVESAY: No, sir.

17 MR. WILSON: Thank you, Judge.

18 MR. GALMORE: Thank you.

19 (The trial concluded at 10:01 a.m.)

20 * * * *

21

22

23

24

25

1 CERTIFICATE OF COURT REPORTER

2 *****

3 CASE NAME/NUMBER: State v. Grate and Grate

4 DATE OF HEARING: August 29, 2024 (Trial Day 8)

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings to the best of my ability, and that I
9 am neither counsel for, related to, nor employed by any of
10 the parties to this case, and I have no interest,
11 financial or otherwise, in its outcome.

12
13 14 /s/ Bobbi Fisher

15 Bobbi Fisher, RPR, Court Reporter III

16 Date Submitted: 12/16/24

17
18 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
19 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
20 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."
21 ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM
22 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO
23 THIS REPORTER AT BFISHER@SCCOURTS.ORG.
24
25

2022 056346
P- S.C.D.L.'s - NASIREA

Horry County Police
2022056346

2 0 2 2 0 5 6 3 4 6

Description: SC DL's

STATE'S NO. **28**
DATE: **AUG 19 2024**
Bobbi Fisher, RPR

South Carolina ID
SC USA

IDENTIFICATION CARD

NOT FOR
FEDERAL
IDENTIFICATION

4a DL# [REDACTED]
UNDER 18 UNTIL [REDACTED]

1 GRATE
2 NASIREA BREWNOPLIS JEROME
3 504 MOORE RD
LONGS SC 295687212
3 DOB: [REDACTED]
4a Issued: 10/10/2019
4b Expires: 10/10/2024
15 Sex: M 16 Hgt: 5'-11"
17 Wgt: 150 lb 18 Eyes: BRO
NOT A DRIVER'S LICENSE
5 DO 2600740100268322580

08/28/2002

South Carolina BP
SC USA

BEGINNER'S PERMIT

NOT FOR
FEDERAL
IDENTIFICATION

4a DL# [REDACTED]
UNDER 21 UNTIL [REDACTED]

1 GRATE
2 NASIREA BREWNOPLIS JEROME
3 504 MOORE RD
LONGS SC 295687212
3 DOB: [REDACTED]
4a Issued: 03/31/2021
4b Expires: 03/31/2022
15 Sex: M 16 Hgt: 5'-11"
17 Wgt: 140 lb 18 Eyes: BRO
19 Class: D 20 End: None
12 Restrictions: None
5 DO 2600740601297153624

08/28/2002

South Carolina BP
SC USA

BEGINNER'S PERMIT

NOT FOR
FEDERAL
IDENTIFICATION

4a DL# [REDACTED]
UNDER 18 UNTIL [REDACTED]

1 GRATE
2 NASIREA BREWNOPLIS JEROME
3 504 MOORE RD
LONGS SC 295687212
3 DOB: [REDACTED]
4a Issued: 10/31/2017
4b Expires: 10/31/2018
15 Sex: M 16 Hgt: 5'-04"
17 Wgt: 137 lb 18 Eyes: BRO
19 Class: D 20 End: None
12 Restrictions: None
5 DO 2600260401236095025



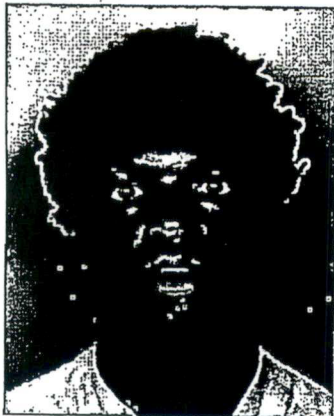
Horry County Sheriff's Office

Booking Report with Photo

05/22/2024

Facility: J REUBEN LONG

Cell: HD



Inmate Name: GRATE, NASIREA BREWNOPLIS

Alias: [REDACTED]

ID: [REDACTED]

FBI ID: [REDACTED]

SID: [REDACTED]

SSN:

Address:

[REDACTED]
LONGS, South Carolina 29568
USA

Phone: (000) 000-0000 x0000

DOB: 08/28/2002

Age: 21

DL No. 102055593

Birth Location: South Carolina

Employer: Unknown

Custody Unknown

Status:

Gender: MALE

Ethnicity: AMERICAN (US)

Height: 5' 11"

Weight: 140

Right Eye Color: BROWN

Left Eye Color: BROWN

Hair Color: BLACK

Arrest Date: Unknown

Arrest Officer: Unknown

Role:

Occurrence Date: Unknown

Arrested With: Unknown

Agency: Unknown

Booking No. HC06032211940

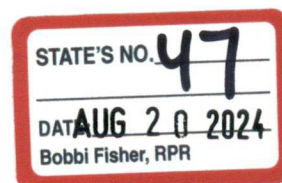
Officer: Unknown

Property #: -No Bin-

Date: 06/03/2022

Holds:

[REDACTED]



1254

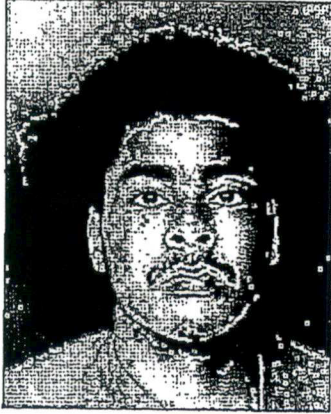
Horry County Sheriff'S Office

Booking Report with Photo

05/22/2024

Facility: -No Facility-

Cell: -No Housing-



Inmate Name: FRY, TODD ALLEN, JR

Alias: [REDACTED]

ID: [REDACTED]

FBI ID: [REDACTED]

SID: [REDACTED]

SSN: [REDACTED]

Address: [REDACTED]
CONWAY, South Carolina 29526
USA

Phone: (843) 231-4741 x8773
DOB: 12/19/2004
Age: 19
DL No. Unknown
Birth Location: Rhode Island
Employer: Unknown
Custody Unknown
Status:

Gender: MALE
Ethnicity: AMERICAN (US)
Height: 6' 0"
Weight: 170
Right Eye Color: BROWN
Left Eye Color: BROWN
Hair Color: BROWN

Arrest Date: Unknown
Arrest Officer: Unknown
Role:

Occurrence Date: Unknown
Arrested With: Unknown
Agency: Unknown

Booking No. HC06032211947
Officer: Unknown

Property #: -No Bin-
Date: 06/03/2022

Holds:



Horry County Sheriff'S Office

Booking Report with Photo

05/22/2024

Facility: J REUBEN LONG

Cell: 105D



Inmate Name: GRATE, DAJON MALIK

Alias: No Known Alias

ID: [REDACTED]

FBI ID: [REDACTED]

SID: [REDACTED]

SSN: [REDACTED]

Address:

[REDACTED]
LONGS, South Carolina 29568
USA

Phone: (478) 230-9376 x5555

DOB: 01/04/2004

Age: 20

DL No. Unknown

Birth Location: South Carolina

Employer: Unknown

Custody Unknown

Status:

Gender: MALE

Ethnicity: AMERICAN (US)

Height: 5' 6"

Weight: 130

Right Eye Color: BROWN

Left Eye Color: BROWN

Hair Color: BLACK

Arrest Date: Unknown

Arrest Officer: Unknown

Role:

Occurrence Date: Unknown

Arrested With: Unknown

Agency: Unknown

Booking No. HC06032211939

Officer: Unknown

Property #: 384

Date: 06/03/2022

Holds:



1256

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

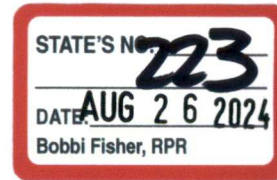
FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

June 18, 2024



Lori Dudley
Horry County Police Department
2560 North Main St, Suite 7
Conway, SC 29526

LATENT PRINTS
SLED LAB: L22-09603
Your Case No: 2022056346
Incident Date: 5/31/2022
[V-Deceased] Kalik Conn
[V-Deceased] Jeremiah Dicker
[S] Dajon Grate
[S] Nasirea Grate
[S] Todd Fry

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 54 Latent lift marked "lower ejection side of magazine".

RESULTS:

No value for comparison.

Item: 55 Latent lift marked "lower magazine release side".



Item: 55.1 Latent impression represented on Item 55.

RESULTS:

NOT IDENTIFIED

Item #57 - Conn, Kalik Isaiah.

IDENTIFIED

Item #58 - Dicker, Jeremiah Zachariah.

Item: 56 Latent lift marked "lower magazine, release side, 2nd lift".

Item: 56.1 Latent impression represented on Item 56.

RESULTS:

NOT IDENTIFIED

Item #57 - Conn, Kalik Isaiah.

IDENTIFIED

Item #58 - Dicker, Jeremiah Zachariah.

Item: 57 Fingerprint card bearing the name Conn, Kalik Isaiah (SID # SCR0594754).

Item: 58 Fingerprint card bearing the name Dicker, Jeremiah Zachariah (SID # SC02368888).

Item: 59 Fingerprint card bearing the name Grate, Dajon Malik (SID # SC02448736).

Item: 60 Fingerprint card bearing the name Grate, Nasirea Brewnoplis (SID # SC02411553).

Item: 61 Fingerprint card bearing the name Fry, Todd Allen (SID # SC02457795).



RESULT TERMINOLOGY:

Identified - The determination that there is sufficient quality and quantity of features in agreement to conclude that the latent print and known standard originated from the same source.

Not Identified - The determination that there are sufficient features in disagreement to conclude that the latent print and known standard did not originate from the same source.

Inconclusive - latent print quality - Features present in the latent print correspond with the known standard but are not sufficient to allow for an identification.

Inconclusive - known standard quality - Areas of friction ridge detail in the known standards needed for examination are absent or unreliable.

No value for comparison - Features present in the latent print are not sufficient to allow for comparison to a known standard.

Impression evidence in this case was examined utilizing the ACE-V methodology.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Technical records supporting the conclusions in this report are available upon request. Afford sufficient time for production.



Thomas E. Darnell
Forensic Scientist

cc: Horry County Solicitor's Office



What is the law of ¹²⁵⁹

(+) Self Defense
if they leave

(2) What is the
definition of
Voluntary Manslaughter

Dickey John
8-28-24



WITNESSES

Tysheena L May Horry County Police Department

Sam Brantly

DOCKET NO. 2023GS2600422

The State of South Carolina

County of Horry

Nancy Livesay

22H02689

FILED
HORRY COUNTY

2023 JAN 25 P 4:04

COURT OF GENERAL SESSIONS

January, 2023 TERM

REHEEN ELYS
CLERK OF COURT
HORRY COUNTY, SC

ARREST WARRANT NUMBER

2022A2610201212

CDR: 0116 16-03-0010, 0020

DOA: 6/3/2022

DATE RECEIVED FROM

GRAND JURY

ACTION OF GRAND JURY

TRIP RUI

Dajon Malik Lavern Grate

/M

Longs, SC 29568

DOB:

SSN:

vs.

THE STATE

WV
Foreperson of Grand Jury JAN 25 2023

Date:

ATTORNEY: James Cullen Galtmore

VERDICT

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

1260 Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

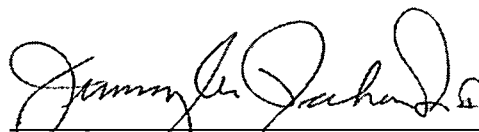
At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Dajon Malik Lavern Grate did in Horry County, on or about May 31, 2022, act with co-defendants during the commission of a felony to willfully, feloniously, and intentionally kill the victim, Kalik Conn (deceased), with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about May 31, 2022 in Horry County, in violation of Section 16-03-0010, 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.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

DocId:3417

WITNESSES

Tysheena L May Horry County Police Department

Sam Brantley

C

DOCKET NO. 2023GS2600423

The State of South Carolina

County of Horry

Nancy Livesay

22H02689

FILED
HORRY COUNTY

2023 JAN 25 P 4: 04

COURT OF GENERAL SESSIONS

January, 2023 TERM

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

ARREST WARRANT NUMBER

2022A2610201213

CDR: 0116 16-03-0010, 0020
DOA: 6/3/2022

DATE RECEIVED FROM
GRAND JURY

ACTION OF GRAND JURY

TRUE BILL

Dajon Malik Lavern Grate
/ M

Longs, SC 29568

DOB:

SSN:

[Signature]
Foreperson of Grand Jury
Date: JAN 25 2023

ATTORNEY: Galmore, James Cullen

VERDICT

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

1262
Foreperson of Petit Jury
Date:

 ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

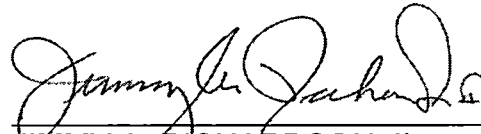
At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Dajon Malik Lavern Grate did in Horry County, on or about May 31, 2022 during, the commission of a felony did willfully, feloniously, and intentionally kill the victim, Zachariah Dicker (deceased), with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about May 31, 2022 in Horry County, in violation of Section 16-03-0010, 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.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

RECEIVED
 JAN 31 2023
 CLERK OF COURT

WITNESSES

Tysheena L May Horry County Police Department

Tysheena L May

DOCKET NO. 2023GSS2600424

The State of South Carolina

County of Horry

Nancy Livesay

22H102690

COURT OF GENERAL SESSIONS

January, 2023 TERM

ARREST WARRANT NUMBER

2022A2610201214

CDR: 0116 16-03-0010, 0020

DOA: 6/3/2022

ACTION OF GRAND JURY

JOHN BULL

[Signature]

Foreperson of Grand Jury
Date: JAN 25 2023

VERDICT

Foreperson of Petit Jury
Date:

VS.

THE STATE

Nasirea Brewnopolis Jerome Grate
B/M



ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

 ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

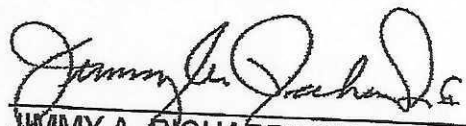
MURDER

CDR: 0116 16-03-0010,0020

That Nasirea Brewnoplis Jerome Grate did in Horry County, on or about May 31, 2022, act with co-defendants during the commission of a felony did willfully, feloniously, and intentionally kill the victim, Kalik Conn (deceased), with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about May 31, 2022 in Horry County, in violation of Section 16-03-0010, 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.




JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CLERK OF COURT
RENEE R. KILMS
CERTIFIED COPY
HORRY COUNTY, SC

WITNESSES

Tysheena L May Horry County Police Department

Tysheena L May

DOCKET NO. 2023GSS2600425

The State of South Carolina

County of Horry

Nancy Livesey

22H02690

**FILED
HORRY COUNTY**

2023 JAN 25 P 4:04

**RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC**

**DATE RECEIVED FROM
GRAND JURY**

January, 2023 TERM

ARREST WARRANT NUMBER

2022A2610201215

CDR: 0116 16-03-0010, 0020
DOA: 6/3/2022

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: **JAN 25 2023**

VERDICT

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

1266
Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

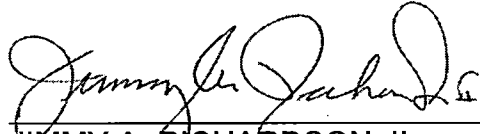
At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Nasirea Brewnoplis Jerome Grate did in Horry County, on or about May 31, 2022, act with co-defendants during the commission of a felony did willfully, feloniously, and intentionally kill the victim, Zachariah Dicker (deceased), with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about May 31, 2022 in Horry County, in violation of Section 16-03-0010, 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.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

JANUARY 25, 2023

WITNESSES

Tyshaena L May Horry County Police Department

Allen Jones

DOCKET NO. 2023GSS2600452

The State of South Carolina

County of Horry

Nancy Livesay

22H02690

FILED
HORRY COUNTY

2023 JAN 25 P 4:05

COURT OF GENERAL SESSIONS

January, 2023 TERM

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2023DI2600037

CDR: 0139 16-11-0330(A)

DOA: 6/3/2022

THE STATE

VS.

Nasirea Brewnoplis Jerome Grate
B/ M

Longs, SC 29568-7212

DOB

SSN:

ACTION OF GRAND JURY

INDICTMENT

[Signature]
Foreperson of Grand Jury
Date: JAN 25 2023

VERDICT

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

Armed Robbery

Jimmy A. Richardson, II, Solicitor

1268
Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

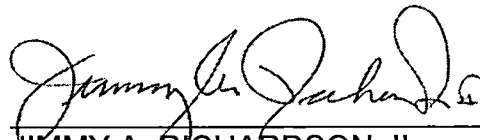
At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Nasirea Brewnoplis Jerome Grate did in Horry County on or about May 31, 2022, while armed with a deadly weapon and/or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of from or in the immediate presence of with intent to deprive of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Ivshheena L. May, Horry County Police Department

Allen Sims

DOCKET NO. 2023GSS2600453

The State of South Carolina

County of Horry

Nancy Livesay 22H02689

COURT OF GENERAL SESSIONS

January, 2023 TERM

FILED
HORRY COUNTY

2023 JAN 25 P 4:05

RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

ARREST WARRANT NUMBER

2023DI2600038

CDR: 0139 16-11-0330(A)
DOA: 6/3/2022

DATE RECEIVED FROM

GRAND JURY

ACTION OF GRAND JURY

THE PETIT JURY

[Signature]

Foreperson of Grand Jury JAN 25 2023
Date:

VERDICT

Dajon Malik Lavern Grate
/M
Longs SC 29568
DOB
SSN: [REDACTED]

ATTORNEY: James Cullen Galmore

Indictment for

Armed Robbery

Jimmy A. Richardson, II, Solicitor

 **ORIGINAL**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

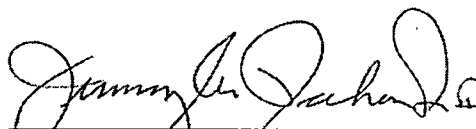
At a Court of General Sessions, convened on January 25, 2023, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Dajon Malik Lavern Grate did in Horry County on or about May 31, 2022, while armed with a deadly weapon and/or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of from or in the immediate presence of with intent to deprive of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

1272

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE

VS.

DAJON MALIK LAVERN GRATE

AKA:

Race: [REDACTED] Sex: M Age: 20

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]
City, State, Zip: Longs, SC 29568

DL#* [REDACTED] SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2023GS2600422A/W#: 2022A2610201212Date of Offense: 05/31/2022S.C. Code §: 16-03-0010, 0020CDR 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 ☐ PLEADSTO: Voluntary ManslaughterIn violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code #0217
0055☐ 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:

	75159		8386
Nancy Livesay, Solicitor	SC Bar #	Dajon Malik Lavern Grate, Defendant	James Cullen Galmore, Attorney for Defense

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or paymentof \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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.
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.

LAM

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

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$ 25. ⁰⁰	Beginning	8/29/54	\$
			\$
			\$ 100.00
			\$ 100
			\$ 12
			\$ 25
			\$ 25
			\$ 150
			\$ 41
			\$ 50
			\$ 40/ea
			\$ TBD
			\$ 3.75
			\$ 500
			\$ TBD
			\$ TOTAL
			\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:Benee Elvis
Bobbi FisherPresiding Judge:
Judge Code:
Sentence Date:Morgan T. Culbertson
2148
Aug. 29, 2024

1274

RECEIVED

Sep 05 2024

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE

VS.

SC Court of Appeals

INDICTMENT/CASE#: 2023GS2600424A/W#: 2022A2610201214Date of Offense: 05/31/2022S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

NASIREA BREWNOPLIS JEROME GRATE

AKA: Nasirea Brewnoplis GrateRace: BSex: MAge: [REDACTED]DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#*: [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Voluntary ManslaughterIn violation of § 16-03-0050of the S.C. Code of Laws, bearing CDR Code # 0217
0055☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ § 17-25-45

The charge is:

☐

As indicted,

☐Lesser Included
Offense,☐Defendant Waives Presentment
to Grand Jury.(CSC w/minor 1st or CSC w/minor 3rd)

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

75159

Nancy Livesay, Solicitor

SC Bar #

Nasirea Brewnoplis Jerome Grate,
DefendantRalph Wilson, Sr., Attorney for
Defense

6176

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served☐ Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or paymentof \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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 SODOC.

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.

RENEE M. ELYS
CLERK OF COURT
HORRY COUNTY, SC

2024 AUG 29 P 12:08

FILED
HORRY COUNTY

LAM

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: _____

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Fine may be pd. in equal consecutive weekly/monthly pmts. of

§14-1-206 (Assessments 107.5%)

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§50-21-114 (BUI Breath Test Fee)

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☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund\$ 25.⁰⁰ Beginning 8/29/24

\$	\$
\$100	\$ 100. ⁰⁰
\$100	\$
\$12	\$
\$25	\$
\$25	\$ 25. ⁰⁰
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$ 3.75
\$500	\$
TBD	\$
TOTAL	\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:Renee Elvis
Bobbi FisherPresiding Judge:
Judge Code:
Sentence Date:Morgan C. Cullen
2148
Aug. 29, 2024

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."

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Oct 13 2025
SC Court of Appeals

Respectfully Submitted,


Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of October, 2025.

RECEIVED

Oct 13 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAJON MALIK LAVERN GRATE,

APPELLANT

APPELLATE CASE NO. 2024-001477

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 Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of October, 2025.



Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT