

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable William C McMaster, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COURTNEY CHARLES CORDAE RICHARDS,

APPELLANT

APPELLATE CASE NO. 2024-001274

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
DEFENSE EXHIBIT #2 (PICTURE OF LAYLOW VON FACEBOOK (ID ONLY)),
DEFENSE EXHIBIT #18 (FULL ZION’S VIDEO), DEFENSE EXHIBIT #19 (JAVON
WALK-UP REGULAR SPEED.MOD), DEFENSE EXHIBIT #20 (JAVON WALK-UP
SLOWED DOWN.MOD), DEFENSE EXHIBIT #21 (ZION REGULAR SPEED
ZOOMED-IN CAR DOOR.MOD), STATE’S EXHIBIT #8-10 (DISC REPRESENTING A
CLIP OF A VIDEO FROM ZION’S FACEBOOK PAGE), STATE’S EXHIBIT #10
(FIREARM FROM THE TRAFFIC STOP)**

1 vehicle that drove right to where Mr. Thomas' body was found.

2 Would you agree with that?

3 A. Yes.

4 Q. And the vehicle moving in the area there where
5 placards 6, 7, 8, 9, and 10 and the vehicle driving over
6 them, even though they may not be manipulated then -- that
7 could move shell casings?

8 A. Yes.

9 Q. Doesn't necessarily have to move them, but it
10 could?

11 A. Correct.

12 Q. I show you what's been marked as
13 Defense's Exhibit 12. Take a look at that picture. You
14 recognize that as well?

15 A. Yes, sir. I took it.

16 Q. But you took from the scene?

17 A. (No verbal response)

18 MR. BISCHOFF: Permission to -- no, I'm sorry. I move
19 to admit Defense's 12.

20 THE COURT: Any objection?

21 MS. OUTTEN: Nothing from the State.

22 THE COURT: All right. Defense's Exhibit 12 is entered
23 without objection.

24 (Defense's Exhibit 12 admitted into evidence.)

25 BY MR. BISCHOFF:

1 Q. Okay. And in that photograph, it's basically an
2 extension of what we saw in the last photograph we looked at,
3 correct?

4 A. Yes, sir.

5 Q. And I don't need to belabor the point, but we have
6 another vehicle there that is in that area close to the
7 vehicle we were discussing?

8 A. Yes.

9 Q. Just a second ago. Any idea that that looks like
10 a first responder who may have arrived on scene early on?

11 A. It does.

12 Q. And that's on the other side of the crime scene?

13 A. Yes.

14 Q. Possibly driven through the crime scene -- the
15 area where the shell casings were prior to that vehicle has
16 arrived?

17 A. Yes, sir.

18 Q. You -- show you a picture now. I also show you
19 now what's been marked as Defense's Exhibit 14. Do you
20 recognize that photograph?

21 A. Yes, sir.

22 Q. And that's another photograph you took from the
23 scene?

24 A. Yes.

25 MR. BISCHOFF: I move to submit Defense's Exhibit 14?

1 MS. OUTTEN: No objection from the State.

2 THE COURT: All right. Defense's Exhibit 14 is entered
3 without objection.

4 (Defense's Exhibit 14 admitted into evidence.)

5 BY MR. BISCHOFF:

6 Q. Now, when first responders arrive on scene, there
7 is some medical treatment that's typically given to a gunshot
8 -- someone who suffered a gunshot, correct?

9 A. Yes, sir.

10 Q. And EMS does what they can to check on whether or
11 not there are any life-saving measures that can be
12 implemented?

13 A. Yes, sir.

14 Q. And then if the person is pronounced deceased,
15 then no one else really is supposed to touch the body?

16 A. Correct.

17 Q. And no one else is supposed to touch around the
18 body?

19 A. Correct.

20 Q. In Defense's 14, that's a picture of Mr. Thomas'
21 body on the ground, correct?

22 A. Yeah. Yes, sir.

23 Q. And even though -- well, can you see some white
24 sticky-looking circles?

25 A. Yes. Those are -- those are TENS electrodes.

1 Q. And that's put on by EMS?

2 A. Yes.

3 Q. After they have tried to give life-saving care if
4 necessary to the individual, do they just -- they don't turn
5 the body over one way or the other anymore, correct?

6 A. Once they've declared that he's been deceased,
7 they usually just leave him as is, which is why they don't
8 even take those off.

9 Q. And in this picture, we see a pair of pants,
10 correct?

11 A. Yes, sir.

12 Q. And you took those -- you took a photograph of
13 those pants?

14 A. Yes.

15 Q. And they're sweatpants?

16 A. Yes.

17 Q. And you actually took them into evidence as well?

18 A. I don't remember offhand, but I'll take your word
19 for it.

20 Q. If you had a chain of custody for him -- that
21 included the sweatpants?

22 A. Yes.

23 Q. And then very close to Mr. Thomas' body, we also
24 found -- where you found a weapon photographed, correct?

25 A. Yes, sir.

1 Q. Show you what was previously marked as
2 Defense's Exhibit number 1.

3 A. Yes, sir.

4 Q. Do you recognize that photo?

5 A. Yes.

6 Q. And that's a photo from the scene that day?

7 A. Yes, sir.

8 MR. BISCHOFF: I move to admit Defense's Exhibit 1?

9 THE COURT: (Inaudible)?

10 MS. OUTTEN: No objection.

11 THE COURT: All right. Defense's Exhibit 1 is entered
12 without objection.

13 (Defense's Exhibit 1 admitted into evidence.)

14 BY MR. BISCHOFF:

15 Q. All right. Corporal Hunt, that's a photograph of

16 --

17 A. It's a Glock firearm.

18 Q. And there's a placard number 11 there, correct?

19 A. Yes.

20 Q. And that placard is placed there to give an
21 indication that that's where the evidence was found when you
22 discovered it?

23 A. Yes.

24 Q. Any evidence whatsoever -- any information that
25 anybody moved this firearm after the 911 call?

1 A. Not that I was given.

2 Q. Nobody on scene said the firearm was moved to that
3 location?

4 A. Correct.

5 Q. Do you know what type of firearm that is?

6 A. It's a Glock 43 9mm.

7 Q. Okay. And are you familiar with the way the Glock
8 operates?

9 A. Generally speaking, yes.

10 Q. And correct me if I'm wrong, but we see a
11 cigarette lighter in this picture, do we not?

12 A. Yes.

13 Q. And then right beside that, we have what looks
14 like the end of -- of the barrel of the gun?

15 A. Yes.

16 Q. Now, the Glock has a unique feature, does it not?
17 And that you slide it back to load a round into the chamber?

18 A. Well, it's not a unique feature --

19 Q. I'm sorry.

20 A. But yeah. Yeah, you can do that. Yes.

21 Q. And when you load that round into the chamber --
22 and perhaps if you have six other rounds, five rounds,
23 four rounds of the magazine --

24 A. Uh-huh.

25 Q. Once you discharge all of them, that's the

1 position that the slide locks in after all the bullets are
2 fired?

3 A. Correct.

4 Q. Showing what's been marked as
5 Defense's Exhibit 16. Do you recognize that photo as well?

6 A. Yes.

7 Q. Photo you took of the Glock 9mm from the scene?

8 A. Yes, sir.

9 MR. BISCHOFF: I move to admit Defense's Exhibit 16.

10 MS. OUTTEN: No objection from the State, your Honor.

11 THE COURT: Defense's Exhibit 16 entered without
12 objection.

13 (Defense's Exhibit 16 admitted into evidence.)

14 BY MR. BISCHOFF:

15 Q. I am going to go back to Defense's Exhibit 1
16 briefly.

17 A. Okay.

18 Q. That is the way the gun was found when you
19 arrived.

20 A. Yes, sir.

21 Q. Correct?

22 A. Yes.

23 Q. And one side of the gun is touching the paper?

24 A. Correct.

25 Q. One side is face off?

1 A. Yes, sir.

2 Q. And Defense's Exhibit 16, correct me if I'm wrong,
3 but that is the other side of the left?

4 A. Correct.

5 Q. And you photograph the other side of the left
6 because sometimes it could have relevant information?

7 A. Yes.

8 Q. Such as this one, where we had dirt at the end of
9 the muzzle or the left?

10 A. Correct. Yep.

11 Q. Right. And that dirt is right here, correct?

12 A. Yes, sir.

13 Q. You might put dirt on that weapon?

14 A. You mean like an officer or whatnot? Not that --
15 not that I'm aware of, no.

16 Q. So it would've been flipped over, and then you
17 went back -- yet taken in as evidence. Correct?

18 A. Yes.

19 Q. And one more photograph, Defense's Exhibit 15. Do
20 you recognize that photograph?

21 A. Yes, sir.

22 Q. Okay. What's that photograph of?

23 A. It's the firearm and the magazine.

24 Q. From -- and you took this photograph the day of
25 the incident?

1 A. Yes, sir.

2 MR. BISCHOFF: I move to admit Defense's Exhibit 15.

3 MS. OUTTEN: No objection from the State.

4 THE COURT: Defense's Exhibit 15 is entered without
5 objection.

6 (Defense's Exhibit 15 admitted into evidence.)

7 BY MR. BISCHOFF:

8 Q. All right. And, Corporal Hunt, if you would
9 please explain to the jury what we see in this photograph.

10 A. That's the picture of the Glock 43. I removed the
11 magazine to document that there was no ammunition in that or
12 in the slide.

13 THE COURT: All right. And that's
14 Defense's Exhibit 15?

15 MR. BISCHOFF: Yes, your Honor.

16 THE COURT: All right. Thank you.

17 MR. BISCHOFF: Defense's Exhibit 15.

18 BY MR. BISCHOFF:

19 Q. And if there had been any bullets in that gun that
20 would've -- you would've taken a photograph of it, correct?

21 A. Yes, sir.

22 Q. But there weren't any bullets?

23 A. No. It was empty.

24 Q. Totally empty?

25 A. Yes, sir.

1 Q. And you are wearing gloves?

2 A. Yes.

3 Q. And you do that because if you are not wearing
4 gloves, you could manipulate evidence and leave your
5 fingerprints or (inaudible), correct?

6 A. Correct.

7 Q. Do you take certain safeguards to make sure the
8 evidence is handled properly?

9 A. Yes, sir.

10 Q. Show you one more photograph.

11 A. Yes, sir.

12 Q. Do you know what that photograph is. Is that
13 right?

14 A. Yes.

15 Q. You took the photograph?

16 A. Yes, sir.

17 Q. From the day of the incident?

18 A. Yes, sir.

19 MR. BISCHOFF: Your Honor, at this time, I move to
20 admit Defense's Exhibit 17.

21 MS. OUTTEN: No objection from the State, your Honor.

22 THE COURT: Defense's Exhibit 17 is entered without
23 objection.

24 (Defense's Exhibit 17 admitted into evidence.)

25 BY MR. BISCHOFF:

1 Q. We'll leave the casings in the package.

2 A. Okay.

3 Q. But in Defense's Exhibit 17, we have placard
4 number three?

5 A. Yes, sir.

6 Q. And placard number 3 again corresponds to --

7 A. The .45s.

8 Q. -- .45? Let me show you Defense's 10. But we've
9 got placard three right there in the middle of that picture
10 --

11 A. Yes, sir.

12 Q. -- close to the fire truck, correct?

13 A. Correct.

14 Q. Let's go back to Defense's 17. Can you tell me
15 the condition of that shell casing?

16 A. It's deformed.

17 Q. And deformed in a way that likely is from a
18 vehicle running over it or something heavy?

19 A. Yes, sir.

20 Q. But you're sure that casing came from the
21 .45-caliber?

22 A. Yes.

23 Q. 9mm?

24 A. Yes, sir.

25 Q. The characteristics of it that match the other

1 casings that were recovered?

2 A. Yes. And it -- it -- it was confirmed with IBIS
3 as well, so yes.

4 Q. So ten shell casings are recovered from the scene?

5 A. Complete. Yes.

6 Q. And have you seen the video in this case?

7 A. Briefly. Yes.

8 Q. And there's 13 shots in the video, correct?

9 A. That I don't know, I only saw it once and that was
10 it.

11 Q. Regarding Defense's Exhibit 15, there's other
12 documentation with your report that indicates that that is a
13 six-capacity magazine. Do you agree with that?

14 A. Yes, sir.

15 Q. What does that mean?

16 A. It means that the magazine can hold six rounds.

17 Q. All right. And when you were loading the Glock,
18 if you put six bullets into a magazine and you put that
19 magazine into the weapon, is it ready to fire?

20 A. No, sir.

21 Q. You have to chamber around, correct?

22 A. Correct.

23 Q. And you do that by sliding the top of the weapon
24 back?

25 A. Yes.

1 Q. And then, you have five bullets in the magazine,
2 correct?

3 A. Correct.

4 Q. And there's something called "topping off," is
5 there not?

6 A. Yes, sir.

7 Q. And topping off would mean you add one more bullet
8 to the magazine, and then you can put it back into the
9 weapon, and the weapon's ready to fire seven rounds, correct?

10 A. Correct.

11 Q. Earlier on -- we've already talked about clusters
12 of shell casings?

13 A. Yes.

14 Q. Did you mean -- say cluster in that, that's all of
15 them close together at the time they were fired?

16 A. I mean a cluster as like a grouping.

17 Q. So for you, in Defense's Exhibit 10, we see all of
18 the shell casings in one picture from the .45?

19 A. Yes, sir.

20 Q. And that cluster to you means that they all kind
21 of go together to the same gun?

22 A. Yeah, so like the -- those five placards to me,
23 are in a group, and then there's some distance, and then
24 there's like another cluster. So even if like both clusters
25 were .45s, I would still say two clusters because they're in

1 one area, there's a great distance, and then there's another
2 grouping.

3 Q. So it does not mean that all of the shell casings
4 were fired that exact spot where the shell casing was
5 located?

6 A. I'm not really sure of your question.

7 Q. Well, what I'm saying is if there's not
8 manipulation at the scene and weapon is fired multiple times,
9 and you have five shell casings on the ground, you're not
10 going to get a layout like this?

11 A. Most likely not. No.

12 MR. BISCHOFF: That's it. Thank you, Corporal.

13 THE WITNESS: You are welcome.

14 THE COURT: Any re-direct?

15 MS. OUTTEN: Yes, your Honor.

16 RE-DIRECT EXAMINATION

17 BY MS. OUTTEN:

18 Q. Generally speaking, why do fire truck or EMS
19 respond to a scene like the one you responded to on
20 February 19, 2022?

21 A. To render aid.

22 Q. And that's because when a report is made, or a 911
23 call is made, that goes out to law enforcement, EMS, fire
24 truck, everybody gets the same kind of call?

25 A. Yes.

1 Q. And how would you describe, you know, a crime
2 scene -- a response to a shooting? How would you sort of, in
3 general terms, describe what those kinds of scenes are like?

4 A. They're chaotic.

5 Q. And why are they chaotic?

6 A. Because everyone's there like -- so EMS and fire
7 -- they're there to render aid, that's all they care about.
8 They don't care about preserving evidence or anything like
9 that. So they get there as quickly as possible. And then
10 officers, when they arrive on scene, their first priority is
11 to preserve human life, but then they have in the back of
12 their head that they need to preserve the crime scene in
13 order to be able to prosecute if it's a crime. So everyone's
14 got different thoughts going on in their head.

15 Q. And -- and do all law enforcement or does
16 everybody who work at -- works at the
17 North Charleston Police Department who respond to a crime
18 scene, do they receive training on how to properly move about
19 that scene so as to preserve evidence?

20 A. Well, no, they don't actually even know what's
21 going on at that moment. They just know that someone's been
22 shot and they don't know where the scene is. The scene could
23 be somewhere else. It could not even possibly be there. So,
24 they don't know right away.

25 Q. I'm speaking about the officers from the

1 North Charleston Police Department that come to a crime
2 scene. Do they know how to move in the crime scene to
3 preserve evidence?

4 A. Yes.

5 Q. And you also received training?

6 A. Yes.

7 Q. You are also trained in how to preserve evidence?

8 A. Yes.

9 Q. And would you say that all law enforcement are
10 aware of the importance of maintaining a crime scene?

11 A. Yes.

12 Q. I'm going to go through some of these photos with
13 you. I'm going to try to make it somewhat brief. I'm going
14 to show you, first, State's Exhibit 32 and now I'm going to
15 show you Defense's Exhibit 10. Are those two photos the same
16 photo?

17 A. Yes -- yes.

18 Q. And I did want to show you one other photo,
19 State's Exhibit 35. Is that -- are you standing in sort of a
20 similar location as you were when you took
21 State's Exhibit 32?

22 A. Yes.

23 Q. Is it kind of the same internal area?

24 A. Yes.

25 Q. But is a different range?

1 A. Yes.

2 Q. And why do you take photos from different ranges
3 like that?

4 A. Just to get every different angle.

5 Q. Let me show State's Exhibit 36, still kind of
6 talking about the same area here?

7 A. Yep.

8 Q. Thirty-seven same thing?

9 A. Yes, ma'am.

10 Q. I am going to show you State's Exhibit 41. What's
11 in this photo?

12 A. It's a fired cartridge casing.

13 Q. And -- and we've been talking about kind of two
14 different calibers. So which caliber is this one?

15 A. That's a .45.

16 Q. Im going to zoom in a little bit. Does that
17 appear -- fired cartridge cases appear dented to you in any
18 way?

19 A. No.

20 Q. Showing you State's Exhibit 45, how about that
21 one?

22 A. No, it does not.

23 Q. State's Exhibit 47. Did that appear -- this is
24 you?

25 A. No.

1 Q. Now, I want to show you one more time,
2 State's Exhibit 49 and I kind of -- in the beginning of your
3 direct examination talked about crime scene tape. So, do we
4 agree that's where the crime scene tape is?

5 A. Yes.

6 Q. And do we agree that most of the people right
7 there are standing outside of it?

8 A. Yes.

9 Q. And can you sort of speak to what the importance
10 of crime scene tape is when it comes to preserving the
11 integrity of the scene?

12 A. The -- it's to preserve the evidence so people try
13 to stay out of it, so that they don't affect any of the
14 evidence.

15 Q. And so, is it sort of a -- a -- a way that
16 officers might know: I'm about to be close to some evidence,
17 I need to be really careful of what I do miss?

18 A. Yes.

19 Q. Show you State's Exhibit 71. Now, you testified
20 on direct and I believe maybe on cross as well. You are not
21 the one who puts up that crime scene tape, correct?

22 A. Correct.

23 Q. And who puts that up?

24 A. The first responding officers.

25 Q. But as part of your process and securing and

1 documenting the scene, would you go outside of that tape?

2 A. No.

3 Q. But looking at this photo -- well, backing up a
4 little bit, is the edge of this roadway Comstock Avenue?

5 A. Yes.

6 Q. So then looking at this photo -- I'm zooming in a
7 little bit, would you agree with me that there's some items
8 kind of, you know, down here -- back here?

9 A. Yes.

10 Q. And would you agree with me that you wouldn't have
11 looked there for additional items?

12 A. Correct.

13 Q. Showing State's Exhibit 72. And we're still
14 looking at Comstock Avenue?

15 A. Yes.

16 Q. So we agree there's some items in here that would
17 not have been where you would've looked?

18 A. Correct.

19 Q. And now I do want to show one more,
20 Defendant's Exhibit 1 and then State's Exhibit 81. Are those
21 the same photos?

22 A. Yes.

23 MS. OUTTEN: I don't have any further questions for
24 you.

25 THE COURT: You have anything further with this witness

1 -- for this witness?

2 MR. BISCHOFF: Just briefly.

3 RE-CROSS EXAMINATION

4 BY MR. BISCHOFF:

5 Q. Corporal, I'm not saying anybody did anything
6 wrong or intentional. You understand that. Correct?

7 A. Yes, sir.

8 Q. It's just possible that the vehicle drives through
9 an area where there's evidence that that evidence could
10 potentially be carried away?

11 A. Yes, sir.

12 Q. Like a tire running over a shell casing, could
13 take a shell casing with the tire outside of the crime scene.

14 A. Yes.

15 MR. BISCHOFF: Correct? Thank you.

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

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: Thank you. All right. Call your next
19 witness.

20 MS. OUTTEN: State calls Austin Rissanen.

21 AUSTIN RISSANEN,

22 having been duly sworn, testifies as follows:

23 THE CLERK: You'll state your full name and spell your
24 last name please.

25 THE WITNESS: It's Austin Rissanen, spelled

1 R-I-S-S-A-N-E-N.

2 DIRECT EXAMINATION

3 BY MS. OUTTEN:

4 Q. Good afternoon. Who is your employer?

5 A. It's the Charleston County Sheriff's Office.

6 Q. And what's your current position with sheriff's
7 office?

8 A. I am a patrol supervisor. I'm a sergeant assigned
9 to the patrol division.

10 Q. And can you explain to the jury the duties that
11 you have as a sergeant?

12 A. Yes. I oversee approximately nine deputies. We
13 cover about 1,358 square miles of Charleston County. I
14 oversee their daily operations. I give guidance on legal
15 matters and matters of policy and I -- I review matters of
16 misconduct or complaints and uses of force.

17 Q. What was your position back in September of 2022?

18 A. I was a master deputy in field training instructor
19 assigned to the patrol division.

20 Q. And what did your duties include at that time?

21 A. So at the time, assigned to patrol my job was to
22 answer calls for service, investigate any kind of instances
23 where someone calls the police, investigate traffic
24 accidents, conduct enforcement, whether it's traffic
25 enforcement, criminal enforcement, make arrests. Also, like

1 I said, I was a field training instructor so I also trained
2 new deputies who came to the agency.

3 Q. And can you please tell the jury a little bit
4 about your education, training, and experience?

5 A. Yes. I've been a law enforcement officer for
6 about 14 years. I graduated from the
7 California Coast University with a bachelor's degree in
8 criminal justice. I graduated from the Criminal Justice
9 Academy in Columbia in South Carolina.

10 In my agency every year, we participate in roughly
11 about 40 hours of in-service annual training. The State
12 requires about 40 hours every three years. But my agency, we
13 do it every year. I think altogether through the academy I
14 have about 1,123 hours of in-service training through the
15 academy.

16 In my career, I've worked in the patrol division, I've
17 worked in our warrants division for about seven years. I was
18 on a violent crimes task force with the US Marshal service
19 for about three years. My collateral duty is I'm in our air
20 support unit as well.

21 I have several advanced trainings as far as roadside,
22 criminal interdiction, which is basically traffic stops,
23 person encounters for interview and interrogation, drug
24 offenses, weapons offenses, also with several advanced
25 trainings, and fugitive investigations and supervisory

1 training.

2 Q. And were you working back on
3 September the 16th of 2022?

4 A. I was.

5 Q. Did you -- while on shift that day, did you
6 conduct any traffic stops?

7 A. I did.

8 Q. Can you just briefly tell the jury about the
9 traffic stop you conducted in the area of Lincolnville Road
10 in Candlebrush Lane?

11 A. Yeah, a little bit after 9:00 that evening, I
12 conducted a traffic stop on a Buick in that area because the
13 Buick didn't have any rear lighting. When the vehicle
14 stopped, there was three occupants inside of the car. I
15 established probable cause to search the vehicle. When I had
16 a backup of officer arrive, we searched the vehicle and
17 located two firearms in the car.

18 Q. And was one of those firearms a Glock .45-caliber?

19 A. It was.

20 Q. And do you recall the serial number of that gun,
21 .45?

22 A. The serial number for that gun is XBV985.

23 Q. And what did you do with that firearm after the
24 traffic stop?

25 A. After I recovered it, it was transported to the

1 Charleston County Sheriff's Office in North Charleston where
2 we housed it in evidence.

3 MS. OUTTEN: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MS. OUTTEN:

6 Q. At this time, I show you -- it's been marked
7 State's Exhibit 10. If you can please look at that. Do you
8 recognize it?

9 A. Yes. It's the same firearm from the traffic stop.

10 Q. And does it appear substantially the same
11 condition as it was when you seized it in the traffic stop in
12 September of 2022?

13 A. Yes.

14 MS. OUTTEN: Your Honor, at this time the State would
15 seek to admit State's 10 into evidence.

16 MR. BISCHOFF: We renew our earlier objection, your
17 Honor.

18 THE COURT: All right. Subject to your earlier
19 objection, it'll be -- State's 10 is in evidence. All right.

20 (State's Exhibit 10 admitted into evidence.)

21 BY MS. OUTTEN:

22 Q. All right. Okay. I'm going to ask you a couple
23 questions about that firearm and whatnot in the box that was
24 just admitted as State's 10, so that's easier for usual to
25 hold -- the reason hold. So this is State's 10, the items in

1 this box, we've got two items. What is this?

2 A. That is the firearm itself. It's a Glock .45.

3 Q. And what is this?

4 A. It's an extended magazine.

5 Q. All right. And when you -- when you got this gun
6 -- when you seized it from that traffic stop, the Defendant
7 was not in that car, was he?

8 A. No.

9 Q. Okay. And -- but this magazine, was it found like
10 this or was the magazine --

11 A. It was in the gun.

12 Q. It was in the gun?

13 A. Yes.

14 Q. And how many rounds does this magazine hold?

15 A. That's a 25-round magazine or -- I'm sorry,
16 26-round magazine.

17 MS. OUTTEN: Right. And then with this firearm -- I
18 don't know if it's easier, your Honor, I don't know if he
19 could get down to be able to show them and point out things
20 -- or I could walk back and forth between him and -- got
21 permission for him to come down?

22 THE COURT: He -- he can stand and step down that now.

23 THE WITNESS: Okay.

24 MS. OUTTEN: All right. I'll do better for you,
25 please. All right. So --

1 THE COURT: Hold on. Hold on one second. Let the
2 Defense re-position themselves please. All right. You can
3 continue.

4 BY MS. OUTTEN:

5 Q. All right. So with this firearm, if you can --
6 I'm going to give this back to you and if you can show the
7 jury, and I'll try it out of the way and explain the
8 different -- the different components of that firearm.
9 Understanding that the magazine that was located when you
10 found it -- it's still back in the box.

11 A. Okay. So this bottom piece of the firearm, this
12 is the frame. This is the trigger guard -- on the frame
13 itself is an integrated rail. This is your -- your grip,
14 your magazine would be in here. This is your slide. This is
15 your barrel and your muzzle. And this is your checker cord.

16 Q. And can different size magazines go in -- into
17 this firearm?

18 A. Yes, you can. You can buy all kind of different
19 magazines for this firearm.

20 Q. So there's -- there could be a -- a -- a smaller
21 capacity magazine that goes in that as well?

22 A. Yeah. They're interchangeable all the time. It's
23 pretty frequent.

24 Q. And then the -- what is the integrated rail? Can
25 you explain what that is?

1 A. So not all firearms have one, but this one does,
2 Glocks specifically make integrated rails. And what this is
3 used for is it's where you can attach different components to
4 the gun, specifically like flashlights or laser size.
5 Basically, to modify the gun.

6 MS. OUTTEN: All right. Thank you. I don't have any
7 further questions for you. If you can please answer anything
8 that the Defense may have.

9 THE WITNESS: Sure.

10 THE COURT: Cross-examination?

11 MR. BISCHOFF: No questions, your Honor.

12 THE COURT: All right. Thank you. You can step down.
13 Thank you.

14 MS. OUTTEN: Your Honor, may this witness be released
15 from his subpoena?

16 THE COURT: Mr. Bischoff?

17 MR. BISCHOFF: No objection.

18 THE COURT: All right. This witness is released. No
19 objection. Call your next witness, please.

20 MS. OUTTEN: State calls Michele Eichenmiller.

21 MICHELE EICHENMILLER,

22 having been duly sworn, testifies as follows:

23 THE CLERK: State your full name for the record,
24 spelling your last name.

25 THE WITNESS: My name is Michele Eichenmiller.

1 E-I-C-H-E-N-M-I-L-L-E-R.

2 DIRECT EXAMINATION

3 BY MS. OUTTEN:

4 Q. Good afternoon.

5 A. Hello.

6 Q. Where do you work?

7 A. I work for the

8 South Carolina Law Enforcement Division. It's also known as
9 SLED. I work in the forensic laboratory in the firearms
10 department.

11 Q. And how long have you been at SLED?

12 A. Approximately 18 years.

13 Q. And you mentioned that you were -- worked in the
14 firearms department. What does that department do?

15 A. We're the branch of forensic science that deals
16 with any fired evidence found at a crime scene or firearms.
17 So we attempt to match bullets and cartridge cases back to a
18 firearm.

19 Q. And what's your educational background?

20 A. I have a bachelor's degree in biology and
21 psychology. I also have a master of science in forensic
22 science.

23 Q. Did you -- did you receive any additional training
24 in order to specialize in firearms?

25 A. Yes. There's no college that you can attend to be

1 a firearms examiner. So once you're hired somewhere, it's an
2 apprenticeship program. Takes approximately
3 three to four years to finish. During that time, I did a lot
4 of studying on my own, and did a lot of practical exercises
5 looking at fire evidence -- not evidence. But fired
6 cartridge cases and bullets, and using the microscope to
7 match them. And then, at the end of that three years, I took
8 a comprehensive final and they said I could do casework on my
9 own.

10 Q. And did you complete --

11 MR. MCGUIRE: I don't mean to interrupt, your Honor, we
12 would stipulate that she's an expert, we're familiar with her
13 work.

14 MS. OUTTEN: At this time, State offers
15 Michele Eichenmiller as a -- as an expert in the field of
16 firearms examination.

17 MR. MCGUIRE: Agreed. No objection.

18 THE COURT: All right. Without objection. She's
19 admitted as an expert. Ladies and gentlemen, if you remember
20 yesterday, as far as expert witnesses, normally a person
21 cannot give opinion testimony, normally when a person
22 testifies and has testified to what they either saw, heard or
23 sensed by smell or something of that nature.

24 However, there is an exception when someone's qualified
25 because of education or experience. They're permitted to

1 give their opinion in certain areas if the Court qualifies
2 them that way. This witness has been qualified in the area
3 of firearms examination to give the opinion testimony in that
4 area. That does not mean that you must accept the -- the
5 opinion, but it is evidence for you to use in any way you see
6 fit. Thank you.

7 BY MS. OUTTEN:

8 Q. So approximately how many examinations have you
9 taken part in SLED?

10 A. Probably thousands by now.

11 Q. And we just qualified you as an expert. But has
12 that happened for you before -- you qualify as an expert
13 before?

14 A. Yes.

15 Q. How many times?

16 A. Approximately 130 times.

17 Q. So, can you please explain to the jury how a
18 semi-automatic handgun or a pistol works?

19 A. A semi-automatic pistol uses a magazine which
20 holds the cartridges. So you put the cartridges in the
21 magazine, you insert it into the bottom of the firearm or the
22 magazine well. You can close the slide, or pull it back and
23 close it, so that one cartridge will load into the chamber.
24 Once you pull the trigger, that cartridge is fired, the
25 bullet will come out the front of the firearm.

1 The cartridge case will get extracted by a little piece
2 of metal in the firearm. The slide will open and the
3 cartridge case will get kicked out of the firearm. The slide
4 will close on the next cartridge that's in the magazine well,
5 or in the magazine. And once you pull the trigger again,
6 it'll keep doing that cycle until there are no cartridges
7 left in the magazine.

8 Q. And so, just sort of taking this piece by piece
9 for people who may not be as familiar. So, can you sort of
10 explain what a cartridge and a cartridge case are?

11 A. A cartridge holds all the pieces of ammunition
12 together. So, it's the case that holds the -- the gunpowder
13 inside. There's a firing a -- a primer in the bottom, and
14 then the bullet in the top. Once the primary's hit, there's
15 a little explosion in the primer that causes the gunpowder in
16 the case to ignite, and the bullet to be expelled from the
17 case.

18 Q. And so, could you sort of explain what the end
19 goal of -- you know, we talked about firearms and indication
20 examination, but what's the goal of doing that?

21 A. The -- the best-case scenario is to match fired
22 bullets and fired cartridge cases to a particular firearm
23 based on the microscopic marks that I observe. In the case
24 of not getting a firearm, we can tell you how many firearms
25 were used possibly by looking at all of the cartridge cases

1 and comparing them to each other.

2 In the absence of a gun for a bullet, we can put the
3 measurements of that bullet into a database. The database
4 will tell us how many manufacturers make firearms with those
5 specifications.

6 Q. And so, when you're talking about matching, are
7 you able to do that because there are certain characteristics
8 or patterns marks that are unique to each individual firearm?

9 A. Yes. Wherever a cartridge case or a bullet comes
10 in contact with the metal of a firearm, there are marks left
11 that can be used to identify the cartridge case or the bullet
12 back to the firearm.

13 Q. And did you receive evidence in this case, the
14 State versus Courtney Richards, which was
15 SLED lab number L22-04715?

16 A. Yes.

17 Q. How did you receive the evidence in this case?

18 A. When evidence is submitted to the lab at SLED, it
19 can either go through two ways. It can go through an actual
20 person; you can talk with a tech -- technician in the login
21 department and they'll log it in for you, or you can drop it
22 in a locker and then they'll take it out. Once the evidence
23 is logged in at SLED, that means it gets a case number.

24 Every piece of evidence will get a barcode. And then
25 that barcode is tracked throughout the whole laboratory. So

1 wherever that evidence goes, whether it's a shelf, or an
2 examiner, or a storage unit it will get tracked by barcode.
3 And then we have a chain of custody, which is the paper
4 record of all of that transferring.

5 Q. And that process you just described, was that
6 followed in this case?

7 A. Yes.

8 Q. And what evidence did you receive in this case?

9 A. I received 10 fired cartridge cases and one fired
10 bullet.

11 Q. And can you please take the jury through the
12 analysis of the items you received?

13 A. Yes, I examined items -- SLED items two through
14 six were five fired .45-auto caliber cartridge cases. I
15 examined them. I -- when I -- once I get the evidence, I'll
16 document how I received it, make sure the evidence was
17 sealed. I'll take pictures, I'll fill out worksheets
18 documenting, make -- manufacturer caliber if there was any
19 trace evidence left on it.

20 And then I'll compare them on my comparison microscope,
21 which is basically two separate stages connected by an
22 optical bridge. Looks like a pair of binoculars, but if I
23 look through the binoculars, I can see both pieces of
24 evidence. I can adjust the lighting and change the angle,
25 adjust the magnification, and then I can try to see the marks

1 that I need to make an identification.

2 Q. So I'm going to show you what's already been
3 admitted into evidence as State's Exhibit 12 through 16 which
4 contained -- which were SLED lab numbers two through six. Do
5 you recognize these?

6 A. Yes. Whenever I receive evidence in a case, I'll
7 mark it with an electric pencil. So I'll engrave it with my
8 initials, the item number, and the case number. And when I
9 finish with it, I'll seal it, and initial and date the seal.
10 So these are the items I examined in this case.

11 Q. And were you able to make any conclusions about
12 these fired cartridge cases in State's 12 through 16?

13 A. Yes.

14 Q. Sorry. Cut you off. What was that conclusion?

15 A. Items two through six were physically examined and
16 microscopically compared. Matching individual identifying
17 characteristics were found. And items two through six it was
18 concluded, were fired by one firearm.

19 Q. And what kind of firearm was that?

20 A. That would be a .45-auto caliber firearm.

21 Q. All right. I'm going to show you what's already
22 been admitted as State's Exhibit 23.

23 A. Sorry.

24 Q. Do you recognize that item?

25 A. Yes, I do.

1 Q. And did you perform any analysis on the site?

2 A. I did. This item is a fired bullet.

3 Q. And what determinations did you make about it?

4 A. I determined that it was .45-auto or .45-gap
5 caliber. Without a cartridge case or a firearm, there's no
6 way to tell it's the same bullet diameters for both of those
7 calibers. So .45-auto or .45-gap. I didn't have a firearm
8 to compare it to at this moment, so I put it in the database
9 and then the database told me that if it were .45-auto, it
10 could have been fired by a Bersa firearm or a Glock. If it
11 were .45-gap, it would've been fired by a Glock.

12 Q. And -- and so, just kind of to go through some of
13 that a little bit slower, you were not able to match that
14 bullet to a firearm? To a specific firearm?

15 A. Correct.

16 Q. And you were not able to say that it matched the
17 way you were talking about the other fired cartridge cases
18 matching one another? You can't say that this matches other
19 bullets or other fired cartridge cases?

20 A. I didn't receive any other bullets to compare it
21 to. It was on its own.

22 Q. And did you compare the fired cartridge cases in
23 State's 12 through 16 or the bullet in Exhibit 23 with any
24 firearms?

25 A. I did.

1 Q. And how did you submit the firearm to you?

2 A. Charleston County Sheriff's Office submitted a
3 firearm.

4 Q. And why did you make -- why did you compare the
5 firearm and the fired cartridge cases and the bullet? What
6 caused you to make that comparison?

7 A. It was based on activity of the
8 National Ballistics Information Network, which is NIBIN.
9 NIBIN is a network that you can put cartridge cases into or
10 test fires. It's a database, so it will correlate every
11 couple of hours with neighboring states and all the evidence
12 that's in it, and all the firearms that are in it. We'll get
13 correlations back at our lab, or in this case it was
14 Charleston County.

15 Someone has to look at those correlations, something --
16 the computer says, "Oh, these look good to me." So a person
17 has to look at it, and then a second person has to look at
18 it, and then a lead is generated. That need -- lead is given
19 to the examiner or the investigators, and then they can
20 determine if they want it confirmed. In order to get it
21 confirmed, it has to go to a firearms examiner.

22 Q. I -- so the NIBIN lead, just in summary, what does
23 the NIBIN lead really tell you if you --if you received like,
24 "Hey, we got a NIBIN lead." What does that tell you?

25 A. It tells us that the computer and then two

1 individuals agreed that the cartridge cases and the firearm
2 may look good and they need to look at -- be looked at in
3 person because we don't make examinations based on
4 photographs.

5 Q. Okay. I'm going to show you what has been
6 admitted into evidence at State's Exhibit 10. Do you
7 recognize that?

8 A. This is the firearm examined for this case.

9 Q. What kind of gun is that?

10 A. It is a Glock model 21, Gen4, and .45-auto caliber
11 with serial number XBV985.

12 Q. And when you compare the -- the firearm to the
13 projectile we were discussing before, were you able to make
14 any conclusions?

15 A. I compared the bullet to the firearm. There are a
16 couple different conclusions that firearms examiners can
17 reach. One is positive means it was fired by that firearm.
18 One is negative, it was not fired by that firearm.

19 One is inconclusive, means it was too damaged or too --
20 little marks for me to tell you if it was fired by that
21 firearm or unsuitable. In this case, when I compared the
22 bullet to the firearm, it was too damaged and didn't have
23 enough individual markings for me to say that it was fired by
24 this particular firearm.

25 Q. But backing up a little bit about that projectile,

1 what caliber did you believe that bullet to be?

2 A. It's either .45-auto or .45-gap.

3 Q. And can that high ammunition be fired from that
4 firearm?

5 A. That's correct.

6 Q. And when you compared the firearm -- this firearm
7 to the fired cartridge cases we discussed in
8 State's 12 to 16, were you able to make any conclusions?

9 A. Yes.

10 Q. And what was that conclusion?

11 A. Matching individual identifying characteristics
12 were found on the five cartridge cases I examined and it was
13 concluded that they were fired by this firearm.

14 Q. And what caliber are those fired cartridge cases?

15 A. .45-auto.

16 Q. And do you generate a report as a result of your
17 examination?

18 A. Yes.

19 Q. And did you generate a report in this case?

20 A. I did.

21 Q. And if I were to show it to you today, would you
22 recognize it?

23 A. Yes.

24 Q. I'm showing the witness what's been marked as
25 State's Exhibit 25. Do you recognize that?

1 A. Yes. It's a copy of the report I generated for
2 this case.

3 Q. So it's a fair and accurate copy of the report you
4 generated?

5 A. Yes.

6 MS. OUTTEN: At this time, the State would offer
7 Exhibit 25 into evidence.

8 MR. MCGUIRE: No objection.

9 THE COURT: All right. State's 25 is in evidence
10 without objection.

11 (State's Exhibit 25 admitted into evidence.)

12 MS. OUTTEN: I don't have any further questions for
13 you, but please answer any questions Mr. McGuire may have.

14 THE COURT: Cross?

15 MR. MCGUIRE: Thanks for coming. No questions.

16 THE COURT: All right. Thank you. You may step down.

17 THE WITNESS: Thank you.

18 MS. LINDER: May she please be released from her
19 subpoena in the remainder of the week?

20 THE COURT: Of course. All right.

21 MS. LINDER: Judge, may we approach for scheduling?

22 THE COURT: Yes.

23 (Bench conference.)

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to be at ease for the rest of the day. So I'm going to

1 return you to your jury room and we're going to start back
2 tomorrow morning at 9:00 -- 9:00 in the morning. So if you
3 could be here you know -- start making your way into the
4 courthouse at about 8:45, that would be great. But we -- our
5 plan is to start at 9:00 in the morning.

6 And we're out a little bit -- you're going to be able
7 to get out a little bit early today. So if -- if -- with
8 that being said, please just remember my prior instructions
9 about discussing the case or if anyone tries to discuss the
10 case with you. But we're going to release the jury for the
11 -- the rest of the day. Thank you. Be back tomorrow morning
12 at 8:45.

13 (Jury exits courtroom.)

14 THE COURT: All right. Can we take -- we'll take about
15 a 10-minute break, just kind of let everybody refresh
16 themselves at the Counsel tables that we've been going full
17 time. We can come back and we can deal with the -- I believe
18 we're going to have Detective Butler and questions about some
19 evidence. We're going to deal with that today. All right.
20 We'll be at -- just about let's try to -- let's really try to
21 keep this one about ten minutes. All right. Thank you.
22 We'll be at ease ten minutes.

23 (Off the record.)

24 THE COURT: All right. We're back on the record. We
25 had a bench conference for scheduling purposes and the

1 parties agreed that -- that the next witness could take a
2 considerable amount of time, but there were some -- some
3 issues they wanted to deal with before Detective Butler takes
4 a stand dealing with some -- I believe some exhibits --
5 potential exhibits. And so, I'm ready to -- we can proffer
6 that testimony now or I don't know how y'all want to handle
7 it, but --

8 MS. OUTTEN: Yes, Judge, I think that would help make
9 things go smoother into tomorrow about getting the jury in
10 and out. I have the text messages that the State intends to
11 enter through Detective Butler. And these text messages are
12 all from the phone that we've been talking about this whole
13 time. The phone that was seized from the Defendant's person
14 that are all -- any kind of potential situation.

15 The objection was withdrawn earlier today. There are a
16 number of text messages, some are individual and some are --
17 well, they're all individual. All of the text messages State
18 intends to enter are as we discussed during the
19 Duncan Hearing and they're all green box one, which means
20 they're all sent from the Defendant's phone. So these are
21 sent from him.

22 So they're not -- it's nobody else. So those are the
23 only ones we're trying to enter. We're not trying to enter
24 any others for context or for anything else. It's strictly
25 those. There are text messages to a couple of different

1 people in there, and you're happy to call -- I just -- I gave
2 my copy exhibit to Defense.

3 I understand I'm looking at it right now. But I'm
4 happy to call Detective Butler and I think it's probably
5 easiest for us to handle the texts, and then move along to
6 kind of the next -- and the next item, as far as exhibits, we
7 would like to enter during the trial. The detective will
8 testify tomorrow.

9 THE COURT: I'll let them have a second to look at the
10 -- the -- the green -- the green -- I'm going to call them
11 the green texts, which are from their client is what -- that
12 I've been letting -- believe here.

13 MR. BISCHOFF: Judge, can we also just allow our client
14 to take a look at them specifically?

15 THE COURT: Absolutely.

16 MS. OUTTEN: And -- and -- and, Judge, listen,
17 Cellebrite takes forever on anyone's computer to download or
18 whatever. A couple weeks ago before -- it was before the
19 holiday, we gave Mr. McGuire a printed out drive, they go on
20 Cellebrite because a lot of times it -- it shuts down our
21 computers to have the drive open. So I mean, they -- they --
22 they've had all this and -- and whatnot and so, I just wanted
23 to show them this and I understand it's a couple people
24 looking through right now.

25 MR. MCGUIRE: That's true. We appreciate that. We got

1 a really high stack of all these -- we -- we've gone through
2 them, we've seen them, we're just making sure which ones
3 we're talking about.

4 THE COURT: All right.

5 MS. OUTTEN: All right. Judge, we're ready to have
6 Detective Butler testify on -- as far as the text messages
7 are concerned, we can call her up.

8 THE COURT: Okay. These are the -- these are the --
9 just to make sure I'm right. These are the text messages
10 that we're indicating are from the Defendant -- from the
11 Defendant to another individual. And it's on his phone that
12 was extracted through a cell phone?

13 MS. OUTTEN: Yes, Judge.

14 THE COURT: All right. Yes, she can come up and
15 testify.

16 JENNIFER BUTLER,

17 having been duly sworn, testifies as follows:

18 THE CLERK: State your full name, spelling your last
19 name.

20 THE WITNESS: Jennifer Butler. B-U-T-L-E-R.

21 DIRECT EXAMINATION

22 BY MS. OUTTEN:

23 Q. All right. And for the purposes of this proffer
24 testimony, I'm just going to cut right to this.

25 Detective Butler, did you do a search warrant on the phone

1 that was seized from the Defendant, Courtney Richards, in
2 this case?

3 A. Yes, ma'am.

4 Q. And was the digital extraction from that search
5 warrant successful? Did you receive any information from
6 him?

7 A. Yes, ma'am.

8 Q. After you received the information, did you review
9 the information that was gotten off of the extraction from
10 his cell phone?

11 A. Yes, ma'am.

12 Q. Some of the items that you reviewed; did those
13 include text messages?

14 A. Yes, ma'am.

15 Q. All right. I'm going to hand you -- for ID
16 purposes only, I'm going to hand you
17 State's Exhibit 103, 104, 105, and 106. If you can look at
18 those.

19 A. Yes, ma'am.

20 Q. And do you recognize those?

21 A. Yes, ma'am.

22 Q. And what -- and do they fairly and accurately
23 represent all of the text messages that were written off of
24 the Defendant's cell phone extraction?

25 A. Yes, ma'am.

1 Q. And in -- you're reviewing all those text
2 messages, these Exhibits 103, 104, 105, 106. This is not all
3 what the text message is that is on the Defendant's phone, is
4 it?

5 A. No, ma'am. That's not all of them.

6 Q. And -- and reviewing these selected ones. They're
7 all outlined in a green box. And from that and the
8 information within, does that indicate to you who the text
9 message was sent from?

10 A. Yes, ma'am. The owner of the phone.

11 Q. All right. And this is the phone that was from
12 the Defendant?

13 A. Yes, ma'am.

14 Q. All right. So what I'd like to do is take these
15 chronologically and with the recipients. All right. So
16 first -- the first one --

17 MS. OUTTEN: And -- and, your Honor, I -- I guess I
18 would seek to admit these 103, 104, 105, and 106 for the
19 limited purposes of this proffer testimony.

20 THE COURT: All right. Any objection for the limited
21 purposes of this proffer testimony?

22 MR. BISCHOFF: No, your Honor.

23 THE COURT: All right.

24 MS. OUTTEN: All right.

25 THE COURT: Admitted for that limited purpose: 103,

1 104, 105, and 106.

2 (State's Exhibits 103, 104, 105, and 106 admitted into
3 evidence.)

4 BY MS. OUTTEN:

5 Q. All right. Okay, so this is State's Exhibit 104.
6 What time -- what day and time did the shooting happen?

7 A. February 19th at approximately 1:30 in the
8 afternoon. 2022, I apologize.

9 Q. All right. And with State's 104, what date and
10 time is this?

11 A. February 20, 2022, at approximately 1:25 p.m.

12 Q. So how many days after the murder?

13 A. The next day.

14 Q. And what -- what does this state -- can you just
15 read it?

16 A. "One more thing, whatever you do, can you try to
17 keep everybody from talking about it just so it can die
18 down?"

19 Q. All right.

20 THE COURT: I -- I'm going to jump in. Is there going
21 to be an objection to these admissions? By the -- I assume
22 these are all considered admissions by the Defendant.

23 MR. BISCHOFF: They're --

24 THE COURT: What is the objection?

25 MR. BISCHOFF: I don't have.

1 THE COURT: All right. So -- okay. Well, then let's
2 get it off. All right. Let's get to some other items.

3 MS. OUTTEN: Okay. Yes, Judge, I -- I'm happy to move
4 on. So if there's no objection to
5 State's 103, 104, 105 or 106, then we'll tender to enter
6 those through
7 Detective Butler tomorrow. And we don't need to go through
8 those today. That's great. All right.

9 MR. BISCHOFF: Well, subject to the foundation tomorrow
10 where she can say I abstracted today also.

11 THE COURT: All right. Is there something that we need
12 to deal with today that you -- you say that we need to take
13 -- we would be taking outside -- outside the presence of the
14 jury tomorrow?

15 MS. OUTTEN: Right. So --

16 THE COURT: Technically, we have some other items.

17 MS. OUTTEN: Yes, Judge. So with that -- so with that,
18 Judge, there is -- is the Defense going to be objecting from
19 the video? I don't remember how many seconds it is. All of
20 the Facebook records belonging to Zaire Davis?

21 MR. MCGUIRE: Yes.

22 THE COURT: All right. And the basis of your objection
23 to that video.

24 MR. MCGUIRE: So anything that is hearsay, we would
25 object to. Clearly something that's a present sense

1 impression. If this is the video from Zaire where he's
2 describing the shooting, oh, then the only thing that we
3 would object to would be any statement that's referencing
4 something not right in front of him at that moment.

5 No objection to him saying, "Courtney just shot that
6 boy" basically, but if there's a reference on there about,
7 "Courtney was telling me that that boy's been bothering him"
8 or something like that, then that -- that's not what he's
9 seeing. That's something else. So we would say that's it --

10 THE COURT: You would not -- and you would not want
11 that in?

12 MR. MCGUIRE: That's right.

13 MS. OUTTEN: Okay. So I -- I'd like to just play this
14 because I don't -- I -- I want to make sure that we're clear
15 as, your Honor, we're not long.

16 THE COURT: All right. All right. Just tell me --
17 let's give it a number so we know what we're -- we're looking
18 at. Give it -- number on it.

19 MS. OUTTEN: I believe it's State's 8. Let's put it in
20 there. Yes. State's 8.

21 THE COURT: All right. State's 8 is the video. All
22 right. Go ahead.

23 (Video starts)

24 MR. DAVIS: Drop that dumbass boy. You tell him stop
25 playing with him because he's gone crazy drop his stupid ass.

1 (Video stops.)

2 THE COURT: Okay. Which part?

3 MR. MCGUIRE: "He tell him to stop playing with him."
4 That little phrase.

5 THE COURT: Courtney, meaning your client, that the
6 Defendant is saying that he's to stop playing with him. Is
7 that the part?

8 MR. MCGUIRE: Just that little snippet. Yes.

9 THE COURT: All right. What's the State's position on
10 that?

11 MS. OUTTEN: Judge, I -- I -- I think that all of that
12 should come in, including the part that Mr. McGuire does not
13 want in. I think it's all under present tense impression. I
14 think it's -- it's also excited utterance. He just wanted to
15 be killed. He's driving away. You see him flash down to the
16 body right there. It is -- it is -- it is kind of all one
17 stream of consciousness of Mr. Davis while he's driving by.
18 I -- I think that all comes in.

19 THE COURT: So you think the presence sense impression
20 and excited utterance. Is that what you --

21 MS. OUTTEN: I do, Judge.

22 THE COURT: All right. Yes sir. I'll be glad to hear
23 from you.

24 MR. MCGUIRE: The little snippet, "Courtney," I think
25 it's roughly Courtney told him, "stop playing with him."

1 Something to that effect. That is a statement from
2 Mr. Richards that would go then to Mr. Zairae. And then that
3 is hearsay, that then it's on video. So it's Richards',
4 Zairae video -- that video.

5 So it's hearsay within hearsay, the whole -- that --
6 that references a history of something that happened some
7 other time. Courtney telling him, "Stop playing with him."
8 That's clearly not right there. That's a -- that's a
9 statement made by Courtney to Zairae, and then Zairae repeats
10 it in that video. So it is hearsay.

11 THE COURT: So it's you're -- that you indicate it's
12 not a present sense impression because it's something that he
13 got from another time? Is that --

14 MR. MCGUIRE: That's right. Yes, sir.

15 THE COURT: -- what you're saying?

16 MR. MCGUIRE: Yes sir.

17 THE COURT: All right.

18 MS. OUTTEN: And -- and, you know, I would look at
19 State v Burnett. And the whole point also of the excited
20 utterance is it talks about, "The rationale side utters
21 exceptional lies discussion, reliability, according to the
22 statement, utterance, McCain's (ph) statement. Which suspend
23 -- declares power of reflection of fabrication. It -- it is
24 all going all at one time with him." And so, I think that --
25 that -- that is something that -- that should have that

1 portion coming in.

2 THE COURT: All right. You addressed the excited
3 utterance of coming in under an excited utterance.

4 MR. MCGUIRE: Oh no objection to, "Courtney just
5 dropped that boy." No objection to any of that. Also, we
6 don't even know if what he's referencing there came from
7 Mr. Richards. He could be at a corner in a neighborhood and
8 some other fella tells this guy, "You know, Courtney told
9 Javon to stop messing with him." It could come from somebody
10 else. We don't know the source.

11 There's no inherent reliability. I can't cross-examine
12 this guy by where he got that information to go into if it's
13 reliable or not. I mean, I don't think that happened. I
14 don't think Mr. Richards had any communications with
15 Javon Thomas saying, "Stop playing with me."

16 I don't think that ever happened. I don't think that's
17 true. But to try to get it in for the truth of the matter
18 asserted, which is Mr. Richards has been telling
19 Mr. Javon Thomas stop playing with him, is improper.

20 THE COURT: All right. I'll let you have the last
21 word, Solicitor.

22 MS. OUTTEN: And I -- I was just going to say, I think
23 that goes to weight not admissibility and I think that's --
24 that's up to the jury to determine that. You're welcome to
25 argue that, your Honor.

1 THE COURT: Okay. All right. I'm going to take that
2 under advisement. And do -- do you have anything else on
3 that?

4 MS. OUTTEN: Yes, there are two audio recordings from
5 the Facebook records that were from the search warrant from
6 Zairae Davis' Facebook. This was on the videos on there.
7 Then there's two audio recordings that we would seek to get
8 in.

9 One is from the day of the shooting at 3:44 and one is
10 the day of the shooting at 3:54. So this is like two -- two
11 and a half hours after the shooting. And these are audio --
12 these are audio recordings from Zairae's Facebook.

13 THE COURT: And your position on that? Are you taking
14 that, Mr. McGuire, a piece of evidence as well?

15 MR. MCGUIRE: I'm not sure exactly which audio we're
16 talking about. I've listened to a lot. Are these --

17 MS. OUTTEN: They're -- they're about
18 20 and 30 seconds.

19 THE COURT: All right.

20 MR. MCGUIRE: Oh, I know they're short. Yeah -- yeah,
21 I agree they're short. But I think they're from Zairae's
22 posting on social media?

23 MS. OUTTEN: Yes, they're Zairae's Facebook.

24 MR. MCGUIRE: Yeah.

25 MS. OUTTEN: But from Zairae's Facebook records.

1 MR. MCGUIRE: In my objections, it'll be hearsay.

2 MS. OUTTEN: And, your Honor, pulls up.

3 THE COURT: And we're going to call this one. What
4 number on this one?

5 MS. OUTTEN: This is State --

6 MR. DAVIS: "I have to make sure my dog been good."

7 THE COURT: Hold on a second.

8 MS. LINDER: Update on --

9 MS. OUTTEN: This is State's 125.

10 THE COURT: Okay. So State's 125.

11 MS. OUTTEN: And then the next one will be 126.

12 THE Court: State's 126. Okay. So we're listening to
13 125 now?

14 MS. OUTTEN: Yes, sir.

15 THE COURT: All right.

16 (Video starts.)

17 MR. DAVIS: I had to make sure my dog has been good.
18 He had to finish the job, you know, what I'm saying? He
19 already called me and let me know we were out there in the
20 park with him. So I was already on my way down there and he
21 speaking back, but I was like attacking him, right?

22 So I was coming down the park with him. By the time I
23 get down there, they were clapping at each other. So I came
24 down there, they help brought me, you know what I'm saying?
25 So he killed the dog. Dropped the dog. I don't have to

1 MS. OUTTEN: Yes, Judge. And I would look at the case
2 law with excited utterance that it has many different ones.
3 I'll put -- tell you some case things if you would like that
4 -- it's, you know, up to 12 hours of time still could be
5 considered excited. I -- in here we have just, you know,
6 under two and a half hours.

7 THE COURT: Do you have that case?

8 MS. OUTTEN: Yes. So the 12-hour one is State v Sims,
9 which is 348 SC 16.

10 THE COURT: 248 SC --

11 MS. OUTTEN: 348. I'm sorry.

12 THE COURT: 348 --

13 MS. OUTTEN: SC 16.

14 THE COURT: Okay.

15 MS. OUTTEN: And then for up to 11 hours, that's
16 State v. Quillen, that's 263 SC 87.

17 THE COURT: Okay.

18 MS. OUTTEN: And then also something I would say as far
19 as sense is concerned, that it talks about the passage of
20 time and also other factors which includes the demeanor of
21 the person who is saying it.

22 And I would submit to you that I believe in both good
23 means, 125 we just listened to, 126 which we're about to
24 listen to. I would say that the demeanor and the sound of
25 the voice sounds he's excited -- just say it's not -- it's

1 not monotone, it's not a -- a slow speech.

2 THE COURT: We don't have anything to compare that to,
3 obviously?

4 MS. OUTTEN: Right. Well, I mean I think we can -- I
5 think you can look at it how -- how he's speaking on the
6 video as he's watching it and driving past the dead body.
7 And then we have this with just two -- less -- just -- just
8 under two and a half hours later. And the next one is also
9 just under two and a half hours later.

10 THE COURT: All right. Let's -- I'll hear from
11 Mr. McGuire on the -- on that objection, hearsay. State's
12 position is present sense impression, excited utterance.
13 Mr. McGuire, I'll be glad to hear on that.

14 MR. MCGUIRE: That's not a horse I would ride to the
15 South Carolina Supreme Court.

16 THE COURT: So you take issue with that?

17 MR. MCGUIRE: Yes.

18 THE COURT: All right. All right. We'll go to 126.

19 MS. OUTTEN: All right. State's 126. This is on the
20 day of the shooting, 2/19/22. And this is at 3:54 p.m. So
21 this is just under two and a half hours on --

22 MR. DAVIS: According to this, this was one.

23 MS. OUTTEN: Oops, sorry. Sorry. It plays as soon as
24 I open it.

25 THE COURT: That's okay. That's all right.

1 (Video starts.)

2 MR. DAVIS: According to this, this was one young boy.
3 Like, man, mans, I see the video, right? All right. I see
4 him coming. He shoot one time, and he shoot the rest of the
5 shit. Man, little Courtney, ducked that first thing like
6 that nigga, my feet is cooked, man. Little Courtney come
7 from one side of that motherfucking car, like on that -- that
8 door, turn that beam on. All I see is that little beam. I
9 see that shit through the lid, I see that, man.

10 That's when I took the camera, mam. I should've kept
11 this shit, man. Long story short, that nigga shoot three
12 times, that nigga was out here. So little Courtney had been
13 aiming at the tape because that nigga just said, "hey," and
14 his body just went to the left, like, stuck up, went to the
15 left, and he hit that fence, and got dropped here, and it was
16 a wrap.

17 (Video ends.)

18 THE COURT: All right.

19 MS. OUTTEN: And, your Honor, again for that one, I
20 would have the same argument said before ten minutes later,
21 which I still think is welcome that -- that amount of
22 time frame in those cases that I mentioned to you. I also
23 think it's important to note the tone of his voice, the speed
24 of his voice. It's very similar. I would submit to what's
25 happening if he's driving past in the video.

1 And this one in particular, he is talking about the
2 Defendant coming from behind, you know -- coming from behind
3 his door and shooting the victim. He is talking about how
4 the shooting the -- about Javon's body, makes some noise, how
5 it falls. I mean this is all like, detailing what happened
6 and he mentions the video itself in there. So that's our
7 position on this one, State's 126.

8 THE COURT: All right. Mr. McGuire?

9 MR. MCGUIRE: My understanding is that person is under
10 subpoena by the State. To let that in without me
11 cross-examining him would be an error.

12 THE COURT: All right. Any -- any other argument on
13 these two pieces of evidence?

14 MR. BISCHOFF: No, sir.

15 MS. OUTTEN: No, Judge.

16 THE COURT: All right. Any other pieces of evidence
17 that we need? I'm going to take that under advisement on
18 both of those as well. Anything else we need to discuss as
19 far as any potential objectionable --

20 MS. OUTTEN: Just -- just to be on the very safe side,
21 Judge, what -- what we do have is we have that one disc of
22 the -- the video of the shooting and then Detective Butler's
23 going to testify that when she was reviewing it, she would
24 slow down the video, and she would just kind of, like, close
25 her eyes and just listen to the audio or the video. And

1 that's kind of normal and what she does when she's reviewing
2 the video.

3 We do have a separate disc made that is the slowed down
4 zoomed-in video. And we -- and on that disc we also have a
5 just audio recording of it. We would seek to enter that to
6 be able to have Detective Butler talk about my pre-process in
7 the investigation, and then to have that in available for the
8 jury. And we just wanted to work -- what we're having to
9 play those if you want. But we just want to, like, make the
10 Court aware.

11 And I know yesterday or Monday -- I don't know what day
12 it is, with Duncan we kind of brought that up and so, I
13 wanted to bring that up to the Court -- to the Defense as
14 well so that they were aware that we had those further
15 recordings. We do have those in a separate disc, of course.
16 But we do have those.

17 THE COURT: Did they -- both -- they both contain the
18 objectionable material that Mr. McGuire was objecting to?

19 MS. OUTTEN: They -- they do.

20 THE COURT: On State's 8?

21 MS. OUTTEN: They do and we are happy to, since we're
22 not going to get into this tomorrow. You know, the Court
23 would like -- we are happy to make different discs not
24 include that. So depending on the Court's ruling, you hold
25 forward without any further delay.

1 THE COURT: All right. Mr. McGuire, I'd be happy to
2 hear from you on that issue.

3 MR. MCGUIRE: Sure, of course. I -- I think it'd be a
4 good idea to just go ahead and plan now, and we can pose our
5 objections to the Court.

6 THE COURT: Okay. Then we're going to do the slowed
7 down version now. Okay. What's the number on that?

8 MS. OUTTEN: State's 9.

9 THE COURT: All right. State's 9.

10 MS. OUTTEN: Judge, I apologize, we're having issues --
11 for whatever reason, the disc drive is not wanting to
12 cooperate with us.

13 THE COURT: Is this the same version that we reviewed
14 in the Duncan Hearing?

15 MS. OUTTEN: Yes, Judge. It is the same slow Zoom
16 video with sound. There's also one of just sound but, again,
17 you know, if it's one of those, oh, so you -- same as you
18 closed your eyes and just listen, I mean, I -- I can get
19 around that. It is the same slow Zoom video with audio that
20 was used on it.

21 MR. MCGUIRE: You know, Judge, now that we hear the
22 characterization, we're not going to object to that.

23 THE COURT: All right. To -- how about subject to the
24 State's Number 8 you said -- so you have no objection to it
25 being in that version if we -- if -- if the Court would take

1 out the objectionable issue in Number 8. Is that --

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Is that what we're following -- everybody's
4 on the same page?

5 MS. OUTTEN: Judge, I did get it up if you wanted to.

6 THE COURT: That's okay.

7 MS. OUTTEN: I -- I'm sorry.

8 THE COURT: I've seen it from the Duncan hearing. I
9 just was doing their benefit. I know which video you're
10 talking about. So, we're talking about State's 9 and we're
11 talking about what would be the audio version.

12 MS. OUTTEN: I can play that to you.

13 THE COURT: Just the number if you -- you --

14 MS. OUTTEN: It's the same. Yes.

15 THE COURT: Okay. So State's 9 is the slowed down
16 version, and it's the audio, and I'm aware of his objection
17 from the State's 8. All right. Okay. Anything else that we
18 need to deal with?

19 MS. OUTTEN: I think that's everything that I think
20 would probably be an issue as far as us trying to enter
21 exhibits above -- as far as marking.

22 THE COURT: Anybody anticipate anything else so I can
23 hear from you now?

24 MR. MCGUIRE: Not at this time. Thank you.

25 THE COURT: All right. Thank you. All right. I will

1 -- I would ask the State to prepare a -- an edited version of
2 8 and 9. And then we'll just have those depending on my
3 ruling in the morning. First thing I'll -- I plan to rule --
4 I'll rule on this first thing, and then we can put
5 Detective Butler up immediately and go from there.

6 MS. OUTTEN: Yes. And also, Judge, we are almost done
7 with the proposed order for the Duncan hearing, so we will
8 have that sent over to the Defense today. You know, it's
9 already on the spotlight this evening. We'll have it sent
10 over to them for their review also.

11 THE COURT: That's fine. That's fine. We can do that.
12 And Mr. McGuire mentioned this -- and I don't know what -- an
13 individual named Zion, but his last name is -- is --

14 MS. OUTTEN: Davis.

15 THE COURT: Davis? That's Zairae Davis?

16 MS. OUTTEN: Okay.

17 THE COURT: Okay. That's Zion. And he is under
18 subpoena by the State?

19 MS. OUTTEN: He is.

20 THE COURT: Okay. And -- all right. All right. Well,
21 thank you very much.

22 MR. MCGUIRE: Thank you, Judge.

23 THE COURT: All right. Y'all have a good evening.

24 Let's -- let's try and get ready, right at 9:00.

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: You guys can have him here at 9:00, no
2 issues. All right. Be here ready for the rest to go. Thank
3 you.

4 MR. MCGUIRE: Have a good evening.

5 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
6 4:56 P.M.)

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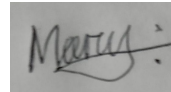
CERTIFICATE OF TRANSCRIBER

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I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 24th Day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 15, 2024



MARY RAGSDALE

Transcriber

1 CONTINUATION OF PROCEEDINGS - JULY 25, 2024

2 THE CLERK: Thursday, July 25, 2024.

3 Charleston County, Judge McMaster.

4 THE COURT: We're on the record. First thing we're
5 going to deal with is yesterday afternoon we had some
6 motions, or heard some evidence about some testimony that --
7 that the State planned to put in. I believe we -- we decided
8 that the text messages from the Defendant, which appeared to
9 be State's 103, 104, 105, 106, are -- are -- there are
10 admissions by the -- by the Defendant.

11 So those -- the Defense is not going to object to
12 those. Next we came -- we're going to talk about
13 State's 125 and 126. Those are audio messages from one of
14 the State's witnesses. I believe it says on the audio,
15 "Zion," that is Zairae Davis; is that correct?

16 MS. LINDER: Yes, Judge.

17 THE COURT: Okay. Zairae Davis. And there are two
18 audio clips, 125, 126. The State would like to introduce
19 those into -- into evidence. In their case the Defense has
20 indicated -- the State has indicated those are either present
21 sense impressions or excited utterances. And the Defense has
22 objected to that. And the characterization of is just basic
23 hearsay.

24 Based on review, I believe the State gave me
25 State v Sims. I reviewed that case last night and I'm going

1 to grant the -- I'm going to rule for the Defense in this,
2 and I'm going to suppress State's 125, 126. I do not believe
3 they -- they fit under the present sense impression of
4 exception to hearsay.

5 As far as excited utterance is concerned, the Sims case
6 does indicate that you can have an excited utterance, you
7 know, many hours after an event but -- and the passage of
8 your time is not dispositive of -- of a -- an evidence,
9 excited utterance. But there are other factors that we look
10 at in Sims, they were -- there was a 6-year-old Zairae Davis,
11 just from the video information that we have reviewed,
12 appears to be much older.

13 He is driving a vehicle much older than six years old.
14 Another factor to consider is -- is the person still under
15 the -- the stress of the situation. There is no way from the
16 audio that we can establish that Mr. Zairae Davis is the --
17 is still under the stress of the situation. So therefore,
18 I'm -- I'm going to suppress those two pieces of evidence.

19 If Mr. Zairae Davis is called as a witness, obviously,
20 we would revisit that at that time. Also, State's 8 --
21 State's 8 is a video of the incident. The Defense does not
22 object to the -- to the video itself.

23 There's some commentary again by Zairae Davis who was
24 filming this incident. And there -- the commentary has to do
25 with a statement that the Defendant, Courtney, said he was

1 going to stop -- he told that boy to stop playing or
2 something to that effect.

3 I believe that is hearsay. The State will need to
4 redact their videos and audio, and remove that objectionable
5 portion from the videos. Other than that, that's -- that is
6 the ruling of the Court, and we're ready to proceed with the
7 next witness.

8 MR. BISCHOFF: Judge, can we get an order that both
9 sides are allowed to use the video -- that is State's 9, I
10 believe -- I'm sorry, 8. State's 8, in any sort of shape,
11 form, or fashion, whether it's zoomed in or slowed down, or
12 there's a still -- as long as it is a product of that exhibit
13 so that we don't have to admit separate copies of -- I know,
14 the State has done that.

15 But is there -- I think it would be fair to both sides
16 that you just say -- if we want to zoom in on the video and
17 play a zoomed-in portion during our cross, then we're allowed
18 to do that, rather than take the steps and waste the time to
19 admit these different portions of --

20 THE COURT: I -- I don't -- I'm not going to agree with
21 you on that. I don't see why that makes any difference.
22 That they can -- they have three different versions -- as
23 long as all the versions are redacted. Ms. Linder, is that
24 -- do you have redacted versions?

25 MS. LINDER: Yes, Judge.

1 THE COURT: Of all three?

2 MS. LINDER: Yes, Judge.

3 THE COURT: Okay. All right. I'm not going to limit
4 the State on that. But we can go back and forth between them
5 and -- and -- and go -- and put them in and use them any way
6 you want to in the trial if they come into evidence, which
7 we'll find out.

8 MR. BISCHOFF: And just -- I'm not asking you to limit
9 it, I'm just saying, do you need us to go through this -- the
10 separate process of authenticating a different part of the
11 video that is slowed down if we want to play a slowed down or
12 we play the zoomed-in portion of the video -- do we need to
13 separately mark that as a separate exhibit?

14 THE COURT: No, I don't think.

15 MR. BISCHOFF: No.

16 THE COURT: You can use their exhibit in -- in -- in
17 however you want -- in any fashion you want to. If it's in
18 evidence. Maybe I'm not following what you want to do. I'm
19 not --

20 MR. BISCHOFF: Well, we have our own zoomed-in version
21 of the video.

22 THE COURT: Okay.

23 MR. BISCHOFF: And we have another version that is only
24 of a particular portion of the video. And so, are you saying
25 that we need to admit those separate portions as separate

1 exhibits?

2 THE COURT: Yes. I would like you to do that.

3 MR. BISCHOFF: Okay.

4 THE COURT: Yes.

5 MR. BISCHOFF: Thank you, Judge.

6 THE COURT: All right.

7 MR. MCGUIRE: And -- and Judge, if I can just be heard
8 just very briefly.

9 THE COURT: On -- on what?

10 MR. MCGUIRE: On the issue of trying to get
11 Ms. Singleton back here?

12 THE COURT: Okay. All right. Let me set that. Let me
13 give some information. All right. It has been brought to
14 the Court's attention that Ms. Singleton, who was a witness
15 yesterday, was asked some questions about an event at -- at
16 Walmart involving the deceased. And she said that she did
17 not know anything about that. I'm paraphrasing. I -- I
18 obviously -- the testimony is in the transcript.

19 That she didn't have any information about that -- had
20 no clue what they were talking about. And then last night,
21 an email was given -- was sent to me last night from the
22 parties that there's a police report of a -- of an
23 altercation at the Walmart where Ms. Singleton worked. Ms.
24 Singleton was a witness by the State.

25 She was subject to cross-examination yesterday and she

1 was -- the last I was told she was still sitting in the
2 solicitor's office waiting area, or lobby, or wherever
3 yesterday afternoon at the close of business. And that --
4 that's all the court information we have at this time. Now,
5 I'm glad to hear from you.

6 MR. MCGUIRE: Thank you, your Honor. So we do have a
7 police report on an issue that came up yesterday in her
8 testimony. We believe it indicates that she testified
9 untruthfully and committed perjury. We'll have to review the
10 transcript to nail that down. I think in fairness to
11 everybody. But the remedy might involve her presence here.
12 She's not here today is my understanding.

13 I don't believe I released her from her subpoena. She
14 should still be under subpoena. We ask the State to provide
15 us with her address. They obviously have her under subpoena
16 at some time. They know where she is, they have the address.
17 And I think in this instance, you know, the saying of
18 prosecutors, their job didn't just secure convictions it is
19 to do justice.

20 And in this situation where we have a good indication
21 that she lied to the jury under oath, I believe it does cause
22 them to have an affirmative duty to fix this. And I think
23 providing us with her address, because we're racing against
24 the clock right here once this case -- once they -- once this
25 case goes to the jury, we can't fix this.

1 So we are racing the clock and we do need some
2 assistance to get her back here to cure this, essentially,
3 fraud upon the jury. And I -- and I think it's -- it's in
4 the interest of justice to -- for the Court to order them to
5 provide that information to us.

6 THE COURT: All right. Ms. Linder be happy to hear
7 from you or Ms. Outten who -- whoever would like to address
8 that. He's requesting the address of Ms. Singleton, --

9 MS. LINDER: I -- I -- I --

10 THE COURT: -- your witness that you subpoenaed.

11 MS. LINDER: I would disagree with Mr. McGuire's
12 characterization. As far as Ms. Singleton is concerned,
13 again, whatever's on the transcript, I think that it was
14 clear that, you know, the way Ms. Singleton communicates is
15 not necessarily the way that Mr. McGuire communicates. Even
16 when he was talking about when they were walking through the
17 park and, you know, he thought at first, "Well this is the
18 last time you go to the store a lot."

19 She's like, "I have no idea what you're talking about."
20 Because that's not what she meant by it. And so, I think
21 that there is some misunderstanding on that part. And I
22 think it goes further to when she was testifying.
23 Mr. McGuire, again, this is based on my notes -- my memory.
24 He asked, you know; well, why she was fired. She said,
25 "Because she was playing," she was young, her and other

1 people, they weren't working, they were playing.

2 That's why she was fired. She said she had worked
3 there for a couple of months. She said she was fired either
4 the day before, or the night before, or the day of all of the
5 shootings. So February 18 -- 19, 2022. And then when she
6 was asking Mr. McGuire, he was asking her if Javon came and
7 assaulted her at the store. I -- she said, "I don't recall."
8 She said, "No."

9 And then he said, "Wasn't that why you were fired?"
10 She said, "No -- no." You know, we still don't -- you know,
11 we don't have anything that shows us why she was being fired
12 and she was fired February 18th -- 19th. I -- I -- I don't
13 know why she was fired. You know, I'd think that.

14 But that aside, I think that it is important that we
15 were surprised when we heard this, obviously on re-direct,
16 Ms. Outten asked Ms. Singleton, you know, "When you were
17 fired that day, you know, day of shooting on that day, you
18 know, you were fired, did Javon went to Walmart that day."

19 She said, "No." Last night, of course, we got a -- we
20 got the report sent to us from the Defense last night that in
21 December of 2021, which is two months prior to this and it is
22 an expunged matter according to the report, that the victim
23 Javon went to Walmart while she was working.

24 And I'm paraphrasing because I just glance at it that
25 he went to Walmart while she was working, he was being loud

1 and whatnot.

2 She told him -- she told him to leave and then someone
3 else got in between them and -- and -- and Javon hit that
4 person. So again -- in -- in the way that some people's
5 minds were -- it -- we know it wasn't at the time of the
6 shooting, or the day before the shooting, or the time that
7 she testified that she was fired.

8 We also -- when the question is asked, "Police came
9 when he assaulted you." Listen, we know what assault versus
10 battery means. If he comes to a wall -- I'm not saying in
11 her mind -- in her mind, who knows, but the -- the punching
12 was not to her. He didn't drag by the hair, he didn't hit
13 her, he didn't do this.

14 THE COURT: We're going to deal with this, we're going
15 to deal with the transcript -- we're going to deal with the
16 transcript on what was said.

17 MS. LINDER: But as far as -- I don't think that it is
18 the State's responsibility to recall her simply for the fact
19 for them to be able to do that. They had ample opportunity
20 to cross-examine her than they did.

21 THE COURT: And -- and the Court will rule on that at a
22 later time. What he specifically asked is about an address
23 and whether the State would give him the address. That's
24 what I'm asking. What's your position on giving him the
25 address? I'm not trying to limit your -- your --

1 MS. LINDER: I -- I have concerns about giving the
2 address. As I mentioned in chambers yesterday, the
3 Defendant's girlfriend has already said some words while in
4 the courthouse to Ms. Singleton. Ms. Singleton has indicated
5 that she has been scared and nervous. She has been escorted
6 to her vehicle from our office yesterday and the day before
7 when we had him here ready to testify.

8 We have been listening to the jail calls of this
9 Defendant throughout this week, and he and his girlfriend
10 have been talking and laughing about Ms. Singleton, and
11 saying things about her. And so, we do have concern with
12 sharing her actual address.

13 THE COURT: You believe it's a safety issue, is that
14 what you're saying?

15 MS. LINDER: Yes, Judge.

16 THE COURT: Okay. All right. Let's listen to -- I'm
17 going to hold that in advance -- your request and we'll
18 listen to the testimony at our break. When we have a break,
19 we'll get that queued up -- that specific part of the
20 testimony. We're not going to replay the entire testimony.

21 We'll hear that, then we'll make a decision on
22 addresses and -- and the position of recalling her and so
23 forth. We'll -- we will do that. But we need to bring the
24 jury out -- is everybody -- is -- all the parties ready to
25 begin? You believe you said Detective Butler will be next.

1 Defense --

2 MS. LINDER: Yes, Judge. State is ready.

3 THE COURT: All right. State is ready. Defense is
4 ready?

5 MR. BISCHOFF: Yes, sir.

6 THE COURT: All right. You taking this Mr. Bischoff
7 today?

8 MR. BISCHOFF: Yes, Judge.

9 THE COURT: All right. Thank you. All right. Bring
10 the jury, please.

11 (Jury enters courtroom.)

12 THE BAILIFF: Jury is present, your Honor.

13 THE COURT: Thank you. Thank you. I'm glad you're all
14 here. Hope you had a good night. I know, that there was --
15 been informed there were some traffic issues this morning.
16 I'm glad everybody got here safely. We're going to continue
17 with the case now. State, call your next witness, please.

18 MS. LINDER: State calls Jennifer Butler.

19 THE COURT: Thank you.

20 JENNIFER BUTLER,

21 having been duly sworn, testifies as follows:

22 THE CLERK: Have a seat. State your name spelling,
23 your last name.

24 THE WITNESS: Jennifer Butler. B-U-T-L-E-R.

25 FURTHER DIRECT EXAMINATION

1 BY MS. LINDER:

2 Q. Good morning.

3 A. Good morning.

4 Q. Where were you working back in February of 2022?

5 A. The North Charleston Police Department.

6 Q. And what was your position at the time?

7 A. I was a person's crime detective.

8 Q. What did your duties include?

9 A. As a person's crime detective, I worked crimes
10 against persons such as homicides shootings, aggravated
11 assaults, also vandalisms, we call them vandalism gunfire
12 where vehicles are shot or houses are shot to -- when I --
13 investigate those cases, I have to talk to victims,
14 witnesses, and suspects.

15 In addition, I complete search warrants on cases,
16 canvass the area for video, collect that video, review that
17 video, and also draft affidavits for arrest warrant.

18 Q. Will you please tell the jury about your
19 education, training, and experience?

20 A. Yes, ma'am. And I started working for the
21 North Charleston Police Department in 2008 as a dispatcher.
22 I completed training as a -- what they call a
23 telecommunication specialist at the
24 South Carolina Criminal Justice Academy. After I turned 21,
25 I became a police officer again back to the

1 South Carolina Criminal Justice Academy to be certified as --
2 as a law enforcement officer. I became a person's crime
3 detective in February of 2015. I've taken several classes
4 for armed robbery investigations, homicide investigations,
5 interview and interrogation basic detective at the
6 South Carolina Criminal Justice Academy.

7 In addition to that, I served in the
8 South Carolina Army National Guard, and I -- I -- ironically
9 retired in 2022. And serving in the guard I took -- I had
10 multiple courses in basic soldiering skills, leadership
11 courses -- courses to train soldiers. And I also obtained my
12 bachelor's degree in business after I got back from
13 Afghanistan in 2013.

14 Q. And were you working back on September --
15 September? Saturday, February 19, 2022?

16 A. Yes, ma'am.

17 Q. And were you involved in the investigation of this
18 case? The State versus Courtney Richards in any way?

19 A. Yes, ma'am. I was the case agent.

20 Q. And tell the jury how you first got involved with
21 the case.

22 A. On Saturday -- on the weekends we typically are in
23 a call out status, which means we have to have our phones on
24 us twenty-four seven and the call out supervisor will call us
25 to respond to a multiple of different incidences. So my call

1 out supervisor called me and asked me to respond to
2 Comstock Avenue in reference to a homicide that just
3 occurred.

4 Q. And did you end up responding then to Comstock?

5 A. Yes, ma'am.

6 Q. And is that Charleston County?

7 A. Yes, ma'am.

8 Q. What neighborhood is that?

9 A. It's in the Union -- Union Heights neighborhood,
10 which is also known as The Height.

11 Q. And can you describe the area of Union Heights and
12 specifically, Comstock to the jury?

13 A. Yes, ma'am. I would describe it as, like, an
14 older neighborhood. It's -- the -- they're all one-way
15 streets. They're very small -- the houses are very small,
16 there's no sidewalks and the houses are very close to the
17 roadway.

18 Q. What happened when you first got on the scene?

19 A. So upon my arrival, initial units have already
20 responded. Also fire and EMS have also responded, so by the
21 time I get there, crime scene has already been established
22 and crime scene tape is already up. So the first thing I do
23 is meet responding units to be briefed on essentially what
24 I'm walking into -- what they have upon my arrival.

25 Q. And when you arrived and when you were there, was

1 there any deceased on the scene?

2 A. Yes, ma'am. After being briefed on what patrol
3 responded to, I walked the scene, for lack of a better term,
4 I observed the decedent lying on the ground clearly deceased.
5 I also was -- observed that EMS had attempted to render aid
6 to him. There was also two separate locations of fired
7 cartridge cases on scene.

8 Q. And -- and who had died that day on scene?

9 A. Javon Thomas who's an 18-year-old black male.

10 Q. Did you conduct any interviews while you were on
11 the scene that day?

12 A. Yes, ma'am. I -- interviewed Abigail Perry. She
13 was a witness that was attending a church service essentially
14 across the street from where the decedent fell.

15 Q. And did you interview her that same day in close
16 times with the shooting?

17 A. Yes, ma'am.

18 Q. Did you interview any other witnesses that day?

19 A. Yes, ma'am. I -- interviewed the decedent's
20 girlfriend, Antoniya Singleton.

21 Q. And where did that interview take place?

22 A. She was transported back to
23 North Charleston City Hall Detective Bay for a formal
24 interview.

25 Q. And did she willingly want to come talk to you?

1 A. Yes, ma'am.

2 Q. And what day did you interview her?

3 A. The same day. Within hours of the incident
4 occurring.

5 Q. We're talking about interviewing and witnesses,
6 just generally, how do you identify witnesses who need to be
7 interviewed when you're investigating a case or assisting
8 with the case?

9 A. As I stated before, I get briefed by the units
10 that responded on scene. Part of my job as the case agent
11 and a detective is to, for lack of a better term, kind of vet
12 to that. So I ask them, you know -- they may say, "Oh I have
13 this person that heard this," I need to establish, are they
14 an eyewitness? Were they there, did they see the incident
15 take place or are they just going on word of mouth -- word of
16 mouth and what they heard on the street? So from that
17 information I'm able to determine if I need to interview them
18 or not.

19 Q. And in this case, specifically when you arrived,
20 were -- were -- was -- were there a lot of people? Was there
21 kind of a crowd there on the scene --

22 A. Yes --

23 Q. -- outside the crime scene tape?

24 A. Yes, ma'am. It -- it's very typical of a lot of
25 the homicide. I've worked in the city of North Charleston,

1 but there was a very large crowd outside of both sides of the
2 crime scene tape.

3 Q. And most of those people, were they coming up
4 while law enforcement had already gotten on scene or were
5 they all already there?

6 A. Both. There was a crowd there and there would
7 continue to be several people coming up to the crime scene
8 upon our arrival.

9 Q. And in this case, did you or your team -- were you
10 able to interview Emonie Burgess?

11 A. No, ma'am. I made several attempts through the
12 routine of the investigation to go by the residence and leave
13 my card. I was never able to make physical contact with her
14 or telephone contact. I never received any voicemails and to
15 the best of my knowledge she never arrived at City Hall to
16 speak with me.

17 Q. And were you able ever -- were you ever able to
18 interview Evette Burgess?

19 A. No, ma'am. Same thing. Went by the house several
20 times, left cards, never made physical contact with her, and
21 never was able to get her on the telephone.

22 Q. Were you ever able to interview Zairae Davis in
23 the course of your investigation?

24 A. No, ma'am. Same thing. Went by the house several
25 times, left cards never was able to make physical contact

1 with him or get him on the telephone.

2 Q. Was 911 called that time -- that day by any nearby
3 residence or eyewitnesses in this case?

4 A. Yes, ma'am. Jessica Duncan called 911
5 approximately 1:30 from 2021 Comstock.

6 Q. And did you review the information received on the
7 911 call?

8 A. Yes, ma'am.

9 Q. What did you do as a result of that information
10 from the 911 caller?

11 A. We call it, like, background information. So
12 based on the tag provider, we're able to run DMV and any
13 background information related to the tag provided. So we
14 were able to find out who that vehicle was registered to.

15 Q. And who was that vehicle registered to?

16 A. Courtney Richards.

17 Q. Did you do anything else after you had that tag
18 and vehicle information?

19 A. Yes, ma'am. We did two things. The first thing
20 we do is send what we call a BOLO, "Be On The Look Out" for
21 to all surrounding agencies. So sometimes we'll do it over
22 the radio. Sometimes we'll call dispatch and say, you know,
23 just be on the lookout for this vehicle in regards to this
24 incident -- took place in our jurisdiction.

25 In addition to that, we have something called ALPR,

1 which is an "Automatic License Plate Reader." And there are
2 little cameras -- you've probably seen them, like, throughout
3 the city or throughout the Troy County area, and they capture
4 your tag as your'e driving by. So, we're able to input that
5 tag in that system to see where that vehicle has been
6 infrequent.

7 Q. And when you inputted the vehicle tag from the 911
8 call that you verified was registered to the Defendant --
9 when you inputted that into ALPR,
10 Automated License Plate Reader, did you get any -- any
11 information back around the time of the shooting?

12 A. Yes, ma'am. I believe it was approximately 1:21,
13 which would be prior to this shooting. It hit on the
14 East Bay camera ALPR camera. And then prior to the -- or I
15 apologize. Following the shooting at approximately 1:33 or
16 1:35, it hit on the Spruill Avenue camera, which is in
17 North Charleston.

18 Q. All right. At this time, I'm going to show you --
19 it's been marked for ID purposes, State's Exhibit 96 and 97.
20 If you can look at these. Do you recognize those?

21 A. Yes, ma'am. These are printouts from the ALPR
22 system.

23 Q. And to be fair and accurately represent the
24 printouts and the information from the ALPR system that you
25 received when you were investigating this case --

1 A. Yes, ma'am.

2 MS. LINDER: Your Honor, at this time, the State would
3 seek to admit State's 96 and 97 into evidence.

4 THE COURT: Any objection?

5 MR. BISCHOFF: No objection.

6 THE COURT: All right. It State's 96 and 97 is entered
7 into evidence without objection.

8 (State's Exhibits 96 and 97 admitted into evidence.)

9 BY MS. LINDER:

10 Q. Okay. So on this piece of paper, what is this
11 show?

12 A. That is the
13 South Carolina Department of Motor Vehicles issue tag.

14 Q. And what is this image?

15 A. A grey Jeep Compass. And that is the vehicle
16 captured with that tag on the ALPR system.

17 Q. Okay. And what is this read date? What does that
18 say? What does that tell?

19 A. That is the date that it is read on that camera,
20 which means that is the date that that vehicle passes that
21 camera. So February 19, 2022, at 1:21 p.m.

22 Q. Okay. And what system is that?

23 A. That is the CPD, which stands for the
24 Charleston Police Department East Bay camera.

25 Q. And then what is this X-ray from?

1 A. So typically, on a lot of the cameras, there's two
2 cameras to capture both lanes. So this says
3 CPD East Bay Lane two northbound.

4 Q. And State's 97. This information?

5 A. South Carolina Department of Vehicle --
6 Department of Motor Vehicles issued tag.

7 Q. Okay. And what is this image?

8 A. That is the grey Jeep Compass in relation to the
9 tag that was captured on the ALPR camera.

10 Q. And if you could say this is the -- read date,
11 system, and camera?

12 A. Yes, ma'am. This was captured on
13 February 19, 2022, at 1:33 p.m. It is captured on the NCPD,
14 which is the North Charleston Police Department Spruill
15 camera. And then below it says southbound.

16 Q. All right. And so -- this is at 1:33. What time
17 was that 911 call from Jessica Duncan that you testified to?

18 A. 1:30 p.m.

19 Q. You mentioned earlier that Zairae Davis did not
20 interview with you despite your attempts. Did he go by any
21 other nicknames?

22 A. Yes, ma'am. Zion G.

23 Q. And did you get any search warrants during your
24 investigation on social media in this case?

25 A. Yes, ma'am. I completed a Facebook search warrant

1 on Zion G Davis' Facebook profile.

2 Q. And were you able to get information from
3 Facebook?

4 A. Yes, ma'am. We completed the search warrant
5 requesting specific information within the data provided by
6 Facebook, there was a video of the incident, the shooting
7 that took place.

8 Q. And did you yourself review the items that you
9 received from Facebook on Zion G Davis' Facebook page?

10 A. Yes, ma'am. I did.

11 Q. Did you review video recordings when you were
12 reviewing items?

13 A. Yes, ma'am.

14 Q. And did you observe any video items on that
15 Facebook page? Relevant to this investigation?

16 A. Yes, ma'am. There was a video that was recorded
17 of the shooting that took place.

18 Q. All right. This time I show you what's been
19 marked State's Exhibitd 8 and 9. Do you recognize these
20 items?

21 A. Yes, ma'am.

22 Q. How do you recognize them?

23 A. My signature or my initials are on both discs.

24 Q. And do those discs fairly and accurately represent
25 a clip of a video from Zion G Davis' Facebook page?

1 A. Yes, ma'am.

2 Q. And Zion G Davis is Zairae Davis who you were --
3 despite attempts, unable to interview --

4 A. Yes, ma'am.

5 Q. -- for your investigation?

6 A. Yes, ma'am.

7 MS. LINDER: Your Honor, at this time the State would
8 seek to admit State's Exhibits 8 and 9 into evidence

9 THE COURT: Defense?

10 MR. BISCHOFF: No objection.

11 THE COURT: All right. State's 8 and 9 are in evidence
12 without objection.

13 (State's Exhibits 8 and 9 admitted into evidence.)

14 BY MS. LINDER:

15 Q. So when you were reviewing these items -- when
16 you're reviewing these items from Facebook, specifically the
17 items on the disc, do you just -- take the jury through that
18 process. Do you just kind of watch it once and hit stop, and
19 call it a day? Or what do you do when you review these in --
20 in your investigation?

21 A. Absolutely not. We -- first you want to watch it
22 multiple times to make sure, like, you're accurately seeing
23 everything that is occurring. We typically will slow down
24 the video also. And there have been many incidences,
25 especially in this case, where we have to take the video

1 were reviewing this also?

2 A. Yes, ma'am.

3 Q. All right. At this time we are going to publish
4 State's Exhibit 8 that's been submitted into evidence, and
5 this is the clipped video of the incident February 29, 2022.

6 (Video played - inaudible.)

7 MS. LINDER: Love technology, it froze.

8 BY MS. LINDER:

9 Q. All right. You mentioned that you also would
10 review zoomed in and slowed down -- the video with the audio.
11 Why do you do that? What were you looking for when you did
12 this?

13 A. To accurately understand exactly what took place,
14 which is why we kind of go frame by frame to see what the
15 parties in the video are doing.

16 Q. And when you're looking frame by frame, are you
17 looking at people, are you looking at houses? What are you
18 looking at when you're reviewing that?

19 A. Like I said, I -- I watched the video multiple
20 times. So initially I -- the first time I want to look at
21 the people and see what they're doing, but then the more I
22 watch it, I also want to see where they are in relation to
23 houses, which are fixed points.

24 And that is important in the investigation to go out or
25 to compare to the evidence that was collected on the scene.

1 For example, if I can say that he was at -- at, you know,
2 123 South Street and the shell casings are collected at
3 124 South Street, I can kind of put that in relation -- in
4 regards to the scene that I responded to.

5 MS. LINDER: All right. Your Honor, at this time the
6 State is going to publish from State's Exhibit 9, the clipped
7 video that is zoomed and slowed.

8 THE COURT: All right. Go ahead.

9 (Video starts.)

10 UNIDENTIFIED SPEAKER: (Inaudible) dropped that dumbass
11 boy.

12 (Video ends.)

13 BY MS. LINDER:

14 Q. And when you go through, you listen to it, you
15 watch it, you zoom in, you slow it down. You mentioned going
16 frame by frame. At this time, I approach to show you
17 State's Exhibits 107 108 109, 110, 111, 100, 113, 114, 115,
18 116, 112, 117, 118, 119, 120, 121, then go to 90, 91, 92, 93,
19 122, 123, 94, 124. If you can look at those, please.

20 A. Yes, ma'am.

21 Q. And do you recognize those?

22 A. Yes, ma'am. These are all screen grabs of the
23 video that you just watched or -- we just watched.

24 Q. And do they fairly and accurately represent screen
25 grabs from the -- the video that you got off the Facebook

1 search warrant that's already been admitted into evidence?

2 A. Yes, ma'am.

3 MS. LINDER: Your Honor, at this time, the State would
4 seek to those exhibit -- to admit those exhibits into
5 evidence.

6 THE COURT: Any objection?

7 MR. BISCHOFF: Your Honor, I do. May we approach?

8 THE COURT: Yes.

9 (Bench conference.)

10 THE COURT: All right. All right. And your -- your
11 objection, sir?

12 MR. BISCHOFF: Your Honor, bar clarification on exhibit
13 numbers. The objection is under 401. Relevance without the
14 time associated with its still. I do not believe that
15 they're relevant. And then relevant that the proffer value
16 substantially outweighed by the prejudicial effect without
17 indication of the time of each still.

18 THE COURT: I overrule your objection. The -- the --
19 to the relevance of the -- of the -- the stills also a ruling
20 under doing a 403-analysis present value outweighs of -- of
21 any substantial prejudicial effect. Therefore, the numbers
22 107, 108, 109, 110. State's 111, 100, 113, 114, 115, 116,
23 112, 117, 118, 119, 120, 121, 90 and 91, 92, 122 and 93, 124,
24 94, okay. And 124 are admitted into evidence, subject to
25 your objection.

1 (State's Exhibits 90, 91, 92, 93, 94, 100, 107, 108, 109,
2 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121,
3 122, 123 and 124 admitted into evidence.)

4 MR. BISCHOFF: Thank you, your Honor.

5 THE COURT: Thank you.

6 BY MS. LINDER:

7 Q. You said that you looked at address -- addresses,
8 and houses, and people, and all of that when you were
9 watching these videos, so you understand the crime scene of
10 when you were there and whatnot. At this time, I'd like to
11 show you State's Exhibit 95. You recognize that?

12 A. Yes, ma'am. That is a Google screen grab of
13 Comstock Avenue.

14 Q. And does that fairly and accurately represent the
15 area of Comstock Avenue for when you were there? 2022?

16 A. Yes, ma'am.

17 MS. LINDER: Your Honor, at this time, the State would
18 seek to admit Exhibit 95 into evidence.

19 MR. BISCHOFF: No objection.

20 THE COURT: All right. Exhibit 95 is in evidence
21 without objection.

22 (State's Exhibit 95 admitted into evidence.)

23 BY MS. LINDER:

24 Q. All right. I'd like to take you through these
25 pictures.

1 THE COURT: If you'll please use the numbers.

2 MS. LINDER: Yes, sir.

3 THE COURT: Thank you.

4 BY MS. LINDER:

5 Q. The screen grabs through the video. Okay.

6 State's 107. Who is this?

7 A. That is the decedent, Javon Thomas.

8 Q. And what -- what is this right here?

9 A. That is the car door of the person recording it,
10 like the bottom half of the window or door frame.

11 Q. All right. And just so we understand these
12 things, what -- what address is -- is -- is this house up
13 here?

14 A. The -- that is -- oh, excuse me
15 2010 Comstock Avenue.

16 Q. How about this one?

17 A. 2008 Comstock.

18 Q. This one?

19 A. 2006 Comstock Avenue.

20 Q. Okay. And then what do you -- what do you see way
21 up here?

22 A. Jeep Compass.

23 Q. And what -- what about this right over here?

24 A. That appears -- it should show that the
25 passenger-side door of the Jeep Compass is open, and there's

1 no one outside of the Jeep at that time.

2 Q. Okay. State -- State's 108. Is this similar to
3 what we just saw with the -- these houses? 2010, '08, 2006?

4 A. Yes, ma'am.

5 Q. Does he appear to be bending down, or running, or
6 anything like that?

7 A. No, ma'am.

8 MR. BISCHOFF: Objection, your Honor. Leading.

9 THE COURT: Re-phrase your question please.

10 BY MS. LINDER:

11 Q. Can you describe the manner in which he is
12 standing?

13 A. Yes, ma'am. It appears that the victim is walking
14 with both of his hands out by his sides.

15 Q. This is State's 109 again, what is this up here?

16 A. Grey Jeep Compass.

17 Q. Okay. State's 110.

18 A. In this photograph you can see that the window has
19 come down on the vehicle of the person that is recording the
20 video. You have the same houses in view here, the Jeep
21 Compass here, still with that passenger-side door open and
22 the decedent, Javon Thomas, is still walking with his hands
23 appears out by his sides.

24 Q. State's 111.

25 A. At this time, 2006 is kind of out of view. You

1 still have 2010 and 2008. You still have the grey
2 Jeep Compass here. It appears that the door is still open.
3 Again, it appears that no one is outside the car. You don't
4 see any feet or any arms.

5 The decedent, Javon Thomas, here is now -- has bladed
6 his body to be facing 2010 and 2008 Comstock Avenue with his
7 right arm towards the back. And his left arm appears to be
8 in front of him, and his right knee is bent towards the back
9 as if he's leaning back towards 2008 -- 2010 Comstock Avenue.

10 Q. All right. This is State's 100.

11 A. Similar. It appears that he's a little up farther
12 because this is 2010 Comstock. His body is still bladed
13 towards that side of the road. It appears in this photograph
14 that his arm is reaching behind. His right arm is reaching
15 behind his back as his right leg is also behind him. So he
16 again, is bladed towards Comstock Avenue. His left arm is
17 out of sight and you still see the Jeep Compass here and it
18 does not appear that anybody's outside the passenger side.

19 Q. All right. All right. State's 114.

20 A. Can you zoom out just a tiny?

21 Q. Sure.

22 A. There we go. It appears that he's in the very
23 similar position in regards to the fixed points on the
24 roadway. His body has -- starts to turn from facing
25 2010 Comstock as if he's starting to turn back towards where

1 the Jeep Compass is. It still appears that the
2 passenger-side door is open and no one is outside of the
3 vehicle.

4 Q. All right. Okay. So -- this is State's 115,
5 let's outstretch here.

6 A. Yes, ma'am. In this photograph, the decedent
7 Javon Thomas has his right arm outstretched towards the
8 direction of the Jeep Compass.

9 Q. And what's this house here?

10 A. That is 2008 Comstock.

11 Q. State's 116?

12 A. In this video you can clearly see he's not -- his
13 location has taken a couple steps back based on the fixed
14 points here and here, 2010 and 2008. His left arm is kind of
15 up front -- in front of him on his left side.

16 And it appears that his right arm is not outstretched
17 fully, but as if it's in a manner as if he's bringing it
18 down. His right leg is back as if he's about to take a step
19 back. And the Jeep Compass is here, and again, the
20 passenger-side door is open with no one outside of it.

21 Q. Okay. State -- State's 112. Where -- where --
22 what are these houses now? Okay. We can move that arrow.

23 A. I just did it. Sorry.

24 Q. So we see -- which house is this up here?

25 A. 2010 Comstock Avenue.

1 Q. And then which house is this?

2 A. 2008.

3 Q. And then -- now we'll start to see another house.
4 What's that one?

5 A. 2006 Comstock Avenue. So it just continues to
6 show that he is backing up because you have him coming from
7 where he was at 2010 and into 2008, and now you have 2006
8 coming into view.

9 Q. All right. And is the door closed in this photo
10 or is it open?

11 A. It appears to me in this photograph that the door
12 is closed.

13 Q. All right. Just to look at this one. Oops.

14 A. It appears open in this shot and closed here.

15 Q. All right. State's 117?

16 A. Yes, ma'am. The door appears closed on this video
17 as well.

18 Q. And what's the address of this house?

19 A. 2006 Comstock Avenue.

20 Q. And you see -- who's right here?

21 A. That is the decedent, Javon Thomas. You can see
22 his left leg back, his left arm out and, again, his right
23 arm. It appears that it's continuing to come down.

24 Q. Okay. State's 119.

25 A. Yes, ma'am. And this --

1 Q. I'd like to start up here.

2 A. The Jeep Compass and it appears that the doors are
3 closed.

4 Q. All right. And then, what about Mr. Thomas'
5 position relative to earlier?

6 A. He is further back than 2010. He's almost in
7 front of 2006 Comstock Avenue and it appears that both of his
8 arms are down at this point.

9 Q. And then this is State's 18. What -- where's the
10 position of this car now?

11 A. Based on the video -- having watched the video so
12 many times and this screen grab, it has already gone through
13 the stop sign at Cosmopolitan and Comstock, so it would
14 almost be in the middle of the roadway on Comstock Avenue.
15 This -- oh, I apologize. This is the corner house where the
16 decedent fell here. And you can clearly see that there's no
17 one outside here.

18 Q. All right. And then, you see anybody in this
19 rear-view mirror? Any car, any people?

20 A. No, ma'am.

21 Q. All right. State's 91.

22 A. Yes, ma'am. Seeing the house on the corner, you
23 can see the decedent here. And the -- as the person
24 recording the video is driving through that stop sign on
25 Cosmopolitan across Comstock -- and you clearly see that no

1 one is in the yard here.

2 Q. Okay. All right. State's 123.

3 A. This would be crossing over Comstock on
4 Cosmopolitan. So this is the edge of Comstock Avenue. You
5 see the decedent here where he collapsed. And again, you see
6 no one here in the yard.

7 Q. State's 124.

8 A. Here it is -- he's crossed -- the person recording
9 the video has crossed over Comstock Avenue still on
10 Cosmopolitan. And here you can see who I was able to
11 identify as Antoniya Singleton. She's wearing the white
12 jacket in which I picked her up to interview her at
13 City Hall.

14 Q. Have you ever been on that scene before? Did you
15 only ever go out on that scene the day of -- on
16 February 19, 2022, back on Comstock?

17 A. No, ma'am. I've been out for the scene multiple
18 times since that time.

19 Q. And were you -- were you here in this courtroom
20 when -- when Jodi Hunt testified?

21 A. Yes, ma'am.

22 Q. And did you go to the scene in preparation of this
23 trial with myself as well as Ms. Hunt?

24 A. Yes, ma'am. We went out for what we call trial
25 prep which is very common in preparation for trials.

1 Q. And are you aware of the distances between
2 [REDACTED] Comstock, which is the corner and other fixed points
3 along the street, like, 2021 Comstock with Jessica Duncan's
4 house, 2019, 2010, 2006. Are you aware of the distances
5 between those?

6 A. Yes, ma'am. I am.

7 Q. Talking about distances, when you're in law
8 enforcement training and you have to do annual firearm
9 qualifications, how far do you need to shoot?

10 A. The furthest we shoot to qualify is 15 yards,
11 which is 45 feet.

12 Q. And what does that compare to the distances
13 between 2019 Comstock and where Javon Thomas' body was?

14 A. That location from where the decedent fell in
15 2019 Comstock is approximately five times the required
16 distance that I need to qualify with my firearm.

17 Q. Did you do any other search warrants in this case
18 for -- for telephones?

19 A. Yes, ma'am. I completed a -- we call it a cell
20 phone search warrant on the Defendant, Courtney Richards'
21 phone, which was collected -- incident to arrest
22 approximately five days after the incident took place.

23 Q. And did you -- were you able to -- was
24 North Charleston able to do an extraction or a digital copy
25 of the cell phone that was seized from the Defendant by

1 Sam Souther back when he was arrested on February 24th?

2 A. Yes, ma'am. A search warrant was completed and
3 what we call a "Cellebrite dump" was completed on the phone.

4 Q. And were -- was North Charleston able to extract
5 some information from that phone?

6 A. Yes, ma'am.

7 Q. And did you review the information that was able
8 to be extracted from Charleston?

9 A. Yes, ma'am.

10 Q. And did -- some of that information you reviewed,
11 did that include text messages?

12 A. Yes, ma'am.

13 Q. All right. At this time, I hand you what's been
14 marked as State's 103, 104, 105, and 106. If you can please
15 take a look at that.

16 A. Yes, ma'am.

17 Q. And how do you recognize those?

18 A. Those are screen grabs from the extraction on the
19 Defendant's cell phone.

20 Q. And do they fairly and accurately represent text
21 messages from the search warrant on the Defendant's cell
22 phone that he had with him when he was arrested a couple days
23 after this murder?

24 A. Yes, ma'am.

25 MS. LINDER: Your Honor, at this time, the State would

1 seek to admit the State's 103, 104, 105, and 106.

2 MR. BISCHOFF: No objection.

3 THE COURT: All right. State's 103, 104, 105, 106 are
4 admitted into evidence without objection.

5 (State's Exhibits 103 through 106 admitted into evidence.)

6 BY MS. LINDER:

7 Q. All right. I'm going to start State's 104. And
8 I'd like for you to start, if you can, please. What is this
9 information down here?

10 A. That is the date and the time that the text
11 message was sent.

12 Q. All right. And -- and what is the date?

13 A. February 20, 2022, at 1:25 p.m.

14 Q. And how -- how long after the murder was this?

15 A. The next day.

16 Q. All right. And when you go through all of the
17 information from the phone it -- it has different color boxes
18 in your text messages or SMS messages?

19 A. Yes, ma'am.

20 Q. All right. And then this one for example, is --
21 if you see who it's to and who it's from. Who is -- this --
22 this message -- this message originates from the phone that
23 you seized?

24 A. Yes, ma'am. You can see here where it says "from"
25 and it says "owner" next to it. So that is the owner of the

1 phone, which means this message was sent from that phone
2 number -- the owner of the phone to the phone number below.
3 And here you see that there are only two participants in that
4 text message. So it's not a group text, it's just between
5 the owner and that person.

6 Q. All right. And what does it say?

7 A. It says, "One more thing. Whatever you do, can
8 you try to keep everybody from talking about it just so it
9 can die down?"

10 Q. And that's (inaudible)?

11 A. Yes, ma'am.

12 Q. All right. Now, I'd like to show you State's 105.
13 All right. What's the date and time of this one?

14 A. February 20, 2022, at 2:59 p.m., which is the next
15 day.

16 Q. And what does and is -- is -- is this message from
17 the owner of the phone?

18 A. Yes, ma'am. Same thing here. You can see it's
19 from the owner of the phone to a number labeled LOML, which
20 stands for Love of my Life, and there is only two
21 participants in this text thread.

22 Q. All right. And then what does this say?

23 A. "I'm talking to Josh now, he's saying I should be
24 good, long as I ain't touch no shells. And they -- if they
25 want -- wanted you, they would've found you. Trust me."

1 Q. All right. The next page is State's 105. Later
2 in the same conversation we have 2:59 on 2/20. And then this
3 was what time?

4 A. 3:04 on 2/20.

5 Q. All right. And what does that text say?

6 A. "We good. Everything will pass over, I guarantee
7 you."

8 Q. All right. Also, part of State's 105. This is
9 2/20 at what time?

10 A. 3:18 p.m.

11 Q. What does this one say?

12 A. "Josh said they have 48 hours to find a lead
13 before they move on to the next thing."

14 Q. Also, part of State's 105, 2/20. What time is
15 this top one?

16 A. The top one is at 3:20 p.m. On two --
17 February 20, 2022.

18 Q. What does that say?

19 A. "They just have to find a motive on who did it or
20 whatever, within 48 hours."

21 Q. And what about the next one?

22 A. That is sent at 3:20 and nine seconds on
23 February 20, 2022. And it says, "Just like 'The First 48',
24 the TV show."

25 Q. All right. Now, I'm going to go to

1 State's Exhibit 103. And who was the message to?

2 A. Zion. It's labeled in his phone as Zion. And the
3 Zion G or Zion G. Davis, which is the Facebook page
4 recovered. Also known as Zairae Davis.

5 Q. And what date and time is this?

6 A. February 21, 2022, at 9:55 in the morning, which
7 would be two days after the shooting occurred.

8 Q. All right. And what does this one say?

9 A. "A keep making sure that video ain't getting
10 passed around, bruh for real."

11 Q. And -- and it doesn't say for real, it's "fr."

12 A. Oh. Fr, I apologize.

13 Q. All right, so this is at what time?

14 A. 9:55 a.m.

15 Q. And how many seconds?

16 A. Oh, seven -- seven seconds.

17 Q. And this next one, also part of State's 103. What
18 time is this one?

19 A. 9:55 and 31 seconds. "Tired of people coming to
20 me saying it's a video."

21 Q. Also State's 103. Who's this to still?

22 A. Still to Zion from the owner of the phone. It is
23 at 10:00 a.m. and 44 seconds.

24 Q. And what does this one say?

25 A. "Man, that shit will get me booked bro, everybody

1 got the video."

2 Q. Still State's 103. You can read these two and say
3 the times.

4 A. The top one is at 10:01 and 48 seconds a.m.,
5 "Bruh, you need to report everybody who got that bruh." And
6 at 10:01 and 54 seconds, "And you need to talk to that girl."

7 Q. All right. Still State's 103.

8 A. Same day, 10:07 a.m. and 46 seconds. From the
9 same owner to Zion. "You should have never posted that
10 period, bruh or go on live. That's how everybody getting it,
11 you know, you need to cut them off or something. Because
12 that video can fuck you up and that ain't -- and that ain't
13 no real shit."

14 Q. All right. Still part of State's 103.

15 A. This is same date, 11:07 a.m. and 13 seconds.
16 "You write about what you just said and don't trip, just
17 delete your page rn."

18 Q. All right. And still State's 103.

19 A. At 11:11 a.m. and 23 seconds. "Just delete your
20 page, ma'am. So it won't be nothing, nobody trying to come
21 look for or nothing."

22 Q. All right. And then we're going to go to
23 State's 106. And then is -- who is this? Who are the -- who
24 is this message to?

25 A. This is to someone that the Defendant had saved in

1 his phone as Big J.

2 Q. And date and time of this?

3 A. February 22, 2022, at 5:10 p.m.

4 Q. And what was the date of all those text messages
5 you just went through from State's 103, Zion?

6 A. February 21, 2022.

7 Q. Still the same day?

8 A. Yes, ma'am.

9 Q. Okay. And what does this say?

10 A. "Delete."

11 Q. All right. Next page from State's 106 still to
12 Big J. What's -- you can tell what these are?

13 A. Yes, ma'am. At 10:27, 29 --
14 10:27, 29 seconds p.m. "I already told Bruh to delete it."

15 Q. Okay, the next one?

16 A. And at 10:27 p.m. and 53 seconds, "And I got on
17 him about it."

18 Q. All right. Still Big J. What does it say?

19 A. So this is February 22, 2022, at
20 12:41 a.m. "He just told me to change my number and I just
21 did that and to move light."

22 Q. Still part of -- still part of State's 106.

23 A. Yes, ma'am. This is February 22, '22, at 12:42
24 a.m. "Yeah, my number should pop up soon. It's processing,
25 but it's 864-6697."

1 Q. Last page of State's Exhibit 106.

2 A. That's 12:42 a.m. "It's showing it."

3 Q. And then just for time understanding, the one we
4 just saw around State's 106 is it what time?

5 A. 12:42 a.m.

6 Q. And how many seconds?

7 A. And eight seconds.

8 Q. What's this one?

9 A. 12:42 a.m. and 47 seconds.

10 Q. In your reviewing of the 911 calls that came in
11 from this case, did the Defendant call 911 that day of the
12 shooting right after?

13 A. No, ma'am.

14 Q. Did the Defendant stay on scene after the shooting
15 on February 19, 2022?

16 A. No, ma'am.

17 MS. LINDER: I beg the Court's indulgence. I don't
18 have anything else for you. Please answer anything the
19 Defense may have.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Cross?

22 MR. BISCHOFF: Judge, may we approach?

23 THE COURT: Yes.

24 (Bench conference.)

25 THE COURT: All right. Please proceed with your

1 cross-examination.

2 MR. BISCHOFF: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. BISCHOFF:

5 Q. Good morning.

6 A. Good morning.

7 Q. I've heard reference multiple times to murder
8 during the testimony. This is a homicide, correct?

9 A. I -- I do believe I stated homicide. Yes, sir.

10 Q. Ms. Linder referred to as murder. You would agree
11 the jury has determined that determination whether this is
12 murder or self-defense, correct?

13 A. The -- how we label things in, like, our system,
14 the code would be murder but homicide death at the hands of
15 another.

16 Q. We'll first ask you about some -- an item that was
17 found in Courtney Richards' vehicle after you executed the
18 search warrant. Do you remember executing that search
19 warrant?

20 A. I did not.

21 Q. Do you remember looking at pictures taken?

22 A. Yes, sir.

23 Q. So, you would recognize the pictures?

24 A. Yes, sir.

25 Q. Do you remember seeing a prescription bottle?

1 A. Yes, sir, I do.

2 Q. And do you remember exactly what prescription that
3 was for?

4 A. No, sir, I do not.

5 Q. So you're not familiar with the prescription
6 Zofran?

7 A. No, sir, I am not.

8 Q. We'll come back to that. You would agree that
9 Courtney Richards' girlfriend's pregnant at that day?

10 A. I believe through the course of the investigation
11 it was learned that she was pregnant.

12 Q. And she was out there when Javon Thomas was
13 shooting the vehicle?

14 A. Based on testimony provided by the Defendant?
15 Yes, ma'am -- yes, sir.

16 Q. Let me get to this in a little bit, but somebody
17 pulls the door closed on that passenger side when that
18 passenger door was open?

19 A. Yes, sir.

20 Q. Now, just to give the jury an idea of what
21 neighborhood we're talking about, I want to ask you some
22 questions about the neighborhood and points of interest,
23 okay?

24 A. Yes, sir.

25 Q. And you said, the "Neighborhood is Union Heights?"

1 A. Yes, sir.

2 Q. And we've heard multiple times people saying this
3 happened near the corner or right at the corner of Comstock
4 and Cosmopolitan. Correct?

5 A. The decedent's body was located at the corner of
6 Comstock and Cosmopolitan.

7 Q. Oh, the Perrys were right at the corner of
8 Comstock and Cosmopolitan, yes?

9 A. The -- those two eyewitnesses were located at that
10 corner. Yes, sir.

11 Q. And the video that Ms. Linder just showed you that
12 was taken from the corner of Comstock and Cosmopolitan?

13 A. The video was recorded from Comstock and
14 Cosmopolitan. Yes, sir.

15 Q. And even Niya Singleton said that, "there was a
16 confrontation, there was arguing, there was something that
17 happened that led up to the moment in time when the video was
18 taken there." It all occurred at the corner of --

19 MS. LINDER: Objection, your Honor. I -- I -- I don't
20 -- if we could approach.

21 THE COURT: All right.

22 (Bench conference.)

23 THE COURT: Continue.

24 BY MR. BISCHOFF:

25 Q. All right. Let me show you what's been marked as

1 State's Exhibit 2. So regardless points of interest, correct
2 me if I'm wrong, but where I'm pointing right now where it
3 says "Kwik Mart," can you see that, Detective?

4 A. Yes, sir.

5 Q. Yes, that's right. You (inaudible) that because
6 you --

7 A. Oh, yes, sir.

8 Q. Thank you. All right. That's the Kwik Mart that
9 Antoniya and Javon Thomas were walking to, that day?

10 A. Yes.

11 Q. Correct?

12 A. Yes, sir.

13 Q. All right. And then where the red icon is right
14 here?

15 A. Yes, sir.

16 Q. That's right. Thank you. That is the corner of
17 the intersection of Comstock and Cosmopolitan?

18 A. Yes, sir.

19 Q. And then right to the immediate southeast, that's
20 the parking lot regarding the church.

21 A. So --

22 Q. Is that the parking lot?

23 A. Yeah. Right here is a -- like, a grassy area
24 where people that go to the church park. Yes, sir.

25 Q. And the Perrys were parked there?

1 A. Yes, sir.

2 Q. All right. And then right there at Cosmopolitan
3 in between the parking lot and the church, that's where the
4 video that Zion, as we referred to him -- that's where he
5 took that video that we've seen, correct?

6 A. Yes, sir. Approximately right here.

7 Q. All right. And then right there on the other side
8 of that intersection, that is where that Burgess lived at the
9 time of this incident, correct?

10 A. It -- this residence. Yes, sir.

11 Q. That one? Thank you. That's where that Burgess
12 lived?

13 A. Yes, sir.

14 Q. And that's Emonie Burgess's mom?

15 A. Yes, sir.

16 Q. And Emonie is Courtney's girlfriend?

17 A. Yeah. Yes, sir.

18 Q. And was Courtney's girlfriend that day?

19 A. Yes, sir.

20 Q. Okay. And then right here we have a park that's
21 in the middle of the neighborhood, do we not?

22 A. Yes, sir.

23 Q. And that park has monkey bars, jungle gym,
24 basketball court. You've been to that park, right?

25 A. I can testify that it's a standard park. I can't

1 testify to what exact equipment they have, but it is a
2 standard park.

3 Q. Did you go and check out th9e park that day?

4 A. The day of the incident?

5 Q. Yes.

6 A. I did not make it to the park. But during the
7 course of the investigation. Yes, sir.

8 Q. You did make it to the park?

9 A. Yes, sir.

10 Q. Because you wanted to know exactly what the path
11 was that Niya and Javon took that day. That's important to
12 sort of know, right? Just to get a total idea of what was
13 going on up to the moment of the incident?

14 A. Yes, sir.

15 Q. And you would agree with me that Hackemann --
16 that's just north of that community center --

17 A. Yes, sir.

18 Q. -- on that. That is where Niya lived, she lived
19 on that street. Correct?

20 A. Yes, sir.

21 Q. And that's where you went to pick her up before
22 you took her to the North Charleston Police Department for an
23 interview that same day?

24 A. Yes, sir.

25 Q. And so, if you draw a diagonal line from Hackemann

1 to Comstock and Cosmopolitan, you kind of get this path
2 through there, correct?

3 A. I mean, it's just a direct line.

4 Q. Right. But there -- there are all sorts of dead
5 ends in this neighborhood. There are certain spots where
6 there's dead ends and the park is sort of what people walk
7 through from Hackemann to get to the corner store, do they
8 not?

9 A. Well there's a path through here to Arbutus.

10 Q. Okay. Let me show you what we previously marked
11 as Defense's 2 -- I'm sorry, Defense's 3, Defense's 4,
12 Defense's 5, Defense's 6, Defense's 7, and Defense's 8. If
13 you would, will you take a look at those pictures, just
14 familiarize yourself with them?

15 A. Yes, sir.

16 Q. Those are pictures of the pathway I was talking
17 about. Is that fair to say? Part of them?

18 A. Yes, sir. In the park --

19 Q. And they're pictures -- okay. They're pictures of
20 the park that I was talking about.

21 A. Yes, sir.

22 Q. Pictures of the community center that's right
23 there at the park?

24 A. Yes, sir.

25 Q. And pictures of the parking lot that is right

1 there at the community center in the park?

2 A. Yes, sir.

3 Q. And the pictures that I just showed you, do they
4 accurately depict the general condition of those areas and
5 points of interest that I just mentioned?

6 A. Generally? Yes, sir.

7 Q. On the day of this incident, February 19, 2022?

8 A. During the course of the investigation? Yes, sir.

9 MR. BISCHOFF: Your Honor, at this time I move to admit
10 -- sorry, Defense's 3, 4, 5, 6, 7, 8.

11 THE COURT: Was also two in that? Did you have two as
12 one of those exhibits?

13 MR. BISCHOFF: No, sir.

14 THE COURT: All right. So Defense's 3, 4, 5, 6, 7, 8?

15 MR. BISCHOFF: Yes, sir.

16 THE COURT: All right. State?

17 MS. LINDER: No objection, your Honor.

18 THE COURT: All right. Defense's 3, 4, 5, 6, 7, 8 are
19 entered into evidence without objection.

20 MR. BISCHOFF: Thank you, your Honor.

21 (Defense's Exhibits 3 through 8 admitted into evidence.)

22 BY MR. BISCHOFF:

23 Q. The -- regarding Hackemann, that's where Niya
24 lives, but Javon stayed there as well, did he not?

25 A. Yes, sir.

1 Q. And around this time -- even though maybe his
2 address would have been on his driver's license -- the same
3 thing, but I mean that's where he was living. Correct?

4 A. Yes, sir. Based --

5 Q. Your understanding?

6 A. Yes, sir. Based on the investigation. Yes, sir.

7 Q. And we can agree that Hackemann is to the north of
8 that intersection?

9 A. Yes.

10 Q. Cosmopolitan and Comstock, right?

11 A. Yes, sir.

12 Q. There is no reason, whatsoever, for Javon to be
13 walking down Comstock in the direction of Courtney and
14 Courtney's present girlfriends -- their vehicle that day.
15 There's no reason for him to do that, correct?

16 A. I don't believe I can testify to that, sir.

17 Q. The corner store is not there -- not that
18 direction, is it?

19 A. There is a corner store in that direction. But
20 the corner store that they were walking to is in the opposite
21 direction. Yes, sir.

22 Q. It's in the opposite direction. In the address
23 you don't get to Hackemann that way, but you just testified
24 you get to the park, correct?

25 A. I can't testify as to where everybody would walk

1 that day. But it was common to use that cut through to walk
2 that way. Yes, sir.

3 Q. When in your direct testimony, you pointed out
4 that we see a still that you said at the end of the video as
5 Niya Singleton right there on Cosmopolitan, north of
6 Comstock, right?

7 A. Yes, sir.

8 Q. And we know that Javon told her to go home and
9 that's the direction she said she was traveling.

10 A. Yes, sir.

11 Q. So there's no reason in the world for Javon to be
12 marching down Comstock in the direction of Courtney and
13 Courtney's pregnant girlfriend's vehicle other than to have a
14 conflict. Is that not?

15 A. I don't believe I can answer his state of mind at
16 the time, sir.

17 Q. But witnesses have told you their state of minds,
18 she said, "He was angry," did they not?

19 A. There was testimony that he was -- threw his hands
20 up, and he was talking to Courtney in regards to him speeding
21 past him and almost striking him with his vehicle. Yes, sir.

22 Q. And your investigation that the Perrys told you
23 they couldn't hear what was going on but they could tell by
24 his body language that he was angry?

25 A. Yes, sir.

1 Q. Right?

2 A. Yes, sir.

3 Q. So there's ample information -- evidence in this
4 case that he was angry and marching towards Courtney and
5 Courtney's pregnant girlfriend with a gun that day. Correct?
6 What reason?

7 A. There was evidence in the case that Courtney
8 almost struck Javon and his girlfriend at the time. So he
9 was walking towards him during this altercation that took
10 place. Yes, sir.

11 Q. There was no reason for Javon to be walking
12 towards that vehicle that day at that time other than for
13 conflict.

14 A. Again, sir, I can't testify to his state of mind
15 having been almost struck by a vehicle. I wouldn't put
16 myself in those shoes, I would want to talk to the person
17 that almost struck me.

18 Q. You would? You would want to confront that person
19 and not just walk away?

20 A. I wouldn't say confront, but I would want to talk
21 to that person. Yes, sir.

22 Q. And what would you ask them?

23 A. I would ask them to slow down.

24 Q. You'd ask them to slow down?

25 A. Yes, sir.

1 Q. Would you ask them or would you be telling him,
2 "Shoot that gun," N word. "Shoot it?"

3 A. Absolutely --

4 Q. While you're walking towards him?

5 A. I would not sir.

6 Q. Would you say I'm about to wet this shit up before
7 walking towards them?

8 A. I do not use that terminology. No, sir.

9 Q. You wouldn't do that, would you?

10 A. I do not use that terminology. No, sir.

11 Q. Now, you testified earlier about your training and
12 experience, right? You've been a police officer for how many
13 years?

14 A. Just over 15.

15 Q. And a lot of your training's at the
16 Criminal Justice Academy?

17 A. It -- I would say half and half. I've taken a --
18 courses with basic law enforcement, some basic detective, but
19 there's additional places that put on training like the armed
20 robbery investigation, homicide investigations, those things.
21 Those aren't necessarily at the Criminal Justice Academy.

22 Q. When you first get certified as a police officer,
23 you go to the Criminal Justice Academy, correct?

24 A. Correct. Yes, sir.

25 Q. And you were there for about two weeks?

1 A. At the Criminal Justice Academy?

2 Q. To be certified?

3 A. No, sir, not two --

4 Q. How long were you there?

5 A. When I was certified, it was nine weeks. That has
6 since changed.

7 Q. What is it now?

8 A. I do not recall off the top of my head.

9 Q. It's two weeks.

10 A. No, it's longer than -- no, it's longer than
11 nine weeks. They've added additional training to what I went
12 on back in the day.

13 Q. So, you went for nine weeks?

14 A. Correct.

15 Q. And during that time they taught you how to fire a
16 gun for example?

17 A. Yes, sir. Well, they didn't -- they don't teach
18 you how to fire a gun. You just go through the
19 qualifications to be qualified on your service weapon.

20 Q. They qualified before you taught how to fire a
21 gun?

22 A. It's hard to explain. So I was, like -- again, I
23 said I was in the military, I joined the military at 17. So
24 I was familiar with firearms and knew how to fire a gun.
25 Because of my military experience, I wouldn't necessarily say

1 they teach you how to fire a gun. But they go through the
2 process of teaching you how to qualify -- make you familiar
3 with firearms.

4 Q. What about a police officer who's not trained in
5 firearms?

6 A. They make you familiar with firearms. Yes, sir.

7 Q. They make you learn how to shoot a gun, correct?

8 A. Yes, sir.

9 Q. Before they release you into the public with a
10 gun, they teach you about shooting a gun?

11 A. Yes, sir. They do teach you how to fire.

12 Q. They also teach you about probable cause to
13 arrest?

14 A. Yes, sir. They do.

15 Q. They teach you about how to write reports?

16 A. Yes, sir. They do.

17 Q. I'd like to talk with you about your report, okay?

18 A. Yes, sir.

19 Q. Now, your report -- in this case, homicide is just
20 over a page long, is it not?

21 A. Yes, sir.

22 MR. BISCHOFF: May I approach, your Honor?

23 THE COURT: Yeah.

24 BY MR. BISCHOFF:

25 Q. We'll take a look at that and just confirm whether

1 that is your official report.

2 A. These are what's considered my notes.

3 Q. Your notes?

4 A. Yes, sir.

5 Q. Did you have any other reports?

6 A. No.

7 Q. Of that case -- in this case?

8 A. It is kind of hard to explain. So these are my
9 notes in which I keep on the case in regards to other
10 reports. The initial incident report is part of the case,
11 but that's not authored by me.

12 Q. Detective, I'm asking you about your reports and
13 what you wrote to document your investigation in this case.

14 A. These are my notes in the case. Yes, sir.

15 Q. Is that -- that document, is that all of your
16 notes in the case?

17 A. Yes, sir.

18 Q. Are there any reports that you wrote in this case?

19 A. You're using the term "report"? I use the term
20 "notes". This is my -- what you're referring to report.
21 This would be mine, but I call it my notes.

22 Q. You never wrote a report?

23 A. This is my report.

24 Q. So your notes are your report?

25 A. Correct.

1 Q. Other officers wrote reports, but you have notes
2 that are reports?

3 A. No, sir. But how the RMS system works, the only
4 official report in the terminology that you're using is the
5 initial incident report, which is written by the original
6 responding officer. Any other officers besides the initial
7 responding officer that writes is what -- is what we call
8 notes. So any supplementing officers that responded, even an
9 officer that puts up crime scene tape, it would be considered
10 notes. Any other detectives, it would be considered notes
11 for the terminology that we use.

12 Q. Detective Butler?

13 A. Yes, sir.

14 Q. I'm asking you, what did you document in this
15 case?

16 A. Those are my --

17 Q. Is it a report or a note. Just trying to tell --
18 I'm just trying to ask what did you document about your work
19 in this case?

20 A. And I previously stated, those are my notes, sir.

21 Q. This is it?

22 A. Yes, sir.

23 Q. Two pages?

24 A. Yes, sir.

25 Q. All right. I'd like to ask you two questions

1 about the document right here that I have in my hand. You
2 just looked at it. Okay. Do you have a copy up there?

3 A. I do not.

4 Q. You do not? Well, I'm going to ask you some
5 questions and if you need to refresh your recollection, I'll
6 -- let me know and I can show you the report.

7 A. Yes, sir.

8 Q. So your official report, your notes of all of the
9 investigation that you did -- these two pages and it starts
10 out that you were in a call -- call out status and called to
11 respond to [REDACTED] Comstock in reference to a homicide, right?

12 A. Yes, sir.

13 Q. So right out of the gate, you're talking about
14 investigating homicide. Yes?

15 A. Yes, sir.

16 Q. And then upon arrival you were briefed, those
17 other officers had gotten there before you did it. Yes?

18 A. Yes, sir.

19 Q. And one of the first things you write down -- oh,
20 thank you. Have a copy.

21 A. Okay.

22 Q. One of the first things that you wrote down is
23 that you noticed that there were five shell casings for a
24 .45-caliber weapon. Correct?

25 A. Correct.

1 Q. And that was near 2019 Comstock?

2 A. Yes, sir.

3 Q. And then, you also said that, "There were
4 five 9mm cartridges at 2006 Comstock."

5 A. Correct.

6 Q. Opposite sides of the road.

7 A. Yes, sir.

8 Q. We know for a fact that we hear 13 shots on the
9 video that was played regarding this incident. Did we not?

10 A. I believe it was 12.

11 Q. You believe it was 12?

12 A. Yes, sir.

13 Q. You don't hear 13?

14 A. My recollection is 12. There is a sound before
15 that, like, when the window's being rolled down that could be
16 considered 13.

17 Q. Okay. That's a pop. The sound we were
18 referencing be a pop?

19 A. Yes, sir.

20 Q. And it certainly could be a gunshot -- a warning
21 shot. Yes?

22 A. It's possible that it is a shot.

23 Q. All right. So if we have 13 shots and 10 shell
24 casings?

25 A. Yes, sir.

1 Q. We're missing three. Yes?

2 A. Yes, sir.

3 Q. Okay. And you made contact with Abigail Perry?

4 A. Yes, sir.

5 Q. And you learned from talking to her that there was
6 a male Javon Thomas, who appeared to be arguing. Yes?

7 A. Yes, sir.

8 Q. And then you made contact with Javon's mother?

9 A. Yes, sir.

10 Q. You made contact with Javon's aunt?

11 A. Yes, sir.

12 Q. And you interviewed Antoniya Singleton?

13 A. Yes, sir.

14 Q. Yes? I'm sorry. Right before that we also -- you
15 wrote down that there's a possible suspect -- was developed
16 based on the tag provided by 911 caller. Correct?

17 A. Yes, sir.

18 Q. So that was Ms. Duncan who lives at 2021 --
19 homicide, right?

20 A. The 911 caller. Yes, sir.

21 Q. So it appears that we're going in sequential order
22 through your report. Is that fair to say?

23 A. Yes, sir.

24 Q. Okay. And your interview with Antoniya Singleton
25 that -- we know that took place at the

1 North Charleston Police Department?

2 A. Yes, sir.

3 Q. And we know from the time stamp on the video, that
4 that was around 3:30.

5 A. I don't have the video in front of me, but that
6 sounds --

7 Q. Do you remember what time you interviewed
8 Antoniya Singleton?

9 A. It was within hours of the shooting that took
10 place.

11 Q. Do you know what time exactly?

12 A. I do not know what time exactly at this time.

13 Q. You didn't write it down in your report?

14 A. Correct.

15 Q. And you didn't write down when you arrived on
16 scene in your report?

17 A. Correct.

18 Q. You didn't write down when you left the scene in
19 your report?

20 A. Yes, sir.

21 Q. Right? Correct?

22 A. Yes. I did not write down what time I left. No,
23 sir.

24 Q. So, you would've had to have left the scene to
25 pick up the Singleton. Yes?

1 A. Yes, sir.

2 Q. And then picked her up and took her to City Hall.

3 Yes?

4 A. Yes, sir.

5 Q. Now, earlier you were testifying about where
6 Evette Burgess was based on your review of the video. Do you
7 remember that testimony?

8 A. I do not testify to where Evette Burgess was. No,
9 sir.

10 Q. You didn't?

11 A. No, sir.

12 Q. You didn't say, "While the solicitor was showing
13 you a still photo that you don't see Ms. Burgess outside?"

14 A. No, sir. I said, "No one is seen in the yard." I
15 said, "No one," I didn't name a specific person, sir.

16 Q. So she could have been in the yard?

17 A. No one is seen on the video that was from the
18 Facebook video.

19 Q. She could have been in her screen in the porch?

20 A. It's a possibility. Yes, sir.

21 Q. Yes? And she could have been -- you could have
22 heard her voice on the actual video?

23 A. You could have. Yes, sir.

24 Q. She does have screen in porch, right?

25 A. There is a screen in porch at that location. Yes,

1 sir.

2 Q. And the way that Antoniya Singleton described her,
3 she said, "She'd be nosy."

4 A. Yes, sir.

5 Q. Right. Because she had heard something.

6 A. She didn't say she heard something, she just said,
7 "Being nosy."

8 Q. But something drew Evette Burgess outside to be
9 nosy, right?

10 A. I can't testify to what she did, sir.

11 Q. Well, that's what you talked to Antoniya Singleton
12 about. I mean, that's the impression that she gave you,
13 right? Is that she came out but -- and was being nosy
14 because she heard something.

15 A. She only said, "She was being nosy." Not that she
16 heard something.

17 Q. She definitely told you Javon was fussing with
18 Courtney, right?

19 A. Correct. Yes, sir.

20 Q. The next page of your report -- I'm sorry, at the
21 bottom of the report you mentioned that you -- shows -- or
22 Ms. Singleton six-pack lineup. That's a terminology that
23 you, Detective and law enforcement, you can -- you get
24 composite photos of people, right? When you show them
25 various pictures then you say, "Do you recognize the person

1 who may have been?"

2 A. So --

3 Q. The person that you're investigating -- the
4 suspect?

5 A. So basically, what happens if we -- someone's
6 identified, we'll submit the -- that person's picture -- the
7 person of interest either to -- to
8 Charleston County Detention Center or SLED. They compile a
9 series or an array of six photographs of individual with six
10 similar -- six people with similar characteristics. And that
11 is put together in what we call a six-pack lineup. Yes, sir.

12 Q. And in this case though, you just showed her one
13 picture?

14 A. No, sir. There was a six-pack -- ooh, I
15 apologize. A six-pack lineup shown on the Defendant,
16 Courtney Richards. And there was a single photo shown of
17 Emonie or how -- she calls her Monie.

18 Q. You didn't show her one single picture of
19 Courtney Richards?

20 A. No, sir. I --

21 Q. (Inaudible)?

22 A. No, sir. I showed her a six-pack lineup.

23 Q. I show you what's been marked State's Exhibit 26.
24 If you would help me -- help me -- point me to where the
25 other five photographs are in the six-pack lineup.

1 A. Well, first -- can you scoot it up just a tad,
2 please?

3 Q. Sure.

4 A. So this is -- so the way that the
5 North Charleston Police Department visit is we show a series
6 of photographs. We don't show all six photographs on one
7 page. So typically, on some TV shows, for lack of a better
8 term, it's shown like six different individual pictures. We
9 show one at a time.

10 Here, you can see that it's a photographic lineup. The
11 case number, this is number four of that lineup of six. And
12 this is her initials and the circle around is her identifying
13 that individual of that six-pack lineup.

14 Q. So you're telling me your procedure is to have
15 them tell you that this person out of the six, is the person
16 of interest in any of the full print -- one picture for them
17 to circle?

18 A. No, sir. All six photos were shown.

19 Q. Why do you not have them circle one of the six?
20 What's the point in circling one picture on one page?

21 A. Again, the photographic lineup is shown one at a
22 time. So when they stop on the individual in regards to the
23 case that is being investigated, that is when they circle
24 that individual. If they don't identify anyone, that page is
25 moved over and we go onto -- to the next page.

1 Q. Okay. So she told you that Courtney Richards was
2 the person driving the Jeep Compass, right?

3 A. Yes, sir.

4 Q. And then the next part of your report says, "After
5 the photo lineup shown," and again this shows -- I guess
6 Detective Cockrum showing a photo lineup to a witness?

7 A. Yes, sir.

8 Q. But we don't know who that witness is based on
9 your report.

10 A. It was -- I -- I know who it is. Jessica Duncan.

11 Q. You know that now?

12 A. No, I'm -- I'm -- sir, this is my case. I'm very
13 familiar with the case. I know that that is who she
14 interviewed.

15 Q. And then based on the information we had -- murder
16 warrants. So one per warrant, right? Was drafted?

17 A. Yes, sir.

18 Q. And the other warrant is the possession of a
19 weapon and commission of a violent file crime, right?

20 A. Yes, sir.

21 Q. For Courtney Richards?

22 A. Yes, sir.

23 Q. And then you indicate that on the next page --
24 we've got maybe five sentences here, that the mother was
25 contacted, Javon's mother. And then you say, "Detectives

1 were sent video of the incident, which was recorded and
2 posted on Facebook." When was that video posted based on
3 what's written in your report? Can you tell?

4 A. That -- that day?

5 Q. How do you know it was that day? Just you
6 remember?

7 A. Yes, sir.

8 Q. You didn't -- you don't document that stuff?

9 A. It's all --

10 Q. How did you receive it?

11 A. It -- and it's all documented. All in sequence.

12 Q. So, you're just able to tell that it was that day
13 based on the fact that it's just in your official report?

14 A. Based on my report. Yes, sir.

15 Q. And you said the owner of the Facebook was
16 Zairae Davis. Yes?

17 A. Yes, sir.

18 Q. And then you sent a preservation letter to your
19 account?

20 A. Correct.

21 Q. All right. And that's it -- that's all we have
22 for your investigation in this case.

23 A. Those are my notes. Yes, sir.

24 Q. You testified earlier that you went out to the
25 scene multiple times. We don't have any documentation from

1 you in your official report of those efforts.

2 A. Correct. During the course of the investigation,
3 you -- it's routine -- it's common --

4 Q. Detective, I'm asking you, do you have any
5 documentation of your visits? Not what -- you could just
6 answer my question. Do you have any documentation of your
7 other visits to the scene since February 19, 2022?

8 A. There is no documentation of it because of the
9 routineness of the -- how we conduct investigations.

10 Q. You don't document your efforts to talk to
11 witnesses?

12 A. Unless there's anything to note. It's common to
13 go out. If you leave a card, you leave a card. But it's not
14 -- just because I'm going out here to knock on this address
15 doesn't mean I'm not also going to follow up on another case.
16 As I stated, I'm a person's crime detective. I'm not only
17 assigned this case. Typical caseload is
18 approximately 10 cases to include attempted murders and other
19 shootings.

20 So I could go out, knock on a door, no answer, leave a
21 card, go on and follow up on another incident. Same thing.
22 If there's nothing to note, as in I made contact with someone
23 or brought back someone to City Hall, it's just part of the
24 routine of our investigation.

25 Much like if you get dressed in the morning and you are

1 describing that to someone, you don't -- you say you put your
2 shoes on, you don't necessarily describe bending down and
3 tying each shoe.

4 Q. Do you equate bending down and tying each shoe and
5 talking to potential witnesses in the homicide case?

6 A. As I stated, sir, I did not make contact with
7 them.

8 Q. So with all your cases going on at one time,
9 you're able to keep track of all of that information without
10 any notes?

11 A. Yes, sir.

12 Q. Without any documentation?

13 A. Yes, sir.

14 Q. You're able to tell whether or not you went and
15 looked at this house or you found out that there's
16 surveillance video at this location all by just memory?

17 A. Yes, sir. As I stated -- if like you mentioned
18 surveillance video -- if something significant like that is
19 recovered, that is immediately documented.

20 Q. It's not significant in your mind to go and look
21 for something and not find it. It's just significant if you
22 find anything.

23 A. Is it --

24 Q. Is that what you're trying to say?

25 A. It's -- it's routine -- part of the investigation

1 to go out and attempt to locate people. And if no contact is
2 made, it's not significant.

3 Q. So then, we can deduce from the fact that there's
4 no other information in your official report or your notes --
5 that nothing else came up in your investigation at all that
6 was significant?

7 A. No, sir. I wouldn't say that. I would say in
8 regards to the going out and leaving cards, that was -- like
9 I said, "It's a routine part of what we do," investigating
10 cases. But as I've testified to before, there was a search
11 warrant done on the Subway on this case.

12 And the -- our -- as I stated, our caseloads are heavy.
13 In 2022 alone, I was a case agent on
14 at least eight murder cases of 38 that North Charleston had
15 that year. So it wouldn't be uncommon to document what is --
16 what you see in front of you.

17 Q. So not uncommon to go out and document things
18 you're doing in a case that you know is not going to make --
19 go to trial for two years. Not uncommon to not document any
20 of your efforts.

21 A. That's not what I said.

22 Q. What date did you go and knock on the
23 Evette Burgess' door?

24 A. I can't give you an exact date, sir. I can tell
25 you it was multiple times.

1 Q. Multiple times?

2 A. Yes, sir.

3 Q. Who was with you?

4 A. One of my partners that I work with, there's six
5 of us assigned to the Persons Crime Unit.

6 Q. What was the name of your partner who was with you
7 that day?

8 A. Detective Richard.

9 Q. And Detective Richard documented that?

10 A. I do not believe so, sir.

11 Q. What about the next day -- the next time you went
12 through that -- to knock Evette Burgess' door, who was with
13 you on that day?

14 A. So I will say typically Detective Richard and
15 myself were together on a lot of our cases and that's --

16 Q. Detective Butler, who was with you the following
17 day when you went to knock on Evette Burgess' --

18 MS. LINDER: Your Honor, I would object. The witness
19 is answering his question, Mr. Bischoff --

20 MR. BISCHOFF: She is not answering my question, Judge.

21 THE COURT: All right. Answer the question and move --
22 then move on to the next question. All right. Answer the
23 question.

24 BY MR. BISCHOFF:

25 Q. What date was the second attempt to go and knock

1 on Evette Burgess' door?

2 A. Sir, I do not know the date of the second attempt.

3 Q. Who was with you that day?

4 A. Detective Richard would've been with me on the
5 follow-up on this case because, like I was stating before --
6 is we worked all of our cases together as case and co-case.

7 Q. Was that in 2002?

8 A. 2002? Sir, I wasn't a police officer in 2002.

9 Q. Sorry. 2022.

10 A. Oh, in 2022? Yes, sir.

11 Q. Did you go in 2023?

12 A. I -- I cannot give you specific dates, sir.

13 Q. You're not sure. What about the day of the
14 incident? February 19, 2022. Who knocked on
15 Evette Burgess's door that day?

16 A. Multiple officers that responded to the scene
17 based on where the incident occurred.

18 Q. And there's no documentation of anybody knocking
19 on that -- on Evette Burgess' door that day?

20 A. Okay.

21 Q. In -- in the report, in -- in the entire file from
22 other officers. There's no information showing that they
23 knocked on her door, but you know what happened?

24 A. Yes, sir.

25 Q. And you're saying that nobody documents that

1 stuff, that that's protocol?

2 A. No, sir, that's not what I said. I didn't say it
3 was protocol and I did not say that no one documents that
4 stuff.

5 Q. Just you? You don't document efforts?

6 A. I didn't say that. I don't document efforts. I
7 just said, "In this particular case, I" -- it was not
8 documented.

9 Q. The day of the incident we would agree is at
10 2/19/2022 about 1:30 p.m.?

11 A. I apologize. Can you say that one more time?

12 Q. The day of the incident is February 19, 2022.
13 Yes?

14 A. Yes, sir.

15 Q. And it happens about 1:30 p.m.?

16 A. Approximately 1:30. Yes, sir.

17 Q. And we know from the crime scene log that you
18 arrived sometime about 1:52 p.m.?

19 A. Approximately. Yes, sir.

20 Q. There's not an indication of when you departed, so
21 you're not sure when you departed, but then we know that you
22 picked up Ms. Singleton and took her for an interview about
23 3:30 p.m. Give or take. Is that fair to say?

24 A. Yes, sir.

25 Q. And we know that you got a warrant for a murder

1 and a warrant for possession of a weapon during commission of
2 a violent crime that same day by Judge Palmer at
3 North Charleston City Hall?

4 A. Yes, sir.

5 Q. And we know that we got that warrant signed by
6 her, but during business hours before she left, it was at
7 city hall, correct?

8 A. It was at city hall. Yes, sir.

9 Q. Was that before you had the video?

10 A. I don't recall.

11 Q. And you don't recall because you didn't document
12 it down, right? In your report?

13 A. I did -- I did document that --

14 Q. The time you received the video --

15 A. -- I got the video.

16 Q. -- you did not document. You don't know if you
17 had that video before you got the warrant?

18 A. I cannot recall off the top of my head. No, sir.

19 Q. I'd like to ask -- ask you some questions about
20 the video, okay?

21 A. Yes, sir.

22 Q. Okay. Before we do that, I've got to make sure
23 that the video is accurate, in terms of the other ones we
24 looked at, because we've taken our own videos and modified
25 them from the -- modified then zoomed in just like the

1 solicitor did.

2 A. Okay.

3 MR. BISCHOFF: So I think, your Honor, we can play the
4 videos for her so the jury can't see them. Let her see them
5 first and I'll seek to admit them.

6 THE COURT: Yes. Approach.

7 (Bench conference.)

8 THE COURT: We're going to take our morning break and
9 it's going to be a 15-minute break. I would -- I would
10 advise you again, it's the same orders in place. Please not
11 to discuss the case. Thank you.

12 (Jury exits courtroom.)

13 THE COURT: All right. Everybody to be seated. You
14 wanted -- we had a bench conference. The purpose of this --
15 the -- send the jury out, then have a restroom break, which
16 during this time you indicated you wanted to -- Defense
17 Counsel wants to show some videos to Detective Butler and see
18 if she can authenticate them. Is -- is that my understanding
19 of what we're -- what the respite is -- what you need the
20 time for?

21 MR. BISCHOFF: Yes, sir. It's the same video we looked
22 at. It's just a different clip.

23 THE COURT: Different clip. Okay. All right. Let's
24 do that. And after we do that, then we're going to take a
25 break ourselves for just a few minutes to refresh ourselves

1 so we can get -- keep going, okay?

2 MR. BISCHOFF: Yes, sir.

3 THE COURT: All right. All right. Go ahead.

4 Mr. Bischoff.

5 BY MR. BISCHOFF:

6 Q. All right. Detective Butler --

7 THE COURT: I do need a number.

8 MR. BISCHOFF: Judge, we're going to put this on a
9 thumb drive here. If you could -- Peter, can you pull up the
10 -- so you see the files themselves all one time. Judge, the
11 thumb drive that we're going to submit into evidence -- the
12 first video is, Full Zion Video.mp4, and I believe that would
13 be Defense's 18.

14 THE COURT: Okay.

15 MR. BISCHOFF: And then, the next video is -- the file
16 name is Javon walk up regular speed.mod that would be
17 Defense's 19. And then Javon walk up slowed down.mod is the
18 next file. That would be Defense's 20. And then
19 Zion regular speed zoomed in car door.mod will be
20 Defense's 21.

21 THE COURT: Okay. All right. I have
22 Defense's 18, 19, and 20. The videos as Counsel has
23 indicated -- what the Defense's videos represent.

24 MR. BISCHOFF: All right. If we could -- Peter. And
25 for the record, Peter Beck is a law clerk for our office --

1 is going to have (inaudible). Peter, could you please play
2 Defense's 18, it's full sign on video.

3 BY MR. BISCHOFF:

4 Q. Detective Butler, if you would, can you go back to
5 again -- playing Defense's 18. Just take a look at it or
6 play in full and tell me if you recognize that video.

7 (Video played - inaudible.)

8 THE WITNESS: Yes, sir. That's the clip of the video
9 from the Facebook from Zion.

10 BY MR. BISCHOFF:

11 Q. Okay. And it's the same as the video you're
12 seeing directly in Facebook, right?

13 A. Yes, sir.

14 MR. BISCHOFF: All right. Your Honor, I move to admit
15 Defense's 18.

16 THE COURT: Well, we'll leave that in -- in front of --
17 in front of the jury.

18 MR. BISCHOFF: Well --

19 MS. LINDER: And I would just say, I -- I -- I would
20 object to this because --

21 THE COURT: Okay.

22 MS. LINDER: I would object to this because just like
23 yesterday, we entered a lot of photos and the Defense entered
24 the exact same thing, and it was kind of duplicate. And this
25 one, we went through this whole thing and we trimmed ours to

1 the point to where your Honor's ruling was this morning,
2 which is -- well, Courtney did, and then we had to stop it.

3 And that was based on their objection. So we made all
4 new discs, but on this one, this is an even shorter version.
5 So if we're going to have a full version based upon the
6 Court's ruling, it needs to be the full version. I just
7 think that it is -- it -- it, you know, we made the trim
8 version based on their objection and your Honor's ruling. I
9 don't understand that this is deemed the full Zion's video.
10 It's not actually including everything. I just don't know
11 what's the purpose of these four.

12 THE COURT: So you -- you're objecting to being called
13 the Full Zion video, but to the -- to the video itself,
14 you're not objecting to it, obviously. To the -- to the
15 video. So you're just objecting to the name is that --

16 MS. LINDER: I just don't, I --

17 THE COURT: -- this?

18 MS. LINDER: If their intention is this to be the video
19 based upon your rulings, then I don't understand why they
20 aren't just using our Exhibit 8, which is this.

21 THE COURT: Response?

22 MR. BISCHOFF: Judge, I don't have to use their
23 exhibits. I can have my own exhibits. And the same way that
24 you have a picture that may only capture a portion of a
25 scene, you can have another picture that's the full part of

1 the scene. I don't even understand what she's arguing.
2 We're happy to take Full Zion video out and just label it
3 Defense's Exhibit 18.

4 THE COURT: Let's do that. All right. I'm going to --
5 I'll -- I'm going to overrule your objection to -- and just
6 change the name to Defense's Exhibit 18 and that -- that
7 should -- that -- that would satisfy the Court. All right.
8 So Detective Butler has watched Defense's Exhibit 18. Just
9 want to clarify.

10 THE COURT: All right.

11 MR. BISCHOFF: And Judge, we need to make a note
12 ourselves, so Defense's Exhibit 18 is the Full Zion's video
13 so we can keep track with our notes, so that can communicate
14 with Mr. Beck effectively.

15 THE COURT: Sure.

16 MR. BISCHOFF: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. BISCHOFF: So if I understand, you want me to move
19 to admit it again when the jury comes out?

20 THE COURT: I -- I think it -- it -- it would be -- I'd
21 like -- yes. That's what I'd like you to do. You could --
22 she can identify -- we're just doing this so she can identify
23 it for later when she comes in and you move it into evidence
24 that she's seen it before.

25 MR. BISCHOFF: And I --

1 THE COURT: And can recognize it.

2 MR. BISCHOFF: But I don't need to play it for her
3 here, again, when the jury comes out, I can just show to her,
4 we pull up the screen and have her say, "Yes, I've seen the -
5 -"

6 THE COURT: Yes, you can do that.

7 MR. BISCHOFF: Thank you, Judge.

8 THE COURT: Yes.

9 BY MR. BISCHOFF:

10 Q. All right. So Defense's 19, which again is
11 currently labeled "Javon walk up regular speed.mod."
12 Detective Butler, if you would, please take a look at that
13 video, try playing and tell me if you recognize that. Let's
14 just start right at the beginning of that and check -- play
15 it. Do you recognize that portion of the video?

16 A. Yes, sir.

17 Q. And that's from inside Zion's car?

18 A. Yes, sir.

19 Q. And it's a zoomed-in portion of the video that
20 we've all been referencing throughout this entire trial?

21 A. The general video from Facebook. Yes, sir.

22 MR. BISCHOFF: All right. Mr. Beck, can you, please
23 play that?

24 (Video played.)

25 BY MR. BISCHOFF:

1 Q. All right. And that clip is six seconds long?

2 A. Yes, sir. Of the -- of 21 seconds. Yes, sir.

3 Q. And you would agree with me that that is a
4 six-second clip that is zoomed-in, regular speed, of
5 Defense's 18. And the main video we've been talking about
6 this entire trial?

7 A. I don't know if I can say it's of Defense 18
8 because this says "21 seconds" and Defense's 18 says
9 "20 seconds."

10 Q. Could you agree that that is a zoomed-in version
11 of the video you've been looking at the entire time in this
12 trial?

13 A. The general video from Facebook. Yes, sir.

14 Q. And it's in the same condition as the other video?

15 A. Yes, sir.

16 MR. BISCHOFF: I move to admit Defense's 19.

17 THE COURT: All right. State? 19, zoomed-in video?

18 MS. LINDER: Yes, Judge.

19 THE COURT: Any objection?

20 MS. LINDER: Nope.

21 THE COURT: All right.

22 MR. BISCHOFF: Do we need to label it Defense's 19 in
23 the file name?

24 THE COURT: Yeah.

25 MR. BISCHOFF: Okay. The other video is -- that we're

1 going to look at now it's Defense's 20 and it's labeled --
2 it's labeled "Javon walk up slowed down.mod."

3 Detective Butler, if you would just make a look at that and
4 tell us (inaudible).

5 (Video played - inaudible.)

6 BY MR. BISCHOFF:

7 Q. Is that a portion of the video that we've been
8 looking at the entire time?

9 A. Yes, sir. It's a -- I don't know how many second
10 clip of the general video from Facebook. Yes, sir.

11 MR. BISCHOFF: Okay. I'm going to admit the
12 Defense's 20.

13 MS. LINDER: I'll not object.

14 THE COURT: No objection?

15 MR. BISCHOFF: No objections to the title?

16 MS. LINDER: Correct.

17 MR. BISCHOFF: Thank you. And finally, we have the
18 video that's marked as Defense's 21. The title right now is
19 "Zion regular speed zoomed-in car door.mod." Detective
20 Butler, if you would, please take a look at that video and
21 (inaudible).

22 Just a second, actually. Madam Clerk, when we pull it
23 up, there's this delay, so we're trying to get black out on
24 the screen and so we get loaded so we're not doing the same
25 problem. I don't know why it does that. It just -- it

1 delays it, when it goes up.

2 THE COURT: All right. I'm just trying to work -- just
3 try to work through that. So it -- I -- I -- you don't want
4 it to have start -- back it up.

5 MR. BISCHOFF: Yes, sir.

6 THE COURT: That's fine.

7 BY MR. BISCHOFF:

8 Q. Regarding Defense's 21, Detective Butler, we're
9 going to play that now. You tell me if you recognize that
10 video.

11 A. Yes, sir.

12 (Video played.)

13 THE WITNESS: Yes, sir. A clip of the video -- the
14 general video from Facebook.

15 MR. BISCHOFF: Judge, I move to admit Defense's 21.

16 THE COURT: All right. Any objection?

17 MS. LINDER: None.

18 THE COURT: Any objection to the title?

19 MS. LINDER: None.

20 THE COURT: All right. All right. Thank you. All
21 right. So is that all you need to take care of while the
22 jury's out right now?

23 MR. BISCHOFF: Yes, sir.

24 THE COURT: All right. All right. We're going to be
25 at ease for just a few minutes if you could -- you know,

1 let's try to move fairly quickly so we get the jury back in
2 here. All right. Thank you.

3 (Off the record.)

4 THE COURT: State?

5 MS. LINDER: Yes, your Honor.

6 THE COURT: All right. Defense, you ready to resume --

7 MR. BISCHOFF: Yes --

8 THE COURT: -- cross-examination?

9 MR. BISCHOFF: -- your Honor.

10 THE COURT: All right. You're in place?

11 THE WITNESS: Yes, sir.

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

13 (Jury enters courtroom.)

14 THE BAILIFF: All jurors are present, your Honor.

15 THE COURT: Thank you. Please proceed with your
16 cross-examination.

17 MR. BISCHOFF: Thank you, your Honor.

18 BY MR. BISCHOFF:

19 Q. Detective Butler, I'm going to ask you some
20 questions now about the video?

21 A. Yes, sir.

22 Q. Just pull up. Going to show you Defense's 18,
23 we're not going to play it, we're just going to pull it up on
24 the screen. We talked about this a few minutes ago. You've
25 seen that video before. Yes?

1 A. Yes, sir.

2 Q. Is the same video from the day of the incident?

3 A. Yes, sir.

4 Q. That we've been talking about the entire case?

5 A. Yes, sir. The general -- ooh I apologize.

6 General video from Facebook. Yes, sir.

7 MR. BISCHOFF: Thank you. Your Honor, I move to admit

8 Defense's Exhibit 18 at this time.

9 MS LINDER: No objection.

10 THE COURT: All right. Defense's 18 is in without

11 objection.

12 (Defense's Exhibit 18 admitted into evidence.)

13 BY MR. BISCHOFF:

14 Q. All right. Detective Butler, I'm going to play
15 this video. We're going to stop after two seconds and I'm
16 going to ask you some questions about what we see and hear
17 during those two seconds. Ready?

18 A. Yes, sir.

19 (Video played.)

20 BY MR. BISCHOFF:

21 Q. That's the pop that I was referring to earlier in
22 cross-examination?

23 A. Yes, sir.

24 Q. And you would agree that that is the first pop
25 that we hear on this video?

1 A. I would agree that's the first pop. Yes, sir.

2 Q. And you would agree that that is consistent with
3 the sound of a gunshot?

4 A. I would agree it's a pop, but based on the window
5 being up, I don't know if I could 100 percent agree that's
6 the sound of a gunshot. But it is definitely a pop. Yes,
7 sir.

8 Q. And the pop could be muffled by the fact that the
9 window is up?

10 A. It could be muffled. Yes, sir.

11 Q. And the person who's recording this video is
12 inside the car. Yes?

13 A. The person recording is inside the vehicle. Yes,
14 sir.

15 Q. All right. And the pop that we hear in these two
16 seconds -- not as loud as the other pops. Yes?

17 A. That is correct. Yes, sir.

18 Q. And we know it's not fired by Javon?

19 A. Yes, sir.

20 MR. BISCHOFF: At this time, we'll still play
21 Defense's 18 and I'm going to ask you, the jury, to listen to
22 what's being said. What can we hear being said during this
23 next portion of the video?

24 (Video played.)

25 MR. BISCHOFF: If I increase the volume. All right.

1 Let's play it one more time.

2 (Video played.)

3 BY MR. BISCHOFF:

4 Q. Detective Butler, do you hear someone shouting
5 something?

6 A. I can hear muffled sounds and then I hear the
7 window going down.

8 Q. You don't hear, "Shoot that gun," N word?

9 A. No, sir.

10 Q. You don't hear, "Shoot that gun," N word. "Shoot
11 it," N word. You don't hear that?

12 A. No, sir.

13 MR. BISCHOFF: Re-play it.

14 (Video played.)

15 BY MR. BISCHOFF:

16 Q. What about that again?

17 A. I can hear muffled sounds and the window whirling
18 down.

19 Q. You don't hear a distinct voice at one part of the
20 video. A female voice. Maybe say, "Oh my God." Or some
21 sort of a scream of some sort. You don't hear that on the
22 video?

23 A. No, sir

24 MR. BISCHOFF: Peter, I'll ask you to play it one more
25 time. I ask the jury, please listen as closely as you can to

1 the audio and what's being said during those two seconds.

2 (Video played.)

3 BY MR. BISCHOFF:

4 Q. You still don't hear, "Shoot that gun," N word.

5 "Shoot it," N word?

6 A. I don't hear those words. No, sir. I hear
7 muffled like voices for lack of a better term.

8 Q. But that's definitely Javon that we see in the
9 video?

10 A. In the red shirt is the Javon Thomas.

11 Q. And we see him marching towards Courtney and
12 Courtney's pregnant girlfriend during that portion of the
13 video. Yes?

14 A. Walking towards Courtney and his girlfriend. Yes,
15 sir.

16 MR. BISCHOFF: I'll show you now Defense's 19.

17 (Video played.)

18 BY MR. BISCHOFF:

19 Q. All right. We got Defense's 19, you've seen that
20 before. Yes?

21 A. Yes, sir.

22 Q. And it is a part of the video we've been looking
23 at throughout trial?

24 A. From Facebook. Yes, sir.

25 Q. It's a part of the video for Defense's 18?

1 A. Yes, sir.

2 Q. And it's zoomed in. Would you agree on that?

3 A. Yes, sir.

4 MR. BISCHOFF: Your Honor, at this time I move to admit
5 Defense's 19.

6 MS. LINDER: No objection.

7 THE COURT: All right. Defense's 19 is in evidence
8 without objection.

9 (Defense's Exhibit 19 admitted into evidence.)

10 MR. BISCHOFF: All right. The audio is a little bit
11 better, Defense's 19, Detective Butler. So I'm going to ask
12 you to listen closely to the audio portion of the video one
13 more time.

14 (Video played.)

15 BY MR. BISCHOFF:

16 Q. At that time did you hear the, "Shoot that gun," N
17 word? "Shoot it." N Word?

18 A. No, sir. I hear -- I hear people talking, like,
19 it could be, like, music in the car or something, but I can't
20 determine what is being said.

21 Q. Let's go back to the beginning. I want you to
22 also now focus on Javon's arms as he's marching towards
23 Courtney and Courtney's pregnant girlfriend. I want to ask
24 you some questions about what his arms do, okay?

25 A. Yes, sir.

1 Q. As he is marching down, we can clearly see that
2 his left arm is moving kind of out to his side at times.
3 Yes?

4 A. As he's walking, I can see both of his arms
5 moving. Yes, sir.

6 Q. You see both of his arms moving?

7 A. You can see his arm move. Yes, sir.

8 Q. I'm just asking about the left arm right now.

9 A. The left arm is there. Yes, sir.

10 Q. And the left arm is moved just like this, as he's
11 marching towards Courtney and his pregnant girlfriend, right?

12 A. As he's walking down the -- towards that
13 direction. Yes, sir.

14 Q. Okay. Let's back it up. I'm ask you to focus on
15 the right arm and tell me if you see any daylight whatsoever
16 in the same way you have with the left arm during this
17 (inaudible).

18 A. Before you play it, what was that statement you
19 said? I apologize.

20 Q. Daylight. Yeah, so the -- the video shows that if
21 the arm's out here we could see the houses as he's walking
22 by.

23 A. Okay.

24 Q. We had Javon in a red shirt, correct?

25 A. Okay. I was just -- I didn't hear -- I didn't

1 understand what you said when you said that. I apologize.

2 Q. I understand. For the purpose of the explanation,
3 when I say, "daylight," I mean we've got a red shirt in
4 contrast to the white houses so we can kind of tell whether
5 or not the arm moves out by the fact that the background
6 shows that, okay?

7 A. Okay. Yes, sir.

8 Q. Thank you. Just take a look at the right arm at
9 this time. It's marching towards Courtney and his body.

10 (Video played.)

11 MR. BISCHOFF: Just play it one more time.

12 (Video played.)

13 MR. BISCHOFF: Stop it.

14 BY MR. BISCHOFF:

15 Q. Do you see any daylight on his right arm?

16 A. Not in this clip.

17 Q. Not of that portion. Yes?

18 A. Yeah.

19 MR. BISCHOFF: Play again, keep going.

20 (Video played.)

21 BY MR. BISCHOFF:

22 Q. Do you see -- you don't see his right arm close by
23 his side as he's walking down -- in his left arm dangling
24 beside him?

25 A. I see both of his arms down by his side.

1 Q. You see the left arm -- you -- you don't see the
2 right arm at all as he's walking down -- that right arm is
3 right close next to his body. Is it not?

4 A. Yeah, I can see his right arm by his side. Yes,
5 sir.

6 Q. Okay. And that's where his arm is the entire time
7 he is walking, he's got his arms stiff against his body,
8 touching his body, right? Down --

9 A. I can't say that it's touching his body, but in
10 this clip that you showed his arm -- right -- his arms are by
11 his sides.

12 Q. So, you can't see exactly where his arm is. Get a
13 general idea, but I want you to point to the jury where is
14 this gun located at this point in time?

15 A. I cannot point that out for you.

16 Q. You don't know where the gun is right now?

17 A. I cannot point that out for you. No, sir.

18 Q. Could be down by himself like this?

19 A. I'm unable to point that out for you, sir.

20 Q. I'm just asking you, could it be?

21 A. There are many possibilities. Yes, sir.

22 Q. What possibilities do you think exist?

23 A. In the pocket, in the front, in the back, on the
24 right, on the left on an ankle.

25 Q. Do you think it could go on the left?

1 A. It could be.

2 Q. Okay. Could be down like this?

3 A. Like I said, there's many possibilities. It could
4 be in the front and the back. It could be anywhere, sir.

5 Q. Okay. Well, come back to it.

6 A. Okay.

7 Q. That's -- that's important at this point in time,
8 where is the gun, right?

9 A. Yes, sir.

10 MR. BISCHOFF: Back up one more time.

11 (Video played.)

12 BY MR. BISCHOFF:

13 Q. Detective Butler, do you see the contrast between
14 the red and the black there in that picture?

15 A. Are you referring to --

16 Q. Right around the waist area?

17 A. Are you referring to the top and the -- the --
18 essentially the shirt and the pants?

19 Q. Yes.

20 A. Yes, sir.

21 Q. Did you see a white contrast -- what appears to be
22 a white contrast?

23 A. Between the shirt and the pants?

24 Q. Between -- yes, ma'am. Between the red shirt and
25 the black pants? Could be, right?

1 A. No, sir.

2 Q. You don't believe so?

3 A. No, sir.

4 Q. It is difficult to tell, but it could be -- could
5 it not be what we see in Defense's 14? Could that not be his
6 boxers as he's walking down -- the baggy, saggy sweatpants?
7 Could it not be his boxers that we see in that video?

8 A. I have no idea, sir.

9 Q. It could be that, could it not?

10 A. I don't see the contrast but I -- there was a
11 possibility.

12 Q. Do you agree that the boxers are what we see here
13 in Defense's 14?

14 A. In this photo in front of me that is the boxers.
15 Yes, sir.

16 Q. And it is different from the black pants and the
17 red shirt?

18 A. It's a different color. Yes, sir.

19 Q. Okay. Now, let's play it up to the point where
20 shots were involved.

21 (Video played.)

22 BY MR. BISCHOFF:

23 Q. I'll show you Defense's 20 for that -- these next
24 questions.

25 A. Okay.

1 Q. All right. Now, this is Defense's 20, we looked
2 at this earlier, correct?

3 A. Yes, sir.

4 Q. This is the sort of enhanced part of the regular
5 video we've been looking at this entire trial. Would you
6 agree?

7 A. It's the zoomed-in slowed down version.

8 Q. Yes. And -- and earlier you said it was in
9 substantially the same condition as, you know, the regular
10 video just enhanced, zoomed-in?

11 A. Zoomed-in. Yes, sir.

12 MR. BISCHOFF: All right. At this time, I move to
13 admit Defense's 20 -- Defense's 20.

14 MS. LINDER: No objection.

15 THE COURT: Without objection, Defense's 20 is in
16 evidence.

17 (Defense's Exhibit 20 admitted into evidence.)

18 MR. BISCHOFF: All right. Peter, can you re-play it
19 and then stop right before shots are fired.

20 (Video played.)

21 BY MR. BISCHOFF:

22 Q. All right. Now, this is playing a little bit of a
23 slower speed.

24 A. Yes, sir.

25 Q. I want you to pay close attention to what happens

1 over the next few seconds, all right? Try to focus your
2 attentions around waistband pocket, arms, and hands.

3 (Video played.)

4 BY MR. BISCHOFF:

5 Q. Where's the gun at this point in time?

6 A. I have no idea. I'm unable to point that out sir.

7 Q. Okay. Because you can't see it?

8 A. Correct.

9 (Video played.)

10 BY MR. BISCHOFF:

11 Q. What about right now?

12 A. Unable to tell you, sir.

13 Q. Unable still. Did you see daylight there that I
14 was talking about, right?

15 A. On left arm. Yes, sir.

16 (Video played.)

17 BY MR. BISCHOFF:

18 Q. Right here. Any movement?

19 A. Can you elaborate?

20 Q. Any -- any movement with his right hand or arm
21 that you can see?

22 A. I'm unable to tell.

23 Q. But you would agree with me -- the Glock 9mm, if
24 there's not already round in the chamber again, the Glock is
25 the gun that Javon had. Yes?

1 A. Say that one more time, I apologize.

2 Q. The Glock 9mm is the -- the gun that Javon had
3 that day?

4 A. Yes, sir.

5 Q. And in order to put a bullet in the chamber, you'd
6 have to rack the top of that gun back. Yes?

7 A. If the firearm is empty, you would have to rack
8 the slide back to load a bullet into the chamber.

9 Q. Okay. And you would agree with me that there's no
10 movement at all -- will be consistent with putting a bullet
11 in the chamber of a Glock 9mm in this vehicle?

12 A. I don't see that. No, sir.

13 Q. You would likely see more movement in your arms at
14 that minute?

15 A. More likely than not. Yes, sir.

16 (Video played.)

17 BY MR. BISCHOFF:

18 Q. Right when Javon fires his first of six shots to
19 Courtney and his pregnant girlfriend, where is the gun?

20 A. In his hand.

21 Q. Where is the gun in relation to his body --
22 clothing?

23 A. Say that one more time.

24 Q. The gun is definitely in his hand. I agree with
25 you. When the gun is fired.

1 A. Okay.

2 Q. Where is it right before he puts his hand on the
3 gun?

4 A. Prior to, it appears to me based on this video
5 that he is reaching behind him.

6 Q. And when you say, "behind him," you mean
7 waistband?

8 A. Yes, sir. Based on the -- where his pants are
9 sitting.

10 Q. So that's where the gun is -- you're certain,
11 right in the waistband -- right here behind him?

12 A. That's what it appears based on this video.

13 Q. And that's what you believe the video shows you?
14 Are you certain of that?

15 A. That's what it shows me. Yes, sir.

16 Q. Okay. So in order for that gun to be held up as
17 he's walking down, we go to have a belt or a tight pants or
18 something of it?

19 A. No, sir.

20 Q. No?

21 A. Not in my -- I mean I have a -- it's a
22 small 9mm firearm.

23 Q. So he can just be walking down the street, gun
24 right here walking like this. That gun's not moving, it's
25 not falling down nothing. It's just staying right there in

1 his waistband.

2 A. It's very possible. Yes, sir.

3 Q. Let me show you State's -- or I'm sorry.

4 Defense's 14 -- wearing those pants.

5 A. Yes, sir.

6 Q. Right there in his waistband as he's walking down
7 towards Courtney and his pregnant girlfriend. That gun's not
8 moving. It's not falling, it's staying right fixed in his
9 waistband in those pants?

10 A. I'm not saying it's not moving, but it's very
11 possible -- just stay put where it's placed.

12 Q. Well, it's staying secure. It's not -- doesn't
13 fall out. We know the gun doesn't fall out, right?

14 A. Correct.

15 Q. But that's where you're saying -- right here in
16 those sweatpants?

17 A. That's what I -- I see. Yes, sir. And you could
18 -- it appears there's a tie on the sweatpants too, so that
19 would also help secure it.

20 Q. Secure that gun?

21 A. Like his pants.

22 Q. Right. I understand.

23 A. Yeah.

24 Q. You believe these sweatpants -- but that
25 drawstring would secure his Glock 9mm?

1 A. No, I said, his "Drawstring would secure his
2 pants."

3 Q. What would secure the weapon?

4 A. His pants. It's very -- it is a small firearm,
5 sir.

6 Q. Where is the barrel of the weapon if it's in his
7 waistband?

8 A. I mean, I can't tell you how he placed it, but
9 presumably it would be face down.

10 Q. And the handle would be on the outside. Is that
11 what you're saying?

12 A. Presumably. It's a --

13 Q. You do not know?

14 A. It's a possibility. I do not know. No, sir.

15 Q. No way to tell from that video?

16 A. There is no --

17 Q. On that gun, right?

18 A. There's no -- not from the video. No, sir.

19 Q. And so, we're guessing as to where the gun is?

20 A. What I'm testifying to -- what I'm telling you is
21 it appears based on the video -- what I see is he reaches
22 back prior to the -- his arm coming straight up.

23 Q. All right. I'm going to ask you a series of
24 questions regarding -- this is Defense's 19, what we're
25 looking at right now.

1 A. Okay.

2 Q. I ask you to pay attention to where Javon's hands
3 are.

4 A. Yes, sir.

5 Q. And to pay attention to the audio that corresponds
6 with the shots fired. And I'm going to ask you some
7 questions about that kind of separate. That's where I want
8 your attention now during these answer-questions, okay?

9 A. Yes, sir.

10 MR. BISCHOFF: If you play it, you can stop it after
11 Javon fires his first shot.

12 (Video played.)

13 BY MR. BISCHOFF:

14 Q. I want you to pay attention to the audio after the
15 first shot.

16 A. Okay.

17 (Video played.)

18 BY MR. BISCHOFF:

19 Q. That's just that -- the first shot in this
20 particular little sequence. You would agree that is right
21 around four seconds after you see the timer in four seconds,
22 we hear a second warning shot from Courtney. Yes?

23 A. Can you play it one more time? I apologize.

24 Q. No problem.

25 (Video played.)

1 THE WITNESS: At four, you hear a second shot.

2 BY MR. BISCHOFF:

3 Q. At four seconds we hear a gunshot, correct? And
4 we know Javon is about to return fire. Yes?

5 A. Yes. You hear a gunshot. And it's also seen how
6 he --

7 Q. Right. He kind of moves his body, right?

8 A. Yeah.

9 Q. Reacts to flinching if you left the -- the shot
10 being fired. But what I want to try to do is -- we are in
11 (inaudible) right at four seconds. That is when the shot is
12 fired coming from Courtney, the second one shot.

13 A. You hear us -- a shot at four seconds. Yes, sir.

14 Q. Okay. Thank you. We're going to play it again
15 and I want you to tell me see if we can agree on when the
16 shot first of -- of Javon's six shots are fired. So the
17 first one that Javon is able to fire, that's what I want to
18 kind of focus our attention on, okay?

19 A. Okay.

20 Q. The time associated with that.

21 (Video played.)

22 BY. MR. BISCHOFF:

23 Q. All right. What -- what's the time there?

24 A. Six seconds.

25 Q. Six seconds, right?

1 A. Yes, sir.

2 Q. So you would agree with me that Javon fires back
3 at six seconds in to that video clip?

4 A. To this video clip. Yes, sir.

5 Q. And so if his gun is in his waistband wearing
6 those, you know, baggy, saggy sweatpants, you're saying that
7 in one second he can reach back, grab this weapon, and draw,
8 in one second?

9 A. It's two seconds, but it's possible. Yes, sir.

10 Q. The time it takes for him to draw his weapon is at
11 five seconds.

12 A. It was four.

13 Q. So he's walking, shot is fired, then he draws it
14 second five, second six, he fires.

15 A. Okay.

16 Q. Would you agree?

17 A. I would.

18 Q. The time it takes to take one breath, the time it
19 takes to look at your watch, the time it takes to flick the
20 lights off at night before you go to bed. One second, he's
21 able to draw that weapon --

22 MS. LINDER: Objection, your Honor. Is there a
23 question?

24 MR. BISCHOFF: There is a question.

25 BY MR. BISCHOFF:

1 Q. He's able to draw his weapon in one second?

2 A. It's possible.

3 Q. It's also possible that he's already got it in his
4 hand?

5 A. As I stated before. It's possible.

6 Q. It's also possible that it could be in his
7 waistband?

8 A. Anything is possible. Yes, sir.

9 Q. An incident more likely that Javon has his weapon
10 in his hand. He's angry, he's walking down the road, he's
11 got his hand on his gun the entire time he's walking,
12 marching towards Courtney and he's saying, "Shoot it, shoot
13 it."

14 A. I would disagree with that statement.

15 Q. You know, he is angry, right?

16 A. He's upset. Yes, sir.

17 Q. You know he is marching towards Courtney and his
18 pregnant girlfriend.

19 A. He is walking down the direction towards Courtney.
20 Yes, sir.

21 Q. He's just saying, "Shoot at me. Shoot at me."
22 He's not already got his hand on that firearm?

23 A. I don't hear what he's saying, sir. So I can't
24 say that he is saying that

25 Q. He knows Courtney has a gun, right?

1 A. I can't tell you what he -- the victim knew. No,
2 sir. Or I apologize. The decedent.

3 Q. So based on the gunshots and time of the sequence,
4 don't you think he knew that Courtney had a gun? And he's
5 got -- he's walking towards saying, "Shoot it, shoot it,
6 shoot it." And he's not armed. He's not already got his
7 hand on that weapon. Isn't that more likely?

8 A. I would disagree with that statement based on the
9 video, sir.

10 Q. It's certainly possible, correct?

11 A. Yes, sir. Anything's possible.

12 MR. BISCHOFF: All right. I want to back it up a
13 little bit, Peter. I want to ask you some questions about --
14 first of all, I'm going to show you Defense's 21, pull that
15 on the screen and tell me if you recognize that.

16 BY MR. BISCHOFF:

17 Q. All right. We talked about this before,
18 Detective Butler. You -- you've seen this video before.
19 Yes?

20 A. Yes, sir.

21 Q. And is a zoomed-in portion of the main video we've
22 been looking at?

23 A. From Facebook. Yes, sir.

24 MR. BISCHOFF: And at this time, I move to admit
25 Defense's 21.

1 THE COURT: State?

2 MS. LINDER: Oh, apologies. No objection.

3 THE COURT: All right. Defense's 21 is entered into
4 evidence without objection.

5 (Defense's Exhibit 21 admitted into evidence.)

6 BY. MR. BISCHOFF:

7 Q. All right. Detective Butler and the jury, I'm
8 going to ask you to focus now on the -- the car door purpose
9 of the next few questions. I want to focus on the car door,
10 okay?

11 A. Which car door, sir?

12 Q. You'll see it here in a second.

13 A. Okay.

14 Q. The car door of the Jeep Compass.

15 A. Okay. Yes, sir.

16 MR. BISCHOFF: Peter.

17 (Video played.)

18 BY MR. BISCHOFF:

19 Q. Okay. So as Javon is marching towards what we
20 know is the Jeep Compass, would you agree with me that the
21 passenger door is definitely open at this point in time?

22 A. As he's walking that direction. Yes, sir. It
23 appears that the door is open.

24 Q. Okay. And again, we can kind of tell that by the
25 silhouette, if you will, of the door?

1 A. Yes, sir.

2 MR. BISCHOFF: You can play.

3 (Video played - inaudible.)

4 BY MR. BISCHOFF:

5 Q. We don't see the silhouette of the door anymore,
6 correct?

7 A. Yes, sir.

8 Q. Would you agree with me that we don't see the
9 silhouette at the door on the sixth shot by Javon Thomas? We
10 can play it again.

11 A. Yeah, I didn't count the shots. You advised to
12 focus on the door, so I focused on the door.

13 Q. No, I understand. Let's try -- we'll play it
14 again. I want to see if we can figure out when is the car
15 door closed.

16 (Video played.)

17 THE WITNESS: Yes, sir. The door closes after.

18 BY MR. BISCHOFF:

19 Q. Right after the sixth shot?

20 A. Yes, sir.

21 Q. And so we know that if the door closes that way,
22 then someone has to be in there --

23 A. Yes, sir.

24 MR. BISCHOFF: -- to close it, right? Back up, Peter.

25 (Video played.)

1 BY MR. BISCHOFF:

2 Q. Do you see how now in the silhouette we've got
3 something that appears to be white -- and white circle there
4 at the passenger door. Do you see that?

5 A. No, sir.

6 Q. If you look at the car door, this is where
7 technology (inaudible). If you look at the car door and
8 halfway between the top of the silhouette of the door and the
9 bottom, do we see a -- a white image of something? A color
10 change of some sort?

11 A. A glitch in the video, for lack of a better term.

12 MR. BISCHOFF: Okay. Play it one more time and stop
13 (inaudible).

14 (Video played.)

15 BY MR. BISCHOFF:

16 Q. How about now? Where does it stay?

17 A. It -- it appears to me the same thing. It's the
18 -- I don't know if glitch is the right word. The -- pixels -
19 - like it's pixelated.

20 Q. We can let the jury -- stop it. Did you agree the
21 silhouette changes -- of the door? At the beginning we had a
22 full dark silhouette that makes -- it certainly appears that
23 we have a door. And then at this moment in time, we have
24 some sort of modification. We don't know what it is, but it
25 could be Courtney's pregnant girlfriend. Could it not?

1 A. I see the door open, sir. I don't...

2 MR. BISCHOFF: Peter, can you please slowly drag the
3 cursor across?

4 BY MR. BISCHOFF:

5 Q. Silhouette changes and then it goes right
6 there, right?

7 A. Sir, I see the -- a silhouette of the door.

8 Q. Okay. Could be Courtney's pregnant girlfriend,
9 could it not?

10 A. Again, sir. I just see a silhouette of the door.
11 I don't see anything underneath the door to indicate that --

12 Q. I know, I understand that it -- it could be
13 pregnant on an outside passenger-side door?

14 A. Again, sir, I see a door open.

15 Q. Let's go back to Defense's 18. All right.
16 Detective Butler, now we're back to Defense's 18, I'm going
17 to ask you some questions about what's going to happen after
18 Javon fires the sixth shot from the direction of Courtney and
19 his pregnant girlfriend.

20 (Video played.)

21 BY MR. BISCHOFF:

22 Q. You would agree that here we are -- gosh, it's
23 hard to see. We are eight seconds in -- in the video. Yes?

24 A. Yes, sir.

25 Q. Okay. And you would agree that at eight seconds

1 in, we still have Javon Thomas, gun in his hand, facing
2 Courtney and Courtney's pregnant girlfriend in the vehicle.
3 You would agree with me on that, right?

4 A. His arm was coming down at that time. Yes, sir.

5 Q. My question is at eight seconds --

6 A. Yes, sir.

7 Q. -- you see Javon Thomas facing Courtney and
8 Courtney's pregnant girlfriend with the gun still in his
9 hand?

10 A. Based on the video. Yes, sir. Presumably, but
11 you can't see the gun at this time in this -- the stopped
12 point here.

13 Q. But you can tell by the audio there's no way that
14 he's dropped the weapon --

15 A. Correct. I -- I didn't say he did, sir.

16 Q. Okay. So it -- it hasn't dropped it -- it's got
17 to be in his hand, right?

18 A. Yes, sir.

19 Q. Okay. And again, we know that the weapon is in
20 his hand until he falls to the ground.

21 A. Yes, sir.

22 MR. BISCHOFF: Slowly go ahead and back. You would
23 please pay attention to Javon in the direction that he's
24 facing with the left -- and still in his hand over the next
25 two seconds.

1 (Video played.)

2 BY MR. BISCHOFF:

3 Q. Do you agree here at second nine -- nine seconds
4 in, Detective, he's still facing Courtney and Courtney's
5 pregnant girlfriend. Yes?

6 A. It appears he's facing the Jeep. Yes, sir.

7 Q. And at ten seconds here, let's see if we can stop
8 it right when Javon is out of frame. Okay. Right. Go back
9 a little. Right here. It's not as good as we can do because
10 of the -- the way the camera is set up. But do -- you would
11 agree at that point in time, nine seconds, we're almost at
12 ten seconds, we have Javon with a gun still in his hand
13 facing Courtney and Courtney's pregnant girlfriend. Yes?

14 A. He's still facing that direction. Yes, sir.

15 Q. And then at ten seconds he's out of view.

16 A. Correct.

17 Q. So at this point in time we don't know where he
18 is. We got a general idea, right?

19 A. Yes, sir.

20 Q. We don't know what he's doing with his arms.

21 A. Yes, sir.

22 Q. Right? We just can't see him.

23 A. Correct.

24 Q. That's an unfortunate part of the video. We just
25 can't see.

1 A. Yes, sir.

2 Q. But we do know that he definitely still has a gun
3 in his hand.

4 A. Yes, sir.

5 MR. BISCHOFF: All right. Peter, if you would slowly
6 drag it through second 11, second 12, 13, 14.

7 (Video played.)

8 BY MR. BISCHOFF:

9 Q. So for seconds 13, 14, 15, we can't see much.

10 A. You just see the person --

11 Q. We're going -- I'm going to play this again so we
12 can capture the audio here and talk about what happens. This
13 is the next time -- the next time that we see Javon, you
14 know, five seconds later, right?

15 A. Yes, sir.

16 MR. BISCHOFF: If, Peter, you want to play it from the
17 beginning, but here the -- again it's Defense's 18, I'd like
18 you to try to listen if you can to the audio that's happening
19 between seconds 10 and 15.

20 (Video played - inaudible.)

21 BY MR. BISCHOFF:

22 Q. Would you agree that we can hear five shots during
23 that portion of the video?

24 A. Yes, sir.

25 Q. All right. Thank you. Do you agree with me any

1 of that -- one of those shots could have been Javon?

2 A. Between --

3 Q. We don't know who's shooting, we know there's five
4 shots fired, but we don't know who's shooting, right?

5 A. Between the --

6 Q. Ten and 15.

7 A. Can you play the 10 to 15 again, please?

8 Q. Sure.

9 A. Or can you play the whole video again?

10 MR. BISCHOFF: Sure.

11 (Video played - inaudible.)

12 THE WITNESS: You can hear the distinct of those shots
13 in -- further away.

14 BY MR. BISCHOFF:

15 Q. I understand. The opinion is that they sound
16 further away. We got five, right? Bam, bam, bam, bam, bam.

17 A. Yes, that's what I heard. Yes, sir.

18 Q. Five shots. I'm just trying to make sure we can
19 agree.

20 A. Yeah, yeah. Sorry. Yes, sir.

21 Q. And I know this is tedious, but it is just so
22 important to try figure out what the truth is, right?

23 A. I understand. Yes, sir.

24 MR. BISCHOFF: You have five shots in that period of
25 time. Peter. Right. I'd like you to go back to

1 nine seconds, please. And then play it again from this point
2 in time to the shots stop. When do the shots start? You can
3 play it.

4 (Video played.)

5 BY MR. BISCHOFF:

6 Q. All right. So would you agree that second 11 we
7 hear the first of those five shots?

8 A. Yes, sir.

9 Q. So within one second of Javon Thomas with a gun in
10 his hand and is facing Courtney and Courtney's pregnant
11 girlfriend, we hear a shot.

12 A. Yes, sir.

13 Q. One second.

14 A. Yes, sir.

15 Q. And then of course there's four other ones after
16 that. And we know that Javon's gun holds seven bullets. You
17 would agree they're Glock with a six-bullet magazine?

18 A. It's possible to hold seven. Yes, sir.

19 Q. It's possible. It's very possible that he had
20 seven bullets that day?

21 A. It's possible to hold seven. Yes, sir.

22 Q. But we never see him rack that weapon on video.

23 A. Correct.

24 Q. If we had seen him rack that weapon, we know that
25 that would put one in the chamber and with the five in the

1 clip?

2 A. Based on the evidence recovered.

3 Q. The last question that I have for you, Detective
4 is we know that Javon had that gun in his hand, so he felt
5 it, right?

6 A. Yes, sir.

7 MR. BISCHOFF: Thank you. No question.

8 THE COURT: All right. Re-direct?

9 MS. LINDER: Your Honor, may we approach?

10 THE COURT: Yeah. If you want to do so - if you want
11 to do so.

12 (Bench conference.)

13 THE COURT: All right. Thank you. Please -- please
14 begin your re-direct.

15 RE-DIRECT EXAMINATION

16 BY MS. LINDER:

17 Q. All right. Detective Butler, Mr. Bischoff has
18 asked you a bunch of questions and starting with your
19 investigation, or documentation, or whatnot, you talked about
20 the photo application that was done with the entire -- want
21 you to go through for the jury how a six-pack lineup is done?

22 A. Yes, ma'am. At the
23 North Charleston Police Department we have a form that we
24 fill out that we read the instructions to on -- to whoever
25 we're showing the lineup to, whether it be a victim or a

1 witness in the case. I over-skipped something -- kind of as
2 I described before we submit the -- a photo of the person of
3 interest to either the SLED or the
4 Charleston County Detention Center to receive that lineup.

5 We put it together -- each picture is on a different
6 piece of paper. We have the instructions. Those
7 instructions are read to ensure that the witness or victim
8 understand the instructions. And then they're shown one
9 photograph at a time.

10 If they identify the person in them, you will circle
11 the person, and then there's a form on the instruction sheet
12 to say how you know that person. And how sure you are of the
13 identification. If they don't know the person, then we flip
14 it over and move on to the next one. And there are cases
15 where no one is identified out of the lineups that are shown.

16 Q. All right. And is it up to the law enforcement
17 agency if you show one image with six photos next to each
18 other or if you show a series of six photos?

19 A. That's my understanding. Yes, ma'am.

20 Q. And what's the practicum of Charleston?

21 A. One photo at a time.

22 Q. All right. I'm going to show you what's already
23 been entered as State's 26.

24 A. Yes, ma'am.

25 Q. I'm also going to show you State's 11 for ID

1 purposes.

2 A. Yes, ma'am.

3 Q. Do you recognize that?

4 A. Yes, ma'am.

5 Q. And what is that?

6 A. The lineup shown to Antoniya Singleton.

7 Q. And is that -- fair and accurately represent the
8 -- the remainder of the -- the entire lineup shown to
9 Antoniya Singleton back on the day of this -- on
10 February 19, 2022?

11 A. Yes, ma'am.

12 MS. LINDER: Your Honor, at this time the State would
13 seek to admit State's 26 -- or I'm sorry, 11 into evidence.

14 THE COURT: Any objection?

15 MR. BISCHOFF: No objection.

16 THE COURT: State's 11 is entered into evidence without
17 objection.

18 (State's Exhibit 11 admitted into evidence.)

19 BY MS. LINDER:

20 Q. All right. I'd like to go through this with you.
21 So for State's 11, what is this first page?

22 A. That is the form that I advise where we have the
23 instructions that we give to either the victim or the
24 witness. This thing down here is where they write how they
25 know the person. This is the witness signature and the

1 administrator's signature.

2 Q. All right. So these are all the warnings or -- or
3 instructions that are given?

4 A. Yes, ma'am.

5 Q. And then State's 11, what is this?

6 A. That is -- can you scoot it up just a tad? That
7 is the -- you see the number down here on the bottom, that
8 corresponds with the six different photos. So that would be
9 photo one in that lineup.

10 Q. All right. And this is also part of State's 11?

11 A. Yes, ma'am.

12 Q. What is this?

13 A. That would be photo two in that photo lineup.

14 Q. Still part of State's 11, what is this?

15 A. Photo three in that lineup.

16 Q. State's 26. It's already been entered.

17 A. Photo four in the lineup.

18 Q. This is part -- State's 11, it's been entered.

19 A. Photo five in that lineup.

20 Q. Those is for State's 6.

21 A. And photo six in that lineup.

22 Q. I'm sorry. State's 11. All right. So we --

23 THE COURT: Note those -- the exhibits and that they
24 are part of that -- like A, B, C or something like that. So
25 we keep up -- which includes in State's 11. How many sub-

1 parts of State's 11?

2 MS. LINDER: Yes, I'll do that.

3 BY MS. LINDER:

4 Q. So what we're going to do is State's 11 -- we're
5 going to say State's 11 A is going to be, can you just --
6 what's the page? Detective Butler?

7 A. That would be the instructions.

8 Q. 11 B?

9 A. Photograph one.

10 Q. 11 C?

11 A. Photograph two.

12 Q. 11 D?

13 A. Photograph three.

14 Q. And at that point, I went to State's 26.

15 A. Photograph -- photograph four.

16 Q. State's 11 E?

17 A. Photograph five.

18 Q. State's 11 F?

19 A. Photograph six.

20 Q. So Detective Butler, State's 11 and State's 26,
21 does this represent the entirety of the six-pack series of
22 photos that you gave Antoniya Singleton in your investigation
23 when she identified this Defendant as the person driving the
24 Jeep back on February 19th?

25 A. Yes, ma'am.

1 Q. All right. And then also when you respond to the
2 scene, is it just you by yourself? There are a bunch of
3 different officers and detectives around?

4 A. A lot of officers and detectives.

5 Q. And you write your report which you refer -- on
6 cross, referred to as detective notes. Do other detectives
7 write any notes describing what they did?

8 A. Yes, ma'am.

9 Q. And do you by yourself investigate a case or are
10 there a team of people and other detectives who assist with
11 that?

12 A. It's a team effort and also -- I mean, if you want
13 to dwindle it down further, it's an agency effort because the
14 initial responding officers, they're the ones that first
15 document everything they see and provide that information to
16 me when they -- I get on scene.

17 Q. In this case, did you have someone else aside from
18 you check to see if there were any Ring cameras along
19 Comstock Avenue?

20 A. Yes, ma'am.

21 Q. And were there any Ring cameras that were
22 activated and captured anything in this case?

23 A. No, ma'am.

24 Q. Did you have another detective on your team go
25 inside that church that we all talked about?

1 Jehovah Tabernacle -- and ask if anybody was inside -- if
2 they were witnesses?

3 A. Yes, ma'am.

4 Q. And based upon somebody on your team -- another
5 detective, did that then lead you to interview an eyewitness
6 to the shooting themselves?

7 A. Yes, ma'am.

8 Q. Did you interview additional people who were
9 inside the church?

10 A. The -- that were inside the church at the time?

11 Q. Yes.

12 A. I spoke with them briefly but no one witnessed the
13 incident take place.

14 Q. And did -- did you have somebody else who was a
15 detective in North Charleston in this case canvass the
16 overall area for other surveillance cameras?

17 A. Yes, ma'am.

18 Q. And were there any other surveillance cameras in
19 the area that would've captured this incident?

20 A. No, ma'am.

21 Q. So you tasked other detectives with doing items
22 for this investigation?

23 A. Yes, ma'am. That's the -- kind of the job -- of
24 my job as the case agent or lead detective, however you refer
25 to it -- is obviously I'm only one person, so we'll get to

1 the scene and kind of divvy up to my team what I need at that
2 time and as the investigation is ongoing.

3 Q. All right. All right. There are many videos that
4 you've been looking at between our exhibits and the Defense
5 exhibits. So I'm not going to utilize the Defenses' right
6 now. We have ours on this drive, so it's suffer to go in
7 between them. Do you hear -- as Javon is walking down the
8 street, do you hear him saying, "All right. Do something?"

9 A. No, ma'am.

10 Q. Can you say for certain he is saying, "All right.
11 Do something?"

12 A. No, ma'am.

13 Q. "All right. Then do something?"

14 A. No, ma'am.

15 Q. Can you say for certain he is not saying. "All
16 right. Do something?"

17 A. No, ma'am.

18 Q. All right. I'm going to take you through some of
19 -- from State's 9, the slower video, and it is zoomed in.
20 It's not on a location, it's just larger. So it's not the --
21 the tall skinny version.

22 A. Okay.

23 Q. So what I want to do is, I want to kind of take
24 you -- I'm not going to take you completely frame by frame,
25 but if you can just watch this, if it's out, it's out is

1 going to kind of play/pause, play/pause, play/pause, because
2 we don't really blame him to enjoy his momentss. Okay. So
3 what's the time when it starts, Detective Butler? On the far
4 bottom left corner?

5 A. Oh, zero.

6 MS. LINDER: All right. Okay.

7 (Video played.)

8 BY MS. LINDER:

9 Q. All right. Right there. Yeah. All right. So I
10 was going to kind of pause, play, pause, play along this.
11 I'm sorry. If you could start again. I'm not going to be
12 back there. All right.

13 (Video played.)

14 BY MS. LINDER:

15 Q. So right here. Which angle is the vehicle being
16 taken from? Is the vehicle being taken from Javon's left
17 side, or is the vehicle -- or is the video being taken from
18 Javon's right side?

19 A. Left side.

20 Q. Okay. Is the vehicle -- is the video being taken
21 from behind Javon, in front of Javon, or equal to Javon?

22 A. Behind him at an angle?

23 MS. LINDER: All right. So I'm going to have her start
24 in the beginning and just watch the style in which Javon is
25 walking, and then she'll pause.

1 (Video played.)

2 BY MS. LINDER:

3 Q. All right. The entire time Javon is walking, is
4 his left arm swinging full up and fall back?

5 A. No. No, ma'am.

6 MS. LINDER: I want you to watch again. Does Javon's
7 arm swing a little more and then kind of swing a little less?
8 Or does it swing consistently the whole time.

9 (Video played.)

10 Y MS. LINDER:

11 Q. Or can you tell?

12 A. I don't think I can tell.

13 MS. LINDER: Okay. All right. And then I can't --
14 Ms. Outten, if you can go back to show up through this again.

15 (Video played.)

16 BY MS. LINDER:

17 Q. Can you see any movement on the right arm? You
18 see the right arm -- right shoulder move?

19 A. Yes, ma'am. I -- I can see him move at his -- in
20 a walking manner.

21 Q. All right. In the very beginning of this video,
22 do you see brake lights on?

23 A. No, ma'am.

24 Q. One, or two, or three, or four, or five, or six,
25 or however many seconds into this video. Do you see the

1 brake lights on of that Jeep?

2 A. No, ma'am.

3 Q. If the brake lights are not on, what does that
4 indicate?

5 A. That the vehicle is in parking.

6 MS. LINDER: All right. Ms. Outten, if you could play
7 again, please.

8 (Video played.)

9 BY MS. LINDER:

10 Q. All right. So my question to you is --

11 (Video played.)

12 BY MS. LINDER:

13 Q. All right. Is it before or is it after the shot
14 from Courtney that Javon lays his body?

15 A. After.

16 Q. Is it before or after the shot from Courtney that,
17 as you testified there, the right arm goes behind Javon's
18 back?

19 A. After the shot.

20 Q. If someone's gun is by their side, do they need to
21 lay their body and go behind them to get their gun out?

22 A. No, ma'am.

23 Q. Is it possible if a gun is at your side just to
24 lift it to shoot?

25 A. Yes, ma'am.

1 Q. Would it be quicker?

2 A. Yes, ma'am.

3 Q. Just to lift it to shoot?

4 A. Yes, ma'am.

5 Q. If a gun was in your hand, would it be quicker to
6 lift it and shoot, or to let your body turn, put your hand
7 near your rear and then shoot?

8 A. Raise your arms directly up.

9 Q. Okay. All right. I'm just going to -- the jury's
10 going to have these videos. So I'm just going to have these
11 out from the beginning, play this through and then I'm not
12 going to keep on going after it. Walking which direction?

13 A. In the direction of the Jeep.

14 Q. Tell me the moment the stance changes or starts
15 going back.

16 A. Right there. Where -- after the shot.

17 MS. LINDER: After the shot.

18 (Video played.)

19 BY MS. LINDER:

20 Q. Is he moving forward or backing up?

21 A. He's retreating is the word I would use, but he's
22 backing up.

23 Q. Is he backing the entire time that he is shooting?

24 A. Yes, ma'am.

25 Q. When the gun was found on the scene that day, was

1 the gun -- was Javon's gun in the locked back position?

2 A. Yes, ma'am.

3 Q. And what does the locked back position mean?

4 A. What we call it -- is like shot dry, which means
5 the gun is completely empty.

6 MS. LINDER: Go ahead, Ms. Outten.

7 (Video played.)

8 BY MS. LINDER:

9 Q. Where's -- where's his gun now?

10 A. I don't know.

11 Q. Before it switches to Zion's lap?

12 A. His arm's down.

13 Q. Okay. So she's going to play this little portion
14 and I want you to tell me when his arms up and when his arm
15 goes down.

16 A. Yes, ma'am.

17 (Video played.)

18 THE WITNESS: Up then its going down, and it's down.

19 BY MS. LINDER:

20 Q. So it's down. All right. So Javon's arm is down.

21 (Video played.)

22 BY MS. LINDER:

23 Q. So after his arm is down, is he going forward or
24 back in?

25 A. It appears that on the video he's still walking

1 back.

2 Q. All right. That location there.

3 A. Yes, ma'am.

4 Q. Earlier you testified about Javon being around
5 2010 Comstock when all the fire -- you were saying 2010,
6 2008, 2006?

7 A. Yes, ma'am.

8 Q. And approximately how far is it from -- from
9 2006 Comstock, where his body is?

10 A. I believe it is around 50-something feet.

11 Q. Okay. All right. Here we go. Okay. Sorry on
12 the scrap for a second. Although can you get the last of --

13 A. That's not my --

14 Q. -- Mr. Thomas? Oh, Mr. Thomas' pants, do they
15 appear to be upright in his waist in this photograph or not?

16 A. No, ma'am.

17 Q. Mr. Thomas' pants in State's 110. Do they appear
18 to be down around his knees or up?

19 A. Up.

20 Q. State's 121, Mr. Thomas's black pants, do they
21 seem to be down around his knees or are they up?

22 A. They're up.

23 Q. Defense's Exhibit 14. This photograph -- this
24 photograph for crime scene has already been admitted. Is
25 this after the Defendant ran 50-ish yards from the fixed

1 point --

2 MR. BISCHOFF: Objection, your Honor. Leading.

3 THE COURT: Re-phrase it.

4 BY MS. LINDER:

5 Q. From where the Defendant is seen on the -- the
6 victim from where Javon is seen on the video firing 2010,
7 2008, 2006 Comstock. And this location earlier, you
8 testified to approximately how far that is?

9 A. 50-something feet. I can't remember, but over --
10 it was over 50 feet, approximately.

11 Q. And was -- in the video -- and then also -- was
12 Mr. Thomas' pants up or down when he was walking forward
13 towards the vehicle?

14 A. His pants were up.

15 Q. Were Mr. Thomas' pants up or down when he was
16 walking away retreating from the vehicle?

17 A. His pants were up.

18 Q. Were Mr. Thomas' pants up or down when he was
19 firing his gun?

20 A. His pants were up.

21 Q. Was -- what was the approximate distance from the
22 conclusion of Mr. Thomas firing his gun to where his body
23 laid?

24 A. Approximately over 50 feet.

25 Q. And what condition were his pants in when he was

1 shot in on the ground?

2 A. Down closer to his knees.

3 Q. May sound like a weird question. Do your legs
4 tend to move more or move less if you walk versus if -- I'm
5 not going to try -- if you're running?

6 A. I would say move more.

7 Q. Okay. In the video that you've seen now hundreds
8 of times, especially here, would you say that the audio is
9 important?

10 A. Yes, ma'am.

11 Q. Would you say that there is a difference between
12 the sound of -- is there a difference between the sound of
13 the gunshot where Mr. Thomas's response is blatant and the
14 sound of Mr. Thomas's gunshots?

15 A. Yes, ma'am.

16 Q. Is there a difference --

17 MR. BISCHOFF: Your Honor, we've a matter of law.

18 (Bench conference.)

19 THE COURT: All right. Please continue the
20 questioning.

21 BY MS. LINDER:

22 Q. Is there a difference in volume on the video?

23 A. Yes, ma'am.

24 Q. Of Defendant shooting at Javon when Javon fired --
25 when Javon fire and -- and a difference in the volume on the

1 reporting of Javon's shots?

2 A. Yes, ma'am.

3 Q. Is there a difference on the video in the volume
4 of Javon's shots?

5 A. Yes, ma'am.

6 Q. Because right of -- of Javon's shots and the
7 shots, when we're just looking at Zion and we're hearing that
8 happen, is there a difference in volume with those?

9 A. Yes, ma'am.

10 Q. Is the volume louder or quieter on the Defendant's
11 shot that caused Javon to turn?

12 A. Quieter.

13 Q. Are the shots louder or quieter of the six that we
14 see Javon's shot?

15 A. Louder.

16 Q. Are the shots louder or quieter after the -- the
17 video goes to Zion and then Javon's body is 50-plus feet
18 away?

19 A. Quieter.

20 MS. LINDER: I don't have anything further.

21 MR. BISCHOFF: Very quickly, Judge.

22 THE COURT: All right.

23 RE-CROSS EXAMINATION

24 BY MR. BISCHOFF:

25 Q. Detective Butler?

1 A. Yes, sir.

2 Q. I'll show you what's been marked as Defense's 22
3 and ask would you recognize that document?

4 A. Yes, sir.

5 Q. And what is that?

6 A. Screen grab of Cellebrite data from the
7 Defendant's phone.

8 Q. So even the -- the color is different. It's just
9 the same cell phone messages that you extracted from
10 Courtney Richards' cell phone that we were looking at
11 earlier.

12 A. Correct.

13 Q. Correct. Same thing?

14 A. Yes, sir.

15 MR. BISCHOFF: Your Honor, I move to admit
16 Defense's 22.

17 THE COURT: State's position?

18 MS. LINDER: No objection.

19 THE COURT: Defense's 22 is in evidence without
20 objection.

21 (Defense's Exhibit 22 admitted into evidence.)

22 BY MR. BISCHOFF:

23 Q. All right. And, Detective Butler, we've got a
24 cloud message -- is from the owner, correct?

25 A. Yes. Yes, sir.

1 Q. And it's to LOML?

2 A. Yes, sir.

3 Q. And I think you testified on direct, "Love of my
4 life," you believe that's the abbreviation?

5 A. Yes, sir.

6 Q. And that number corresponds to Courtney's
7 girlfriend, Emonie?

8 A. Yeah. Yes, sir.

9 Q. Right? And that message right there, "Javon
10 trying to start," that's on February 13, 2022?

11 A. Yes, sir.

12 Q. And then right below that, it looks like we have
13 owner texting LOML and nothing's in between there. So is it
14 safe to say, the way the extraction works, there's no
15 response and time?

16 A. Based on my understanding of the extraction. Yes,
17 sir.

18 Q. Okay. So before LOML responds, we have Courtney
19 text to LOMLs, "big scary, AFOMM?"

20 A. Yes, sir.

21 Q. And that is on February 13, 2022?

22 A. Yes, sir.

23 Q. And that's before the incident?

24 A. Yes, sir.

25 Q. All right. Can I show you what's been marked as

1 Defense's 23?

2 A. Yes, sir.

3 Q. Do you recognize that shot?

4 A. Yes, sir. Screen grabs from the Defendant's
5 phone.

6 Q. And even the color difference, the same thing as
7 State's 104, 105, et cetera. It says text message from
8 Courtney Richards' cell phone?

9 A. Yes, sir.

10 MR. BISCHOFF: Thank you. Your Honor, I move to admit
11 Defense's 23.

12 THE COURT: Defense's 23. And State's position?

13 MS. LINDER: No objection.

14 THE COURT: All right. Defense's 23 is in evidence
15 without objection.

16 (Defense's Exhibit 23 admitted into evidence.)

17 BY MR. BISCHOFF:

18 Q. Okay. And then this one, Detective, it's on
19 February 20th?

20 A. Yes, sir.

21 Q. And on February 20th, we have owner texting Big J.

22 A. Yes, sir.

23 Q. And for purposes of letting jury -- your Honor,
24 Big J is just what Courtney Richards would put into his -- as
25 the contact name for that number?

1 A. Correct. That's how he saved that number.

2 Q. And on February 20, 2022, he writes, "I about to
3 call back."

4 A. Yes, sir.

5 Q. And then right below that, another message has
6 come in, but that -- I want to focus on this one. The
7 message is, "What do you think I should do, pops?"

8 A. Yes, sir.

9 Q. And that's 2/20/2022 and some 13 minutes or so
10 after the first message was sent?

11 A. Yes, sir.

12 Q. Did you ever talk to Big J?

13 A. No, sir.

14 Q. And then the next page and State's -- I'm sorry,
15 Defense's 22.

16 THE COURT: How many pages is Defense's 22?

17 MR. BISCHOFF: Your Honor, for the record
18 Defendant's 23 is three pages.

19 THE COURT: Defendant's 23 is three pages?

20 MR. BISCHOFF: Yes, sir.

21 THE COURT: Thank you.

22 BY MR. BISCHOFF:

23 Q. Detective Butler, on the second page of
24 Defense's 23, we have another text to Big J?

25 A. Yes, sir.

1 Q. From the owner, Courtney Richards?

2 A. Yes, sir.

3 Q. And that's a 2/20/2022 at 11:37 a.m.?

4 A. Yes, sir.

5 Q. And we know that's Eastern Standard Time because
6 of the UTC conversion designation at the end of that entry,
7 right?

8 A. Yes, sir.

9 Q. Okay. And then response -- a message right from
10 owner, Courtney Richards to Big J below that -- about an hour
11 later, "I may need you to keep talking to me to keep my head
12 straight, pops. I can't trust nobody else rn."

13 A. Yes, sir.

14 Q. You do see RN there?

15 A. It's -- yes, sir.

16 Q. And that's right now?

17 A. That's my understanding. Yes, sir.

18 Q. (Inaudible). Okay. And then on page 3 of
19 Defense's 23 at the top, we have again from owner to Big J.
20 "Well, that means I will be doing it for the longest then."
21 Yes?

22 A. Yes, sir.

23 Q. And that's on 2/23/2022, about 10:07 a.m.?

24 A. Yes, sir.

25 Q. And then the message below that, "I'm telling

1 you?"

2 A. Yes, sir.

3 Q. That same day, five minutes later?

4 A. Yes, sir.

5 Q. And then at the end we have one final message to
6 Big J on that day, two minutes later, "I know God got me
7 because he knows I was protecting me and my BM wife also and
8 started busting at me first."

9 A. Yes, sir.

10 Q. And BM, what do you understand to be?

11 A. Baby mama.

12 Q. Baby mama. So he's talking about Emonie?

13 A. Yes, sir.

14 MR. BISCHOFF: No more questions. Thank you.

15 THE WITNESS: Yes.

16 THE COURT: All right. Anything further with this
17 witness?

18 MS. LINDER: Nothing further.

19 THE COURT: All right. You can be excused.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Can I see the lawyers up here?

22 (Bench conference.)

23 THE COURT: Ladies and gentlemen, we're going to have
24 your lunch break now we've got to take up some other matters,
25 but we're going to go ahead and let you retire to your jury

1 room and then -- and -- and head out and grab some lunch. It
2 is now 20 to 1:00. I would like you to be back in your jury
3 room at -- at 2:15 -- at 2:15.

4 Please remember my prior instructions. Please do not
5 discuss the case with anyone including yourselves. And enjoy
6 your lunch. Thank you.

7 (Jury exits courtroom.)

8 THE COURT: All right. We had a bench conference and
9 the State indicated that they wanted to possibly put in the
10 Defendant's testimony from the Duncan hearing. And
11 Mr. McGuire requested that we have a hearing on this matter
12 outside the presence of the jury. So that's what we're
13 handling now. Yes, sir.

14 MR. MCGUIRE: So -- so, Judge, we're not really certain
15 if we're going to object or not object to them playing
16 Mr. Richards' prior testimony. We need to make that
17 decision. But it's akin to a Jackson versus Denno hearing.
18 He has a Sixth Amendment right, Statutory Right under the --
19 under the Protection of Persons and Property Act to take the
20 stand and testify.

21 It's kind of like a Jackson v Denno. He has a right to
22 testify at a Jackson versus Denno hearing. And you can't
23 just throw his testimony in -- in their case in chief, he
24 would have to get on the stand and say something different.
25 You don't have a license to lie, you don't get to go to the

1 Jackson v Denno, say something, and then say something
2 different at trial. You can be impeached.

3 And that's perfectly appropriate. But that's not the
4 situation here. You can't just throw someone's testimony in
5 a Fourth Amendment search and seizure issue taken earlier in
6 the trial. Can't do it in Jackson v Denno. You can't do it
7 in this -- Duncan hearing either.

8 And we haven't actually decided to object or not. I
9 mean, we -- my personal view is that Mr. Richards did quite
10 well on the stand and his testimony in its entirety in front
11 of the jury might not be a bad idea. But I need to -- a
12 little bit of time to contemplate that. Because I think if
13 we object the State's out.

14 THE COURT: So that last part --

15 MR. MCGUIRE: I -- I think -- I think if we maintained
16 an objection, it stays out. They can't just put it in -- in
17 their case in chief without Mr. Richards testify.

18 THE COURT: All right. And State's position, there is
19 no objection yet. So we need some more time.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Okay. All right. So you want more time to
22 discuss that? How you all going to handle that?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: Strategically.

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: And then we'll have to worry about State's
2 response if they object. All right. So we're really nowhere
3 on that a second, but we do want to listen to and key up.
4 And -- and I know if you -- if you need to take a break
5 before we do this, we need to try to key up the section of
6 the testimony from yesterday by Ms. Singleton about the
7 encounter at Walmart or -- or the -- it -- was toward the end
8 that -- my notes.

9 MR. MCGUIRE: I believe it was towards the end.

10 THE COURT: Toward the -- towards the end.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: There's some questions about some type of
13 altercation at Walmart with Mr. Thomas and Ms. Singleton.
14 And we need to key that up so we can -- we can hear that
15 testimony. While she's doing that, I'm going to let
16 everybody take a break until -- I'm going to give it
17 about 15 minutes. Just everybody stretch your legs. And --
18 and let's just break for a second. You all talk -- might
19 solve your other issue then.

20 MR. MCGUIRE: So just to help the court personnel with
21 the recording, I think just before we took a break, I asked
22 some questions about being fired from Walmart and then -- or
23 sometime earlier, because it wasn't until we took a break and
24 I was allowed to -- I was able to talk to Mr. Richards.
25 That's where we got the information that she was fired for

1 the incident involving Thomas. So it might be two separate
2 spots there.

3 THE COURT: All right. And I -- and it certainly if --
4 if you two, the State and the Defense, want to come try to
5 advise the court reporter where that would be, that's -- that
6 -- you know, during the break, that's certainly permissible.
7 Just you two brings up together and y'all time try to get
8 this keyed up. All right. Thank you.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: Recess until 1:00.

11 (Off the record.)

12 THE COURT: All right. We're going back on the record
13 to listen to some of the testimony of Ms. Singleton from
14 yesterday involving Walmart and her termination from Walmart.
15 All right. Go ahead.

16 (Video playback starts.)

17 CROSS-EXAMINATION

18 BY MR. MCGUIRE:

19 Q. (Inaudible) Courtney and Emonie?

20 A. Yes.

21 Q. And I -- we heard about your testimony about
22 leaving the scene and you never called 911?

23 A. I did. My phone died, so somebody behind me said
24 that they called and was calling them also.

25 Q. So the moment that was critical that you called

1 911 because your boyfriend got shot, your phone died in that
2 moment?

3 A. Yes.

4 Q. Okay. And when you were fired from Walmart, what
5 really happened was Javon came to Walmart, found you there,
6 argued with you became so disorderly that the cops were
7 called?

8 A. Javon never came to Walmart with me that day.

9 Q. The police never came and took Javon out of
10 Walmart?

11 A. No

12 Q. Javon, your boyfriend, never came to Walmart and
13 became fussy with you to the extent that they called the
14 police?

15 MS. OUTTEN: Objection, asked and answered.

16 THE COURT: I -- I'm going to allow that. All right.
17 Mr. McGuire, you -- I guess you are done with your
18 cross-examination?

19 MR. MCGUIRE: I'm done, Judge.

20 THE COURT: Okay. All right. Any re-direct?

21 MS. OUTTEN: Briefly. Brief re-direct, Judge.

22 RE-DIRECT EXAMINATION

23 BY MS. OUTTEN:

24 Q. Ms. Singleton, when did Emonie Burgess live with
25 you? What year?

1 A. You said Emonie Burgess? Emonie?

2 Q. Emonie, excuse me.

3 A. That was like 2018.

4 Q. And --

5 A. 2019.

6 Q. We were talking about -- on cross-examination,
7 talking about you leaving the scene. Was your interview with
8 Detective Butler the same day that Javon died?

9 A. Yes.

10 MS. OUTTEN: I beg the Court's indulgence.

11 BY MS. OUTTEN:

12 Q. And -- and one last thing, Mr. McGuire just asked
13 you whether Javon came to Walmart the day you were fired.
14 Did that happen?

15 A. No.

16 MS. OUTTEN: I don't have any further questions.

17 THE COURT: All right. Did you have anything else for
18 this witness?

19 MR. MCGUIRE: Nothing further, Judge.

20 THE COURT: All right. You can step down. Thank you.

21 (Video playback ends.)

22 THE COURT: Is there another section that you're
23 looking for now, Mr. McGuire?

24 MR. MCGUIRE: I don't think so, Judge.

25 THE COURT: All right. Okay. Based on what the Court

1 heard and the clarification, the question was about the day
2 that Javon died in Walmart and her getting fired from
3 Walmart, which was in the same testimony, was that day as
4 well. Are -- are we on the same page with that for
5 everybody?

6 MR. MCGUIRE: Say that again, Judge?

7 THE COURT: I -- it picked -- I -- I was listening to
8 it like you were and it -- from -- and the reason this is
9 important is because there is this police report from
10 December.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: I believe, which -- everybody needs to
13 remind on -- make a Court's exhibit regardless, but we're
14 going to make a Court's exhibit. It's not -- there's a --
15 there is an incident report from -- I don't know what agency,
16 but it was at the Walmart where Ms. Singleton worked in
17 December of 2021. And she -- this incident did not happen
18 until February of 2022.

19 And the question is, I heard it was about Javon coming
20 to Walmart on the day of the incident, which she indicated
21 was the day she was fired or that evening before. I -- I'm
22 not sure. That's -- that's what I was hearing. Now, I'll be
23 happy to hear from the parties now about their positions on
24 the incident report.

25 I'll hear from you first, Mr. McGuire.

1 MR. MCGUIRE: Thank you, Judge. Our position would be
2 that in response to my question, "Did Javon come to Walmart
3 and become disorderly? The cops were called that's why you
4 got fired?" Her response was, "Javon never came to Walmart."
5 And I think that was untruthful.

6 MS. OUTTEN: Judge, you would obviously disagree with
7 that. I think that the question was, "When you were fired
8 from Walmart." And she said, "Javon never came that day."

9 I also think that any sort of ambiguity is put out by
10 the fact that when I re-direct her, I ask, "Did he come that
11 day?" So I think it's clear that we're all talking about the
12 same day here.

13 THE COURT: All right. I -- I -- I agree with the
14 State on that based on the -- the -- the information that --
15 that we just heard and the testimony. So I believe I'm going
16 to make this police report -- someone can provide it to me, a
17 Court's exhibit for a later date if necessary.

18 And so, we'll have that, your objection is noted that
19 you would like the opportunity -- what you're asking for is
20 the opportunity to insert the police report into the record.
21 Is that correct?

22 MR. MCGUIRE: Not necessarily. It would be -- we were
23 able to call the Singleton to the stage and we asked her
24 directly, but she said, "Javon never came to Walmart." What
25 did she mean by that? She wants to be honest and say, "Oh

1 no, he did come one day. I -- I wasn't correct in that, but
2 I said never." We would request the ability to do that.

3 And if we are able to either secure the witness -- we
4 would definitely want to put the police report in because
5 that's all we have right now. And if we also get records
6 from Walmart, the police department, or maybe a witness on --
7 from that day, we request that we put all that in.

8 THE COURT: All right. Let me ask -- let's State
9 address. What is the State's position on allowing the
10 Defense to put the police report in? In -- in the words of a
11 famous judge, "For what it's worth?" And let that in -- that
12 -- that would in relationship, have it entered into evidence
13 for in relationship to the testimony of Ms. Singleton. What
14 is the State's position on that?

15 MS. OUTTEN: Judge, I think that would be wholly
16 improper. I think it's inadmissible hearsay. I also think
17 that you are not permitted to prove specific evidence --
18 instances of conduct with extrinsic evidence. I think that
19 the opportunity to ask her has come and gone. And I also
20 think that this is -- at this point, as we indicated in
21 chambers, you know, we're not talking about, as was discussed
22 in Roe (ph) versus Osmond.

23 We're not talking about a witness being untruthful
24 about a meeting with law enforcement, a statement given to
25 law enforcement, a meeting with our office, things that --

1 all things that would go to a heart of a Brady violation.
2 Things that we would be ethically obligated to correct. This
3 is -- at best impeachment evidence, which I don't even think
4 is DI -- don't even think a police report is direct
5 impeachment evidence.

6 And -- and at worse it would just be an end runaround -
7 - an ability to put more evidence about our victim in
8 evidence in specific instances of misconduct, which are not
9 admissible in a self-defense case. So we would strongly
10 object to that, please.

11 THE COURT: All right. Mr. McGuire. And -- and -- and
12 again, we're supplementing the record from our -- from our
13 chambers meeting as well. So she referenced the chambers
14 meeting we had this morning and -- and I believe you
15 indicated there as well that you found out this information
16 from your client during a break. And I don't remember what
17 the break was for, but there was some type of break in the
18 action. And your client --

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: -- told you about this police action at
21 Walmart?

22 MR. MCGUIRE: That's correct.

23 THE COURT: Is that correct?

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: All right. Well, I'm going to deny your

1 motion, Mr. McGuire. I -- I do believe it's improper. You
2 had the opportunity to cross-examine Ms. Singleton at that
3 time. I will say also that the information was known to your
4 client as well. The State was not in possession -- any
5 knowledge of this incident based on their statements to the
6 Court.

7 So it was readily discoverable in your -- in the
8 cross-examination -- the initial cross-examination of
9 Ms. Singleton. So I'm going to keep that out, but I would
10 like to make the Court's exhibit and -- and I will -- and
11 your objection is noted then for what you would like to do.
12 All right.

13 MR. MCGUIRE: Thank you, Judge. I'm hand -- I'm
14 handing up the police report.

15 THE COURT: All right. That -- please mark that as a
16 Court's Exhibit -- I believe that would be Court's Exhibit 2
17 or Court's Exhibit 3. Okay. Police report is marked as
18 Court's Exhibit 3 for purposes.

19 For other purposes. Okay. I -- we had a chance to
20 talk about the -- The stand your ground hearing testimony of
21 Mr. Richards and we had a chance to discuss that. What is
22 your position on that, Mr. McGuire?

23 MR. MCGUIRE: No objection. They can play it.

24 THE COURT: All right. Well, that -- all right.
25 That's all that. All right. Appreciate that. Anything else

1 before we go grab a little lunch -- from the State?

2 MS. LINDER: Nothing from the State.

3 MR. MCGUIRE: Not at this time, Judge.

4 THE COURT: All right. And we're -- we can go off the
5 record now. We're off the record.

6 (Off the record.)

7 THE COURT: I -- I just want to...

8 MR. MCGUIRE: Sure. Judge, I just want to put one
9 thing on the record that if -- we had a discussion over lunch
10 and if -- if the prosecution had the
11 North Charleston Police Department or any record regarding
12 Javon going to Walmart and being violent, whether it's verbal
13 information, oral messages to them, piece of paper document,
14 whatever it is, if they had it, I think it would be under
15 Brady and I just want to make sure they didn't have.

16 THE COURT: All right.

17 MS. OUTTEN: Judge, after the testimony concluded
18 yesterday, we did ask Investigator Butler to search and see
19 if she could discover such an incident. She was able to, and
20 I apologize for not being able to get, like the exact times,
21 but I want to say it was not very far before we received the
22 email from Mr. Bischoff also.

23 THE COURT: So you did not have it before?

24 MS. OUTTEN: We did not have it until yesterday --
25 until we heard it on the stand from Mr. Bischoff.

1 THE COURT: Okay. So hear that, that's the State's
2 position. They did not have that document at all before
3 Ms. Singleton to testify?

4 MS. OUTTEN: No document and -- and -- and absolutely
5 no awareness of that.

6 THE COURT: And no information about this?

7 MS. OUTTEN: None at all, your Honor.

8 THE COURT: All right. Thank you. All right. Thanks.
9 All right. Are we ready to proceed? State?

10 MS. LINDER: State is ready.

11 THE COURT: Defense?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: All right. My understanding is the next
14 thing we're going to do is we're going to play the testimony
15 of Mr. Richards from the stand your ground hearing and we're
16 going to proceed with that. The State's going to going to be
17 -- set the testimony. Is that where we're going?

18 MS. LINDER: Yes, sir.

19 THE COURT: All right. Bring the jury.

20 (Jury enters courtroom.)

21 THE BAILIFF: Judge, all the jurors are present and
22 seated.

23 THE COURT: All right. Thank you. Please be seated.
24 I hope you had a nice lunch. We're ready to continue
25 testimony from the State. Ms. Linder?

1 MS. OUTTEN: At this time --

2 THE COURT: Oh, Ms. Outten. I'm sorry.

3 MS. OUTTEN: At this time, the State would be admitting
4 Duncan hearing testimony.

5 THE COURT: All right. And do we have that queued up?

6 (Video playback starts.)

7 THE CLERK: Just state your full name for the record,
8 spelling your last name, please?

9 THE WITNESS: Courtney Charles Richards.

10 THE COURT: Can you pull that mic down just a little
11 bit, Mr. Richards? Thank you.

12 THE WITNESS: Courtney Charles Richards.

13 THE COURT: Thank you. All right. Before we get
14 started, Mr. McGuire, obviously this is your client, the
15 Defendant in the case. Have you discussed with him that his
16 rights concerning testifying -- understanding that when he --
17 whatever he says here today will be obviously recorded and it
18 can be used against him in a later proceeding?

19 MR. MCGUIRE: Yes, sir. He wishes to testify and tell
20 his side of the story regarding February 19, 2022.

21 THE COURT: All right. Mr. Richards, do you understand
22 that -- do you understand that you -- anything you say here
23 will be recorded and the State will have the opportunity to
24 cross-examine you on those -- anything you have to say, and
25 it can be used against you later in actual -- in the actual

1 trial of your case as we get to that part. Do you understand
2 that?

3 THE WITNESS: Yes, sir.

4 THE COURT: Any question about that?

5 THE WITNESS: No, sir.

6 THE COURT: Do you have -- do you need any more time to
7 talk to your lawyer about that before you proceed?

8 THE WITNESS: No, sir.

9 THE COURT: Is that your decision -- to want to testify
10 in this hearing?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Go ahead.

13 COURTNEY CHARLES CORDAE RICHARDS,

14 having been duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Courtney, back in February of 2022, were you
18 working at Five Guys burger?

19 A. Yes, sir.

20 Q. Is that on King street?

21 A. Correct.

22 Q. And were you on your way to work in the afternoon
23 of February 19, 2022?

24 A. Correct.

25 Q. Was your girl with you?

- 1 A. Yes.
- 2 Q. And -- and who is she?
- 3 A. Emonie.
- 4 Q. Emonie Burgess?
- 5 A. Correct.
- 6 Q. And were you going to take her all the way to work
7 with you or were you going to take her someplace else?
- 8 A. Take her to her mom's house.
- 9 Q. Where does her mom -- where does her mom live?
- 10 A. [REDACTED] Comstock Avenue.
- 11 Q. And what neighborhood is that in?
- 12 A. Union Heights. The Height, we call it.
- 13 Q. Right. Slang is The Height. But it's Union
14 Heights.
- 15 A. Correct.
- 16 Q. And that's on Comstock Avenue?
- 17 A. Correct.
- 18 Q. And when you were on the way to Emonie's mom's
19 house, did you guys make a stop?
- 20 A. Correct.
- 21 Q. Is there -- is there a store close by?
- 22 A. Uh-huh.
- 23 Q. Is is -- where is it?
- 24 A. On the corner of Spruill Avenue and Comstock.
- 25 Q. Okay. So it's on the corner of Spruill, which is

1 a busy street?

2 A. Correct.

3 Q. And it's on same street -- the corner of the same
4 street, where Emonie's mom lives, correct.

5 A. Correct.

6 Q. After you stopped at the store, did Emonie call
7 her mom?

8 A. Correct.

9 Q. Why did she call her mom?

10 A. The let her know we was about to be outside.

11 MS. LINDER: Your Honor, I would object to speculation
12 and also the fact that this questions all leading.

13 MR. MCGUIRE: First off, Judge, we're not leading, it's
14 a South Carolina case law point. You can ask a question, for
15 instance, did Emonie buy anything at the store? That's not
16 leading. Because it doesn't suggest the answer. If I phrase
17 the question, isn't it true that Emonie bought a Snickers bar
18 at the store? That's leading. Asking a witness, did you
19 stop at the store?

20 THE COURT: I'm going to ask you to re-phrase the
21 question and let's go through it step-by-step. And -- and he
22 can't testify to -- I'll sustain the objection for
23 speculation - he can't testify to what the girlfriend
24 might've thought.

25 MR. MCGUIRE: Right.

1 BY MR. MCGUIRE:

2 Q. Courtney --

3 THE COURT: All right. Hold on. Somebody's got a cell
4 phone. All right. Let's try to silence all the cell phones.

5 Go ahead, Mr. McGuire, I'm sorry.

6 MR. MCGUIRE: Thank -- thank you, your Honor.

7 BY MR. MCGUIRE:

8 Q. Courtney, at the store, did -- when you all were
9 leaving, did Emonie call her mom?

10 A. Yes.

11 Q. Did she let her know you all were close by?

12 A. Yes.

13 Q. How close is the store to Emonie's mom's house?

14 A. Less than one minute.

15 Q. How many blocks?

16 A. I'd say about one.

17 Q. Okay. Just right down the street?

18 A. Right down the street.

19 Q. When you and Emonie are going down to Comstock,
20 the street that Emonie's mom is on, do you come to the
21 intersection before her mom's house?

22 A. Yes.

23 Q. Is her mom's house in the middle of the street or
24 right on the corner?

25 A. Right on the corner.

- 1 Q. Corner of Comstock and Cosmopolitan?
- 2 A. Correct.
- 3 Q. When you got to that corner, was there a stop
- 4 sign?
- 5 A. Yes.
- 6 Q. Were you slowing down for it?
- 7 A. Yes.
- 8 Q. Before you stopped, did you see anything?
- 9 A. Yes.
- 10 Q. People?
- 11 A. Uh-huh.
- 12 Q. Who?
- 13 A. Javon and Antoniya.
- 14 Q. And who's Javon?
- 15 A. The victim.
- 16 Q. And who's Niya?
- 17 A. His girlfriend.
- 18 Q. When you slowed down, did Niya or Javon do
- 19 anything?
- 20 A. Yes.
- 21 Q. What did they do?
- 22 A. Start bickering through the window.
- 23 Q. Okay. When you say, "Start bickering through the
- 24 window," who's doing the bickering?
- 25 A. Antoniya.

1 Q. Did she and Emonie have a beef that was going on?

2 A. Correct.

3 Q. And did Emonie say anything first or did Niya say
4 something first?

5 A. She said something first.

6 Q. Do you remember the words?

7 A. No.

8 Q. But it was in a bickering way?

9 A. Correct.

10 Q. And what did Javon do?

11 A. Clutch at his arm -- firearm.

12 Q. When you say "clutch", what does that word mean?

13 A. Grabbing his waistband like he fixing to pull a
14 firearm out.

15 Q. Okay. Did he come towards the car?

16 A. Correct.

17 Q. Did he come to your side or Emonie's side?

18 A. Emonie's side.

19 Q. When he went to your car, did it look like he was
20 going to pull the door open?

21 A. He was close enough.

22 Q. Okay. We are going to talk about this maybe
23 later, but has Javon ever pulled your car to work before?

24 A. Correct.

25 Q. Did he try to get you out of the car before?

1 A. Correct.

2 Q. And he was doing the same thing to Emonie that
3 hurt you?

4 A. Correct.

5 Q. Now, did you engage with Javon? Did you talk to
6 him, say anything to him? Yell at him?

7 A. No.

8 Q. When he clutched at his gun at his waistband, what
9 did you do?

10 A. Just drove away instead of stopping at her house.

11 Q. Okay. So, you drove away from Javon when he went
12 for his gun?

13 A. Correct.

14 Q. And this is -- this at the -- the stop sign -- the
15 intersection where Emonie's house is?

16 A. Correct.

17 Q. So, was Emonie's house just across the street from
18 where Javon was grabbing that stuff?

19 A. Correct.

20 Q. And you wanted -- did you want to drop Emonie off
21 her mom's house?

22 A. That's what I was planning on doing.

23 Q. That was your plan?

24 A. Correct.

25 Q. But you couldn't do your plan?

1 A. Correct.

2 Q. Because you had to drive. Did you drive away from
3 Javon when he pulled the gun?

4 A. Yes.

5 Q. How far did you get down the road when you drove
6 away from Javon after he grabbed for his gun?

7 A. Not that far.

8 Q. And did you slow down?

9 A. Yes.

10 Q. Did -- what did Emonie do when you slowed down?

11 A. Opened the door and put her foot out the car.

12 Q. Like she was getting out of the car?

13 A. Correct.

14 Q. Did you hit the brakes?

15 A. Yes.

16 Q. Did you stop the car?

17 A. Yes.

18 Q. Did you want to stop the car and engage with
19 Javon?

20 A. No.

21 Q. Emonie wanted to get out the car?

22 A. Correct.

23 Q. And you stopped for her?

24 A. Correct.

25 Q. And she was the one who had the beef with Niya?

1 A. Correct.

2 Q. When Emonie gets out of the car and you stop it
3 for her, what does Javon do?

4 A. Walking up the street with his gun in his hand.

5 Q. So when you saw him at the corner, he grabbed at
6 his gun, and you left that situation, but then when Emonie
7 got you to stop your car, Javon came down the street?

8 A. Correct.

9 Q. And he had his gun in his hand?

10 A. Correct.

11 Q. And you couldn't just -- could you just drive away
12 with Emonie in the roadway?

13 A. No.

14 Q. You couldn't leave her there?

15 A. No.

16 Q. And when you saw Javon marching towards you and
17 Emonie, did you get your gun?

18 A. Correct.

19 Q. Did you go towards the -- where did you go when
20 you got your gun?

21 A. Towards the back of the car.

22 Q. And did you show -- did you show Javon you had the
23 gun?

24 A. Yes.

25 Q. And why did you do that? What was your hope?

- 1 A. Tried to get him to leave me alone. Didn't work.
- 2 Q. He kept coming?
- 3 A. Correct.
- 4 Q. Did he yell at you?
- 5 A. Correct.
- 6 Q. What did he yell when he saw the gun?
- 7 A. "Do something nigger."
- 8 Q. He said, "Do something nigger?"
- 9 A. Correct.
- 10 Q. And what did you do?
- 11 A. Fired a warning shot in the ground.
- 12 Q. So he says something, like, "Use it nigger, shoot
- 13 it nigger?"
- 14 A. Correct.
- 15 Q. And he keeps coming?
- 16 A. Correct.
- 17 Q. And you shot him -- warning shot in the ground?
- 18 A. Correct.
- 19 Q. Did that stop him?
- 20 A. Nope.
- 21 Q. Did he keep marching towards you?
- 22 A. Correct.
- 23 Q. And Emonie?
- 24 A. Yep.
- 25 Q. Emonie was pregnant with your child?

1 A. Correct.

2 Q. After the warning shot didn't stop Javon -- he
3 kept marching towards you all with his gun out. What's the
4 next thing he made? Did you shoot at him?

5 A. I shot one time at the ground.

6 Q. Did that stop him?

7 A. No.

8 Q. Is that when he started shooting at you and
9 Emonie?

10 A. Correct.

11 Q. And then, when you were able to -- shot back?

12 A. Correct.

13 Q. Did you shoot him to protect Emonie?

14 A. Correct.

15 Q. Did you shoot him to protect yourself?

16 A. Correct.

17 Q. Did you shoot at him to protect your unborn child?

18 A. Correct.

19 Q. And you did shoot him?

20 A. Correct.

21 Q. In self-defense?

22 A. Yes.

23 Q. Now, there was a fellow at the intersection -- had
24 a phone and he filmed this shoot-out, and you've seen that,
25 right?

1 A. Correct.

2 MR. MCGUIRE: And this time, Judge, we will go ahead
3 and play the video, and we'll take a break. Thank you.

4 THE COURT: All right. We're about to play the video.
5 If anyone else needs to exit in courtroom, please do so at
6 this time. If no one else is in the need an exit, we're
7 going to start the video. Let's start the video.

8 MR. MCGUIRE: All right. It is important -- all I
9 have is for you to play this video, and of oourse, you'll let
10 the play get some fire in you, and then I'm going to ask you
11 some questions about it, okay?

12 THE WITNESS: Correct.

13 (Video played.)

14 UNIDENTIFIED SPEAKER: (Inaudible).

15 THE COURT: Attorneys, approach. Sorry.

16 (Bench conference.)

17 THE COURT: All right. Ladies and gentlemen, we need
18 to take up the issue outside your presence. So if you'll
19 please return to jury room. Please do not discuss the case.
20 Thank you.

21 (Jury exits courtroom.)

22 THE COURT: All right. Ladies and gentlemen, the issue
23 in listening to the video -- I mean, the audio, I was
24 concerned that when the video was playing, we had made that
25 there were some rulings where we redacted some of the video.

1 I was concerned that the jury was about to hear the
2 redacted portion. That it -- at the bench with Counsel, no
3 one has a clear -- that nobody's mind is very clear on where
4 we remember which video we put in. We put in so many, so
5 we're going to just listen to this and make sure that we
6 don't have any copies. I believe -- if I remember correctly
7 the State put in -- did they put in their own video during
8 this as well?

9 MS. LINDER: We did put in a video through
10 Detective Butler in the hearing.

11 THE COURT: Okay. Okay. But not with -- not --

12 MS. LINDER: Correct, Judge.

13 THE COURT: Okay. All right. Let's -- I don't think
14 this has that language because I believe it was Defense's
15 video and I believe it was clipped. I want to make sure.
16 Can we play that, please.

17 (Video continues.)

18 BY MR. MCGUIRE:

19 Q. So Courtney, when we're watching that, before that
20 window, when that car was slowing down, there's a pop or a
21 shot. Is that the one coming from you?

22 A. Yes.

23 Q. Is that the warning shot you put in the ground?

24 THE COURT: (Inaudible) here. The end of the -- it
25 should be about 21 second.

1 BY MR. MCGUIRE:

2 Q. (Inaudible) video (inaudible)?

3 A. Correct.

4 THE COURT: It might be more.

5 BY MR. MCGUIRE:

6 Q. So, Courtney, when we're watching that, before
7 that window, when that car was rolled down, there's a pop or
8 a shot. Is that coming from you?

9 A. Yes.

10 Q. Is that a warning shot you put in the ground?

11 A. Yes.

12 Q. And then when we see that window rolled down, and
13 you hear some words in the audio. Is that -- what you're
14 saying is, "Shoot that nigga, shoot it nigga?"

15 A. Yes.

16 Q. And that's -- that's not coming from you, that's
17 coming from Javon?

18 A. Correct.

19 Q. As he's marching towards you guys with his gun?

20 A. Correct.

21 Q. In the warning shot that we heard the soft pop,
22 that didn't deter Javon, he kept coming?

23 A. Kept coming.

24 Q. And the -- the next shot, that's also from you and
25 it's in Javon's direction; is that right?

1 A. Correct.

2 Q. And then, is it Javon who fires the next
3 succession of shots?

4 A. Correct.

5 Q. Of volley shots?

6 A. Correct.

7 Q. And was that directed at you and Emonie?

8 A. Correct.

9 Q. And then you returned fire?

10 A. Yes.

11 Q. Just the moment he stopped shooting, is that when
12 you returned fire?

13 A. Yes.

14 Q. And you did that in self-defense?

15 A. Yes.

16 Q. Now, Courtney, after Javon shot at you, and shot
17 at Emonie, and you shot, did you leave the scene?

18 A. Yes.

19 Q. Where'd you go?

20 A. Back to Summerville.

21 Q. In Summerville, do you and Emonie have an
22 apartment there?

23 A. Correct.

24 (Video paused.)

25 THE COURT: Is this the -- was this

1 Defense's Exhibit 1?

2 MR. BISCHOFF: Yes, sir.

3 THE COURT: This -- this -- this doc -- this video is
4 Defense's Exhibit 1?

5 MR. BISCHOFF: Yes, sir.

6 THE COURT: Do we have Defense's Exhibit 1 from the --
7 from the Duncan hearing? If we can just play that middle
8 page.

9 MR. BISCHOFF: And I'm not sure if I played any more
10 video. That might be that.

11 THE COURT: I think -- like I said, my memory is that
12 you had a redacted video with -- cut it off at the end
13 because I believe the State put in theirs that was -- was the
14 full video. If I -- If I remember it correctly. Did we have
15 that video?

16 THE CLERK: We've already seen the possession on the
17 other end, and it's sitting locked up. If you want us to
18 grab it, we can.

19 THE COURT: I'm going to make sure it doesn't pass.
20 How long will that take?

21 THE CLERK: Five minutes (inaudible).

22 THE COURT: We might run downstairs to get it. Let's
23 just get sure to move on. We'll be at ease until she gets
24 back.

25 (Off the record.)

1 THE COURT: Back record on something. What? Where
2 your -- you --

3 MR. BISCHOFF: Doesn't have to be here.

4 THE COURT: All right. This -- this is about -- I got
5 a note from the jury. I'm going to mark this as
6 Court's Exhibit 4. It says, "Dear, Judge McMaster, this is
7 just a reminder to you that I have tickets to leave the
8 country on Saturday. I'm available until 11:59, Friday. My
9 cell number" -- She gives her cell number. It's
10 juror number 40, Carrie Kavanaugh. Thank you. Carrie
11 Kavanaugh. The -- this is from the foreman.

12 "The above juror has submitted her information about
13 not being available beyond the end of this week. I too, as a
14 business owner, would have a hardship if this trial extends
15 until the next week. I've had neglected my business all this
16 week. Thank you. And respectfully submitted, Shawn Lawson,
17 juror number 152 and jury foreman." Has a signature on the
18 bottom, and 7/25/24.

19 THE COURT: We're not -- I'm not going to plan to
20 address this at this time. We'll just address that when we
21 get a little bit further down the road. All right. If
22 you'll mark that number 4. Thank you. All right. Now,
23 we'll be at ease until she gets back.

24 (Off the record.)

25 THE COURT: Already the clerk has retrieved the video,

1 Defense's Exhibit 1 from the Duncan Hearing. I plan to play
2 this in just -- in just a minute and have this put as Court's
3 exhibit in this -- in this matter. Can the Defense -- will
4 the Defense be able to state that you work together? We need
5 a replacement for this drive because it's been done hearing
6 matter, there's a -- there's a replacement that we can --

7 MR. BISCHOFF: Yes, Judge.

8 THE COURT: All right. So this is going to be
9 Court's Exhibit 5. This is Defendant's Exhibit Number 1 from
10 the Duncan Hearing. All right. We're going to publish that.
11 Let's publish that now. All right. Mr. McGuire, please
12 proceed (inaudible) examination.

13 MS. LINDER: (Inaudible) from Duncan hearing.

14 UNIDENTIFIED SPEAKER: What is that?

15 THE COURT: I'm going to put this over here just as in
16 my notes.

17 MS. LINDER: Publishing Defendant's Exhibit 1.

18 THE COURT: From the Duncan hearing.

19 (Video played.)

20 UNIDENTIFIED SPEAKER: (Inaudible)

21 THE COURT: All right. Thank you. Everybody in
22 agreement that this does not -- this is a copy that we're
23 about to play the jury did not contain the -- your
24 objectionable material that we've redacted?

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: All right. State ready?

2 MS. LINDER: State's ready.

3 THE COURT: All right. Can you get us back? We're
4 going to -- we're going to queue back up to where Mr. McGuire
5 is about to play the -- the video to the jury. Bring the
6 jury, please.

7 THE BAILIFF: Yes, your Honor.

8 THE COURT: They're going to make a copy of that.
9 That's going to be a Court's exhibit (inaudible) queue it up
10 or something like that. And then we (inaudible) hearing.

11 (Jury enters courtroom.)

12 THE BAILIFF: Judge, all the jurors are present and
13 seated.

14 THE COURT: All right. Thank you. Please be seated
15 and let's continue. All right. We're about to play the
16 video. If anyone's needing to exit the courtroom, please do
17 so at this time. If no one else is needing to exit, we're
18 going to be ready to start the video.

19 MR. MCGUIRE: Yes, sir.

20 (Video playback starts.)

21 BY MR. MCGUIRE:

22 Q. All right. It's important. All I have is for Pat
23 to play this video. I'm just going to let it play its
24 entirety, and then I'll ask you to watch and stop it, okay?

25 A. Correct.

1 (Video played.)

2 BY MR. MCGUIRE:

3 Q. So, Courtney, when we're watching that,
4 before that window, when that car was rolled down, there's a
5 pop or a shot. Is that coming from you?

6 A. Yes.

7 Q. Is that a warning shot you put in the ground?

8 A. Yes.

9 Q. And then when we see that window rolled down, and
10 you hear some words in the audio. Is that -- what you're
11 saying is, "Shoot that nigga, shoot it nigga?"

12 A. Yes.

13 Q. And that's -- that's not coming from you, that's
14 coming from Javon?

15 A. Correct.

16 Q. As he's marching towards you guys with his gun?

17 A. Correct.

18 Q. In the warning shot that we heard the soft pop,
19 that didn't deter Javon, he kept coming?

20 A. Kept coming.

21 Q. And the -- the next shot, that's also from you and
22 it's in Javon's direction; is that right?

23 A. Correct.

24 Q. And then, is it Javon who fires the next
25 succession of shots?

1 A. Correct.

2 Q. Of volley shots?

3 A. Correct.

4 Q. And was that directed at you and Emonie?

5 A. Correct.

6 Q. And then you returned fire?

7 A. Yes.

8 Q. Just the moment he stopped shooting, is that when
9 you returned fire?

10 A. Yes.

11 Q. And you did that in self-defense?

12 A. Yes.

13 Q. Now, Courtney, after Javon shot at you, and shot
14 at Emonie, and you shot, did you leave the scene?

15 A. Yes.

16 Q. Where'd you go?

17 A. Back to Summerville.

18 Q. In Summerville, do you and Emonie have an
19 apartment there?

20 A. Correct.

21 Q. You went back home?

22 A. Correct.

23 Q. Did you stop to eat or anything else?

24 A. No.

25 Q. Scared?

1 A. Scared.

2 Q. Called the police?

3 A. No.

4 Q. Why were you scared?

5 A. Because the police wasn't listening to my side of
6 the story, you know, somebody died so they wouldn't kill -
7 see what they did now, right?

8 Q. So despite this shooting being captured on video,
9 despite it showing Javon marching down the street, yelling at
10 you, "Shoot it there", is the police having all this -- you
11 -- you were afraid you were going to get arrested?

12 A. Correct.

13 Q. And you were arrested?

14 A. Correct.

15 Q. And you were jailed?

16 A. Correct.

17 Q. You've got to wait until the day to fight this
18 out?

19 A. Correct.

20 Q. The gun that you had -- did they have a really
21 long clip?

22 A. No.

23 Q. -- hold, like, 26 bullets?

24 A. No.

25 Q. It had a regular clip?

1 A. Standard clip.

2 Q. Standard clip. Standard means it's flushed with
3 the bottom of the gun, right?

4 A. Right.

5 Q. And that's what you had?

6 A. Right.

7 Q. You didn't have a super long 26-bullet magazine?

8 A. No.

9 Q. After this, you -- you sold the gun, right?

10 A. Correct.

11 Q. And do you remember how much you got for it?

12 A. Around \$200, 250.

13 Q. Do you remember who you sold it to?

14 A. No.

15 MR. MCGUIRE: Okay. Give me just one second, Judge.
16 Courtney, that's all the questions I have for you. Please
17 answer any questions they have for you.

18 THE COURT: Cross?

19 MS. LINDER: Yes, your Honor. May it please the Court?

20 CROSS-EXAMINATION

21 BY MS. LINDER:

22 Q. Good afternoon, Mr. Richards. All right. I just
23 want to kind of take you few -- through a few of these things
24 to make sure and that I'm understanding what -- what you just
25 testified to, okay? So, it's your testimony that you were

1 driving down Comstock, and before you reached the
2 intersection of Comstock and Cosmopolitan, you stopped the
3 car?

4 A. Correct.

5 MR. MCGUIRE: Yeah, sure. If you would just refer it
6 to as State's 57 for ID and then you're going to put it in
7 evidence -- three people. That's fine.

8 MS. LINDER: Okay. All right. At this time, your
9 Honor, may I approach the witness?

10 THE COURT: You may.

11 BY MS. LINDER:

12 Q. I'm going to show you, Mr. Richards, which are
13 marked as State's Exhibits 57 and 58 for ID purposes for the
14 Duncan hearing.

15 MS. LINDER: And, your Honor, as I indicated to
16 Mr. McGuire, we are intending to put these into evidence
17 later on through our witness as well.

18 BY MS. LINDER:

19 Q. Will you please look at these? Do you recognize
20 those?

21 A. Uh-huh.

22 Q. And how do you recognize what those are?

23 A. What are you asking? Do I recognize?

24 Q. I'm asking if you recognize these.

25 A. The streets, yeah.

1 Q. The streets you recognize?

2 A. Uh-huh.

3 Q. And you're familiar with the streets that are
4 shown on these maps?

5 A. Yes.

6 Q. And do these fairly and accurately show the
7 streets from the Union Heights neighborhood, specifically
8 Comstock and Cosmopolitan as they were back in
9 February of 2022?

10 A. Yes.

11 Q. All right.

12 MR. MCGUIRE: Judge, I don't have any objection if you
13 just want to move them back.

14 MS. LINDER: Okay. Your Honor, at this time, the State
15 seeks to admit State's Exhibits 57 and 58 into evidence for
16 the limited purposes of the Duncan hearing.

17 THE COURT: And no objection?

18 MR. MCGUIRE: No objection, Judge.

19 THE COURT: All right. They're admitted for limited
20 purposes of this hearing without objection. And they're 57
21 and --

22 MS. LINDER: 57 and 58, Judge.

23 THE COURT: 57 and 58.

24 (State's Exhibit 57 and 58 admitted into evidence.)

25 BY MS. LINDER:

1 Q. All right. So if you can look in front of you,
2 there's a monitor in front of you, that's probably the
3 easiest way for you to see it, Mr. Richards. What's this
4 road right here?

5 A. Comstock.

6 Q. Okay. And this road right here?

7 A. Cosmopolitan.

8 Q. All right. And right here, what is this right
9 here?

10 A. [REDACTED] Comstock.

11 Q. And you testified that that's where your
12 girlfriend's mother lived at the time?

13 A. Correct.

14 Q. All right. And the store you were talking about,
15 is the store off the map this way?

16 A. Correct.

17 Q. Okay. So just to make sure I understand -- and
18 that is a touch screen in front of you, so if you use your
19 finger on it it'll show up on the touch screen. And if you
20 prefer I can switch to State's 58, which is this. So you
21 just let me know what's easiest for you, okay?

22 A. The screen --

23 Q. So --

24 A. -- the screen messed up.

25 Q. You want the other one?

1 A. The screen is messed up.

2 Q. Street is messed up?

3 A. The screen.

4 THE COURT: Screen.

5 BY MS. LINDER:

6 Q. Oh, it's not touching. Okay.

7 A. Like is --

8 Q. All right. I'll try to do my best here. So, your
9 testimony is that you were driving -- you were driving your
10 Jeep Compass, right?

11 A. Correct.

12 Q. It was -- it was a relatively newer one. It was,
13 like, less than 10 years old, right?

14 A. Correct.

15 Q. And that Jeep Compass, what did it have -- was it,
16 like, a crank window or automatic?

17 A. Automatic.

18 Q. Was it a stick shift or a -- or a -- an automatic
19 car?

20 A. Automatic.

21 Q. All right. So, you're driving your Jeep and I
22 just want you to tell me -- and as you're driving your Jeep,
23 you said, "You're driving this way down Comstock to
24 Cosmopolitan," correct?

25 A. Correct.

1 Q. And I believe you testified that you stopped on
2 Comstock before getting to Cosmopolitan?

3 A. No.

4 Q. Okay. But isn't it true -- on direct you
5 testified that you were driving on Comstock, and you were --
6 you slowed because there was a stop sign coming up?

7 A. But that doesn't mean I stopped.

8 Q. And then, when you were in -- isn't it true that
9 on your direct, you said that, "You were slowing because the
10 stop sign was coming up" and that's when you say that,
11 "Antoniya," the victim's girlfriend, "started bickering
12 through the window?"

13 A. Correct. When I got at the intersection.

14 Q. So, you're saying you -- that did not happen and
15 you testified on direct because you were going up to that
16 stop sign?

17 A. That did happen until they got at the
18 intersection.

19 Q. That did happen -- what?

20 A. She did start bickering when I got at the
21 intersection.

22 Q. Okay. So, you're here on -- on Comstock
23 approaching this intersection, and your testimony is that
24 Antoniya start bickering with your girlfriend?

25 A. When I got to the stop sign.

1 Q. Okay. So -- so you got in the -- so you're the --
2 stop sign's on Comstock, it's not past Cosmopolitan, is
3 before; is that correct?

4 A. Correct.

5 Q. Okay. All right. But you testified that you
6 didn't hear what Antoniya was saying -- you don't know what
7 words she was saying?

8 A. No.

9 Q. And the Jeep, it -- it is a standard Jeep Compass.
10 So is it fair to say that Antoniya was, according to you,
11 maybe five feet away from you?

12 A. I'd say about.

13 Q. Okay. So, you couldn't hear what she was saying
14 when she was five feet away?

15 A. No, because I already knew it was aggressive,
16 animosity type. The window wasn't all the way down. It was
17 halfway down.

18 Q. Okay. But you're saying, "You couldn't hear what
19 Antoniya was saying when she was like about five feet away
20 from?"

21 A. No.

22 Q. Okay.

23 A. Because I'm on the opposite side of the car.

24 Q. All right. Perfect. So you also testified on
25 direct, that the victim, Javon, at this point clutched his

1 waistband?

2 A. Correct.

3 Q. Right? So, you testified that just -- clutch at
4 his waistband?

5 A. Yeah, clutch at his waistband.

6 Q. Okay. All right. And at that point, your
7 testimony is that after he clutched his waistband and after
8 Antoniya was five feet away from you -- but you don't know
9 what she was saying, you started to drive away?

10 A. Correct.

11 Q. All right. Now -- so when you were sitting right
12 there, it's your testimony that Javon didn't have his gun out
13 pointing at you?

14 A. No.

15 Q. Okay. Just want to make sure. So your testimony
16 was, you said, "You -- you drove through the intersection."
17 So after this you -- your testimony that you drove through
18 the intersection and you kept on driving. I believe you said
19 not that far down the road. What is "not that far?" Did you
20 stop here?

21 A. No.

22 Q. Did you stop here?

23 A. No.

24 Q. Here?

25 A. No.

1 Q. Here?

2 A. No.

3 Q. Here?

4 A. Yes.

5 Q. You stopped right here?

6 A. Yes.

7 Q. Okay. And if this is where you stopped, I don't
8 know, it's not very -- I can zoom in for you. (Inaudible)
9 you stopped right here. What is this number right here?

10 A. It's 2010.

11 Q. Okay. And what's this number right here?

12 A. 2009.

13 Q. Okay. All right. So you stopped 2009, 2010 part
14 to your testimony, and I believe you testified that you then
15 went to the back of your car; is that correct? You got out
16 and went to the back of your car?

17 A. Correct.

18 Q. Okay. So would you agree that, if you're driving
19 down the street this way, and your car stops here facing this
20 direction, and you get to the back of your car, you're
21 walking back this direction; is that correct?

22 A. I -- I never walked, I just got out and stood by
23 the car.

24 Q. Okay. So, you're now saying that you did not go
25 to the back of your car?

1 A. Towards the gas tank? Yes, I did.

2 Q. So -- so you walked toward the rear of your
3 vehicle then?

4 A. Yes, and I stopped right there.

5 Q. Okay. All right. So, you're out of the car and
6 you testified -- so your girlfriend's out of the car at this
7 time?

8 A. Correct.

9 Q. And did your girlfriend walk to the back of the
10 car like you did?

11 A. Correct.

12 Q. On direct, you testified that she had a foot out
13 of the car?

14 A. That what made me stop the car.

15 Q. So as you're -- so you're still in driving --
16 you're still in driving -- you're still driving and she --
17 she opens her door and gets her foot out the car?

18 A. That made me stop.

19 Q. Okay. So, your newer Jeep Compass then doesn't
20 automatically lock the doors when you put the car on drive?

21 A. Yes, it does.

22 Q. But as you're driving she's able to open the door
23 and start getting out of the car?

24 A. Up the lock and open the door.

25 Q. And you testified on direct that when you got out

1 of your car and walked toward the rear of your car toward the
2 gas tank -- but we agree that's the rear of the car. You're
3 walking toward the car -- so you're walking toward the back
4 of the car -- sorry, you're all the way up here, I'm sorry.
5 You're walking toward the back of the car and you're walking
6 this direction off Comstock?

7 A. Correct.

8 Q. And this whole time, Javon and Antoniya are back
9 here where they were before?

10 A. No, she stayed back and he was walking up.

11 Q. Okay. And your testimony is that at that point
12 you showed --

13 A. Him that I had a gun.

14 Q. -- you showed him that you had a gun at that
15 point?

16 A. Yes.

17 Q. Okay. And then your testimony is that you fired -
18 - shot into the ground?

19 A. Correct.

20 Q. And then your testimony is that he kept walking?

21 A. Correct.

22 Q. And then your testimony is that you shot at?

23 A. I shot at the concrete.

24 Q. So, you fired into the ground for the first shot
25 because on -- on direct you testified fired --

1 A. I fired like this and then I fired like this.

2 Q. Okay. On direct, you testified that you fired a
3 warning shot into the ground?

4 A. Correct.

5 Q. You fired shot into the ground?

6 A. Uh-huh.

7 Q. And then on direct you said that, "You fired
8 second shot in the victim's direction -- in Javon's
9 direction?"

10 A. Yeah, but it wasn't going to hit him.

11 Q. So you test -- but your testimony is that --

12 A. Correct.

13 Q. -- you got out of your car, you walked towards the
14 rear of the car, which is the direction of the victim, right?

15 A. And he was yelling, "Do something nigger."

16 Q. Not the question. You got out of the car, you
17 walked back through the direction of the victim, and you also
18 testified that you showed the victim that you had a gun,
19 right? And you testified that you fired a warning shot into
20 the ground with concrete, right? And then you fired second
21 shot towards the direction of the victim, right?

22 A. Correct.

23 Q. Okay. All right. Sure. At that point, the
24 victim shot you a good number of times?

25 A. Correct.

1 Q. And then, your testimony also was that you then
2 fired back multiple times. The moment he stopped shooting --
3 at the moment the victims -- the moment the victim stopped
4 shooting is when you fired at him?

5 A. Correct.

6 Q. And when you started firing back, your girlfriend
7 was already sitting in your car, right?

8 A. Not that I remember.

9 MS. LINDER: Beg Court's indulgence.

10 BY MS. LINDER:

11 Q. Okay. Just a couple more things for you, okay,
12 Mr. Richards. I'm just trying to get this -- this sequence
13 as clear as possible. So, first time you saw Javon and
14 Antoniya was when you were driving down Comstock that day?

15 A. When I got to the intersection.

16 Q. Right. When you were approaching that
17 intersection on Comstock, Cosmopolitan, the first time you
18 saw them was at that time?

19 A. Correct.

20 Q. And you were slowing down because of the stop
21 sign, right?

22 A. Correct.

23 Q. And then Antoniya was bickering with your
24 girlfriend, right?

25 A. Correct.

1 Q. You said -- you "about five feet away, but you
2 couldn't hear what they were saying?"

3 A. No.

4 Q. Because the window was halfway down. I believe
5 you testified?

6 A. The music was playing.

7 Q. All right. So then you said that Javon clutched
8 his waistband. So -- so Javon clutched his waistband like
9 this? So he grabbed it right there where that gun would be,
10 right?

11 A. Correct.

12 Q. So he grabbed his front. Okay. So at that point
13 you drove away?

14 A. Correct.

15 Q. After you drove away, you -- you only went to
16 about 2009, 2010, you stopped, got out and walked back toward
17 the rear of your car toward the victim?

18 A. Uh-huh.

19 Q. For the record, you can make sure you just try to
20 say yes or no. Sometimes it's tough for uh-huhs. Thank you.
21 And as you're still driving, Emonie's able to open the door,
22 she opens the door and puts her foot out as you're driving?

23 A. Yes.

24 Q. The car still moving?

25 A. Yes.

1 Q. You then are walking -- you then go to the rear --
2 get out of your car, and you walk toward the rear of your
3 car, and you show -- you pull out your gun --

4 A. Yes.

5 Q. -- to victim. You shoot once into the ground or
6 concrete, right?

7 A. Yes.

8 Q. And then you shoot at the victim -- towards the
9 victim in the -- it is not at the ground. Your second shot
10 is not at the ground, it's toward him, right?

11 A. No.

12 Q. It -- it is in the direction of the victim?

13 A. It wouldn't hit him.

14 Q. It wouldn't hit him?

15 A. No.

16 Q. All right. But it was in his direction?

17 A. Correct.

18 Q. Right. I mean, if you're -- if you're shooting
19 toward her, it's in my direction, even if it wouldn't
20 necessarily hit me; is that fair? Okay.

21 A. It's fair to say.

22 Q. And then only at that point -- and you said the
23 shot in the ground -- Javon kept walking -- shot in Javon's
24 direction, Javon kept walking towards you?

25 A. Yes.

1 Q. Even after that second shot, he's walking towards
2 you?

3 A. Yes.

4 Q. And then, the moment he stopped shooting is when
5 you fired back at him?

6 A. Yes.

7 Q. And when you fired back at him, you literally
8 fired at his back, right?

9 A. I guess so.

10 Q. You -- you fired at his back, right?

11 A. I fired the gun in self-defense.

12 Q. That's not my question, Mr. Richards.

13 A. But that's what happened.

14 Q. That's not my -- my question is, after Javon
15 stopped firing, he turned around and started running away
16 from you, right?

17 A. Right.

18 Q. And then at that point you shot Javon in the back,
19 right? Or in the back of the head actually, right?

20 A. Correct.

21 Q. And you shot at Javon many times after that?

22 A. About three times.

23 MS. LINDER: I don't have any further -- anything
24 further. Please re-direct.

25 THE COURT: Re-direct, please.

1 MR. MCGUIRE: Thank you, Judge.

2 RE-DIRECT EXAMINATION

3 BY MR. MCGUIRE:

4 Q. Courtney, when the prosecutor was asking you, "Did
5 you walk towards Javon or Niya or did you walk towards the --
6 the intersection -- the corner where you had seen him, where
7 Javon clutched his gun" did you take more than just one or
8 two steps? Just --

9 A. No.

10 Q. -- away from the car?

11 A. No.

12 Q. So, you didn't march back to them?

13 A. No.

14 Q. You weren't claiming to meet Javon halfway or
15 anything like that?

16 A. No.

17 Q. You just went away from the car just enough where
18 he could see you had a gun?

19 A. Yes.

20 Q. Okay. And you weren't marching towards him?

21 A. No.

22 Q. You wanted him to turn around and go the other
23 way?

24 A. Yes.

25 Q. And you were hoping displaying the gun would do

1 that?

2 A. Yes.

3 Q. It didn't?

4 A. No.

5 Q. And I think you were describing the first warning
6 shot to the prosecutors didn't work, like, really going
7 straight in the ground?

8 A. Yes.

9 Q. And the second shot was -- was it also directed to
10 the ground, but also in the general direction of --

11 A. Yes.

12 Q. -- Javon? And did you kind of "up the game" a
13 little bit there? Because the first warning shot didn't
14 work?

15 A. Yes.

16 Q. And so you -- you tried to set the signal that was
17 a little stronger by shooting his direction?

18 A. Yes.

19 Q. But still on the ground?

20 A. Yes.

21 Q. Not going to hit him?

22 A. No.

23 Q. But that didn't stop him?

24 A. No.

25 Q. He kept coming?

1 A. Yep.

2 Q. When you -- when -- when Javon was marching
3 towards you guys and Emonie said something, like -- or let
4 you know she wanted to get out of the car and that was so she
5 could talk to Niya?

6 A. Yes.

7 Q. Because they had the beef?

8 A. Yes.

9 Q. You never did anything to Javon?

10 A. Never did.

11 Q. Did he put himself in the beef?

12 A. Yes.

13 Q. Whenever you saw Javon and Niya in the
14 neighborhood, did Javon always clutch up his gun?

15 A. Yes.

16 Q. And when he would do that and go for his gun -- he
17 saw you in the neighborhood, would he give you a kind of a
18 mean stare?

19 A. Yes. That he always did.

20 Q. All the time?

21 A. All the time.

22 Q. They lived just a couple of blocks from Emonie's
23 house?

24 A. Yes.

25 Q. The store was on Spruill?

1 A. Yes.

2 Q. And they had to walk -- or they would often walk
3 right by Emonie's mom's house to the store?

4 A. Yes.

5 Q. You'd see them -- you'd see them walk in there?

6 A. Yes.

7 Q. You'd see them in the store?

8 A. Sometimes.

9 Q. And every time you ran into him -- these chance
10 meetings, Javon -- would Javon clutch at his gun and give you
11 a hard stare?

12 A. Yes.

13 Q. And he did it that day at that intersection?

14 A. Yes.

15 Q. And he didn't just grab it, his shirt, or his
16 waistband, he really had a gun there?

17 A. He really did.

18 Q. And he always really did?

19 A. Yes.

20 Q. Now, the prosecutor asked you, "When you started
21 firing, was Emonie safely in your car?" That's not true,
22 right?

23 A. No.

24 Q. When -- when the -- when the events led up to the
25 shooting with Javon marching towards you guys with the gun,

1 did you yell at Emonie to get back in the car?

2 A. Yes.

3 Q. But she didn't?

4 A. No.

5 Q. And you couldn't leave her?

6 A. No.

7 Q. And when the shooting happened, did she scurry
8 around and hide behind the door?

9 A. Yes.

10 Q. She didn't get back in the car?

11 A. No.

12 MR. MCGUIRE: Javon, that's all -- I mean, Courtney,
13 that's all I have for you (inaudible). Thank you.

14 THE COURT: Anything further?

15 MS. LINDER: Nothing further, Judge.

16 THE COURT: All right. All right. You can step down.

17 (Video Playback ends.)

18 THE COURT: Anything else from the State?

19 MS. LINDER: State rests.

20 THE COURT: All right. Thank you. All right. Ladies
21 and gentlemen, I need to speak with the attorneys and I'll
22 ask you to get back to your jury room at this time. And
23 please, do not discuss the case.

24 (Jury exits courtroom.)

25 THE COURT: All right. Please be seated. All right.

1 The State has rested.

2 Mr. McGuire, any motions from you?

3 MR. MCGUIRE: Thank you, Judge. Move for directed
4 verdict of acquittal. This is self-defense, as a matter of
5 fact and as a matter of law, the evidence that the State has
6 put in is that there's a quarrel between these two young
7 ladies. It starts -- the interaction starts with
8 Ms. Singleton yelling something, bickering at the car towards
9 Emonie, and Courtney says -- I couldn't hear the words
10 exactly but it was in a bickering manner.

11 And he doesn't fully stop. He does the right thing.
12 He tries to leave this altercation, and he does leave this
13 altercation by putting his foot on the gas and getting down
14 the road. Remember, Emonie's mom's house is right -- right
15 there on the corner, right -- right there on the corner. And
16 he wanted to stop. He wanted to stop to let Emonie off at
17 her mom's house, but he couldn't.

18 Why couldn't he? Because there was danger and conflict
19 at that corner. And they, Javon and Niya interrupted his
20 plans to drop Emonie off. When he sees Niya yelling and then
21 he sees Javon clutching at his gun, he leaves, he leaves.
22 And you'll hear in his testimony that was played by the
23 State, that there was a time -- that occasion before where
24 Javon had come up to his car and yanked his door open and
25 accosted him and wanted to fight him in his car.

1 And we talked about that just for a second there. So
2 you have the ability to take into account and factor in prior
3 difficulties. And a -- a fellow shirtless yelling, "Get out
4 of the car." N word, "Get out of the car." N word.

5 Obviously, so he could beat him down in the park. That
6 is clearly a prior difficulty. That Court not only has the
7 right -- he has the obligation and duty to factor that in as
8 to what kind of guy Javon is.

9 So he leaves, he does the right thing. He leaves Javon
10 clutching his gun, he leaves Niya yelling, and he gets down
11 the road. We didn't go to the scene, but the State wanted
12 to. I wanted to -- the roads are really narrow, only 15 feet
13 across. It's kind of like a big path that's been paved over,
14 really. And so, he has to slow down. He gets away from the
15 intersection.

16 He slows down. Emonie announces she wants to get out
17 of the car. She pops the lock, she opens up the door. She's
18 about to put a foot on the roadway, on the concrete, forces
19 him to stop the car. He testified, "I didn't want to stop
20 the car."

21 "I wanted to keep going. I wanted to leave," but he
22 can't leave Emonie there on the roadway. Emonie -- and I
23 think there is testimony that Emonie and Niya yelled or
24 Emonie wanted to confront Niya -- Ms. Singleton.

25 Anyway, Courtney's trapped, it's a lose -- lose for

1 him. He can't drive away and leave Emonie there. He gets
2 his gun to protect his pregnant girlfriend and he just takes
3 a couple of steps to the back of the car. My ears are not
4 the greatest, but I hear when Javon is walking up that
5 street, "Shoot that gun." N word, "Shoot it." N word. And
6 I believe your ears are as good as mine. I think you heard
7 it too.

8 And when we hear that -- and you have this fella who
9 just clutched his gun -- always clutches at his gun of this
10 -- because of this continuing beef between these two young
11 ladies, he's allowed to take into account -- Courtney's
12 allowed to take into account every time Javon clutched at his
13 firearm and gave Courtney a hard stare. Not only is he
14 allowed to, he has a duty -- obligation to factor that
15 information in as to who Javon is, what kind of threat he is.
16 He's a threat. He's a dangerous man.

17 Armed, dangerous, hostile. Javon has self-selected
18 himself to fit that bill. Armed, dangerous, hostile.
19 Courtney has no choice. He gets his gun, he goes to the back
20 of the car. He testified, "I hoped, showing that gun to
21 Javon would turn him around. He wouldn't come any further.
22 He'd go away." But Javon didn't go away. He kept marching.
23 And my eyes are not as good. I they once were, but they
24 weren't well enough to see Javon marching down that road with
25 his arm tight to his body, swinging his left arm, that we

1 know what he's got in his hand. What he told you in his
2 testimony, he saw the gun in Javon's hand.

3 Again, I think your eyes are probably working as well
4 as mine. And you can see that. Anybody can see that. So
5 Javon is walking down the road -- marching down the road.
6 He's got his arm tight to his body.

7 Courtney says, "Gun in the hand." Pop, soft warning
8 shot showing the gun did work, hop in the ground. Courtney
9 testified, "I was hoping that would turn him around and he'd
10 go away."

11 Stop coming. Did it work? No -- no. Second warning
12 shot in his direction. But at the ground -- Courtney said it
13 wasn't going to hit him towards the ground. At that time,
14 Javon just brings up his arm; boom, boom, boom, boom.
15 Shooting at Courtney, shooting at his pregnant girlfriend,
16 Courtney said, "I fired back the moment he stopped shooting
17 in self-defense."

18 And just because the bullet enters the rear of his neck
19 in kind of an odd upward angle from low to high, we don't
20 know in -- the medical examiner told you, "Don't know where
21 -- what his body was doing, how it was positioned, don't
22 know."

23 And when Courtney does return fire and self-defense in
24 the time it takes to -- in the time it takes to take a
25 breath, a second, the moment -- a moment he fires and he does

1 hit Javon in self-defense. Now, the State would argue that
2 the moment he stopped, Javon stopped firing and turns his
3 body with his back towards Courtney. That -- that's, whoa,
4 that's time out. That's time out. Then we're shooting.

5 "I, Javon say, I declare don't shoot at me anymore.
6 Time out. Game's over." No, he doesn't have that right.
7 The law says Courtney is allowed to shoot until the threat is
8 extinguished.

9 There are multiple cases with multiple gunshots. We'll
10 submit a case in the charge conference if we get that far.
11 It says -- I think it's -- there's no -- no dispute that the
12 first shot took care of the job and extinguished the threat.
13 I think there were three or four more shots after that. And
14 the opinion says that's -- that is self-defense -- that is
15 self-defense.

16 Javon Thomas didn't get on his knee with -- with a
17 ceremonial battle sword and present it to Courtney with a
18 white flag. No. A second. A moment is the time between
19 Javon stops trying to kill them. Kill them. A moment. A
20 second is when he makes the decision to fire himself to
21 facts.

22 He's not required to play this in slow motion or slow
23 time down. He's a real human being. He's a real fact. That
24 was a real killer shooting at him. Based on all this
25 information, a directed verdict of acquittal is appropriate

1 in this case.

2 THE COURT: All right. We happy to hear from the
3 State?

4 MS. LINDER: Thank you, your Honor. May it please the
5 Court? As Court's well aware, the whole point of the direct
6 verdict motion is to examine the existence or non-existence
7 of evidence in the light most favorable to the State with
8 that -- with that in mind, the Defendant, Courtney Richards,
9 is charged with murder and a weapon during a commission of a
10 violent crime.

11 We have established through multiple people's testimony
12 to include, but not limited to, Jellico and Butler that all
13 this was in Charleston County. For the murder, the killing
14 of another with malice aforethought. And that malice
15 aforethought can be either expressed or implied. I believe
16 that while there isn't any dispute about it, but also that
17 Dr. Presnell now testifying that in indeed Javon Thomas died
18 as a result of that gunshot wound to the back of the head.

19 And the malice aforethought, I think that it is
20 important to look at all the facts and circumstances
21 surrounding the incident. And to consider not just the
22 Defendant's sworn statement. From the Duncan testimony is --
23 we would have to believe in his argument, but also to
24 consider everybody else's as far as what happened that day.
25 And as far as everybody else is what happened that day.

1 The State has presented the people who talked to law
2 enforcement, who are eyewitnesses. And Antoniya, who says,
3 "They were walking to the store that the Defendant drove
4 past. And then Javon had to get out the way of the street."
5 Pointed out where on that -- where on the street that was.
6 You have Monique and Abigail Perry, who are uninterested,
7 have no part in any of this, don't know the people involved
8 in this.

9 They were driving up Cosmopolitan. Their view is
10 unobstructed. No other cars are up there. They don't see a
11 grey car in front of Evette Burgess' house. They don't see a
12 grey car on this side of the stop sign. They are just
13 driving up and they don't see a car, they don't see any other
14 people. They don't see any of that. Then they turn right
15 the wrong way down Comstock. And then right there, right
16 where Antoniya and Javon were standing and pulling into the
17 parking lot. So this whole idea of an altercation occurring
18 ahead of time, we believe that we've presented witnesses that
19 that denial would occur. That being said, there's testimony
20 from Monique Perry and from Abigail Perry that Javon is
21 walking down the street, also from Antoniya, they kind of
22 split off.

23 Antoniya turns to go head up toward Cosmopolitan or up
24 Cosmopolitan and Javon continues forward. At that time, the
25 car had already stopped. The car had already stopped when

1 Javon was walking that direction. The car had already
2 stopped and there is already back and forth between --
3 between them. Antoniya is turning off the car -- stopped.
4 Look at the video.

5 You don't see the brake lights because that stops after
6 video starts after, I guess. And you see the car stopped.
7 You see the passenger doors open. You don't see a person
8 out. You hear Monique and Abigail talk about how they do not
9 see a gun on Javon. They are actually much, much, much,
10 much, much, much, much, much closer to Javon than the
11 Defendant is.

12 So they -- they are saying that they don't see any kind
13 of gun in Javon's hand. They just see him walking in the
14 video. I submit, you do not see any sort of gun in Javon's
15 hand. And you see him moving from the angle of the video.
16 Listen, not everybody pumps their arms in his wall walker,
17 okay? I don't know. Different people walking different
18 manners. His pants are up and he's walking.

19 So from that, our position is that he did not
20 necessarily have a gun out, but even -- even if the Court
21 thinks he did, I don't think that's luck -- was fair to the
22 State, but I don't think that -- that's the -- give the
23 direct verdict and the Defense's favor. He's going down the
24 street. You hear -- you hear definitely one gunshot. If you
25 believe the Defendant, could you hear two. There's some

1 clear sound you hear also before the window goes down.

2 As soon as the shot that the Defendant intends, his
3 testimony is towards the victim Javon, that's when everything
4 changes. Javon stops, he turns, he plays his body, he
5 reaches his right arm back, and then he begins shooting every
6 single time from when he pulls his gun out. He is backing
7 up, backing away. He is retreating.

8 As soon as his -- as soon as he's out of ammunition,
9 the Defendant even says in his testimony that the moment he's
10 done -- that Javon is done shooting, the Defendant is
11 shooting at him. So I would argue that that combined with
12 Abigail and Monique saying that when they heard the shot
13 coming down Comstock towards them. I believe Abigail said
14 that, "Javon quickly turned, pulled out his gun and returned
15 the fire."

16 So yes, this did happen fast. Javon pulling his gun
17 out and -- and responding to the shot fired by the Defendant.
18 Yeah. That happened fast. And then you have Monique and
19 Abigail saying that, "The Defendant was done shooting." He
20 turned around and he started running. There was testimony
21 from Jodi Hunt and a little bit from Detective Butler about
22 distances from fixed points.

23 Those could be looked at along -- looking at the crime
24 scene photos to see the distances between everything. The
25 testimony that was elicited from the State was that it was

1 approximately 170 feet, which is about -- my math is not
2 good. Four or five times, I believe the distance that was
3 measured of the length of the courtroom. It is that much
4 further from the fixed point and 219 Comstock to 2006 or
5 2010 Comstock.

6 The body is then even further, another 50- to 60 feet
7 to [REDACTED] Comstock. So we know that there is 50- to 60 feet of
8 her retreat. We know that there is this huge distance well
9 beyond here by many times as far as the distance, I think it
10 is -- the Defendant claimed in his testimony that he can't
11 hear something five feet away, but he can hear something
12 170 feet away.

13 The Defendant, if you -- if you pay attention to the
14 Duncan testimony, and I know that it was brought up with
15 Detective Butler on the video of the -- of the shooting.
16 Detective Butler said, "She couldn't really hear very clearly
17 what it is." If you listen to the Defendant's testimony,
18 he's agreeing to say correct, correct, correct, correct.
19 Right, right. Yes, yes. No, no.

20 But some of the few times that he actually says more
21 himself and is not just agreeing or disagreeing is when he
22 says -- when he's asked about what Javon is saying, the
23 Defendant himself says, "Do something." And -- that -- and
24 -- and he says that on his direct, on his re-direct -- on his
25 re-direct and his cross. The Defendant himself says, "I

1 would not shoot your gun or whatever else."

2 So I think in looking at all of those items, it shows
3 that -- that there -- there was a way to avoid everything,
4 keep driving -- keep driving from when he first turned on
5 Comstock. It's our position. And we believe there's been
6 testimony that there never was a first stop. There never was
7 a first disagreement. There never was a first altercation.

8 And we believe that all of those items, the Defendant
9 acknowledging that he got out of the car, he claims that in
10 might emergency is out of the car, claiming might emergency
11 around the door for protection during the shooting that is
12 not on the video. Her body is not out of the car. Her body
13 scurrying around the door and standing outside of the car
14 during Javon's shooting is not on the video.

15 Him not being able to drive away and having to shoot
16 back because Emonie is still out of the car, which is what
17 the Defendant testified to, is not on the video. In fact,
18 the door is closed -- the passenger door is closed before the
19 Defendant ends up shooting at Javon and ultimately killing
20 him.

21 Your Honor, I believe that there -- there are many
22 things and the lightness fair to the State. Looking at the
23 existence -- non-existence of -- of the evidence that's been
24 presented, I believe there is -- there's ample evidence to
25 deny their directed verdict on the murder, as far as the

1 weapon charge. I -- I think we can all agree that 16-1-60
2 defines murder as a -- classifies a statutory violent crime.

3 Nobody is debating that Mr. Richards had a gun and
4 fired a gun and killed Javon with the gun. So I think the
5 elements of that is all is also satisfied. So we
6 respectfully request that you deny Defense's motion for
7 directed verdict and give this case to the jury.

8 THE COURT: All right. Thank you. And I am required
9 to look at the evidence in light most favorable to the State,
10 therefore, I'll be denying the Defense's motion and the --
11 the charges of murder and possession of weapon during the
12 commission violent crime will proceed to the jury based on a
13 review of the evidence. I appreciate your arguments and now
14 I'll call for this -- for the Defense if you're ready to
15 present a case or your position at this time.

16 MR. MCGUIRE: We're ready.

17 THE COURT: You're ready? All right. Is Mr. Richards
18 decided if he's going to -- discuss testifying yet?

19 MR. MCGUIRE: At this moment right now? He's decided
20 not to testify.

21 THE COURT: Okay.

22 MR. MCGUIRE: And if you want to give the usual advice
23 --

24 THE COURT: I'll -- I'll let Mr. Bischoff --

25 MR. MCGUIRE: I'll let Mr. Bischoff stand in while I go

1 make sure my witness is here.

2 THE COURT: All right. If you'll swear Mr. Richards
3 in, please.

4 COURTNEY CHARLES RICHARDS,
5 having been duly sworn, testifies as follows:

6 THE COURT: All right. Mr. Richards this is the stage
7 of the trial where we need to discuss your Fifth Amendment
8 rights. All right? Do you understand that?

9 THE WITNESS: Yes, sir.

10 THE COURT: Fifth Amendment indicates that no person
11 shall be compelled in any criminal case to be a witness
12 against himself. Do you understand that?

13 THE WITNESS: Yes, sir.

14 THE COURT: And if you testify, you're subject to the
15 same rules as -- as everyone else, and if you have any prior
16 record, I'm not sure if you do, you understand that that
17 could be used against you if the Court rules that matter. Do
18 you understand that?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Your decision not to testify
21 must be made freely, voluntarily, and intelligently made.
22 That means you have to have thought about it. If you
23 consider it, talked it over with your lawyers, you understand
24 that if you do not testify, I will charge the jury. They
25 cannot hold the fact that you did not testify against you.

1 Do you understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: You also -- your decision, you can consult
4 with your attorneys and you -- you're welcome to do that and
5 there may be strategic reasons that they tell you that they
6 think you should testify or they think you shouldn't testify,
7 but the decision to testify is yours and yours alone. Do you
8 understand that?

9 THE WITNESS: Yes, sir.

10 THE COURT: And do you understand what I've explained
11 to you?

12 THE WITNESS: Yes, sir.

13 THE COURT: Do you need any more time at all to talk
14 with either one of your lawyers about this decision before I
15 ask you some additional questions?

16 THE WITNESS: No, sir.

17 THE COURT: And as far as your decision to testify,
18 have you decided about your decision to testify and what you
19 would like to do?

20 THE WITNESS: No, sir.

21 THE COURT: Which one would you like to testify in your
22 case?

23 THE WITNESS: No.

24 THE COURT: Or would you like not to testify?

25 THE WITNESS: No.

1 THE COURT: You do not want to testify?

2 THE WITNESS: No, sir.

3 THE COURT: That's your decision?

4 THE WITNESS: Yes, sir.

5 THE COURT: And have you had enough time to speak to
6 your lawyers about that decision?

7 THE WITNESS: Yes, sir.

8 THE COURT: And understanding it is your decision, no
9 one's put any pressure or any -- in any type of pressure on
10 you to make you make that decision?

11 THE WITNESS: Yes, sir.

12 THE COURT: You're making that decision freely,
13 voluntarily, and intelligently, and thoughtfully considered.
14 Is that correct?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Do you have any questions of
17 the Court regarding your decision not to testify?

18 THE WITNESS: No, sir.

19 THE COURT: All right. All right. Thank you very
20 much. You can be seated.

21 MR. BISCHOFF: Your Honor, we need to do housekeeping.

22 THE COURT: All right. We'll -- we'll give it about --
23 you think we can be ready to start here in about 15 minutes?

24 MR. BISCHOFF: Yes, sir.

25 THE COURT: All right. We'll go off the record now.

1 (Off the record.)

2 THE COURT: All right. We're back on the record. He's
3 -- I was at a quick bench conference. I was advised,
4 Counsel, that I -- I neglected to confirm the prior record,
5 if any, of Mr. Richards when we were advising him in this
6 Fifth Amendment right.

7 I've spoken to the prosecutor and -- and Defense
8 Counsel at the bench. My understanding is, Ms. Linder, there
9 is no prior record that you would be -- you would seek to
10 introduce against Mr. Richards if he were to testify.

11 MS. LINDER: That is correct, your Honor. There is
12 nothing, no juvenile adjudication or adult conviction that we
13 would try to introduce unless -- until we believe that the
14 Defendant opened the door to slight and then we would
15 approach, of course before --

16 THE COURT: Can you tell us? Tell us. So in his
17 decisions to plead guilty or I mean to testify or not so he
18 can make a -- a informed decision, what would be those items?

19 MS. LINDER: All right. The adjudications that we
20 believe would come in just by him getting on the stand would
21 be he has some -- so he has shopliftings, he has regular
22 larceny. These convictions though, if -- if he testified, we
23 wouldn't even get into those. There are additional
24 adjudications and specific instances that we would try to get
25 into if he opened the door.

1 THE COURT: And the -- but these, in your opinion, are
2 these types of adjudications involving dishonesty? Is that
3 --

4 MS. LINDER: The ones that I just mentioned? Yes,
5 Judge.

6 THE COURT: Okay. All right. You understand,
7 Mr. Richards, in your decision to decide whether to testify
8 or not, you need to take into consideration what the
9 prosecutor has said about your prior adjudications and
10 whether those would come in against you.

11 I know you probably talked about those with your
12 lawyer. I'll be happy to hear from you, Mr. McGuire and
13 Mr. Bischoff about those prior adjudications, if you'd like
14 to discuss those now.

15 MR. MCGUIRE: No, we've -- we've talked about it.
16 Obviously before this moment it was phrased depending on the
17 Court's ruling, there could be prior convictions that the
18 State would introduce if you testified. Of course, we would
19 -- we would've objected and tried to keep out the mention of
20 prior convictions and there'd have to be a ruling by the
21 Court.

22 So Mr. Richards knows it would depend upon the Court's
23 ruling, but our understanding of -- as of this moment, the
24 State would not try to introduce those prior convictions on
25 their own without some sort of opening the door.

1 If Mr. Richards said, "Well, of course, I'm telling you
2 the truth. I'm a completely honest person. I've never been
3 in trouble for lying before." If he opened the door,
4 obviously that would change things, but I believe you're
5 going to ask him just a second that, "Now, knowing that the
6 State does not intend to introduce any of these convictions
7 that you just heard, does that change your decision to
8 testify?" And he'll answer.

9 THE COURT: That is exactly what I was about to ask
10 you. Now, knowing that they're -- they did not intend to put
11 in any of your prior general adjudications or attempt to
12 place any of those in the -- if you testified, does that
13 change your decision to testify in this matter?

14 THE WITNESS: No, sir.

15 THE COURT: Your decision is still not to testify?

16 THE WITNESS: Yes, sir.

17 THE COURT: And you had enough time to make a deny and
18 you want to do that?

19 THE WITNESS: Yes, sir.

20 THE COURT: You need anymore time to talk with your
21 lawyers, reflect privately, or anything like that before
22 making that decision?

23 THE WITNESS: No, sir.

24 THE COURT: All right. I find that it was his decision
25 not to testify -- is freely, voluntarily, and intelligently

1 made, but is also thoughtfully considered and he has sought
2 the advice of his attorneys, yet he understands this is his
3 decision and his decision alone. Is there anything else that
4 -- that you need me to discuss with you about your right to
5 testify at this time?

6 THE WITNESS: No, sir.

7 THE COURT: All right. We've covered the other -- the
8 other issues of your right to testify and you understand that
9 I will be charging the jury, they cannot hold the fact that
10 you do not testify against you. Do you understand?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Thank you. All right. Are we
13 ready?

14 MS. OUTTEN: Your Honor, just briefly before we resume
15 testimony, we wanted to clarify -- the State, before calling
16 Antoniya Singleton, made the motion regarding past instances
17 -- excuse me, of conduct between the victim and the Defendant
18 -- between the victim and other people between, you know,
19 Emonie Burgess and Antoniya Singleton.

20 And we just want to clarify that your ruling as to
21 those specific instances, if you could state that ruling
22 again before these witnesses -- before who we believe the
23 Defense is about to call to testify and testify scanner.

24 THE COURT: All right. Well, I'll have -- to on my
25 notes on that, Ms. Outten?

1 MS. OUTTEN: And additionally, your Honor, it is our
2 belief that Defense intends to call Emonie Burgess and
3 Evette Burgess. They are both seated in the courtroom right
4 now. So we would just like to make sure that before one or
5 the other takes the stand that the other one leaves. So it's
6 not to violate the court sequester order.

7 THE COURT: All right. If that they -- they will be
8 sequestered before the other one testifies for sure. If they
9 decide to testify -- I've got to find my notes on that prior
10 rule.

11 MR. MCGUIRE: And -- and Judge, while you're looking
12 for that, only Evette Burgess is in the courtroom,
13 Emonie Burgess is not in here.

14 THE COURT: Okay. Let me step back in my office and
15 clarify. This has to do with the -- we -- allow any
16 instances where the -- there the -- the victim, the deceased
17 has personally attacked or -- or -- or brought in violence
18 toward the Defendant. I know we said those would be allowed
19 and then there was a 90-day period and I don't know how would
20 -- phrase that exactly.

21 MS. OUTTEN: Judge, I'm happy to consult my notes if
22 that would --

23 THE COURT: Yes, that would help.

24 MS. OUTTEN: -- be helpful?

25 MR. MCGUIRE: Well, Judge, since I'm the one that has

1 to abide by it, let me tell you my understanding.

2 THE COURT: Okay. Go ahead.

3 MR. MCGUIRE: Violence directly targeting Courtney from
4 Javon Thomas, pretty much any time is okay.

5 THE COURT: Yes.

6 MR. MCGUIRE: And instances of violence where
7 Javon Thomas directed violence at another, for instance,
8 Niya -- Ms. Singleton, that would be limited to 90 days.

9 THE COURT: That is my understanding is -- is what we
10 were -- what we had.

11 MS. OUTTEN: So long as who -- whoever's testifying to
12 it witnessed it. So we -- we don't believe that any of the
13 witnesses could come in and say, "Well, I heard one time
14 about --"

15 THE COURT: No -- no, this is direct -- this is direct
16 not --

17 MS. OUTTEN: Correct.

18 THE COURT: You -- you saw what -- witnessed it. You
19 -- you -- you did. Okay.

20 MR. MCGUIRE: Yes.

21 MS. OUTTEN: Correct. Just want to make sure we're on
22 the same page.

23 THE COURT: So we're all on the same page. Do I need
24 to go get anything else?

25 MS. OUTTEN: No, your Honor.

1 THE COURT: All right. Are we ready to start?

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: All right. Bring the jury.

4 (Jury enters courtroom.)

5 THE BAILIFF: Judge, all the jurors are present and
6 seated.

7 THE COURT: All right. Thank you. When we left, the
8 State had rested. Mr. McGuire, the Defense, call your next
9 witness.

10 MR. MCGUIRE: Yes, sir. Judge, Defense calls
11 Evette Burgess.

12 EVETTE BURGESS,

13 having been duly sworn, testifies as follows:

14 THE CLERK: State your full name and spelling your last
15 name.

16 THE WITNESS: Evette Burgess. Last name. Burgess.
17 B-U-R-G-E-S-S.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Good afternoon, Evette?

21 A. Good afternoon.

22 Q. You're Emonie's mom?

23 A. Yes.

24 Q. And Emonie is Courtney's girlfriend?

25 A. Yes.

1 Q. Okay. And you've talked to me a couple of times
2 in the past?

3 A. Yeah.

4 Q. And I showed you a video?

5 A. Yes.

6 Q. And I asked what you remember from what was
7 happening?

8 A. Yes.

9 Q. On that day where there were shots -- an argument
10 and shots in front of your house? Did you see Javon Thomas
11 in front of your house?

12 A. Yes.

13 Q. And you were outside and you saw Niya?

14 A. Yes.

15 Q. Niya saw you?

16 A. Uh-huh.

17 Q. And Javon was angry --

18 THE COURT: Oh, we got to answer, yes or no?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MR. MCGUIRE:

22 Q. And he was walking down the street?

23 A. Yes.

24 Q. And down the street was your daughter?

25 A. Yes.

1 MS. OUTTEN: Objection, Judge. Leading.

2 THE COURT: All right. Let's re-phrase it and -- re-
3 phrase those questions. Thank you.

4 BY MR. MCGUIRE:

5 Q. Was your daughter down the street?

6 A. Yes.

7 Q. Courtney down the street?

8 A. Yes.

9 Q. And your car was down the street?

10 A. Yes.

11 Q. Javon, was he walking towards that --

12 A. Towards that way. Yes.

13 Q. He was walking towards that way?

14 A. Yes.

15 Q. He was yelling?

16 A. Yes.

17 Q. Did he have anything in his hand?

18 A. Yes, on the side when he walked past me and he was
19 like, "I'm going to wet this shit up."

20 Q. Okay. Let's -- let's go back and -- and talk
21 about that. What was in his hand?

22 A. He been on his pocket. His right-side pocket.
23 And there was the gun.

24 Q. And you saw him pull the gun?

25 A. Yes.

1 Q. And it was on his right-hand side?

2 A. Yes.

3 Q. Close to his body?

4 A. Yes.

5 Q. And this is how he went down the street, right in
6 front of your house?

7 A. Yes.

8 MS. OUTTEN: Objection again, leading, Judge.

9 THE COURT: All right. Let's -- let's re-phrase our
10 questions. I'm going to sustain the objection.

11 MR. MCGUIRE: All right. Just try to go a little
12 faster.

13 THE WITNESS: Okay.

14 BY MR. MCGUIRE:

15 Q. Where was his arm in reference to the rest of his
16 body? Was it out here or was it tight?

17 A. It was tight.

18 Q. Okay. And you said that, "You heard him say
19 something," can tell us what that was?

20 A. "I'm going to wet this shit out."

21 Q. "I'm going to wet this shit up."

22 A. Yes.

23 Q. What does that mean?

24 A. Wet it up. Shoot it up.

25 Q. Okay. When he said, "I'm going to wet this up,

1 shoot it up." He had the gun out already, or no?

2 A. Yes.

3 Q. And he kept walking down the street?

4 A. Yes.

5 Q. And then you were sort of on -- were you on your
6 porch area?

7 A. Like, a little bit to my front door and -- yeah.

8 Q. And then there was some shots?

9 A. Yes.

10 Q. You didn't see --

11 MS. OUTTEN: Objection again. Leading, Judge.

12 MR. MCGUIRE: I think --

13 THE COURT: Stop.

14 MR. MCGUIRE: Sorry. Sorry, Judge.

15 THE COURT: May I see the sttorney right here.

16 (Bench conference.)

17 THE COURT: I'm going to sustain the objection.

18 Leading. Please re-phrase your question. Thank you.

19 MR. MCGUIRE: Appreciate it, Judge.

20 BY MR. MCGUIRE:

21 Q. Were there shots fired that?

22 A. Yes.

23 Q. And you didn't see -- did you see exactly what
24 happened down the street with the shots?

25 A. When he passed -- walked past my house --

1 Q. When Javon pass by your house, did you know who
2 was shooting first or from where, stuff like that?

3 A. No, but I saw him shot first. I don't know about
4 the down the street. After I saw the first shot, I going
5 back in my house because I had my one-year-old baby in there,
6 so...

7 Q. And when I showed you the video and I -- I asked
8 you, "Do we hear somebody say, oh my God?" Was that you?

9 A. Yes.

10 MR. MCGUIRE: Okay. Evette, thank you for coming.
11 Please answer any of their questions.

12 THE COURT: All right. Cross?

13 MS. OUTTEN: Yes, your Honor.

14 CROSS-EXAMINATION

15 BY MS. OUTTEN:

16 Q. Good afternoon, Ms. Burgess.

17 A. Hi.

18 Q. I'm just going to ask you a few questions. So you
19 testified that on February 19, 2022, you saw Javon Thomas in
20 front of your house?

21 A. Yes.

22 Q. And you knew him?

23 A. Not like that, but I mean, that's Niya -- that was
24 Niya's boyfriend.

25 Q. So, you've met him before?

1 A. No, I never met him and talked to him like that.
2 I only -- just knew Niya and see them together all the time,
3 so --

4 Q. So, who you really know all this is Niya?

5 A. Yes.

6 Q. Because she used to be friends with your daughter?

7 A. Yes.

8 Q. And how long were they friends?

9 A. They were friends maybe since nine -- nine or
10 six years old.

11 Q. And -- but around the time of this in 2022, how
12 often were they hanging out?

13 A. Low but not that much. I guess they had got into
14 a little argument or whatever it was.

15 Q. But you -- you still recognize her when she came
16 walking out?

17 A. Oh, yes. Yes.

18 Q. So you see Javon Thomas walking down the street?

19 A. Uh-huh.

20 Q. And you see Niya walking down the street?

21 A. Yeah.

22 Q. Are they walking together?

23 A. No, not really. She was arguing with him as he
24 was walking that way, being angry. She was like -- you want
25 to know what she had said?

1 Q. Sure.

2 A. Well, all she was saying was, "Oh, you never --
3 you don't know how to let shit die and stuff like that." And
4 that was it. So I -- looking down the street, you know, he
5 still walking where he was walking towards that way. And
6 after that first shot, I go into my house.

7 Q. So, you went outside after you heard the first
8 shot?

9 A. No, I was already out there. I've been already
10 out there if I saw him walk past my house.

11 Q. Okay. So, I just want to make sure that we're
12 understanding this correctly. So you are -- you're -- you
13 are at your house? This day?

14 A. Yeah.

15 Q. And -- and your house is on the corner of Comstock
16 and Cosmopolitan Avenue?

17 A. Uh-huh

18 Q. And where are you standing? Are you standing at
19 your front door?

20 A. Oh, my porch.

21 Q. Your porch?

22 A. Yeah.

23 Q. Now, about -- if you're standing on your porch,
24 how far are you from Comstock Avenue?

25 A. My -- Comstock Avenue is right there on the

1 corner. My house was fenced then. So the -- the sign right
2 here -- the yard right here -- the gate right here. So, it
3 wasn't that far.

4 Q. But there's still some yard in front of your
5 house?

6 A. Oh, yeah.

7 Q. So on the porch -- you are not right up on the
8 street, are you?

9 A. No -- no. I was in my yard behind my gate.

10 Q. Okay, so you're -- so what -- but when you see
11 Javon Thomas, are you on the porch?

12 A. Yeah.

13 Q. Or are you in the yard?

14 A. On -- I got steps, so I was on top of the steps --
15 the porch. I -- I wasn't out the fence.

16 Q. So you weren't outside the fence, I understand
17 that.

18 A. Okay.

19 Q. But were you inside of the screen porch?

20 A. Inside my house porch. Not the screen porch.

21 Q. Where were you in your yard?

22 A. In my yard.

23 Q. In your yard?

24 A. Yeah.

25 Q. Were you closer to the porch?

1 A. Yeah.

2 Q. Or closer to the street?

3 A. The porch, street, I mean --

4 Q. So, like, if I'm standing right here, I'm closer
5 to this than I am to you.

6 A. Yeah.

7 Q. So were you closer to your porch?

8 A. Yes.

9 Q. Okay.

10 A. Yeah.

11 Q. So you're -- so, you're still a few feet back from
12 Comstock Avenue?

13 A. Not really, because when -- Comstock -- my -- my
14 steps and the -- the street sign would say Comstock is right
15 there. You understand what I'm saying?

16 Q. I understand.

17 A. Okay.

18 Q. So, you are standing right there and you see --
19 who do you see first? You see Javon first or you see Niya?

20 A. That they both was together? She was, like, a
21 little bit behind him. He was walking ahead of her.

22 Q. Okay.

23 A. Yeah.

24 Q. And so -- so at what point -- so you're -- so
25 you're standing from your porch, you see Javon go walking by?

1 And you said you saw his gun, but -- but when -- what -- when
2 did you see that? Did you see it right when he walked up?

3 A. When he was walking past me, I had been looking at
4 him when he said, "I'm going to wet this shit up." I looking
5 down the street light and then the shots going off.

6 Q. So, it sounds like this all happened pretty fast.

7 A. Yeah, it did real fast.

8 Q. But you did just testify on direct that he had the
9 gun in his right-side pocket?

10 A. That's the right side. And he was on my right
11 side. My house was on the right side.

12 Q. So is -- so is the gun in his right-side pocket?

13 A. I don't know if it's been in the pocket or he been
14 holding it, but it been on the clocks, you know, like how
15 they got it on their clip or whatever -- about to come out.
16 So when they come out, "Hey, shots fired."

17 Q. But you could see it?

18 A. I could have seen -- he was holding on the club.
19 So when you -- you know.

20 Q. Okay.

21 A. Okay.

22 Q. Okay. So you did just testify on direct though,
23 that where your house is, you couldn't see all the way down
24 Comstock.

25 A. No.

1 Q. About how far can -- could you see -- you could
2 see your neighbor's house, which is [REDACTED] --

3 A. I couldn't see all the way down Comstock. I got
4 four steps. So therefore -- when I say I had saw him walk
5 past, I was on my second step, not two steps and two more
6 steps down. So the -- the steps I've been on would've -- my
7 door was at the screen door. I could have seen what I see,
8 you know, I wasn't like off the step, the fourth step, which
9 would be me opening up my door -- I mean my fence.

10 Q. Okay.

11 A. You -- you see what I'm saying?

12 Q. I -- I understand.

13 A. Okay.

14 Q. So, you couldn't see the Defendant's car?

15 A. No.

16 Q. And you couldn't see your daughter at that point,
17 could you?

18 A. I couldn't see them, but I couldn't see them all
19 the way, you know, because where I been at on the corner, it
20 is, like, probably five or six houses maybe where they had
21 stopped at, you know?

22 Q. And so -- but -- but you testified on direct, you
23 saw him shoot first?

24 A. I had to see him shoot first because he walked
25 past me and said that.

1 Q. And then you testified that you seen the video of
2 the shooting?

3 A. Yeah, I saw it.

4 Q. And so, there's a voice that says, "Oh my god."
5 On that?

6 A. Yeah. That was me.

7 MS. OUTTEN: And that's you. I beg Court's indulgence.

8 BY MS. OUTTEN:

9 Q. So, I kind of want to go back to the beginning a
10 little bit. What -- so the incident that we're here talking
11 about happened around 1:30 that day?

12 A. Yeah.

13 Q. When did you go outside that day?

14 A. Well, I went outside that day and I had to went
15 outside -- well, I didn't had to went outside. My daughter
16 had called me. She already told me she was coming to the
17 house. So, I don't know why it happened prior to that. But
18 however, this incident start that -- why make me come on the
19 porch? Because when she said she was coming by the house,
20 then next thing you know the shooting by the car.

21 Well, I hear the shooting by the car first. Like the
22 car speeding past the house, you know. So that would make me
23 run to my door because I already know she was coming to the
24 house with me, you know. Then next thing you know all that
25 was going on. I see him and Niya and then what he said,

1 "Shots fired." I see. Well --

2 Q. So, I sort of want to back up. So, your daughter
3 calls you?

4 A. Uh-huh

5 Q. And that's what makes you come outside?

6 A. No, she already told me she was coming to the
7 house.

8 Q. So, you come outside because you think Emonie's
9 about to be at the house?

10 A. Uh-huh.

11 Q. And then, you just said that, "You see the car
12 speed past?"

13 A. No, I didn't just say that. Listen, she already
14 tells me she was coming. So I was expecting her. I heard
15 the zoo. So, that would make me come to my door. So, when I
16 came to my door, they already had passed past me. So, when
17 he was coming -- Niya was coming and he was charging --
18 walking fast down the street.

19 And what he said -- what he said -- because I was right
20 there, you know I already had come out. Because when that
21 ride passed, I wouldn't know what that noise is. Because I
22 know I've been expecting her, you know. So, I see all that.
23 And when he said what he said and he shot, shit I ran back in
24 my house, church going on and everything.

25 Q. And you testified you've seen the video, correct?

1 A. Yeah.

2 Q. So, I'm going to show you what's already been
3 admitted into evidence as State's Exhibit 90. I'm going to
4 show you -- I'm going to start by showing you
5 State's Exhibit 90. And this is a photo -- this is like a
6 screenshot of the -- of the video. Is that your house?

7 A. Yes.

8 Q. Okay. So this is your fence that you're talking
9 about, right?

10 A. Yes.

11 Q. Is it possible to see the stairs in this video --
12 or in this picture? Excuse me.

13 A. Yeah, you see the steps, you see it.

14 Q. So, that screen you can actually touch it. So, if
15 you want to put a dot or a circle and tell me, so you can
16 sort of show me kind of where those stairs are.

17 A. And it should be three right there from the screen
18 there. You see it?

19 Q. Okay. And so --

20 A. Where you're putting the dots at?

21 Q. And so, you said you were on the first step?

22 A. No, I said on two steps and it's two more steps
23 down before you come off my --

24 Q. Okay. And now are -- are -- do you see yourself
25 anywhere in this photo?

1 A. No.

2 Q. State's Exhibit 91.

3 THE COURT: What was the prior exhibit?

4 MS. OUTTEN: 90.

5 THE COURT: 90. Okay.

6 BY MS. OUTTEN:

7 Q. Still looking at your house. Are you anywhere in
8 this photo?

9 A. No. I've been in my house -- not in my house, but
10 on my porch. That's a screening porch.

11 Q. 92? State's Exhibit 92. Are you anywhere in this
12 photo? So that by then you had -- by this time you had
13 gotten on your phone?

14 A. Oh, no. No. By that time that's when you all
15 probably hear me. I say, "Oh my gosh." Because I had come
16 to the door, I was, like, "Oh my gosh." That's why you all
17 here. Because I don't know how he get right there.

18 Q. And you know, Ms. Burgess, this might actually be
19 a better photo where we could see those steps. So are the
20 steps right there?

21 A. Uh-huh.

22 THE COURT: What photo is that?

23 MS. OUTTEN: State's Exhibit 123.

24 BY MS. OUTTEN:

25 Q. So, when -- so you're standing right here.

1 A. To the top part with the screen next.

2 Q. On the top part.

3 A. Uh-huh

4 Q. And that's when you hear the car go. I believe
5 you said (sound effect) by?

6 A. Yeah, I wasn't standing right there. I wasn't
7 like -- with the screen door open. I was inside. That's
8 what make me like --

9 Q. All right. Ms. Burgess, I'm going to show you
10 what's been admitted into evidence as State's Exhibit 7.
11 Would you agree this is Comstock Avenue?

12 A. Uh-huh.

13 Q. And --

14 THE COURT: Yes?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Thank you.

17 BY MS. OUTTEN:

18 Q. And can you -- you can circle or point, or I can
19 point as to where your house is?

20 A. On the corner. Right there.

21 Q. Right there? Okay. So, you're standing out there
22 and you see Javon, and then you see Niya. And where are they
23 on Comstock Avenue when you see them?

24 A. When I see them, they look like they was coming,
25 like, even that half part right here, maybe right there.

1 Q. So they were --

2 A. I seen them, like, behind --

3 Q. So they were by the stop sign on Cosmopolitan?

4 A. No, they wasn't by the stop sign, like -- either
5 they been coming from my part right here, the side part. But
6 when I did see them, she was probably -- she was a little bit
7 behind him, but he was in front of her.

8 Q. So they -- so, you see them around this area right
9 here?

10 A. Yeah.

11 Q. And then you said, "Javon goes walking by your
12 house?"

13 A. Yeah.

14 Q. Did you see him go walking by?

15 A. Yeah. He was walking by, like, on the grass park.
16 You know. So, like, how that lady right there walking?
17 That's how close by my house he was. And I've been standing
18 to the top of the step.

19 Q. So can you -- on this map sort of relative to your
20 house, show me where the last place you saw Javon was?

21 A. Walked past my house. And when he said that.

22 Q. So -- so was he right? Like, was he right here
23 the last time you saw him?

24 A. No. Because that's my step going to my -- my
25 fence. No, he already had passed by, like, maybe --

1 Q. Right there?

2 A. -- where she at.

3 Q. Where this lady is?

4 A. Yeah.

5 Q. So, that's the last time you saw him?

6 A. Yeah. And that's when he shot the fire. But --
7 there been multiple shots going on. I went in my house after
8 that. I ain't going to stay out there.

9 MS. OUTTEN: I don't have any more questions for you.

10 THE COURT: Okay. Re-direct?

11 MR. MCGUIRE: I have no further questions for
12 Ms. Burgess. Thank you for coming ma'am. May she be excused
13 from her subpoena?

14 THE COURT: Any -- any comment on that from the State?

15 MS. OUTTEN: No objection from the State.

16 THE COURT: All right. You are -- you can step down
17 and you're -- and you're pretty good. Thank you. All right.
18 Call your next witness please?

19 MR. MCGUIRE: Defense rests.

20 THE COURT: All right. Thank you, sir. All right.
21 Ladies and gentlemen, let me see the lawyers for one minute.

22 (Bench conference.)

23 THE COURT: All right. Ladies and gentlemen, that
24 concludes the -- the testimony in the evidentiary phase. We
25 will -- will be starting the -- the third phase, the

1 opportunity for closing statements tomorrow. We're going to
2 do that tomorrow morning.

3 I would ask you to be back in your jury room by 9:15 in
4 the morning. Obviously, please do not discuss any of the
5 evidence in the case, any of the information. Please don't
6 do any research.

7 And again, if anyone reaches out to you please alert
8 the bailiff if you have anyone that tries to contact you
9 about this case. So, I'm going to release you. It is 4:25,
10 so we're going to get out a little bit early and we're going
11 to reconvene. You'll -- if you'll be back in your jury room
12 at 9:15 in the morning we'll get started. Thank you. Have a
13 good night.

14 (Jury exits courtroom.)

15 THE COURT: All right. We are going to take a recess
16 for this evening. We're going to be back in the courtroom at
17 9:15. The attorneys back in the courtroom at 9:15. Yeah, I
18 know you might need to speak to some people before we talk
19 about charges, but if you're -- when you're ready, we can do
20 it. I've got them on my computer. We can do it right up
21 here at the bench.

22 And if you've got anything specific that you want me to
23 charge, I'll be happy to take a look at that too. All right.
24 I think we've covered -- I think we've got -- necessarily
25 covered based on our prior conversation. I just had to make

1 some good adjustments based on Mr. Richards not to testify.

2 All right.

3 MR. MCGUIRE: Thank you, Judge.

4 THE COURT: All right. Thank you. All right. We're
5 at ease, like I said, just see your -- if you need to talk to
6 -- you can come back in here, we'll figure it out.

7 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
8 4:26 P.M.)

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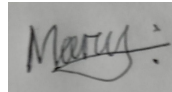
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I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 25th Day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 15, 2024



MARY RAGSDALE

Transcriber

1 CONTINUATION OF PROCEEDINGS - JULY 26, 2024

2 MR. BISCHOFF: Good morning, your Honor.

3 THE COURT: Good morning.

4 MS. LINDER: Your Honor --

5 THE COURT: All right. Great.

6 THE CLERK: Friday, July 26, 2024.

7 Charleston County Circuit Court, Judge McMaster.

8 THE COURT: We're going to -- the first thing this
9 morning is discuss some charges. We had an informal -- are
10 you -- you're ready? We had an informal bench conference
11 yesterday afternoon after court was in recess and discussed
12 the -- the charges. There were some issues or some -- some
13 requests that -- that the parties made. And we're going to
14 go through those now on -- on the record. The one thing I
15 did want to make a note of while I was thinking about it is
16 there's no live ammunition in evidence, is there?

17 MS. LINDER: No, your Honor.

18 THE COURT: Yeah. I thought it was just bullet -- just
19 casings. Okay.

20 MS. LINDER: Yes, Judge.

21 THE COURT: All right. Just want to make sure that --
22 before we send anything back to the jury. All right. I
23 think the State had a -- a request for or sent me some
24 information last night about a voluntary manslaughter. I'll
25 happy to hear from you.

1 MS. OUTTEN: Thank you, your Honor. So, we pulled just
2 a case law last night. In support of that, we believe that
3 the standard when considering a jury charge is any evidence
4 in the record whatsoever, especially for a voluntary
5 manslaughter charge. We believe that the testimony that's
6 come from the Defendant's testimony and also from
7 Evette Burgess, who made mention of some of the things that
8 were said, as well as the Defendant's testimony that he was
9 acting to protect his pregnant girlfriend who was not -- and
10 the State's obviously not conceding that we believe this is
11 how this happened.

12 But the Defendant's own testimony that he was acting to
13 protect his pregnant girlfriend from getting out of the car
14 while he's got somebody who he knows to be armed who
15 apparently threatens him, or I think the testimony was
16 "clutches his gun and looks at him meanly."

17 And has done that over time. We also think, given the
18 Defendant's age, we think there's sufficient evidence in the
19 record from which a jury could determine that even if this is
20 not murder and -- but this is not self-defense that they
21 could find voluntary manslaughter. It is in support of that.
22 I do have some case law State versus Gourdine, 322 SC 396.

23 And that case basically stands for, you know, the
24 court's not held to one party's version of the facts. If
25 there's any evidence whatsoever where a jury can convict on a

1 lesser charge, the court should charge on it. In
2 State versus Wiggins, 330 SC 538. That case stands for the
3 proposition that a court can charge volunteer manslaughter
4 and self-defense. And that -- and in that case, the court
5 specifically held that fear could be -- could go to the key
6 to passion sufficient legal provocation analysis.

7 But the case that I felt was most on point is
8 State versus Lowry, 315 SC 396. In that case, just very
9 briefly, there was sort of a confrontation between two
10 parties and conflicting evidence about who was armed when.
11 But then in that case, the Defendant even fired a -- again,
12 putting in quote, "warning shot" before ultimately killing
13 the victim. And that's something that the Defendant has
14 alleged in this case as well.

15 And so, citing the State versus Norris, 253 SC 31 and
16 the Supreme Court held that the trial court should not
17 eliminate a charge of manslaughter unless there is no
18 evidence whatsoever tending to reduce the crime for murder to
19 manslaughter that in this case, we believe, like I was
20 discussing before, there was evidence in the record that a
21 heating or heated argument occurred either between the
22 Defendant and the victim -- between Ms. Burgess and
23 Ms. Singleton. Between, you know, Mr. Thomas and however you
24 want to do it. There's plenty of evidence by which this jury
25 could -- could conclude that these parties, who everybody

1 concedes were all known to one another. Who I think
2 everybody, I think the State even e list a testimony, there
3 was some sort of ongoing disagreement between victim's
4 girlfriend, Ms. Singleton, Defendant's girlfriend,
5 Ms. Burgess.

6 So, I think we all agreed that there was some sort of
7 underlying issue here. And I think that -- I think that
8 given that and given the Defendant's testimony about his
9 girlfriend being pregnant and her -- and the way that he said
10 he -- she actively tried to remove herself from a moving
11 vehicle. I think that that satisfies that.

12 And I'll just come up by saying that the case of
13 State versus Gilliam, which is 296 SC 395, the court really
14 states our argument for us quoting here. The rationale for
15 this rule is that the jury may fail to find all the elements
16 for self-defense, but could find sufficient legal provocation
17 and heat of passion to conclude that the Defendant was guilty
18 of voluntary manslaughter.

19 We believe that fits in this case. We believe that --
20 that there's evidence from both sides where the jury could
21 conclude that. And we believe that, given that the Court has
22 given that there should be a voluntary charge unless there's
23 no evidence whatsoever, we believe that we have satisfied
24 that standard.

25 THE COURT: All right. Thank you. I'll hear from

1 Mr. McGuire or Mr. Bischoff.

2 MR. BISCHOFF: Your Honor, good morning. May it please
3 the Court? I struggle with addressing the Court on this very
4 issue because I -- I just cannot think of a more disingenuous
5 argument in this case from the State with the ask for this
6 compromised verdict -- a voluntary manslaughter under these
7 facts. I just do not understand how there's any facts in the
8 record that is supported.

9 There is evidence that there's a confrontation of some
10 sort that really has nothing to do with Courtney. Courtney
11 removes himself from the situation. Courtney is presented in
12 the situation of trying to get his pregnant girlfriend upset
13 back into the vehicle and Javon takes it upon himself to
14 march toward both of them. Whether or not Javon is yelling
15 at Courtney, I don't believe has any place in the overall
16 analysis.

17 I think the analysis is where there is confrontation
18 between two parties. And in voluntary manslaughter cases,
19 State cites -- and that are out there, there is this clear,
20 overwhelming evidence that there are people, Defendant,
21 alleged victim, maybe a third party that are arguing back and
22 forth and they have conflict. They have a situation that
23 rises to the level of a study moment when someone is shot and
24 killed, usually.

25 And I just don't think we have that hearing. You know,

1 there's requirement under voluntary manslaughter that we have
2 heat of passion on adequate provocation. Heat of passion, as
3 your Honor knows, is essentially saying that the Defendant
4 had no ability to cool down, no ability to essentially
5 control themselves. We've got Courtney who fires a warning
6 shot into the ground.

7 That's his first warning shot. We've got Courtney who
8 fires another warning shot at the feet of Javon. And only
9 because Javon unloads his gun six times in the direction of
10 Courtney, his pregnant girlfriend -- does Courtney feel like
11 he has to shoot back to protect himself and his pregnant
12 girlfriend?

13 There is no -- there's no adequate comparison between
14 voluntary cases that are out there in this particular case,
15 just because the State may pick out a small part of a -- an
16 opinion, essentially a tree -- old discussion of law school,
17 don't forget to see the forest for the trees. Does not mean
18 that this Court should say, "We're going to focus on this one
19 sentence in this opinion" to say because it would happen in
20 this case.

21 We're just going to ignore the facts and charge what
22 essentially is a compromised verdict situation that I hope
23 the Court would think is -- is not appropriate in this case.
24 I just don't think there's any evidence in the record to
25 support voluntary manslaughter. We ask that you deny the

1 request.

2 THE COURT: All right. Thank you. I appreciate your
3 arguments. I'm going to deny the State's request. The Court
4 will charge murder as we discussed yesterday in our -- our
5 informal bench conference. So, I mean charge conference and
6 it will be murder and the -- the Court also charges
7 self-defense. I believe you had a -- Defense had a proposed
8 jury charge for self-defense.

9 MR. BISCHOFF: Your Honor, we do. We just relied
10 briefly on State v McCray. The State v McCray -- the
11 Defendant asked for a charge that was in excess of a
12 self-defense charge, essentially asking the court to charge
13 16-11-440 subsection C which is under the immunity statute,
14 but we believe is applicable.

15 McCray basically says that accordingly -- and this is
16 important, "Based on the facts and circumstances of this
17 case," meaning State v McCray, "we found the Circuit Court
18 charged the correct law and did not err in denying McCray's
19 request to charge the jury with the language from section
20 16-11-440(c).

21 We believe the court had ample opportunity to say it's
22 not appropriate at all to charge any case in McCray. And
23 because they did not say that, we believe that the courts are
24 saying that, "There is potentially a set of circumstances
25 where will be warranted," we think this case is warranted.

1 THE COURT: All right. Thank you. State?

2 MS. OUTTEN: Judge, we'll be brief about this. We read
3 McCray last night. It was provided to your Honor, and I'm --
4 I'm sure he is -- did the same. But nowhere in this case
5 does -- does that case stand for the idea that that charge
6 might be appropriate in some circumstances, but not in this.
7 To say that that case stands for that proposition is a -- is
8 not even a bit of a stretch.

9 It is a stretch. There's a reason why the act reads
10 "Immunity from prosecution." There's a reason why there is a
11 whole line of pieces and process that we have in the State
12 for determining immunity under that act. And that's because
13 our legislature and our Supreme Court together have decided
14 that immunity under that act is to be determined by a judge
15 and not by a jury. And I just don't think that there's
16 really anything more to say than that.

17 THE COURT: Thank you. I'll -- I have read your case.
18 I read your proposed charge. I'm going to deny your motion
19 and I'm not -- I do not -- will not be charging that, but I
20 will let you make that jury charge as use it as a Court's
21 exhibit and you're protected for the records.

22 MR. BISCHOFF: Thank you, your Honor.

23 THE COURT: If you'd like to enter it as a Court's
24 exhibit, we can do that.

25 MR. BISCHOFF: We will.

1 THE COURT: All right. A couple other things. We
2 discussed last night or -- yesterday afternoon, we -- we
3 talked about the charge for prior inconsistent statements.
4 The State had some concerns about the language. I have
5 amended the language to that charge and I will tell you what
6 that would be in just a second and get there. The charge
7 that we discussed is prior inconsistent statements.

8 The charge that we had proposed was there has been
9 evidence presented -- those witnesses have made prior
10 statements, which are not consistent with the witness's
11 present testimony. There's more to it, but that's the -- the
12 part that I wanted to go with -- the parties that I -- I have
13 determined that I have changed that language.

14 I have changed it to, "If you determine there has been
15 evidence presented those witnesses have made prior statements
16 which are not consistent with the witness's present
17 testimony, you may use this evidence to decide whether to
18 believe the witness." I changed the -- the beginning of
19 that. I think that's a comment that I made on -- on the
20 facts.

21 They heard the testimony, they can take the testimony
22 and so that is going to be a change. Also, in imminent
23 danger for -- for defense of others and for -- for the
24 Defendant that the imminent danger portion, it references
25 circumstances surrounding the crime, including the physical

1 condition and characteristics of the Defendant and the
2 deceased.

3 I have removed the word "crime" and have inserted
4 "incident" -- incident instead of crime. I'll also -- based
5 on our -- the prior rulings in the case, I have worked very
6 hard to make sure that I don't have "the victim" written in
7 the -- the jury charge. It does say "a deceased," when I've
8 used that, I've used the term "deceased." So that are just
9 the only things that I want to point out to the parties that
10 were issued yesterday.

11 I've also renewed -- we've discussed, and that everyone
12 is understands and know -- have confirmed with me that they
13 will not be talking about punishment. And during closing,
14 I've taken an out jury charge about punishment. I've got it
15 over here if somebody wants to do that, but, you know, I -- I
16 believe that would probably be objection. But we can -- we
17 can deal with that if we got to. All right. So, who is
18 going to be closing for the State?

19 MS. LINDER: I, Judge.

20 THE COURT: All right. So you'll be going first then
21 you follow, then you'll -- Mr. McGuire, then we'll have a
22 reply.

23 MS. OUTTEN: Judge, briefly just -- we just wanted to
24 seek Court's clarification when we were going over the
25 self-defense charge at the bench. And we -- and I'm just

1 fully saying we could have heard you wrong, we believe
2 there's, like, four elements of self-defense and we didn't
3 know if that's how you were charging it, or if you were kind
4 of collapsing imminent danger and reasonable person until
5 1:00.

6 THE COURT: Yes, that is correct.

7 MS. OUTTEN: Do -- is it -- do you mind if we can hear
8 that one more time just so that we -- just so that we are
9 appropriately addressing it in our closing.

10 THE COURT: Okay. You just want imminent danger part?

11 MS. OUTTEN: Yes, sir.

12 THE COURT: Okay. The second element of self-defense
13 is that the Defendant was actually in imminent danger of
14 death or serious bodily injury, or that the Defendant
15 actually believed he was in imminent danger of death or
16 serious bodily injury. The Defendant was actually in
17 imminent danger.

18 It must be shown that the circumstances would've
19 warranted a person of ordinary firmness and courage to strike
20 a fatal blow to prevent death or serious bodily injury. But
21 the Defendant believed he was in imminent danger of death or
22 serious bodily injury and must be shown that a reasonably
23 prudent person of ordinary firmness and courage would've had
24 the same belief.

25 In -- in deciding whether the Defendant actually was or

1 believed he was in imminent danger of death or serious bodily
2 injury, you should consider all the facts and circumstances
3 surrounding the incident, including the physical condition
4 and characteristics of the Defendant and the deceased.

5 And then the next charge would talk about right of the
6 outcome appearances, which addresses imminent danger, prior
7 violence. I've got -- this is just the title. Prior
8 violence by the victim will say deceased in there -- threats
9 by the victim. And then we go to number three. We did
10 collapse those two. No other way to avoid the danger.

11 And that's -- then I would say the final level of
12 self-defense is that the Defendant had no other probable way
13 to avoid the danger of death or serious bodily injury. And
14 to act as the Defendant did in this particular instance. And
15 there we would talk about degree of force, continuing --
16 continuing until the harm has ended.

17 Prior difficulties and deceased filed reputation. And
18 then, we would get a defense of others where again you will
19 get defense of others and then you'll get right jack
20 appearances for defense of others. Does that clear up for
21 you?

22 MS. OUTTEN: Yes. Thank you, your Honor. We just
23 wanted to make sure because we only heard three.

24 THE COURT: That's right. That's fine. That's fine.
25 Anything else we need to take up?

1 MS. LINDER: We --

2 THE COURT: We -- we have -- go ahead.

3 MS. LINDER: No, this is not related to this case. I
4 just got a text about the docket.

5 THE COURT: About the docket?

6 MS. LINDER: I just -- I'm sorry, Judge, I just got a
7 text saying that there's a case that is supposed to be first
8 of next week, that's a jail case and I think it's in exposure
9 to property office. Anyway. He wants to plead guilty today.
10 If it gets signed and he gets transported, would you be
11 willing to hear that guilty plea when you're deliberating?

12 THE COURT: Well, yes. When we're deliberating, we
13 have to do that.

14 MS. LINDER: Okay.

15 THE COURT: I would -- you know, State's going to have
16 to get together with -- I don't know if you all bring
17 probation in or how that works. I don't -- probation case,
18 but I just want to make sure and then, I don't know if the
19 clerk goes against the indictment or --

20 MS. LINDER: We -- we would organize all that. I just
21 wanted to -- if you -- potentially doing that during
22 deliberation.

23 THE COURT: I'll be happy to.

24 MS. LINDER: Thank you.

25 THE COURT: No problem. All right. Anything?

1 MS. OUTTEN: I'm sorry, I was -- I -- I was trying to
2 cut you off. I'll just say -- have one last thing.

3 THE COURT: Okay. All right.

4 MS. OUTTEN: Just the one last thing that we wanted to
5 say, Judge, is pursuant to State versus Bamberg 270 SC 77 --
6 just to avoid an objection during closing argument. The
7 State does intend to -- to mention a closing argument that
8 the Defense did fail to call Ms. Emonie Burgess to the stand.

9 Because they put up a case and they were able to call
10 witnesses and she was a witness that was within their custody
11 and control that they could have called. That's not improper
12 pursuant to that case and assume to other case on the State.
13 And so, we just wanted to avoid an objection in the middle of
14 a closing argument having to send the jury out if we could.

15 THE COURT: All right. I'll be happy to hear from
16 McGuire. You're closing.

17 MR. MCGUIRE: Okay.

18 THE COURT: All right. Mr. McGuire, you do not object?

19 MR. MCGUIRE: Nope.

20 THE COURT: All right. All right. So that's cleared
21 up. Anything else like that before we get started so we
22 don't have to send the jury out in the middle of closing?
23 Does anybody want to share with me how long they're going to
24 be closing?

25 MS. LINDER: I have no idea. I would guess maybe --

1 maybe 45 minutes.

2 THE COURT: Okay.

3 MR. MCGUIRE: I'll be less than that.

4 THE COURT: All right. Then the reply -- you obviously
5 know the rules of that. Well, we're going to -- as I
6 indicated before, what we will do is we will allow the
7 closings and we'll finish that. Then we're going to send the
8 -- the jury out for a break. I don't know as far as your --
9 if you have family or whoever is here for -- for either
10 party.

11 But during closing, I'm going to tell the bailiff that
12 no one's going in and out while you all are trying to do your
13 closing. So if they're not in here, they're not getting in
14 here until we take a break and then a charge. Does everybody
15 understand that?

16 MS. LINDER: Yes, Judge.

17 THE COURT: All right.

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: Does anyone need some time to go -- maybe
20 see if anybody's out there or either side?

21 MS. LINDER: If I have five minutes, you know.

22 THE COURT: Sure. That's fine. Let's just -- we'll --
23 we'll -- we'll take five minutes. Make sure everybody's got
24 everybody lined up, and then we'll come back and we'll get
25 it.

1 MR. MCGUIRE: Thank you, Judge.

2 THE COURT: All right. Thank you.

3 THE COURT: Oh, if we can get back on the record. No
4 objection to the verdict form?

5 MR. MCGUIRE: No, sir.

6 THE COURT: State?

7 MS. LINDER: Not from the State.

8 THE COURT: All right. Thank you. Recess for about
9 five minutes?

10 MS. OUTTEN: Yes, Judge.

11 (Off the record.)

12 THE COURT: All right. Defense you all ready?

13 MR. BISCHOFF: Just one thing really quick.

14 THE COURT: Sure. Okay.

15 (Off the record.)

16 THE COURT: Going on the record. I just wanted to
17 mention to the -- the individuals in the gallery, we're going
18 to start closing arguments in just a few moments. At that
19 time, the court will be -- the doors will be sealed, we'll
20 not be able to go in and out during closing arguments.

21 The way it will work is after closing arguments are
22 done, at that point in time, we will take a -- a -- a comfort
23 break and let everyone move out of the courtroom before the
24 jury -- actual jury charge. So, I just want to kind of let
25 everybody know the -- the events and how it's going to go.

1 If you need to leave the courtroom, I would ask you to do
2 that at this time.

3 So we just don't want any interruptions, these
4 attorneys deserve the -- the opportunity to -- to present
5 their closing statements if they choose to do so in a -- a
6 manner that they're not interrupted. Does anyone need to
7 leave? Now's the time. All right. No one stands that
8 request. Mr. Bischoff, we're going to have to get started.
9 The jury's standing outside?

10 THE BAILIFF: Yes, sir.

11 THE COURT: Okay. All right. State ready to proceed?

12 MS. LINDER: State ready to proceed.

13 THE COURT: Defense ready to proceed?

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: All right. Bring the jury. We ready?

16 (Jury enters courtroom.)

17 THE BAILIFF: All jurors are present, your Honor.

18 THE COURT: All right. Thank you. Please be seated.

19 All right. Ladies and gentlemen of the jury, I appreciate
20 everybody being on time and -- and being here this morning.
21 We are now in the stage of the trial. The -- the parties are
22 given the opportunity to give a closing statement. After
23 that, we will just -- to give you the events.

24 After the closing statements are concluded, we will
25 take a comfort break for a few minutes before any charge on

1 the law, we will do that. So just kind of give you the --
2 the lay of the land. But we're ready to proceed.

3 Ms. Linder?

4 MS. LINDER: Thank you, your Honor. May it please the
5 Court?

6 THE COURT: Yes, ma'am.

7 MS. LINDER: Ladies and gentlemen of the jury, you're
8 here today in the State of South Carolina versus Courtney
9 Richards. Courtney Richards is charged with murder and
10 possession of a weapon during a violent crime. The judge is
11 going to instruct you on the laws that are applicable in this
12 case. And as he told you in the beginning of this case, you
13 are the judges of the facts.

14 You are the ones who get -- determine the facts of the
15 case and must apply the law as the judge instructs it to you.
16 I think it's always helpful to explain to you a little bit
17 about what the law is from -- from my perspective and my
18 understanding of the law, so that way when you are listening
19 to the arguments and reviewing the evidence, you can consider
20 it.

21 Of course, the judge is the judge of the law. He will
22 be instructing you of that at the end. So one of the things
23 the judge is going to talk to you about is beyond a
24 reasonable doubt. Beyond a reasonable doubt is evidence.
25 That means you are firmly convinced that does not require

1 proof beyond all doubts. That does not require proof beyond
2 any doubts.

3 It just is evidence that means you are firmly convinced
4 and beyond a reasonable doubt. He's going to talk to you
5 about direct and circumstantial evidence. Direct evidence --
6 kind of think about your five senses and it's something you
7 saw, you tasted, you smelled, you heard, you know, that you
8 touched. And that is testimony of a person who claims to
9 have actual knowledge of a fact.

10 Circumstantial evidence is a proof of chain of facts
11 and circumstances that indicate the existence of a fact. And
12 it is based on inference. There is no difference in weight
13 between those two types of evidence. Some cases have all
14 direct, some have all circumstantial, and some have a
15 combination of both.

16 One way I like to explain circumstantial evidence is --
17 analogy about -- we're just starting today, but all day long
18 we were here in this closed room and there are no windows.
19 If you see somebody walk inside and they have an umbrella and
20 they shake it and water droplets come off. If you see
21 somebody else come in with the rain jacket and then you kind
22 of just -- and then they're brushing off water droplets from
23 them. Somebody else comes in and their clothes are drenched
24 and their hair is matted to their head, all of those items
25 can lead you to believe that it likely rained recently. You

1 didn't see that rain, you can't look out the window, you
2 didn't see that sky. But all of those circumstances are --
3 allow you to decide and conclude that, in fact, it did rain.

4 Something I think is extremely important in this case
5 is the credibility of witnesses. The judge is going to
6 instruct you on this. The credibility of the witnesses is --
7 simply means believability. You can believe one witness over
8 many witnesses. You can believe many witnesses over one.
9 You can believe part of a witness's testimony and reject the
10 rest of it. Or you can -- or you can believe the entire
11 testimony of a witness.

12 It's also extremely important to consider any interest,
13 bias, prejudice, or other motive that somebody may have --
14 for stating what they did. I submit to you that if somebody
15 is related to a witness or a family member, or if somebody
16 has testimony that is about themselves that could benefit
17 themselves, those are things that -- that you should consider
18 in this case.

19 In this case, the Defendant, Courtney Richards is
20 charged with murder. Murder is the killing of another person
21 with malice aforethought. Seems pretty simple. It is short,
22 but there are some unusual sounding things in there. The
23 killing of another person. That is exactly what it sounds
24 like. But then there's malice aforethought. What is malice
25 aforethought?

1 Malice aforethought is hatred, ill will, or hostility
2 towards another person. That's it. It's the intentional
3 doing of a wrong flag without just cause or excuse and with
4 an intent to inflict an injury, or under circumstances that
5 the law will infer an evil intent. And it's not required to
6 exist for a particular time. You don't have to have that for
7 a day, for a week, for an hour, for five minutes even.

8 The next thing that the Defendant, Courtney Richards is
9 charged with is possession of a weapon during the commission
10 of a violent crime. That means that the Defendant was in
11 possession of a weapon. A weapon could be it -- it could be
12 a lot of things of that. And actual -- in this case, I
13 submit to you, is that a firearm means any pistol, which is
14 designed to expel projectiles that will be considered a
15 weapon.

16 And in this case -- as the murder -- as the judge will
17 instruct you, murder is classified under our statutes as a
18 violent crime. One of the things that is going to be brought
19 up to you by the Defense and throughout this trial will be
20 charged to you by the judge is self-defense. Self-defense is
21 something that if it is brought up, that it is up to me, it
22 is up to the State, to disprove self-defense.

23 Self-defense is like a table. I'm going to talk about
24 it here with four elements. I believe the Court will address
25 it with two and three together. I think it is clear to

1 explain it at least -- as four, as I said, the judge is the
2 judge of the law. Listen to what he's going to instruct you
3 on. Self-defense is a table.

4 There are four legs of a table. If one leg doesn't
5 work, if one leg is broken, if one leg is not there, it's not
6 a table anymore. So if any one of these are not there, then
7 you cannot find that the Defendant acted in self-defense. I
8 only need to disprove one of these. I don't need to disprove
9 2, 3, 4. Just one. If one of these is not there, then there
10 is no self-defense and the Defense's claim that there is
11 fails.

12 So the idea of this is there's -- the first one is
13 without fault. That is without fault in bringing on the
14 difficulty. And part of that is that if the conduct of the
15 Defendant is reason to be reasonably calculated to and then
16 did provoke a deadly assault, that the Defendant would be at
17 fault in bringing on the difficulty. And then, there is
18 imminent danger.

19 The longer version of that is that the -- that the
20 Defendant was actually in imminent danger of death or serious
21 bodily injury, or that he actually believed he was in
22 imminent danger. The next one -- which those two can be
23 paired together, it's kind of two parts. So, I guess I
24 should have known 2A and 2B is a reasonable person.

25 What a reasonably prudent man or woman of ordinary

1 firmness and courage also entertain that same belief of the
2 Defendants. And the last one, which I think is extremely
3 crucial -- I believe that first and fourth are the most
4 important, is that there is no other way that the Defendant
5 could have avoided that danger. It's also kind of known as a
6 duty to retreat.

7 The Defendant had to have no other way of avoiding the
8 danger. On February the 19th of 2022, it was a Saturday, it
9 was a regular day for Javon Thomas. He woke up at his
10 girlfriend's house on Hackemann in the Union Heights
11 neighborhood in North Charleston. As you heard throughout
12 this trial and you've seen many photos and seen videos, the
13 Union Heights neighborhood is a smaller neighborhood in the
14 south end of North Charleston.

15 It has very narrow one-way -- it has narrow one-way
16 streets and then there tend to be smaller houses that are
17 closer together and also very close to the road. Midday that
18 day, a little before 1:30, Antoniya and Javon decided to walk
19 to the neighborhood store to buy some snacks. They left her
20 house up there toward the center middle of the screen at
21 2018 Hackemann and they cut through the community playground.
22 They went down Arbutus, they went down Cosmopolitan, and then
23 they turned on to Comstock, headed to the store.

24 You heard testimony that they didn't stop or pass
25 anybody that whole way they were walking, until they got out

1 of Comstock. And they -- Niya and Javon, were starting to
2 walk down Comstock to the store for snacks.

3 The deliberate plan was already forming for this
4 Defendant, Courtney Richards. The Defendant was speeding his
5 grey Jeep Compass down Comstock. He decided to act. He --
6 as he approached Javon and Antoniya, he was speeding, tried
7 to hit him. Javon and Antoniya had to jump out of the way in
8 order to not be hit. And he did this to Javon just the day
9 before too.

10 Javon was frustrated. Understandably, he and his
11 girlfriend could have been killed by the Defendant. He also
12 remembered just the day before when this Defendant did the
13 exact same thing trying to get -- trying to take him out.
14 Javon and Antoniya then turned around on Comstock and they
15 were headed toward Cosmopolitan, re-tracing that path they
16 just took.

17 But what's the Defendant doing at this time? Well,
18 after almost hitting there, he kept speeding down Comstock --
19 and his Jeep and then he stopped. But the only place he
20 stopped that day, ever, on Comstock was way, way, way down
21 past where Javon and Antoniya were down in 2021 Comstock,
22 that is Jessica Duncan's house. He stopped at a place so far
23 down that road that he had the advantage.

24 He had the upper hand. It was a strategic decision.
25 Not only was he in a car and Javon is on foot, not only was

1 his car driving down the one-way street away -- speeding past
2 Javon and Antoniya, but he parked down there. He was poking,
3 he was prodding, he was trying to provoke Javon, trying to
4 get him to come down that street. Antoniya turned and she
5 started going down Cosmopolitan.

6 Javon kept walking up Comstock. He was walking and he
7 was talking. He had a long way to go if he was going to make
8 it all the way up to where the Defendant strategically placed
9 his car. But he was walking that way to try to figure out
10 this is two days in a row. And the Defendant's trying to hit
11 and kill him.

12 The Defendant is parked, the Defendant gets out of his
13 car. The Defendant grabs his gun from his car and the
14 Defendant shoots at Javon. Javon turns his body not to get
15 hit. He reaches back, pulls out his gun to protect himself.
16 Javon is trying to protect himself. He was just shot at.

17 All of this happened when Javon was shot at, it was
18 around 2010 Comstock the entire time that Javon is shooting.
19 Only after the Defendant tried to hit him the day before,
20 only after the Defendant tried to hit him that day. Only
21 after the Defendant tried to stop down the road, only after
22 the Defendant got out of the car, only after the Defendant
23 got out of the car with his gun. Only after the Defendant
24 shot at Javon. That's when Javon started shooting and he's
25 shooting and he's -- he's backing up. He's backing up and

1 he's shooting like this. He's not aiming. He's -- he's
2 backing up. He's scared, he's defending himself. He wants
3 to get the heck out of there.

4 He's trying to get back toward where Cosmopolitan was,
5 the closest street where he just passed that he could make a
6 turn and try to get away. That's what he was doing. Javon
7 stopped shooting by about 2006 Comstock. And then he started
8 to run. He turns completely around and runs away. He's not
9 firing and he's running fast. He's seeing if he could make
10 it to that corner, but he wasn't fast enough.

11 The moment he turned around, the Defendant started
12 shooting at Javon in the back. He was shooting at a fleeing
13 person. He was shooting at someone who was not shooting at
14 him and he hit and killed Javon by shooting in the back of
15 the head from possibly 230 feet away. That's about 70 yards.
16 That's about three quarters of a football field away. Javon
17 (inaudible) he was running away. Courtney Richards murdered
18 Javon Thomas.

19 The sounds are important. Does it sound like a gunshot
20 in the beginning or does it sound like some other noise while
21 a window is rolled up? Also, it's not just the sound that's
22 -- it is important, but it's also the volume of the sound
23 which could indicate how far away things are from where the
24 recording is taking place.

25 You hear the window go down. You hear a gunshot from

1 further away down Comstock, and then you hear six in quick
2 succession that are much, much louder and much -- much
3 closer. And then, you hear five more from further away.

4 (Video played.)

5 MS. LINDER: So that is the slowed down version. You
6 have all of these things you can review -- if you back there.
7 But I think also when you hear the gunshot -- Courtney shot
8 at Javon and then Javon shooting back to defend himself and
9 then Courtney shooting and killing Javon as he's running
10 away, listen to that echo. Listen to the echo that actual
11 gunshot makes.

12 And it's up to you to decide if there was any shotgun
13 done for the one you hear after the window rolls down. So
14 the sound and the picture matters. You're going to have a
15 clip of the shooting you -- live, clips of the shooting. You
16 could look at them all, you can look at none of them. That
17 is up to you during your deliberation. But what I urge you
18 to do is review all those still images and review the videos
19 that you're going to have in the jury room with you.

20 Things that I would urge you to take note of are how
21 far away the car is from Javon. Look at -- the door being
22 the passenger door is open part of the time. No one is ever
23 outside that door. Take note of 2010 Comstock, which is the
24 white house, which is the farthest that Javon ever walked --
25 walks.

1 And she told you how Javon Thomas was at the edge of the yard
2 in [REDACTED] Comstock. And about 60 feet away from him in front
3 of 2006 Comstock were five 9mm fired cartridge cases. So
4 Javon is on [REDACTED] and he does have his firearm next to him --
5 his black 9mm firearm, and then 60 feet away is in front of
6 2006 Comstock and you could see the houses, and you could see
7 which little pathway is there and whatnot.

8 And then I think this is also very important to
9 remember, remember that 2021 Comstock is the 911 caller
10 Jessica Duncan's house. The photo is the bottom left and it
11 coordinates to the red dot that the line was drawn to and so
12 on so forth. Jessica Duncan told you that the Defendant was
13 parked outside of her home at 2021 during the shooting.

14 Jodi Hunt testified that there were fired cartridge
15 cases that were all .45-caliber outside 2019 Comstock, which
16 is that green house just next door with the correlating dock.
17 Go back and look at these crime scene pictures. Look at
18 where those fired cartridge cases were located.

19 Look at where the houses -- and the addresses of those
20 houses in those pictures. I submit to you that Jodi told you
21 it was approximately 170 feet, which is about 60 yards
22 between 2019 Comstock and 2006 Comstock, which is the red
23 circle on the street, the open circle, and the yellow circle
24 on the street.

25 She said that was, "Approximately 170 yards." And then

1 going from the red circle to where Javon is at the very
2 corner, was approximately 230 feet. I think distances,
3 distances, distances, it's really important. If I walk into
4 a room with -- glance a crowd of people, I have no way -- I
5 could guesstimate how many, I would probably say 75, maybe
6 200. I have no idea.

7 So, I think it's extremely important that you pay
8 attention and consider these distances. All right. If -- if
9 Comstock is right there, just like the middle of the jury box
10 -- and I walked to here, this is 30 feet from 2006 Comstock
11 where you'll see on the video right now, firefighter's cases
12 according to the photos are right there. He ran double this
13 away, his back to the Defendant before his body fell to the
14 ground dead.

15 This is 30 feet, just imagine 170 feet. Again, I'm a
16 lawyer, not a mathematician but I submit to you it is five or
17 six times this distance in order to get from where the
18 Defendant parked his car outside 2021 Comstock all the way
19 down the street to where Javon was. It's extremely important
20 to remember that. So in front of 2019 Comstock, which is
21 that green house, there were five fired cartridge,
22 five .45 caliber fired cartridge cases.

23 Due to the nature of the call, first responders
24 including fire came rushing to the scene. They drove through
25 the scene all before crime scene tech, Jodi Hunt could get

1 there to document it. They did that because they heard there
2 was a shooting, they were trying to save the wife. You can
3 also see in this picture -- in many of the other photos that
4 you will have back there, the crime scene tape is up.

5 The crime scene tape is up pretty much along the street
6 and Jodi testified that she searched the area that was within
7 the crime scene tape. She wasn't wandering off in yards
8 looking at whatever. And listen, we all agree actually that
9 there are more shots than fired cartridge cases. You see
10 Javon shoot six, Jodi finds five. We all agree that we're
11 missing the few.

12 That, ladies and gentlemen, I submit to you is due to
13 first responders trying to save Javon's life and the crime
14 scene take being for the streets. You heard from
15 Dr. Presnell -- this goes to that killing of Javon you heard
16 from Dr. Presnell. She conducted the autopsy on
17 Javon Thomas. Javon Thomas was only 18 years old. He was
18 5'8 and 148 pounds.

19 And I will not tell you the difference there. She
20 testified that Javon died to a single penetrating gunshot
21 wound to the back of the head. She described where it came
22 in the back of his head and I can't say all the language.
23 She does talk about the brainstem, and going through the
24 brain, and through the skull, and then it got out of the
25 skull and stopped here at the parental -- at the parental

1 scalp.

2 She was able to recover that. And then she submitted
3 that projectile to evidence. On February the 24th, which is
4 five days after this murder happened, the Defendant was
5 arrested. You heard from Sam Souther who works for
6 North Charleston, who is part of task force with US Marshal
7 services. He serves high-risk warrants. He conducted
8 surveillance he did until background work. He conducted
9 surveillance that morning on the Defendant and Emonie's home
10 in Summerville.

11 And then he saw the Defendant get into that same Jeep,
12 followed it when the Jeep stopped, they were able to take the
13 Defendant into custody for those two arrest warrants. He
14 sees the Defendants' blue iPhone which is now in evidence and
15 he submitted that to evidence. Jodi was able to, later, do a
16 search warrant because that Jeep was towed to -- to the
17 warehouse in order to have a search pursuant to a search
18 warrant.

19 About six months later, September 16, 2022, you heard
20 from Sergeant Rissanen, he conducted a lawful traffic stop,
21 pulled over a car in the Lincolntonville area of Charleston.
22 And during that stop he seized two firearms including a
23 .45 caliber Glock handgun that had an extended clip that
24 holds 26 rounds. He explained to you the different parts of
25 the firearm: The integrated rails, the frame, he explained

1 all of that to you.

2 And it -- I didn't understand very much, but he said
3 that the integrated rails could mean that a -- there are
4 accurate modifications, like, a laser side or a flashlight or
5 things like that. The Defendant was not at that traffic stop
6 and he told -- he sold the gun \$200 -- \$250. Well, I don't
7 really remember who I sold it to.

8 But he had already sold that gun. Rissanen had
9 submitted everything to evidence as he spoke to a law
10 enforcement -- entered all the information to a database that
11 is shared among law enforcement federally and the state.

12 You also heard from Michelle Eichenmiller from SLED.
13 She said, "She compared the fired cartridge cases -- the
14 .45 fired cartridge cases that were located in front of 2019
15 Comstock to the firearm that Sergeant Rissanen got at that
16 traffic stop." And she also compared the projectile that was
17 recovered from Javon to that firearm. She told you that,
18 "All the fired cartridge cases were fired from the same
19 firearm."

20 She told you, "That firearm is this firearm that was
21 recovered after the Defendant sold it to somebody." She told
22 you, "The projectile that you perform --" she can only tell
23 you the caliber, but she couldn't match it to the exact gun.
24 However, that is -- that item is not truly in dispute. I
25 think what is so -- so -- so important is to talk about

1 witness testimony.

2 That's what you've been listening to for the past
3 couple of days. It's important to talk about the differing
4 witness testimony. You need to think about each witness's
5 credibility and biases, and how the information is viewed in
6 conjunction with the other evidence in this case.

7 Detective Butler explained to you that, "She and her team,
8 when they go out, they have to assess who are actual
9 eyewitnesses and who are kind of looking loose."

10 Who are those people who kind of come up later or just
11 kind of hear -- were on the street and then they attempt to
12 interview everybody who are eyewitnesses? She also told you
13 who law enforcement was able to interview and who law
14 enforcement was not able to interview despite her multiple
15 attempts. So the people you heard from during the course of
16 this trial, this image is just to try to show you the red
17 dots or where people were.

18 So, you were able to hear from Jessica Duncan at
19 2021 Comstock, which is -- I'm going left to right, which is
20 the bottom left. You were able then to hear -- there's not
21 the right order at -- at Comstock, Cosmopolitan,
22 Antoniya Singleton. She's the next one -- I'm sorry,
23 Evette Burgess is the next one who is in the house in
24 [REDACTED] Comstock.

25 And then on that street just to the right of that,

1 that's Antoniya Singleton. And then, you've got
2 Abigail and Monique Perry who are sitting in the church
3 parking lot right there. So, you heard from all of these
4 people and then you also were able to hear from the -- from
5 the Defendant's prior sworn testimony who was put forth here.
6 Jessica Duncan doesn't know anybody involved.

7 Monique and Abigail Perry don't know anybody involved.
8 Antoniya Singleton was dating Javon Thomas, Evette Burgess,
9 her daughter is dating the Defendant and the Defendant is
10 sitting here on trial. So think about those biases. Think
11 about that when you weigh what they actually said. So, I
12 think it's important to kind of compare a certain point --
13 long story as far as who said what.

14 So let's talk about -- what if anything happened on
15 Comstock before Cosmopolitan. Monique Perry told you,
16 "They're -- they're coming up Cosmopolitan, facing the
17 intersection." They -- they see all this stuff. No grey
18 car, they don't see a grey car -- they don't see a grey car
19 over here. They don't see a grey car in front of the house.
20 They don't see a grey car anywhere. No grey car.

21 They also see no person in the yard of [REDACTED] Comstock
22 and Javon and Antoniya are near 1996, which is on that
23 mailbox on the one-story house closest to us in this image.
24 Abigail Perry told you the same thing. Coming up
25 Cosmopolitan, you know, they both kind of with the illegal

1 turn down Comstock to get into that parking lot. No grey
2 car, no person in the yard of [REDACTED] in that house.

3 Javon and Antoniya in 1996. There's -- they're
4 actually, like, kind of off the road about -- off, like, on
5 the steps I believe is what the testimony was. And then you
6 hear Antoniya, she said they were walking to the store. She
7 said that as they're walking to the store that the Defendant
8 was speeding by his grey Jeep. Then he tried to hit the two
9 of them. They had jumped off the street to avoid being hit.

10 Let's think about what other people said about this.
11 You hear -- you listen to the Defendant's prior sworn
12 testimony. He was approaching the stop sign, driving slowly
13 and then the girls began to bicker. He was unable to hear
14 anything five feet away from him. And Javon had his front --
15 his hand on the front waistband and then he slowly drove away
16 down Comstock.

17 Then you hear Evette Burgess, and she said, "She heard
18 a car zoom by the house" and I think the sound was made also.
19 She heard the car zoom by her house and then she came
20 outside, but only after that car had already passed. I think
21 it's also important to talk about what happened in traveling
22 up Comstock. So in traveling up Comstock, Monique Perry said
23 that, "Antoniya did not go past that corner."

24 That corner of Cosmopolitan and Comstock, that Javon
25 was talking and she was -- he was gesturing with his hands as

1 they're crossing over all that area before the video picked
2 up. She said, "No gun, no gun in Javon's hands."
3 Abigail Perry said, "Antoniya did not go past the corner."
4 She also told you that Antoniya started walking up
5 Cosmopolitan.

6 She said that, "Javon was arguing." And then, she said
7 that, "He was walking down Comstock and there was no gun in
8 Javon's hands." They are right there. They are watching
9 this, you know, nobody else on the streets, no other cars
10 going around. They're watching. And then we have Antoniya,
11 she says, "No gun in Javon's hands." And she tells you, "She
12 turns down Cosmopolitan."

13 You need to see how what people say they line up. They
14 don't line up. Do these people know each other? Are they
15 interested? Do they have any self-interest or any other
16 interest in saying what they're saying? Then you hear
17 Jessica Duncan. Jessica Duncan says that, "The Jeep stopped
18 at 2021 Comstock." There's a female inside the car. The
19 Defendant was outside the car.

20 And if you look at the video, Javon walks until
21 2010 Comstock, that's where he is walking. You don't see a
22 gun in Javon's hand. The Jeep door is open, there's no
23 person outside of the passenger side. And the Jeep is way
24 further down Comstock than 2010. Why I bring that up?
25 Because Evette says, "She's standing in her front yard at

1 this time."

2 And Evette -- you know, the Defendant's girlfriend's
3 mother and says that, "Javon walked past her house." She
4 testified that she saw a gun in his right pocket, not
5 private. She said, "It was in the right pocket and she kind
6 of gestured up there and said it is, like, he was holding
7 onto a clip like with an elbow out." So I mean, I'm -- I'm
8 seeing any of this happening.

9 So she -- she gives that version that is in his pocket
10 holding it. And then she gives this statement that -- well,
11 what Javon is yelling about. The Defendant's prior testimony
12 says, "Oh, he stopped." And -- and during that you can find
13 here -- is it here? Is it here? Is it here? Okay. So it's
14 2009, 2010. He says he stopped. The place he stopped was
15 2009, 2010.

16 This is the block he is super familiar with. His
17 girlfriend's mama lives right there. He knows. And when my
18 -- when -- when going down the street, he knows where these
19 things are. He says, "He stopped 2009, 2010," which is where
20 that red star is. And he says he stops, "Because Emonie gets
21 out of the car." "Emonie wants to confront Antoniya" is,
22 what he says.

23 She wants to confront him -- pregnant, the four-month
24 pregnant girlfriend decided it's a wise idea to get out of
25 the car, okay? So he blames her. Emonie is trying to get

1 out, so I had to stop the car. I had to hit my brakes at
2 that point because if she got out of the -- she got out of
3 the car, it's still moving. And then -- and at that point he
4 says that, "Javon was walking down the street with his gun"
5 and then he testified not just in the, "Yes, yes, correct,
6 correct."

7 But he testified that Javon was yelling, "Do something,
8 do something." So they can't even get the right phrase.
9 Like, what is he saying? What does he say? Does he have the
10 gun out? Is it gun in his pocket? They -- they can't even
11 get the story straight. Then the shooting begins. And the
12 shooting beginning, got a lot of perspectives here. So
13 Monique Perry says, "Javon has nothing in his hands." Javon
14 is walking down the street.

15 The first shot is heard from a distance. Then she
16 says, "Javon pulls his gun out and returns fire." Abigail
17 Perry, the same thing. Javon has nothing in his hands. He's
18 walking down the street. The first shot is heard from a
19 distance. I think Abigail testified that he quickly pulled
20 his gun out and returns fire. Jessica Duncan said, "The grey
21 Jeep is all in the street" at 2021 Comstock -- female is
22 sitting in that passenger seat.

23 The Defendant got out of the car and she talked to you
24 about just how close everything was and said, "They were only
25 a few feet away." That female is sitting inside that car.

1 Now, in the video -- when Javon is close to 2010 Comstock,
2 you hear that loud echo gunshot and that's when it changes.
3 I submit to you, that's the first shot. He turns. He's
4 like, "Oh my God, this guy just shot at me."

5 Javon was surprised because he can't see that far down
6 the road. Javon can't see if -- if he has a gun or not. He
7 just sees the car stop and he sees the guys out. He -- Javon
8 has no idea. He's going down the road and then, "Oh my God.
9 Stop. Turn." You see an arm, kind of go back and then
10 immediately he's doing this. You don't see when the -- when
11 the shot goes, you don't see Javon raise his arm. You don't
12 see Javon go to the front and raise his arm. He's -- he's --
13 he's bending, grabbing, shooting back to save or try to save
14 himself. And then Javon begins to return fire. Look at that
15 crime scene. Think about that distance. Look at all those
16 items. 2019 Comstock 2006 Comstock is approximately 170
17 feet. Again, not a math person. If this was 30 feet and
18 that's 170 feet, think about it.

19 But now let's talk about what else you hear. Evette,
20 you heard from her yesterday afternoon. She says that,
21 "Javon was just past her property line." She talks about
22 little, little further, little further, little further, and
23 this out kept moving her finger along and she said right
24 where that lady was. That star is right where that lady is,
25 right? I covered her up a little bit with that.

1 So -- so it's -- that's just set the edge of her
2 property. Evette has Javon -- first of all, she said, "Javon
3 shot first," more than once in her testimony. All she was
4 trying to help is for Richards. But the truth is what helps.
5 She said, "Javon shall first on more than one occasion." And
6 she said that, "Javon was just past her property line," right
7 where that lady was.

8 And as soon as that happens, you know, she's in her
9 yard for all of this. She was very, no -- I'm not the second
10 -- first step. It's the second step. So she was not on her
11 screen porch, not inside of her house -- not on her screen
12 porch. But she was with the sky above her outside and then
13 she runs into her home. Because she had a one-year-old in
14 there. That's what she testified to.

15 Then the Defendant -- so you know again, what his prior
16 testimony that he listened to -- that the Jeep was parked
17 outside 2009 -- 2010 Comstock, that Emonie was outside of the
18 car. He also testified that he sees the gun in Javon's hand.
19 That he shoots one round into the ground and then he shot --
20 he shoots one round at Javon in Javon's direction. But he
21 knew that shot.

22 He -- he said -- he testified in that prior sworn
23 statement that he knew that his shot at Javon wouldn't hit
24 him -- wouldn't have hit him. Really? Are you shot here?
25 You lose it -- use a laser site on your gun. That's how you

1 know. All Javon knows from that far away is someone is
2 trying to kill me. I need to defend myself. I need to back
3 up. So let's talk about the shooting.

4 So again, Monique Perry -- she said, "The first shot
5 came from a distance." Javon quickly pulls his gun out and
6 turns fire. Javon backing up, Javon turns around, Javon
7 runs, Javon flexes. Abigail says same thing. First shot
8 came from a distance coming down this way. Javon quickly
9 pulls his gun out and turns fire. He is backing up and turns
10 around. He runs away. He collapses.

11 Jessica Duncan said, "Jeep is on the street."
12 2021 Comstock. There is a female passenger in the car. She
13 locks eyes of the Defendant. She told you that. And then
14 she saw the Defendant shoot down Comstock. As far as the
15 video, you see Javon walking backwards. You see he's walking
16 and then when he does have his gun out, it is up. It is been
17 sideways and he's walking backwards the entire time.

18 The entire time Javon is shooting, he is going
19 backwards. He is never advancing forward. When he is
20 shooting his gun, he's going from 2010 to 2006. Javon puts
21 his -- and then Javon puts his arm with the gun down around
22 2006, which is the bottom picture. The passenger door is
23 closed. The door is closed. Emonie -- he's not outside.
24 The door is closed.

25 And then the video switches to Zion, but pay attention

1 to the volume of the gunshots. And then you see Javon on the
2 ground and as he's driving away, you see Zion calling. Then
3 look at the crime scene again. 230, 2019 to [REDACTED] 170, 2019
4 to 2006 60 feet. Twice. This from where -- from this close
5 to bottom picture -- the closest house. That's 2006. Arm is
6 not up shooting, arm is down there to where he died 60 feet.
7 Twice that.

8 What did Evette tell you? Well, she was inside her
9 house. She ran inside after she saw shoot first. So she
10 didn't -- she doesn't know. What did the Defendants say? He
11 said, "He shot the moment," his words, after Javon stopped.
12 He said -- he -- he said, "Javon was running away." He said
13 that, "He fired Javon back." He said that, "Emonie was
14 outside of the car."

15 He said that, "Emonie scurried behind the door when --
16 when Mr. McGuire asked him in his prior sworn testimony,"
17 Mr. McGuire asked him where Emonie was and she scurried
18 behind the door. "He couldn't leave her in the roadway," was
19 another thing that he said. And the Defendant testified that
20 he took -- hit Javon his first shot. Then he shot three more
21 times.

22 So what happened after the shooting? After the
23 shooting, Monique Perry, she stayed on the scene. She gave a
24 statement to law enforcement. Abigail Perry stayed on the
25 scene, gave a statement to law enforcement. Jessica Duncan

1 called 911, gave a statement to law enforcement.
2 Antoniya Singleton, she went to Javon who was on the ground.
3 She attempted to call 911. She gave a statement to law
4 enforcement and she made an identification to law
5 enforcement. The video -- nobody is in the -- these are
6 stills from the video. Nobody's in the yard at [REDACTED] Comstock
7 -- Javon's on the ground. And there you see Antoniya on
8 Cosmopolitan -- there she is coming back.

9 After the shooting, Evette Burgess does not call 911,
10 does not give a statement to law enforcement. The Defendant
11 that day fled the scene. The Defendant did not call 911 that
12 day. He did not speak to law enforcement that day. Sold his
13 gun and then he started sending a bunch of text messages. So
14 let's look at these text messages. February 20th, you heard
15 from Detective Butler they did a search warrant on his phone
16 and I think the timeline of these texts are important.

17 The tone changes. So consider the tone with other
18 items and pieces of evidence in this case, when you look at
19 these. February 20, 2022, which is one day after the murder,
20 this is two days after one known car attempt on Javon's life
21 one. And then this is one day after the car attempt putting
22 himself in an advantageous location way down the street where
23 no one could really see anything.

24 He got off one shot and missed Javon and then he waited
25 for Javon to turn around and run away before he sat there and

1 killed him. But he starting to think he was going to get --
2 found out that he might get caught for murdering Javon. So
3 he sends text to Kevin, "One more thing. Whatever you do,
4 can you try to keep everybody from talking about it just so
5 he can die down." Doesn't want to be caught.

6 This is same -- the day of the murder still. More text
7 messages. This is him talking to Emonie, love of my life.
8 "I'm talking to Josh now. He's saying I should be good as
9 long as I ain't touched no shells -- the day. If they wanted
10 you, they would've found you. Trust me, we good. Everything
11 will pass over. I guarantee you." He's worried about
12 leaving evidence on the scene. He's worried that if he
13 touched those shells, his fingerprints are going to be there
14 and he's going to be caught for rot lung. Josh said, "They
15 have 48 hours to find a leave before they move on to the next
16 thing." Next text. They just have to find a motive on who
17 did it or whatever within 48 hours. Next, just like
18 "The First 48" TV show. You would think I would watch that
19 with my job? I don't.

20 But I'm glad that Josh does and he's advising the
21 Defendant on what to do. This is the day after. So he's
22 real stressed for this 48-hour timeline here. This is two
23 days after the murder. That 48 hours is approaching quick.
24 He starts texting Zion. Defendant realizes that Zion is the
25 only Defendant (inaudible). First text, "I -- keep making

1 sure that video ain't getting passed around bruh fr." For
2 real. Next one, "Tired of people coming to me saying it's a
3 video."

4 Pretty ticked off. "Man, that will get me booked bruh.
5 Everybody got the video." He's concerned he is going to get
6 arrested for murder. And here's the video. Wasn't bad. He
7 wouldn't be so concerned, but he says, "That will get me
8 booked." He's going to get booked -- he's going to get
9 arrested. Then he keeps on texting Zion. And you -- look at
10 these times, 9:55 and seven seconds.

11 9:55, 31 seconds, 10 minutes -- 10:00 and 44 seconds.

12 10:01:48, 10:01:54. I mean, he is blowing up his phone.

13 "Bruh, I need to report everybody who got that shit bruh and
14 you need to talk to that girl. You should have never posted
15 that period bruh or gone live. That's why everybody getting
16 it, you know you need to cut them off or, or something
17 because that video can fuck you up and that ain't no real
18 shit."

19 Still texting, still that same day, still within that
20 48-hour window. "You're right by what you said, just don't
21 trip, just delete your pages right now." Next one, "Just
22 delete your pages man. So it won't be nothing. So it won't
23 be nothing. Nobody's trying to come look for them." He --
24 he's mad to tick off is tell him get -- get down. Then he
25 texted Big J, two days after this -- this is after -- after

1 -- look at the time, this is after he texted Zion, "Delete."

2 Next one, "I already told bruh to delete it." Next
3 one, "And I got on him about it." You sure did. Because we
4 saw the texts. This is three days after the murder. This is
5 February 22nd. He's texted Big J. "He just told me, changed
6 my number and I -- I just did that and to move light," okay?
7 So he just has to move light. Why? Why are you moving
8 light? You nervous about something?

9 A little nervous because you just killed Javon? You
10 just murdered him? Then he texted, "Yeah, my number will pop
11 up soon. It's processing, but it's" -- and then he says the
12 number and then he's trying to confirm, "Is it showing?" So
13 what I think is important is -- that what happens is he is
14 caught despite his text messages -- despite worrying about
15 the prints on the shells.

16 Despite all this, he is caught. People tell the truth,
17 the video comes out and the Defendant is rightfully charged
18 murder and possession of a firearm during commission of a
19 violent crime. I'm going to very briefly take you through
20 how I believe the law applies in this case and it applies to
21 this case and the facts of the case and specifically the
22 self-defense. This is 1, 2A, B, and 3. Any one of these
23 don't work, done. No self-defense lies.

24 So the entire story -- well, the first one, about
25 (inaudible) bringing on the difficulty. The Defendant's

1 entire story of that altercation -- Comstock before the stop
2 sign with his responsible driving, it is refuted by everyone
3 else's testimony. Even his Defendants were provided. It is
4 refuted by all of the testimony. So I submit to you that the
5 difficulty was him first speeding by trying to hit Javon.

6 So he fails to stop -- go move on, no self-defense.
7 You know what? If you need a little more -- which I don't
8 think you do, he stopped the car way down there to have that
9 track full advantage. He out of his car. It's another
10 difficulty. He got out -- with his gun and he fired his gun
11 at Javon. I think that any of those -- I don't even need
12 more than one. Those are maybe something that you think of.

13 There's another one, you brought on the difficulty. So
14 I think you just stop it there and I'd like to go through
15 these other ones really quick. So then, the next one is
16 self-defense. This is the long one, which I guess would be
17 more like 2A. He's actually in imminent danger of death or
18 he actually believed he was in imminent danger for death.

19 So as far as believed in danger of death, the Defense
20 is also going to talk about cuts of others. So in looking at
21 what happened, if he believed he was in danger of death or
22 Emonie thought she was potentially in danger of death,
23 according to him, she got out of the car -- she got out of
24 the car, she would have words with Antoniya -- she got out of
25 the car, she did want to have words with Antoniya.

1 Now, we know that she didn't get out of the car and we
2 know that Antoniya is down Cosmopolitan. But even according
3 to him, the behavior doesn't line up with what the actual
4 elements of self-defense are. He claims that there is a
5 bunch of prior things that happened. The Defense claims --
6 and there are prior things that have happened, but the only
7 person who testified about that was the Defendant's prior
8 sworn statement.

9 Evette testified that she did not know Javon. She
10 didn't know him. She can't fair -- nothing -- she -- she
11 didn't know him. And I think it's important for you to
12 remember -- and the judge told you at the beginning of this
13 trial, while we all love hearing ourselves talk with lawyers,
14 the questions we ask the witnesses, that's not evidence, the
15 answers the witnesses give you is evidence. It's not what we
16 say it is -- what you hear from that stand, not us all
17 sitting out here.

18 And so, I think it is important because if you think
19 about the answers who answered affirmatively to you, when
20 asked about all these prior difficulties, the only person who
21 answered that -- who said, "Yeah, they had problems. Yeah,
22 hand on the gun. Yeah. Always threatening me." That didn't
23 know him.

24 Antoniya said, "I -- I haven't seen him pull that gun.
25 I didn't see him have his hand on there for all this. I

1 didn't see -- I have not seen the two of them get in. I
2 don't know what's going about."

3 He's the only guy. And again, that goes back to who
4 has self-interest in that story. You don't have to believe
5 it -- you don't have to believe the Defendant. He's the one
6 person who benefits from all of his lies that he's trying to
7 sell you. So then also he claims to have seen a small gun
8 from far away. He's a 170 -- 230 feet away from the -- from
9 Javon and he claims to have seen a gun, black sweatpants,
10 black gun, medium to dark skin.

11 And Courtney's driving down the street and gets out of
12 the driver's side and is looking back. Javon is way over on
13 the other side of the street a thousand times his distance.
14 And he's saying he sees this gun on this side of his body,
15 skin, sweatpants, gun color. He doesn't see it. He doesn't
16 see a gun. He can't see a gun. You hear a gun. That, "Oh
17 yeah, I mean he had a gun in his pocket." He had a gun in
18 his pocket and his arm was bent that -- that's just kind of
19 out there. She was trying to help. I appreciate that. But
20 I mean his entire story about why he stopped, why he got out,
21 why he started shooting, why he shot the victim after --
22 after Javon had already turned and was running away was that
23 Emonie was outside -- blamed her.

24 Well, she's why I say I was trying to protect her. No.
25 Emonie never talked to the law enforcement and she didn't

1 even testify for you -- for you to be able to consider any of
2 that. Nothing backs up what the Defendant is saying about
3 that. And actually, the video refutes what he's saying and
4 what he claims in his prior sworn testimony. Would agree at
5 least to the 2A, would have reasonably prudent man or woman
6 of ordinary firmness and courage have entertained the same
7 belief. Again, kind of the same idea.

8 This isn't -- this isn't with the slant of his story,
9 but with this -- is just with a reasonable person standard.
10 Middle of the day -- everyone raises the middle of the day --
11 everyone agrees to Javon and Antoniya walking together.
12 Everyone sees Javon was wearing sweatpants and you know all
13 of these items when a reasonable -- reasonably prudent man or
14 woman of ordinary firmness and courage have entertained the
15 same belief.

16 And if not, again, fails to meet it. Self-defense
17 doesn't -- I still hold that he -- he brought about that he
18 was part of bringing out -- difficulty may get this. The
19 last portion that I'm going to address with you is no other
20 way to avoid the danger, which is also known as the duty to
21 retreat. This is really important. Did the Defendant have a
22 way to avoid danger? Well, he could go down the street.
23 Actually, he was driving down the street. He could have
24 driven down the street without trying to hit Javon, right?

25 MR. MCGUIRE: Judge, I hate to interrupt. But to

1 preserve this matter, I would have to object that there would
2 -- our position is there's no duty to retreat under
3 South Carolina Law. I want to preserve that for the record.

4 THE COURT: All right. Thank you.

5 MS. LINDER: And as the judge will instruct you, there
6 is a duty to retreat, and the Defendant had to have no other
7 way. Not no easy way to avoid it. No other way to avoid
8 this danger. He could have driven down the street without
9 trying to hit Javon. He could have continued to drive down
10 the street after he was past Cosmopolitan -- after he was
11 past Emonie's mom's house.

12 After he was already there, he could have kept driving.
13 Nothing would have happened. Javon was on foot, he was in a
14 car. All of this could have been avoided. All of this could
15 have been avoided. But for the Defendant making these
16 deliberate decisions time after time, after time. It is the
17 State's position that the Defendant has absolutely committed
18 murder of Javon Thomas.

19 And he possessed a weapon in commission of that violent
20 crime. It is also our position with that, that the Defendant
21 should not be entitled to self-defense in your deliberations
22 as he did not meet all -- every single one of those
23 requirements that's needed in order to be given self-defense.
24 Thank you very much.

25 THE COURT: Mr. McGuire?

1 MR. MCGUIRE: What if Javon Thomas was successful that
2 day? What if his bullets would've hit the intended targets?
3 What would -- what would that scene look like if he got the
4 job done that he was trying to do? Remember he was trying to
5 kill Courtney, kill Emonie. That scene would have Courtney
6 dead lying on the ground, the fallen protector, his pregnant
7 girlfriend. Emonie dead on the other side of the car, her
8 unborn child also die.

9 Javon would've been charged with murder and my
10 colleagues would have prosecuted that case.
11 Courtney Richards is guilty of surviving. And not calling
12 the police, that's what he's guilty of. Those text messages.
13 They didn't talk to you about the ones that showed that
14 Courtney was thinking about going to the police.

15 He texts his dad, "Pops, I don't know what to do.
16 What should I do?" Ours' are in black, they're different
17 color. You'll have them back there. You can read it. But
18 it says, "Pops, what should I do." As evidence, if he's
19 thinking about turning himself in, he tells his dad, "I've
20 thought about it, prayed about it. I've been with God. God
21 knows I did what I had to do to protect Emonie, protect me."

22 That text message is over there, you'll be able to read
23 it back there. Javon is scary "AF," that's how Courtney
24 thinks about Javon based on his behavior. Always flushing
25 out his gun, giving hard stares. Courtney doesn't say, "That

1 boy bothers me, I'm going go -- I'm going to kill him. Take
2 care of him." No one -- he says, "Javon is scary
3 (inaudible)." Because Courtney is scared of him.

4 Javon Thomas tried to get Courtney, tried to kill him,
5 didn't get him. He's hoping you'll join him. Join
6 Javon Thomas. He's got one more bullet in his gun from the
7 grave and he is hoping you fired with the verdict of guilty
8 and you get him and you finished Javon Thomas's job. That's
9 what he's hoping. He hopes you'll see things the way
10 Javon Thomas sees them. See things the way his world is.

11 Disregard the judge's law apply Javon Thomas's law. In
12 Javon Thomas's world, he's allowed to try to kill people and
13 nobody has the right to defend themselves. Defend a pregnant
14 girl. In his world -- if you have a second, you're supposed
15 to reevaluate the situation, conduct a refined analysis, and
16 decide not to fight or save your own life and your
17 girlfriend's life.

18 That's Javon Thomas's world. That's the law he wants
19 you to apply. He wants you to join his murderous team.
20 Believe his agent who still walks the earth and
21 Niya Singleton. Believe her ridiculous story and fire that
22 one last bullet at Courtney. He wants you to get him. Don't
23 do it. Listen to the judge's law. Apply the real law match
24 on Thomas's law. Look at the video with your -- your eyes
25 and your ears.

1 See reality. See the world for what -- what it is.
2 What was captured on that video. You should common sense
3 respond. Javon Thomas wants you to park your intelligence
4 and your common sense outside that door. And believe Niya's
5 ridiculous story. This is where I wish we could have a
6 conversation. And I -- I'm not -- I'm just unfortunately
7 limited to talking to you. I can't talk with you.

8 This is the part where I wish I could just ask you.
9 Does anybody believe Niya Singleton? And you all all say
10 nope. And I'd move right past her. But I can't do that. I
11 have to address all these issues. Niya Singleton --
12 Singleton's ridiculous story is that Courtney sees them on
13 the road and in a murderous rage tries to kill them with his
14 car. And despite church going on and all these people out
15 there, nobody sees that.

16 That he tries to commit murder with an automobile and
17 nobody sees it. And then if you believe Niya, he decides to
18 park his car down the street to finish the job. "Dang. God.
19 Darn it. I missed him with my car. I did not kill them with
20 my automobile. I need to park it so I can finish the job."
21 That's crazy. Why do we know that's crazy? Because
22 Javon Thomas is the one who's got the beef, got the anger,
23 got the gun, got the attitude, moron, dangerous, hostile.

24 You hear on that video in the first second, "Shoot that
25 gun." N word. "Use it." N word. It's hard to hear. But

1 that's definitely coming from Javon. But what does that
2 mean? That means Courtney did what he told you. He went --
3 when the mighty pops out of the car and he can't drive away,
4 he does get out and he gets his gun, and he goes to the back,
5 and he shows it to Javon in hopes that Javon would back off.

6 "I see, you have the gun, all right, I'm going to turn
7 around. I'm going to chill out. I'm not going to bring my
8 battle to you, my gun to you and try to kill you."

9 Unfortunately, Javon doesn't take the warning. He doesn't
10 take the hint. "Let's just go ahead and turn around here,
11 Javon." So what does that mean? When he's yelling, "Use
12 it." N word, "Shoot it." N word. That means Courtney is
13 not using that gun.

14 Does that make sense? With Niya's statement -- I mean
15 Niya's version, Javon Thomas's version is tried to kill him
16 with the car and then park it so he could finish the job and
17 -- but we know what reality is. It's captured in that video.
18 Reality is Courtney goes to the back of the car with the gun
19 and he does not use it. Right there, you know, Niya's line,
20 you know, that theory doesn't hold up. That is baloney.

21 He's at the back of the car, he has a gun, he's not
22 using it. If he was parked and finished the job, you would
23 see park, pop out, boom, boom, boom. Is that what happened?
24 No. If that's what Niya wants you to believe -- her story.
25 It had popped out and she finished the job by shooting. So

1 we knew she was lying.

2 And then you hear the pop, softer pop, window, the car,
3 the filmer, it's got this window up and you hear the pop.
4 They are prepared to die on the hill. And that is not a
5 gunshot. That's their position. That's -- that pop is not a
6 gunshot.

7 Please use your ears. Please use your eyes. My ears
8 are not as good as they once were. My eyes are not as good
9 as they once were, but I got ears enough to hear a gunshot --
10 a warning shot fired by Courtney in the ground.

11 How do we know it's not a shot at Javon? How do we
12 know it's a warning shot? Because Javon keeps coming. First
13 -- second, you see Javon. "Use it." N word. "Shoot it.
14 Shoot that gun." N word. And he is walking like this.
15 After Evette saw him take his gun out and say, "I'm going to
16 wet this shit out." Walked right by her house, walking down
17 the street with his arm close to his body.

18 You hear the warning shot, pop. Keeps coming, keeps
19 coming. I say you notice the warning shot. If he saw that
20 shot pointed to him, sure he would've done something.
21 Fledge. Stop. But Courtney looking at him, "Oh, he's not
22 afraid of that." He's just not afraid. He's one tough guy.
23 Scary AF. That's who he is. Courtney ups the warning. Let
24 me ask you this.

25 We -- we're -- you're -- you have conversation. You're

1 going to know beyond any doubt that was a warning shot.
2 You're going to hear pop, it's going to sound like a gunshot.
3 You're going to see Javon advancing with his gun close to his
4 body. "Use it." N word. Scary AF. You're going to know
5 that's a warning shot. Again, Niya wants you -- Javon Thomas
6 wants you to park your intelligence out there.

7 Close your ears and ignore reality (inaudible) video.
8 You're going to know beyond any doubt that pop is a gunshot.
9 And it was a warning shot. Because Javon's behavior doesn't
10 change. He doesn't stop. He doesn't slow down. He doesn't
11 do anything. He is not afraid. He's scared AF.

12 What's the -- what does that mean to fire a warning
13 shot at the ground? In the history of firearms -- in the
14 history of man, somebody fires a warning shot and you come at
15 him, it means one thing. Stop. Turn around. Don't -- don't
16 come -- don't come any further. Is there any other
17 explanation? No. Yeah, that was Courtney. That was
18 Courtney out there on Comstock. That was Courtney saying, "I
19 don't want it to (inaudible), I don't want you fight. I
20 don't want your anger. I don't want this quarrel. Turn
21 around."

22 That's the universal meaning of a warning shot. There
23 is no other explanation that was "his plea on that street did
24 Javon to leave him alone." Go away. And Javon doesn't. In
25 Javon Thomas' world where he moves around scary AF with his

1 gun on his body right here with his arm close to his body and
2 look at the video -- his arm -- left arm's swinging like
3 this. He's walking fast.

4 This arm right here. He's got that gun. He's got that
5 gun. He's not afraid of a long shot. Pointing up is the
6 game. Puts another one in the ground (inaudible) general
7 direction to say, "Please, I mean business don't come, don't
8 come any further. Don't come. I don't want this fight." He
9 keeps coming and he draws like that. All he does is -- just
10 like he flushes and he brings his gun up.

11 He's not fishing around in saggy pants. He's not
12 (inaudible) trying to find a gun behind his back. No, this
13 is what he does. Switches, comes up and he trains down on
14 body. He trains down Courtney; he fires and he tries to kill
15 them. In Javon Thomas's world, he's allowed to do that and
16 know is allowed to defend. He wants you to join his frame of
17 vibe when it comes to the law of reality.

18 He thinks he can just shoot and try to kill somebody.
19 And that person is not allowed to defend themselves. That's
20 his world. I'm Javon Thomas, come down here. I want to kill
21 you. I want to yell at you. "Use it. Use that gun." N
22 word. "I want to get the warning shot. I want to disregard
23 it. I got my gun already. I'm coming for you." And when he
24 gets close enough and Courtney puts the shot in the ground,
25 put in his direction, comes up, trains on him. Fires six

1 shots. His gun was all already cocked ready to fire.
2 Anybody seen him on that video? Cocks the gun, slide it
3 back, put around in the chamber? What does that tell you?
4 He already cocked it. Maybe at home. Maybe that's how he
5 rolls with his gun cocked, loaded, bullets in the chamber,
6 ready to pull the trigger. He's not walking down there like
7 they say, I don't know how this Javon Thomas's convince them
8 to take his positions, but he has from the grave. That
9 somehow, he has no gun in his hand. He's going to go ahead
10 and march towards somebody who's got a gun. He's actually
11 saying, "Use the gun." He's going to march towards that --
12 towards that gun and he's just walking along. Not armed, not
13 having his hand on his gun?

14 That is stupid. That's implausible. That is
15 ridiculous. He's got his hand on his gun. He took it out.
16 Evette told you he took it out. And she saw the gun and he
17 said, "I'm going to wet this shit up." And he keeps walking
18 and he says, "Use it nigger. Shoot it." Hears the gunshot.
19 Hears the pop. Still keeps coming. A more serious one shot
20 brings it up and fires like that.

21 You know, I've gotten state of Courtney representing
22 him. You -- you kind of know him as I know the judge told
23 you -- you -- worked at the Five Guys burger joint, King
24 Street, Summerville, Mount Pleasant, soon-to-be father. Just
25 got an apartment with Emonie. All he wants to do is go to

1 work that day, earn a paycheck, feather the nest that is
2 their apartment in Summerville.

3 Does it make any sense to you that Courtney would use
4 his car to try to murder people on the way where he just
5 wants to drop Emonie off at her mom's house? Does that make
6 any sense, you would just try to murder people with a car and
7 then stop and then finish the job. But he doesn't use the
8 gun? Fires a warning shot? This make any sense to you?
9 It's ridiculous.

10 Javon Thomas wants you to join up his agent who still
11 works off the Earth and fire that one last bullet at
12 Courtney. He wants you to take him -- take him away from the
13 body. He wants you to fire a shot. Don't do it. Don't join
14 Javon Thomas' murderous team. How else do you know Niya is
15 -- tried to sell you a lie. Because ultimately, she admitted
16 in my question that she started out trying to tell the
17 Detective Butler -- didn't know who was in the car -- didn't
18 know who was in the car.

19 She tried to say Javon said, "Well, who was that? Who
20 was that?" And then she's supposed to run over by Emonie's
21 house, which means she would've just heard a gunshot. That's
22 what she says. She wouldn't have seen who's in the car. Her
23 first version -- her first version. Her first attempt in
24 lying was her lying to Detective Butler. Didn't know who was
25 in the car.

1 Didn't know. Javon said, "Who's that? Who's that?
2 They did that. They did that yesterday." Oh, really. Well,
3 towards the end of my question, I asked her, "First version
4 you tried to sell Detective Butler was you didn't know who
5 was in the car. That wasn't being interaction, that was not
6 selling. So you switched." "I knew it was Emonie and
7 Courtney." Her story evolved in the scene conversation with
8 Detective Butler. And she admitted that filing towards the
9 end of her testimony. I wanted to play the video of her
10 interview with David Jackson. I'm sorry.

11 MS. LINDER: Objection, your Honor.

12 THE COURT: Sustained.

13 MR. MCGUIRE: She finally admitted towards the end of
14 her testimony -- she started out saying, "Didn't know who was
15 in the car." And according to her testimony, she went over
16 to the side of the house, heard gunshots and came back. She
17 was never seeing who was in the car according to her. And
18 she started off, "Oh the car went by. Javon said who was
19 that? She was asking who was that?"

20 That just was too much to try to sell. So she says, "I
21 did know it was Emonie and Courtney." She changed. Judge
22 will tell you: You need to evaluate people's testimony. See
23 if they tell you the same thing. She didn't tell
24 Detective Butler the same thing. She started out with a lie.
25 She kept lying. She didn't call 911. Her excuse for that

1 is, "My phone died." I stayed at the scene.

2 Her excuse for that is, "Some strangers from the church
3 came out and just said, honey, just -- it'll be all right.
4 Go on home." You believe that? Believe anybody would've
5 said that to her. "Go on home?" Now, what she wanted to do
6 was to explain things. She didn't call 911. She was at
7 fault. She started this thing by yelling at the car when it
8 was at the stop sign -- the intersection.

9 She didn't want to put herself in this situation where
10 she would have to testify that, "I brought on this
11 difficulty. I'm the one responsible for Javon Thomas walking
12 down that road with his gun, ignoring the warning shot,
13 telling the person. Use it. I'm going to wet this shit
14 out." She started it and she didn't want to admit to that.
15 So she has to come up with an excuse.

16 Well, how this difficulty happen? "Oh I know, I want
17 to make up a lie right here. The car came so close to us, it
18 was trying to kill us. We had to jump out of the way of the
19 car. That's the only reason Javon went down the street."
20 And now she's taking herself out of the situation. She
21 doesn't have to admit, "I am the one who started the incident
22 that day."

23 She takes herself out of it. But I'm not accusing her
24 of being the best liar because her story is ridiculous. That
25 she's a liar. And that was the first lie she accused up

1 with. "How do I get myself out of this situation? Remove
2 myself. Oh, I just say that the other guy, the guy in the
3 car, he was at fault. He drove by fast. He tried to kill us
4 with the car."

5 That was her first lie. That's what came to her. It
6 was ridiculous. But that was her lie. So she blamed -- she
7 puts the onus on the driver of the car. She's keeps herself
8 out of it. "I'm not at fault I didn't do anything wrong."
9 She didn't want to pick that. Seeing it -- seeing what
10 happened, staying there. Abigail Perry, those witnesses,
11 they say, "She was there and she was yelling at him."

12 She was yelling at Javon. And I actually think -- you
13 know what? At that moment in time, I think Niya did not want
14 Javon go down there. And I think she was yelling at him.
15 "Javon, don't go down there, let it go. You don't -- let
16 go." I think that's why she yelled. I think she wanted him
17 to go down there because she knows -- she knows he's a
18 hothead. He's armed. Dangerous as possible.

19 She never sees Javon with a gun yelling like that.
20 Keeps it hidden from her all the time. That's ridiculous.
21 She knew he was armed, dangerous -- as possible heading down
22 the street and she pleaded with him and held out the cover.
23 I think she did that. She was unsuccessful. She all walks
24 down there and tries to murder Courtney, and then she tries
25 to murder them, and she knows I'm the one that put this in

1 motion. So I come up with a ridiculous lie that Courtney
2 tried to murder me and Javon just walking out the street with
3 his car.

4 And nobody sees it. The people at church -- people at
5 park in church, no one sees that. When you look at that
6 video -- because I'm sure you're going to look at it back
7 there. First second, it's Javon, "Use it, shoot it, shoot
8 that gun." N word. Pop, keeps coming and he's walking like
9 this.

10 His gun close to him and bends to pull it. Around two
11 seconds, that's the pop. And he keeps coming. There's a
12 second shot. Then Javon did a second. And that time he's
13 doing that, he's not fishing for a gun -- he's not fishing
14 for a gun. And what does he do when he's finished shooting?
15 Does he run? No. Just what he does. Still looking at
16 Courtney -- still looking at where Emonie is.

17 He's got his gun in his hand -- that's not running.
18 There's about two seconds where you just see him staring down
19 Courtney, gun in his hand like this. Does that sound like a
20 runaway to you? You could do that again. Five shell casings
21 were found in Javon's area, in his territory. His gun can
22 hold seven if you load up six -- put six in the gun, slide it
23 back, put one in the chamber, hit the button, take the
24 magazine out, put one more on the top, put it in there.

25 It's very likely Javon was walking around with

1 seven shots day and night. Only doesn't know what kind of
2 magazine he has. Does he have an extended magazine equal 10,
3 13, 15? Who knows? An officer testified those magazines --
4 those glitches you can put all kinds of sizes to the gun. So
5 Courtney, after just being shot at when Javon Thomas is
6 trying to murder him.

7 He sees Javon Thomas, two more seconds -- just look it
8 out in his gun. He can do that in a second. And the last
9 time you see Javon Thomas on that video, it's about one
10 second from when Courtney fires. From Javon's last shot,
11 it's more than just a moment in time. It's more than just
12 one second. And that's because he does that. Just squared
13 up. Looking at Courtney still has his gun.

14 Do that in a second. Literally, a second after you see
15 Javon on his last appearance on that video. Explain Court --
16 fire and self-defense. Judge will tell you a person is not
17 supposed to engage in some sort of refined analysis of the
18 situation when you're in that type of situation. If you're
19 allowed to react, that's important you do. I'll tell you
20 something. I don't have the words to tell you how scared
21 Courtney probably was, but I know how it feels because I was
22 actually at a shooting at one time. This -- there -- I had
23 two investigators with me. We were dragging a magnet through
24 ditch on the side of the road, it was proof of violence they
25 say. They're down in the ditch, kind of a deep ditch, like,

1 ten feet down from the road. It's got some water in the
2 bottom of it. And I'm on the top. And they're armed.

3 My investigators are armed. They're dragging the
4 magnet through the ditch. There are some woods behind my
5 back. They got to run inside of the woods and down the
6 street running for his car. A red pickup truck. Scooting,
7 running as fast as he could to a pickup truck down the road,
8 and another guy comes out of the woods with a gun, and he's
9 about 10 feet away from me.

10 He trains down the road, pop, pop, pop. And he empties
11 a clip. Well, maybe empty, I don't know. He shot five,
12 six times and then turns around and locks eyes with me. And
13 I'll tell you, I froze. My heart was beating so hard. I
14 could hear my heart beating in my ears. It affected my
15 hearing. My knees were weak and I froze. And I was scared
16 to death.

17 I'm not going to get shot because I'd witnessed
18 attempted murder. I can't tell you how scared Courtney must
19 have been with Javon Thomas shooting at him trying to kill
20 him. The gun was never pointed at me. Nobody took a shot at
21 me and I was scared to death. Courtney must have experienced
22 those times, 100 times. And that's why when the judge tells
23 you you're not expected to think that Courtney's allowed to
24 make some call rational evaluation -- refined evaluation of
25 the situation. He's allowed to react. And the last time you

1 see Javon Thomas just doing this, eyeball with Courtney. Gun
2 in his hand. You bringing up any second? That's how
3 Javon Thomas leaves that video in a second. Later is when
4 Courtney fires. What was Javon doing when he's off that
5 video? We don't know -- we don't know. They want you to
6 guess that he got on his knee and delivered his ceremony of
7 battle sword to Courtney. "I surrender."

8 This is Javon Thomas' world. You're not allowed to
9 shoot me anymore. I stopped shooting at you, like, two
10 seconds ago. You can't shoot me. That is ridiculous -- that
11 is ridiculous. Again, Javon Thomas wants you to believe that
12 he waved the white flag. "I surrender. You don't -- you're
13 not allowed to shoot me. I can try to kill you but you're
14 not allowed to shoot back at me."

15 Because when he is off that video, we don't know what
16 he's doing. Did he get another shot off? I think
17 Abigail Perry said, "He walked backwards and he got another
18 shot off." And it could be in that little volley at the end
19 because there is a volley and you can't really tell what's
20 going on. Who's shooting who? There's one shot to me sounds
21 like double loud. That could have been two simultaneously.

22 But remember the gun holds seven. It can hold seven.
23 Maybe the gun was empty. Maybe when he's going backwards --
24 and he's still flashing it. Maybe the bluff court, "Hey, I
25 still got a bullet. Go behind your car, don't shoot me

1 anymore." We don't know, 100 percent speculation. They
2 don't want you to fill in the blanks. They want you to join
3 Javon Thomas's gene to pretend that we have evidence of him
4 waving a white flag in surrender.

5 Well, that's just not true. Javon Thomas was trying to
6 kill Courtney Richards and he's got one more bullet. He
7 hopes in his God -- he hopes to shoot. If you were to even
8 contemplate checking guilty on this charge -- these charges,
9 you should feel Javon Thomas's hand on yours when you check
10 that box. If you were to check that box, his hand would come
11 from the grave to put his 9mm in your hand.

12 And he's begging you to fire the last shot to get
13 Courtney. And I know you wouldn't do it. You got too much
14 sense. You've got eyes, you've got ears, you've got common
15 sense. Courtney didn't go to the police because he didn't
16 trust them. I trust you.

17 I trust you to use your eyes, use your ears. Use your
18 common sense. Don't let Javon Thomas come from the grave and
19 put his 9mm in your hand. Fire the last shot to get
20 Courtney. The verdict is not guilty. Not because I asked
21 for it, but because justice demands it. Thanks, Judge.

22 THE COURT: Ms. Linder?

23 MS. LINDER: Thank you, your Honor. I want to very
24 quickly address with you a couple of things that the Defense
25 said to you in their closing. When he first started talking

1 to you, he was talking about the -- the texts, he was talking
2 about Javon scary AF. I say -- I'm not telling my age, but
3 what I -- what I mean when I say that versus what you know,
4 somebody 20 years younger than me means -- doesn't
5 necessarily mean the same thing.

6 Things that may seem obvious, may not mean that. I
7 think it's also extremely important to look at the dates. I
8 told you that -- earlier that the dates matter -- the dates
9 and the timeline -- that all these things matter. That
10 message was sent on February 13th. That message was sent six
11 days before all of this happened. And I think it's important
12 to talk about how he goes through kind of -- as I said.

13 Mr. Richards goes through the different ways of how he
14 feels about, "Okay. I got to cover this up. I got to make
15 sure I didn't touch the shelves. I got to get this video
16 down. I got to change my phone number, I got to sell this
17 gun." But then he starts doing pretty good. All that stuff
18 is handled the 20th, 21st, 22nd. By the time this text --
19 that Mr. McGuire mentions about the call and text about all
20 is good, "God got me." That's the 23rd. The Defendant
21 already had everything in order. So then he's called, he's
22 getting all his stories lined up. I think that it is
23 interesting Mr. McGuire was talking about Javon and the
24 firearm that he had and how easy it was. I was -- not
25 everybody's very familiar with firearms, but there were a lot

1 of steps. "It was very, very, very easy. Javon fired seven
2 times, Javon fired seven times. It's super easy."

3 "He'd load that up because it carried six. He put it
4 in and then he would rack it, and then he would get the
5 magazine out, and then he would add one more. And then he
6 would" -- I mean, my head, that's a lot of steps -- that's a
7 lot of steps. It's not this easy breezy thing as he was
8 talking about. And also, listen to the volume, look at the
9 video. Javon shot six times and then he ran twice that
10 distance.

11 So I also want to address a few things. You know,
12 Mr. McGuire's talking a lot about this video and you'll have
13 it. He kept saying different quotes, he said that, "Shoot
14 that gun.: And then, "Use that gun." He is saying -- he
15 told you that on the video you hear Javon saying, "Use that
16 gun." You hear Javon according to their version. The --
17 according to their version, the window is up.

18 There is a warning shot fired. The window is down,
19 "Use that gun." According to them. Why is he saying that?
20 Because the gun's already been used. It just doesn't -- I
21 mean, it doesn't make sense. They're saying that a -- a shot
22 was fired. "Hey, use that gun." Way down there. "Oh God,
23 you already did. Ain't better next time." That's not what
24 happened. Believe and trust in yourself.

25 Believe and trust in what is going on in this

1 situation. Even in the Defendant's prior court testimony, he
2 says, "Do something." The Defendant tells you that Javon
3 says, "Do something." Standing out, driving down the street,
4 standing outside the car, Javon is walking back, trying to go
5 up back toward the house about to turn on Cosmopolitan and he
6 sees -- he sees the Defendant stop his car, he sees the
7 Defendant jump out of his car.

8 He says "Do something. Do something. Not, "Shoot your
9 gun." Oh wait, it already happened. As the Defense would
10 have you believe. Also, the Defense acted out for you. This
11 -- this, like, dangerous upward nod. After Javon was done
12 shooting six shots, he put his arm down, and then he's
13 backing up with this upward nod that's very threatening.

14 And, you know, only then does the Defendant feel like,
15 "Oh, gosh. Okay, I need (inaudible) may keep shooting at me.
16 So now I need to shoot him as he's fleeing." First of all --
17 and -- and they say that Javon shot one more time. It's a
18 scary upward nod. And then we don't see it. But Javon
19 shoots one more time. That's what he just told you. Listen
20 to the volume. It is six really loud -- close to the
21 videographer. And then the five, which sound like the first
22 shot, period. That was after the go -- after the window went
23 down.

24 Also, Monique and Abigail Perry, both told you Javon
25 was shooting back. He backed, he backed, he turned, he ran.

1 It wasn't, he was shooting all of this. And then there was a
2 pause and then he shot one more time and then he turned and
3 ran. This whole idea just does not go. The witnesses don't
4 tell you diversion. He just told you. The Defendant doesn't
5 even tell you his prior sworn statement that -- that that's
6 what happened.

7 He says Javon was shooting. And then he turned and
8 then he -- the moment he stopped, he shot him. So -- so
9 truthfully, there is nothing anywhere in any evidence of
10 anybody's testimony of these six shots or scary stare. One
11 last shot by Javon. Nowhere. Nowhere. And everything
12 you're going to have back there and everything you heard
13 from, just nowhere. Not even his own client.

14 So all of this about Niya's story, Niya's story, Niya's
15 story. I believe said "baloney." Listen, he is telling you
16 what -- Niya lied, Niya lied. It was talking --
17 Detective Butler said, "Well, I didn't know who was in the
18 car." I submit to you that Niya said it -- it happened fast.
19 She's like, "Who? Who? Who?" Javon had more of the
20 reaction to it.

21 Javon said that, "They tried to use this the other
22 day," but then the car stopped and then she saw who it was.
23 Then she was -- then she was putting two and two together and
24 realizing, "Oh." But let's -- you know what? Take Niya out
25 of this stuff. Take her out completely. This is about

1 witness credibility. You don't like Niya, fine, ignore every
2 single thing she said, act like she was never up there. Act
3 like she's never up there. That's fine. They never -- they
4 -- they -- they say the Defendant in his prior sworn
5 statement said that, "He and Emonie were in the car." So why
6 are we arguing about that? Why is this becoming an issue?
7 Project everything she has to say and the Defendant still
8 murdered Javon. Perry said, "There was no grey car at that
9 intersection." Evette says, "She heard a car zoom past her
10 house." The Defendant still does not get self-defense
11 because he pulled over, he got out of the car with that gun
12 difficulty. And --

13 MR. MCGUIRE: Objection. Judge, I would have to
14 object. This is not addressing issues that I brought up.
15 This is re-plowing the same closing statement that's already
16 been made.

17 THE COURT: I'll sustain the objection. Please reply
18 to the arguments that Defense counsel made, please.

19 MS. LINDER: I would also say that the Defense claims
20 that the Defendant was more or less saying that, "I don't
21 want this fight, I don't want this quarrel" by showing his
22 gun and firing he called "a warning shot." That again goes
23 back to the elements of self-defense. It is not
24 self-defense. If you are at all bringing about difficulty in
25 stopping a -- car is not self-defense if you could have

1 continued to drive and avoided the danger.

2 Ladies and gentlemen, the Defense talked about Courtney
3 was scared. Courtney was scared -- Courtney was scared.
4 Courtney's beliefs. That's only one part of self-defense.
5 The other portion would've reasonably proven person of
6 ordinary furnishing courage also to entertain that. But then
7 you also got fault and you also got an avoidance.

8 Mr. McGuire stood up here, kept talking about Javon's
9 world, Javon's world. He was telling you about Javon's
10 beliefs and Javon's wants. I wish that Javon was here today
11 to be able to tell you himself, but this Defendant chose to
12 murder him and because of that and all the evidence, we
13 respectfully request that you come back with a verdict of
14 guilty for murder.

15 THE COURT: Thank you. All right. Ladies and
16 gentlemen, the attorneys have concluded their closing
17 arguments, their arguments are not evidence in the case.
18 There are -- their statements and arguments are meant to help
19 you understand the evidence and apply the law that I'll
20 provide you to the evidence. We'll now take our
21 15-minute comfort break and then we'll return and I'll charge
22 you on the law in the case.

23 Please do not discuss this case. We have not concluded
24 and I have not given you orders to do that yet. So please no
25 discussions of the case amongst yourselves or with anyone

1 else. If we'll take 15 minutes now and we'll -- we'll come
2 back in 15 minutes for charge on the law. Thank you.

3 (Jury exits courtroom.)

4 THE COURT: All right. Anything from the State before
5 we take our break?

6 MS. OUTTEN: Very briefly, Judge, and -- and we can
7 take a break and then address this before the end of the
8 jury. 16 minutes. The State in line of Mr. McGuire's
9 closing argument would -- would want to renew some
10 conversations about charging -- charge conference.
11 Particularly, first the prior and consistent statement.
12 Mr. McGuire completely mischaracterized that we objected to
13 the statement coming in.

14 The conversations between us and Defense counsel and --
15 your Honor, as your Honor well knows were about -- if you
16 want to impeach her, you need to do it specifically, you
17 cannot just play her whole statement. And the Defense
18 abandoned that that was their choice. Ms. Singleton's
19 statements and Detective Butler was here and they could have
20 done that at any time. I think at this point, if a prior
21 inconsistent statement charge was given, I believe that that
22 is the Court then agreeing with the Defense that the State
23 kept out this statement and kept away evidence from them.

24 And I think the reason they wanted to bring that up is
25 because I think the prior inconsistent statement charge

1 conflicts extrinsic evidence and I think that it was improper
2 for him to make that comment.

3 THE COURT: All right. Anything else?

4 MS. OUTTEN: We would also ask that since Mr. McGuire
5 said a couple of times that, "The jury would be the bullet if
6 they convicted the Defendant," that that would warrant the
7 charging of punishment because they implied that they would
8 be taking away the Defendant's life if they convicted him. I
9 think that that improperly -- this issue of punishment in
10 front of the jury.

11 And the last thing we would say is that as we
12 suspected, the Defense went into an entire thing about -- and
13 I wrote down direct quotes, "The Defendant said he was
14 scared. I can't imagine how -- I don't have the words to
15 tell you how scared the Defendant was."

16 Mr. McGuire said, "His evidence showed that the
17 Defendant was scared." And that he -- and then he told this
18 whole story and he said, "He -- Mr. Richards must have been a
19 hundred times as scared as me." As we discussed at the
20 beginning of this, and I think the case law on the State
21 court's fear is an element that goes into voluntary
22 manslaughter.

23 I believe that the way Mr. McGuire characterized his
24 case, he opposed a voluntary charge. He could have joined
25 Bennett. It -- he did not want it. That's his right. But I

1 don't believe the way that he just presented evidence to the
2 jury is either you find that Courtney was afraid and he acted
3 --

4 THE COURT: He didn't present any evidence to the jury
5 that was closing argument.

6 MS. OUTTEN: He characterized the evidence to the jury.

7 THE COURT: All right.

8 MS. OUTTEN: The way he characterized it is option one
9 is murder. Option two is he was so scared that he had to
10 defend himself. And I believe in the State of South
11 Carolina, we have the defense voluntary manslaughter to close
12 the gap between those two things that say that when somebody
13 is so scared that they suspend their rational thinking and
14 they intentionally kill another human being.

15 And I believe that -- the way that -- I believe that --
16 have McGuire not argue that I would not be raising it again,
17 but I believe in light of that... I -- I -- I understand
18 your Honor is going to charge those arguments are not
19 evidence, but I believe that he -- he didn't just say it
20 once, he said it multiple times. He belabored the point and
21 I believe that gives the jury the impression that either you
22 find that Courtney was afraid and so he could act himself to
23 offense or he murder him. And I believe that is improper and
24 I don't believe that's a wrong mistake.

25 THE COURT: All right. Mr. McGuire?

1 MR. MCGUIRE: Nothing.

2 THE COURT: Nothing? All right. I listened to your
3 arguments. I will -- I'm going to deny your motion to charge
4 voluntary manslaughter. I'll -- I believe the prior
5 inconsistent statement -- the law that we've discussed does
6 use the term if they determine that there was a prior
7 inconsistent statement then they can apply that.

8 I'm going to continue to apply that and I'll charge
9 that. I will charge the punishment law. And -- and per your
10 request based on the argument about the bullet, I will charge
11 punishment and I'll add that to the charge. Anything else?

12 MS. OUTTEN: Nothing from the State.

13 THE COURT: All right.

14 MR. BISCHOFF: No, your Honor.

15 THE COURT: All right. Let's take -- let's be back in
16 our seats about 11:45. No, about 11:40. Thank you. We're
17 in recess.

18 (Off the record.)

19 MR. BISCHOFF: Judge, just for the record, I did add
20 the charge -- the jury charge that we request -- requested
21 marked it as Court's Exhibit 6.

22 THE COURT: All right. So Court's Exhibit 6 is the
23 requested jury charge from the Defense. And that is now been
24 made a Court's exhibit for these purposes. All right. Thank
25 you. Anything else for -- as far a jury charge? Yes, sir.

1 All right. Your family members. Okay.

2 MR. BISCHOFF: We'll lock the doors when the charge
3 starts.

4 THE COURT: Okay. All right. Let's let them get in
5 place.

6 (Off the record.)

7 THE COURT: Bring the jury. It's already -- yeah, it's
8 already in evidence.

9 MS. LINDER: Judge, you want me to move the podium back
10 away?

11 THE COURT: Yes, that'd probably be good so that --

12 MS. LINDER: I can put it up there? Or back here?

13 THE COURT: Back -- yeah. Let's kind of put it back
14 here so we can get out there. Thank you. We're ready?

15 (Jury enters courtroom.)

16 THE BAILIFF: Judge, all the jurors are present and
17 seated.

18 THE COURT: All right. Thank you. You may be seated.
19 All right. Ladies and gentlemen, now I'll charge you on the
20 law of this case and I'll start by telling you, I remind you
21 that during this trial you and I have certain duties to
22 perform. As a trial judge, it is my responsibility to
23 preside over the trial of this case. And I also have the
24 duty to rule on the admissibility of the evidence offered
25 during this trial.

1 You are to consider only the competent evidence before
2 you. If there was any testimony ordered stricken from the
3 record -- in this case during this trial, you must disregard
4 that testimony. You are to consider only the testimony which
5 has been presented from the witness stand, any exhibits which
6 have been made a part of the record in this case, and any
7 stipulations of counsel.

8 I have the additional duty to charge you the law
9 applicable to this case. As the presiding judge, I'm the
10 sole judge of the law of this case and it is your duty as
11 jurors to accept and apply the law as I now state it to you.
12 If you already have any idea as to what the law is or what
13 the law ought to be and it does not agree with what I now
14 tell you the law is, you must abandon this idea because you
15 are sworn to accept the law and apply the law exactly as I
16 state it to you.

17 In every case tried in this court before a jury, the
18 jury becomes the sole and exclusive judge of the facts in the
19 case, a trial judge cannot intimate, state, comment on, or
20 make any statement to a trial jury about the facts in a case.
21 Since you, the jury, are the sole judge of the facts in this
22 case, you are not to infer from what I have said during the
23 progress of this trial in ruling upon the admissibility of
24 evidence, or otherwise, or anything that I say now, during
25 the course of this instruction to you that I have any opinion

1 about the facts in this case.

2 The law does not allow me to have an opinion about the
3 facts in this case. This is a matter solely for you, the
4 jury, to determine. As jurors, it is your duty to determine
5 the effect, weight -- excuse me, the effect, value, weight,
6 and truth of the evidence presented during this trial.

7 The indictments charged the Defendant with murder and
8 possession of a weapon during the commission of a violent
9 crime. I remind you that the fact that the Defendant was
10 arrested, charged, and indicted in this case is not evidence
11 in this case and cannot be considered by you as evidence of
12 guilt in this case, nor does it create any presumption or
13 inference of guilt.

14 These documents are simply the formal written
15 instruments which contain the charges made against the
16 Defendant. It is the formal documents by which this case is
17 brought into this court. The following charges are being
18 submitted to you as to the Defendant: Murder, possession of a
19 weapon during the commission of a violent crime.

20 Each of these charges are separate and distinct
21 offenses. You must decide each charge separately on the
22 evidence and all applicable. You will be asked to write a
23 separate verdict of guilty or not guilty for each indictment.
24 The Defendant has pled not guilty to these indictments and
25 that plea puts the burden on the State to prove the Defendant

1 guilty.

2 A person charged with committing a criminal offense in
3 South Carolina is never required to prove themselves
4 innocent. I charge you that it is an important rule of the
5 law that the Defendant in a criminal trial, no matter what
6 the seriousness of the charge may be, will always be presumed
7 to be innocent of the crime for which the indictment was
8 issued unless guilt has been proven by evidence satisfying
9 you all that guilt beyond a reasonable doubt.

10 This presumption of innocence does not end when you
11 begin your deliberations, but it accompanies the Defendant
12 throughout the trial until you reach a verdict of guilty
13 based on evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 The presumption of innocence is like a rod of
16 righteousness placed about the shoulders of the Defendant,
17 which remains with the Defendant until it has been stripped
18 from the Defendant by evidence satisfying you of the
19 Defendant's guilt beyond a reasonable doubt.

20 The presumption of innocence is not mere legal theory.
21 It is not just a legal phrase. It is a substantial right to
22 which every Defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the Defendant's guilt beyond a
24 reasonable doubt. The State has the burden of proving the
25 Defendant guilty beyond a reasonable doubt.

1 Some of you may have served as jurors in civil cases
2 where you were told that it is only necessary to prove that a
3 fact is more likely true than not true, such as by the great
4 -- greater weight or preponderance of the evidence. In
5 criminal cases, the State's proof must be more powerful than
6 that. It must be beyond a reasonable doubt. Reasonable
7 doubt is the count of doubt that would make a reasonable
8 person hesitate to act.

9 Proof beyond a reasonable doubt is proof that leaves
10 you firmly convinced of the Defendant's guilt. There are
11 very few things in this world that we know with absolute
12 certainty, and in criminal cases the law does not require
13 proof that overcomes every possible doubt. If based on your
14 consideration of the evidence you are firmly convinced that
15 the Defendant is guilty of the crime -- the crimes charged,
16 you must find the Defendant guilty.

17 If, on the other hand, you think there's a real
18 possibility that the Defendant is not guilty, you must give
19 the Defendant the benefit of the doubt and find him not
20 guilty. Facts and circumstances that merely place upon the
21 Defendant a grave suspicion of the crimes charged or that
22 merely raise a speculation or conjecture of the Defendant's
23 guilt are not sufficient to authorize a conviction of the
24 accused.

25 There are two types of evidence which are generally

1 presented during a trial: Direct and circumstantial evidence.
2 Direct evidence is the testimony of a person who claims to
3 have actual knowledge of a fact such as an eyewitness. It is
4 evidence which immediately establishes the main fact to be
5 proved.

6 Circumstantial evidence is proof of a chain of facts
7 and circumstances indicating the existence of a fact. It is
8 evidence which immediately establishes collateral facts from
9 which the main fact may be inferred. Circumstantial evidence
10 is based on inference and not on personal -- personal
11 knowledge or observation. Crimes may be proven by
12 circumstantial evidence.

13 The law makes no distinction between the weight or
14 value to be given to either direct or circumstantial
15 evidence. However, to the extent the State relies on
16 circumstantial evidence, all of the circumstances must be
17 consistent with each other, and when taken together point
18 conclusively to the guilt of the accused beyond a reasonable
19 doubt.

20 If these circumstances merely portray the Defendant's
21 behavior as suspicious to prove this failure, the law makes
22 absolutely no distinction between the weight or value to be
23 given to either direct or circumstantial evidence. Nor is a
24 greater degree of certainty required of circumstantial
25 evidence than of direct evidence. You should weigh all the

1 evidence of the -- you should weigh all of the evidence in
2 the case.

3 After laying all the evidence, if you're not convinced
4 of the guilt of the Defendant beyond a reasonable doubt, you
5 must find the Defendant not guilty. Necessarily, you must
6 determine the credibility of witnesses who have testified in
7 this case. Credibility simply means believability. It
8 becomes your duty as jurors to analyze and to evaluate the
9 evidence and to determine which evidence convinces you of its
10 truth.

11 In determining the believability of witnesses who have
12 testified in this case, you may believe one witness over
13 several witnesses or several witnesses over one witness. You
14 may believe a part of the testimony of a witness and reject
15 the remaining part of the testimony of that same witness.
16 You may believe the testimony of a witness in its entirety or
17 reject the testimony of a witness in its entirety.

18 You may consider whether any witness has exhibited to
19 you any interest, bias, prejudice, or other motive in this
20 case. You may consider the appearance and manner of a
21 witness while on the witness stand. The rules of evidence
22 ordinarily do not permit witnesses to testify to opinions or
23 conclusions. An exception to this rule exists for witnesses
24 we call expert witnesses.

25 A witness who by education and experience has become an

1 expert in some art, science, profession, or calling may state
2 an opinion as to relevant and material matter in which the
3 witness claims to be an expert. And may also state the
4 reasons for the opinion. You should consider any expert
5 opinion received in evidence in this case like any other
6 evidence, give it the weight you think it deserves.

7 If you decide that the opinion of an expert witness is
8 not based on sufficient education and experience, or if you
9 conclude the reasons given in support of the opinion are not
10 sound, or that the opinion is outweighed by other evidence,
11 you may disregard the opinion entirely. An expert witness's
12 testimony is to be given no greater weight than that of other
13 witnesses simply because the witness is an expert.

14 Further, you are not required to accept an expert's
15 opinion even though it is not contradicted. I instruct you
16 and emphasize that the fact that the Defendant did not
17 testify is not a factor to be considered by you in any way in
18 your deliberation and in your consideration on the question
19 of the guilt or the innocence of the Defendant. It must not
20 be considered by you in any manner whatsoever.

21 A Defendant has the constitutional right to remain
22 silent and the assertion of this right must not be considered
23 by you in your deliberations. I repeat, under your oath, you
24 are to draw no conclusion whatsoever from the fact that the
25 Defendant in this case did not testify. The fact that this

1 Defendant did not testify should not even be discussed in the
2 jury room.

3 The burden of proof, as I have stated to you, is on the
4 State. The Defendant is not required to prove his innocence.
5 The burden of proof remains on the State to prove guilt
6 beyond a reasonable doubt. If you determine there has been
7 evidence presented that witnesses have made prior statements
8 which are not consistent with the witness's present
9 testimony, you may use this evidence to decide whether to
10 believe the witness.

11 You may also use evidence of the earlier contradictory
12 statements to determine the truth of those statements. It is
13 up to you to decide whether to believe the earlier statements
14 on the testimony given at trial. If a witness is shown to
15 have knowingly testified untruthfully concerning any material
16 matter, you may consider this in determining whether to trust
17 the witness's testimony as to the other matters.

18 You may reject all testimony of that witness or give
19 all or part of the testimony the weight you think it
20 deserves. In order to establish criminal liability, criminal
21 intent is required. For example, the mental state required
22 to be proven by the State for a particular crime might be
23 purpose, intent, knowledge, recklessness or criminal
24 negligence.

25 Criminal intent must be proven by the State beyond a

1 reasonable doubt. Criminal intent is always a matter that
2 must be determined by the jury from the circumstances
3 surrounding the situation. There is no way to prove intent
4 to a mathematical certainty. There is no way medical science
5 can dissect a person's brain and determine what the person
6 had in mind.

7 So the law says that criminal intent may be inferred
8 from the circumstances shown to have existed. This is how
9 you make a determination of whether or not the element
10 requiring intent was present. It is not necessary to
11 establish intent by direct and positive evidence, but intent
12 may be established by inference in the same way as any other
13 fact, by taking into consideration the acts of the parties
14 and all the facts and circumstances of the case.

15 Criminal intent is a mental state. A conscious
16 wrongdoing. It's up to you to determine what the Defendant
17 intended to do based on the circumstances shown to have
18 existed. Criminal intent can arise from action or a failure
19 to act. It may arise from negligence, recklessness, or an
20 indifference to duty, or to consequences that are considered
21 by the law to be the equivalent of a criminal intent.

22 The Defendant is -- the Defendant is charged with
23 murder. The State must prove beyond a reasonable doubt that
24 the Defendant killed another person with malice aforethought.
25 Malice is hatred, ill will, or hostility towards another

1 person. It is the intentional doing of a wrongful act
2 without just cause or excuse and with an intent to inflict
3 and injure, or under circumstances that the law will infer an
4 evil intent.

5 Malice aforethought does not require that malice exists
6 for any particular length of time before the act is
7 committed, but malice must exist in the mind of the Defendant
8 just before and at the time of the act is committed.
9 Therefore, there must be a combination of the previous evil
10 intent and the act. Malice aforethought may be either
11 expressed or inferred.

12 These terms "expressed" and "inferred" do not mean
13 different kinds of malice, but merely the manner in which
14 malice may be shown to exist. That is either by direct
15 evidence or by inference from the facts and circumstances
16 which are proved. Expressed malice is shown when a person
17 speaks words which express hatred or ill will for another, or
18 when the person prepared beforehand to do the act which was
19 later accomplished.

20 For example, lying in wait for a person or other acts
21 of preparation going to show that the deed was within the
22 Defendant's mind would be expressed malice. If facts are
23 proved beyond a reasonable doubt sufficient to raise an
24 inference of malice to your satisfaction, this inference
25 would be simply an evidentiary fact to be taken into

1 consideration by you, the jury, along with the other evidence
2 in the case, and you may give it such weight as you determine
3 it should receive.

4 The Defendant is charged with possession of a weapon
5 during the commission of a violent crime. The State must
6 prove beyond a reasonable doubt that the Defendant was in
7 possession of a firearm or visibly displayed what appeared to
8 be a firearm during the commission of a violent crime.

9 A firearm means any machine, gun, automatic rifle,
10 revolver, pistol, any weapon which will is -- designed to or
11 may readily or -- or may be readily converted to expel a
12 projectile.

13 In order to find the Defendant guilty of possession of
14 a weapon during the commission of a violent crime, you must
15 first find the Defendant guilty of committing a violent
16 crime. Murder is considered a violent crime. The State must
17 prove beyond a reasonable doubt that the weapon furthered,
18 advanced, or helped in commission of the crime.

19 The Defendant has raised the defense of self-defense.
20 Self-defense is a complete defense, and if it is established,
21 you must find the Defendant not guilty. The State has the
22 burden of disproving self-defense by proof beyond a
23 reasonable doubt. If you have a reasonable doubt of the
24 Defendant's guilt, after considering all the evidence,
25 including the evidence of self-defense, then you must find

1 the Defendant not guilty.

2 On the other hand, if you have no reasonable doubt of
3 the Defendant's guilt, after considering all the evidence,
4 including the evidence of self-defense, then you must find
5 the Defendant guilty. The following elements are required --
6 required to establish self-defense. First, the Defendant
7 must be without fault in bringing on the difficulty. The
8 Defendant's conduct was the type which was reasonably
9 calculated to and did provoke a deadly assault.

10 The Defendant would be at fault in bringing on the
11 difficulty and would not be entitled to an acquittal based on
12 self -- self-defense. The second element of self-defense is
13 that the Defendant was actually in imminent danger of death
14 or serious bodily injury, or that the Defendant actually
15 believed he was in imminent danger of death or serious bodily
16 injury.

17 If the Defendant was actually in imminent danger, it
18 must be shown that the circumstances would've warranted a
19 person of ordinary firmness encouraged to strike the fatal
20 blow to prevent death or serious bodily injury. If the
21 Defendant believed he was in the imminent danger of death or
22 serious bodily injury, it must be shown that a reasonably
23 prudent person of ordinary firmness and courage would've had
24 the same belief.

25 In deciding whether the Defendant actually was or

1 believed he was in imminent danger of death or serious bodily
2 injury, you should consider all the facts and circumstances
3 surrounding the incident, including the physical condition
4 and characteristics of the Defendant and the deceased. The
5 Defendant does not have to show that he was actually in
6 danger.

7 It is enough that the Defendant believed he was in
8 imminent danger and a reasonably prudent person of ordinary
9 firmness and courage will have had the same belief. The
10 Defendant has the right to act on appearances. Even though
11 the Defendant's beliefs may have been mistaken, it is for you
12 to decide whether the Defendant's fear of imminent --
13 immediate danger or -- or of death or serious bodily injury
14 was reasonable and would've been felt by an ordinary person
15 in the same situation.

16 Prior instances of violence by the deceased may be
17 considered in deciding whether the Defendant actually
18 believed he was in imminent danger of death or serious bodily
19 injury, or was actually in imminent danger. Threats made by
20 the deceased may be considered in determining whether the
21 Defendant actually was or believed he was in imminent danger.

22 The final element of self-defense is that the Defendant
23 had no other probable way to avoid the danger of death or
24 serious bodily injury than to act as the Defendant did. In
25 this particular instance, a person cannot be required to make

1 an exact calculation as to the degree or amount of force
2 which may be needed to avoid death or serious bodily harm.

3 Therefore, in self-defense, the Defendant has the right
4 to use the force needed to avoid death or serious bodily
5 harm. The force used in self-defense does not have to be
6 limited to the degree or amount of force used by the
7 deceased. The Defendant has the right to use so much force
8 as appeared to be necessary for complete self-protection and
9 which a person of ordinary reason and firmness would've
10 believed to be needed to prevent -- prevent death, or serious
11 bodily harm.

12 If the Defendant is justified in defending himself or
13 others in firing the first shot, then the Defendant is also
14 justified in continuing to shoot until it is apparent that
15 the danger of death or serious bodily injury has completely
16 ended. Words accompanied by hostile acts, depending on the
17 circumstances establish self-defense.

18 Evidence of prior difficulties between the Defendant
19 and the deceased may be considered of whether the threat
20 existed, whether the Defendant had reason to believe a threat
21 existed, and how serious the threat was. The reputation of
22 the deceased as a violent person may be considered inciting
23 where there was a need for force, whether the Defendant had
24 reason to believe there was a need for force, and whether the
25 deadly force was reasonably necessary.

1 Under the law of self-defense, the Defendant may take
2 another's life in the defense of others. The right to
3 intervene to protect another person is subject to the same
4 rights and limitations as the right of self-defense. The
5 Defendant may take the life of a person who assaults a friend
6 relative, or bystander. If that friend, relative, or
7 bystander would've had the right of self-defense.

8 To show that -- that -- that the person, being
9 Defendant had the right of self-defense, it must first be
10 shown that the person being Defendant and the Defendant were
11 both without fault in bringing on the difficulty. If the
12 conduct of the person, Defendant, or the Defendant was the
13 type which was reasonably calculated to and did provoke a
14 deadly assault, the person would be at fault in bringing on
15 the difficulty and would not have the right of self-defense.

16 Therefore, the Defendant would not have the right to
17 use deadly force in defending that person. The defense of
18 another person is excusable if the Defendant had reasonable
19 grounds to believe and in good faith did believe that the
20 person being defended was in imminent danger of death or
21 serious bodily harm from the deceased.

22 In deciding whether the person defended actually was,
23 or that the Defendant actually believed the person was in
24 imminent danger of death or serious bodily injury, should --
25 you should consider all the facts and circumstances

1 surrounding the incident, including the physical condition
2 and characteristics of the parties. The Defendant does not
3 have to show that the person, the Defendant -- Defendant was
4 actually in danger. It is enough if the Defendant believed
5 the person was in imminent danger.

6 The Defendant has the right to act on appearances even
7 though the Defendant's belief may have been mistaken. The
8 Defendant must show under the circumstances as they appear to
9 the Defendant -- the Defendant believed the person --
10 Defendant was in danger and that a reasonably prudent person
11 of ordinary firmness and courage would've had the same belief
12 under the same circumstances.

13 It is for you, the jury, to decide whether the
14 Defendant's fear of immediate danger, or of death, or serious
15 bodily injury to the person Defendant was reasonable and
16 would've been felt by an ordinary person, in the same
17 situation. The Defendant does not have to wait until the
18 deceased gets the drop on the person Defendant. The
19 Defendant has the right to act under the law of
20 self-preservation to prevent the deceased from getting the
21 drop on the person, Defendant.

22 In determining the guilt or innocence of the Defendant,
23 you cannot consider any possible penalty for any particular
24 crime. The punishment for the crimes is a matter for me to
25 determine and should never be considered by you in any way

1 whatsoever in arriving at an impartial verdict as to the
2 guilt or innocence of the Defendant.

3 Mr. Foreman, ladies and gentlemen of the jury, I wish
4 to express the hope that each of you will be mindful of the
5 importance of your responsibility. You're not called upon to
6 serve as jurors very often, and the proper performance of the
7 duty requires each of you to reach the height of freeing your
8 mind of all improper influences.

9 As the presiding officer of this court, I'm vitally
10 concerned that whatever verdict you find will be the result
11 of you going into the jury room and confining your
12 consideration to the evidence and the law that you have heard
13 in this courtroom. Weighing it fairly and impartially as I
14 have every confidence you'll do. Your verdict in this case
15 cannot be based on sympathy, passion, prejudice, or emotion,
16 or some other consideration not found in the evidence.

17 Remember, your verdict must be unanimous. All right.
18 I'll now explain the -- the verdict form and the possible
19 verdicts. I have the verdict form in my hand. There are two
20 possible verdicts which you may find in this case. There is
21 no significance whatsoever in the order in which I -- I state
22 these possible verdicts. It is simply that one must be
23 stated first.

24 The verdict form in its -- in the body of the verdict
25 form, you will have to answer the following questions. As to

1 indictment number 2023-GS-10-03777, the charge of murder, "We
2 the jury, unanimously find the Defendant" -- and you will
3 check on the top guilty, bottom not guilty. Again, there is
4 nothing to the order, one must come first.

5 As to -- number two, as to
6 indictment number 2023-GS-10-03778, the charge of possession
7 of a weapon during the commission of a violent crime. "We,
8 the jury, unanimously find the Defendant" -- you will check
9 one. Again, guilty or not guilty. After that, the -- the
10 foreman will certify that this is a unanimous decision of the
11 jury and juror 17 is the foreman. At that point he would
12 sign the form and date it, and return this document to the
13 bailiff. You have been provided all the evidence you are to
14 consider. If you get back there and want to consider
15 something not in evidence, then that is not permissible.

16 We can give you nothing else. You must decide this
17 case based on what is evidence. Any questions must be
18 written, signed, dated by the foreman and given to the
19 bailiff. Ladies and gentlemen, your verdict must be a
20 unanimous one. Mr. Foreman, when the jury agrees on the
21 verdict, you will write the verdict on the verdict form, then
22 sign your name as foreman, then knock on the jury room door
23 and inform the bailiff that you have reached a verdict.

24 At that time, we will receive you back into the
25 courtroom. I ask you -- I ask that you now return to your

1 jury room, but do not begin deliberations until you are told
2 by the clerk or the bailiff to do so. There are some matters
3 which must be discussed with the attorneys before you begin
4 deliberations. All right. Again, this is the last time
5 you'll hear it. You cannot discuss the case until I -- until
6 the clerk comes and instructs you to do so. Everyone will --
7 will retire to the jury room and I'll send further
8 instructions. Thank you.

9 (Jury exits courtroom.)

10 THE COURT: Okay. All right. Please be seated. The
11 clerk has brought one thing to my attention that I'll need to
12 change on the jury -- on the verdict form. I said,
13 "Juror number 17 is the foreman." He was number 17 in the
14 lineup. He's actually juror number 152. I can make that
15 change and provide that to the jury. Does anyone have an
16 objection to me for making that change and providing it to
17 the jury or do you -- would you like me to bring them back in
18 and re-charge them on the verdict form?

19 MS. LINDER: There's no objection from the State judge.

20 MR. MCGUIRE: No objection.

21 THE COURT: All right. I'll take care of that. I'll
22 let you both review the verdict form with the correct number
23 if you just give me just a minute. And -- and then -- but
24 before then, do you have any other objections to the charge
25 that was presented other than what you had previously put on

1 the record?

2 MR. MCGUIRE: Not beyond that.

3 THE COURT: All right. That you're -- you're protected
4 that your previous objection is noted and you're protected on
5 that. Anything from the State?

6 MS. OUTTEN: Same response, your Honor.

7 THE COURT: Okay.

8 MS. OUTTEN: Nothing different.

9 THE COURT: Nothing -- nothing new? All right. What
10 I'd like you to do now is I'd like the attorneys to take a
11 look at the evidence. Let's make sure everything's in order.
12 I'll take care of this. Of course, I told you I don't --
13 I've got to go look it up -- the printer. So I'll figure
14 that out in just a second. But -- but --

15 MR. BISCHOFF: Judge, we already --

16 MS. LINDER: We've already done that.

17 THE COURT: You've already done it. Okay. Fantastic.
18 All right. Well, let me fix this because I want it to go --
19 I want the verdict form to go back with the -- the -- with
20 the jury. This -- this won't take just a second. Let me --
21 I got that printed right there. I can get it. I think I can
22 get it. I think we can get it faster than that. If I can
23 ask where I had it. All right. Verdict form. All right.
24 We'll be right back. We're going to be at ease just a
25 minute. Let me go print this off and be right back.

1 (Off the record.)

2 THE COURT: Verdict form with the correction I've made
3 everything else still substantially the same. All right.
4 All right. I'm -- I corrected the -- the verdict form. The
5 parties have reviewed it and have no objections to the
6 verdict form being changed to juror 152. And that verdict
7 form will go back to the jury. All right. All the evidence
8 has been gathered up?

9 MR. BISCHOFF: Yes, sir.

10 THE COURT: All right. If you can please bring the
11 alternates in, please. All right. Mr. Rourk and
12 Mr. Robertson, you're the alternates in the case.
13 Fortunately, we have -- you know, all the jurors are still
14 present, so we will now release you as jurors in this case.
15 You are -- you may be contacted by some of the attorneys to
16 ask you a question or something about the case.

17 So your thoughts on the case at some time, that it's
18 completely up to you if you'd like to discuss the case with
19 anyone or -- or you don't want to discuss the case with
20 anyone. It -- it is -- is up to you. But we appreciate your
21 service. We appreciate you being with us all week and we
22 thank you for your service.

23 All right. Thank you. All right. We're off the
24 record. We're going to go back on the record right -- quick.
25 All right. You ready? Madam Clerk is the verdict form --

1 she has the evidence she will go instruct the jury to now
2 begin deliberations. Thank you. We're at ease. Thank you.

3 (Off the record.)

4 THE COURT: We're back on the record. In this case we
5 actually had -- we have a question from the jury that they
6 have written down. But when the -- Madam Clerk went back to
7 tell them to start deliberating, the foreman asked for a
8 question as well and I tried to find everybody but you all
9 had gone to lunch. This was -- but this question that they
10 asked her, you can -- if you get up and just state your name
11 and tell them what they asked you.

12 THE CLERK: Lindsey Elm, deputy clerk of court, I had
13 to pay with the number quickly, so I was not alone. The
14 foreperson asked me would he need election to read the
15 verdict and I just answered no.

16 THE COURT: So that -- that's the only thing there that
17 nothing -- nothing the substance -- only you all know about
18 it. When to put it on the record, they did ask a question.
19 Obviously, it's nothing important. The next question is
20 marked Court's Exhibit Number 7. "Can we have the written
21 summary of what qualifies for self-defense?" signed by the
22 foreman, 7/26/24.

23 What I would suggest in this is obviously there's not
24 going to be a summary form to send back. I can bring them
25 back in, I can -- what I plan to tell them and we can respond

1 on the note that I can bring them back in and charge them on
2 self-defense. I can re-charge the jury. Defense?

3 MR. MCGUIRE: Judge, we'd be in favor of you just
4 sending the written charge back.

5 MS. LINDER: We think that your Honor's first thought
6 of bringing that -- that back in and re-charging on
7 self-defense is the appropriate (inaudible).

8 THE COURT: If they request a re-charge of
9 self-defense, I -- I'm inclined to just re-charge them on
10 self-defense. I don't think I can just send back a -- I
11 don't think I can send back just a portion of the charge. I
12 believe there's some case law on that, that I should send
13 back the entire charge from beginning to end if necessary.
14 I'm not inclined to do that at this point.

15 So I would -- I would tell them that I'd be willing to
16 re-charge them on self-defense. Now, I will say this, if
17 they want a re-charge on self-defense, I would re-charge them
18 on self-defense -- the elements of self-defense, and I think
19 I have to re-charge them on defense of others as well.
20 Because it -- it says under the law of self-defense, that's
21 what we started with. The Defendant may take another life in
22 defense of others.

23 So I think I have to do self-defense. I would do the
24 general information about self-defense without fault,
25 imminent danger, and then I would do no other way to avoid

1 danger, and then I would do -- defense of others is what I
2 would plan on doing.

3 MR. MCGUIRE: And what about -- don't have to let the -
4 - the decedent get the drop on you, connect on appearances
5 the whole -- it's going to be the whole charge to
6 self-defense?

7 THE COURT: No, I was planning on doing what I just
8 said, the elements of self-defense and adding defense of
9 others. That's what I plan to re-charge.

10 MS. LINDER: And, your Honor, we would -- we would
11 agree that that's -- if -- if they want --

12 THE COURT: If that's what --

13 MS. LINDER: -- to be recharged. If they want to be
14 re-charged, your Honor, then yes, the elements of
15 self-defense and defense of others.

16 THE COURT: And I'll be happy to -- if they want more
17 charges after that that'd be fine too.

18 MR. MCGUIRE: So -- so they're not lawyers and when
19 they say we want the summary of self-defense, I believe their
20 only source of knowledge about what self-defense is came from
21 your Honor, today.

22 THE COURT: That's right.

23 MR. MCGUIRE: And I think they're referring to
24 everything you said about self-defense.

25 THE COURT: Well, I can read them on self-defense, what

1 self-defense is, and then if they have another question they
2 can ask at that point and we can re-charge the entire on
3 that.

4 MR. MCGUIRE: I mean I don't think we should presume
5 that they know that self-defense is the four prongs of Davis
6 and it doesn't include the other charge of self-defense. I
7 mean, if -- if we had an objection to your Honor's charge on
8 self-defense, the Court would look at -- look at it as the
9 jury charge as a whole regarding self-defense. And I think
10 that's what they need to get.

11 THE COURT: All right. I'll hear from the State on
12 that.

13 MS. LINDER: I think that the fact that they -- they
14 said, "They wanted a summary on it." Again, I'm not trying
15 to read into their word choices. The fact they said, "They
16 want a summary of it," I think that reading, like your Honor
17 said the elements of self-defense and including that under
18 self-defense is self-defense of others and the elements under
19 that.

20 I think that if they want to be re-charged, I think
21 that's what you re-charge them on. And I think that we can
22 then stand by very close to not leave or go anywhere. And
23 because I think that if you know they're leaving, if they
24 say, "Well, I have other questions about other things," then
25 I think that they can ask that question.

1 THE COURT: All right. Well, let's first send the note
2 back and see what they say. They may not want me to do --
3 re-charge anything. They might -- they may say, "No, I don't
4 want to be re-charged." I don't know. Let's send a note
5 back and if clerk is going to write on the note that, "The
6 judge can recharge you on self-defense."

7 You're going to say that and then, I'll make a decision
8 based on what their answer is to that then yeah, they want to
9 be re-charged.

10 MR. MCGUIRE: I mean -- I think we need to ask them do
11 they -- what part of self -- I mean, so what's going to
12 happen is if -- if they say, "Yes, we still want to be
13 re-charged on self-defense." And it just says self-defense.
14 Let's assume there's an appeal. It's going to be that
15 there's an improper focus on just part of the charge --
16 somebody's back there could be saying.

17 "Well, now I heard this language about don't get the
18 drop on somebody. I heard you can act on appearances." And
19 then other jurors hearing just part of the charge could say,
20 "See that's not part of it." So what we're -- the danger is
21 to focus on part of it and there's no danger in charging the
22 whole thing.

23 THE COURT: Let's -- let's see what they say first if
24 they want to be re-charged and then we'll cross that bridge.
25 I got their arguments on that side.

1 MR. MCGUIRE: Yes, sir.

2 THE CLERK: (Inaudible)?

3 THE COURT: Re-charge on self-defense. Just tell them
4 that she's going to write. Judge McMaster can re-charge you
5 on self-defense. And then do that, so...

6 MS. LINDER: Thank you.

7 THE COURT: And then we can work out what -- no. What
8 parts of self-defense need to come in. I'll be right back.
9 Just on self-defense. We do not need the full charge.
10 That's the -- that's the question -- that's the answer.

11 MR. MCGUIRE: And I think they're referring to all of
12 the information regarding self-defense that they heard today?

13 THE COURT: As the full charge?

14 MR. MCGUIRE: No, no, no, no. When they say
15 self-defense, I think they mean all of the information that
16 your Honor charged them regarding self-defense. They're not
17 lawyers. They don't know that it's broken down into parts.
18 When they say self-defense, they mean all the information on
19 self-defense.

20 THE COURT: I did a little quick research -- I was
21 doing a little quick research while we had a second there to
22 kind of see what I could find. There's nothing directly on
23 point in an abundance of caution, I'm going to re-charge the
24 full self-defense charge that I did. And -- and if they try
25 to stop me or whatever, they raise their hand and say they've

1 heard enough, then they can do that.

2 But it's about -- it's -- I think that's the right
3 thing to do based on the fact that they are -- I don't know
4 if they do not need -- the full charge means they don't
5 understand, like I said, I know what that means. But anyway,
6 we're going to mark this as the Court's exhibit. Every --
7 okay. Everybody's here. So let's mark that. I think that's
8 eight now, did we get the other Court's exhibit back?

9 UNIDENTIFIED SPEAKER: Not yet.

10 THE COURT: Okay. All right. Okay. All right. Thank
11 you. All right. All right. Please bring in the jury.

12 (Jury enters courtroom.)

13 THE BAILIFF: All the jurors are present and seated.

14 THE COURT: All right. Thank you. Please be seated.
15 We have received a note from the foreman indicating that the
16 jury would like to be re-charged on self-defense. I'll now
17 re-charge you on self-defense. You on the record? Ready?
18 All right. All right. The Defendant has raised the defense
19 of self-defense. Self-defense is a complete defense, and if
20 it is established, you must find the Defendant not guilty.

21 The State has the burden of disproving self-defense by
22 proof beyond a reasonable doubt. If you have a reasonable
23 doubt of the Defendant's guilt after considering all the
24 evidence, including the evidence of self-defense, then you
25 must find the Defendant not guilty. On the other hand, if

1 you have no reasonable doubt of the Defendant's guilt, after
2 considering all the evidence, including the evidence of
3 self-defense, then you must find the Defendant guilty.

4 The following elements are required to establish
5 self-defense. First, the Defendant must be without fault in
6 bringing on the difficulty. If the Defendant's conduct was
7 the type which was reasonably calculated to and did provoke a
8 deadly assault, the Defendant would be at fault in bringing
9 on the difficulty and would not be entitled to an acquittal
10 based on self-defense.

11 The second element of self-defense is that the
12 Defendant was actually in imminent danger or death -- excuse
13 me, was actually in imminent danger of death or serious
14 bodily injury, or that the Defendant actually believed he was
15 in an imminent danger of death or serious bodily injury. If
16 the Defendant was actually in imminent danger, it must be
17 shown that the circumstances would have warranted a person of
18 ordinary firmness and courage to strike the fatal blow to
19 prevent death or serious bodily injury.

20 If the Defendant believed he was in imminent danger of
21 death or serious bodily injury, it must be shown that a
22 reasonable prudent person of ordinary firmness and courage
23 would've had the same belief in deciding whether the
24 Defendant actually was or believed he was in imminent danger
25 of death or serious bodily injury. You could -- should

1 consider all the facts and circumstances surrounding the
2 incident, including the physical condition and
3 characteristics of the Defendant and the deceased.

4 The Defendant does not have to show that he was
5 actually in danger. It is enough if the Defendant believed
6 he was in imminent -- in imminent danger and a reasonably
7 prudent person of ordinary firmness and courage would've had
8 the same belief. The Defendant has the right to act on
9 appearances even though the Defendant's beliefs may have been
10 mistaken.

11 It is for you to decide whether the Defendant's fear of
12 immediate danger of -- of death, or serious bodily injury was
13 reasonable and would have been felt by an ordinary person in
14 the same situation. Prior instances of violence by the
15 deceased may be considered in deciding whether the Defendant
16 actually believed he was in imminent danger of death or
17 serious bodily injury, or was actually in imminent danger.

18 Threats made by the deceased may be considered in
19 determining where the Defendant actually was or believed he
20 was in imminent danger. The final element of self-defense is
21 that the Defendant had no other probable way to avoid the
22 danger of death or serious bodily injury than to act as the
23 Defendant did in this particular instance. A person cannot
24 be required to make an exact calculation as to the degree or
25 amount of force which may be needed to avoid death or serious

1 bodily injury.

2 Therefore, in self-defense, the Defendant has the right
3 to use the force needed to avoid death or serious bodily
4 injury. The force used in self-defense does not have to be
5 limited to the degree or amount of force used by the
6 deceased. The Defendant has the right to use so much force
7 as appeared to be necessary for complete self-protection in
8 which a person of ordinary reason and firmness would've
9 believed to be needed to prevent death or serious bodily
10 harm.

11 If the Defendant is justified in defending himself or
12 others in firing the first shot, then the Defendant is also
13 justified in continuing to shoot until it is apparent that
14 the danger of death or serious bodily injury has completely
15 ended.

16 Words accompanied by hostile action depending on the
17 circumstances established self-defense. Evidence of prior
18 difficulties between the Defendant and the deceased may be
19 considered in deciding whether a threat existed, whether the
20 Defendant had a reason to believe a threat existed, and how
21 serious that threat was.

22 The reputation of the deceased as a violent person may
23 be considered in deciding whether there was a need for force.
24 Whether the Defendant had a reason to believe there was a
25 need for force, and whether deadly force was reasonably

1 necessary. Under the law of self-defense, the Defendant may
2 take another's life in the defense of others.

3 The right to intervene to protect another person is
4 subject to the same rights and limitations as the right of
5 self-defense. The Defendant may take the life of a person
6 who assaults a friend, relative, or bystander. If that
7 friend, relative, or bystander would've had the right of
8 self-defense.

9 To show that the person being defended had the right of
10 self-defense, it must be -- must first be shown that the
11 person being defended and the Defendant were both without
12 fault in bringing on the difficulty.

13 If the conduct of the person defended, or the Defendant
14 was the type which reasonably calculated to and did provoke a
15 deadly assault, the person would be at fault in bringing on
16 the difficult -- the person at -- excuse me. The person
17 would be at fault in bringing on the difficulty and would not
18 have the right of self-defense. Therefore, the Defendant
19 would not have the right to use deadly force in defending
20 that person.

21 The defense of another person is excusable. If the
22 Defendant had reasonable grounds to believe and in good faith
23 did believe that the person being defended was in imminent
24 danger of death or serious bodily harm from the deceased. In
25 deciding whether the person defended actually was, or that

1 the Defendant actually believed the person was in imminent
2 danger of death or serious bodily injury, you should consider
3 all the facts and circumstances surrounding the incident,
4 including the physical condition and characteristics of the
5 parties.

6 The Defendant does not have to show that the person,
7 the Defendant -- Defendant was actually in danger. It is
8 enough that the Defendant believed the person was in imminent
9 danger. The Defendant has the right to act on appearances
10 even though the Defendant's beliefs may have been mistaken.

11 The Defendant must show that under the circumstances as
12 they appeared to the Defendant, the Defendant believed the
13 person defended was in danger and that a reasonably prudent
14 person of ordinary firmness and courage would've had the same
15 belief under the same circumstances.

16 It is for you, the jury, to decide whether the
17 Defendant's fear of imminent danger of death or serious
18 bodily injury to the person defended was reasonable and
19 would've been felt by an ordinary person in the same
20 situation.

21 The Defendant does not have to wait until the deceased
22 gets the drop on the person defended. The Defendant has the
23 right to act under the law of self-preservation to prevent
24 the deceased from getting the drop on the person defended.
25 All right. All right. Ladies and gentlemen, I've re-charged

1 you to the law of self-defense. I would ask you to return to
2 your jury room at this time.

3 (Jury exits courtroom.)

4 THE COURT: All right. Anything from the State?

5 MS. LINDER: Nothing from the State.

6 THE COURT: Anything from the Defense?

7 MR. MCGUIRE: Only what we argued earlier about the
8 charge.

9 THE COURT: You -- you -- did you just want to be
10 protected on the record of your earlier charge where you had
11 the request that I -- we made a Court's exhibit that I denied
12 --

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: -- information?

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: All right. You're -- okay. We -- we got
17 that noted. I have the note here. It is now marked exhibit
18 -- Court's Exhibit 8. Put this again over here. We'll be at
19 ease. And like I said, you all just got your phones and
20 we're pretty close. That'd be great.

21 (Off the record.)

22 THE COURT: State ready to proceed?

23 MS. LINDER: State ready.

24 THE COURT: Defense ready?

25 MR. BISCHOFF: Yes, sir.

1 2023-GS-10-03777 for the charge of murder, "We, the jury,
2 unanimously find the Defendant guilty." As to indictment
3 number 2023-GS-10-03778 for the charge of possession of a
4 weapon during commission of a violent crime. "We, the jury,
5 unanimously find the Defendant guilty." I certify that this
6 is a unanimous decision of the jury. Signed, foreperson of
7 the jury dated July 26, 2024.

8 THE COURT: Thank you. Do -- do -- does anyone request
9 polling of the jury?

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: All right. Please poll the jury.

12 THE CLERK: Ladies and gentlemen, when I call your jury
13 number, you'll please raise your right hand and please answer
14 yes or no to each of the questions I ask you.

15 THE CLERK: Juror number 152. Is this your verdict?

16 JUROR NUMBER 152: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR NUMBER 152: Yes.

19 THE CLERK: Juror number 260.

20 JUROR NUMBER 260: Oh. Yes.

21 THE CLERK: Is this your verdict?

22 JUROR NUMBER 260: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 260: Yes.

25 THE CLERK: Juror number 295. Is this your verdict?

1 JUROR NUMBER 295: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR NUMBER 295: Yes.

4 THE CLERK: Juror number 47. Is this your verdict?

5 JUROR NUMBER 47: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NUMBER 47: Yes.

8 THE CLERK: Juror number 198. Is this your verdict?

9 JUROR NUMBER 198: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR NUMBER 198: Yes.

12 THE CLERK: Juror number 159. Is this your verdict?

13 JUROR NUMBER 159: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NUMBER 159: Yes.

16 THE CLERK: Juror number 5, is this your verdict?

17 JUROR NUMBER 5: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NUMBER 5: Yes.

20 THE CLERK: Juror number 40, is this your verdict?

21 JUROR NUMBER 40: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR NUMBER 40: Yes.

24 THE CLERK: Juror number 143. Is this your verdict?

25 JUROR NUMBER 143: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR NUMBER 143: Yes.

3 THE CLERK: Juror number 185 or 285. I apologize. Is
4 this your verdict?

5 JUROR NUMBER 285: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NUMBER 285: Yes.

8 THE CLERK: Juror number 74, is this your verdict?

9 JUROR NUMBER 74: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR NUMBER 74: Yes.

12 THE CLERK: Juror number 11. Is this your verdict?

13 JUROR NUMBER 11: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NUMBER 11: Yes.

16 THE CLERK: Your Honor. The jury's been polled and the
17 verdict stands.

18 THE COURT: Mr. McGuire, the -- the -- the jury's been
19 fully polled at this time.

20 MR. MCGUIRE: Thanks, your Honor.

21 THE COURT: Thank you. All right. Anything further
22 from the State or the Defense?

23 MS. LINDER: Not at this time, your Honor.

24 THE COURT: All right. Thank you. This time ladies
25 and gentlemen your -- your service is done. We will release

1 you now. I thank you for your service here this week. I
2 know you've been here all week with us since early Monday
3 morning. Thank you for your service.

4 And -- and now we'll release the jury for the remainder
5 of the week. I'll -- I'm going to go speak to the jury as
6 they leave and then I will -- we'll come back in and we will
7 commence with sentencing.

8 MS. LINDER: Yes, Judge.

9 THE COURT: Please make sure you've got all your
10 paperwork or whatever you need.

11 Yes, Judge. Thank you. Thank you.

12 I'll be back. We'll be in recess for just a few minutes.

13 MS. LINDER: Thank you.

14 (Off the record.)

15 THE COURT: Is Mr. McGuire still out?

16 MS. LINDER: Yes, Judge.

17 THE COURT: Okay.

18 MS. LINDER: Your Honor, if I may approach with the
19 sentencing sheets?

20 THE COURT: Yes, please do. Thank you. Mr. McGuire,
21 did you have a chance to speak with the people you need to
22 speak with?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right -- all right. I'm just trying to
25 make sure this sentencing sheet -- this is a new sentencing

1 sheet that came out this week. So obviously, I've been in
2 here with all of you, so I have not studied this yet, so I'm
3 -- I'm working through this as well. But at any rate I think
4 -- I think it's all -- I think it's all in order. Okay. All
5 right. Have you had a chance to calculate the jail day
6 credits?

7 MS. LINDER: Yes, Judge. I calculated the jail day
8 credits and talked to Mr. McGuire about it and he has
9 269 days credit.

10 THE COURT: Are you in agreement with that number
11 Mr. McGuire?

12 MR. MCGUIRE: I am.

13 THE COURT: All right. Thank you. All right. If you
14 please come forward and we'll -- and we'll -- now do you --
15 come forward to the bench or you all want to do it from
16 there?

17 MR. MCGUIRE: Judge, if we can stay right here,
18 appreciate it.

19 THE COURT: Oh, that's fine. Yes you can -- that's
20 fine with me. All right -- all right. If you please stand
21 Mr. Richards. All right. Mr. Richards has been convicted of
22 murder and possession of a weapon during the commission of a
23 violent crime. Obviously, the -- the sentence range in
24 murder is 30 years to life and five years on the possession
25 of weapon during the commission of a violent crime.

1 Murder is classified as violent, most serious, and so
2 with most serious offenses, a conviction with a most serious
3 offense means that -- that if he ever receives another most
4 serious offense or a combination of two serious and a most
5 serious offense, he could face life without parole at that
6 time.

7 I've been informed that he is to receive
8 269 jail days credit. And I think it -- it's going to be
9 here. And I'll be happy to hear -- I'd like to hear from the
10 State and then I'll be happy to hear from you Mr. McGuire.

11 MS. LINDER: Thank you, your Honor. May it please the
12 Court? As far as the Defendant's prior record is concerned,
13 he has an adult conviction from 2022 for burglary, second
14 degree violence, and then he has an extensive juvenile
15 history of adjudications.

16 The State has previously gotten the form -- five of the
17 adjudications, along with -- given the initial incident
18 reports for each of the adjudications to the defense in
19 preparation of this trial, I think it is important to
20 consider that while it's not typically done, because that was
21 so recent -- in fact, his 2022 for second file conviction as
22 an adult was a burglary in first degree. He had other
23 charges at that time in the state of family court. It is
24 adjudication as a juvenile going backwards in 2020. He has a
25 possession of stolen motor vehicle, possession of marijuana.

1 2019, he has two burglary, second non-violence, two
2 school threats, unlawful carry of a pistol, assault and
3 battery, third-degree possession of marijuana, damaging the
4 vehicle, and probation violation. In 2018, he has a break-in
5 larceny and disturbing schools and information violation. In
6 2017, he has a information violation. In 2016, he has
7 (inaudible) second non-violent (inaudible) motor vehicle
8 (inaudible) with conduct assault and battery, third degree
9 and a shoplifting. In 2015, he has two counts of assault and
10 battery in third degree and disturbing schools. Your Honor,
11 I am -- I'm speaking on behalf of the State,
12 North Charleston Police Department, and the family who have
13 been wonderful and have been sitting in here all week and
14 being quite respectful of the process that -- that we have
15 been going through all week.

16 In reviewing the Defendant's prior juvenile
17 adjudications in those reports, like I said, (inaudible)
18 encouraged to the Defense. We actually were speaking to a
19 lot of individuals in preparation with Mr. Richards was going
20 to testify, including many incidents at the school where he
21 physically assaulted the principal, for example.

22 And then told that principal days later that he saw
23 outside of the school he was going to put a cup in his ass.
24 We believe that Mr. Richards has an extremely long history of
25 violence, of acting out and progression toward others and he

1 showed that with his behavior with Javon Thomas and the jury
2 agreed with us. Myself, North Charleston and the family
3 would ask for him to receive life.

4 THE COURT: All right. Have you complied with the
5 Victim's Rights Act? I believe you indicated they're all
6 here. Does anyone like to -- would like to speak? I'd be
7 happy to hear from them if they do. All right. No one would
8 like to speak on behalf of the victim. Mr. McGuire, I'd be
9 happy to hear from you.

10 MR. MCGUIRE: Thank you, Judge. Courtney's mom's here,
11 Darcell, she doesn't want to speak. She just wanted me to
12 relay to your Honor that she knows in her heart that Courtney
13 was out for no ill will that day. No malice. This is a
14 chance meeting with Javon Thomas. There's no way that
15 Courtney could have predicted when they were going to go to
16 that store, what route they were going to take.

17 This is 100 percent chance meeting when Courtney woke
18 up that day. He wanted to do one thing, go to work at
19 Five Guys, earn a paycheck to pay for the new apartment that
20 he and Emonie just got. They were still moving things in it.
21 That was the first step on his adult life, was to get that
22 apartment with Emonie and prepare for the birth of their --
23 their daughter. He was a soon-to-be father and at this time
24 he was just working -- working hard.

25 He worked at Five Guys, he worked at Taco Bell, he

1 worked at Sonic. And he also did Uber Eats, DoorDash. He
2 actually got his bond revoked based on him trying to work too
3 much and being late, getting home and violating curfew. When
4 we had the map of the GPS violations, he picked up his -- his
5 mom once at MUSC where she worked. And other than that it
6 was all just working hard, trying to provide for himself and
7 Emonie.

8 Again, when he woke up that day, he had no idea he was
9 going to run into Javon Thomas and -- and Niya. And we cut
10 our case kind of short to -- to try to just focus on the
11 basics towards the end of this week. But I'll tell you this
12 -- it's absurd that this thing happened. This is over a
13 request to go to the Waffle House at 3:00 in the morning and
14 Emonie said, "No, Niya, we're not taking you. We have jobs."

15 Emonie worked at The Citadel serving breakfast and
16 lunch. She also served meals at River Hospital at night.
17 Again, she was doing her part to try to provide for -- for
18 their steps in their adult life and their -- their daughter
19 who's going to arrive in the near future. And they refused
20 Niya's request, Javon Thomas's request to go to the
21 Waffle House at 3:00 in the morning.

22 And then after that, Javon posted some nasty stuff on
23 Facebook about Courtney. Courtney didn't engage, didn't
24 respond, did nothing. Javon did try to yank Courtney out of
25 his car when they were parked under that oak tree in the park

1 between Niya's house and Emonie's mom's house. Courtney
2 didn't respond, engaged, put his foot on the gas, closed that
3 door as soon as he could and got out of there. He left
4 again.

5 On the corner this day -- this incident, same thing.
6 Niya says something, picking Emonie -- the feud between the
7 two young ladies and Javon gives him the hard look. Clutches
8 at his gun that we all know he had. And what did Courtney
9 do? He did what he did in those other occasions. Put his
10 foot on the gas, tried to leave. He's always removed himself
11 from the conflict, always left, never engaged, never
12 responded.

13 And the only reason his car stopped down that road is
14 because Emonie pulled on that door handle and started to put
15 her foot on the pavement, and he stopped the car for her so
16 she could confront Niya and say, "Stop this picking at me."
17 He didn't stop to confront Javon. He stopped because Javon
18 was coming up the road after saying, "I'm going to wet this
19 shit out." Right in front of Evette's house.

20 Marching down the road, Emonie is out of the car,
21 Courtney's stuck. Can't go. He showed his gun. He got his
22 gun. He went to the back of the car, he showed it. And
23 that's completely inconsistent with the State's theory that
24 he tried to murder Niya and Javon with his automobile and
25 then he hit the brakes to finish the job. If that was true,

1 he'd have popped out and popped off shots.

2 That's not what happened. Yeah. He went to the back
3 of that car, showed his gun, hoping that would stop Javon, it
4 didn't. Put a warning shot in the ground hoping that would
5 turn him around. It didn't. Another warning shot in Javon's
6 direction hoping that would do it, it didn't. In that video,
7 the last two seconds is Javon Thomas with his gun in his
8 hand, eyeballing Courtney, walking backwards? Sure.

9 Squared up facing Courtney. And the last time we see
10 Javon in that video, there's only one second before you hear
11 Courtney returning fire. I firmly believe that he's not
12 guilty and that he did act in self-defense. On advice from
13 his lawyers, Courtney is not going to say anything to the
14 Court.

15 THE COURT: All right.

16 MR. MCGUIRE: We've got 10 days within which to appeal.
17 We'll do it.

18 THE COURT: He does have 10 days to appeal. You're
19 correct. Mr. Richards, I've been informed that you would not
20 like to say anything and -- and you certainly do not have to,
21 but I'm giving you the opportunity if you would like. You do
22 not wish to speak. All right. He's shaking his head that he
23 does not wish to speak.

24 MR. MCGUIRE: And Judge based on the facts of this case
25 --

1 THE COURT: Yes.

2 MR. MCGUIRE: While the jury did not find self-defense,
3 it is such a close call that the appropriate sentence should
4 be the minimum in this case.

5 THE COURT: All right. Well, thank you. Anything else
6 from the Defense?

7 MR. MCGUIRE: No, sir.

8 THE COURT: Anything further from the State?

9 MS. LINDER: Nothing from the State.

10 THE COURT: What was the -- the burglary second degree
11 violent -- what was the sentence on that?

12 MS. LINDER: He received an active YOA.

13 THE COURT: So that's being completed. He's on -- he
14 was put on parole I assume when he left.

15 MR. MCGUIRE: This will be a violation.

16 THE COURT: Violation of the parole. Okay. All right
17 -- all right. Give me one minute. I'm going to -- I've got
18 to look over the sentencing sheet and make sure that I'm
19 filling everything out appropriately. All right. Sentence
20 of the Court on 2023-GS-10-03777, the charge of murder I
21 sentence Courtney Charles Richards to
22 Department of Corrections for a period of 45 years.

23 You're given 269 days of credit. On GS -- excuse me.
24 On 2023-GS-10-03778, possession of a weapon near the
25 commission of a violent crime, I've sentenced

1 Courtney Charles Richards to five years in the
2 Department of Corrections that will run concurrent to
3 2023-GS-10-03777. He has given 269 days credit on that as
4 well. Good luck to you, sir.

5 MS. LINDER: Thank you, your Honor.

6 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
7 3:23 P.M.)

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STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	INDICTMENT NUMBERS: 2023GS1003777
)	2023GS1003778
STATE OF SOUTH CAROLINA,)	WARRANT NUMBERS: 2022A1021000145
)	2022A1021000146
Plaintiff,)	
)	
-versus-)	DEFENDANT'S PRETRIAL BRIEF
)	
COURTNEY RICHARDS,)	
Defendant.)	

STATUS OF CASE

The defendant, Courtney Charles Cordae Richards is in pretrial detention at the Al Cannon Detention Center. He is charged with Murder and Possession of a Firearm During a Violent Crime in regard to a shooting in February of 2022.

PRETRIAL ISSUES

The defendant will make the following motions:

- 1) The state will allege that the defendant fired a .45 caliber pistol during the incident. When the defendant's car was ultimately searched, some 9-millimeter unfired bullets were found in a bag containing loose change. These bullets are not related in any way to the pending charges and would be introduced to paint the defendant as having a gangster-like persona.
- 2) The .45 caliber pistol that the defendant fired during the incident was ultimately recovered in the possession of another person sometime after the incident. When recovered, a high-capacity extended magazine capable of containing 26 rounds was with the .45 caliber pistol. This extended magazine was never used by the defendant and was not in the .45 caliber pistol during the incident. The introduction of the magazine would be introduced to paint the defendant as having a gangster-like persona.
- 3) The defendant moves for a Duncan hearing as this is a case of self-defense wherein the defendant and his girlfriend were in- or just exited- their automobile, when the alleged victim was an armed aggressor.
- 4) The defendant will object to the introduction of gruesome images of the alleged victim, either from the incident location or the autopsy.

- 5) The defendant objects to Javon Thomas being called “the victim.” Javon Thomas was not a victim. He was an armed aggressor threatening two occupants of a vehicle.
- 6) The defendant objects to the incident location being referred to as a crime scene. The incident location shall be referred to as such by both parties.
- 7) The defendant objects to any line of questioning that calls attention to the defendant's post incident silence, as this questioning would draw improper attention to the defendant's post arrest silence in violation of the defendant's constitutional rights.

The defendant agrees to the following proposals, so long as the prosecution agrees to the each proposal:

- 1) It is not necessary for the state or defense to lay a foundation for the defendant's call records or text messages. The rules of hearsay, relevance, etc., would still apply.
- 2) Despite multiple identifications being made using a single photo, or 6-pack photo line ups, the defendant does not request a Biggers hearing with regard to any of the identifications.
- 3) It is not necessary for the state or defense to lay a foundation for the 911 calls. Any of the calls may be played by the state or defense without a witness to authenticate the calls. If any calls are played, the jury will be instructed by the Court that they are listening to a recorded 911 call.
- 4) No chain of custody is necessary to prove that the guns attributed to the alleged victim and the defendant are in fact the guns fired by the respective parties. They may be admitted into evidence by either party as “Javon Thomas' gun” and “Courtney Richards' gun.”
- 5) No chain of custody is required for the admission of the shell casings at the scene. They may be admitted by either party as shell casings “fired by Javon Thomas' gun,” and shell casings “fired by Courtney Richards' gun.”
- 6) No chain of custody is required for the admission of any of the items recovered in the search of Courtney Richards' car. They may be introduced as an item found in Courtney Richards' car if the items are found otherwise admissible, and not prejudicial to the defendant.
- 7) No foundation is necessary for the introduction of the BWC footage. Either party may play the footage and introduce it as BWC footage from the scene so long as the entire footage is played and admitted in its entirety.

- 8) No foundation is necessary for the introduction of the defendant's work records from 5 Guys Enterprises. This is the 5 Guys Burgers restaurant on King Street in downtown Charleston, SC. The records are agreed to be admissible and may be admitted by either party.
- 9) It is not necessary to lay a foundation for any social media- whether audio or video attributed to the potential witness, Zariae Davis. The material would still be subject to the remaining rules or evidence.

RESPECTFULLY SUBMITTED,



William S. McGuire
SC Bar Number 9722

Adams & Bischoff, LLC
171 Church Street, Suite 360
Charleston, SC 29401
(843) 277-0090 (office)
bill@adamsbischoff.com

Charleston, South Carolina
This 8th day of July, 2024

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

AUG 16 PM 3:35
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

vs.

COURTNEY CHARLES CORDAE
RICHARDS,

DEFENDANT.

Arrest Warrant #2022A1021000145
Arrest Warrant #2022A1021000146

Indictment #2023-GS-10-03777
Indictment #2023-GS-10-03778

ORDER

This matter comes before the Court on the Defense's Motion for an Order Granting Immunity Pursuant to the Protection of Persons and Property Act. A hearing was held on July 22, 2024, before the Honorable William C. McMaster, III. The State was represented by Assistant Solicitors Stephanie Linder and Mariana Outten. The Defendant was represented by William Sean McGuire and Scott Bischoff.

Based upon the exhibits and the testimony of the Defendant and the State, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

On February 19, 2022, the victim, Javon Thomas, and his girlfriend, Antoniya Singleton, were walking toward the intersection of Comstock Avenue and Cosmopolitan Avenue in the Union Heights area of North Charleston. While Thomas and Singleton were on foot, the Defendant and the Defendant's girlfriend, Emonie Burgess, drove past them in the Defendant's 2013 Jeep Compass.

The Defendant testified that he was driving down Comstock to drop off Burgess at her mother's house, which was located at the corner of the intersection. The Defendant testified that

W 1 of 7

he was then going to work after dropping off Burgess. According to the Defendant, Singleton was yelling at Burgess in a picking and bickering way. At the same time, he claimed Thomas was clutching at his waistband leading him to believe Thomas may have had a gun. The Defendant drove past Thomas and Singleton, approximately 230 feet past Burgess's mother's house and stopped his vehicle in front of 2010 Comstock Avenue. The Defendant further testified that although he drove away before stopping, Burgess opened the door of the car "like she was going to fall out" because she wanted to confront Thomas and Singleton. The Defendant testified that Burgess exited the vehicle and that he yelled at her to get back in the car. The Defendant further testified he could not drive away as he "believed" doing so would leave Burgess behind in the roadway. The Defendant testified it was at this point when he could not get Burgess back in the vehicle that he observed Thomas walking toward him with a gun. The Defendant testified he fired a "warning shot" into the ground. The Defendant then fired a second "warning shot" in the direction of Thomas.

The majority of the shooting was captured on a cell phone video by a witness. This cell phone video was presented at the hearing. The person who took the video is seated in his vehicle, which was located approximately at the corner of Comstock and Cosmopolitan Avenues. The video begins with the car window rolled up. As the video begins, the video captures Thomas walking down Comstock toward the parked vehicle and no gun is seen on the video in Thomas's possession. A pop is heard. The window rolls down, and another pop can be heard. Next, Thomas is seen and heard shooting with his back to the video taker. The video then flips to show the face of person taking the video for four seconds, but several different sounding gunshots can be heard. The video then shows Thomas lying dead in front of 2000 Comstock Avenue. The video taker

states, "drop that boy, drop that boy, drop that dumb a*s boy. He tell him stop playing with him. Courtney, Lil' Courtney just dropped his stupid a*s."

The video also shows the Defendant's vehicle parked a distance down Comstock Avenue and the passenger door is open and then closed during the shooting. No one can be seen outside the passenger side of the Defendant's vehicle at any point on the video. The driver side of the vehicle is out of the video's picture.

The State called four witnesses in rebuttal: North Charleston Police Department Corporal Jodi Hunt, Monique Perry, Abigail Perry, and former North Charleston Police Department Detective Jennifer Butler.

Corporal Jodi Hunt was the crime scene technician who responded to the scene that day. Her responsibility was to take photos and collect evidence. She testified that she found two clusters of fired cartridge cases: one cluster of .45 caliber casings were found in front of 2019 Comstock Avenue and another cluster of 9mm casings were found in front of 2006 Comstock Avenue. Neither the Defense nor the State dispute that Thomas fired a 9mm firearm during the shooting and the Defendant fired a .45 caliber firearm during the shooting. Hunt testified Thomas's body was found in front of 2000 Comstock Avenue, and she recovered his 9mm firearm close to his body. She also testified that the distance between Thomas and the house where the fired cartridge cases from his 9mm firearm were found was approximately 60 feet. The distance between the house near where the Defendant's fired cartridge cases were found and the house near where Thomas's fired cartridge cases were found was approximately 170 feet.

Monique Perry, and her daughter Abigail, were eyewitnesses to the shooting. Monique Perry testified that she was riding to Jehovah Tabernacle Church, located at the corner of Cosmopolitan and Comstock Avenues, with her daughter for a woman's Bible study. She testified

that after Abigail parked their car, she first saw Thomas walking towards their location in the church parking lot without a firearm in his hand. She testified Thomas was gesturing and waiving both of his hands in the air and appeared to be engaged in a confrontation with someone down the street who she could not see. She testified that she heard gunshots coming and saw Thomas return fire. She testified Thomas had turned his back and was running away from the direction of the shots when he was struck. In her opinion, Thomas shot in order to defend himself.

Abigail Perry testified Thomas was angry and his body language put her at unease, such that she instructed her mother to stay in their car parked in the church parking lot. Abigail testified after Thomas fired his weapon, he turned his back and was running away from the direction of the shots when he was struck.

Investigator Jennifer Butler, formerly of the North Charleston Police Department, was the lead detective in this case. She testified that she responded to the scene that day and interviewed several witnesses, including Monique Perry and Abigail Perry, as well as family members of Thomas. She also testified that later that day she interviewed Singleton at North Charleston Police Department Headquarters. She testified that although she attempted to discern what might have been the difficulty between Burgess and Singleton, or between the Defendant and Thomas themselves, she was never able to determine with any specificity whether there was some preexisting issue that led to the shooting.

Conclusions of Law

S.C. Code Section 16-11-410 et seq, known as the Protection of Persons and Property Act ("the Act"), generally provides for immunity when a person uses lethal force in defense of themselves, their property, or another person. There are three different subsections to the Act, but subsection (C) of the Act is a catch-all, which applies when the Defendant acts outside of his home

and has not otherwise been excused from his duty to retreat. State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019).

Subsection (C) of the Act provides “[a] person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be...has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury or another person...” S.C. Code §16-11-440(C). In the case of State v. Duncan, the Supreme Court held that immunity pursuant to 16-11-420 must be raised and ruled upon pretrial. 392 S.C. 404, 709 S.E.2d 662 (2011). In order for a person to be immune from prosecution, they must show that the act applies by a preponderance of the evidence. Id.

In order for the Act to apply, a valid self-defense case must exist. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). The Act removes the duty to retreat. State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2022). However, the following elements must still be shown: (1) the Defendant must be without fault bringing on the difficulty; (2) the Defendant must have an actual belief of imminent danger, losing his life, or sustaining seriously bodily injury; and (3) a reasonable person in the Defendant’s position must have shared that belief and acted in a similar way. Id.

The Court determined that subsection (C) is applicable in the case at hand since the Defendant was in an area that he had the right to be in.

The first element the Defendant must show in order to prevail on his claim for immunity is that he was without fault in bringing on the difficulty. The Defendant testified about the verbal altercation between himself, Burgess, Thomas and Singleton. He does not claim that at the time of the verbal altercation, Thomas brandished a firearm. He merely claims Thomas “reached for his

waistband.” Next, he claims he drove away, and once he was 170 feet away, Thomas came down the street with a gun in his hand. The Defendant’s testimony on this point is contradicted by Monique Perry and Abigail Perry, who with a closer view of Thomas, testified that he did not have a firearm in his hand when they saw them.

The Court finds the Defendant was not without fault in bringing on the difficulty. The Court finds the Defendant stopped his car in the street, Thomas had no visible firearm, and the Defendant fired twice, once in the ground and then in the direction of Thomas. The Court finds both Monique and Abigail Perry’s testimony about Thomas not having a firearm in his hand compelling, as those two individuals had no connection to the Defendant or Thomas. Furthermore, the Court finds the testimony regarding distances between the Defendant and Thomas compelling. The testimony is uncontroverted that the Defendant fired the first two shots before Thomas fired any shots. Thus, the Court does not find by a preponderance of the evidence that the Defendant was without fault in bringing on the difficulty.

The second and third elements are that Defendant must have been in actual danger of imminent peril, and that his belief of peril must be reasonable. The Court does not find that the Defendant demonstrated these elements by a preponderance of the evidence. As a preliminary matter, the Defendant did not testify that he was ever in fear for his life. He testified that he “had to protect” Burgess who was apparently attempting to exit a moving vehicle. He does not say that he believed that either himself or Burgess would imminently die or be seriously injured if he did not use deadly force.

Aside from the Defendant’s testimony, the Court finds credible the testimony of Monique and Abigail Perry. Both women testified they could not see the Defendant from their location in the church parking lot, but that they could see Thomas. This testimony is consistent with Corporal

Hunt's testimony that the Defendant's fired cartridge cases were approximately 170 feet away from Thomas's fired cartridge cases. The Defendant and Thomas were not in close proximity to one another when the Defendant fired the first two shots.

Further, the Defendant admits to being in his vehicle with the direction of his vehicle facing away from Thomas and then exiting his vehicle and coming closer to Thomas to fire the first two shots. The Defendant did not have to exit his vehicle to evade Thomas. He could have continued to drive away, down Comstock Avenue, and away from any potential threat of Thomas. Additionally, the video evidence does not show Burgess outside of the vehicle. Not only does this amount to being at fault in bringing on the difficulty, but this also goes to the second and third elements: he did not have a reasonable belief of imminent peril, nor would a reasonable person in his position have a fear of imminent peril.

Based on the foregoing, the Court finds that the Defendant has failed to satisfy the elements of the Protection of Persons and Property Act by a preponderance of the evidence, such that he should be immune from prosecution, and; therefore, the Court denies the Defendant's Motion.

This Order incorporates all findings of fact and conclusions of law made by the Court at the conclusion of the Defense's Motion.

IT IS SO ORDERED.

August 12, 2024


William C. McMaster, III
Presiding Judge Ninth Judicial Circuit

2024 AUG 16 PM 3:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

SBL/0387474
WITNESSES

BUCKET NO. 2023-GS-10-03777

943

North Charleston Police Department

The State of South Carolina

County of Charleston

Ross

AGENCY CASE NUMBER

2022-004226

ARREST WARRANT NUMBER

2022A1021000145

DATE OF ARREST

02/24/2022

ACTION OF GRAND JURY

TRUE BILL

COURTNEY CHARLES CORDAE

RICHARDS

VS.

B/M DOB: [REDACTED]

McCluskey

SEP 12 2023

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Indictment for

MURDER

S

9/26/23

Foreperson of Petit Jury

Date:

SC Code: § 16-03-0010
CDR Code: 01116

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened September 2023, the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County, South Carolina on or about February 19, 2022, the defendant, Courtney Charles Cordae Richards with malice aforethought did kill and murder Javon Thomas by means of shooting with a firearm, and Javon Thomas did die in Charleston County as a proximate result thereof on or about February 19, 2022, in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



STEPHANIE B. LINDER
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

STATE)

INDICTMENT/ 2023-GS-10-03777
CASE#:

VS.)

COURTNEY CHARLES CORDAE RICHARDS)

A/W#: 2022A1021000145

AKA: Courtney Charles Richards, Courtney Charles Cordae Richards)

Date of 02/19/2022

Race: Black Sex: M Age: 21)

Offense:

DOB: [REDACTED] SS#: [REDACTED])

S.C. Code §: 16-03-0010

Address: [REDACTED])

CDR Code #: 0116

City, State,)

SENTENCE SHEET

Zip: Charleston, SC 29407-5251)

DL# [REDACTED] SID [REDACTED])
* #

*CDL Yes No CMV Yes No Hazmat Yes No
 Defendant Pro Se

In disposition of the above indictment comes now the Defendant who WAS CONVICTED OF or PLEADS


TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The State's Position is:
 None
 Negotiated and Agreed Upon Sentence: _____ Years, _____ Months, Probation for _____ Years, _____ Months;
 Negotiated and Agreed as to Charges Only
 Recommended and Agreed Upon Sentence: _____ Years, _____ Months, Probation for _____ Years, _____ Months;

ATTEST:

Stephanie B. Linder, Assistant Solicitor SC Bar # 72656 Defendant Attorney for Defendant SC Bar # 9722

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,

for a determinate term of 4.5 Hours/Days/Months/Years Time Served

- Home Detention Program(HIP) MH Evaluation and Compliance Batterer's Treatment
- Domestic Abuse Counseling Drug Court Drug Program Alcohol Program Inpatient Facility
- Hold Until Bed Space Available Mental Health Court Balance Suspended with Drug Court
- Other: _____
- Judicial Review _____ Days/ Months
- Youthful Offender Act not to exceed _____ Days/ Months/ Years

STATE COURTNEY
VS. CHARLES CORDAE
RICHARDS

INDICTMENT/CASE#: 2023-GS-10-03777

And /Or to pay a fine of \$_____;

Time Served

provided that upon the service of _____ Hours/Days/Months/Years

- Home Detention Program(HIP) MH Evaluation and Compliance Batterer's Treatment
- Domestic Abuse Counseling Drug Court Drug Program Alcohol Program Inpatient Facility
- Hold Until Bed Space Available Mental Health Court Balance Suspended with Drug Court
- Suspended To Batterer's Treatment
- Other: _____

And/ Or a payment of \$_____ ; plus costs and assessments as applicable*

the balance is suspended with probation for _____ Months/ Years

- Suspended During Probation Suspended During Drug Court Suspended During Batterer's Treatment
- Other: _____

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.

269 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.

Defendant has 10 days to apply for Home Detention Program or this will convert to an active sentence.

SPECIAL CONDITIONS:

- PTUP** after _____ Months/Years Home Detention Program (HIP)

And Other Terms Listed Below:

- Conditional Discharge
- 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: _____

STATE COURTNEY INDICTMENT/CASE#: 2023-GS-10-03777
VS. CHARLES CORDAE
RICHARDS

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$	_____
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____
§14-1-206 (Assessments 107.5%)		\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	_____
§56-5-2995 (DUI Assessment)	\$12	\$	_____
§56-1-286 (DUI Breath Test)	\$25	\$	_____
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$	_____
§50-21-114 (BUI Breath Test Fee)	\$50	\$	_____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	_____
3% to County (if paid in installments)	TBD	\$	3.75
Other Costs (As Authorized by Cost Code)*			
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$	_____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$	_____
	TOTAL	\$	128.75

Clerk of Court/Deputy Clerk: Lindsey Helm
Court Reporter: DCRP

Presiding Judge: [Signature]
Judge Code: 2780
Sentence Date: 7/26/2024

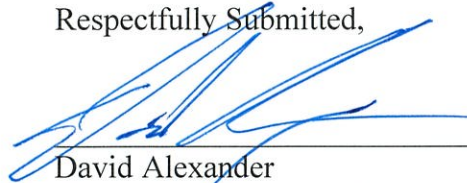
Specify Other Costs*

Cost Code	Cost Description	Amount
<input type="checkbox"/> _____	_____	_____
<input type="checkbox"/> _____	_____	_____
<input type="checkbox"/> _____	_____	_____
<input type="checkbox"/> _____	_____	_____
<input type="checkbox"/> _____	_____	_____

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Nov 13 2025

SC Court of Appeals

This 13th day of November, 2025.

RECEIVED

Nov 13 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable William C McMaster, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COURTNEY CHARLES CORDAE RICHARDS,

APPELLANT

APPELLATE CASE NO. 2024-001274

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of November, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT