

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jan 14 2026

SC Court of Appeals

Appeal from Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XABIAN URONIE BAILEY,

APPELLANT

APPELLATE CASE NO. 2024-001526

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[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT 3 (911 CALL)]

1 Q. Kept on going?

2 A. Yes, ma'am.

3 Q. Do you know that it went into the river?

4 A. I mean, I seen it go like, I'm pretty sure it went
5 over like, like the edge. Like I don't know what they call
6 -- it wasn't no bridge, but it was water up -- under us.

7 Q. So you were close to the water wherever you threw
8 it?

9 A. Yes, ma'am.

10 Q. And was anyone else in the car with you and Devin?

11 A. No, ma'am.

12 Q. And after you threw it, you kept on going?

13 A. Yes, ma'am.

14 Q. Were you in the passenger seat or the driver's
15 seat?

16 A. I was in the back seat.

17 Q. Who else was in the passenger seat? The front.

18 A. Nobody.

19 Q. You're in the back by yourself and Devin is your
20 chauffeur?

21 A. Yes, ma'am.

22 Q. And then where do you go after you throw the gun
23 in the river in North Carolina along the highway. Where do
24 you go?

25 A. Back to Econo Lodge.

1 Q. How long did you stay this time?

2 A. I mean we ain't stayed the night in North
3 Carolina, nothing. We went and came right back.

4 Q. So did you go to North Carolina specifically to
5 get rid of the gun?

6 A. Oh, no.

7 Q. What'd you go for?

8 A. We went to go meet one of his cousins to do
9 something.

10 Q. When you get rid of the gun, you go back to the
11 Econo Lodge, you stayed for how long?

12 A. By the time I went to North Carolina, I was at
13 Econo Lodge for like two days already. So after I got back
14 from North Carolina, I probably stayed for like three or four
15 more days.

16 Q. And then that's when you make the trip to Memphis?

17 A. Yes, ma'am.

18 Q. And then Oklahoma and that's it?

19 A. Yes, ma'am.

20 Q. No other stops?

21 A. No, ma'am.

22 Q. Did Richard Carroll have a gun on that day?

23 A. No. Who? No, ma'am.

24 Q. Did Fantasia Carroll have a gun on?

25 A. No, ma'am.

1 Q. And how about Heavenly Reedy?

2 A. No, ma'am.

3 Q. And as far as your testimony today, you are the
4 one who shot all three of those victims?

5 A. Yes, ma'am.

6 MS. CHARBONNEAU: Nothing further.

7 THE COURT: Any re-direct?

8 MR. MCKELLAR: Thank you, Your Honor.

9 RE-DIRECT EXAMINATION

10 BY MR. MCKELLAR:

11 Q. Mr. Artis, you testified that you were carrying a
12 pistol that day?

13 A. Yes, ma'am. I mean, yes, sir.

14 Q. Did -- was it -- did you carry -- was it common
15 for you to carry a pistol?

16 A. Yeah.

17 Q. Did you carry daily?

18 A. Yes, sir.

19 Q. When you started firing, did you fire until the
20 threat was gone? Did you fire until the threat was over?

21 A. Yeah -- yeah.

22 Q. Did you -- do you know whether you fired every
23 round in the magazine?

24 A. Yeah, I did.

25 Q. And what is -- tell the jury where the magazine

1 is?

2 A. The -- the clip, like how -- however many bullets
3 go in the gun.

4 Q. How do you know you fired every round in the
5 magazine?

6 A. Whenever you -- whenever you shoot the whole clip,
7 the slide caught back and I seen my slide was caught back,
8 so.

9 Q. Now, when you first see W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED],
10 they walked to you. Did everything happen really fast?

11 A. Yes, sir.

12 Q. Do you have much time to (inaudible)?

13 A. Not really.

14 MR. MCKELLAR: I have no further questions.

15 THE COURT: Any re-cross?

16 MS. CHARBONNEAU: Yes.

17 RE-CROSS EXAMINATION

18 BY MS. CHARBONNEAU:

19 Q. Mr. Artis, Mr. McKellar just asked you that you
20 shot until the threat was over. You shot until the three
21 boys were dead, right?

22 A. I mean, I -- it wasn't really that. I just -- I
23 really ran out of bullets.

24 Q. Were you -- would've kept you going?

25 A. Probably not because they was already on the

1 ground.

2 Q. Because they were already on the ground. Yes?

3 A. Yes, ma'am.

4 MS. CHARBONNEAU: Nothing further.

5 THE COURT: All right. Mr. McKellar, do you have any
6 additional witnesses?

7 MR. MCKELLAR: No, Your Honor. The defense rests.

8 THE COURT: Very good. Ladies and gentlemen of the
9 jury, at this time, we need to excuse you back to the jury
10 room. Mr. White, please escort the jury.

11 (Jury exits courtroom.)

12 THE COURT: Please be seated. Mr. Artis, very careful,
13 if you can watch your way down, watch those two steps right
14 there. All right.

15 All right. Mr. McKellar, you've closed. Are there any
16 motions?

17 MR. MCKELLAR: Your Honor, the defense renews its
18 motion for a directed verdict. Defense renews its motion for
19 a mistrial, and the defense renews all its motions or
20 objections.

21 THE COURT: Thank you, Mr. McKellar.

22 Any response Madam Solicitor?

23 MS. CHARBONNEAU: We stand on the same ground, Your
24 Honor.

25 THE COURT: All right. Mr. McKellar, I'm going to

1 continue to deny the motions -- deny the motion for mistrial
2 as well as deny the motion for the directed verdict. The
3 rulings with regards to the objections will remain the same
4 as done prior. With regards to some housekeeping --

5 MS. CHARBONNEAU: Your Honor, the State has one
6 rebuttal.

7 THE COURT: That's right.

8 MS. CHARBONNEAU: And he is in the Court.

9 THE COURT: That's right.

10 MR. MCKELLAR: Your Honor, if it is for impeachment,
11 Your Honor, I think it'd be for the proffer if, Your Honor,
12 is willing.

13 THE COURT: All right. Is this --

14 MR. MCKELLAR: I'm going to be challenging the
15 foundation of some of what I believe they're going to say are
16 prior consistent statements.

17 THE COURT: All right.

18 Madam Solicitor, this is for impeachment purposes?

19 MS. CHARBONNEAU: Yes.

20 THE COURT: All right. Very good. And so, we'll --
21 we'll proffer if you'll call your witness, we'll go ahead and
22 proffer that outside of the presence of the jury.

23 MS. CHARBONNEAU: Can we have five minutes?

24 MS. MORGAN: Let's just step out a little bit.

25 THE COURT: Absolutely. We'll stand down for five

1 to proceed with the rebuttal witness?

2 MS. MORGAN: Yes, Your Honor.

3 THE COURT: Mr. McKellar, you ready to proceed?

4 MR. MCKELLA: Ready, Your Honor.

5 THE COURT: Can you please bring the jury in?

6 (Jury enters courtroom.)

7 THE COURT: Please be seated. Madam Solicitor?

8 MS. MORGAN: Yes, Your Honor. The State calls
9 Investigator Greg Faulkner.

10 GREGORY FAULKNER,

11 having been duly sworn, testifies as follows:

12 THE CLERK: Please say and spell your last name.

13 THE WITNESS: My name is Investigator Gregory Faulkner.
14 It's F-A-U-L-K-N-E-R.

15 FURTHER DIRECT EXAMINATION

16 BY MS. MORGAN:

17 Q. Good afternoon, Investigator Faulkner. Where do
18 you currently work?

19 A. Aiken County Sheriff's Office.

20 Q. And how long have you been in law enforcement?

21 A. Ten years to this year.

22 Q. Did there come a time that you had any involvement
23 with the case of State v Xabian?

24 A. Yes, ma'am.

25 Q. And did there come a time that you had the

1 opportunity to interview a possible witness,
2 Fantasia Carroll?

3 A. Yes, ma'am.

4 Q. During that interview, was that interview
5 recorded?

6 A. Yes, ma'am.

7 Q. And have you had the opportunity to review the
8 transcript of that interview?

9 A. Yes, ma'am.

10 Q. And is this -- is the transcript accurate?

11 A. Yes, ma'am.

12 Q. And during that interview, did you ask
13 Ms. Fantasia Carroll when she, on the day of June 26, 2022,
14 when they walked to x26 Wadley Drive, did you ask her whether
15 or not any of the people that went to that address with her
16 if they had guns?

17 A. Yes, ma'am.

18 Q. How did she respond?

19 A. She responded Xay and Alvin.

20 Q. And by Xay, who do you mean?

21 A. Xabian Bailey.

22 Q. And did you -- I'm sorry. Okay. And did you ask
23 her where they had the guns -- where they carried the guns?

24 A. Yes, ma'am.

25 Q. And what did she say?

1 A. In their pants.

2 Q. Did you ask her how she knew they had guns?

3 A. Yes, ma'am.

4 Q. What did she say?

5 A. She knew because she saw them shoot.

6 MS. MORGAN: Thank you. No further questions.

7 THE COURT: Mr. McKellar?

8 CROSS-EXAMINATION

9 BY MR. MCKELLAR:

10 Q. Good afternoon, Investigator Faulkner.

11 A. Good afternoon.

12 Q. I might change gears a little bit. You
13 interviewed Fantasia Carroll on day of the shooting, right?

14 A. Yes, ma'am. Yes, sir. Sorry.

15 Q. And you were informed that weapons used at the
16 incident may have been hid in Twaine's --

17 MS. MORGAN: Objection.

18 BY MR. MCKELLAR:

19 Q. -- house, correct?

20 THE COURT: What's the basis?

21 MS. MORGAN: It's beyond the scope.

22 THE COURT: What's your question, Mr. McKellar?

23 MR. MCKELLAR: It is -- Your Honor, I will be beyond
24 the scope of my cross. I'm -- I'm allowed a thorough -- a
25 thorough cross-examination --

1 THE COURT: Let's sidebar -- let's sidebar.

2 (Bench conference.)

3 THE COURT: All right.

4 MR. MCKELLAR: Thank you, Your Honor. It's not stated
5 that you have sustained same objections to resolve the
6 question.

7 THE COURT: Yes, sir.

8 MR. MCKELLAR: And I have no other questions.

9 THE COURT: All right. Very good. Thank you. This
10 witness --

11 MS. MORGAN: May be excused.

12 THE COURT: Yes, this witness may be excused. Please
13 watch your steps, sir. It's okay.

14 MS. MORGAN: Your Honor, with that, the State rests.

15 THE COURT: The State has rested. Thank you.

16 Mr. McKellar, are there any additional witnesses from
17 the defense?

18 MR. MCKELLAR: No, Your Honor.

19 THE COURT: Okay. Thank you. Can I have counsel to
20 meet very briefly with regards to some housekeeping matters
21 tonight.

22 (Bench conference.)

23 THE COURT: Ladies and gentlemen of the jury, at this
24 time we are going to excuse you for the night. Let me give
25 you a few reminders. The first reminder is that you are not

1 to discuss this case with anyone including the fellow jurors
2 -- jurors on the break tonight. Also, do not attempt to
3 obtain any type of information or any further details on what
4 you have been told today. We will give you all of the
5 evidence and all of the information that you need in order to
6 make a just verdict.

7 And thirdly, if you are having any type of
8 transportation issues please call us. We will make
9 arrangements for you. And lastly, you all do not need to go
10 to the gym tonight, up and down enough for today. And so, we
11 certainly appreciate your patience. Sometimes court has is
12 not like what you see on television. There are many things
13 for us to discuss outside of your presence.

14 So with that said, please let us know whether you've
15 got some transportation issues or not. We ask that you be
16 back here tomorrow morning at 9:00 a.m. We will get started
17 a little bit earlier tomorrow morning in order to give you an
18 opportunity to not have to come back on Saturday. All right.
19 Very good. We'll see you all tomorrow morning at 9:00.

20 (Jury exits courtroom.)

21 THE COURT: All right. Please be seated. We will
22 adjourn for the day tomorrow morning. Court will begin,
23 counsel, a bit earlier at 9:00 a.m. I do have some other
24 plea that we will try -- that I need to try to squeeze in
25 now. We will try to get started this as early as possible

1 tomorrow morning. So we'll adjourn for night. If there are
2 any issues, please contact our office immediately. Court is
3 adjourned tonight.

4 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
5 5:35 P.M.)

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1 UNIDENTIFIED SPEAKER: Right.

2 THE COURT: And you can just take this out. Yeah, you
3 can just take this out and add that one in. But we'll need
4 to do that and then print it off. All right. Do you all
5 just want an electronic copy or the -- I mean can you follow
6 along on your computer or you want us to have copies printed
7 off for you to follow along?

8 MR. MCKELLAR: I would like a hard card copy.

9 MS. CHARBONNEAU: Card, please.

10 MS. MORGAN: Same, Your Honor.

11 THE COURT: It's the county's paper.

12 MR. MCKELLAR: Your Honor, before the jury comes in,
13 may I use the restroom?

14 THE COURT: Absolutely. We're going to stand down
15 while we accommodate the alteration to the jury charge.
16 Before we print them off, I will make sure that we have all
17 four elements in as appropriate and then we'll just overlook
18 them one more time to make sure. All right. So we'll stand
19 down. Go ahead Mr. McKellar.

20 MR. MCKELLAR: Thank you.

21 (Off the record.)

22 (Jury enters courtroom.)

23 THE COURT: Please be seated. Members of the jury and
24 our alternates, you are now at the stage of the trial where
25 we will have the final arguments by the attorneys. Once they

1 have completed that, I will instruct you on the law of this
2 case. The State will go first followed by the Defendant and
3 then the State has the right to reply to anything that
4 Defendant has said.

5 Closing arguments are a lot like opening statements.
6 They are not evidence in this case. Obviously, these
7 attorneys will be arguing the evidence and the like most
8 favorable to their position, but it is not evidence. You've
9 already heard all of the evidence; the testimony and the
10 exhibits are where you will make your decision.

11 However, please pay very close attention to the
12 attorney's arguments and once they have completed those
13 arguments, I will instruct you on the law and then it will be
14 in your hands for deliberation. Madam Solicitor?

15 MS. CHARBONNEAU: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes.

18 MS. CHARBONNEAU: Counsel? You've heard all the
19 testimony and the evidence and the Judge will instruct you on
20 the law. So let's go over it and put it all together.
21 You'll get all the evidence back in the jury room with you.
22 You will have everything. You will also have a clean
23 computer so you can play the evidence back and forth as much
24 as you want, all the photographs, everything going back with
25 you.

1 So to keep us straight, State's Exhibit 2 on the --
2 across the top of the victims, across the bottom of the six
3 people who walked up Wadley Drive. And to the left are the
4 three eye witnesses. State's Exhibit 1. Just to make sure
5 we're all oriented to the correct way. So
6 xxx Hillview Circle, that's where the Defendant and the five
7 other people walked from. They come up, they go down
8 Sassafras. Here's Wadley Drive. Your crime scene is x26
9 Wadley Drive is the last trailer on the right.

10 That's where Larry Carroll lives, also known as Junior,
11 Twaine Carroll lives across the way. That's his brother.
12 And you heard from the ear-witness Yolanda Miller. She lives
13 next door to Larry. Okay. So the judge is going to instruct
14 you on the law and she's going to tell you that it's my
15 burden as a state to prove to you the elements of murder.
16 And the elements are that the Defendant killed another person
17 with malice, aforethought.

18 Malice is hatred, ill-will, or hostility towards
19 another person. It is the intentional doing of a wrongful
20 act without just cause or excuse and with an intent to
21 inflict an injury or under circumstances that the law will
22 infer an evil intent. Malice may be inferred from conduct
23 showing a total disregard for human life. Three counts.
24 There's also -- the fourth count is the possession of a
25 weapon during a violent crime.

1 And it's just like it sounds, the Defendant was in
2 possession of a firearm or visibly displayed what appeared to
3 be a firearm during the commission of a violent crime. So
4 when you go through the evidence and the law, if you find the
5 Defendant guilty of the three counts of murder, he's -- he's
6 guilty of the fourth because there's no dispute that the
7 three victims died of gunshot wounds.

8 If you found him not guilty of the three counts of
9 murder, he would be not guilty of the possession of firearm.
10 The other instruction that the judge is going to instruct you
11 on is the hand of one is the hand of all, and that is the law
12 in South Carolina. And the judge will tell you that if a
13 crime is committed by two or more people who are acting
14 together and committing a crime, the act of one is the act of
15 all.

16 A person who joins with another to commit an unlawful
17 act is criminally responsible for everything done by the
18 other person, which happens as a probable or natural
19 consequence of the acts done in carrying out the common plan
20 and purpose. The hand of one is the hand of all. She will
21 also go on to tell you that a principal in a crime is one who
22 either actually commits the crime or who is present aiding,
23 abetting, or assisting in committing the crime.

24 When a person does an act in the presence of and with
25 the assistance of another, the act is done by both. Where

1 two or more acting with a common plan or intent are present
2 at the commission of a crime, it does not matter who actually
3 commits the crime, all are guilty. Let me give you an
4 example to help clarify that. Say three people decide to rob
5 a bank and they decide that one's going to stay out front in
6 the getaway car and he's going to be the getaway driver.

7 The second guy is going to stand outside the bank and
8 he's going to whistle if he sees law enforcement come and the
9 third guy is going in with the gun and he's the one who's
10 going to put the gun to the teller and rob the bank. Under
11 the hand of one, they are all guilty. And you as the jury,
12 you decide whether they are guilty or not. You do not decide
13 on the sentence that's completely up to the judge.

14 So if the judge wanted to treat them differently based
15 on their participation, that's up to her. But that is not up
16 to you. You decide did they do it. And in that case, all
17 three of those people would be guilty of bank robbery. And
18 in this case, when we go through all the evidence with you,
19 you will see that Xabian Bailey is guilty because of
20 Alvin Artis actions, his own actions and Antonio Jones
21 actions.

22 The judge is also going to tell you what reasonable
23 doubt is and it's a hard concept to understand. She's going
24 to tell you that that's the burden of proof, the standard
25 that I must prove to you beyond a reasonable doubt.

1 Reasonable doubt is proof that leaves you firmly convinced of
2 the Defendant's guilt. There are very few things in this
3 world that we know with absolute certainty.

4 And in criminal cases, the law does not require proof
5 that overcomes every possible doubt. If based on your
6 consideration of the evidence you are firmly convinced that
7 the Defendant is guilty of the crime charged, you must find
8 the Defendant guilty. Let me give you an -- an -- an example
9 to help so you can understand reasonable doubt.

10 Think of a entertainer that we may all know like
11 Denzel Washington or Taylor Swift. Is it possible, just
12 possible, that Denzel Washington hears about this trial flies
13 into a and comes and he sits in the courtroom all week and he
14 watches the trial? Is it possible? Absolutely. He's alive.
15 We know he travels all over the world because he makes movies
16 all over the world.

17 So it is totally possible that he could come. But is
18 it reasonable to believe that Denzel Washington is showing up
19 in Aiken County to watch this trial? No. And why isn't it
20 reasonable? Because there is no evidence that
21 Denzel Washington knows anything about this trial. There's
22 no evidence that he even knows where Aiken County is or that
23 the trial is going on or that he is an interest in the trial.

24 And that's the difference because almost anything is
25 possible, but it is whether -- you decide whether it is

1 reasonable or not. And that's the standard. So the judge
2 will also tell you about the evidence. And you as a jury,
3 you look at the testimony of the witnesses and you see if it
4 matches or if it's corroborated by the other evidence, by the
5 other testimony of other witnesses, as well as by the
6 physical evidence on the scene.

7 So let's start with Larry Carroll. He is an eye
8 witness. He saw everything that happened. He actually knows
9 all six of those people. And in fact, he's related to both
10 sides. He's related to the victims and he is also related to
11 the six people who walked up to Wadley Drive. That is direct
12 evidence. It's a clear sunny day, June 26, 2022, in the
13 afternoon. There's nothing obscuring his vision.

14 The Defendants didn't have masks on. He knows them.
15 He clearly testified to you what happened that day. That
16 they were all sitting around joking. They were talking about
17 the old days. The six people walk up. They were unexpected,
18 they weren't invited. There was no communication between
19 them. The six people walk up and Larry Carroll told you he
20 did not see any guns and there would no -- there would be no
21 reason to be alarmed.

22 Because remember he told you that the week before, he
23 was just on vacation with some of them. They were in a cabin
24 in Tennessee. Larry Carroll, Fantasia Carroll was there,
25 Xabian Bailey was there, Antonio Jones was there as well as

1 Larry's sister, and C.C. . A week before this
2 happened, they're all in a cabin in Tennessee. No issues, no
3 fights.

4 There would be no reason for Larry Carroll along with
5 Twaine Carroll and Josh Smith, the one they called Pawn,
6 there would be no reason for them to be alarmed. And he told
7 you didn't see any guns. They come up, they -- they're
8 talking a verbal -- there's verbal communication that goes
9 back and forth. And what did he tell you? Alvin Artis
10 pulled out his gun from the front of his waistband. The gun
11 that he didn't see when he first walked up and he started
12 shooting.

13 He told you Alvin Artis was the first shooter that it
14 was like a rapid fire, like a machine gun and that the three
15 victims dropped right where they were shot, they were dead.
16 And that after that happened, he also told you that he saw
17 Xabian Bailey, the Defendant in this case, he saw him pull
18 out his gun and shoot towards the victims.

19 He also told you that he started running after he was
20 shooting -- while he was shooting, that he started running in
21 front of Twaine Carroll's trailer. So shooting is happening
22 here and the -- the Defendant on trial today runs this way.
23 Why is that important? Because later on that's where the
24 shell casings are found and later on after that, months
25 later, that's where the firearm expert gets to analyze them

1 and tell you which shots and where your shell casings were.

2 He tells you that they were two to three feet apart
3 when they were talking. Everyone is consistent that the
4 three victims are in front of Larry Carroll's house. They're
5 standing looking towards the road and that the six people who
6 walk up are closer to the road. Again, why is that
7 important? Because of where all the shell casings are. All
8 the shell casings are where the Defendants were standing, not
9 where the victims were standing.

10 Another point, what's important about that is because
11 all the bullet damage besides in the three victims are
12 shooting towards the victims. Larry Carroll's house is shot
13 up. The white Cobalt, which -- these are not the -- this is
14 the aerial from Google Map. So the -- the cars are not right
15 but the white Chevy Cobalt, we have the pictures is over here
16 in the front. You have the blue truck and you have the black
17 Dodge Ram.

18 All of those vehicles were shot as well as well as next
19 door. Looking at State's 1, Yolanda Miller's house. There's
20 no damage at time Lane Carroll's house. There's no damage at
21 any of these other four trailers that way. What does that
22 tell you? It tells you that all the shooting happened from
23 the Defendant towards the victim. Victims didn't shoot
24 because they didn't have guns.

25 Larry Carroll also told you that C.C. [REDACTED] was

1 the only one that was able to speak. The other two were dead
2 immediately, that he was trying to get up but that he
3 couldn't get up and that when the police arrived, they were
4 in the same position as where they had been when they were
5 shot. Larry Carroll told you none of the victims had guns or
6 weapons.

7 Twaine Carroll told you none of the victims had guns or
8 weapons. Josh Smith told you none of the victims had guns or
9 weapons. More importantly, law enforcement who arrives in
10 minutes tells you there were no guns or weapons on that
11 scene. There was the one found in the truck, we brought that
12 in for you. That was tested, it was in the truck the whole
13 time because the Jamie Green, the -- the firearms expert told
14 you not involved in this, was never shot.

15 He was absolutely clear that all three Defendants shot
16 that day. So the judge is going to give you another
17 instruction on credibility. She's going to tell you that you
18 are the judges of the testimony. You are the ones -- you
19 look at the witnesses and you observed how they testified and
20 you use your common sense and you look at how they testified.

21 You watch their body language, you look at their
22 demeanor, you look at whether they were consistent in what
23 they told the police at the time and what they said to you in
24 court this week. You look at their manner of testifying and
25 you also look at whether the witness had reason to be biased

1 or prejudice. Whether their testimony was contradicted by
2 other testimony or by the physical evidence or whether it was
3 supported and corroborated.

4 And I submit to you the three eyewitnesses, all the
5 physical evidence corroborates what they said. So how do you
6 know that Larry Carroll is telling the truth? Number one,
7 he's an eyewitness. Number two, the 4/40 spent shell casings
8 were found in front of the victims and they were found in
9 that line that we were talking about. So let's go to the
10 photographs showing the markers.

11 First, let's look at 49. So that's the setup that day.
12 This is Larry Carroll's house, X26. Here's the white Chevy
13 Cobalt, the blue truck, the black truck. You can see one in
14 the decedents laying here and that's where all of the bullet
15 strikes went. State's 55. Okay. So you see all the
16 markers, these are two decedents and Melissa Murdock, the
17 investigator who marked everything and collected everything
18 she told you.

19 That, markers 1 through 18 with the 9mm Lugers and we
20 see all the markers out here. You can see them for yourself,
21 20 through 22 were also the 9mm Lugers, which the firearms
22 expert ends up telling you those were all shot from the same
23 gun and that gun would've been a Gen5. What else did she
24 tell you? She told you that the 4/40 caliber were marked as
25 19, 23, 29, and 30.

1 So when you look on scene here, and we're looking at
2 State's Exhibit 55, we see 19, here's 20, that is a
3 40-caliber shell casing at marker -- I'm sorry I'm not --
4 I've got the wrong number. 19, 23, 29, and 30. Okay. Let's
5 look at 61. State's Exhibit 61. Here's 19, and you just saw
6 it in relation to the last photo it how it's in relation to
7 these. This is right at the scene.

8 19 is a 40-caliber. Then we go to 62. We're panning
9 across. So now the decedents are to the right of 62 and
10 we're starting to pan across. And you're going to see the
11 markers come across. Look at 63. We're now looking at time
12 Twaine Carroll's house and I'll get you a close up the next
13 one. But you're going to see 23 and 30, right here. In
14 front of Twaine Carroll's house where the witnesses said
15 Xabian Bailey ran to.

16 Sixty-four, then closer. Here is Twaine Carroll's
17 house. There's 23 and closer and 30. Look at State's 65.
18 That's the closeup of the marker of 23. You remember here is
19 Twaine Carroll's steps. That's a 40 caliber. 66, so this
20 photo is from when you stand again, Larry Carroll's house
21 would be behind you. They're panning across. You see the
22 bush here. I specifically asked Investigator Murdock about
23 and this would be Twaine Carroll's house to the left.

24 So the next photo, 67, is marker 29 at that bush that
25 you just looked at. Marker 29 is a 40 caliber. So you can

1 see the progress. The Defendant shoots right in the mix of
2 things right in front of the victim. This Defendant,
3 Xabian Bailey, shoots and then he is running across
4 Twaine Carroll's in the front of his yard and he shoots three
5 more times.

6 How do you know that? Not only did the witnesses
7 testify to it, the now you have the physical evidence.
8 Sixty-eight, there's a closeup of the fourth shell casing
9 third 23, 30. As time as Xabian Bailey is running to the
10 woods and running away, is Twaine Carroll's house. How else
11 do you know? The surveillance video. And again, take it in
12 the bath, play it as many times as you want. You want to
13 look at everything as thoroughly as possible.

14 Investigator Neel told you that the timestamp, date and
15 timestamp were accurate. When you look at the surveillance
16 video, you will see at approximately 1:17, the six people
17 walk up to Wadley Drive. You know that Larry Carroll
18 identified Xabian Bailey and his daughter Fantasia Carroll in
19 that video. And you will see on the timestamp, it's about
20 four or five minutes later when you start to see them running
21 back individually. So they're up there four or five minutes.

22 So say 1:22. We know that dispatch 911 is already on
23 notice at 1:23 because the deputy Ashley Meyer told you that
24 she was dispatched at 1:23 p.m. That's how quick everything
25 is happening. You also know that Larry Carroll and

1 Fantasia Carroll are on the phone with 911 and that phone
2 call you have in evidence and that phone call is five minutes
3 and 51 seconds long.

4 So you know what Larry Carroll is -- and Fantasia
5 Carroll are doing for five minutes and 51 seconds while
6 they're on the phone. And you also know that Larry Carroll
7 is yelling for **c.c.** to lay down. "Just lay down, **c.c.**. Just
8 lay down." And you can hear that he's yelling. So he's
9 obviously not standing right next to him. He's not hiding
10 guns as the defense witnesses want you to believe he's armed
11 with 911 for five minutes and 51 seconds.

12 Dr. Easton told you that all three victims were
13 murdered by multiple gunshot wounds and several fatal shots
14 each one. The GSR investigator Chris Johnson, took the GSR
15 kit and the -- and Mr. Sturkie, the forensic scientist told
16 you GSR on that Defendant's shirt, he was there. The
17 firearms, there are three guns at that scene. Jamie Green
18 could not say it enough times.

19 He told you that the 21, 9mm Lugers were shot by the
20 same one gun, the 4/40 caliber shell casings, cartridge cases
21 he called. It was shot by the same second gun. And then the
22 third 9mm he said was not a Glock and was a third gun out
23 there. And that was the shell -- the 9mm shell casing that
24 was found on the windshield wiper by the white Chevy Cobalt.
25 Again, in front of the house.

1 Law enforcement told you Deputy Meyer first on one of
2 the first on the scene, she told you when she got there,
3 there were no Defendants, no shooters on the scene. They
4 secured it. You know from Lieutenant Blevins that this
5 Defendant was found later on that night hiding under a
6 bathroom sink. Ladies and gentlemen, that's consciousness of
7 guilt. He never called 911.

8 He runs to another house after he runs home and then he
9 is hiding under a bathroom sink. That is consciousness of
10 guilt. He knew what he did. How about Twaine Carroll, his
11 testimony again, direct evidence. He's an eye witness. He
12 knows the six people again, not alarmed; they weren't
13 expected. They don't usually go up there, he said but there
14 was no reason to be alarmed.

15 No -- he didn't see any guns. He gave his statement to
16 the police and he did a photo lineup, and you have these in
17 evidence as well. And he picked out Xabian Bailey,
18 Antonio Jones, and Alvin Artis. And he told the police on
19 June 29, 2022, that all three of them were shooting. And he
20 also described on the day of the incident what he saw and
21 what happened.

22 And again, it matches the physical evidence that is
23 collected and it matches the results of the examination
24 months and months later by SLED. He also writes -- and
25 you'll have these in the back with you, exactly what he said

1 they did. His house was searched on the same day, three days
2 later, no guns or weapons found. He says the same thing, "No
3 guns or weapons on the victims." And it matches what the law
4 enforcement found when they got there.

5 Also, when you go in the back and you watch the
6 surveillance video, here's another thing that you can
7 corroborate on your own. On the surveillance video, you're
8 not going to see when the six people walk up. You're not
9 going to be able to see guns because they had them hidden
10 under their clothes. You won't be able to see them either.
11 The same way that the six people that were on Wadley Drive
12 could not see them.

13 Twaine Carroll is also related to both sides. He is a
14 cousin to this Defendant. So when you are looking at
15 credibility and you're trying to decide if someone's bias or
16 prejudice, they are related to both sides. This is a complex
17 situation and that's why we made this chart to keep -- to
18 keep it straight for you and for us. They're all related in
19 certain avenues.

20 Twaine is directly related to the Defendant.
21 Yolanda Miller, she is an -- an ear witness. She didn't see
22 the crime. She heard it. She told you about her house
23 getting shot up. She told you that a bullet hit her house
24 and went through to the -- to the bedroom and that she saw
25 three black males running to the left. So that is her house.

1 It's Larry Carroll's house, her house down Wadley Drive.

2 That's exactly correct as far as where they went, they
3 left down Wadley Drive. Josh Pawn, Josh Smith also known as
4 Pawn. He is an eyewitness. He told you what he saw. He
5 told the police that day what he saw. He didn't just jump on
6 a bandwagon and say, "Oh yeah, all three of them shot." He
7 was consistent back then with what he told you in court. He
8 said he didn't know -- he didn't know all the people before.

9 I think he said that he knew Fantasia, Antonio, and
10 Richard. So he knew them before. But he picks out all
11 three. All three that were there that day. And he says
12 Alvin Artis is a shooter, Xabian Bailey is a shooter.
13 Antonio Jones was with them, but he did not see him with a
14 gun. And he was honest about it. So the physical evidence
15 that you have on the scene matches and is corroborated by
16 what the witnesses say.

17 And then you have again the scientific -- the forensic
18 scientists who match it. They tell you where the shell
19 casings are. They tell you how many guns are out there. So
20 how do you know that the victims didn't have any guns? None
21 were found. None were there. Law enforcement is on the
22 scene very quickly.

23 State's Exhibit 9. Where W.G. [REDACTED], I.P. [REDACTED],
24 C.C. [REDACTED], see for yourself. No guns, no weapons, 1:28.
25 Larry Carroll and Fantasia are on the phone for five minutes,

1 51 seconds and that call went in at one twenty-three. See
2 the men. How close it is. They searched Larry's house.
3 They searched Twaine's house three days later. No guns, no
4 weapons. There's -- they're eyewitnesses, no guns, no
5 weapons. Yolanda Miller, the next-door neighbor who
6 testified she didn't see the shooting.

7 She -- she's the one who told you about the three black
8 males running. But she did tell you was that she -- she
9 didn't really know her neighbors, but she knew the guy that
10 lived across the road. So she's talking about
11 Twaine Carroll. And she said she saw him out there and there
12 wasn't anything in his hands. That's because there was no
13 guns and no weapons.

14 Larry, Twaine, and Josh, all told you they did -- they
15 were there until the police came. Nobody took anything off
16 those victims. And again, using your common sense, is it
17 reasonable to believe that these three victims were armed to
18 the teeth as the defense witnesses would have you believe,
19 that they all have guns in their hands. Some of them have
20 two guns in their hands. They all have their hands on the
21 trigger, but they didn't get off a single shot.

22 They're the ones, according to the defense witnesses
23 that are ready. What are they ready for? They're hanging
24 out with their family, telling stories about the good old
25 days on their own property, minding their own business. Is

1 it reasonable to believe that while they're hanging out with
2 their family, they have -- they're not expecting anyone to be
3 there.

4 That they're all armed to the teeth with multiple guns
5 with their hands on the trigger ready to go and they didn't
6 get off a single shot? It's not reasonable. It's not
7 reasonable. Because it's not true. None of the six people
8 that walked up there, none of them were shot. There is not a
9 shred of evidence that the victims or the witnesses for that
10 matter had any guns or weapons out there.

11 When you look at the three Defendants though, they're
12 the ones that have a plan. They have a plan because they get
13 a phone call from Dilo, a total random outside person. He
14 calls, nobody -- nobody there. Dilo supposedly calls and
15 tells them that Larry Carroll is saying something. Junior is
16 saying something that the Defendants don't like. That's it.

17 I mean, nobody disputes that there was no physical
18 altercation. There's no fight, there's no -- never a fight.
19 Physical fight. So Dilo randomly calls Antonio supposedly
20 and says, "By the way, Larry Carroll's up at his house and
21 he's saying stuff that you're not going to like." So they
22 form a plan.

23 All the defense witnesses tell you they woke up, they
24 get the call, they all listen to the call, they put on their
25 clothes, they strap up with loaded firearms, they hide them

1 in their clothes and they walk up, why?

2 They're going to confront Larry Carroll. Because they
3 don't like what he's saying. So they decide to bring three
4 loaded firearms with them to go and confront Larry and in
5 their own words, to clear their name. That's why they go up
6 there. Well, that isn't good enough to shoot somebody.
7 Because under the law, you cannot go and -- arm yourself with
8 a firearm and then not be responsible for what you -- what
9 you end up doing.

10 There are 25 shell casings out there, 25, 14, hit their
11 mark. There are 14 gunshot wounds in those three boys. That
12 is unbelievable. That's not self-defense. And there are a
13 couple of things. There is no requirement that I produce a
14 firearm for you or that law enforcement must find the firearm
15 that is not an element of the crime. So they don't get a
16 pass.

17 Because Alvin Artis drove to North Carolina to dump his
18 gun in a river and who knows where the other guns are. Law
19 enforcement did everything they could to find those guns.
20 But there is no requirement, there's no instruction that the
21 judge will read to you that requires that I produce that gun
22 for you. We made every effort to find it. And -- but the
23 evidence is the evidence. And there's plenty of times that
24 you don't have the gun. He does not get a pass for that.

25 I also do not have to prove to you who shot which gun

1 or who shot the -- which victim. That's not the elements of
2 the crime, under the hand of one, the hand of all, they are
3 all guilty. So don't -- don't slow yourselves down on who
4 shot who because that is not an element of the crime. And
5 you don't have to figure out which guns.

6 You know which guns, because we've had enough evidence
7 to tell you based on the testimony of the witnesses and the
8 forensic scientist, Jamie Green, that the 21 shell casings
9 came from a Gen5, which Alvin Artis says was his, but it
10 matches the eyewitnesses because they said he pulled out
11 first, they were all standing in front of each other and that
12 he sprayed like a machine gun.

13 So you know that, but it's not required. You also know
14 from the testimony and where the shell casings were that
15 Xabian Bailey had the 40 because there's a 40 right in the
16 mix, right in front of the victims. And then as he's running
17 away of the 40 cartridge cases. So you know he had the 40,
18 but you don't need to know that for this to be guilty of
19 murder.

20 Everything -- everything matches, everything added up
21 and everyone is -- is separate. They all had their own jobs.
22 You have eyewitnesses, you have the investigators who collect
23 the physical evidence, and then you have the SLED forensic
24 scientists who do the examinations. And it all adds up to
25 one thing that man sitting in front of you is guilty of

1 murder three counts, and he's guilty of possession of a
2 firearm.

3 When you look at the evidence, you don't just look at
4 what he did. You are -- you are only the jury for him. But
5 you look at everything that the three guys did, you look at
6 all of it, they will have their day another day. But you
7 look at everything that they did as well as Xabian Bailey,
8 and that's how you find him guilty. They've raised
9 self-defense. So now it is my burden to prove to you that
10 it's not self-defense.

11 So in conjunction with that, let's look at the
12 credibility of the defense witnesses that they put up.
13 Fantasia Carroll was the first woman that defense called.
14 She is the ex-boyfriend girlfriend with Xabian Bailey for
15 three years. I believe she said three or four years. And
16 that they were living together at that address on Hillview.
17 She admits all of them were together.

18 They all get this phone call from Dilo. They all get
19 dressed and they walk up there. She tells you Antonio gets
20 the call. She tells you the reason why they go up there.
21 The Defendants wanted to clear their names. Now, she says,
22 and this is important because even her testimony doesn't,
23 first of all, it doesn't match any of the physical evidence.

24 It doesn't match the state's witnesses, but it doesn't
25 even match the other defense witnesses. And that's how you

1 know she's lying. Fantasia says that the three -- the three
2 victims came outside dad's house. That's Larry Carroll's
3 house on the right side. She does admit that they did not --
4 the victims did not threaten. She tells you that her dad
5 told her to call 911.

6 She says to you yesterday in Court to your face that
7 all three Larry Carroll, Jack (sic) Smith, and Twaine
8 Carroll, all three of them picked up the guns from the
9 victims and put them in Twaine's house. She also admits
10 though to you that she walked to her auntie's house on the
11 same street. Let's look at one of them. Testimony came out.
12 He alleged used the crime scene. The auntie lives down here
13 on the corner of (inaudible).

14 So she admits she has to because she's on 911 telling
15 the 911 operator that she walked down to her auntie's house.
16 So how did she see all this, supposedly, if she is now
17 walking down to the auntie's house? And here's another way
18 that you know that she's not telling the truth, is because
19 Heavenly Reedy, the second woman who got on the stand, she
20 told you that after the shooting, she didn't see anybody get
21 shot, but she saw dust in the air.

22 And when the dust cleared, when she didn't see
23 Fantasia, she left. So that means Heavenly was there after
24 Fantasia. Why is that important? Because Heavenly told you
25 she did not see anyone take anything from the victims. And

1 that was in response to Mr. McKellar's question. She also
2 said that Junior and Twaine was still there and she -- and
3 they did not pick anything up.

4 That's right, because there was nothing to pick up. So
5 going back to Fantasia for a minute, we know she lied about
6 that. She does have to admit though that her dad didn't call
7 them. It was this random third person, Dilo, that the
8 victims didn't call the Defendants. And again, you hear on
9 the 911 that she has walked away. So on cross, they asked
10 her because she told you yesterday that the Defendants didn't
11 have guns and that they didn't shoot.

12 She got caught in her lie, because on
13 cross-examination, she was impeached by her own statement
14 that she gave to police that night. On June 26, 2022, she
15 told Investigator Faulkner that Alvin and Xabian had guns,
16 that they had them in their pants and that she saw them when
17 they shot. And even when she was given an opportunity over
18 -- opportunity, over chance, over chance to correct herself
19 to explain why she lied to you, she wouldn't do it, wouldn't
20 do it.

21 And that's why we called Investigator Faulkner because
22 he's the one who took the statement from her. And what did
23 he tell you? On that night, she -- Fantasia Carroll told
24 them Alvin and Xabian had guns they were in their pants and
25 she saw the machine. Heavenly Reedy's story as far as when

1 they walk up is also different from Fantasia. Fantasia says
2 they walk up, three victims come out, remember from the right
3 side of her dad's house, heavenly says the -- the three
4 victims were sitting in chairs with guns in their left
5 plainly visible when they first walked up. So now those two
6 don't match at all. But she's in direct conflict with
7 Fantasia. She tells you that they decided to walk up to
8 Larry's house to clear this Defendant in Antonio's name.

9 Tat when Dilo called. He told them, the six of them
10 who supposedly hear the call that Junior, Larry Carroll and
11 pun Josh Smith were at Junior's house. So they're told where
12 their targets are. They get dressed, they strap up and they
13 go to confront them and they're going to clear their names
14 and they're going to take care of it. And they sure did
15 because those three boys were dead.

16 She also told you, again, this is Heavenly. When the
17 -- three victims with these long guns, she explains ARs.
18 Well, ARs are rifles. So there's not a single -- there's not
19 a single rifle casing out there. She said that they're ARs,
20 that they have their, all of them have fingers on the
21 trigger. Again, common sense. Three of them armed, ready,
22 hands on the trigger. None of them get off a single shot.
23 It's not reasonable. Denzel Washington could be walking in
24 in a minute. It's not reasonable. It's not believable.

25 She told you that she didn't see anyone shooting. It's

1 just not reasonable. They admitted -- she admitted that they
2 were not welcome at Larry Carroll's house or Richard
3 Carroll's house and that they didn't go there frequently or
4 Twaine's house. So again, their whole story about somehow
5 Larry put the word out that he wanted them to come up and see
6 him, that's ridiculous.

7 Larry Carroll could call them; Larry Carroll could go
8 to their house if any of that was true. But it's not true.
9 It fell apart, fell apart in front of your eyes and it's not
10 reasonable and it doesn't match a single thing that was found
11 at that scene. In fact, Heavenly eventually admits that she
12 did not say Larry Carroll wanted them up there.

13 She was told -- they were told by Dilo that Junior and
14 Pawn were up there. But she had to admit that Larry Carroll
15 didn't ask them to come up there. She also says they're
16 going up there. They're not scared. They're all family.
17 That's right. They're not -- they're not scared. Because
18 they're armed to the teeth. She's not scared. She's on the
19 side with all the guns.

20 The witnesses and the victims are the ones that don't
21 expect anyone to come. They're totally blind sided. They
22 have no idea what's coming. She told you they walked up
23 without fear that the -- the chairs were in front of the
24 trailer. "The six of us were standing in front of the
25 victims." So again, Larry Carroll's house, victims, six of

1 them closer to the road.

2 And then she tells you, "Well, today I'm accurate."
3 Back then I wasn't -- not believable. And then we have Alvin
4 Artis. Alvin Artis, the good friend of Bailey for 10 years.
5 He's also living there. He -- he says that Junior was saying
6 stuff they didn't like. We decide to go up there and clear
7 it up with Junior. He tells you that the three victims came
8 out of the woods.

9 That's a totally other story again. Then he says
10 they're armed. He says, "I shot." He admits the victims
11 didn't shoot. He admits he only had one gun. That's key.
12 He says he only had one gun. Well, there's three guns out
13 there. That's -- that's the evidence. The evidence itself
14 doesn't lie. He said, "I shot all three of them. I shot 21
15 to 22 times. I shot as fast as I could."

16 "How many guns did you have?" "One." "Did any of the
17 victims shoot?" "No. No one knew I was armed." He admitted
18 that he hid his gun in his clothes. And then he tells us
19 about this phantom reputation for violence that the victims
20 have in the community. Okay. None of them were shot. And
21 let's -- let's go through the elements of self-defense so you
22 know that it's disproved.

23 Number one, the judge will tell you there's four
24 elements of self-defense. The Defendants were without fault
25 in bringing on the difficulty they lose. Because when you

1 decide that you are going to confront somebody and you bring
2 a loaded gun with you and you hide it in your clothes, you
3 are responsible for what you and your fellow co-Defendants
4 do.

5 So if you decide that you are going to shoot somebody
6 when you get there, you are responsible for that. And before
7 -- because of the fact that all three of them participated
8 under the hand of one, they lose. Number -- the second
9 element, "The Defendant must have actually believed he was in
10 imminent danger of losing his life or sustaining serious
11 bodily injury, or actually was in such imminent danger."
12 What danger? What danger were they in?

13 There's no evidence. Again, I know I keep saying it,
14 but it's important. There's no evidence that the victims or
15 the witnesses or anyone on Wadley drive that the six of them
16 confronted had any guns or weapons. They weren't in any
17 danger. Number three, "If the defense is based on the
18 Defendant's actual belief of imminent danger, a reasonably
19 prudent person of ordinary firmness and courage would've
20 entertained the same belief.

21 If the Defendant actually was in imminent danger, the
22 circumstances were such as would warrant a man of person of
23 ordinary prudence is encouraged to take the necessary action
24 in order to save himself from serious bodily harm or losing
25 his own life." Same question. What danger are they in?

1 Alvin Artis told Mr. McKellar that he -- he wears his loaded
2 gun every day.

3 So is he shooting people every day? Of course not. So
4 even if you want to stretch it and somehow believe that the
5 victims are hanging out at their own house, not knowing that
6 these six are coming, that somehow the six who confront them
7 are in danger? Makes no sense because it's not true. And
8 then the fourth element, "The Defendant had no other probable
9 means of avoiding the danger of losing his own life or
10 sustaining serious bodily injury than to act as he did in
11 that particular circumstance."

12 Remember I asked him, "Did you call 911?" He had seven
13 months to call 911. He never once did. I asked him if he
14 left once he saw these alleged guns and weapons on the
15 victims, multiple guns. Did he leave? No. Did he call 911?
16 No. Did he run away before it happened? No. Did he ask for
17 help? No. Did he try to diffuse the situation with his
18 words, "Hey, now we're just hanging out. You don't need
19 those guns."

20 Did he do any of that? No, of course not. Did he ask
21 anybody else for help? No. Did he yell out for help? No.
22 Did he say, "I have no beef with you. Why are you all
23 sitting around waiting for me to show up miraculously with
24 all your guns?" No. None of that happened. When you judge
25 the credibility of Alvin Artis, and I know that you were

1 watching very closely, his demeanor on that stand was cocky.

2 He was almost bragging to you -- to you. When I said
3 to him, "You shot 21 times?" "Oh no, I had a binary on
4 there. So I only shot 11 times because it shoots twice." I
5 said, "Okay, shot 11 times." And then when asked if he had
6 time to contemplate -- did he have much time to contemplate?
7 He said, "Not really." And when I asked him, but he shot all
8 of his bullets and he said -- when he ran out bullets.

9 He said, "If he had not run out of bullets, he might
10 have kept shooting." You have got to be kidding me. He is
11 the end all by himself. He makes him guilty all by himself.
12 When -- when the judge gives you the instruction on malice of
13 forethought, there's no set time that that you can make that
14 decision. It can be a split second. And every time you pull
15 out -- once you pull out that gun, once you decide to carry
16 the loaded gun to confront somebody, you have already
17 committed, you already have evil intent, an ill-will in your
18 mind, but it doesn't even have to go back that far. You get
19 there, you can change your mind. But when you pull that gun
20 out, that's malice aforethought. And when you pull that
21 trigger the first time, that's malice aforethought. And you
22 can change your mind and not pull it a second time and not
23 pull it a third time.

24 But that man over there pulled that trigger four times.
25 That's malice aforethought. That's exactly what it is. He's

1 guilty of all charges. W.G. [REDACTED], eight gunshot wounds,
2 16 years old, kid, I.P. [REDACTED], two gunshot wounds, kid,
3 C.C. [REDACTED], four gunshot wounds, kid. It's proven. And
4 the problem is you may be sitting there going, "What am I
5 missing?"

6 Like, "I don't get it. They did this in broad
7 daylight. The people know them. You know, they didn't have
8 masks on. I don't get it. Why are we here?" Well, you're
9 not missing anything, because every Defendant is entitled to
10 a trial and every Defendant, I have the burden to prove it
11 beyond a reasonable doubt. You're not missing anything.
12 This is -- this is simple.

13 Once you get through it all, once you look at it all,
14 it's simple. Those three are guilty and you are the jury for
15 Xabian Bailey. They went there, the mayhem broke out and
16 they killed 14 gunshot wounds that you are guilty of, murder
17 and possession of weapon. And I'm asking you to return a
18 verdict of guilty. You've got this.

19 MR. MCKELLAR: Your Honor, may Ms. Charbonneau and I
20 approach about housekeeping matter?

21 THE COURT: Yes.

22 MR. MCKELLAR: Thank you.

23 (Bench conference.)

24 THE COURT: All right. Mr. White, at this time we're
25 going to allow the ladies and gentlemen of the jury to take a

1 short bathroom break. So we'll stand down for about 10
2 minutes and please escort the jury out to the jury room.

3 (Jury exits courtroom.)

4 THE COURT: We will stand down for approximately 10
5 minutes.

6 (Off the record.)

7 THE COURT: Mr. McKellar, are you ready to proceed?

8 MR. MCKELLAR: Thank you, Your Honor.

9 THE COURT: All right. Mr. White, can you please bring
10 ladies and gentlemen of the jury in?

11 (Jury enters courtroom.)

12 THE COURT: Please be seated. Ladies and gentlemen of
13 the jury, at this time we will hear from, Mr. McKellar?

14 MR. MCKELLAR: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes.

17 MR. MCKELLAR: Good morning. I'd like to start off by
18 acknowledging how bad this case is. And as bad in the sense
19 that three teenagers lost their lives. There's no getting
20 around that. It's awful. We have three sets of parents who
21 have lost some value loss of their children -- teenagers.
22 And Xabian Bailey -- well -- but it is awful. But that
23 doesn't mean Xabian Bailey, who was also 18 at the time, is
24 guilty of murder.

25 I would like to start off with going over some things

1 that I don't think are in dispute. We know that the six
2 people at Xabian Bailey's house receive a phone call. I
3 don't think that's in dispute. And I don't think it is in
4 dispute that Larry -- they hear at a minimum, they hear that
5 Larry Carroll is angry at them for breaking into somebody's
6 house.

7 And specifically, Joshua Smith's house. I don't think
8 there's any dispute that they walk to Larry Carroll's house
9 to speak to Larry Carroll and say, "Why are you saying all
10 this? What evidence do you have? We didn't do this." I
11 don't think Twaine or Larry Carroll acknowledges this, but
12 Joshua Smith does. Joshua said, "Yeah why are you saying
13 this, Xabian argued with Larry." I think he said -- Larry
14 says, "Xabian didn't speak." But Joshua Smith says he did.

15 So they walk up there and to confront Larry and an
16 argument breaks out. I don't think that's in dispute. And
17 they walked up there just to clear their names. I don't --
18 there -- there's no evidence that they walked up there with
19 an attempt to harm anyone. And what happens next is what
20 this case is all about, right? It's why we're here. What
21 happens next?

22 Now, everyone -- almost everyone has a -- everyone has
23 a different variation of what happened, everyone. Heavenly,
24 Fantasia, and Alvin all have different variations of what
25 happened, slight variations. Twaine, Josh, and Larry have

1 slight variations of what happened. But let me start off
2 with -- and -- with -- we'll start off with Josh -- Josh
3 Smith's testimony. So you heard testimony from Josh Smith
4 that both Alvin and Xabian and what -- I don't know if he
5 testified to that they both shot, but he did testify and he
6 may have I -- I -- I just don't remember.

7 He may have testified that, but he definitely testified
8 that they were witness. However, he admitted that just the
9 day before, I think he did say he saw them both shoot, if you
10 -- you can go back and listen to his testimony. I think he
11 did say they both shot. But he admitted that on the stand,
12 just the day before that he said that he witnessed only Alvin
13 shoot.

14 He admitted that on the stand, the day before, under
15 both there was only one shooter, which is consistent with
16 somebody acting out. (Inaudible) On the day of the incident,
17 right after it happened, within probably 20 minutes, he
18 tells, according to Deputy Meyer, who I called back as a
19 witness, he tells Deputy Meyer that he didn't know who shot.
20 He just saw -- his words were, "Bodies drown." And he saw
21 W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] fall down.

22 He said, "I didn't see their faces, I just saw them
23 walk away." So I think everything that he says has to be
24 taken with a grain of salt because his story varies
25 significantly from Bailey. Now, Larry and Twaine, which have

1 you believed that everything's hunky dory and then that Alvin
2 and Xabian just execute these kids with no motivation but a
3 little bit of an argument. It just -- just goes to
4 reasonable doubt. That doesn't really make sense.

5 Let's talk about what Heavenly, Fantasia, and Alvin
6 said. They all say that W.G. [REDACTED], C.C. [REDACTED], and I.P. [REDACTED] were
7 armed. All of them. They do differ on what kind of guns
8 they had, what number of guns they had. I think either
9 Fantasia or Heavenly said that there were two long arms, two
10 ARs. I think Alvin and I think Heavenly or Heavenly or
11 Fantasia says that either W.G. [REDACTED] or I.P. [REDACTED] had two handguns.

12 Alvin says there was one AR and everybody else had
13 handguns. But those are differences that don't really amount
14 to much. It's been two years. It happened really fast.
15 They're all scared. Everyone's recollection of exactly what
16 happened and what kind of guns they were and where they came
17 from. It should be a little bit different, right? It put up
18 -- right -- it would put up red flags that everybody came in
19 here and said the exact same thing, which did not come close.

20 So Alvin and Fantasia both say that W.G. [REDACTED], I.P. [REDACTED], and
21 C.C. [REDACTED] walked from the right side of Larry Carroll's house.
22 Maybe somebody said -- or I'm not sure -- I'm not sure if
23 somebody said around the back of the house, but they all say
24 that he came from the right side, Larry Carroll's house and
25 they all say they were armed. Heavenly has a little

1 different recollection.

2 She says, "I saw them sitting down armed." Right?
3 Which is, nobody else says that. "I saw them sitting down
4 armed and they were on the run again on the right side of the
5 house." And when you go back there, take a good look at --
6 take a look at all the evidence. But I just want to point
7 out a handful exhibits. She says they were sitting down.
8 When you go back there, take a look at Exhibit 5, I think she
9 says they were all sitting down.

10 She may have said they were all sitting down next to
11 Larry's house or a back -- back against his house. Well, in
12 this picture, you won't see three seats. You only see one
13 seat. You see -- you look very closely in the shade. You'll
14 see a second seat. And if you look even more closely, you'll
15 see what looks up -- what may be a mountain dew or mellow
16 yellow 20-ounce drink right beside one of these seats.
17 Somebody was sitting there.

18 Heavenly says they're armed; they're sitting armed and
19 they get up armed. Alvin says they walked around the corner
20 armed, already armed when the -- and Fantasia says the same,
21 that already armed. Somebody said their fingers on the
22 trigger, Fantasia or Heavenly, I'm not sure which. That's
23 pretty direct. Right. I think Alvin said, **W.G.** was
24 pointing the gun at him. I don't know if Fantasia or
25 Heavenly were asked who was pointing at who.

1 They all say threatening things were said, which
2 accompanied having guns drawn. And I want to point out
3 something to you that I found very interesting. Is this
4 picture of the white Chevy Cobalt, trunk is closed, front
5 passenger side door. And if you compare this to other
6 photographs in evidence, you'll see that this -- this car is
7 almost directly in front of these chairs.

8 And I asked Heavenly, "Heavenly, is there anything
9 different about this photograph from what you -- you
10 remember?" She said, "Yeah, I remember the trunk being
11 opened and I remember this door being closed." Now, why is
12 that scene, why is the trunk being open significant? Because
13 that's where they would've gotten the guns from.

14 And why is different now? It's cleanup afterwards.
15 Cleaning up the scene. Trunk is open, slammed the trunk
16 down, don't know what's in it. Let's take a look -- good
17 look in his car too. Open the door, look through the car.
18 9mm rounds in the car. So the evidence from Alvin, Fantasia,
19 and Heavenly is that they were all -- all three were loaded.
20 W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] were loaded.

21 And that's the approach. Certain things were said.
22 And Heavenly and -- Heavenly and -- and Fantasia did not say
23 who shot first on the stand. They did not say that they saw
24 -- I don't think they said they saw anyone with guns other
25 than W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED]. I think there was some testimony

1 that they said things differently in the past after going --
2 being asked for five different -- not five different versions
3 of the story. But being asked over and over and over what
4 their story is and then recording the story on the fourth --
5 based on the fourth attempt. And that's what we have a
6 transcript of is, I guess, third or fourth.

7 So after the audio has trouble -- I believe Alvin said
8 all the guns were being pointed. Fantasia -- Alvin said he
9 was scared for his life and rightly so. So Alvin said,
10 "Yeah, he turned -- he got the guns drawn. If he'd turned
11 back and run, they might get shot in the back. Fantasia --
12 and I asked her if she was in fear for her life. She got
13 very emotional. Didn't she? When I asked that question
14 after the break and then she answered the question after the
15 break. "Yes." Or maybe she answered it before the break.
16 She answered the question. "Yes."

17 Now, Alvin shot, right? We know that he got on the
18 stand and said, "Yeah, I shot them, I shot them all. I'm the
19 only one who shot." Which is consistent with Xabian Bailey
20 had a gunshot residue only on his back because he's running.
21 He said he had a binary trigger. Everyone said the bullets
22 came out really fast. I don't know that it matters.

23 Binary trigger, whatever. He shoots really quickly; he
24 shoots them all and they die. He empties his clip and they
25 die. He shot until the threat was over, quoting his words.

1 I think he said he emptied the clip or until they hit the
2 ground (inaudible). All three of those things he says nobody
3 else shot. Now, I'm not sure that's right. I'm not sure
4 that nobody else shot, that W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] didn't
5 shoot.

6 I'm not sure about that. The State seems to take it
7 for granted that they didn't shoot, they didn't get a shot
8 of. Alvin says they didn't shoot. I'm not sure Alvin is
9 right. And here's why. Look at this. That may very well be
10 a bullet that struck that window. Now, judging from where
11 C.C. [REDACTED], I.P. [REDACTED], and W.G. [REDACTED] were standing, that's nowhere near
12 them. That would've been closer to my understanding of where
13 the six of them are.

14 And also, a round went through Yolanda Miller's house.
15 Yolanda Miller -- so if you're walk going up Wadley Drive,
16 very narrow road. The very back right is Larry Carroll's
17 house. It is running parallel with the road. The next house
18 is Yolanda Miller's.

19 Now, if you look at where W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] were
20 found and where the shell casings are, Yolanda Miller is
21 nowhere near the direction of -- Yolanda Miller's house. Is
22 nowhere near the direction of where I.P. [REDACTED], W.G. [REDACTED], and C.C. [REDACTED]
23 live.

24 So Yolanda Miller's house is back here back, right?
25 W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] are here and somewhere in the middle

1 where all the shell cases are. That doesn't make sense for
2 them to have not shot. I know people -- everyone says they
3 didn't shoot or Alvin says he didn't shoot. I'm not sure
4 Alvin has it right. Now, there are -- there -- there is
5 testimony that 40 caliber rounds were found, that 4/40
6 caliber rounds were consistent with coming -- the evidence is
7 that they came from the same gun.

8 We don't know when those 40 caliber rounds were shot.
9 They could have been -- I think you testified. We can't tell
10 whether a gun shot or the bullet shot just by looking at it.
11 They could have been shot at different times. But all you
12 know is they were shot by the same guy. And the State argues
13 that it was Xabian Bailey that fired those things that they
14 fired those 40 caliber rounds. Because Twaine Carroll says
15 that that's the way Xabian ran, was that direction to
16 Carroll's house.

17 Larry Carroll says the exact opposite. He ran --
18 everyone ran straight down the driveway. But I don't think
19 it makes a difference whether he shot or didn't shoot. I
20 don't think that is an issue that matters. And here's why.
21 Well, actually I'm not going to say here's why. Let me come
22 back to that. I will tell you that. So the shooting
23 happens, however it happens, it happens.

24 Who -- Alvin shoots -- kills them all, they die. What
25 happens next? Everybody runs whatever way they run, they

1 run. One person stays back. Who is that? Is the only
2 person that tried to help C.C. ██████, Fantasia Carroll. She's
3 the only one that tries to help him. She -- she's probably
4 the very last person that C.C. ██████, family member that
5 he came in contact with. She's the only one that helps.

6 And she is not sure how much this matters. Despite her
7 being the only one that helped. Larry didn't help. He said
8 Twaine didn't help, Josh didn't help. Fantasia helps. She's
9 the family outcast. She tries to help him out. Maybe it was
10 better not to try to help him up. Maybe -- it doesn't
11 matter. She tried to help. So she tries to help and at some
12 point we have this 911 call, right?

13 Fantasia calls on 911 or maybe Richard, I'm not sure.
14 Listen to the 911 call, please. Listen to it many, many
15 times. I don't recall who called the dispatcher, but Richard
16 gets on the -- I mean not Richard, excuse me. Larry gets on
17 the phone and he doesn't want staying on the phone at all.
18 He's like, "Here -- here -- here's my daughter. Tell -- tell
19 her who it was. Fantasia, it's your boyfriend. Tell her who
20 it was."

21 And so, she stays on the phone and she tries to get
22 help. She obviously doesn't want to implicate her boyfriend.
23 So she's not going into any details. But she is on the phone
24 for the majority of that 911 call. That's her. And we know
25 that W.G. ██████ -- excuse me. We know that Larry, Twaine, and

1 Josh aren't helping C.C. . What are they doing? What are
2 they doing when Fantasia Carroll is on the 911 call?

3 We do hear Larry yell, "C.C. lay down." But it has me
4 to listen a little more carefully for the things that aren't
5 are up in that -- in that 911 call. Let's look at some
6 evidence that would've been helpful if you had some things
7 that really would help you make your decision in this case
8 that you do not have.

9 The Night Owl DVR system. This is a security system
10 that is hooked up to cameras on the front side of the -- on
11 the outside of the house by the very minimum, one on the
12 front side of the house and is directed generally in the area
13 of where W.G. , J.P. , and C.C. are from.

14 Now, also take a look at this. When you get back
15 there, Defendant's Exhibit 2, Investigator Murdock says,
16 "Yeah, I photographed the scene. When I go in the scene, I
17 try to document everything as I see it. I don't try to
18 change anything." If I remember I'm going to come back to
19 this white Chevy Cobalt. And then -- so look at this. You
20 can't read it from -- you can't read it from where I was
21 standing, but I'll read it to you.

22 First says, "Night Owl." Here again underneath, "Night
23 Owl." And underneath it says, "Welcome to the Night Owl
24 Startup Wizard. The short process will help you set up your
25 basic system quickly and easily." The installation, it is

1 the thing he -- he -- he must be putting it in for the very
2 first time. According to this, the installation wizard. But
3 look -- look how dusty the hard drive is. That's been there
4 a long time.

5 I think he said it may have been there two years. I'm
6 not sure how long he said he had it, but he had it a long
7 time. And the installation wizard is on the street, like
8 it's being installed for the very first time. Why? Because
9 it cleaned up the scene. We have to delete -- we have to
10 eliminate the evidence of that. Did he accidentally hit the
11 reset button after this? Whoops, that doesn't make sense,
12 does it?

13 And what does law enforcement do with the Night Owl
14 system? What do they do? They -- they look through it.
15 They find, I think like old, the -- the most recent thing,
16 they find some deleted files from May. I'm not sure you can
17 -- this is Scott's testimony.

18 And that's what he sighed off on. But they didn't find
19 anything of value when they did the dump. The -- what we
20 call a data dump. The device is extracted. We call it data
21 dump. We did a data dump on this, didn't find any relevant
22 evidence.

23 And knowing that, what does law enforcement do?
24 They're trying to get to the bottom of what's on this Night
25 Owl system. Do they contact Night Owl and say, "Hey, you got

1 a cloud server where this stuff -- this data, this video may
2 have been stored in addition to the hard drive?"

3 No, they don't. They don't do anything with it. They
4 just chalk it up. They just -- they check the box and then
5 move on. Now, I would like to talk a little bit about what I
6 think law enforcement could have done better and that's one
7 of the things that law enforcement could have done better.

8 Right. Now, I have a great deal of respect for the
9 Aiken County Sheriff's Office. I think they are good people.
10 I'm on a first name basis with many of them. I'm on the
11 first name basis with Investigator Scott Neel. I saw Scott
12 Neel someday at Panera Bread. We shook hands and said,
13 "Hey." Said, "Hey Scott. We both did -- we had a murder
14 trial coming up. We didn't talk much, but we said, hey,
15 shook hands.

16 I said, "See you next week. Good luck." He's good
17 people. They're all good people. Investigator Murdock's
18 could be the -- let me come back to that. Investigator
19 Murdock, the State, I'm glad to call it that.

20 The State seemed to make a big deal out of Heaven --
21 Heavenly not knowing when this picture was taken or who took
22 the picture. Who cares? Heavenly does -- Heavenly doesn't
23 need to know who took this picture and when it was taken.
24 Because we know Investigator Murdock told us. Yeah, "When I
25 arrived on the scene, I take pictures exactly as I find the

1 scene." And she may have even been discussing this car, I'm
2 not sure. But she may have been actually discussing this car
3 is what prompted that response. Not (inaudible) of it,
4 maybe. But she definitely said, "I take pictures of the
5 scene as I find it."

6 So this is how she found it. And it's not how
7 Heavenly Reedy -- it wasn't Heavenly Reedy was there.
8 Heavenly Reedy doesn't know the significance of that. But we
9 do. So there could be -- I'm on a first name basis with many
10 of them on personal basis with Scott Neel,
11 Investigator Murdock. Great people Investigator Murdock, we
12 don't -- I don't -- they're -- they're good.

13 They don't -- we have our office, the prosecutor's
14 office, criminal defense attorneys in the area. All work
15 with them on a regular basis. And they have the reputation
16 of crime probably being the best law enforcement agency in
17 the area. But they are human. Right? We're all human. We
18 all make mistakes. And law enforcement made some mistakes.
19 The first mistake that they made was the DVR system not
20 really pursuing that route.

21 The second mistake is not doing anything with these
22 bullets that they find in the -- the white Chevy Cobalt.
23 Their explanation was, "Well, they weren't fired. So what's
24 the point? We don't send them off the ballistics because
25 they haven't been fired.

1 There aren't any -- when you fire a round that makes an
2 identifying mark on the round and you could compare it to
3 other rounds to see if they match. So these weren't fired.
4 We didn't send it off to be examined by SLED."

5 Okay. That makes sense. That's one reason why he
6 would send it off to SLED. But there's a couple other
7 reasons. DNA, see who actually touched it to see if **W.G.**,
8 **I.P.**, or **C.C.** touched these rounds. Fingerprints, maybe? You
9 know that three people are saying that they're armed. Look
10 for fingerprints. See if these rounds have any fingerprints
11 on them from **W.G.**, **I.P.**, or **C.C.**. It's brass.

12 You can't get a fingerprint off of brass without
13 rubbing it. We all know -- we've all touched a brass railing
14 before. That fingerprint is there for a very long time until
15 you polish it off. Not done. And the biggest issue of all
16 is not getting the search warrant for Twaine Carroll's house
17 or the day of the incident, law enforcement learns that
18 weapons that are supposedly being held by **W.G.**, **I.P.**, and
19 **C.C.** at the moment they were shot were picked up off of their
20 -- off their bodies and taken into Twaine's house.

21 They know that. On the very same day Fantasia Carroll
22 tells them that. And those officers that were told that
23 don't do anything with that information.
24 Investigator Scott Neel learns about it for the first time
25 three days later. That's -- that's -- that's a little bit

1 too late. He -- when I learned, and it -- it may have been
2 said earlier, I -- I didn't remember it being said, but I
3 learned -- if I had forgotten, I may have forgotten.

4 Well, I may have forgotten, but I learned on the stand
5 that he searched the house and he testified.

6 Investigator Neel said he testified previously that this was
7 mentioned. I didn't remember that. I wouldn't have said it
8 in my opening that the house would have searched if I knew
9 the house was searched. I didn't remember. Regardless of
10 whether he said it or didn't say, I didn't know. I didn't
11 know going into -- I didn't remember going into this trial.
12 If I ever had known it, I had forgotten.

13 But anyway, it doesn't matter. Right? Because he
14 doesn't learn until three days later. The left hand doesn't
15 know what the right hand is doing. The left hand -- the
16 eighth -- the investigators that took the statement that
17 before them that guns were taken hidden from Twaine's Carroll
18 doesn't inform the right hand that, "Hey, you might want to
19 go get a search warrant for this house ASAP before these guns
20 are removed if they are there."

21 Doesn't happen. He does search three days later, it's
22 too late. Twaine Carroll allows them to search the house.
23 Hard to talk a little bit about one common factor. Change
24 gears. I'm not talking about the evidence, but one, ask us
25 to use our common sense about what we know about people and

1 how people develop age and how people mature.

2 So W.G. [REDACTED], I.P. [REDACTED], and C.C. [REDACTED] have one thing in common.
3 They're all teenagers. And what do we all -- we all have
4 been teenagers at one point? We know what all teenagers --
5 how all teenagers feel because we were -- we have all been
6 teenagers. We know that teenagers have a sense of
7 invincibility that nothing wrong is going to happen. I can
8 be as reckless as I want, nothing is going to happen to me.

9 And we know that teenagers have a -- a dramatic.
10 Dramatic may not be right word. A significant under
11 appreciation of risk. Right? Well, I'll put there
12 invisible. Just I can do whatever I want. Nothing -- no
13 harms going to come to them. Now, as adults, as we grow up,
14 we know that life can be short. Bad things happen. Let's
15 minimize risk.

16 Let's not -- let's not do things that put our lives in
17 jeopardy. So how does this play into our case? Well, when
18 they walk out with those guns, probably didn't think anything
19 was going to happen. They probably didn't think a single
20 thing was going to happen. They didn't know about Artis had
21 that gun here. They likely thought that they can approach
22 these group of -- this group of people with their guns armed.

23 They won't have to shoot. They probably -- they might
24 even -- they don't want to shoot. They probably had no
25 intent of shooting. I don't know. They -- can't get in

1 their heads. But that is a very real possibility that they
2 did not want to shoot. It is very likely that they wanted to
3 pull their guns out. Say some mean things. Scare these guys
4 off and say some things.

5 But they don't know Alvin Artis has that weapon right
6 there. Right? They probably don't want to shoot, they
7 probably don't want this to get sideways the way it does.
8 They don't appreciate risk. Teenagers -- teenagers don't
9 appreciate risk. Teenagers can't think beyond the next
10 moment. They can't think about -- they don't think about
11 tomorrow.

12 They don't think about the consequences of actions.
13 They're not thinking that if I pull out a gun, I might be
14 shot. What I have learned in my years of experience that if
15 you pull out a gun, you better be willing to use it because
16 you might be shot. If you're not, that gun may be taken from
17 you and you may die by your own weapon or you may be shot by
18 somebody, by the person dealing with the guns.

19 They might have their (inaudible). So as adults, we
20 know that. We're not going to take a risk just pull out
21 weapons on people because that -- it happened. But they may
22 not have thought that. If a person pulls a weapon on a --
23 pulls a weapon on another person. Because depending on the
24 big trigger, he better be willing to shoot because if he
25 doesn't shoot that person that he has a weapon is going to

1 shoot him.

2 And if the person that first pulls the weapon didn't
3 have a legal basis to pull the weapon when that person is
4 shot and killed, that's justified. Even if the person that's
5 killed didn't even intend to shoot, it doesn't matter. So
6 those bullets started firing, they -- they might have never
7 had the intent to shoot. It doesn't matter. They pulled
8 weapons, and said threatening things.

9 They probably didn't know that other people, at least,
10 Alvin or other people were armed. They weren't thinking
11 about risk. They weren't thinking about consequences. They
12 were being teenagers. And it -- it is awful. It is. It's
13 awful. I'm not saying it's not awful. It is awful, what
14 happened. Three teenagers gone. I want to talk a little bit
15 about reasonable doubt.

16 The State did inform you that they have to own -- they
17 have to prove reasonable doubt -- excuse me. They have to
18 prove three counts of murder beyond a reasonable doubt.
19 Okay. That's a -- that's the highest evidentiary threshold
20 in the land. Civil cases, which you might be familiar with.
21 Civil cases. One person versus another, that's a much lower
22 standard.

23 It's called preponderance of evidence. More evidence,
24 scales, tilt, more than the other. Beyond a reasonable is
25 without scales, tilt like this. They have to have

1 significant evidence that leaves no -- no reasonable doubt
2 for their minds. They also have to disprove self-defense.
3 They have to not only have to prove murder, but they have to
4 prove to do that, they have to prove that Alvin will, again
5 -- excuse me. I'm sorry.

6 Xabian, Alvin, and Antonio were acting in self-defense.
7 And they have to prove that beyond reasonable doubt. And
8 they haven't. They haven't done so. And let me tell you
9 what I believe should give -- okay. Let me give you reasons
10 -- let me tell you what the reasonable doubt is. If you
11 think that they should have -- law enforcement should have
12 searched Twaine Carroll's house to get to the bottom of what
13 really happened to get to really be confident in your
14 decision. That's reasonable doubt.

15 If you think, "Gosh, I sure would like to know on this
16 installation wizard is on this computer -- on this TV monitor
17 right now. That really doesn't make sense." That's
18 reasonable doubt. If you listen to the 911 call and you pay
19 -- before I get to that. If you think it just doesn't make
20 sense that three unarmed teenagers would be shot down just
21 for an argument, you don't think that makes sense? Much
22 sense? Reasonable doubt.

23 Last, if you hear the 911 call and you listen to it
24 very carefully, if you go to three minutes and 30 seconds
25 within that 911 call, Fantasia Carroll's 911 call, and you

1 listen very carefully. If you hear one person say, "Get the
2 fucking guns." And you hear another person say, "Where the
3 guns at?" That's reasonable doubt. This case, that's
4 reasonable doubt all in it. And I ask, please return for the
5 verdict of not guilty. Thank you.

6 THE COURT: Ladies and gentlemen of the jury, please
7 stand and get everyone in the courtroom an opportunity to
8 stand and stretch. All right. Everyone have a seat. Ladies
9 and gentlemen of the jury, at this time will now have the
10 State's rebut -- I apologize to the State we had civil the
11 last few weeks.

12 Madam Solicitor.

13 (Bench conference.)

14 MS. CHARBONNEAU: Thank you. Okay. Let's address some
15 of the things. Everyone's clear, the argument was to clear
16 their name. And Mr. McKellar said they did not walk up there
17 with intent to -- to hurt anyone. You know that's not true
18 because there was three guns there. Alvin Artis told you he
19 had one. And even not only did the three state witnesses
20 tell you that Alvin Artis and Antonio had guns as well.

21 But even Fantasia, who we know is a liar, but even she
22 told police that night that this man, Xabian Bailey had a
23 gun. When you go with a loaded gun, you are responsible for
24 your actions. Mr. McKellar talks about Josh Smith saying
25 that he -- he wasn't clear. What was he clear with -- with

1 you? He told you he sometimes mixes up the names.

2 He was crystal clear when he picked out the three
3 Defendants in the photo lineups and he was crystal clear
4 yesterday or the day before when he testified to you. And
5 when Ms. Morgan asked him and he said, "I do mix up the
6 names." But he said -- when they're going over the photo
7 lineup, he said, "That man, the one in the courtroom, he's
8 one of the shooters."

9 The fact that Joshua Smith in a state of shock moments
10 after he just watched these three kids get gunned down, the
11 fact that he told Deputy Sheriff Meyer that he just saw the
12 back of their heads and he saw them running away has --
13 doesn't have significance and doesn't make him a liar. He is
14 in shock. Deputy Meyer told you on the stand that in the 13
15 years it's common that once that shock drops, your adrenaline
16 drops.

17 That's why they talk to and re-interview witnesses
18 because you remember more. It's clear in your head and he
19 was crystal clear on the photo lineups and he was crystal
20 clear in the courtroom. Defense keeps telling you that the
21 defense witnesses are saying that the victims were armed and
22 they had their -- their hands -- their fingers on the
23 triggers. Ask yourself, use your common sense. Why are they
24 armed?

25 Not even the defense witnesses are claiming that there

1 was any communication directly between the three witnesses,
2 the three victims or any of the six Defendants. Why would
3 the victims be armed? And if they supposedly were expecting
4 them, no one says they were on either side, but even if they
5 were expecting them, then how come Larry Carroll doesn't have
6 his gun?

7 He -- his gun is the only one on the scene and it is in
8 -- under the -- under the floor, on the floor in the back of
9 his truck. Well, if they're -- if he is this big criminal
10 mastermind and they're expecting the six people to come up
11 here and they're armed to the teeth, why Larry Carroll
12 doesn't have his gun? Because they're not expecting him. It
13 is not reasonable. It is not true.

14 Mr. McKellar wants you to believe that Larry Carroll is
15 a criminal mastermind and that he cleaned up the scene. And
16 I guess he's throwing in Josh and Twaine also, I'm not clear,
17 but you have the physical evidence to prove that what he's
18 saying isn't true.

19 You have the 911 call, State's 3. Five minutes and 51
20 seconds long. You know, from the testimony, because you also
21 have the surveillance video, the surveillance video of the
22 six people walking up at 1:17 p.m. and running that about
23 four or five minutes later. Do the math. Then you have --
24 that's State's 7. So then you have the 911 call at 1:23 p.m.
25 One minute after they start running away, 1:23. It's five

1 minutes and 51 minutes long. That's it. Larry Carroll and
2 Fantasia Carroll are both on that call. So during that time,
3 defense would have you believe that Larry Carroll is somehow
4 cleaning up something in the white Cobalt which there's no
5 evidence whatsoever that there's any change in the white
6 cobalt.

7 Let's -- let's look at it. Mr. McKellar is saying,
8 "Larry Carroll is on the phone with 911. He must be dragging
9 Fantasia with him because they're both answering the
10 operator." So now he's dragging Fantasia with him and he is
11 cleaning up the scene. He's picking up all the guns from the
12 victims.

13 He is changing whatever is going on with the white
14 Cobalt. He's going into his house, he's doing something with
15 the DVR and then 1:28, law enforcement is on the scene. It's
16 not physically possible. You know it's not. You can't fight
17 the physical evidence. There's no time, there's no reason.
18 It is not reasonable. The man who testified for you was
19 emotional on that stand two years later.

20 He watched his family. He is a stepbrother to I.P. [REDACTED]
21 [REDACTED]. He is the godfather to W.G. [REDACTED] and he's the
22 uncle to C.C. [REDACTED]. He watched them get mowed down.
23 He's the one who called 911 with Fantasia. He's the one who
24 stayed on the scene. Criminal mastermind, cleaning
25 everything up? It's impossible. It's physically impossible.

1 Alvin Artis scared for his life. Did he act -- I'm
2 asking you guys to look at his demeanor. Did he act like he
3 was scared for his life? He was cocky and he was bragging
4 how many times he shot those kids. Wasn't scared. And he
5 said he was the only one who shot. Well, even the defense
6 witnesses are calling him a liar. The State witnesses are
7 definitely calling him a liar, but the defense witnesses are
8 too.

9 Because even Fantasia, who would not admit what she
10 told Investigator Faulkner, even she, you know, she told them
11 that night, she told law enforcement that man sitting before
12 you had a gun, that man had his gun in his pants and that man
13 shot. Mr. McKellar talks about the white Cobalt having the
14 bullet strike in the windshield. That is correct.

15 It has a bullet strike in the windshield because it is
16 parked in front of Larry Carroll's house. You have the
17 photos, you saw them, the white Cobalt is in the front of the
18 house to the right side. You have the black truck, then the
19 blue truck, and then the white Chevy Cobalt, it's backed in.
20 You see the windshield, you see the strike. It's in the same
21 direction as Larry Carroll's house, which also has strikes in
22 it. The three victims which have 14 bullet holes in them,
23 and Yolanda Miller whose house has a bullet hole in it. It
24 doesn't matter who shot it. He's got a good shot. That's
25 what I submit to you. He's running and shooting. He shoots

1 at the victims and he misses. And then he is running and
2 shooting and he hits the white Chevy Cobalt. That's what
3 I'll submit to you.

4 The testimony that Twaine Carroll told you was that man
5 as he was running, he tried to get into Twaine Carroll's
6 house, if you remember that testimony. And he said his kids
7 wouldn't let him in and then he kept running towards the
8 woods. Fantasia Carroll tried to tell you -- and
9 Mr. McKellar is making a -- an issue of the fact that she
10 said that she was the only one who was trying to help C.C.
11 [REDACTED].

12 She was the only one, she's the only one who took --
13 who went to him. And you know that's not true. She wasn't
14 trying to help anyone. He was trying to -- they were trying
15 to get sympathy for you to feel about Fantasia. But they --
16 I submit, first of all, sympathy has nothing to do with it.
17 But second of all, it's a lie. Because Larry Carroll tells
18 her to call 911.

19 You hear her on 911, you can hear that Larry Carroll
20 with Fantasia is telling him to lay down. So she's not with
21 C.C. [REDACTED]. And she lies to the 911 operator
22 repeatedly. She doesn't answer when they say, "Who did this?
23 Who did this?" Won't give the direct description of the
24 clothes. Won't say Xabian Bailey's name. She's not helping.
25 She doesn't care. All she cares about is that she wants to

1 get out of there and she walks down to her auntie's house.

2 How else do you know? Defense witness Heavenly Reedy
3 told you dust in the air when the dust clears, Fantasia's
4 gone. And that's when she leaves. Watch the surveillance
5 video. You'll see they all go back separately. Keep
6 watching the video. And what -- what you'll see is them
7 coming from the left side, the screen to the right, and you
8 will see Heavenly Reedy is one of the last ones to go back.

9 And then in the right-side corners, you see the house
10 -- the -- overview of the house that they go to. Fantasia is
11 not there, she already went to her auntie's. She's not this
12 good Samaritan that she's trying to paint herself to be. The
13 DVR system. Defense Exhibit 1, is all DVR system in the
14 house of Larry Carroll. Mr. McKellar wants you to think that
15 somehow this is the key to everything and that this is -- I
16 don't know what.

17 Larry Carroll told you this, it's from his house. He's
18 had it for several years. You could tell by the picture that
19 it's old and dusty. And what you see in the other defense's
20 picture is that it has a live screen. Use your common sense.
21 Investigator Neel told you they took the DVR, they didn't
22 send it to SLED because they had someone in house.

23 And he -- Investigator Neel told you that.

24 Investigator Truesdale examined it, wasn't anything recorded
25 on it since May does that mean the live feed doesn't work?

1 No. Of course not. That's two different things. If
2 nothing's recording since May, nothing's recording. That's
3 it. That's the end. But Larry is cleaning up this team.
4 The mistakes that he lists, Mr. McKellar lists is the DVR
5 system.

6 The bullets were not fired so somehow, we should get
7 DNA or prints off of them. That car was not involved other
8 than it was a -- it was struck by bullets. There's no
9 evidence that anyone drove it to the scene or a getaway
10 vehicle or anything like that. So DNA prints in one of the
11 victim's cars doesn't help you do anything. Twaine Carroll's
12 search warrant at the house, three days later.

13 Well, follow the reasoning. If Mr. McKellar is
14 painting Larry Carroll as this criminal mastermind who is
15 cleaning up this scene in like the minute and a half before
16 the police arrive and when -- and when he is not on the 911
17 call. If he's this big mastermind, then the guns aren't
18 going to be in -- in Twaine Carroll's house. If you follow
19 his logic, the fact that they searched it three days later
20 wouldn't even make a difference.

21 Because this big mastermind has already gotten rid of
22 those guns and he probably drove with Alvin Artis to -- to
23 North Carolina and dropped them in the river. Not
24 reasonable. Alvin told you that nobody knew he had a gun.
25 We know that's not true. We know that he said he was the

1 only one who shot. We know that's not true. That he wanted
2 to save some face and that somehow, they were just being
3 teenagers. Hold that up.

4 They were just being teenagers? When you strap on a
5 loaded firearm and you go to confront somebody, you have now
6 manned up and guess what? Now, you are going to man up and
7 take your responsibility for your actions and for the actions
8 of the co-Defendants. Mr. McKellar wants you to think that
9 that's not a -- it's not a motive because they went there to
10 confront them.

11 It is the only motive that you have. But be clear. I
12 do not have to prove to you why someone does something that
13 is not the element of a crime. It makes a good movie and it
14 makes TV why someone does something is what we watch when
15 we're being entertained. But this is real life and motives
16 can be crazy reasons and they can be ridiculous reasons and
17 they can be unfathomable to the rest of us.

18 And the fact that these six walked up there and three
19 of them went armed because they wanted to confront
20 Larry Carroll. They didn't know the three victims were going
21 to be there, but they were going there to confront
22 Larry Carroll. That's motive, that's why they did it. Other
23 than that, can't explain any further to you and I don't need
24 to, you don't need to understand it.

25 You don't need to think it makes sense. They may do it

1 for absolutely no reason whatsoever, but that is the reason
2 that was given. Watch everything, look at all the
3 photographs. Do it as many times as you want back there.
4 But the bottom line is; under the hand of one, the hand of
5 all Alvin Artis and Xabian Bailey and Antonio Jones murdered
6 those three boys. Doesn't matter who pulled that trigger and
7 actually shot each one of them. They are all guilty under
8 the hand of one. I'm asking you return to a verdict of
9 guilty. Thank you.

10 THE COURT: All right. Members of the jury, you have
11 heard the testimony and evidence and arguments of the State
12 and the Defendant. I'll now explain to you the law that
13 applies to this case. Under the constitution and laws of
14 South Carolina, you are the finders of the facts in this
15 case. I do not have the right to pass upon the facts or even
16 to express any opinion I might have as to them.

17 This is a matter solely for you, the jury, to
18 determine. As jurors then, it is your duty to determine the
19 weight, the effect, the value, and the truth of the evidence
20 presented during this trial. As the trial judge, it is my
21 responsibility to preside over the trial of this case. And I
22 also have the duty to rule upon or pass upon the
23 admissibility of the evidence offered during this trial.
24 You are to consider only the testimony which has been
25 presented from this witness. Stand together with any

1 exhibits which have been made part of the record in this case
2 and any stipulations of counsel made into the record. I have
3 the additional duty to charge you the law applicable to this
4 case. And as the presiding judge, I'm the sole judge of the
5 law of this case.

6 It is your duty as jurors to accept and apply the law
7 as I state it to you, and then reach your verdict. And
8 finally, I charge you in this regard that you should not be
9 concerned with what you think the law ought to be, but what I
10 charge you the law to be. You are also the judges, sole
11 judges of the credibility that is the believability of the
12 witnesses who have testified in this case.

13 And in passing upon their credibility, you may take
14 into consideration many things such as the demeanor or manner
15 of testifying, whether the witness has reason to be biased or
16 prejudice, whether a witness's testimony is (inaudible) on
17 the -- one hand or supported and corroborated on the other
18 hand. You may believe a small portion of a witness's
19 testimony and disregard the larger or vice versa. You may
20 believe one witness against many. Or many against one.

21 All these things you will consider bearing in mind that
22 you should give the Defendant to benefit of any reasonable
23 doubt. It becomes your duty as jurors to analyze and to
24 evaluate the evidence and determine that evidence which
25 convinces you of its truth. The fact that the Defendant was

1 arrested, charged, and indicted in this case is not evidence
2 in this case and cannot be considered by you as evidence of
3 guilt in this case.

4 Nor does it create any presumption or inference of
5 guilt. This document is simply the formal written instrument
6 which contains the charges made against the Defendant. It is
7 the formal document by which this case is brought into this
8 Court. The Defendant has pled not guilty to this indictment
9 and that plea puts the burden of the State to prove the
10 Defendant guilty.

11 A person charged with committing a criminal offense in
12 South Carolina is never required to prove themselves
13 innocent. I charge you that is an important rule of the law
14 that a Defendant in a criminal trial, no matter what the
15 seriousness of the charge may be, will always be presumed to
16 be innocent of the crime by which the indictment of the issue
17 unless guilt has been proven by evidence satisfying you of
18 that guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberation, but it accompanies the Defendant
21 throughout the trial until you reach a verdict of guilt based
22 on evidence satisfying view of that guilt and non-reasonable
23 doubt. The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the Defendant,
25 which remains with the Defendant until it has been stripped

1 away from the Defendant by evidence satisfying you of the
2 Defendant's guilt beyond a reasonable doubt.

3 The presumption of innocent is not merely a legal
4 theory. It is not just a legal phrase. It is a substantial
5 right to which every Defendant is entitled to unless you, the
6 juror, are satisfied from the evidence of the Defendant's
7 guilt beyond reasonable doubt, the State has the burden of
8 proving the Defendant guilty beyond a reasonable doubt. Some
9 of you may have served as jurors in civil cases where you
10 were told that it is only necessary to prove facts is more
11 likely true than not true.

12 Such as by the greater weight or the preponderance of
13 the evidence. In criminal cases, the State's proof must be
14 more powerful than that. It must be beyond a reasonable
15 doubt. Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the Defendant's guilt. There are
17 very few things in the world that we know with absolute
18 certainty. And in criminal cases, the law does not require
19 proof that overcomes every possible doubt.

20 If, based on your consideration of the evidence, you
21 are firmly convinced that the Defendant is guilty of the
22 crime charge, you must find the Defendant guilty. If, on the
23 other hand, you think there is a real possibility that the
24 Defendant is not guilty, you must give the Defendant the
25 benefit of the doubt and find him not guilty.

1 I instruct you and emphasize that the fact the
2 Defendant did not testify is not a factor to be considered by
3 you in any way in your deliberation and in your consideration
4 on the question of the guilt or the innocence of the
5 Defendant, it must not be considered by you in any manner
6 whatsoever. A Defendant has the constitutional right to
7 remain silent and the assertion of this right must not be
8 considered by you in your deliberations.

9 I repeat, under your oath you are to draw no conclusion
10 whatsoever from the fact that the Defendant in this case did
11 not testify. The fact that this Defendant did not testify
12 should not even be discussed in the jury room. The burden of
13 proof as I have stated to you is on the State. The Defendant
14 is not required to prove his innocence. The burden of proof
15 remains on the State to prove guilt beyond any reasonable
16 doubt.

17 The indictments in this case allege two different
18 offenses against the Defendant. The charges are as follows,
19 indictment number one, murder, indictment number two, murder,
20 indictment, number three, murder, indictment number four,
21 possession of a weapon during the commission of a violent
22 crime. Each indictment charges a separate and distinct
23 offense.

24 You must decide each indictment separately on the
25 evidence and the law applicable and the law applicable to it

1 uninfluenced by your decision as to the other indictments.
2 The Defendant may be convicted or acquitted on any or all of
3 the offenses charged. You will be asked to write a separate
4 verdict of guilty or not guilty for each indictment. The
5 Defendant is charged with three counts of murder.

6 For each count of murder, the State must prove beyond a
7 reasonable doubt that the Defendant killed another person
8 with malice aforethought. Malice is hatred, ill-will, or
9 hostility toward another person. It is the intentional doing
10 of a wrong -- wrongful act without just cause or excuse and
11 with an intent to inflict an injury or under circumstances
12 that the law will infer an evil intent.

13 Malice aforethought does not require that malice exist
14 for any particular time before the act is committed. But
15 malice must exist in the mind of the Defendant just before
16 and at the time the act is committed. Therefore, there must
17 be a combination of the previous evil intent and the act.
18 Malice aforethought may be expressed or infer.

19 These terms express and infer do not mean different
20 kinds of malice, but merely the manner in which malice may be
21 shown to exist. That is, either by direct evidence or by
22 inference from facts and circumstances which are proved.
23 Expressed malice is shown when a person speaks words which
24 express hatred or ill-will for another or when the person
25 prepares beforehand to do the act which was later

1 accomplished.

2 For example, lying and wait for a person or other acts
3 of preparation going to show that the deed was within the
4 Defendant's mind would be expressed malice. Malice may be
5 inferred from conduct showing a total disregard between life.
6 If a crime is committed by two or more people who are acting
7 together in committing a crime, the act of one is the act of
8 all.

9 A person who joins with another to commit a -- an
10 unlawful act is criminally responsible for everything done by
11 the other person, which happens as a probable or natural
12 consequence of the acts done in hearing out the common plan
13 and purpose. If two or more people are together, acting
14 together, assisting each other in committing the offense, the
15 act of one is the act of all or as it is sometimes said, the
16 hand of one is the hand of all.

17 Prior knowledge that a crime is going to be committed
18 without more is not sufficient to make a person guilty of
19 that crime, mere knowledge that another person is going to
20 commit a crime even if the Defendant is present when the
21 crime is committed is not sufficient to convince the
22 Defendant as a principle.

23 Guilt, as a principle, is shown by actual or
24 constructive presence at the scene as a result of prior
25 arrangement. Therefore, a finding of a prior arranged plan

1 or common scheme is necessary for finding a guilt -- finding
2 of guilt as a principle. The State must prove beyond a
3 reasonable doubt by competent evidence. The theory of the
4 hand of one is the hand of all.

5 A principle in a crime, is one who either actually
6 commits the crime or who is present, evading, obeying, or
7 assisting in committing the crime. When a person does and
8 acts in the present of and with the assistance of another,
9 the act is done by both. Where two or more acting with a
10 common plan or intent are present at the commission of a
11 crime, it does not matter who actually commits the crime, all
12 are guilty.

13 The hand of one is the hand of all. Present at the
14 commission of a crime means to be sufficiently near to aid
15 and obey and assist in the commission of the crime. However,
16 mere presence at the scene of a crime is not sufficient to
17 convict one as a principle on the theory of aiding and
18 obeying. Intent is also a necessary element. For there must
19 have been a common design or intent to commit the crime.

20 And the crime must have been committed, pursuant
21 thereto, with a person aiding and obeying by some over act.
22 Intent may be shown by acts and conduct of Defendant and
23 other circumstances from which you may naturally and
24 reasonably infer intent. The State must prove these elements
25 beyond a reasonable doubt. Mere presence at the scene is not

1 sufficient to prove someone guilty of a crime.

2 A Defendant's presence where a crime is being committed
3 or mere association with a person who commits a crime does
4 not make a Defendant an accomplice or an aid and a -- better
5 of the person committing the crime. The burden is on the
6 State to prove every element of the crime charged. If you
7 find, after reviewing all of the evidence, that the State has
8 proved that the Defendant was only present at the scene of a
9 crime.

10 And that they have not proved beyond a reasonable doubt
11 any other participation in the crime, then you must find the
12 Defendant not guilty. The law is that proof of being at the
13 scene of the crime is not sufficient to aid someone guilty,
14 to find someone guilty. Self-defense is a complete defense.
15 If established, you must find the Defendant not guilty.

16 There are four elements required by law to establish
17 self-defense. First, the Defendant must be without fault in
18 bringing on the difficulty. Second, the Defendant must have
19 been in actual imminent danger of losing his life or
20 sustaining serious bodily injury or he must have actually
21 believed he was an imminent danger of losing his life or
22 sustained serious bodily injury.

23 Third, if his defense is based upon his belief of any
24 danger, a reasonably prudent person of ordinary firm is
25 encouraged would have entertained the same belief. If the

1 Defendant actually wasn't in danger, then the circumstances
2 were such as would warrant a person of ordinary prudence,
3 firmness, and courage to take the necessary action in order
4 to save himself from serious bodily harm or losing his own
5 life.

6 Fourth, the Defendant had no other probable means of
7 avoiding the danger of losing his own life or sustaining
8 serious bodily injury other than to act as he did in this
9 particular instance. These are the elements of self-defense.
10 A Defendant in a self-defense case has the right to act on
11 appearances. A Defendant must have believed he was in any
12 danger, not that he was actually in such danger because he
13 had the right to act on appearances.

14 And under the circumstances as they appeared to him, he
15 believed he was in such danger and a reasonable prudent man
16 of ordinary, firmness, and courage would have entertained the
17 same bully. Words accompanied by hostile acts, may,
18 depending on the circumstances, establish a plea of
19 self-defense. Self-defense is not available to one who uses
20 language so abusive that a reasonable person would expect it
21 to bring on a physical encounter and which did actually
22 contribute to bring it on.

23 There is no burden upon the Defendant to prove
24 self-defense. The Defendant is not required to prove any
25 element of self-defense. The burden was on the State to

1 disprove self-defense beyond a reasonable doubt. If you have
2 a reasonable doubt of the Defendant's guilt, after
3 considering all the evidence, including the evidence of
4 self-defense, then you must find the Defendant not guilty.

5 On the other hand, if you have no reasonable doubt of
6 the Defendant's guilt after considering all of the evidence,
7 including the evidence of self-defense, then you must find
8 the Defendant guilty. A person cannot be required to make an
9 exact calculation as to the degree or not a force which may
10 be needed to avoid death or serious violent harm.

11 Therefore, in self-defense, the Defendant has the right
12 to use the force needed to avoid death or serious violent
13 harm. The force used in self-defense does not have to be
14 limited to the degree or amount of force used by the victim.
15 The Defendant has the right to use so much force as appeared
16 to be necessary for complete self-protection in which a
17 person of ordinary reasons and firmness would have believed
18 to be needed to prevent death or serve his bodily harm.

19 If the Defendant is justifying the Defendant himself or
20 others in firing the -- and in firing first shot, then the
21 Defendant is also justified in continuing to shoot until --
22 until it is apparent that the -- the danger of death or
23 serious bodily injury has completely ended. The reputation
24 of the victim as a violent person may be considered in
25 deciding whether there was a need for force, whether the

1 Defendant had reason to believe there was a need for force
2 and whether the deadly force was reasonably necessary.

3 Threats made by the victim may be considered in
4 determining whether the Defendant actually was or believed he
5 was in imminent danger. If the Defendant is justified in
6 defending himself or others and has fired in the first shot,
7 the Defendant's also justified in continuing to shoot until
8 it is apparent that the danger or death of serious bodily
9 injury has completely ended.

10 Under the law of self-defense, the Defendant may take
11 another's life in the defense of others. The right to
12 intervene to protect another person is subject to the same
13 right and limitations as the right of self-defense. The
14 Defendant may take the life of a person who assaults a
15 friend, relative, or bystander if that friend or relative or
16 bystander would've had the right of self-defense.

17 To show that the person being Defendant had the right
18 of self-defense, it must first be shown that the person being
19 Defendant and the Defendant were both without fault in
20 bringing on the difficulty. If the conduct of the person,
21 Defendant or the Defendant was the type which was reasonably
22 calculated to and did provoke a deadly assault, the person
23 would be at fault in bringing on the difficulty and would not
24 have the right of self-defense.

25 Therefore, the Defendant would not have the right to

1 use deadly force in defending that person. The defense of
2 another person is excusable if the Defendant had reasonable
3 grounds to believe, and in good faith did believe that the
4 person being Defendant was in imminent danger of death or
5 serious bodily harm from the victim.

6 In deciding whether a person -- whether the person,
7 Defendant actually was, or that the Defendant actually
8 believed the person was in imminent danger of death or
9 serious bodily injury, you should consider all the facts and
10 circumstances surrounding the crime, including the physical
11 condition and characteristics of the parties. The Defendant
12 does not have to show that the person, the Defendant --
13 Defendant was actually in danger.

14 It is enough if the Defendant believed the person was
15 in imminent danger. The Defendant has the right to act on
16 appearances even though the Defendant's beliefs may have been
17 mistaken. The -- the Defendant must show that under the
18 circumstances as they appear to the Defendant, the Defendant
19 believed the person, Defendant, was in danger and that a
20 reasonably prudent person of ordinary, firmness, and courage
21 would have had the same belief under the same circumstances.

22 It is for you, the jury, to decide whether the
23 Defendant's fear of immediate danger of death or serious
24 bodily injury to the person, Defendant, was reasonable and
25 would have been felt by an ordinary person in the same

1 situation. The Defendant does not have to wait until the
2 victim gets the drop on the person Defendant. The Defendant
3 has the right to act under the law of self-preservation to
4 prevent the victim from getting the drop on the person
5 Defendant.

6 All right. Ladies and gentlemen of the jury, stand up,
7 we're almost done. All right. Have a seat for me, please.
8 The Defendant is charged with possession of a weapon during a
9 commission of/or attempt to commit a violent crime, the State
10 must prove beyond a reasonable doubt that the Defendant was
11 in possession of a firearm or visibly displayed what appeared
12 to be a firearm during the commission of a violent crime.

13 A firearm means any machine gun, automatic rifle,
14 revolver, pistol, or any weapon which is designed to or made
15 readily or be readily converted to expel or projectile. In
16 order to find the Defendant guilty of possession of a weapon
17 during the commission of a violent crime, you must first find
18 the Defendant guilty of either committing a violent crime or
19 attempting to commit a violent crime.

20 Murder is a violent crime. The State must prove beyond
21 a reasonable doubt that the weapon further advanced or helped
22 in the commission of the crime. Now, ladies and gentlemen of
23 the jury, you have been chosen and sworn to give the parties
24 a fair and impartial trial. When you have done so, you will
25 have complied with your oath and no one will have the right

1 to criticize your verdict.

2 You must not be influenced by opinions or expressions
3 of opinions you may have heard outside of the Court, but
4 rather should base your verdict solely on the testimony of
5 the sworn witnesses who took the stand, the exhibits received
6 into evidence, and the laws which I have stated. Prince,
7 passion, prejudice, or improper sympathy for or against
8 anyone should not slave it.

9 Remember, you have no friends to reward or enemies to
10 punish. All parties are entitled to a fair and impartial
11 trial. It is your duty as jurors to consult with one another
12 and to be deliberate in an effort to reach an agreement.
13 Each of you must decide this case for yourself, but only
14 after impartial consideration of all the evidence with your
15 fellow jurors.

16 In the course of your deliberations, do not hesitate to
17 re-examine your own views and change your opinion if you
18 become convinced that it is erroneous. However, do not
19 surrender your honest conviction as to the weight or effect
20 of the evidence solely because of the opinion of your fellow
21 jurors or for the mere purpose of returning a verdict.

22 As I stated to you earlier, you are the judges. Judges
23 of the facts. Your verdict must represent the considered
24 judgment of each juror. In other words, your verdict must be
25 unanimous. Now, you may notice that I have read these

1 instructions and I do so in order to give you the law as
2 accurately as possible. I will give you a copy of these
3 instructions to have in the jury room. You may refer to
4 these instructions as a whole and may not follow some
5 instructions and ignore others. Mr. Foreperson?

6 JUROR NUMBER 19: Ma'am.

7 THE COURT: It is your additional duty to preside over
8 the deliberations of the jury. If during your deliberations
9 you should desire to communicate with the Court, please
10 reduce your message or your question to writing signed by
11 you, Mr. Foreperson, and you only. Pass that note to the
12 bailiff who will bring it to my attention. I will then
13 respond as promptly as possible either in writing or by
14 having you to return to the courtroom.

15 I caution you, however, with regards to message or
16 question that's being sent that you should never state or
17 specify your numerical division as a jury at that time. Now,
18 you have heard all the evidence and you have heard the law,
19 whatever your verdict is, Mr. Foreperson, you will indicate
20 the verdict on the back of the indictment as well as the
21 verdict form.

22 Then you'll sign and date the verdict. Remember that
23 although the foreman is the only juror who writes the
24 verdict, it is not his verdict alone. The verdict has to be
25 unanimous. Mr. Foreman, you are not authorized to write the

1 verdict until all of you have agreed on the verdict.

2 Now, ladies and gentlemen, I'll send you to your jury
3 room, but do not begin to discuss the case until you have
4 received a copy of these -- these instructions and this
5 verdict form. You also received the exhibits. Once you have
6 received those items, that will be your signal to begin your
7 deliberations. Once you begin deliberations, you will
8 deliberate until you have reached a verdict at which time you
9 will knock on the door, advise the bailiff and we will bring
10 you out in order to receive your verdict.

11 Mr. Foreman, I will read the verdict form so that
12 everyone has an understanding. The verdict or form reads;
13 number one, murder. "As to the charge of the murder of
14 W.G. [REDACTED]. We the jury unanimously find, beyond a
15 reasonable doubt, the Defendant, Xabian Bailey, not guilty.
16 Guilty."

17 Number two, "As to the charge of the murder of I.P. [REDACTED]
18 [REDACTED], we, the jury unanimously find, beyond a reasonable
19 doubt, the Defendant Xabian Bailey, not guilty. Guilty."

20 Number three, "As to the charge of murder of C.C. [REDACTED],
21 we the jury unanimously find, beyond a reasonable doubt, the
22 Defendant, Xabian Bailey guilty -- not guilty. Guilty."

23 If you find the Defendant guilty of murder, you will
24 proceed to question number four. If you do not find the
25 Defendant guilty, in other words, you find him not guilty,

1 you will skip question four. Question four reads,
2 "Possession of a weapon during the commission of a violent
3 crime.

4 As to the charge of possession of a weapon during the
5 commission of a violent crime, we, the jury unanimously find,
6 beyond a reasonable doubt, the Defendant, Xabian Bailey, not
7 guilty." Guilty? Which the foreperson you will sign the
8 second sheet and date it. In order to preserve everyone's
9 rights, I will ask each party if there are any objections to
10 the jury instructions read. Madam Solicitor, any objection?

11 MS. CHARBONNEAU: No from the State.

12 THE COURT: Mr. McKellar, Mr. Thompson, are there any
13 objections?

14 MR. MCKELLAR: No objection, Judge.

15 THE COURT: Thank you. At this time, Mr. White, will
16 you please excuse the jury. Remember, do not begin your
17 deliberations.

18 (Jury exits courtroom.)

19 THE COURT: Please be seated. Madam Solicitor,
20 Mr. McKellar, Mr. Thompson, are there any matters at law
21 outside the presence we need to -- of the jury that we need
22 to address?

23 MR. MCKELLAR: Your Honor, I would ask that the
24 alternates not be dismissed until we have a verdict. I can't
25 -- can -- if -- if one -- I believe the law is if -- I

1 believe the law is, and I certainly stand correct. Can --
2 can be stand --

3 THE COURT: Can be correct.

4 MR. MCKELLAR: Yeah. Thank you. That if in all -- if
5 a one of the 12 is dismissed while deliberating, then that
6 juror could be replaced with an alternate and deliberations
7 would begin anew.

8 MS. CHARBONNEAU: Judge --

9 MR. MCKELLAR: Is that -- am I right?

10 MS. CHARBONNEAU: -- I believe that that is correct
11 because he would not be a part of the deliberations. So the
12 alternates are let-go at the time that deliberations begin.

13 THE COURT: Mr. McKellar allow us a moment. That is
14 not what I know to be true, but we're going to second check
15 that Mr. McKellar.

16 MR. MCKELLAR: Okay.

17 THE COURT: And then I will make the ruling on that
18 basis. If you'll gather your exhibits, I will pull the two
19 alternates and I'll make a decision as to whether to dismiss
20 them or not. Next one? Where -- I can't -- I can't see the
21 --

22 MR. MCKELLAR: Judge, one additional matter of law.
23 Jurors have access to a laptop or something where they can --

24 THE COURT: They should have a clean computer.

25 MS. CHARBONNEAU: Yes, we have a clean Court computer.

1 THE COURT: Okay.

2 MS. CHARBONNEAU: They don't have access to the
3 internet or.

4 THE COURT: Okay. Is that -- is that solved?

5 MR. MCKELLAR: Yes, Your Honor.

6 THE COURT: All right.

7 MR. MCKELLAR: Thank you. Your Honor, one more matter
8 of law.

9 THE COURT: Yes. Yes, Mr. McKellar?

10 MR. MCKELLAR: Your Honor, we renew all of our
11 objections, renew our motions for directed verdict, and we
12 renew the motion for mistrial.

13 THE COURT: Yes, sir. Thank you, Mr. McKellar.
14 Madam Solicitor, do you have any renewed arguments or do your
15 arguments remain the same?

16 MS. CHARBONNEAU: I stand on the same argument.

17 THE COURT: Thank you, Madam Solicitor. Mr. McKellar,
18 I am going to deny those motions as I have before. And the
19 -- in -- in terms of the ruling of the objections, they will
20 remain as they -- they were before.

21 MR. MCKELLAR: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. McKellar. Mr. McKellar,
23 just to address the question regarding the alternate jurors
24 -- is in my discretion, I can keep one. Mr. McKellar, with
25 regards to keeping the juror -- the alternates, excuse me. I

1 am -- I'm going to release the juror -- the jurors.
2 Normally, when a -- a juror gets sick it's prior to
3 deliberations, no one has indicated any type of cause for
4 emergency or sickness. At this moment, you've -- you've not
5 heard any indication of that Mr. White, have you?

6 THE BAILIFF: No, ma'am.

7 THE COURT: All right. And so, I'm going to allow the
8 two to be released.

9 MR. MCKELLAR: Yes, Your Honor.

10 THE COURT: And so, we'll pull them out once the
11 evidence is -- is sent back to the gentlemen -- the -- the
12 women and gentlemen of the jury.

13 (Bench conference.)

14 THE COURT: Are we off?

15 MR. MCKELLAR: No, ma'am.

16 THE COURT: You can go off.

17 MR. MCKELLAR: I can go off?

18 THE COURT: Yeah, you can go off.

19 (Off the record.)

20 THE COURT: We going to send it that now. Thank you,
21 Justine. Can we bring the gentlemen -- ladies and gentlemen
22 of the jury back in?

23 (Jury enters courtroom.)

24 THE COURT: Thank you. Please be seated. Mr. Foreman,
25 it's my understanding, we have been notified by the bailiffs

1 that the jury has reached a verdict. Is that correct?

2 JUROR NUMBER 19: We have, Your Honor.

3 THE COURT: Is that verdict unanimous?

4 JUROR NUMBER 19: Yes, ma'am.

5 THE COURT: Can you please hand that verdict to our
6 bailiff? Thank you.

7 MS. MCKELLAR: Your Honor, may I approach? I don't
8 know that's allowed or not. I think I screwed up though.

9 THE COURT: That's all right. What we're going to do
10 is this, we're going to escort -- if you'll escort the jury
11 to the jury room and I'll come and speak with you all in just
12 a moment.

13 (Jury exits courtroom.)

14 THE COURT: Please be seated. Please be seated. All
15 right. Counsel, it is -- just by looking at the verdict
16 form, it's apparent that there was a mistake made on the
17 verdict form.

18 The Foreman has indicated to both myself and to myself
19 and in the presence of our clerk of Court that he made a
20 mistake, the jury did not make a mistake, but that he made a
21 Scribner's error which is apparent. We are going to allow
22 him to correct his mistake outside of my presence. And then
23 we will receive the verdict from -- from the jury. And so,
24 to be clear, there is an obvious mistake on the jury form.

25 I'm going to allow the foreperson to correct his

1 mistake. After the fact, I will ask the foreperson to
2 indicate his mistake on the record. Once we have allowed him
3 to correct the mistake, we'll publish the right form.

4 (Jury enters courtroom.)

5 THE COURT: Thank you, Mr. Foreman. Mr. Foreman,
6 again, the jury has reached your verdict, is that correct,
7 sir?

8 JUROR NUMBER 19: Yes, ma'am.

9 THE COURT: All right. And we've given you an
10 opportunity to correct the mistake on the jury form. Is that
11 correct, sir?

12 JUROR NUMBER 19: Yes, ma'am.

13 THE COURT: And is that correct too?

14 JUROR NUMBER 19: It is correct.

15 THE COURT: Does the jury form reflect what the jury's
16 unanimous verdict is?

17 JUROR NUMBER 19: Yes, ma'am. It does.

18 THE COURT: All right. Very good. If you'll just hand
19 it to the Clerk.

20 THE CLERK: Your Honor, with regards to indictments
21 22-GS-0202201, 02202, 02203, and 02204. "As to the charge of
22 murder of **W.G. [REDACTED]**. We, the jury, unanimously find
23 beyond a reasonable doubt, the Defendant, Xabian Bailey,
24 guilty. As to the charge of murder of **J.P. [REDACTED]**, we, the
25 jury, unanimously find, beyond a reasonable doubt, the

1 Defendant, Xabian Bailey, guilty.

2 As to the charge of murder of C.C. [REDACTED], we, the
3 jury unanimously find, beyond a reasonable doubt, the
4 Defendant guilty. Possession of a weapon during the
5 commission of a violent crime; as to the charge of possession
6 of a weapon during the commission of a violent crime, we, the
7 jury, unanimously find, beyond a reasonable doubt, the
8 Defendant, Xabian Bailey, guilty."

9 Ladies and gentlemen of the jury with regards to
10 indictment 22-GS-0202201. The indictment for murder of I.P. [REDACTED]
11 [REDACTED], if this is your verdict, please signify by raising
12 your right hand. With regards to indictment 22-GS-0202202,
13 indictment of the murder of C.C. [REDACTED]. If this is your
14 verdict, please signify by raising your right hand. With
15 regards to indictment 2022-GS-0202203 indictment for the
16 murder of W.G. [REDACTED].

17 If this is your verdict, please raise your right hand.
18 With regards to indictment 2022-GS-0202204 indictment for
19 possession of a weapon during the commission of a violent
20 crime. If this is your verdict, please signify by raising
21 your right hand. All hands are raised on each of the
22 indictments, Your Honor.

23 THE COURT: Thank you, Mr. Clerk. At this time does
24 anyone wish to poll the jury?

25 MR. MCKELLAR: Your Honor, we ask the jury be polled.

1 THE COURT: All right. Mr. White -- Mr. White, can you
2 -- you just call the jurors.

3 THE CLERK: As I call your name, please raise your hand
4 so I can identify which juror. Juror number 41. Is this
5 your verdict on each of the indictments?

6 JUROR NUMBER 41: Yes, sir.

7 THE CLERK: Did you still sustain to that verdict?

8 JUROR NUMBER 41: Yes, sir.

9 THE CLERK: Juror number 74. Is this your verdict as
10 to each indictment?

11 JUROR NUMBER 74: Yes.

12 THE CLERK: And you sustained to that verdict?

13 JUROR NUMBER 74: Yes.

14 THE CLERK: Juror number 156. Is this your verdict as
15 to each indictment?

16 JUROR NUMBER 156: Yes.

17 THE CLERK: And is this still your verdict as to each
18 indictment?

19 JUROR NUMBER 156: (Inaudible).

20 THE CLERK: Juror number 137. Is this your verdict as
21 to each indictment?

22 JUROR NUMBER 137: Yes, sir.

23 THE CLERK: And is this still your verdict as to each
24 indictment?

25 JUROR NUMBER 137: Yes, sir.

1 THE CLERK: Juror number 133. Is this your verdict as
2 to each indictment?

3 JUROR NUMBER 133: Yes.

4 THE CLERK: And is it still your verdict as to each
5 indictment?

6 JUROR NUMBER 133: Yes, sir.

7 THE CLERK: Juror number 120. Is this your verdict as
8 to each indictment?

9 JUROR NUMBER 120: Yes.

10 THE CLERK: And is this still your verdict as to each
11 indictment?

12 JUROR NUMBER 120: Yes.

13 THE CLERK: Juror number 19, is this your verdict as to
14 each indictment?

15 JUROR NUMBER 19: Yes, sir.

16 THE CLERK: And is this still your verdict as to each
17 indictment?

18 JUROR NUMBER 19: Yes, sir.

19 THE CLERK: Juror number 36. Is this your verdict as
20 to each indictment?

21 JUROR NUMBER 36: Yes, sir.

22 THE CLERK: And is this still your verdict as to each
23 indictment?

24 JUROR NUMBER 36: (Inaudible).

25 THE CLERK: Juror number 78. Is this your verdict as

1 to each indictment?

2 JUROR NUMBER 78: Yes, sir.

3 THE CLERK: And is this still your verdict as to each
4 indictment?

5 JUROR NUMBER 78: Yes, sir.

6 THE CLERK: Juror number 101. Is this your verdict as
7 to each indictment?

8 JUROR NUMBER 101: Yes.

9 THE CLERK: And is this still your verdict as to each
10 indictment?

11 JUROR NUMBER 101: Yes.

12 THE CLERK: Juror number 155. Is this your verdict as
13 to each indictment?

14 JUROR NUMBER 155: Yes, sir.

15 THE CLERK: And is it still your verdict as to each
16 indictment?

17 JUROR NUMBER 155: It is.

18 THE CLERK: Juror number 108. Is this your verdict as
19 to each indictment?

20 JUROR NUMBER 108: Yes.

21 THE CLERK: And is this still your verdict as to each
22 indictment?

23 JUROR NUMBER 108: Yes, sir.

24 THE CLERK: They all answered to affirm.

25 THE COURT: Thank you, Mr. Clerk. At this time, ladies

1 and gentlemen of the jury, I wish to thank you for your week
2 of jury service. We appreciate the sacrifice that you've
3 made in order to be here this week as well as going back in
4 that room and giving us a verdict.

5 So we appreciate that. If you need work or school
6 excuses that will be provided to you by the bailiffs.
7 Madam bailiff will you please escort the jury from -- to the
8 jury room? Mr. Foreperson, we -- we have some things that we
9 need to place on the record if you'll just hang tight with us
10 --

11 JUROR NUMBER 19: Yes, ma'am.

12 THE COURT: -- just a few moments.

13 JUROR NUMBER 19: No problem.

14 THE COURT: Very good. Thank you. The jury is now
15 excused.

16 (Jury exits courtroom.)

17 THE COURT: Please be seated. Thank you. All right --
18 all right. Mr. Foreperson, just very briefly, will you stand
19 and raise your right hand? We're just going to put you under
20 your oath. Can you place him under oath please?

21 THE CLERK: The testimony you should give the Court in
22 this case shall be the truth, the whole truth, and nothing
23 but the truth, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you, Mr. Foreperson, just a few

1 questions. We've already established that the verdict has
2 come, that the jury has come to unanimous verdict. However,
3 when the jury first was -- was brought out the verdict form
4 read not guilty as to indictment number one, not guilty as to
5 indictment number two and not guilty as to indictment number
6 three. Is that correct, Mr. Foreman?

7 JUROR NUMBER 19: That's correct.

8 THE COURT: Mr. Foreman, it also read guilty on the
9 fourth indictment, which is possession of a weapon during a
10 commission of a violent crime. Is that correct Mr. Foreman?

11 JUROR NUMBER 19: Yes, ma'am.

12 THE COURT: So it became immediate to me upon the face
13 of the verdict that that is -- that was a mistake because you
14 cannot be guilty of indictment four without first being
15 guilty of indict the first three indictments. Is that your
16 understanding Mr. Foreman?

17 JUROR NUMBER 19: Yes, ma'am.

18 THE COURT: And you indicated to the Court that that
19 was a mistake, is that correct sir?

20 JUROR NUMBER 19: That's true.

21 THE COURT: And Mr. Foreman, at that point, did I -- go
22 in the back and talk to the members of the jury?

23 JUROR NUMBER 19: That's correct.

24 THE COURT: All right. And you indicated to me that
25 that was an error?

1 JUROR NUMBER 19: That's correct.

2 THE COURT: All right. And you were given -- the jury
3 was given the opportunity to change the verdict, is that
4 correct?

5 JUROR NUMBER 19: Yes, ma'am.

6 THE COURT: The jury -- the verdict was changed to
7 guilty as to indictment number one, number two, and number
8 three. Is that correct, Mr. Foreman?

9 JUROR NUMBER 19: Yes, ma'am.

10 THE COURT: Is that -- that was the will of the jury,
11 is that correct, sir?

12 JUROR NUMBER 19: That's correct.

13 THE COURT: The jury did not engage in -- did the jury
14 engage in any other deliberations?

15 JUROR NUMBER 19: No, ma'am.

16 THE COURT: Okay. Mr. Foreman, thank you very much,
17 sir. Hold on just one second. Madam Solicitor does the
18 State have any questions for the Foreman?

19 MS. CHARBONNEAU: No, ma'am.

20 THE COURT: Thank you, Mr. McKellar. Does the defense
21 have any questions for the Foreman? Mr. Thompson?

22 MR. THOMPSON: Your Honor, we don't have any questions
23 for the Foreman, but I do think in order to preserve the
24 record, we do have a motion at the (inaudible).

25 THE COURT: Certainly, thank you, Mr. Thompson. All

1 right. Mr. Foreman, thank you so much for your service.

2 You're free to leave. Thank you.

3 JUROR NUMBER 19: I apologize for the mistake.

4 THE COURT: Certainly. Okay. Thank you. All right.

5 Mr. Thompson, you've indicated that you had a -- a motion?

6 MR. THOMPSON: Your Honor, the votes of caution. We
7 will move for a new trial on the basis that the jury
8 apparently -- possibly misunderstood the instructions for
9 deliberations.

10 THE COURT: Thank you, Mr. Thompson. Madam Solicitor?

11 MS. CHARBONNEAU: There's no indication that they
12 didn't understand the instructions. Actually, the foreman
13 was bringing it to your attention before you even said
14 something to him that he might have made a mistake on the
15 verdict form. And I think that's all it was. Was a
16 Scribner's error. Not that they didn't understand, but that
17 he checked the wrong box.

18 THE COURT: All right. Thank you, Madam Solicitor.
19 Mr. Thompson, I'm going to deny the motion at this time for a
20 -- a new trial. I do find that the foreman as well as the
21 members of the jury, indicated that -- that was an error.

22 The foreman indicated that on the record several times
23 before we sent the jury back. He indicated that there was a
24 mistake made and so the verdict will stand and the trial will
25 stand as it is now. Are there any other motions? Any

1 post-trial motions?

2 MR. MCKELLAR: Your Honor, we renew -- we renew our
3 motion for directed verdict. We renew a motion for a
4 mistrial. We renew all -- all of our objections, and we
5 renew our motion for a new trial.

6 THE COURT: Thank you, Mr. McKellar. Any additional
7 argument, Madam Solicitor, as to those motions and
8 objections?

9 MS. CHARBONNEAU: We stand on our same argument.

10 THE COURT: Thank you, Madam Solicitor. Mr. McKellar,
11 my rulings will remain the same as to the motions as well as
12 to the objections. I understand that there will be an
13 opportunity for mitigation and I do understand that the State
14 is ready to proceed today. Is that correct, Madam Solicitor?

15 MS. CHARBONNEAU: Yes. And we pulled a family from
16 Texas.

17 THE COURT: All right. Thank you. Mr. McKellar, I
18 understand that you do need some time for mitigation. We
19 will -- it is 3:00 p.m. now. I -- I can enter into
20 sentencing at 4:00 p.m. --

21 UNIDENTIFIED SPEAKER: At 15 minutes.

22 THE COURT: Fifteen minutes. Okay. All right. And
23 so, we'll -- we'll enter into mitigation at about five after
24 3:00. All right. We will stand down for about 15 to 20
25 minutes. We stand down.

1 (Off the record.)

2 THE COURT: Mr. McKellar?

3 MR. MCKELLAR: Your Honor, may we approach?

4 THE COURT: Okay. Yes.

5 (Bench conference.)

6 THE COURT: All right. Madam Solicitor?

7 MS. CHARBONNEAU: Yes, Your Honor. I do have one
8 letter from the mother of **W.G. [REDACTED]**, if I could hand it
9 up.

10 THE COURT: Yes.

11 MS. CHARBONNEAU: I -- I did show a copy to defense.

12 THE COURT: Thank you. Well -- well you want me to --
13 Thank you. Madam Solicitor?

14 MS. CHARBONNEAU: Your Honor, I know that you were
15 listening of course to the whole trial. Based on this
16 Defendant's actions and the death of three children the State
17 is asking for a life sentence. Law enforcement is in
18 agreement with that. And so, is the family. There are
19 additional family members that would like to be heard. He
20 does not have a prior record. He was 18 when this happened.

21 THE COURT: Yes, ma'am. All right. Let's hear from
22 the family members.

23 MS. CHARBONNEAU: Sandra Frazier. This is the
24 grandmother to **W.G. [REDACTED]**.

25 THE COURT: Thank you. Ms. Frazier, good afternoon.

1 MS. FRAZIER: Good afternoon.

2 THE COURT: Ms. Frazier, would you spell your last name
3 for my Court reporter, please?

4 MS. FRAZIER: F-R-A-Z-I-E-R.

5 THE COURT: Yes, ma'am. Ms. Frazier, what would you
6 like me to tell me?

7 MS. FRAZIER: That has been really hard and I helped
8 raise W.G. [REDACTED]. And instead of us preparing for proms
9 and graduation, we had to prepare for funerals because he
10 would've graduated that next year. And so, I feel like we've
11 been robbed of that, that we didn't get that opportunity.
12 However, we do have a blessing because we do have a
13 granddaughter.

14 He did leave us a granddaughter behind and she'll be
15 four in November. So that's a blessing within itself. But I
16 do want to say that I forgive them because forgiveness is not
17 for them. It's for me to make me better. So I do forgive
18 them, but I do want them to know that it really hurts.

19 THE COURT: Yes, ma'am. Ms. Frazier, thank you for
20 being here. I'm deeply sorry for the loss of your child.

21 MS. FRAZIER: Yes, ma'am.

22 THE COURT: Thank you, Ms. Frazier.

23 MS. FRAZIER: Thank you.

24 MS. CHARBONNEAU: W.G. [REDACTED]. This is senior.
25 He's W.G.'s [REDACTED] father.

1 THE COURT: Thank you. Good afternoon, Mr. Garrett.

2 MR. GARRETT: Good afternoon.

3 THE COURT: Mr. Garrett, thank you for being here. Can
4 you please spell your last name for my court reporter?

5 MR. GARRETT: G-A-R-R-E-T-T.

6 THE COURT: Yes, sir. Mr. Garrett?

7 MR. GARRETT: I'd like to say that there was a lot of
8 things said about my son here which not -- wasn't -- wasn't
9 correct. I'd like to know who -- let you know who he was.
10 He was the son, first of all. During my life, also his
11 mother's life. He was a brother, a good brother. Every one
12 of his brothers and sisters love him. They miss him. I go
13 through things about this right now because they miss him so
14 much.

15 It's hard to explain it to them. And I also want to
16 say he is a father, him and his daughter. It's sad to say
17 that she won't even get to know his -- her own father. You
18 took him completely out to her life. Completely. And I
19 mean, pretty much his grandma soaked it up because he was a
20 grandson, which I -- which was nana to him.

21 THE COURT: She's acting mother --

22 MR. GARRETT: Right. So his grandma.

23 THE COURT: -- (inaudible), Mr. Garrett.

24 MR. GARRETT: But -- yes but he was a -- he was a
25 grandson, a good grandson. He also was a worker, which is

1 his job. Loved him. He went to work every day, pretty much
2 did what he was supposed to do in life. Really wasn't who he
3 was labeled as at all. I mean, at all.

4 He was never raised by nobody to be like that. He
5 loved his uncles. So he would never have disrespect to his
6 uncles doing anything that he was accused of. It's not how
7 we raised our family. I mean, it's -- and I hope God can
8 forgive you. I mean, that's who answer -- holds that key.
9 That's all I have to say.

10 THE COURT: Mr. Garrett, thank you for being here.
11 Again, I'm deeply sorry for your family's loss.

12 MR. GARRETT: Thank you.

13 THE COURT: Thank you, sir.

14 MS. CHARBONNEAU: Candace Doyle. Candace Doyle is the
15 aunt to J.P. [REDACTED].

16 THE COURT: Ms. Doyle, good afternoon.

17 MS. DOYLE: Good afternoon.

18 THE COURT: Can you spell your last name?

19 MS. DOYLE: D-O-Y-L-E.

20 THE COURT: Yes, ma'am. Ms. Doyle.

21 MS. DOYLE: Okay. J.P. [REDACTED], he was a good person. He
22 would give you -- the shirt off his back. He was a helpful
23 young man and I know my sister would be glad to get justice
24 for her baby boy after finding her dead nine months later
25 after the case.

1 So I'm representing my sister, Ms. Antoinette Simkins.
2 I think he should do life. I forgive, but it hurts. And for
3 the rest of the family, I represent W.G. [REDACTED], C.C. [REDACTED], and J.P. [REDACTED],
4 justice -- I just want justice.

5 THE COURT: Ms. Doyle. Thank you. I'm sorry for the
6 loss of both your nephew and your sister. But thank you for
7 being here to represent her on behalf of the family.

8 MS. DOYLE: Thank you.

9 MS. CHARBONNEAU: Chanel Garrett. Chanel is the mother
10 of C.C. [REDACTED].

11 THE COURT: Good afternoon, Ms. Garrett?

12 MS. GARRETT: Good afternoon. How are you?

13 THE COURT: Spell your last name.

14 MS. GARRETT: Garrett. G-A-R-R-E-T-T.

15 THE COURT: Yes, ma'am. Ms. Garrett.

16 MS. GARRETT: I'm the mother of C.C. [REDACTED]. Also,
17 the auntie of W.G. [REDACTED]. This right here is a lot.
18 Prior to this my 14-year-old, when she's 14 now, she was
19 probably 12 or 11 at the time. She lost her other brother on
20 her other side due to a suicide of whatever situation. Four
21 months behind this, he -- she lost her old -- her next second
22 brother and her cousin at the same time.

23 I was already going through it with her, with her
24 oldest brother trying to keep her together. Here we go again
25 with this. It did a -- a big impact on my family. C.C. [REDACTED] was

1 like the man of the house. **C.C.** would tell you -- he had help
2 -- I had a set of twins -- I got a set of twins. They was
3 premature. They had health issues, allergies, asthma -- all
4 of it. I had to work. So he used to help watch from **C.C.**,
5 little **W.G.**, **C.C.**, **W.G.**. They're two months apart.

6 **C.C.** born in April, I mean, little **W.G.** born in April.
7 **C.C.** was born in July. They was like sticks and stones. They
8 always together. We -- we brought them up together.

9 Little **W.G.** grandma used to take my kids to church with her
10 and everybody was like family. It's a million of things
11 going through my head right now to see I'm hurt and my
12 brothers -- it is just two of us at the same time.

13 Not just one family. You just took my son, my
14 brother's son. And it is -- for him to see me cry or hurt.
15 And for me to see him cry, hurt, that's a double pain. Not
16 just one pain at one time. That's -- that's two pains
17 flowing through your body. And for some of these people to
18 sit on the stage and smirk and laugh and grin and say things
19 that's not true. Both of them worked.

20 My son played football for Schofield. He played
21 basketball, he did traveling basketball. He went to school
22 and he worked and took care of my -- his siblings. He has --
23 besides him, it was -- I have six kids. He took care of four
24 of them besides going to school, sports, working, all of
25 that.

1 He was a motivated person. This and to see
2 Little **W.G.'s** daughter there all the time, she looked just
3 like him. Yeah. They -- she -- he left us a blessing, but
4 she shouldn't have to grow up to be asking where's her daddy
5 or see her daddy on a poster or on a t-shirt at an early age.

6 THE COURT: Yes, ma'am.

7 MS. GARRETT: I said I wasn't going to cry. Get myself
8 together.

9 THE COURT: It's okay if you do.

10 MS. GARRETT: I have anger in me, but I know how to --
11 I'm going to control that, because at the end of the day, the
12 anger that I have in me, I can't take it out on nobody but
13 that person that's sitting across the room. You all did
14 something on June 26th. You all did a lot. You all did not
15 take just one or two. You all took three kids. 15, 16, 17.
16 These are kids.

17 They didn't even get to see they-self grow up yet.
18 They were kids too but Xabian Bailey, he -- he was a friend
19 of the family. You all -- they went to a whole cabin trip
20 together and said how other people can influence you to do
21 things when you don't even have a problem with these people.
22 It's very sad, but you want -- they follow the leader. And
23 that's -- that's how it is.

24 I can't ask him why. He probably wouldn't even have a
25 reason why he did it, but at the end of the day, I think he

1 deserved life because at the -- I can't bring my baby or my
2 nephew back or I.P. . And the smiles my son and my nephew
3 gave me every day, because I -- I've been with them, the same
4 day that they passed. I was with them, they left the house
5 and I was thinking they was going to come back the same day.

6 But here is they picking me up, calling me, telling me
7 they coming to get me to see my son and my nephew shot. It
8 wasn't even no more than 20 minutes before they even left the
9 house. Like, you all just left high -- high down you all
10 shot. I shouldn't even get that phone call.

11 They at family house. You can't be safe at your family
12 house then something is really wrong. Something is really
13 wrong. And what Xabian did, it's just -- it -- it -- it's --
14 it's hard. It's hard. Because I'm now -- I got to deal with
15 my daughter and she's going through a lot, but I have her in
16 counseling now, so.

17 THE COURT: Ms. Garrett, I know that this week has been
18 difficult -- difficult before this week. But the Court does
19 appreciate you being here and telling me those things about
20 your son.

21 MS. GARRETT: Yes, ma'am.

22 THE COURT: As well as your -- your nephew. Thank you,
23 Ms. Garrett. Madam Solicitor?

24 MS. CHARBONNEAU: That's all, Your Honor.

25 THE COURT: Thank you. All right. Mr. McKellar?

1 MR. MCKELLAR: Thank you, Your Honor. Xabian Bailey is
2 20 years old, was 18 years old at the time of this. He got
3 to 10th grade and withdrew from school. He is joined today
4 by his grandfather and his father, Melvin Jones. And
5 Xabian Bailey, I believe both would like to address the Court
6 at the appropriate time. Mr. Bailey has worked in irrigation
7 in the past.

8 He was working in irrigation at the time of this
9 incident. Judge, I would -- I would ask the Court to
10 strongly consider his age at the time of this crime. He was
11 18. And when -- when you're 18 years old, the law says
12 you're an adult and you're to be treated as an adult. But we
13 know is that when you're 18, you still have very childlike
14 thoughts.

15 Even though you have a man of a body, you have
16 childlike thoughts and you often act like a child. And this
17 issue was taken up for -- there is some legal precedent for
18 juveniles on what should be considered when sentencing a
19 juvenile.

20 And the middle aged's not a juvenile, but he's about as
21 close to a juvenile as you can get. And it can be bias that
22 the Court ask that a sentence consider at the time of
23 sentencing, immaturity, irresponsibility, impetuousness, and
24 recklessness.

25 They state -- it states factors as transient as you

1 itself. It is that it goes on. "Although a Court may still
2 sentence a juvenile to life without parole after an
3 individualized hearing, given children's diminished
4 culpability and heightened capacity for change, the
5 appropriate occasions for sentencing juvenile -- juveniles to
6 this harshest possible punishment will be uncommon."

7 Judge, I -- I ask that, take that into consider -- even
8 though it's not directly on point, it's close. And I ask
9 that the Court take that into consideration sentencing. At
10 this time, we would like to ask his father, Xabian Bailey to
11 please come forward and address the Court.

12 THE COURT: Good afternoon. Mr. Bailey. Is it
13 B-A-I-L-E-Y?

14 MR. MCKELLAR: Yes, Your Honor.

15 THE COURT: Thank you, sir. Yes, sir.

16 MR. BAILEY: Yes, ma'am (inaudible).

17 UNIDENTIFIED SPEAKER: Do you have the hand held?

18 MR. BAILEY: I like to apologize about everything --

19 THE COURT: Mr. Bailey, hold on.

20 MR. BAILEY: -- I like to apologize about everything
21 for Xabian. He is a great kid. He's our first son with a
22 great heart. And he just got mislead and influenced by wrong
23 crowd. He was going to stay with me and I had a job
24 actually 9:00 to 4:00 to work in a week later. Just
25 happened.

1 I was actually on my to get him and his all stuff. So
2 things can change. Just got in wrong crowd. Got a great
3 heart. I think I know a lot of people will tell you he is a
4 great kid with a great heart.

5 THE COURT: Mr. Bailey, thank you for being here on
6 behalf of your son. Thank you, sir.

7 MR. MCKELLAR: Your Honor, our next witness is Xabian's
8 grandfather Melvin Jones.

9 THE COURT: Okay.

10 MR. JONES: How you doing?

11 THE COURT: Good, Mr. Jones.

12 MR. JONES: I'm just -- I'm just quoting. This boy,
13 he's a good kid. He's a good kid. I know (inaudible)
14 communicate where I was. He is the granddaddy. I said what?
15 He said, "I'll go get the trunk but get it straight." I
16 said, "What do you mean get straight?" He said, "They lying
17 on me and I got to go straightening it out." And I turned up
18 and went back washing dishes, you know, then all of a sudden,
19 they came back there running and I didn't know what I was
20 going to do.

21 That -- that's what the whole thing started about.
22 Like I said -- I'm over 80 years old and I ain't got long.
23 because I -- I ain't got much time. I ain't got (inaudible).
24 I -- I ain't got much time (inaudible) 2030, he ain't going
25 to make it back. I ain't make it.

1 I'm not robbed, but I'm not going to make it
2 (inaudible) I'm 80 years old, (inaudible) sick just eye
3 surgery and I'm sick. I here and cope with you guys every
4 day. But the same thing. But like I said, he's a good kid.
5 You know, just take into consideration, he's a good kid. I
6 -- I feel like I'm locked over him. I feel like I'm in jail.
7 But I failed him.

8 I feel I failed him. I try to put him on a straight
9 and down road, but down I failed somewhere or another. I
10 just want to have a chance to try to get him on that straight
11 down the road, before I pass on.

12 THE COURT: Thank you, Mr. Jones.

13 MR. MCKELLAR: Thank you, Your Honor. The last thing I
14 would like to point out to the Court is that the State did
15 not mention he has any convictions. Your Honor, we
16 respectfully request a 30-year sentence.

17 THE DEFENDANT: Do I need to say anything?

18 MR. MCKELLAR: Do you want to say anything?

19 THE DEFENDANT: You don't have to?

20 MR. MCKELLAR: I believe my client would like to
21 address the Court.

22 THE COURT: Mr. Bailey, Yes, sir.

23 THE DEFENDANT: I sincerely apologize to the victim
24 family for their lost. I never intended for that to happen.
25 But God knows that I'm not the one that -- that killed the

1 victim. He knows what really happened and one day the truth
2 will come to the light.

3 MR. MCKELLAR: Is that it? That's all, Your Honor.

4 THE COURT: Thank you, Mr. Bailey.

5 MR. MCKELLAR: Your Honor, Mr. Bailey has 808 days
6 credit time served.

7 THE COURT: Thank you, Mr. McKellar. All right. Now
8 is the time that we enter into sentencing and I will do as I
9 normally do in all cases if there are -- if there's anyone in
10 the gallery area who believes that they will not be able to
11 handle the sentence no matter what the sentence says. If you
12 believe that -- that will be too emotional for you, please at
13 this time exit the courtroom because the court cannot
14 tolerate any type of emotional outburst.

15 And so, the State will allow anyone who feels as though
16 they cannot hear the sentencing to exit the courtroom at this
17 time. Although it goes without saying, this is just a tragic
18 case all the way around. All right. Mr. Bailey, your
19 sentence is as follows. With regards to the possession of a
20 weapon, I'm sentencing you to five years in the State
21 Department of Corrections, you'll receive credit for the time
22 you served in the amount of 100 -- excuse me, 808 days. With
23 regards to the three counts murder, I'm sentencing to life
24 sentences on all three. Mr. Bailey, good luck to you, sir.

25 MR. MCKELLAR: Your Honor, I think the -- with life

1 sentences, I believe the sentence for possession of weapon
2 during commission of violent crime is vacated.

3 THE COURT: All right. Very good. We'll adjust these
4 sentence sheets to reflect that, Mr. McKellar.

5 MS. CHARBONNEAU: And is that concurrent, Your Honor?

6 THE COURT: Concurrent. Thank you. At this time, the
7 court's adjourned. We'll stand down.

8 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
9 3:41 P.M.)

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WITNESSES

Aiken County Sheriff

Scott M Neel

Law Enforcement Case #: 22-039312

DOCKET NO. 2022GS0202201

The State of South Carolina

County of Aiken

RECEIVED

Sep 12 2024

SC Court of Appeals

JMC

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

NOVEMBER TERM 2022

2022A0210700148

FILED November 3 20 22

Robert J. Harte
C.C.P. & G.S.

Jonny S. Johnson
Deputy Clerk

THE STATE

vs.

XABIAN BAILEY

ACTION OF GRAND JURY

True Bill

Minige Padgett

Foreperson of Grand Jury

Date: November 3, 2022

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

BILL WEEKS, SOLICITOR

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
12 day of September 2024
Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Christy Adair
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on November 7, 2022, the Grand Jurors of Aiken County present upon their oath:

That **XABIAN BAILEY** along with others, did in Aiken County on or about June 26, 2022, feloniously, wilfully and with malice aforethought, murder by means of shooting and the victim did die as a proximate result thereof. All in violation of Section 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.

Elizabeth B. Young
BILL WEEKS, SOLICITOR

WITNESSES

Aiken County Sheriff

Scott M Neel

Law Enforcement Case #: 22-039312

DOCKET NO. 2022GS0202202

The State of South Carolina

County of Aiken

RECEIVED

Sep 12 2024

SC Court of Appeals

JMC

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

NOVEMBER TERM 2022

2022A0210700149

FILED November 3 20 22

Robert J. Harte
C.C.P. & G.S.

Jonas S. Johnson
Deputy Clerk

THE STATE
vs.

XABIAN BAILEY

ACTION OF GRAND JURY

True Bill

Glenn Padgett

Foreperson of Grand Jury
Date: November 3, 2022

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

VERDICT

Foreperson of Petit Jury
Date:

BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
day of September 20 24
Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Christy Harte
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BILL WEEKS, SOLICITOR

WITNESSES

Aiken County Sheriff

Scott M Neel

Law Enforcement Case #: 22-039312

DOCKET NO. 2022GS0202203

The State of South Carolina

County of Aiken

RECEIVED

Sep 12 2024

SC Court of Appeals

JMC

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

2022A0210700150

FILED November 3 20 22

NOVEMBER TERM 2022

Robert J. Harte
C.C.P. & G.S.

Jonas D. Johnson
Deputy Clerk

THE STATE
vs.

XABIAN BAILEY

ACTION OF GRAND JURY

Jury Bill

Munir Padgett

Foreperson of Grand Jury

Date: November 3, 2022

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

VERDICT

BILL WEEKS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 12 day of September 2024

Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.

Charles A. Harte
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on November 7, 2022, the Grand Jurors of Aiken County present upon their oath:

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BILLY WEEKS, SOLICITOR

WITNESSES

Aiken County Sheriff

Scott M Neel

Law Enforcement Case #: 22-039312

DOCKET NO. 22-039312

The State of South Carolina

County of Aiken

RECEIVED

Sep 12 2024

SC Court of Appeals

JMC

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2022

2022A0210700151

FILED November 3 2022

Robert J. Harte
C.C.P. & G.S.

Jonas S. Johnson
Deputy Clerk

THE STATE
vs.

XABIAN BAILEY

ACTION OF GRAND JURY

Greg Bill

Dwight Padgett

Foreperson of Grand Jury
Date: November 3, 2022

CDR #: 0549

Indictment for

POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

VERDICT

Foreperson of Petit Jury
Date:

BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

12 day of September 20 24
Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on November 7, 2022, the Grand Jurors of Aiken County present upon their oath:

That **XABIAN BAILEY** along with others, did in Aiken County on or about June 26, 2022, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Young
BILL WEEKS, SOLICITOR

Sep 12 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Xabian Uronie Bailey

AKA:

Race: Black Sex: M Age: 20

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 02 - 02201

A/W#: 2022A0210700148

Date of Offense: 6/26/2022

S.C. Code § 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

30-Life

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harter, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 11 day of September 2024.
Paige Bernabeu
Deputy Clerk

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Murder / Murder

In violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jacqui Charbonneau
Charbonneau, Jacqui Michele 103430
SC Bar #

Defendant

Will McKellar
McKellar, William "Will" SCB79902
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of Life days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 800 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Xabian Uronie Bailey INDICTMENT/CASE#: 2022 - GS - 02 - 02201

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling☐ Completion of GED☐ Random Drug/Alcohol Testing☐ Attend Voc. Rehab. or Job Corp.☐ No Contact with Victim☐ Domestic Violence Intervention Program☐ Mental Health Counseling☐ May serve W/E
beginning: _____☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ Public Service Employment _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.☐ Other: _____☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning \$ _____

\$14-1-206 (Assessments 107.5 %)

\$14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ \$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

\$ \$

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

\$41

\$ \$

\$50-21-114(BUI Breath Test Fee)

\$50

\$ \$

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ \$

3% to County (if paid in installments)

TBD

\$ \$3.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

\$500

\$ \$

☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TBD

\$ \$

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:Kristen Barnes
DavePresiding Judge:
Judge Code:
Sentence Date:Q. C. R. P.
2767
8/6/2024

Sep 12 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Xabian Uronie Bailey

AKA:

Race: Black Sex: M Age: 20

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 02 - 02202

A/W#: 2022A0210700149

Date of Offense: 6/26/2022

S.C. Code § 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

30-Life

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harle, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 11 day of September 2024.
C.C.P. & G.S., Aiken County, S.C.
Paige Bontraley
Deputy Clerk

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS

☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐

Lesser Included
Offense,

☐ Defendant Waives
Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Jacqui Charbonneau
Charbonneau, Jacqui Michele

103430

SC Bar #

Defendant

William McKellar
McKellar, William "Will"

SCB79902

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Correction,

☐ County Detention Center,

for a determinate term of Life days/months/years/Time Served

☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 806 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Xabian Uronie Bailey INDICTMENT/CASE#: 2022 - GS - 02 - 02202

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
\$14-1-206 (Assessments 107.5 %)	\$ _____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 <u>\$100.00</u>
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
\$56-5-2995 (DUI Assessment)	\$12 \$ _____
\$56-1-286 (DUI Breath Test)	\$25 \$ _____
\$14-1-212 (Law Enforce. Funding)	\$25 <u>\$75.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150 \$ _____
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$ _____
\$50-21-114(BUI Breath Test Fee)	\$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (If paid in installments)	TBD <u>\$3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500 \$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$ _____
/ TOTAL <u>\$128.75</u>	

Clerk of Court/Deputy Clerk: Kristen Barnes
Court Reporter: DCEP

Presiding Judge: [Signature]
Judge Code: 276
Sentence Date: 9/6/2024

Sep 12 2024

SC Court of Appeals

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Xabian Uronie Bailey

AKA:

Race: Black Sex: M Age: 20

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

INDICTMENT/CASE#: 2022 - GS - 02 - 02203

A/W#: 2022A0210700150

Date of Offense: 6/26/2022

S.C. Code § 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

30-LIFE

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

I, Robert J. Harle, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 11 day of September 2024

Page Bernabeu PB
Deputy Clerk

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jacqui Charbonneau 103430
Charbonneau, Jacqui Michele SC Bar#

Defendant

Will McKellar SCB79902
McKellar, William "Will" SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of LIFE days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 906 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Xabian Uronie Bailey INDICTMENT/CASE#: 2022 - GS - 02 - 02203

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
\$14-1-206 (Assessments 107.5 %)	\$ _____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$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 \$75.00
\$14-1-213 (Drug Court Surcharge)	\$150 \$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	TBD \$3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500 \$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$

TOTAL \$128.75

Clerk of Court/ Deputy Clerk: Kristen Barnes
Court Reporter: Dave

Presiding Judge: _____
Judge Code: _____
Sentence Date: 9/16/2024

Sep 12 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Xabian Uronie Bailey

AKA:

Race: Black Sex: M Age: 20

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 02 - 02204

A/W#: 2022A0210700151

Date of Offense: 6/26/2022

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

5 yrs mandatory

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jacqui Charbonneau
Charbonneau, Jacqui Michele

103430

SC Bar #

Defendant

William McKellar
McKellar, William "Will"

SCB79902

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 800 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.

Order attached -

Sentence vacated per Order to Amend Sentence on September 11, 2024 Signed by Judge Courtney Clyburn Paper.

date 09/11/2024

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harter, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 11 day of September 2024.
R. Harter
C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

STATE VS. Xabian Uronie Bailey INDICTMENT/CASE#: 2022 - GS - 02 - 02204

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

	\$	Beginning	\$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of			
§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		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114(BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 178.75

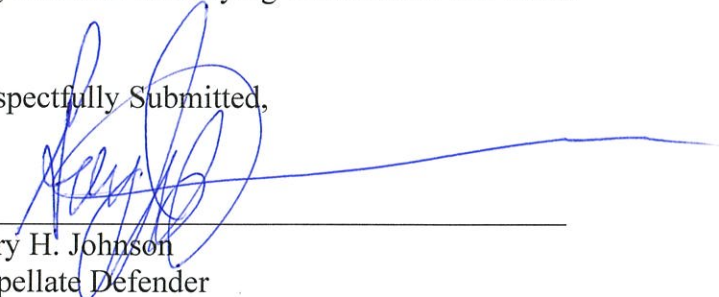
Clerk of Court/ Deputy Clerk: Kristen Barnes
Court Reporter: DEEP

Presiding Judge: Co-Ch. D
Judge Code: 2767
Sentence Date: 9/6/2024

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Gary H. Johnson
Appellate Defender
SC Bar #8898

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of January, 2026.

RECEIVED
Jan 14 2026
SC Court of Appeals