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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Thomas McGee, Circuit Court Judge

DEVONTE T. MAJOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001472

APPENDIX

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1 Q February the 4th, does that sound right?

2 A I believe so.

3 Q And at that time you gave Mr. Porter back his wallet; right?

4 A Correct.

5 Q That had been taken during the search of his house; right?

6 A I do not remember where his wallet was collected from.

7 Q Or maybe at the hospital. Does that sound right?

8 A It might have been.

9 Q You collected some stuff at the hospital like that; right?

10 A We became in possession of his wallet.

11 Q And you gave him back his wallet?

12 A Correct.

13 Q And do you remember the counterfeit money being in his
14 wallet when you gave it back to him?

15 A There was money that was not U.S. currency. Stated for
16 motion picture use only. It was play money.

17 Q That's fair.

18 ATTORNEY HENSLEY: Beg the Court's indulgence.

19 THE COURT: Yes.

20 Q Did you obtain the search warrant for Mr. Porter's house
21 that night?

22 ATTORNEY OSBORNE: Your Honor, I'm going to object. The
23 search warrants aren't evidence. And there's case law on that.

24 ATTORNEY HENSLEY: I'll just withdraw the question, Your
25 Honor.

1 THE COURT: All right.

2 ATTORNEY HENSLEY: Thank you very much. I'm sorry, Judge.

3 Q I think that's all the questions I have, Officer Moy. Thank
4 you very much.

5 A We're welcome.

6 THE COURT: Thank you. Yes, sir, redirect?

7 ATTORNEY OSBORNE: None, Your Honor.

8 THE COURT: Is this witness free to leave, and is there any
9 objection?

10 ATTORNEY OSBORNE: None from the state.

11 ATTORNEY GAY: None from Mr. Green.

12 ATTORNEY HENSLEY: None from Mr. Major.

13 THE COURT: Thank you. All right. Ladies and gentlemen, I
14 am about to excuse you for this evening. The same admonition
15 certainly remains. Please be prepared, however, that your
16 curiosity may be heightened this evening. And again, I don't
17 want anybody upset with you. Put it on the Judge, just tell them
18 that the Judge has told you that you cannot discuss this matter
19 or allow anyone to discuss this matter with you.

20 You must receive all of the information from which you will
21 make up your minds while court was in session.

22 Also, please be mindful that you must not do any sort of
23 investigation. Don't go to the internet, don't do any kind of
24 research, not even to look up a definition, don't do any
25 research, even about anyone that has anything to do with this

1 case.

2 Please remember, with regard to your cellphone, it certainly
3 is my preference that you would leave it away from the
4 courthouse. I don't want it to melt in your car on these hot
5 days. If you have it with you, I think y'all have helped us work
6 out a marvelous system. So if you have it with you tomorrow when
7 you arrive, we'll just do what we did today, which is, it has its
8 own little spot now to say stay. And that's how we will proceed
9 with it tomorrow. You just must not have it with you while
10 you're serving on the jury.

11 Be mindful. Again, I don't know that there will be any sort
12 of news coverage of this matter but, if so, please don't listen
13 to anything, don't read anything about this matter, radio,
14 television, newspaper, internet.

15 Again, you must receive all of the information from which
16 you will make up your minds here in court while court is in
17 session.

18 We will begin in the morning at 9:30. And please have a
19 good evening. See you in the morning.

20 Leave your notebooks. Also, we'll secure them over the
21 evening.

22 (WHEREUPON, the jury is excused for the day at 5:29 p.m.)

23 MATTER(S) OF LAW

24 THE COURT: All right. Anything from the state?

25 ATTORNEY OSBORNE: No, Your, Honor.

1 THE COURT: Anything on behalf of Mr. Major?

2 ATTORNEY GAY: Well, Your Honor, I think we had a lot of
3 sidebar discussion during that last set of objections, during my
4 cross, as well as Ms. Hensley's cross. And I just would like to
5 put a little bit more on that record, that we believe it was
6 appropriate to ask those questions. You ultimately determined, I
7 believe, that it was hearsay.

8 THE COURT: Or double hearsay.

9 ATTORNEY GAY: Or double hearsay.

10 THE COURT: Yes.

11 ATTORNEY GAY: And that we are preserving the objections and
12 such.

13 THE COURT: Very well. Thank you so much.

14 ATTORNEY HENSLEY: And I would join in that, your Honor,
15 just for the record.

16 THE COURT: Of course. Thank you so much. I found it to be
17 hearsay and then double hearsay, and not admissible for
18 impeachment because, extrinsically, he clearly, he admitted it.
19 I do want to put on the record, and he being Mr. Swibaker, I do
20 want to put on the record, that I asked the question of counsel,
21 and it is my understanding that in the event that, in closing
22 arguments, should the defense argue that Mr. Swibaker did not
23 put, did not say or tell anyone, tell any officer in any
24 statement, that he was hit in the back of the head with a gun,
25 that there's not going to be any objection to that. We had a

1 conversation about that.

2 ATTORNEY GAY: And also that Mr. Porter did not tell them
3 the specific things that we argued about that they don't have,
4 about the house being ransacked or things, some other things,
5 that we were, that he did not say at the time of his interview.

6 THE COURT: I don't remember us going to that extent. But
7 why don't we do this. Give me other things. And if you can be
8 more precise, think about it over the evening, and then we'll
9 talk about it in the morning. Okay, fair enough?

10 ATTORNEY GAY: Yes. Thank you.

11 THE COURT: Now, counsel, I need to see counsel for just,
12 just a couple moments before everyone leaves.

13 (WHEREUPON, an off-the-record discussion was held at
14 sidebar.)

15 (WHEREUPON, court recessed for the day at 5:33 p.m. on
16 Wednesday, July 14, 2021, and reconvened at 9:45 a.m. on
17 Thursday, July 15, 2021.)

18 MATTER(S) OF LAW

19 ATTORNEY OSBORNE: Just some housekeeping matters about the
20 evidence after speaking to the court reporter.

21 THE COURT: Yeah.

22 ATTORNEY OSBORNE: I jumped the gun a little bit yesterday
23 in regards to 123 to 156. Those were all of those photographs
24 that I said we weren't going to admit. I neglected, there were
25 some photographs of shoes that we had already admitted that were

1 outside of that. So 130, 131, 141, 142, 148 through 150 are
2 photographs of shoes that had already been admitted and were
3 outside of that discussion.

4 THE COURT: All right. Okay. Very well.

5 ATTORNEY OSBORNE: The second matter is, photographs 85 and
6 86 were pictures of the contents of the victim's wallet. I
7 thought I had moved them in but if I didn't, I apologize, I had
8 already published them. And I've spoken to Ms. Hensley. I have
9 not spoken to Ms. Gay yet. I don't think there would be any
10 objections to those being moved in.

11 ATTORNEY GAY: I don't have an objection on behalf of
12 Mr. Green.

13 ATTORNEY HENSLEY: Without objection, Your Honor. I don't
14 have any issue with that.

15 THE COURT: All right.

16 ATTORNEY OSBORNE: And that's it, Your Honor.

17 THE COURT: Now, you all know the photographs that Solicitor
18 Osborne was talking about; right?

19 ATTORNEY HENSLEY: Yes.

20 ATTORNEY GAY: Yes.

21 THE COURT: And no objection, no issues? Very well.

22 (WHEREUPON, State's Exhibits 85 and 86 are entered into the
23 record.)

24 THE COURT: Anything on behalf of Mr. Green, Ms. Gay?

25 ATTORNEY GAY: No, Your Honor.

1 THE COURT: All right. And on behalf of Mr. Major?

2 ATTORNEY HENSLEY: No, Your Honor. Thank you.

3 THE COURT: Thank you. Let's have the jury, please.

4 (WHEREUPON, the jury is seated in the courtroom at
5 10:52 a.m.)

6 THE COURT: Good morning, ladies and gentlemen. At this
7 time we will continue with the state's case.

8 Call your next witness, please.

9 ATTORNEY OSBORNE: Thank you, Your Honor. The state calls
10 Detective Sergeant Jonathan Davis.

11 CLERK OF COURT: If you'll please raise your right hand, and
12 state your full name for the record.

13 THE WITNESS: Jonathan Davis.

14 JONATHAN DAVIS,

15 having first been duly sworn, was examined and testified as
16 follows:

17 THE COURT: Your witness.

18 ATTORNEY OSBORNE: Thank you, Judge.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY OSBORNE:

21 Q Good morning, detective.

22 A Good morning, sir.

23 Q Let's start off by telling the jury, where do you currently
24 work?

25 A Summerville Police Department.

1 Q And how long have you been employed with Summerville?

2 A January of 2017.

3 Q Okay. And any prior law enforcement?

4 A Yes, sir. I'm in my 20th year of service. Started out with
5 the Saint Lewis Metropolitan Police Department in 2001. Then
6 moved across the river to Illinois. And then here in 2015.

7 Q Okay. And what have been some of your various assignments
8 with Summerville?

9 A With Summerville, I've been a patrol officer. I was a
10 resource officer at the high school. I've been a detective, a
11 detective corporal, and currently a detective/sergeant.

12 Q I'm just curious. With Summerville, do y'all have, is your
13 investigative unit set up under general assignment or do you
14 specialize?

15 A Correct. It's general.

16 Q So you're a detective/sergeant in charge of all of central?

17 A Correct, nine detectives.

18 Q Okay. Any specialized training relevant to this case?

19 A I've attended REID basic and advanced interview
20 interrogation. I've also attended the Cellebrite courses. I'm
21 certified as a physical analyst, as well as a Cellebrite
22 certified operator.

23 Q Okay. And we've heard some testimony. Cellebrite, that's a
24 machine that extracts information from phones; is that correct?

25 A Correct.

1 Q Let's go back to January 28th of 2019. Were you working
2 that night or were you called in?

3 A I was called in.

4 Q What was your position with Summerville then?

5 A I was a general detective.

6 Q And since then you've been promoted ---

7 A Correct.

8 Q --- to sergeant? Okay. What was your initial role in this
9 investigation?

10 A So I was assigned as the assistant case agent to assist
11 Detective Moy. So the way we do it is, we have a case agent
12 who's a primary agent, an assistant who assists him, and then
13 everybody else just kind of helps out.

14 Q And did you take on a different role in this investigation?

15 A I did. When Detective Moy left for another agency, I became
16 the case agent.

17 Q Okay. And I don't know that I asked Detective Moy this but,
18 as a case agent -- some of it might be obvious -- but generally
19 speaking, what are some of your duties and responsibilities?

20 A You're going to familiarize yourself with the whole case so
21 you know all the ins and outs of it. You're going to act as a
22 liaison between the other agencies involved, such as the
23 solicitor's office, medical examiner, coroner. Whatever.

24 Q And sit during the trial?

25 A Correct.

1 Q All right. When you became the case agent in this
2 investigation, were you interested in identifying, as best as
3 possible, the accurate times of certain events?

4 A I was.

5 Q Let's talk about timing a little bit. How long does it take
6 to get from Beaufort to Summerville?

7 A Approximately an hour and a half.

8 Q One way?

9 A Correct.

10 Q Did you, at a certain point or ever, have the occasion to go
11 back and clock, or estimate, how long it takes to get from [REDACTED]
12 Myrtle Place, the scene of the murder, to the location on Fripp
13 Lane where Officer Scarborough first saw the Honda CR-V?

14 A I did.

15 Q And how long does it take to get from point A to point B?

16 A Driving the speed limit, a little under three minutes.

17 Q A little under three minutes?

18 A Uh-huh.

19 Q And I don't know if we've heard this or not, so let's just

20 --

21 ATTORNEY OSBORNE: Your Honor, may I approach?

22 THE COURT: You may.

23 Q I'm showing you, just for ID purposes, State's Exhibit
24 No. 3. And you can hang on to that for a second. And we've
25 already heard testimony that's the CAD report, the dispatch

1 report.

2 A Correct.

3 Q What time did the initial 911 call come in?

4 A Initial call was received by dispatch at 12:03:07 in the
5 morning.

6 Q And what time do you estimate that the individuals that were
7 responsible for breaking into the home exited the victim's home?

8 ATTORNEY HENSLEY: I'd object, Your Honor.

9 ATTORNEY GAY: That calls for speculation, I believe.

10 ATTORNEY OSBORNE: Well, this is going to be part of his
11 investigation, pulling everything together, and based on the
12 information that he has as a case agent.

13 THE COURT: If you could rephrase, please.

14 ATTORNEY OSBORNE: Okay.

15 Q Did you have the occasion to review all the reports in this
16 case?

17 A I did.

18 Q Did you have the occasion to listen to interviews in this
19 case?

20 A I did.

21 Q And did you have the occasion to put all that together and
22 estimate times as the case agent and base decisions that you make
23 on this case and where it led you on those estimations?

24 A I did.

25 Q Based on all of that, what time did you estimate the four

1 individuals exited the victim's home?

2 A Approximately around 12:02:30, 12:02:45.

3 Q Well, we already heard you come about that, is that fair to
4 say?

5 A Correct.

6 Q So I want you to turn to page 4. And under the notation,
7 The complainant advised her neighbor just came to her house, do
8 you see that?

9 A Page 4. Correct.

10 Q What time did that come in?

11 A 12:04:26.

12 Q But again, the original call came in at 12:03, correct, and
13 then some change?

14 A Correct.

15 Q And I think we've heard testimony that was Shaneka Wright.
16 Did officers interview Ms. Wright?

17 A They did.

18 Q Was there any information that was gleaned from anything,
19 from any interviews, that caused you to change your time of
20 estimation from which the suspects left?

21 A Just the fact that Mr. Porter stated that when he, when the
22 suspects exited the back door, that he heard the chain-linked
23 fence, he heard four distinct jumps over the fence as he was
24 exiting out of the front door. So there was no delay in the
25 report there.

1 Q I can take that back. Going back to the night of the
2 incident. When you were called in, where did you first respond?

3 A I first went to the scene. Upon my arrival, I was getting a
4 brief of what had occurred. Then I was informed that the four
5 defendants had been taken into custody and were being transported
6 back to the station for interviews.

7 Q After you were breached as to what was going on, did you
8 then respond to the Summerville Police Department?

9 A I did.

10 Q And did you have the occasion to see Mr. Elijah Green, the
11 defendant?

12 A I did.

13 ATTORNEY OSBORNE: Your Honor, may I approach?

14 THE COURT: You may.

15 Q And for ID purposes only, I'm showing you what's been marked
16 as State's 182. Can you tell me if you recognize that?

17 A It is an Apple iPhone seized from Mr. Green.

18 Q Okay. You seized it from him?

19 A Yes, myself and Detective Moy.

20 Q And we've already heard testimony that Captain Driscoll
21 downloaded that phone. Did you have the occasion to review those
22 downloads?

23 A I did.

24 Q I'm talking about the download from Mr. Green's phone and
25 Mr. Porter's phone.

1 A Yes, both of them.

2 Q Okay.

3 (WHEREUPON, State's Exhibit 184 is marked for
4 identification.)

5 ATTORNEY OSBORNE: Your Honor, may I approach?

6 THE COURT: You may.

7 Q I'm showing you State's 180, 181, 183 and 184. All right.
8 Let's start with 180. Do you recognize 180?

9 A I do.

10 Q And what is that?

11 A That is a screenshot, it looks like, of the contact in
12 Mr. Porter's phone.

13 Q Let me do it a little bit different. What about 183, what
14 is 183?

15 A 183 is a CD containing the download from Mr. Green's phone.

16 Q And what is 184?

17 A 184 is a phone call from SIM extraction.

18 Q Okay. The extraction, the screenshot from the extraction on
19 184, where was that extraction taken from?

20 A From 183.

21 Q Okay. So 184 is actually a CD?

22 A 184 is ---

23 Q A Screenshot?

24 A A screenshot.

25 Q And you say ---

1 THE COURT: We're getting a little bit of feedback. Maybe
2 just move it a little bit. Thank you.

3 A So 184 is a screenshot. 183 is a CD from Green's phone.

4 Q Okay, I was confusing myself. Okay. So 183 is the actual
5 CD. You've identified 183 as being the CD from the download from
6 Mr. Green's phone?

7 A Correct.

8 Q And then 184 is simply just a screenshot of information?

9 A Correct.

10 Q And you obtained that?

11 A Correct.

12 Q From that CD?

13 A Correct.

14 Q Which was from the phone?

15 A Correct.

16 ATTORNEY OSBORNE: Your Honor, at this time, 183 was just
17 ID'd. I'd seek to move in 184.

18 THE COURT: Any objection?

19 ATTORNEY GAY: No, Your Honor, not from Mr. Green.

20 THE COURT: All right.

21 ATTORNEY HENSLEY: None from Mr. Major, Your Honor.

22 THE COURT: Okay.

23 (WHEREUPON, State's Exhibit 184 is entered into the record.)

24 Q Now let's double-back on the other two. What is 180 again?

25 A 180 is a screenshot of a contact from Mr. Porter's phone.

1 Q I see. And then 181 is the CD?

2 A Correct, from Mr. Porter's phone.

3 Q So we're doing the same thing. So 180 is a screenshot of
4 information taken from the CD?

5 A Correct.

6 Q Which contained the download from Porter's phone?

7 A Correct.

8 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to move
9 in 180.

10 THE COURT: Any objection on behalf of Mr. Green?

11 ATTORNEY GAY: That's other screenshot, Dave?

12 ATTORNEY OSBORNE: Yes.

13 ATTORNEY GAY: No objection from Mr. Green, Your Honor.

14 ATTORNEY HENSLEY: None, Your Honor.

15 THE COURT: Very well.

16 (WHEREUPON, State's Exhibit 180 is entered into the record.)

17 Q Okay. Well, let's go ahead and publish that. All right.
18 I'm starting off by showing you -- can you see that okay?

19 A I can.

20 Q I'm starting off by showing you State's 180. Again, what
21 are we looking at here?

22 A That is a screenshot of the Cellebrite report from
23 Mr. Porter's cellphone.

24 Q Okay. And so it's basically just showing a contact here of?

25 A Contact. And the name was stored as Little Brh. And it

1 provides a phone number.

2 Q Ending in?

3 A [REDACTED].

4 Q All right. Now I'm showing you 184. And I think you said
5 this was taken from whose phone?

6 A Mr. Green's.

7 Q Okay. Now, first entry here, what is this depicting?

8 A That's an outgoing phone call from Mr. Green's phone to the
9 number listed there, [REDACTED], ending in [REDACTED].

10 Q The same number, Little Brh?

11 A Correct.

12 Q And what time was this call placed?

13 A This was at 2236, so 10:36 p.m., on January 27th, 2019.

14 Q And so this is the night of the incident?

15 A Correct.

16 Q And 14:26, what does that depict?

17 A That's the duration of the phone call, 14 minutes and 26
18 seconds.

19 (WHEREUPON, State's Exhibits 174, 175, 176 and 177 are
20 marked for identification.)

21 ATTORNEY OSBORNE: Your Honor, may I approach?

22 THE COURT: You may.

23 Q I'll show you 174 through 177.

24 ATTORNEY OSBORNE: Beg the Court's indulgence.

25

1 Q And 178. Do you recognize those items? And if you could,
2 just go through the state's exhibit and what it is.

3 A I do. All four are South Carolina DMV records.

4 Q All right. And if you could just go through each one.

5 A 174 is an official South Carolina DMV record for Polo
6 Salazar.

7 175 is an official South Carolina DMV record for Muanah
8 Fortune.

9 176 is an official South Carolina DMV record for Devonte
10 Major.

11 177 is an official South Carolina DMV record for Elijah
12 Green.

13 And 178 is a South Carolina Department of Motor Vehicle
14 official record for Jaquavious Washington.

15 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
16 to admit 174 through 178 into evidence.

17 THE COURT: Any objection on behalf of Mr. Green?

18 ATTORNEY GAY: Beg the Court's indulgence.

19 THE COURT: All right.

20 ATTORNEY GAY: Your Honor, we just discussed, and I think we
21 have a joint objection as to relevance as to 178.

22 THE COURT: All right, let me see 178. If you'll all come
23 forward.

24 (WHEREUPON, an off-the-record discussion was held at
25 sidebar.)

1 THE COURT: Ladies and gentlemen, there's a matter that I
2 must take up outside of your presence, so I'm going to ask you to
3 please step to your jury room.

4 Do not discuss this matter or allow anyone to discuss it
5 with you. And we'll be with you shortly. Be a good time for you
6 to take your morning break, as well. So leave your notepads,
7 please, in your seats.

8 (WHEREUPON, the jury is escorted out of the courtroom at
9 10:14 a.m.)

10 MATTERS OF LAW

11 THE COURT: All right. Now we can speak with normal volume.
12 It's so helpful. As I understand the concern, the concern is is
13 that what is the relevance to the South Carolina Department of
14 Motor Vehicle's official driving license record of Jaquavious
15 Washington. And it has been marked as 178 for identification
16 purposes.

17 And what this indicates, what this document indicates, is
18 that Jaquavious Washington lives at ■■■ Seabrook Road, No. ■, in
19 Seabrook, South Carolina.

20 As I understand the argument from the solicitor, the
21 solicitor -- really, there are two arguments. Number one is that
22 he intends to argue that the connection between these alleged
23 victims and these two gentlemen is that they live in the same
24 location and that an hour and a half prior to these events, that
25 one of these gentlemen was speaking with Mr. Washington.

1 And that the inference is is that the connection from
2 Mr. Washington to these two gentlemen is they live in the same
3 location, and Mr. Washington had purchased marijuana from the
4 alleged victims; he lives in the same location, he's had a
5 conversation with one of these gentlemen an hour and a half
6 before these alleged events occurred.

7 And the inference being that's how these gentlemen, who live
8 an hour and a half away, that is the connection between these
9 gentlemen and the alleged victim.

10 Have I got the argument of the state correct?

11 ATTORNEY OSBORNE: That is correct, Your Honor. And the
12 only other thing that dawned on me just now, which is what I was
13 going to argue, obviously, in my closing, too, was that not only
14 did they come to the home to do a home invasion, they came to the
15 home, according to the testimony, to rob him of marijuana.

16 So it's not only that these four individuals knew that, you
17 know, this was a home, but this was also a home they knew, or at
18 least came in asking for marijuana.

19 Well, there's one person that we know of that would know
20 that that person had marijuana who had connection with these two,
21 and that's Jaquavious Washington. We know that because
22 Jaquavious bought marijuana on two different occasions from
23 Marcus Porter.

24 Also, and I think not insignificant, is that both the
25 defense, I believe both Ms. Gay and Ms. Hensley, elicited

1 testimony from Marcus indicating that Marcus suspected David
2 Swibaker as being responsible for setting them up, because he was
3 really confused, How did these guys even know about me; how do
4 they even know I sell marijuana? Well, that's how, Jaquavious
5 Washington.

6 At least that would be the reasonable inference, that the
7 robbery occurred just an hour and a half after there was
8 communication.

9 THE COURT: I understand. Yes, ma'am, Ms. Gay?

10 ATTORNEY GAY: Well, I think that we had this long
11 discussion yesterday about what hearsay was and how, you know,
12 when you're having hearsay or double hearsay or lots of hearsay,
13 there's no witness to cross-examine to talk about it. Of course,
14 Mr. Washington isn't here to be cross-examined about this.

15 But this is this document that we're talking about, Your
16 Honor, not the reference or the inference about Jaquavious
17 Washington's involvement in any of this.

18 We are objecting to the entrance of a particular document,
19 and that document is his DMV paperwork. And there is no
20 relevance whatsoever or any connection to this crime that that
21 DMV paperwork needs to be in this case for him.

22 He's not a charged defendant. You know, he can -- he
23 already has in the cellphones and the cellphone CDs and the
24 screenshots connecting the two phone numbers, and the time of the
25 call. He can make up anything he wants in his closing argument

1 about inferences from that.

2 But this particular document, which is apparently all he
3 wants to do is try to prove that they lived in Seabrook which, I
4 think, is not appropriate in this case, and I'm objecting to the
5 entrance of that document.

6 Not to the reference to him as being somebody they spoke to,
7 because that's already been admitted.

8 THE COURT: Let me handle the hearsay part of the document.
9 This is not a certified copy.

10 ATTORNEY GAY: I don't object to it being DMV documents.
11 I'm not objecting to the authenticity. I'm objecting to the
12 document having to do with Mr. Washington being admitted into
13 this case, just because it's about Mr. Washington.

14 THE COURT: I understand. I see. Yes, ma'am?

15 ATTORNEY HENSLEY: And I would join in Ms. Gay's objection
16 and just say that we can't cross-examine that document. I do
17 know from reading all the tons of discovery I got in this case
18 that at the time of this occurrence Mr. Washington didn't live in
19 Seabrook. But I can't ask that piece of paper that.

20 And I think that he wants to put a piece of paper in and
21 make it seem like they all live down here in Seabrook which
22 actually is not even true. And we can't cross-examine a piece of
23 paper.

24 Jaquavious Washington can certainly come in here, sit on
25 that witness stand and talk about living in Seabrook, or his

1 driver's license saying he lives in Seabrook. He's on the
2 witness list. We could hear from him. We could talk to him
3 about it.

4 THE COURT: I'm with you. Here's what flies in the --
5 here's the concern, is there is a statutory provision that says
6 that if you change your address, then you must -- and on the top
7 of my head I don't know how many days.

8 ATTORNEY HENSLEY: Thirty days.

9 THE COURT: Is what?

10 ATTORNEY HENSLEY: Thirty days.

11 THE COURT: That's what I thought. I was going to say 30
12 but then I was scared to say 30. There is a particular period of
13 time, a period when one must change one's address. And I think
14 that, so interestingly -- so, so, I think it's relevant. I think
15 it's admissible. I think it comes in, even over the objection of
16 counsel.

17 But, listen. If you want to pull the statute and y'all want
18 me to charge it, it might be an appropriate statute to be charged
19 if you're concerned about the 30-day period. All right.

20 ATTORNEY HENSLEY: Can I just look at that just one second?

21 THE COURT: Sure. Sure. If there's something that you want
22 to redact, I don't care. You may want to redact something that's
23 on there that has nothing to do ---

24 ATTORNEY HENSLEY: I'd like to redact Seabrook, South
25 Carolina. This also doesn't say when this was issued, so I think

1 that's an issue with regard to the DMV records, because it does
2 not say when it was issued.

3 THE COURT: I understand. What is the relevance between
4 that official record, in other words, or what period of time are
5 we talking about.

6 ATTORNEY HENSLEY: Right.

7 THE COURT: Does that matter?

8 ATTORNEY OSBORNE: No. And, I mean, I don't know, maybe I
9 shouldn't even say this. I think it's completely acceptable for
10 Ms. Hensley or Ms. Gay to ask, Did you have the occasion to
11 interview Mr. Washington, and where was his residence when you
12 interviewed him?

13 ATTORNEY HENSLEY: I understand the cross-examination
14 questions.

15 ATTORNEY OSBORNE: Well, no. I mean, I was just going to
16 say I wouldn't object to hearsay to that, because we're not
17 getting into, to me, hearsay, saying, Have you met with him?
18 That's all I'm saying.

19 THE COURT: Let me ask you this question. Here's the issue
20 that is propounded. That's here. That has no, that has nothing,
21 there's no date that says when he lived in Seabrook. What if he
22 moved to Seabrook last week.

23 ATTORNEY HENSLEY: On the real official DMV record, it says
24 date of issue. And if you change your address, it will show you
25 that. It's more than just your picture and your -- I mean, did

1 you ---

2 ATTORNEY OSBORNE: Well, I mean -- so, for the record, I did
3 provide notice as to business records authenticity statute. And
4 this is the official documentation that was provided from DMV.

5 ATTORNEY HENSLEY: One of the pages. There's quite a bit of
6 pages.

7 ATTORNEY OSBORNE: There could be more, and it could be --
8 you know what? Maybe I did. It is possible. Let me see if I
9 can find what I actually sent this them.

10 ATTORNEY GAY: Maybe we could ask for the whole thing,
11 maybe.

12 THE COURT: Hold on, Ms. Hensley, for just a second. We'll
13 be at ease, because you can't find a document while you have the
14 judge right here looking. Let's just stand down for a minute.
15 You find that document. If you can, you find that document, if
16 you can, Mr. Osborne.

17 ATTORNEY GAY: I left mine at home, my notes. Because I
18 only brought my guy's. I didn't bring everybody else's.

19 ATTORNEY HENSLEY: And I may have, because ---

20 THE COURT: I would be willing to bet you have.

21 ATTORNEY HENSLEY: I have it in a folder that says 911 call
22 and authentication of DMV records. But I may have taken them out
23 because we had agreed that the 911 call, we weren't going to
24 just -- we were going to do the operator and all that.

25 THE COURT: Do take a look.

1 ATTORNEY HENSLEY: I will look.

2 THE COURT: We'll take a very short break. And, you know,
3 one of the nice things is that Department of Public Safety is
4 right across the street.

5 (WHEREUPON, court recessed at 10:25 a.m. and reconvened at
6 10:36 a.m.)

7 THE COURT: Did you find it?

8 ATTORNEY OSBORNE: Yes, Your Honor, we did. And what we
9 have done is just remarked them, 174 through 178, with the actual
10 certified copies which does have the issue date in it. I was
11 mistaken. I asked Ms. Durr to redact them. But now we have the
12 unredacted version, so.

13 THE COURT: All right. Good. Let's have the jury.

14 ATTORNEY HENSLEY: Just for the record, I still have an
15 objection.

16 THE COURT: I understand.

17 ATTORNEY HENSLEY: But if we're going to have them, I like
18 this one better.

19 THE COURT: Yes, ma'am. I concur. I concur.

20 ATTORNEY GAY: I would join in that.

21 THE COURT: Of course. Over the objection.

22 (WHEREUPON, the jury is seated in the courtroom at 10:30.)

23 THE COURT: All right. Ladies and gentlemen, at this time
24 we will continue with the state's case. Yes, sir. You may
25 continue.

1 Q Detective/Sergeant, again, I think you've already identified
2 these, but 174 through 178, do you recognize those and, just
3 generally, what are they?

4 A Certified DMV records.

5 Q Of which individuals?

6 A Polo Salazar, Muanah Fortune, Devonte Major, Elijah Green
7 and Jaquavious Washington.

8 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
9 admit, the state seeks to admit, 174 through 178 into evidence.

10 THE COURT: Over the objection ---

11 ATTORNEY GAY: Over the objection of 178.

12 THE COURT: --- of Mr. Green and Mr. Major.

13 ATTORNEY HENSLEY: Yes, Your Honor.

14 THE COURT: Yes. And those are certified copies; is that
15 correct?

16 ATTORNEY OSBORNE: They are. You are correct, Your Honor.

17 (WHEREUPON, State's Exhibits 174, 175, 176, 177 and 178 are
18 entered into the record.)

19 Q We'll start off, I'll show you 174. Can you see that okay?

20 A I do.

21 Q All right. So what are we looking at on 174?

22 A That's the certified DMV record for Polo Salazar.

23 Q And what town does Polo live in?

24 A Seabrook, South Carolina.

25 Q And showing you 175. What are we looking at here?

1 A Certified DMV record for Mr. Muanah Fortune.

2 Q And what town does it show on his DMV records?

3 A Seabrook, South Carolina.

4 Q Okay. 176?

5 A Certified DMV record for Mr. Major. That is also -- or,
6 excuse me. That one is Beaufort, South Carolina.

7 Q Elijah Green, 177?

8 A Certified DMV record for Mr. Green, and residence of
9 Seabrook, South Carolina.

10 Q And 178?

11 A Certified DMV record for Mr. Washington. Also a resident of
12 Seabrook, South Carolina.

13 Q Okay. Now, in all fairness, I suppose, through your
14 experience in law enforcement, the address to which is reported
15 are reflected on the DMV doesn't always reflect where they live,
16 is that fair to say?

17 A Correct.

18 Q But nevertheless, the DMV records show Seabrook?

19 A Correct.

20 Q And Beaufort for Mr. Major?

21 A Correct.

22 Q All right. Did you find any connection at all, looking
23 through the cellphone records or anything from what you
24 investigated during the investigation, a connection between the
25 victim in this case, J.B. Weaver, and any of the four defendants?

1 A No.

2 Q Did you find any connection at all between David Swibaker or
3 Marcus Porter to any of the four charged codefendants, with the
4 exception of the Jaquavious Washington phone call?

5 A No.

6 Q And we haven't really talked a whole lot about Muanah
7 Fortune and Polo Salazar. Have they also been charged?

8 A Yes, they have.

9 Q Same charges as these two defendants?

10 A Correct.

11 Q But I think Polo actually had, in all fairness, an
12 additional charge?

13 A Yes. He was charged with the possession of a stolen
14 vehicle, as he was the driver.

15 Q I'm just going to show you a few things at once. Some of
16 these might already be in. Just out of an abundance of caution.

17 Now, you had stated earlier that on the night of the
18 incident that you had went to the station. Did you have the
19 occasion to collect clothing from these defendants, or some of
20 the defendants?

21 A I did. I collected shoes from all of the defendants, and I
22 collected a jacket and pants from Mr. Green.

23 Q Okay. Can you just go ahead and tell us if you recognize
24 those items and what they are as you're going through them.

25 A 130 is a photo of the shoes that Mr. Green was wearing.

1 131 is another photo of the shoes that Mr. Green was
2 wearing.

3 141 is a photo of the shoes that Mr. Major was wearing.

4 142 is another side-view of those same shoes that Mr. Major
5 was wearing.

6 148 is a photo of the shoes that Mr. Fortune was wearing.

7 149, another photo of the shoes that Mr. Fortune was
8 wearing.

9 150, another photo of Mr. Fortune's shoes.

10 157 is a photo of the shoes that Mr. Salazar was wearing.

11 158, another photo of Mr. Salazar's shoes.

12 159, another photo of Mr. Salazar's shoes.

13 (WHEREUPON, State's Exhibits 162 and 163 are marked for
14 identification.)

15 Q Hang on to those. We'll try to move them all in at once.
16 I'm showing you now 162 and 163. Take a look at those and tell
17 me if you recognize those.

18 A 162 is the shoes that Mr. Fortune was wearing, along with my
19 handwriting on the bag of his last name.

20 163 is the shoes that Mr. Salazar was wearing, again with my
21 handwriting on the bag.

22 (WHEREUPON, State's Exhibit 160 is marked for
23 identification.)

24 Q Hang on one second. And now I'm going to show you, lastly,
25 160 and 161 and tell me if you recognize those.

1 A 160 are the shoes that Mr. Green was wearing, again, with my
2 handwriting on the bag.

3 161, my handwriting on the bag, and the shoes that Mr. Major
4 was wearing.

5 Q Okay.

6 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
7 to admit -- some of this might be duplicative, I apologize --
8 130, 131, 141, 142, 148 through 150, 157 through 159, and 160
9 through 163 into evidence.

10 ATTORNEY GAY: I was kind of confused because I don't
11 remember all those things being discussed before, but I think
12 it's the clothing and the shoes. Isn't that what he's got up
13 there?

14 THE COURT: I don't ---

15 ATTORNEY GAY: A lot more numbers. Dave, those are the
16 clothing and the shoes?

17 ATTORNEY OSBORNE: Those are the shoes and the photographs
18 of the shoes.

19 ATTORNEY GAY: And the photographs, okay. So I have no
20 objection, Your Honor.

21 THE COURT: All right. Very well.

22 ATTORNEY HENSLEY: Without objection.

23 THE COURT: Very well. They're in evidence.

24 (WHEREUPON, State's Exhibits 160, 161, 162 and 163 are
25 entered into the record.)

1 Q I think these are the last two pieces. 196 and 197, can you
2 take a look at those and tell me if you recognize those.

3 A 196 is the black jacket that was worn about Mr. Green. Or,
4 excuse me. Yes, a black jacket.

5 197 is going to be an additional black jacket that was worn
6 by Mr. Green.

7 Q And where did you see those jackets on the night of the
8 incident?

9 A On Mr. Green's person.

10 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
11 move in 196 and 197.

12 THE COURT: Any objection?

13 ATTORNEY GAY: No objection on behalf of Mr. Green.

14 THE COURT: All right. On behalf of Mr. Major?

15 ATTORNEY HENSLEY: I was thinking. I'm sorry, Your Honor.

16 THE COURT: That's okay.

17 ATTORNEY HENSLEY: I still think I have a chain objection
18 with regard to the jackets. Not for Mr. Green's jacket.
19 Mr. Major's jacket.

20 ATTORNEY GAY: Your Honor, with regard to Mr. Green, my
21 understanding that they've now identified by an individual
22 witness their own personal vision of the items, and then that
23 they're in the bags and that they are identifying them, I don't
24 know if that ---

25 THE COURT: What he's doing now.

1 ATTORNEY GAY: If there's any ability to argue the chain,
2 I'd like to join in the argument. But I'm just am wondering what
3 your ruling will be.

4 THE COURT: I understand. Overruled.

5 (WHEREUPON, State's Exhibits 196 and 197 are entered into
6 the record.)

7 Q And lastly, 195. Do you recognize 195?

8 A 195 was the black sweatshirt worn by Mr. Fortune.

9 Q Okay. And you saw/did you see that sweatshirt on the night
10 of the incident?

11 A I did.

12 Q And where was it when you saw it?

13 A On Mr. Fortune's person.

14 Q Does it have something identifiable on it that you know?

15 A It is a brand American Eagle.

16 Q American Eagle sweatshirt.

17 ATTORNEY OSBORNE: All right. Your Honor, at this time we'd
18 seek to admit 195 into evidence.

19 THE COURT: All right.

20 ATTORNEY GAY: One moment, Your Honor. Your Honor, at this
21 time, objection as to relevance. I don't understand why
22 Mr. Fortune's piece of clothing needs to come into this trial.
23 Not my client; my client wasn't wearing it.

24 THE COURT: I understand.

25 ATTORNEY GAY: Mr. Major wasn't wearing.

1 THE COURT: Overruled. Thank you.

2 ATTORNEY HENSLEY: And I would just join in that objection.

3 THE COURT: Sure. Of course. You may proceed.

4 (WHEREUPON, State's Exhibit 195 is entered into the record.)

5 Q And now just doubling back, I'm going to show you these
6 pictures real quick. 130, what is that?

7 A Mr. Green's shoes.

8 Q 131?

9 A Side view plaintiff Green's shoes.

10 Q 141?

11 A Mr. Major's shoes.

12 Q 142?

13 A Side view of Mr. Major's shoes.

14 Q 148?

15 A Mr. Fortune's shoes.

16 Q 149?

17 A Top view of Mr. Fortune's shoes.

18 Q And 150?

19 A Side view of Mr. Fortune's shoes.

20 Q And lastly, 157?

21 A Mr. Salazar's shoes, top view.

22 Q Okay. 158?

23 A Another top view of Mr. Salazar's shoes.

24 Q And 159?

25 A And a side-view of Mr. Salazar's shoes.

1 Q Okay. I lied before, but this is the last.

2 (WHEREUPON, State's Exhibit 206 is marked for
3 identification.)

4 ATTORNEY OSBORNE: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q Showing you State's 206. Can you take a look at that and
7 tell me if you recognize that.

8 A That is a buccal swab that I took from Mr. Porter.

9 Q I think that's called a known standard from an individual?

10 A Correct.

11 ATTORNEY OSBORNE: Your Honor, that's just for ID purposes.

12 THE COURT: All right.

13 ATTORNEY OSBORNE: No further questions.

14 THE COURT: All right. Ms. Gay, on behalf Mr. Green.

15 ATTORNEY GAY: Thank you, your Honor.

16 THE COURT: Cross-examination.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY GAY:

19 Q Good morning.

20 A Good morning.

21 Q You sat here throughout the trial. As you know, I'm Melisa
22 Gay, I represent Mr. Green. And so just to understand again, and
23 not to rehash but, you're currently the case agent, so that's why
24 you're sitting in the courtroom with Mr. Osborne today?

25 A Correct, ma'am.

1 Q And I think that the other officer who testified yesterday
2 was previously the case agent?

3 A Correct.

4 Q And you've been promoted to this position at this time. So
5 that gives you unique knowledge of this case?

6 A Correct.

7 Q And that's why you're looking at all this evidence, and
8 Mr. Osborne was able to admit this evidence through you?

9 A Correct.

10 Q And, so because you're the case agent, you would know all
11 the documents that are in this file, the package, if we call it
12 the whole arrest package, everything, about these four
13 defendants?

14 A I'm familiar with the case file. Yes.

15 Q When these people were arrested, when my client, Mr. Green,
16 was arrested, he was at the Summerville Police Department?

17 A He was taken in -- officially charged at the Summerville
18 Police Department. He was taken into custody immediately after
19 the car stop.

20 Q And that was January 28th, 2019?

21 A Correct.

22 Q And he has a booking sheet document that would have been
23 done at the time of his arrest?

24 A Correct.

25 Q And I have a copy of it. And if you need to look at it at

1 some point, we'll talk about that.

2 A If I could see.

3 Q Sir?

4 A If I could see.

5 Q Okay, but I have to ask you a question first.

6 A It doesn't look like a booking sheet from ---

7 Q Well, it's called an arrest synopsis and checklist.

8 A Okay.

9 Q So again I'm going to ask you, on this arrest synopsis and
10 checklist, Mr. Elijah Green's eyes are listed as brown. Do you
11 recall that? Would you like to see the document?

12 A If I could.

13 ATTORNEY GAY: I'd like to mark this as Defense 2 for ID
14 purposes.

15 (WHEREUPON, Defendant Green's Exhibit 2 is marked for
16 identification.)

17 Q I'd like to show you what's marked for ID purposes only
18 Defense 2, and ask you to identify this document and see if it
19 refreshes your recollection.

20 A So this would be what we provide the Court with in order to
21 actually draft the physical warrants. This was prepared by
22 Detective Moy. It does list eyes as brown, but that could be a
23 scrivener error.

24 Q And it could also be the truth. I'll take the document
25 back. Thank you. So you said specifically, when you just

1 answered my question, we prepared it. We, meaning law
2 enforcement?

3 A Correct.

4 Q So law enforcement looked at Mr. Green and wrote down, eyes,
5 brown. You don't know who that person specifically was, but this
6 document, part of your file, says that?

7 A Correct.

8 Q And with regard to the cellphone information, this document
9 was entered into evidence in this case, is one, little tiny line,
10 I think you referred it as, a screenshot?

11 A Correct.

12 Q And that one, tiny line had a common telephone number which
13 was Marcus Porter -- or, which was Little Brh, which was
14 Mr. Washington?

15 A Correct.

16 Q And so at this point there's nothing else that was admitted
17 into evidence that says anything else about what happened during
18 that 14-minute phone call; it just says that at some point that
19 call occurred?

20 A Correct.

21 ATTORNEY GAY: I'd like to beg the Court's indulgence for a
22 moment, Your Honor.

23 THE COURT: All right.

24 ATTORNEY GAY: I need to speak with Ms. Hensley, but I think
25 she's got the rest of it.

1 I have no further questions of this witness, Your Honor.

2 THE COURT: All right. Very well, cross-examination?

3 ATTORNEY HENSLEY: May it please the Court.

4 THE COURT: Yes.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY HENSLEY:

7 Q I wrote this down. Detective Sergeant?

8 A You got it.

9 Q Good morning. I'm Laree Hensley. We've met before.

10 A Good morning.

11 Q I represent Devonte Major. On my notes I wrote it down, I
12 thought, be sure you say it right. And then I didn't bring it up
13 here.

14 Okay, so I have a few questions. As you told Mr. Osborne,
15 Ms. Gay, you're the case agent now?

16 A Correct, ma'am.

17 Q You bring the whole thing together?

18 A Yes.

19 Q You reviewed all of this, tons of evidence and interviews
20 and all of that; right?

21 A Yes, ma'am.

22 Q You took the information out of the phones; right?

23 A I reviewed the information.

24 Q Reviewed information from the phones. So let's talk a
25 little bit about Mr. Porter's phone, okay.

1 A Okay.

2 Q There was lots of pictures of marijuana in Mr. Porter's
3 phone; right?

4 A I believe so.

5 Q There was information about drug deals in Mr. Porter's
6 phone; right?

7 A There was.

8 Q And Mr. Porter -- well, let me just jump around a little
9 bit. So on the timeline that you've estimated, right, all of
10 those, all of your estimates, depend on the truthfulness of the
11 report, right, the accuracy of the report?

12 A And the witness statements.

13 Q And the witness statements, right, exactly. So you have to
14 believe Mr. Porter and Mr. Swibaker to believe that that's when
15 this started; right?

16 A As well as the neighbor.

17 Q And the neighbor. The neighbor only knows what Mr. Porter
18 told her. Right?

19 A True.

20 Q And the neighbor didn't hear any gunshots. Right?

21 A Correct.

22 Q So all of that, again, just relies on Mr. Porter and
23 Mr. Swibaker's honesty; right?

24 A True.

25 Q And we've got some photographs in here, some DMV records

1 which have four people who live in Seabrook. Right?

2 A Four in Seabrook, one in Beaufort.

3 Q One in Beaufort. So those are different places; right?

4 A Close to each other.

5 Q Close to each other, right. But you'd agree with me that
6 not everybody in Beaufort knows everybody in Seabrook; right?

7 A True.

8 Q And all of this evidence that was collected, I know, and I
9 just do, I'm not even going to guess on who's right, Officer
10 Brooks was the CSI guy and all that; right?

11 A Correct.

12 Q And he was assisted by Wade Rollings; right?

13 A Correct.

14 Q And Wade Rollings no longer works for Summerville Police
15 Department; right?

16 A That's correct.

17 Q And he got fired for stealing evidence?

18 A Stealing money.

19 Q And that money was evidence?

20 A Correct.

21 Q I mean, He didn't go into the Summerville Police Department
22 bank account and stole money; right?

23 A No.

24 Q He stole money out of the evidence room; right?

25 A I don't know where it was from, but he stole money.

1 Q And that's where you put evidence; right?

2 A Correct.

3 Q Do you remember reviewing the interview by Officer Hirsch
4 and David Swibaker?

5 A I do not.

6 Q Swibaker. I got his name wrong, too.

7 A I don't recall that.

8 Q If you had listened to it, would you remember having David
9 Swibaker telling Officer Hirsch, You might want to check that
10 back door for a footprint? Do you remember that?

11 A I don't. But if it's in the bodycam or in the document or
12 the report, then that's accurate.

13 Q You'd agree that's accurate?

14 A Correct.

15 Q And in this case they tried to locate, they took, you took
16 some buccal swabs; right?

17 A Correct.

18 Q And the purpose of that was to try to find some DNA in that
19 house; right?

20 A And to compare.

21 Q And to compare, right. But you didn't find any Devonte
22 Major's DNA in [REDACTED] Myrtle Place; right?

23 A I did not.

24 Q And in [REDACTED] Myrtle Place there were some cameras; right?

25 A Correct.

1 Q They weren't like a ringing doorbell camera; they were like
2 cameras inside the house to record what happened in the house;
3 right?

4 A Correct.

5 Q But you didn't look at those cameras; right?

6 A We talked to Mr. Porter, and Mr. Porter advised that he shut
7 those off because they're all motion activated. So when he's
8 home, he doesn't keep them on because it keeps constantly
9 recording. So when he's home, he shuts them off. When he's
10 away, he turns them on.

11 Q Right. And you believed him?

12 A Correct.

13 Q You didn't look at them?

14 A I don't believe we ever examined them because there should
15 have been no evidence there.

16 Q If you believe Mr. Porter; right?

17 A Right.

18 Q Because, golly, a camera in the house might have recorded a
19 whole lot of stuff. Right?

20 A Right.

21 Q And Mr. Porter told you -- I mean, obviously he made some
22 statements, and he admitted to making statements, that weren't
23 true. Right?

24 A You'd have to provide me with an example of that. I'm not
25 sure I ---

1 Q Okay. I'm a small-time drug dealer, how about that?

2 A I don't know if that's true or untrue. That's his opinion.

3 Q Would it be your opinion that somebody who's charged with
4 trafficking methamphetamine, over 28 grams, is a small-time drug
5 dealer?

6 A Do I think he's a cartel member or something like? I don't
7 think anything of that level. But is he a --

8 Q Pretty big drug dealer; right?

9 A More than a petty drug dealer. But not any ---

10 Q He keeps ledgers of his debts; right?

11 A Do you think that's a business transaction? I don't know.

12 Q He has lots pictures in his phone and discussions about drug
13 deals; right?

14 A Yep.

15 Q I mean, Marcus Porters a drug dealer; right?

16 A No argument there.

17 Q No doubt, okay.

18 ATTORNEY HENSLEY: Beg the Court's indulgence.

19 Q Open. On February the 4th do you remember talking to Marcus
20 Porter about gloves? That was the interview that you and Officer
21 Moy did the Monday after the Super Bowl. Marcus came back in and
22 you all ---

23 A I vaguely remember that interaction.

24 Q And Mr. Porter told you, You guys keep asking me about
25 gloves, and I just can't visualize that. Do you remember that?

1 A Correct.

2 Q But on February the 4th you knew why gloves were important;
3 didn't you?

4 A Correct.

5 Q And the first time you heard anything about gloves was a
6 couple years later; right? About Mr. Porter remembering anything
7 about gloves was a couple years later?

8 A I don't recall when he actually said, Yes, I remember
9 gloves. At some point he disclosed that.

10 Q At some point.

11 ATTORNEY HENSLEY: Beg the Court's indulgence.

12 THE COURT: Yes, ma'am.

13 ATTORNEY HENSLEY: That's all the questions that I have,
14 Detective/Sergeant Davis.

15 A Thank you, ma'am.

16 THE COURT: All right. Redirect?

17 ATTORNEY OSBORNE: Thank you, Your Honor. Briefly.

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY OSBORNE:

20 Q Wade Rollings, he's a thief?

21 A Yes, sir.

22 Q And he was charged accordingly?

23 A Yes, sir.

24 Q For, was it larceny? Or grand larceny? Do you know?

25 A I think he was charged with misconduct in office.

1 Q Okay. Let me show you State's 106. Did you or any other
2 detective show this photograph to Marcus Porter?

3 A No, sir.

4 Q Why not?

5 A That would be inappropriate.

6 ATTORNEY OSBORNE: All right. No further questions.

7 THE COURT: All right. Recross?

8 ATTORNEY GAY: I'd just ask one question, just because it
9 came up.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY GAY:

12 Q There was no DNA at all in the house that was attached or
13 connected to Mr. Green in any way; was there?

14 A Correct.

15 ATTORNEY GAY: I have no further questions.

16 THE COURT: All right. Yes, ma'am, recross?

17 ATTORNEY HENSLEY: No, Your Honor. Thank you.

18 THE COURT: All right. You can come back down. Thank you,
19 sir.

20 All right. Call your next witness, please.

21 ATTORNEY YOUNG: The state calls Vera Martinez.

22 CLERK OF COURT: If you'll please raise your right hand, and
23 state your full name for the record.

24 THE WITNESS: Vera Martinez.

25

1 VERA MARTINEZ,
2 having first been duly sworn, was examined and testified as
3 follows:

4 THE COURT: Your witness.

5 ATTORNEY YOUNG: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY YOUNG:

8 Q Good morning. If you would, please, just state your name
9 for the record.

10 A My name is Vera Martinez.

11 Q All right, Ms. Martinez. How long have you been employed
12 with SLED?

13 A About 18 months.

14 Q And what is your job?

15 A I am a forensic technician in evidence control.

16 Q And what would be your duties as an evidence control
17 technician?

18 A We receive evidence in from agencies throughout the state to
19 log in and store for analysis. After analysis, we return it back
20 to the agencies.

21 Q Okay. And when you come into possession of evidence, do you
22 check to be sure it's properly sealed and packaged?

23 A Yes, we do.

24 (WHEREUPON, State's Exhibit 172 is marked for
25 identification.)

1 ATTORNEY YOUNG: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 Q I'm going to show you what he's been marked as exhibit 172.

4 A Sure.

5 Q Let's walk through each one of these exhibits here, or the
6 items that are in there. And, if you would, just explain what
7 you're looking at there.

8 A Okay. First off, for clarification, when we get packages
9 in, there are items inside of a heat-sealed envelope. What we
10 log in in evidence control is the package. We don't actually
11 open it up and go through each of the individual items. We log
12 it in on a said-to-contain basis.

13 And when the analysts request it for processing upstairs,
14 they are the ones that open the packages. We don't open
15 packages.

16 Q Okay. So you would just take it and then place it in
17 inventory, essentially?

18 A Correct. We would log it in and then place it on the shelf
19 for analysis.

20 Q Okay. So these items would have came in on what date? I
21 believe it was February 26, 2019. Is that correct?

22 A That was the date that I transferred it to the analyst.

23 Q Okay. And when they came into your possession for a brief
24 period of time, did they appear to be tampered with or altered in
25 any way?

1 A No, they did not.

2 Q And if they had or appeared to be tampered with or were not
3 properly sealed, what action would you have taken?

4 A A supervisor would have been advised, and it would have been
5 noted in the case file.

6 Q While they were in your possession, did you alter, tamper or
7 damage these, incidentally, in any way?

8 A No, I did not.

9 Q And when you initially receive these, where do they come
10 from, how did do they come into your possession?

11 A They were requested from the analyst. I retrieved the
12 package off of the shelf and released it to the analyst for her
13 processing.

14 Q Do you recall the name of the analyst?

15 A It was Ryan DeWane.

16 ATTORNEY YOUNG: Thank you, ma'am. Please answer any
17 questions defense might have.

18 Q Okay.

19 THE COURT: All right. Ms. Gay, cross-examination on behalf
20 of Mr. Green?

21 ATTORNEY GAY: Thank you, Your Honor. I just want to go and
22 look and see what this package is. I don't know that I have
23 questions. I just want to examine what we're looking at here.

24 Laree, would you like to look at them? If you don't mind,
25 Your Honor, I'm going to show them to Ms. Hensley also.

1 THE COURT: Sure.

2 ATTORNEY GAY: Because this is just, we don't know what was
3 actually put in the bag.

4 I have no questions at this time for this witness, Your
5 Honor.

6 THE COURT: All right. Yes, on behalf of Mr. Major?

7 ATTORNEY HENSLEY: One or two, Your Honor.

8 THE COURT: All right.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY HENSLEY:

11 Q Good morning.

12 A Good morning.

13 Q I'm Laree Hensley. I represent Devonte Major.

14 A Okay.

15 Q So the evidence comes to you, and it's sealed and doesn't
16 appear to be tampered with; right?

17 A Correct.

18 Q But you don't know anything about what happened to that
19 evidence before it got to you; right?

20 A No, I do not.

21 Q Anything could have happened to it, and then it got sealed
22 up and it didn't appear to be tampered to you; right?

23 A When I received it, it was on a shelf. It had been logged
24 in already.

25 Q Oh, okay.

1 A And I took it off the shelf and released it to the analyst
2 for processing.

3 Q So you didn't see it at all when it came in initially;
4 right?

5 A No, I did not.

6 Q You just went to the shelf. They have a code on them, they
7 have markings, and the analyst asks for this particular piece of
8 evidence?

9 A Correct.

10 Q You retrieve it; you give it to the analyst?

11 A Correct.

12 Q Okay. That's all the questions I have. Thank you so much
13 for clearing that up.

14 A You're welcome.

15 THE COURT: All right. Redirect?

16 ATTORNEY YOUNG: No further questions, Your Honor.

17 THE COURT: Very well. Is this witness free to leave, and
18 is there any objection?

19 ATTORNEY GAY: I have no objection on behalf of Mr. Green.

20 ATTORNEY HENSLEY: None from Mr. Major.

21 THE COURT: Thank you. You are free to go.

22 THE WITNESS: All right. Thank you.

23 THE COURT: Call your next witness, please.

24 ATTORNEY OSBORNE: The state calls Jackie Davis.

25 CLERK OF COURT: If you will please raise your right hand,

1 and state your full name for the record.

2 THE WITNESS: Jackie Davis.

3 JACKIE DAVIS,

4 having first been duly sworn, was examined and testified as
5 follows:

6 THE COURT: Mr. Young, your witness.

7 ATTORNEY YOUNG: Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 BY ATTORNEY YOUNG:

10 Q Good morning, Ms. Davis.

11 A Good morning.

12 Q Where are you currently employed at?

13 A South Carolina Law Enforcement Division, also known as SLED.

14 Q Could you remove your mask just to make sure we can hear you
15 clearly.

16 A I'm sorry. It's habit.

17 Q That's all right. How long have you been employed with
18 SLED?

19 A I've been there since November of 2016.

20 Q That would be approximately six years?

21 A Yes.

22 Q Which unit were you employed in or working in back in 2019?

23 A I was an evidence technician in the forensic lab.

24 Q And what duties did that entail at that point?

25 A We transferred and logged in evidence that was submitted by

1 the agencies.

2 Q And if you briefly would, what's the process for that coming
3 in from the agency?

4 A The agencies would bring us evidence. And we would pull it
5 out of the lockers, make sure it was sealed, initialed and dated
6 as it should be, and then we would take it back to our desk and
7 we would log it in and give it a unique lab number.

8 And then we would transfer it to the evidence room that was
9 secure, and we would leave it there until an analyst or scientist
10 requested it.

11 Q And when the evidence initially came in did you check to
12 ensure it had been properly sealed and packaged?

13 A Yes.

14 Q And was it?

15 A Yes.

16 Q Do you recall handling evidence for a chain of custody on, I
17 believe your SLED lab number is, L19-02-418? Is that correct?

18 A Yes, that's correct.

19 Q And what I just want to briefly go through is, from
20 May 15th, 2019, is that the date that you came into possession of
21 these items?

22 A Which items are we talking about? This is a fairly large
23 case.

24 Q Fair question. Specifically it would be, I believe, what's
25 marked as 41, 42 and 43 of your report.

1 A Yes. That was in May of '19. You're correct.

2 Q What about, also, item 40?

3 A Yes, same thing.

4 Q And also item 38?

5 A Yes, same.

6 ATTORNEY YOUNG: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q I'm going to show you what's marked as State's Exhibits 187
9 and 188, as well as 186, just for identification purposes.

10 A Okay.

11 Q With regards to 187, is that marked as items 41, 42 and 43
12 on your report?

13 A It is.

14 Q Does it list the contents?

15 A Yes.

16 Q What does it say on there?

17 A Item 40 is a sealed envelope containing fired bullets.

18 Forty-one is one sealed envelope containing fired bullets
19 described as a bullet from the autopsy, labeled bullet from the
20 left chest wall.

21 And item 42 is one sealed envelope containing a fired bullet
22 described as a bullet from autopsy, labeled bullet from the
23 stomach.

24 Q Okay, thank you. What did you do with this evidence once it
25 came in? Do you recognize that packaging?

1 A Yes. Looked at it, made sure it was sealed, initialed and
2 dated, and it was. Logged it in. Gave it a unique lab number.
3 And then transferred it, in this case, to the firearm's intake in
4 the evidence room.

5 Q When it came into our possession, did it appear to be
6 tampered with or damaged in any way?

7 A No.

8 Q And if these items had been tampered or appeared to be
9 tampered, damaged, would you have taken possession of these
10 items?

11 A We do take possession of it. We make note of it, take a
12 picture of it. Then we re-seal it the way it should be sealed;
13 initial and date it; and then we take another picture.

14 Q Did that happen in this case?

15 A It did not.

16 Q And while it was in your possession, did you happen to alter
17 tamper, or damage these items in any way?

18 A I did not.

19 ATTORNEY YOUNG: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 Q I'm going to show you what marked as Exhibits, State's
22 Exhibits, 19 and 20 just for identification purposes. Also
23 marked as State's Exhibit 206, again, just for identification.

24 Specifically on March 12th, 2019, did you come in possession
25 of State's Exhibit 19? I believe that's referred to as item 12

1 and 13 in your report.

2 A Yes, I did.

3 Q What are those listed as in your report?

4 A According to my report, this was logged in by someone else.
5 Again, another technician would have done the same thing I did.
6 But I pulled it off of that DNA shelf and then transferred it to
7 the scientist who worked the case.

8 Q Who is the scientist? Do you recall?

9 A According to my chain of custody, it's Ryan DeWane.

10 Q Okay. And with reference to State's Exhibit No. 20, I
11 believe that's item 14 on your report ---

12 A Okay.

13 Q --- what does your report indicate as that item?

14 A What is it?

15 Q Yes, ma'am.

16 A Item 14 is one sealed, heat-sealed, pouch containing an oral
17 swab from the inside of a dog's mouth, is what this says.

18 Q And then at that point what did you do with the item once it
19 came in?

20 A It was logged in by another technician, Doris Yarborough,
21 and then she put it on DNA intake shelf 93. And then I pulled it
22 off of DNA intake and transferred it to Ryan DeWane, the analyst.

23 Q And with regards to State's Exhibit 206, I believe that's
24 marked as item 32 in your report.

25 A Okay.

1 Q What is that listed as in your report?

2 A It is a sealed, heat-sealed, pouch containing a buccal swab
3 from the victim Porter.

4 Q And then what was your involvement with that particular
5 item?

6 A It was already logged in and placed on the DNA intake shelf.
7 I removed it from that shelf and transferred it to the analyst,
8 Ryan DeWane.

9 Q And do you recall, was this on what date?

10 A I transferred that on March the 12th of 2019.

11 Q And when you came into possession of these particular items,
12 did they appear to be damaged or tampered in any way?

13 A No.

14 Q And while you were in possession of them, did you happen to
15 incidentally alter, tamper or damage these items in any way?

16 A I did not.

17 Q Okay.

18 ATTORNEY OSBORNE: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 Q I'm going to show you what's marked as State's Exhibit 10,
21 11 and 24 for identification. On May 15th of 2019, did you come
22 into possession of these items, these exhibits? I believe they
23 would be marked in your reports as item 34, SLED item 34, item 35
24 and 44.

25 A I did.

1 Q With regards to State's Exhibit 24, which is item 44 of your
2 report, what was the contents, or what's that labeled as?

3 A Give me just a second. I'm sorry.

4 Q That's okay.

5 A According to this, item 44 is a sealed envelope containing
6 gloves, described as multiple latex-style gloves located near the
7 scene.

8 Q And how did you come into possession of that one, that item?

9 A Again, I pulled it out of the locker. It was already sealed
10 properly, initialed and dated. And I pulled it out of the
11 locker, logged it in, gave it a lab number and stored it in the
12 evidence room.

13 Q And with regard to State's Exhibit 10, I believe that's item
14 34 in your report ---

15 A Okay.

16 Q --- if you would just briefly, how did you come into
17 possession of that and what's it labeled as far as content?

18 A Item 34 is labeled as a sealed, paper bag containing
19 clothing described as an orange ski mask. I pulled it out of the
20 locker on May 15th of 2019, logged it in, and gave it a lab
21 number.

22 Q All right. And with regards to State's Exhibit No. 11,
23 which is item 35, I believe, in your report, again, just briefly,
24 how did you come into possession of that and what's it marked as
25 in your report?

1 A Item 35 is a sealed, paper bag containing clothing described
2 as a black jumpsuit. Again, on 5/15/2019 I logged it in from the
3 evidence locker and gave it a unique lab number and put it in the
4 evidence room.

5 Q Okay. I'm going to show you also what's marked as, for
6 identification purposes, State's Exhibit 109 and 110.

7 With regards to State's Exhibit 110, if you would, again
8 just very briefly, how did you come into possession of this and
9 what it's marked as in your report?

10 A 110. What's my --

11 Q I'm sorry. Item 36 I believe it is, in the report.

12 A Okay. Item 36 is a sealed, paper bag containing clothing
13 described as a pair of camouflage gloves. And I logged it in on
14 5/15/2019, as well.

15 Q And with regards to State's Exhibit 109, I believe that's
16 item 37 in your report, just briefly, how did you come into
17 possession of that and what's it marked as in your report?

18 A I pulled it from the evidence locker and logged it in. And
19 it is described as a black, knit hat and black-and-orange glove.

20 Q With regards to all these exhibits, State's 24, 10, 11, 110
21 and 109, which would be 34, 35, 36 and 37 in your report, all the
22 ones we just talked about ---

23 A You.

24 Q --- who brought those? Who did you receive those from?

25 A It looks as if Wade Rollings of the Summerville Police

1 Department put them in the locker.

2 Q Okay. And once you received these items, did you check to
3 make sure they were properly sealed, dated and logged properly?

4 A Yes.

5 Q And again, just to be clear, what was the date?

6 A 5/15/2019.

7 Q And with regards to these items, these last exhibits we were
8 speaking of, when you came into possession of them did they
9 appear to be tampered, damaged or altered in any way?

10 A No.

11 Q And while in your possession were they incidentally altered,
12 tampered or damaged in any way?

13 A No.

14 Q And did you have an opportunity to take possession of these
15 items again on June the 4th of 2019?

16 A I did.

17 Q What did you do with them?

18 A The analysts had done what they needed to do. They brought
19 it back, and it was, again, properly sealed, initialed and dated.
20 And I took it from them and electronically scanned it to a
21 location in the evidence room, and we stored it again.

22 Q And then did you receive them again on June the 5th of 2019?

23 A I did. At that time the agency had come to pick up their
24 evidence. And I pulled it and returned it back to the submitting
25 agency.

1 Q And when it came back in your possession, did it appear to
2 have been altered, tampered with or damaged in any way?

3 A No.

4 Q And while it was in your possession, was it altered, damaged
5 with or tampered in any way?

6 A No.

7 Q All right. Thank you very much. Please answer any
8 questions defense counsel might have.

9 A Okay.

10 THE COURT: Yes, ma'am, Ms. Gay, on behalf of Mr. Green?

11 **CROSS-EXAMINATION**

12 BY ATTORNEY GAY:

13 Q How are you today?

14 A Good. How are you?

15 Q Good. My name's Melisa Gay, and I represent Elijah Green.
16 And I just have a couple quick questions. And this may even be
17 something that was talked about again. When this stuff is in
18 your building ---

19 A Okay.

20 Q --- on your shelf, you have no idea what happened to it
21 before it gets there?

22 A No.

23 Q So you don't know if the person who brought it there from
24 the agency had done anything fishy with it before it gets to your
25 building; correct?

1 A No.

2 Q And so your testimony is that once it got there, you had all
3 signatures, did everything, and then on the 5th of June you
4 testified that you returned it to the agency?

5 A That's correct.

6 Q And this thing right here, which is marked as State's 22 --
7 if you want to look at this -- I think this is also a SLED bag?

8 A That is.

9 Q And I think that your SLED number for this is no. 33; is
10 that correct?

11 A No.

12 Q I'm sorry. Which number is it?

13 A This right here's our lab number, and that is a container.
14 So it is container K.

15 Q Container K. So on your list, would this item, which is
16 State's Exhibit 22, be listed as something you checked in? Or if
17 not you, whom?

18 A I'm looking for that container, just so you'll know what I'm
19 doing.

20 Q I understand. While you're looking, just let me ask some
21 general questions. When something like this comes in, which
22 appears to be green, plant material ---

23 A Yes.

24 Q --- this would have followed the normal course of what you
25 all do ---

1 A Yes.

2 Q --- and then sent to an analyst; correct?

3 A Correct.

4 Q And then that analyst would have given some type of report
5 as to what the weight and substances are in this bag right here?

6 A I can't tell you how they record on it, honestly. I can
7 just tell you we handle it the same way. We log it in; transfer
8 it.

9 And what the analyst does, I cannot answer for that.

10 Q I understand. And then when it comes back to you, you log
11 it back in and then return it to law enforcement?

12 A We do not log it back in because it's been logged in. We
13 transfer it. So we would -- say you're the analyst. I would
14 physically take it from you, transfer it out of your custody into
15 mine, and then I would transfer it from my custody to a shelf.

16 Q Okay. So if this is in a SLED bag, similar activity would
17 occur to get this to an analyst, this green, plant material?

18 A Everything's transferred the exact same way.

19 Q Okay. And even though the solicitor didn't ask you about
20 this particular document right here, it would go through that
21 same process?

22 A Correct.

23 ATTORNEY GAY: One moment, Your Honor. I beg the Court's
24 indulgence.

25 THE COURT: Okay.

1 ATTORNEY GAY: I have no further questions at this time on
2 behalf of Mr. Green.

3 THE COURT: On behalf of Mr. Major?

4 ATTORNEY HENSLEY: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY ATTORNEY HENSLEY:

9 Q Ms. Davis, I'm Laree Hensley, I represent Devonte Major. I
10 do have a couple of questions about what's been marked as State's
11 Exhibit 22 and your container K.

12 A Okay.

13 Q So can I show you this?

14 A You can.

15 Q Maybe it will help. It's marked on your report. Is it fair
16 to say that on your report, item 33, everything that is in that
17 bag initially came in as item 33; is that right?

18 A We take it on a said-to-contain basis. So what they said is
19 in there is what I believe to be in there. I'm not an analyst.
20 I cannot answer to that.

21 Q I understand that. I'm not going to ask you about that. I
22 want to ask you about the unique lab numbers and the things that
23 went into, were listed as in, container K. So you have, I think
24 there's, item 33.1?

25 A Okay, go ahead.

1 Q And that was said to contain a Ziploc bag containing crystal
2 substance; right?

3 A Yes.

4 Q That's what it said? That's what's on your report; right?

5 A That's what it says. Correct.

6 Q That's what it was said to contain. I'm not asking you
7 about what the analyst found; I'm just asking you about what was
8 in the bag.

9 A When we got it -- let me back up for you.

10 Q Okay.

11 A It was item 33, and it came in a sealed BiSKit. A BiSKit is
12 a clear back bag that has BiSKit. And it will be sealed. And
13 then it is placed in a Manila envelope that says BiSKit. That is
14 what I see, is the BiSKit. I pull it out of the Manila envelope
15 and I go, yes, there's drugs. It's sealed, initialed and dated.
16 I put it back in and send it away.

17 Q So who does the next numbers, like 33.1, 33.2?

18 A The analyst, the person who actually opens it and analyzes
19 it.

20 Q That's fair. Appreciate the knowledge.

21 A Okay.

22 Q So the unique lab number that you gave it is item 33?

23 A Yes, ma'am, item 33.

24 Q And so the sub numbers come from the analyst?

25 A That's correct.

1 Q And I missed the item number on this, but you received a
2 black, knit hat and a glove?

3 A I remember saying it, but I don't remember what item it is.

4 ATTORNEY HENSLEY: Beg the Court's indulgence.

5 ATTORNEY GAY: I think it's 109 and 37.

6 Q I'm just going to show you what's been marked as State's
7 Exhibit 109. I'm sorry.

8 A No, that's fine. And that's container J for me.

9 Q Container J. And it says black, knit hat and gloves; right?

10 A I don't know, hang on a second.

11 Q Okay.

12 A Does it have an item number on it? Oh, here it is. Okay.

13 It's a sealed paper bag containing black, knit hat and a
14 black-and-orange glove.

15 Q So that came in together, in the package together; right?

16 A According to this chain of custody, yes.

17 Q Thank you. I appreciate your help, Ms. Davis. Thank you so
18 much.

19 THE COURT: Anything further?

20 ATTORNEY HENSLEY: No, Your Honor.

21 THE COURT: All right. Redirect, Mr. Young?

22 ATTORNEY YOUNG: No, Your Honor. No further questions.

23 THE COURT: Is this witness free to leave, and is there any
24 objection?

25 ATTORNEY YOUNG: No objection. Free to go.

1 THE COURT: No objection?

2 ATTORNEY HENSLEY: No objection.

3 THE COURT: Thank you. Call your next witness, please.

4 ATTORNEY YOUNG: The state calls Bethany Davidson.

5 CLERK OF COURT: If you'll please raise your right hand, and
6 state your full name for the record.

7 THE WITNESS: Bethany Davidson.

8 BETHANY DAVIDSON,

9 having first been duly sworn, was examined and testified as
10 follows:

11 THE COURT: And if you'd state your name for our record, me.

12 THE WITNESS: Bethany Davidson.

13 THE COURT: Your witness.

14 ATTORNEY YOUNG: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY YOUNG:

17 Q All right, Ms. Davidson. Where are you currently employed?

18 A I currently work for the South Carolina Law Enforcement
19 Division, also known as SLED.

20 Q And how long have you been employed by SLED?

21 A Since July of 2017, so about four years.

22 Q What is your job at SLED?

23 A I am currently the coordinator for our training unit.

24 Q And what duties does that entail?

25 A I keep track of all of our training requests. I also keep

1 track of all of our training certificates to ensure that all of
2 our sworn and nonsworn personnel are keeping up and getting the
3 correct training and certifications, as needed.

4 Q Have you previously worked at any other units within SLED?

5 A I have. I started in the regulatory NICS unit in July 2017;
6 as an admin. specialist, which I stayed until July 2018; when I
7 transferred to our evidence control department as a forensic
8 technician, I was in that department from July of 2018 until
9 October of 2020, when I transferred to my current position as a
10 training coordinator.

11 Q And so in January of 2019 was your occupation a forensic
12 technician?

13 A That's correct.

14 Q And as a forensic technician, did part of your duties
15 include handling evidence or transferring evidence?

16 A Correct.

17 Q When you came into possession of evidence, do you check it
18 to ensure it's been properly sealed or packaged correctly?

19 A Yes, sir.

20 Q What I want to do is talk about the evidence in this case,
21 which I believe is in your SLED lab number report of L19-02-418.
22 Is that correct?

23 A Yes, sir.

24 Q On February 8th of 2019 did you come into possession of any
25 items?

1 A Yes. According to our certified chain of custody, on
2 February 8, 2019, I would have come into possession of item nos.
3 6 and 7, as well as items 14 through 24.

4 Q May I approach the witness, Your Honor?

5 THE COURT: You may.

6 Q I'm going to show you what's marked as State's Exhibit 17
7 for identification purposes only. When those items came in, did
8 you open the package or inventory it?

9 A I did not. I would have retrieved this package from our
10 secured evidence room off of the firearm's intake storage bin and
11 transferred it to the forensic scientist, Chad Smith.

12 Q And I believe you said in your report they're listed as
13 items 14 through 24, the contents of that?

14 A I believe it's 15 through 24.

15 Q Fifteen, okay. What are those items listed as in your
16 report?

17 A Item 15 would be a cartridge case described as a spent .38
18 SPL Winchester 1.

19 Item 16 would also be a cartridge case.

20 Item 17 is also a cartridge case.

21 Item 18 would also be a cartridge case, as well as items 19,
22 20, 21, 22, 23, 24.

23 Yes. So items 15 through 24 are all cartridge casings.

24 Q Okay, thank you. And, I'm sorry. Just to be clear, once
25 you received that into your possession, who did you transfer that

1 to.

2 A It would have been transferred to Forensic Scientist Chad
3 Smith.

4 Q When you came into possession of these items, did the
5 packaging appear to be tampered, altered or damaged in any way?

6 A No, sir. The items were sealed when I retrieved them.

7 Q If these items had appeared to have been tampered or weren't
8 properly sealed, would you still have taken possession of the
9 items?

10 A I would have. If items appeared to have been tampered with,
11 what we would do would be photograph items of the evidence, take
12 documentation of how the evidence appeared. We then would
13 re-seal the evidence, and initial/date it ourselves, photograph
14 that evidence again, and then attach all that documentation into
15 the case.

16 Q And while they were in your possession, did the packaging
17 become altered, tampered, damaged, incidentally, in any way?

18 A No, sir. It was secure at all times.

19 Q On February 8th of 2019 did you also come into possession of
20 two additional items?

21 A Yes, sir, items 6 and 7.

22 Q May I approach, Your Honor?

23 THE COURT: You may.

24 Q I'm going to show you what's marked as State's Exhibit 18
25 just for identification purposes. I believe in your report you

1 said it was listed as -- I'm sorry, what item's numbers?

2 A They would have been listed as items 6 and 7.

3 Q And what are those items labeled as in your report?

4 A According to the certified chain of custody, it is a sealed
5 envelope containing fired bullets described as spent projectiles.

6 Q And that particular packaging, do you recognize that?

7 A I do.

8 Q You say you came into possession of these, I believe you
9 said, on February 8th of 2019. Do you recall who gave them to
10 you?

11 A I retrieved these from the secured evidence room off the
12 firearms evidence intake storage bin, and transferred them to
13 Forensic Scientist Chad Smith.

14 Q And when you came into possession of these particular items,
15 did the packaging appear to be damaged, tampered or altered in
16 any way?

17 A They did not. These items of evidence were sealed when I
18 retrieved them.

19 Q And again, if these items had appeared to have been tampered
20 or weren't properly sealed, would you still take possession of
21 them?

22 A I would have taken possession, but we would have made all
23 that documentation.

24 Q And while they were in your possession, did you incidentally
25 alter, damage or tamper those items in any way?

1 A I did not.

2 Q All right. Thank you very much. If you would, just please
3 answer any questions of defense counsel.

4 THE COURT: Cross-examination?

5 ATTORNEY GAY: I have no questions on behalf of Mr. Green.

6 THE COURT: All right. Yes, ma'am?

7 ATTORNEY HENSLEY: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, ma'am.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY HENSLEY:

12 Q Ms. Davidson, I'm Laree Hensley. I represent Devonte Major.
13 I just have a couple of questions, all right.

14 A Okay.

15 Q So item 6, you received that item on February the 8th, 2019,
16 at 9:33 a.m; right?

17 A According to our chain of custody, yes.

18 Q I mean, that's because you logged it in and out and write
19 down the time; right?

20 A That's correct.

21 Q It's not a guess; it's what time you received it. Right?

22 A Correct.

23 Q And you gave it to Forensic Scientist Chad Smith on February
24 the 28th of 2019 at 9:37?

25 A February 8th of 2019, at 9:37.

1 Q And you don't know what happened to it after that?

2 A Correct. When I transfer it to him, I can't speak on what
3 happened after that.

4 Q And that's the same with item 15; correct?

5 A That would be correct.

6 Q On the same date and time, February the 8th, 2019, 9:30 you
7 received item 15? Retrieved it; right?

8 A Yeah, I retrieved it at 9:33.

9 Q And at 9:37 you gave to it Chad Smith?

10 A Yes.

11 Q And you don't know what happened to it after that?

12 A No, ma'am.

13 Q And item 16, 9:33 you retrieved that item?

14 A That's correct. Yes.

15 Q At 9:37 you gave to it Chad Smith?

16 A Yes, ma'am.

17 Q And you don't know what happened to it after that?

18 A According to the chain of custody, he would have transferred
19 it to a forensic scientist in Greenville.

20 Q That's just something you're reading on a piece of paper.
21 You don't know of your own knowledge what happened to it?

22 A I can only speak of when it was in my possession.

23 Q I got it. That's how the chain works, right, that's why we
24 write it down?

25 A Yes.

1 Q So the same thing with item no. 17. On February the 8th at
2 9:33, you got the item. On February the 8th, 2019, at 9:37 you
3 gave it to Mr. Smith. And you don't know what happened to it
4 after that?

5 A Correct.

6 Q And that's the same thing with item 18, also?

7 A Correct.

8 Q 9:33; 9:37; you don't know what happened to it after that?
9 Fair? That's the same thing with item 19, also; right?

10 A Yes, ma'am. All these items traveled together.

11 Q All these items traveled together from you to Chad Smith?

12 A Correct. And they were all sealed in the same envelope.

13 Q And after that, you don't know what happened to them?

14 A Correct. Yes. Chad Smith would have transferred them to
15 forensic scientist --

16 Q Well, that's what this piece of paper says, but you don't
17 know of your own knowledge what Chad Smith did with it; right?

18 A Correct.

19 Q All of these items, every item that we've talked about;
20 right? So that's also item 21; right?

21 A According to our chain of custody, yes.

22 Q Item 22? Item 23?

23 A Yes.

24 Q Item 24? Thank you. That's all the questions that I have.

25 THE COURT: Redirect?

1 ATTORNEY YOUNG: Beg the Court's indulgence.

2 THE COURT: Sure.

3 ATTORNEY YOUNG: Very briefly, Your Honor.

4 THE COURT: Yes.

5 **REDIRECT EXAMINATION**

6 BY ATTORNEY YOUNG:

7 Q Do you happen to know what the forensic technician, Chad
8 Smith, would do once he received these items?

9 ATTORNEY HENSLEY: Objection, Your Honor. Well, I guess if
10 she knows, she can answer.

11 Q What does he do at SLED?

12 ATTORNEY YOUNG: I apologize. I withdraw that question.

13 THE COURT: Hold on. The question was withdrawn. Got a new
14 one, though?

15 ATTORNEY YOUNG: Yes.

16 THE COURT: All right.

17 Q What does he do at SLED? Not what does he do with the
18 items.

19 A He's also a forensic scientist.

20 Q Okay. And once that item had been transferred, would there
21 be any reason that would go to anybody else?

22 A I can't speak on 100 percent sure what the department does
23 or how they transfer evidence or why certain scientists get
24 certain cases.

25 ATTORNEY YOUNG: All right. Thank you very much. Nothing

1 further, Your Honor.

2 THE COURT: Recross?

3 ATTORNEY GAY: No, your Honor.

4 ATTORNEY HENSLEY: Nothing from Mr. Major.

5 THE COURT: And is this witness free to leave, and is there
6 any objection? Hearing none, thank you.

7 Call your next witness, please.

8 ATTORNEY OSBORNE: Your Honor, may we approach briefly?

9 THE COURT: Sure.

10 (WHEREUPON, an off-the-record discussion was held at
11 sidebar.)

12 THE COURT: Yes. You wish to recall the witness briefly; is
13 that correct?

14 ATTORNEY YOUNG: Vera Martinez. Yes, Your Honor.

15 VERA MARTINEZ,

16 having previously been duly sworn, retakes the witness
17 stand, was examined and testified as follows:

18 THE COURT: As you will recall, you have already been sworn.
19 You continue under oath. And if you, once you get to the
20 microphone, unmask and state your name for the record, just so
21 the record will be clear that you've been recalled as a witness.

22 THE WITNESS: Yes, ma'am. My name is Vera Martinez.

23 ATTORNEY OSBORNE: Thank you, Your Honor. Very briefly may
24 I approach?

25 THE COURT: Sure.

FURTHER DIRECT EXAMINATION

BY ATTORNEY OSBORNE:

Q I'm showing you 209, 210 and 211. Can you tell me if you recognize those items?

A I do.

Q And you double-check on your records, but if my records are correct, they correspond to your SLED item numbers 47, 49 and 51?

A Yes, they do.

Q And what date did you come into possession of those items?

A On February 26, 2020.

Q And what did you do with them after you came into possession of them?

A They were requested by the analyst. I retrieved them off the shelf and released them to the analyst.

Q Ryan DeWane?

A Yes, sir.

Q Did they appear to be damaged, altered or tampered in any way?

A No, sir.

Q All right.

ATTORNEY OSBORNE: No further questions.

THE COURT: Cross-examination?

ATTORNEY GAY: None from Mr. Green, ma'am.

THE COURT: All right. On behalf of Mr. Major?

ATTORNEY HENSLEY: None from Mr. Major, Your Honor.

1 THE COURT: Very well. Is this witness free to leave, and
2 is there any objection?

3 ATTORNEY YOUNG: Free to leave. No objection, Your Honor.

4 THE COURT: You probably are going to go quickly now.

5 THE WITNESS: Thank you.

6 THE COURT: All right. Ladies and gentlemen, we are going
7 to take a very short comfort break. We're going to take about 10
8 minutes. Please step to your jury room.

9 Do not discuss this matter or allow anyone to discuss it
10 with you. Oh, and leave your notepads on your seats.

11 (WHEREUPON, the jury is escorted out of the courtroom at
12 12:00 p.m.)

13 (WHEREUPON, court recessed at 12:00 p.m. and reconvened at
14 12:25 p.m.)

15 (WHEREUPON, Court's Exhibit 7 is marked for identification.)

16 THE COURT: We have another note. It's the first note like
17 this that I have ever had. A great note. It says -- I'm going
18 to make it a Court's exhibit -- it says, May we have pizza for
19 lunch?

20 Anything before we bring the jury out?

21 ATTORNEY OSBORNE: No, Your Honor.

22 ATTORNEY GAY: No, Your Honor.

23 (WHEREUPON, the jury is seated in the courtroom at
24 12:28 p.m.)

25 THE COURT: All right. Ladies and gentlemen, I have your

1 note. And somebody's like tossing it up in the air. We will
2 keep you apprised of when your pizzas arrive. So I was excited,
3 I thought that was great. All right.

4 And at this time we will continue with the state's case.
5 Please call your next witness.

6 ATTORNEY OSBORNE: Thank you, Judge. State calls Agent
7 Jamie Hall.

8 CLERK OF COURT: If you'll please raise your right hand, and
9 state your full name for the record.

10 THE WITNESS: Jamie Elizabeth Hall.

11 JAMIE ELIZABETH HALL,
12 having first been duly sworn, was examined and testified as
13 follows:

14 THE COURT: This is as much as of a sound check as anything
15 else. Can you state your full name again, please.

16 THE WITNESS: Jamie Elizabeth Hall.

17 THE COURT: Your witness. Good volume. Thank you.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY OSBORNE:

20 Q Ms. Hall, what is your occupation?

21 A I'm a forensic technician.

22 Q Who are you employed by?

23 A The South Carolina Law Enforcement Division in the forensic
24 services laboratory.

25 Q And how long have you been with SLED?

1 A Six years.

2 Q All right. And what are your duties as a forensic
3 technician?

4 A As a forensic technician in the trace evidence department, I
5 primarily prep GSRs for analysis. I do an inventory of GSR kits
6 or collect inanimate objects that may be submitted for testing,
7 as well. I also pick up and return evidence for the department.

8 Q And I think we subpoenaed you here today mostly talking
9 about GSR.

10 A Correct.

11 Q And what is GSR?

12 A It's gunshot residue.

13 Q And we'll have Ms. Nicole Hardin, an expert in GSR, get into
14 a little bit more detail about that.

15 But for your purposes, were you asked to collect some lifts,
16 or attempt to collect lifts, of GSR particles in this case?

17 A I was.

18 Q And do you have your lab number handy?

19 A I do.

20 Q And what is that?

21 A Lab no. L19-02-418.

22 Q All right. I'm going to start by showing you -- well, you
23 know what, before I do that, just, if you could, tell the jury,
24 how do you generally go about collecting particle lifts of GSR
25 from an item?

1 A Okay. For clothing, when we're collecting for potential
2 GSR, we're going to sample from the area that would have been
3 closest to the discharge of a firearm. So in this case, all the
4 items that were selected were long-sleeved garments.

5 So for long-sleeved garments, we collect from each arm, so
6 right arm, left arm, and then the chest area, divided into right
7 and left, as well.

8 What that consists of is a small aluminum stub with a
9 double-sided adhesive, and we just dab the stub across the
10 garment, again, in the areas that would have been closest to the
11 discharge of the firearm.

12 Q And do you make some sort of notation as to the locations of
13 those dabs?

14 A I do. Everything is documented on our clothing inventory
15 worksheet for the analyst to refer to. It includes a description
16 of the garment, whether everything was properly sealed and
17 initialed, where I collected from, name brand, size, any
18 identifying factors like that.

19 Q Okay. And then presumably then the analyst can marry up
20 their results to the clothing inventory worksheet to determine
21 where, if any, there was positive GSR found on the clothing?

22 A Correct.

23 Q And do you do anything to protect against cross
24 contamination?

25 A I do. Between each item, everything is properly sanitized.

1 We also use butcher paper to put down that is sterile to make
2 sure there's no contamination. We also use what is called a
3 clothing blank, so a blank stub is left out while we process just
4 to make sure there's no environmental contamination.

5 Q Okay. I'm going to start by showing you what's already been
6 marked and admitted as State's Exhibit No. 201. Do you recognize
7 this item?

8 And it may be a little bit difficult to see, and if you
9 would like to actually see some of these items, I can show them
10 to you.

11 A That's okay. I think I actually took this picture.

12 Q You said you actually took this picture?

13 A I did. So it appears to be item no. 29.

14 Q All right. You know what we'll do just to make -- I'm not
15 saying you're wrong, I haven't looked at it. But just to make
16 sure we're 100 percent correct here, I'm going to show you some
17 items and see if you recognize these, okay.

18 A Okay.

19 Q I'm going to show you item 193, 194, 195, 196 and 197. And
20 these are state's items. And can you just tell me if you
21 recognize these items?

22 A Do you want me to -- I have to see the bar code.

23 Q Sure. Sure.

24 A So that's item no. 27.

25 Q What is item no. 27? What's the state's exhibit that

1 corresponds to your item 27?

2 A 195.

3 Q And my 196?

4 A Is item no. 28.

5 Q And my item 197?

6 A Item no. 26.

7 Q Okay. And my item 193?

8 A Item no. 29.

9 Q And lastly, my item 194?

10 A Item no. 25.

11 Q So while I'm mentioning state's exhibits, you're going to
12 work off your items?

13 A Correct.

14 Q So back to 201. And what's your item number on this? My
15 State's Exhibit 201, or the photograph is 201 that I'm showing
16 you. Sorry.

17 A My apologies. Okay.

18 Q And what item number is that for you, SLED item number?

19 A Item no. 29.

20 Q And did you have the occasion to pull some lifts from this
21 item?

22 A I did.

23 Q And again, do you happen to know the locations in which you
24 pulled those lifts?

25 A Let me get to my worksheet. Yes. Item no. 29, I collected

1 from the four areas I mentioned before, right chest, left chest,
2 right sleeve, left sleeve.

3 And in this particular case, the jacket appeared to be
4 reversible, so we actually collected from side one and side two
5 just in case the garment may have been turned by the time we
6 received it.

7 Q Okay. I'm now showing you -- so this is my State's Exhibit
8 No. 202. And can you see up there what item number that would be
9 for you?

10 A Looks like item no. 25.

11 Q And did you go through the same procedure here and take
12 lifts from this item?

13 A I did. And this was just four areas, right chest, left
14 chest, right sleeve, left sleeve.

15 Q All right. And now we're moving to 203. And it looks like,
16 maybe, your item 27?

17 A Okay.

18 Q Did you take lifts from this item?

19 A I did.

20 Q Same locations?

21 A Yes, sir.

22 Q Moving on to 204. And if I'm reading your photograph
23 correctly, it looks like that's your item no. 28?

24 A Correct. Same location.

25 Q And lastly, State's 205, SLED item no. 26?

1 A Yes, sir. The same location.

2 Q And now once you take all of those lifts, what do you do
3 with them?

4 A Once I am finished with my portion of collection, all the
5 items go into a container and they go into a secure location
6 within the trace evidence lab until the analyst retrieves them
7 for analysis.

8 Q And do you properly package them and seal them up?

9 A They are not sealed. Again, they're in a secure location
10 that only trace evidence has access to, so we don't fill it. It
11 just gets messy if we start opening and re-filling it multiple
12 times.

13 ATTORNEY OSBORNE: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q Showing you State's 207. Do you recognize that?

16 A Yes, sir, container L.

17 Q And what is in container L?

18 A The particle lifts that I collected from the clothing.

19 Q So all of those lifts that you discussed, they're all in
20 207?

21 A Yes, sir.

22 Q Where they can cross-contaminate into 207, or are they each
23 individually?

24 A They're all individually secured.

25 Q And the only thing I think I neglected to ask you was, these

1 jackets, 193 to -- 193 to 197, the jackets in this case. When is
2 it that you came into possession of those and from whom?

3 A I picked then up from our evidence control technician, Doris
4 Yarborough, on April 8th of 2020.

5 Q Did they appear to be packaged correctly or by SLED
6 protocols?

7 A Yes.

8 ATTORNEY OSBORNE: Okay. No further questions.

9 THE COURT: Cross-examination, Ms. Gay?

10 ATTORNEY GAY: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY GAY:

13 Q Hi, there. How are you today?

14 A Good.

15 Q My name is Melisa Gay, and I represent Elijah Green. Thank
16 you for coming today. So you had some information that's very
17 crucial to the jury's understanding. The things that you do once
18 it gets to SLED is prevent cross contamination; isn't that true?

19 A When I'm collecting, I follow protocols to make sure that
20 nothing in our environment could potentially put GSR on the
21 items. Yes, ma'am.

22 Q So when you're saying put GSR on the items and I'm saying
23 cross contamination, can you describe to the jury what it would
24 mean to cross-contaminate? Just what does it mean?

25 A In our department, that would mean that any sort of GSR

1 could get there that did not come from the clothing we were
2 collecting from.

3 Q And is it possible that another definition for cross
4 contamination would be that GSR from one article could end up on
5 GSR from a different -- well, GSR from one article could end up
6 on a different article if the two of them were too closely
7 together?

8 A It's possible.

9 Q Right, it is possible. So when you got it, it was in
10 separate, I think was it in, brown paper bags?

11 A Yes, ma'am.

12 Q So each piece of clothing was in its own individual paper
13 bag?

14 A Correct.

15 Q And it came to you that way?

16 A Correct.

17 Q And so from the point you were dealing with it, in your
18 training and pursuant to SLED protocol, everything you did was to
19 keep that individual bag and that individual piece of clothing
20 separate and apart from the others to make sure that any GSR you
21 found on that piece of clothes is going to be sent to the
22 analyst?

23 A Correct.

24 Q But you have no idea what happened to those garments before
25 they came to SLED?

1 A That's true.

2 Q And you have no idea if those garments could have been, at
3 one point in time, touching each other?

4 A Correct.

5 Q You don't know?

6 A I have no knowledge of what happens before it comes into my
7 possession.

8 Q Right. So it's possible that that could have occurred, but
9 by the time it got to you every single one of these had some
10 lifts that you could take off and send to the analyst?

11 A I collected the lifts. Yes, ma'am.

12 Q And each one of these four coats, pieces of clothing, had
13 lifts?

14 A I collected the lifts. They didn't have them with it. But
15 I did collect from all of them and create the lifts.

16 Q I think I'm asking the question a stupid way, but what I'm
17 really saying is, there was GSR, like gunpowder residue, stuff,
18 on each one of these pieces of clothes?

19 A I have no knowledge of what was actually found. Like I
20 said, I just collected from the areas where potential GSR could
21 have been. And from there, the analyst does the analysis to
22 determine whether or not there was GSR.

23 Q I understand. So you're just stickying, double-taped,
24 stickying, things and then it gets sent off?

25 A Correct.

1 Q And all four of these had stuff that you did sticky tape and
2 attributed to each piece of clothing?

3 A Correct.

4 ATTORNEY GAY: One moment, Your Honor.

5 THE COURT: Sure.

6 Q So you said that you had actually been the person who took
7 pictures?

8 A I did.

9 Q And so again going back to the idea that they were just in
10 these paper bags when you got them, all scrumpled up?

11 A Correct.

12 Q And then you were the person who took them and laid them out
13 and had the actual picture taken?

14 A Correct.

15 Q But in those pictures we don't see any tags for locations or
16 things like to show where you actually took the lifts from?

17 A That's not typically something we do. When we document
18 these photos, those are more just for reference for the analyst
19 since the analyst doesn't touch the garments, so that she can see
20 the garments that it came from. Again, it's standard. We
21 collect essentially from the seam down on a sleeve, and then from
22 the midsection up for the chest.

23 ATTORNEY GAY: Okay. And I think that's all, Your Honor,
24 but I just want to confer with counsel.

25 THE COURT: All right.

1 ATTORNEY GAY: I have no further questions, Your Honor.

2 Thank you.

3 THE COURT: All right, very well. Yes, ma'am?

4 ATTORNEY HENSLEY: Thank you, Your Honor.

5 THE COURT: Gentlemen, ma'am.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY HENSLEY:

8 Q Hi, Ms. Hall.

9 A Hi.

10 Q I'm Laree Hensley. I represent Devonte Major. So you
11 prepare a GSR collection clothing worksheet; right?

12 A I do prepare the worksheet. Yes, ma'am.

13 Q And explain to me kind of what goes into that.

14 A The worksheet is just documenting identifying information
15 about the garment, what the garment looked like, how it was
16 packaged when I opened and it received it, where I collected
17 from, you know, brand name, sizes, just identifying factors. And
18 all that is just for the analyst to reference that.

19 Q And you also prepare -- do you also prepare the SLED trace
20 evidence, gunshot primer residue, SEM and results worksheet?

21 A I do not.

22 Q Explain to me now how many times you do -- I know you do the
23 four, the right sleeve, the left sleeve, the right chest, the
24 left chest. How many dabs do you make when you're trying to
25 collect residue?

1 A I just dab. I typically start in wider ranges to cover the
2 whole garment. And then I will then go back and fill in, so to
3 speak, until the adhesive no longer appears to be sticking.

4 Q And the object of that is to make sure you get every single
5 thing that could be on ---

6 A To just cover as much area as possible. Yes, ma'am.

7 Q In the case of, I think, item 29, you did both sides of that
8 garment; right?

9 A I did.

10 Q Because you didn't know, there wasn't any way for you to
11 know how the garment was worn. Correct?

12 A Correct.

13 Q And after you do the adhesive thing, that's what the analyst
14 uses; right?

15 A Yes, ma'am. That's what goes on the instrument for
16 analysis.

17 Q She doesn't actually take the jacket and look at the jacket.

18 A Correct.

19 Q She takes your adhesive thing; right?

20 A Yes, ma'am.

21 Q And you picked that up, I think, from Ms. Yarborough, you
22 picked up the item 29 on April the 8th; is that right?

23 A Yes, ma'am.

24 Q And then when you actually did the collection, that was on
25 April the 15th; correct?

1 A Correct.

2 Q And in between that, the item was in your ---

3 A It was in my custody in a secure location in our department.
4 Yes, ma'am.

5 Q Thank you so much. I'm sorry, I may have just one or two
6 more questions. You don't know how the items were? You don't
7 know anything about the items, what happened to them before you
8 got them?

9 A Correct.

10 Q They came to you through Ms. Yarborough, and that's all you
11 know; right?

12 A Yes, ma'am.

13 Q Okay. Thank you so much.

14 THE COURT: Redirect?

15 ATTORNEY OSBORNE: None, Your Honor.

16 THE COURT: All right. Is this witness free to leave, and
17 is there any objection?

18 ATTORNEY OSBORNE: None from the state.

19 THE COURT: Very well. Thank you.

20 THE WITNESS: Thank you. Call your next witness, please.

21 ATTORNEY OSBORNE: State calls agent Jamie Green.

22 CLERK OF COURT: Please raise your right hand, and state
23 your full name for the record.

24 THE WITNESS: James Green.

25

1 JAMES GREEN,
2 having first been duly sworn, was examined and testified as
3 follows:

4 THE COURT: Your witness.

5 ATTORNEY OSBORNE: Thank you, Judge.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY OSBORNE:

8 Q What's your occupation, Mr. Green?

9 A I'm a forensic scientist at SLED in the firearms department.

10 Q All right. How long have you been employed with SLED?

11 A Since June of 2005.

12 Q Okay. And so if you could, just tell the jury, what does --
13 it may be a little obvious -- a firearms examiner actually do?

14 A We examine firearms and firearm-related evidence, fired
15 bullets, fired cartridge cases, and try to attempt to determine a
16 common source. Were these bullets fired by this gun or were they
17 not?

18 Q What is your educational background?

19 A I have a Bachelors of Arts degree and a Masters of Science
20 degree from Charleston Southern University. And when I was hired
21 at SLED, I started the firearm and toolmark course of
22 instruction. It's about a three to three-and-a-half year course
23 instruction in an apprentice-like fashion, studying under
24 court-qualified firearms examiners, learning to do what I do now.

25 Q Did you say you started that course?

1 A No, sir. I started ---

2 Q Started then, okay.

3 A And I'm actually now trained in the course to do some
4 trainings.

5 Q So you are trainer now?

6 A Yes.

7 Q And that sort of covers it. Any other specialized training
8 in the field of firearms identification?

9 A We also do toolmarks, which is, toolmarks is the larger part
10 of firearms.

11 Q Okay. And I know y'all don't use this term but, so to
12 speak, are you authorized by SLED to conduct firearms
13 identification?

14 A Yes, sir.

15 Q And how many cases have you worked since your employment
16 with SLED in the field of firearms identification?

17 A Oh, good gravy. It's in the hundreds of thousands.

18 Q Are you a member of any professional organizations related
19 to that field?

20 A Yes, sir. I'm a member of the Association of Firearm and
21 Toolmark Examiners, or AFTE, A-F-T-E. It is a worldwide
22 organization of firearms examiners.

23 Q And have you ever been qualified as an expert in court in
24 the area of firearms identification?

25 A Yes, sir.

1 Q How many times and what courts?

2 A I believe it's 92 now. Twice in federal, and the rest were
3 in state courts.

4 ATTORNEY OSBORNE: Your Honor, at this time the state would
5 offer Agent Jamie Green as an expert in the field of firearms
6 examination.

7 THE COURT: Is there any voir dire on behalf of Mr. Green or
8 Mr. Major?

9 ATTORNEY GAY: Not on behalf Mr. Green, Your Honor.

10 THE COURT: All right.

11 ATTORNEY HENSLEY: None for Mr. Major, Your Honor.

12 THE COURT: Is there any objection to her qualifications?

13 ATTORNEY GAY: No, ma'am.

14 ATTORNEY HENSLEY: None at all.

15 THE COURT: Ladies and gentlemen, let me take a moment and
16 just explain to you about experts, experts and their testimony.

17 Under our rules, ordinarily a witness is not allowed to
18 testify regarding their opinions or the reasons for those
19 opinions. There is an exemption. And that is when, by virtue of
20 some training, education, occupation, perhaps knowledge-based,
21 that that person has become an expert in some field. Typically
22 it's in the field of art or the field of science.

23 And when so qualified, then that individual may testify with
24 regards to their opinions and the reasons for those opinions
25 within the area of expertise. And this witness is qualified as

1 an expert within the field of firearms examination.

2 Ladies and gentlemen, I'm give you some concluding
3 instructions about expert testimony. Suffice it, at this point,
4 to say that expert testimony is given for the purpose of helping
5 you understand the evidence. It is not given for the purpose of
6 controlling your judgment.

7 And you will consider expert testimony as you do other
8 testimony. And again, we'll talk more about that when I give you
9 the concluding instructions on the law.

10 All right. You may proceed. And, thank you.

11 Q All right. Agent Green, how do you go about matching a
12 particular cartridge casing or a fired bullet to a weapon that
13 you're asked to compare it to?

14 A When firearms are produced, the manufacturers, whether it's
15 Smith & Wesson, Forrest, GLOCK, Springfield, whoever the
16 manufacturer is, determine certain characteristics they want on
17 their car -- excuse me, on their gun. It's just like Chevy says
18 we want to make a pick-up truck that looks like this, and they
19 design their pick-up truck. Firearm companies do the same thing.
20 So there are certain characteristics that are unique to every
21 firearm made with those characteristics.

22 However, there are certain characteristics that are
23 individual to those firearms that are produced during
24 manufacture. While they're produced during manufacture, they're
25 not meant to be there, the manufacturer does not intend for them

1 to be there. And they also can arise through use and abuse of a
2 firearm. They're like fingerprints of a gun, so that lets us
3 look at each one and say this one came from this gun.

4 There's been certain studies done, of which I've taken part
5 in three or four now, where they'll go to a manufacturer and
6 they'll get consecutively made firearms. So that's one made
7 right after the other, after the other, after the other, using
8 the same tool. And if you ever want to see any similarities,
9 it's going to be made right after the other with the same tool.

10 And trained examiners are able to differentiate which was
11 made by the first barrel, the second barrel, the third barrel.
12 While there are some similarities, you can tell the differences.

13 So marks that are there may be used for identification on
14 any particular firearm.

15 Q And can you explain to the jury, just generally speaking,
16 the differences between the way a semiautomatic pistol or handgun
17 operates and a revolver and what happens with the cartridge case
18 when it's fired.

19 A Yes, sir. Basically everyone's seen an old spaghetti
20 western where you have the good guy show up in a white hat and
21 the bad guy shows up in a black hat and they do a dual, and
22 they'll pull out guns and they'll pull the trigger and nothing,
23 just a little bit of smoke and there's no cartridge cases flying
24 out. They are using revolvers.

25 And what a revolver is is usually a single-barreled firearm

1 with multiple chambers lined up in the cylinder. You put the
2 cartridges in the chamber, you pull the trigger, and the cylinder
3 rotates. After each cartridge fires, the bullet goes down the
4 barrel and the cartridge case stays in the cylinder. Pull the
5 trigger; the cylinder rotates; firearm goes off again; cartridge
6 case stays in the cylinder. They'll stay there until someone
7 unloads the gun if the gun is working properly or if it's not
8 broken.

9 Semiautomatic pistols, every time you pull the trigger a
10 cartridge fires as long as the magazine is loaded. And after the
11 bullet goes down the barrel, the cartridge case bangs up against
12 the breech face, takes on the marks, is extracted and ejected
13 from the pistol. Then when the slide goes forward, if there's
14 more ammunition in the magazine, another cartridge will be loaded
15 into the chamber and ready to be fired again. Pull the trigger;
16 extract; eject; load again.

17 Q Do you have the technology? Is it possible for you, at
18 SLED, to match up a fired bullet, a recovered, fired bullet, to a
19 cartridge casing to say that, you know, that bullet came from
20 that specific cartridge casing for either a semiautomatic or a
21 revolver?

22 A There are some agencies out there that do it. At SLED we
23 toyed around with the idea, but we don't consider it reliable.
24 Basically, computer terms, when you take a bullet, and basically
25 they just jam it into the cartridge case, the cartridge case will

1 leave marks on the bearing surface of that bullet.

2 However, when the bullet is passing through the barrel and
3 engages the rifling, all the marks left by the cartridge case are
4 being overwritten by that other rifling.

5 Q And I just want to make sure that I really hammer down this
6 point. So while it is possible to compare a bullet, depending
7 upon the condition of the bullet, I suppose, whether it was fired
8 from a pistol and a cartridge case, whether it was fired from a
9 pistol, it is not possible to compare whether a cartridge
10 casing -- or, a bullet came from a specific cartridge casing?

11 A In a sense, yes. At SLED, we'll do bullet-to-bullet
12 examinations, bullet-to-gun examinations, cartridge case to
13 cartridge case, cartridge case to gun. But we will not do
14 bullet-to-cartridge case, because we do not believe it to be
15 reliable.

16 Q Okay. All right. With regard to this case, your lab
17 no. L19-02-418, did you have the occasion to examine some
18 evidence submitted by the Summerville Police Department?

19 A Yes, sir.

20 Q And I believe you came into possession, on October the 10th
21 of 2019, some of the evidence in this case, or the evidence in
22 this case. Does that sound correct?

23 A Yes, sir.

24 Q All right. And who was it, do you happen to know who it
25 was, that you came into possession of it from?

1 A Chad Smith.

2 Q Okay. And where does Chad work?

3 A Chad is another firearms examiner. His office is literally
4 right next door to mine.

5 Q So he does the same thing as you?

6 A Yes, sir.

7 Q All right. We're just going to show you some of these
8 items. We'll start off and I'm going to show you State's 13, 14,
9 15, 16, and State's 25. And while I got you, I might as well do
10 this, 17, 18, and 87 and 188.

11 And if you want, while you're going through them, so you're
12 not duplicating it, if you recognize the item, can you just say
13 what you recognize it as and the state's exhibit number.

14 A Yes, sir. State's Exhibit 13 is the Taurus pistol I
15 examined as item 1 in this case.

16 State's Exhibit 2 is the Smith & Wesson revolver I examined
17 in this case.

18 Q You mean SLED 2?

19 A I'm sorry, SLED item 2.

20 Q That's okay. That's our 14.

21 A State's 14.

22 State's Exhibit 15 is the Jimenez Arms .380 auto caliber
23 pistol I examined as SLED item 3.

24 Sixteen, State's Exhibit 16, is the Springfield Armory,
25 Model XD, pistol, a 9-millimeter Luger caliber, I examined as

1 SLED item 4.

2 And State's Exhibit 25 is the Taurus PT738 .380 auto caliber
3 pistol I examined as SLED item 5 in this case.

4 State's Exhibit 188 is --

5 Q And here's some scissors.

6 A Is a fired bullet and a bullet fragment I examined as SLED
7 item 40.

8 State's Exhibit 18 are two fired bullets I examined as SLED
9 items 6 and 7.

10 And State's Exhibit 17 are the fired cartridge cases I
11 examined as SLED items 15 through, I believe, 24 in this case.

12 And state's 187 are three fired bullets that I examined as
13 SLED items 41 through 43.

14 Q Okay. When you received these items from Mr. Smith, or
15 Agent Smith, did all the items appear to be sealed and labeled
16 appropriately?

17 A Yes, sir. They were all sealed.

18 Q Didn't appear to be tampered with in any way?

19 A No, sir.

20 Q All right. Mr. Green, let's begin with State's 25. I think
21 it's going to be your SLED item no. 5. So what can you tell the
22 jury about this particular firearm?

23 A State's Exhibit 25 is a Taurus, Model PT738, pistol. It was
24 designed to be a semiautomatic pistol. However, when I received
25 it, it would not function. I could not get it to fire.

1 Q Okay. And State's 25 has already been identified as being
2 recovered from Marcus Porter's closet. And you said that that
3 firearm would not fire?

4 A I'm sorry?

5 Q You said that firearm would not fire?

6 A Correct. I tried to get it to fire to get test specimens
7 from it. I tried to take the slide and barrel off and put it
8 onto another frame from our firearms reference collection that we
9 have. We have about 5,600 guns that we have in a case where we
10 get a firearm that doesn't work, we can maybe get a frame. I
11 tried that. It still would not work.

12 So I needed to get a test bullet for comparison purposes,
13 which means I didn't need the slide. So I took the barrel off of
14 State's Exhibit 25, put it in one of our pistols, and shot it to
15 get test bullets from it.

16 Q Okay. So let's move on do State's 13, which is SLED item 1.
17 What can you tell the jury about that firearm?

18 A Yes, sir. State's Exhibit 13 is the Taurus, Model 24/7-G2,
19 semiautomatic pistol and 9-millimeter Luger caliber that I
20 examined in this case.

21 Q So that's a 9 millimeter. State's 14, SLED 2?

22 A Yes, sir. State 14 is a .38 special caliber revolver, a
23 Smith & Wesson.

24 Q Okay. And that State's 15, SLED 3?

25 A State's 15 is a .380 auto caliber, Jimenez Arms pistol.

1 Q And State's 16, SLED 4?

2 A Was a Springfield, Model XD, 9-millimeter Luger caliber
3 pistol.

4 Q All right. So now let's talk about the projectiles and the
5 cartridge casings. And you were asked to compare those to see if
6 it appeared as though they were fired by any of those firearms,
7 is that fair to say?

8 A Yes, sir.

9 Q Let's start with State's 18, which would be your 6 and 7.
10 And they have previously been identified as having been recovered
11 from the carpet of ■■■ Myrtle Place. What can you tell the jury
12 about any conclusion or conclusions, if any, you can draw when
13 you analyzed these items?

14 A So State's Exhibit 18 is actually made up of two bullets,
15 SLED item 6 and SLED item 7. SLED item 6, a bullet was most
16 consistent with being a bullet loaded into some 9-millimeter
17 Luger caliber cartridge. So once I determined the caliber of
18 this bullet, I had two 9 millimeters submitted. I shot each of
19 those into our vertical water tank to get test specimens. They
20 were fired by those guns. I know they were fired by the guns
21 because I did it myself. So I fired both of those to get test
22 cartridge cases and test bullets.

23 However, due to the limited markings and the damage, it's
24 not really readily visible to the naked eye. Microscopically, my
25 results for SLED item 6 were inconclusive. I could not determine

1 whether it was fired by the State's Exhibit 13 pistol or the
2 State's Exhibit 16 pistol.

3 Q And you might have said it, I might have missed it. Is it
4 consistent with having been fired from a 9 gun?

5 A Yes, sir. It is a 9-millimeter Luger caliber bullet, and
6 has the same or similar rifling specifications as both State's
7 Exhibit 13 and State's Exhibit 16.

8 Q And what conclusions, if any, were you able to draw by
9 looking at your item 7, also contained in State's 18?

10 A SLED item 7 bullet was most consistent with bullets loaded
11 in the .38 special and .357 magnum caliber cartridges. I say
12 both, because they use the same bullet. But it was fired by
13 State's Exhibit 14.

14 Q Okay. So you can conclusively say in your opinion that
15 State's 17 -- or your 7, was fired by the revolver?

16 A Yes, sir. One of the bullets in State's Exhibit 18 was
17 fired by the item 14 -- or, excuse me, State's Exhibit 14 pistol.
18 Revolver. Sorry.

19 Q All right. Let's move on to State's 188. I think that's
20 your SLED item no. 40. And this has already been previously
21 identified as one bullet and one bullet fragment recovered from
22 the residence of [REDACTED] Myrtle Place. State's 188.

23 A Yes, sir.

24 Q When you analyzed this item and compared it to the pistols,
25 what conclusions, if any, were you able to draw?

1 A State's Exhibit 188 was made up of a fired bullet and a
2 bullet fragment. So we're going to speak about two different
3 things in the same item number.

4 The bullet portion of State's Exhibit 188 was most
5 consistent with a 9-millimeter Luger. However, also due to
6 damage and limited marks value, it was also inconclusive as
7 State's Exhibit 13 and 16.

8 I'm sorry, I forgot to really say what inconclusive was.
9 It's a fancy word we use for I don't know. There was enough
10 similarities and markings for me to say, Wow, it could have been
11 fired by this gun, but there was not enough for me to say, Yes,
12 it was.

13 So the bullet portion of State's Exhibit 188 was
14 inconclusive with the two 9-millimeters, but not fired by the
15 other three firearms.

16 And the tiny, little fragment portion, it's so damaged, due
17 to its size I can't tell you what caliber it was. And even if
18 you told me, Jamie, this gun was used, me or no one else would
19 ever be able to say, yes, it was.

20 Q And that brings up a fair point. I mean, is it fair to say
21 you really don't know anything about this investigation; you're
22 just given items and asked to analyze them?

23 A Yes, sir. For every case, while it is required that an
24 incident report is submitted with the paperwork, I never look at
25 it because, honestly, it doesn't mean anything to me or any of

1 the other examiners. We don't have a timeline when things need
2 to be done by, like a six-hour window for certain departments.
3 The markings on the bullet cartridge case aren't going to change.

4 Q All right. Let's get into the big stuff. I think it's
5 going to be State's 17, which is going to compare, or which is
6 going to contain, your items 15 through 24.

7 And I guess probably the easiest way is just -- well, since
8 you have them all right there, if you could just tell me what the
9 item number is and then what conclusions, if any, you were able
10 to draw.

11 A Okay. So we're talking about State's Exhibit 17. And in
12 State's Exhibit 17 there are SLED items 15, 16 and 17. They are
13 three fired .38 special caliber cartridge cases. Through
14 conversations and through the paperwork, it was determined that
15 these were taken out of the State's Exhibit 14 revolver by law
16 enforcement personnel.

17 If you remember a few minutes ago I talked revolvers, when
18 you pull the trigger the cartridge case stays in the revolver and
19 doesn't get ejected from the revolver. So I did no microscopic
20 comparisons on the three fired cartridge cases, SLED items 15
21 through 17, because basically I wasn't going to prove that they
22 came out of that gun when somebody already told me they took them
23 out of that gun. If that makes sensed.

24 Q And so that leaves us with 18 through 24. And 18 has
25 already been identified as being recovered from marker 7 under

1 the kitchen table. What conclusions, if any, were you able to
2 draw from 18?

3 A A few minutes ago I talked about shooting test bullets to
4 see if they, you know, that I know were fired by that gun because
5 I shot it myself.

6 When I have cartridge cases, I do the same thing. So I'll
7 go shoot test cartridge cases, make sure they're marking
8 consistently, look at them microscopically before I start
9 comparing them with the evidence.

10 Before I do that, I look at the evidence against each other
11 to see. I have seven fired 9-millimeter Luger caliber cartridge
12 cases in this case. So theoretically I could have one gun or I
13 could have seven guns. So I looked at them microscopically to
14 determine how many guns I had.

15 The State's Exhibit 17, 9-millimeter Luger caliber cartridge
16 cases, all seven of them were fired by this same firearm.

17 After I determined that, I got test specimens, test
18 cartridge cases, from State's Exhibit 13 and State's Exhibit 16
19 to determine which, if either of these, fired these cartridge
20 cases. And I concluded that State's Exhibit 17, 9-millimeter
21 cartridge cases, were fired by the State's Exhibit 16 pistol.

22 Q So all seven were fired from that one pistol?

23 A Yes, sir.

24 Q That's a Springfield; is that right?

25 A Yes, sir.

1 Q All right. Well, let's move on then. Let's talk about
2 State's 187, labeled as projectiles recovered from the autopsy.
3 And I think this is going to be your SLED item 41, 42 and 43.
4 After analyzing these items what, if any, conclusions were you
5 able to draw?

6 A That two of the bullets were fired by the State's Exhibit 14
7 revolver. And one of the bullets was 9-millimeter Luger, and it
8 was also inconclusive with State's Exhibit 13 and 14, meaning it
9 could have been fired by 13, 14 or by another firearm.

10 Q So of those bullets that are listed as being recovered from
11 the autopsy, is it fair to say, in your opinion, that those are
12 two guns that were used to fire those bullets?

13 A Yes, sir. One gun fired two bullets, and one gun fired the
14 third.

15 Q And the one gun that fired the two has already been matched
16 up to the revolver in this case?

17 A Yes, sir, State's Exhibit 14.

18 ATTORNEY OSBORNE: Your Honor, at this time -- and again, I
19 apologize, some of this might be duplicative -- but the state
20 would offer State's 25, 13 through 18, -87 and -88 into evidence.

21 THE COURT: On behalf of Ms. Green, any objection?

22 ATTORNEY GAY: One moment, Your Honor.

23 THE COURT: Sure, that is fine.

24 ATTORNEY OSBORNE: And if I wasn't clear, 187 and 188.

25 THE COURT: It's 187 and 188?

1 ATTORNEY OSBORNE: Yes, ma'am.

2 ATTORNEY GAY: I don't believe that we have an objection on
3 the basis of Mr. Green's case, Your Honor.

4 THE COURT: All right. Ms. Hensley?

5 ATTORNEY HENSLEY: No objection from Mr. Major. Thank you.

6 THE COURT: Thank you. They're all admitted without
7 objection. Y'all understand that that's 187 and 188?

8 (WHEREUPON, State's Exhibits 17, 18 187 and 188 are entered
9 into the record.)

10 ATTORNEY GAY: Yes, ma'am.

11 THE COURT: Thank you.

12 ATTORNEY OSBORNE: No further questions, Your Honor.

13 THE COURT: All right. On behalf of Mr. Green?

14 ATTORNEY GAY: I'm going to talk to my client for a minute.

15 THE COURT: Sure.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY GAY:

18 Q Hello.

19 A Hi.

20 Q How are you? I'm Melisa Gay, and I represent Elijah Green.
21 How are you? The only thing I want to ask -- and you did a great
22 job explaining what you were asked to do and what your position
23 is at SLED, and we really appreciate your help in this case.

24 When the word inconclusive is used in your report, it means,
25 you testified, I don't know?

1 A Yes, ma'am.

2 Q And so if someone else were to come along and say, Well, it
3 might be this 9 millimeter that was found on the ground, that's
4 not consistent with what your testimony is, which is, you don't
5 know, and so you can't connect them up?

6 A Well, yes and no, if that makes any sense. By me saying
7 it's inconclusive, I'm saying I can't tell. But it very well
8 could have been State's Exhibit 13.

9 Q Right.

10 A Conversely, it very well could have been State's Exhibit 16.
11 I just can't tell. So it may have been that gun, it may have
12 been that gun, or it may have been some gun that's in Arizona
13 right now. I just can't tell.

14 Q And that's kind of the last thing I was going to say, is it
15 may have been a casing that was on the ground, in the house, from
16 a different occasion because it can't be connected to the two
17 guns in evidence?

18 A Yes, ma'am. It could have been a bullet from another time.
19 Yes.

20 ATTORNEY GAY: I have no further questions. Thank you.

21 THE COURT: Cross-examination?

22 ATTORNEY HENSLEY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY ATTORNEY HENSLEY:

25 Q Agent Green, I'm not going to introduce myself because we

1 know each other. Right?

2 A Yes, ma'am.

3 Q We've known each other a long time; right?

4 A Yes, ma'am.

5 Q So I just have a couple of questions first. So the
6 revolver, that's what a nongun person like me would refer to as a
7 wheel gun; right?

8 A Yes, ma'am.

9 Q And the semi, that's like a square gun; right?

10 A Not a wheel gun but, yes.

11 Q So that's the way I distinguish them. That's right; right?

12 A Yes, ma'am.

13 Q So you can't tell me that your item 1, that Taurus
14 9-millimeter, was ever fired by Devonte Major; right?

15 A I can't say who fired any of the guns.

16 Q Same with item 2, the revolver. You can't tell me Devonte
17 Major ever fired that gun; right?

18 A Correct.

19 Q Or the Jimenez, you can't tell the jury, that either; right?

20 A There's no evidence I have -- there are no tests I do or
21 comparisons I make will ever say who fired what unless I was
22 actually there. And I was not.

23 Q You just can say whether these
24 bullets/projectiles/cartridges were fired from those guns; right?

25 A Yes, ma'am.

1 Q And you received that evidence on [REDACTED]?

2 A Yes, ma'am.

3 Q And that's your birthday; right?

4 A Yes, ma'am.

5 ATTORNEY HENSLEY: That's all the questions I have. Thanks,
6 Jamie.

7 THE COURT: All right. Redirect?

8 ATTORNEY OSBORNE: Just one question.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY OSBORNE:

11 Q I don't think Ms. Gay meant to rephrase it this way, but she
12 said that if someone were to say that a casing was fired, they
13 didn't know if that casing was fired from a gun, and that would
14 be inconclusive, you would be in agreement with that.

15 But isn't it fair to say that in this case all of the
16 casings were matched up. It was just some of the bullets that
17 were inconclusive. Is that correct?

18 A Correct. The cartridge cases I examined in State's Exhibit
19 17, I believe it was, the .38 Special cartridge, I didn't do
20 anything with. But all of the 9-millimeter Luger caliber
21 cartridge cases I examined in this case, I was able to match to
22 State's Exhibit 16.

23 It was some of the fired bullets, or the projectiles, that I
24 was inconclusive on.

25 ATTORNEY OSBORNE: Okay. No further questions, Your Honor.

1 THE COURT: Recross, Ms. Gay?

2 ATTORNEY GAY: No, ma'am. Thank you.

3 THE COURT: Anything?

4 ATTORNEY HENSLEY: Nothing, Your Honor. Thank you.

5 THE COURT: Very well. Is this witness free to leave, and
6 is there any objection?

7 ATTORNEY OSBORNE: None from the state.

8 THE COURT: Very well, you are free to go. Thank you.
9 Please call your next witness.

10 ATTORNEY OSBORNE: State calls Rachel Nguyen.

11 CLERK OF COURT: If you'll please raise your right hand, and
12 state your full name for the record.

13 THE WITNESS: Rachel Nguyen.

14 CLERK OF COURT: If you'll spell your last name for the
15 record.

16 THE WITNESS: N-g-u-y-e-n.

17 RACHEL L. NGUYEN,

18 having first been duly sworn, was examined and testified as
19 follows:

20 THE COURT: When you're all organized, your witness.

21 ATTORNEY OSBORNE: Thank you, Judge.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY OSBORNE:

24 Q Ms. Nguyen, what is your occupation?

25 A I'm a forensic serologist within the DNA casework department

1 at SLED, which is the South Carolina Law Enforcement Division.

2 Q And if you don't mind, do you mind pulling that just a
3 little bit closer. All right. And how long have you been a
4 forensic serologist with SLED?

5 A I've been a forensic serologist a little over
6 three-and-a-half years.

7 Q And so what does a forensic serologist do?

8 A So the primary duties of a forensic serologist is doing
9 body-fluid identification. So we examine items of evidence for
10 the possible presence of blood, semen or saliva. We also do
11 touch or ownership processing. That's to collect skin cells off
12 of items like clothing to define whether someone wore that item
13 or if they've touched that item.

14 Q What is your educational background?

15 A I have two Bachelor of Science degrees from the University
16 of New Haven, one in forensic science and one in biology.

17 Q Have you received any additional, maybe in-house, training
18 with SLED as it relates to forensic serology?

19 A I have. My forensic serology training is approximately a
20 year long. It was under a court-qualified forensic serologist.
21 During that time I was able to observe the different kinds of
22 testing and processes that a forensic serologist does.

23 After an observational period, I then was able to practice
24 the different types of analysis and testing. That was followed
25 by, I was given kind of, a pre-test. So I was given what are

1 called training samples, which are noncasework samples, to
2 perform the different times of analyses to show that I could do
3 so.

4 After that period, I entered a competency phase. So this is
5 going to test my knowledge and my abilities to be a forensic
6 serologist. These tests include a written exam, an oral exam, a
7 mock case which is one, kind of like, practice samples, and then
8 a mock court.

9 And then once all the components are successfully completed,
10 I am then able to do independent casework in forensic serology.

11 Q How many samples would you say, or estimate, that you have
12 tested?

13 A I would estimate that I have tested probably close or over a
14 thousand samples in my time.

15 Q Have you ever been qualified as an expert in the field of
16 forensic serology?

17 A I have.

18 Q And how many times, would you estimate?

19 A Twice.

20 Q In what courts?

21 A Both were in General Sessions Court.

22 ATTORNEY OSBORNE: Your Honor, at this time I'd offer, the
23 state would offer, Ms. Nguyen as an expert in the field of
24 forensic serology.

25 THE COURT: Is there any voir dire?

1 ATTORNEY GAY: No, ma'am. And I do not have an objection to
2 the qualification of Ms. Nguyen.

3 THE COURT: Very well.

4 ATTORNEY HENSLEY: Same, Your Honor, no objection. No voir
5 dire.

6 THE COURT: She is so qualified. And you may proceed.

7 ATTORNEY OSBORNE: Thank you, Your Honor.

8 Q All right. Let's generally talk. When a law enforcement
9 agent submits evidence to SLED and asks for DNA analysis to be
10 run, what is the process for that test to occur?

11 A So typically someone from an outside agency, or internal,
12 will submit items of evidence for testing. These items will get
13 a unique case number, as well as a unique item number. Once they
14 are assigned these, they are given requests, what kind of
15 analysis they want, whether they want blood, semen, saliva, that
16 kind of thing. And then once we are notified that any new case
17 has been submitted, we will go to our evidence control
18 department, retrieve that evidence and then begin processing it
19 for whatever the request is for.

20 Q Okay. And with regard to this case, your lab no.
21 L19-02-418, did you have occasion to examine some evidence
22 submitted by the Summerville Police Department?

23 A I did.

24 Q And, you know what, I'm just going to show you since we have
25 it up here, I'm going show you, State's 10, 11, 110, 109 and 24.

1 A Is it all right to walk up there?

2 Q Yes, ma'am.

3 THE COURT: I just need to be sure that you keep your volume
4 up so everyone can hear.

5 Q And as you're going through them, if you don't mind just
6 saying, Yes, I recognize, or, No, I don't recognize State's 10,
7 State's 11, things of that nature.

8 A Yes, I recognize State's 10, State's 11, State's 110,
9 State's 109 and State's 24.

10 Q All right, thank you. What were you asked to do with these
11 items?

12 A May I reference my notes?

13 Q Yes, ma'am.

14 A So I received multiple items of clothing, which included an
15 orange ski mask, a jumpsuit, a pair of camouflage gloves, a
16 black, knit hat and black-orange glove.

17 All of those items were submitted for ownership processing.
18 To explain ownership processing, it's looking to find the primary
19 wearer of the items of clothing. So I'm going to take a sterile
20 scraper and scrape areas of high friction. So that would be
21 possibly your underarms, your collar, cuffs of long-sleeved
22 shirts, to try to collect skin cells. We also look for hair.

23 Multiple latex-style gloves that were located near the scene
24 were also submitted. Those items were submitted for blood and
25 ownership processing, as well.

1 Q Okay. When you received these items, did they appear to be
2 altered, tampered or damaged in any way?

3 A They did not.

4 Q Sealed correctly?

5 A Yes, they were sealed.

6 Q And if you need to refer to your notes, that's fine. When
7 did you come into possession of these items?

8 A So our item 34, which was an orange ski mask, I took into my
9 custody on May 22nd of 2019 at 11:49.

10 Item 36, which was a pair of camouflage gloves, I took into
11 my custody on May 22nd of 2019 at 11:49.

12 Item 37, which was a black, knit hat, black-orange glove,
13 also May 22nd of 2019 at 11:49.

14 And item 44 was the same date and time.

15 Q You mean item 44?

16 A Forty-four. Sorry.

17 Q Did you mention 35?

18 A If I didn't, item 35 was a jumpsuit which I took into my
19 custody at the same date and time as the rest.

20 Q And do you have on there from whom you received custody of
21 it from?

22 A Yes. I received these items from Charlotte Pitts, who is a
23 forensic technician within the evidence control department.

24 Q Okay. All right. So let's start with State's 10. And I
25 think that's going to be your 34. And I'm going to show you

1 what's already been marked and admitted as State's 170. Do you
2 recognize that?

3 A I do recognize that.

4 Q Did you actually take this picture?

5 A I did not take that picture.

6 Q Do you know anything about these notations that are on?

7 A So on the bottom of the ski mask you can see the unique case
8 number, as well as the item number and then my initials. And
9 then the arrows with the 34.1 in the middle show the area of
10 collection that I did the scraping for. 34.1 indicates the new
11 item number that the set of swabs is now under.

12 Q All right. And, well, I'll just show you. We'll come back
13 to 170, but I'll show you 171. Same thing on the back?

14 A Yes. So the entire side was scraped.

15 Q And is this item that we see over here next to it, this
16 white, is that the scraper?

17 A That would be the sterile scraper that I used.

18 Q Okay. All right. What analysis, if any, did you perform on
19 this item?

20 A So for the orange ski mask, I did the ownership processing.
21 So I took swabs from the entire interior. And then I did collect
22 hair off of the ski mask. My set of swabs, which are sterile
23 Q-tips in the hair, were forwarded to the DNA section.

24 Q When you do that, how do you package, like, the hair or the
25 sterile swabs, how do you do that?

1 A So anything that I collect off of items of evidence will get
2 their own envelope, and then they will also get their own item
3 number. And then I will make what we call a container to put all
4 of these items in, which is just basically a plastic pouch that
5 we heat seal. And then whatever I collected will continue on to
6 the DNA section, whereas everything, for example, the ski mask,
7 will then be returned to evidence control to be returned to the
8 agency.

9 ATTORNEY OSBORNE: Beg the Court's indulgence. Okay. May I
10 approach the witness, Your Honor?

11 THE COURT: You may.

12 (WHEREUPON, State's Exhibits 164, 165, 166 and 167 are
13 marked for identification.)

14 ATTORNEY OSBORNE: Actually, one second.

15 Q I'm going to show you 164 through 167. Can you take a look
16 at those items and tell me if you recognize them.

17 A I do recognize your Exhibits 164 to 167.

18 Q Okay. And what are they? What are they showing?

19 A So 164 is a picture of the exterior packaging of item 35.
20 So you see the unique case number, the unique item number, my
21 initials, as well as a date.

22 165 appears to be a picture of the jumpsuit, a pocketknife,
23 a glove, as well as the scraper I used on these items.

24 166 appears to be the same thing, but laid out. The
25 previous photo, it was all jumbled together.

1 And 167 shows the same thing, except it includes a plastic
2 pouch that had various types of debris and broken-up pieces.

3 Q Okay.

4 ATTORNEY OSBORNE: All right, Your Honor. At this time we
5 would seek to admit State's 164 through 167 into evidence.

6 THE COURT: 164 through 167, any objection?

7 ATTORNEY GAY: I don't believe so. I just want to confer
8 with Ms. Hensley. I don't have any objection on behalf of
9 Mr. Green.

10 THE COURT: All right.

11 ATTORNEY HENSLEY: No objection.

12 THE COURT: All right, very well.

13 (WHEREUPON, State's Exhibits 164, 165, 166 and 167 are
14 entered into the record.)

15 Q I'll start off by showing you 164. Now, after you got
16 finished analyzing the navy jumpsuit and doing your tests on it,
17 did you end up packaging it back?

18 A So prior to processing any items of evidence, we lay these
19 items out on white, what we call, butcher paper. So we cut it
20 based on the size of the item. When we're done processing, we
21 wrap it up in this paper.

22 So what you see here is the paper, and then the identifiers
23 that I wrote on it after processing.

24 Q And I know, I realize we're kind of working backwards here.
25 So this would have been after you had analyzed it; correct?

1 A Correct.

2 Q And you know that because that's your initials?

3 A Yes.

4 Q And moving now to State's 165. What are we looking at here?

5 A So this is the navy jumpsuit. It looks like a portion of a
6 pocketknife, and then the black-and-orange glove.

7 Q All right. And the knife and the glove, were they found in
8 the jumpsuit, or where were they found?

9 A So this item was submitted to the lab as item 35, and it was
10 only described as a navy jumpsuit. When I opened the packaging
11 from the submitting agency, I found numerous things also packaged
12 with it, to include, I made different items for a green, leafy
13 substance, a teal, sneaker-shaped tablet, a dime, a pocketknife,
14 a black-and-orange glove, and, yes, and then the small pouch I
15 had previously mentioned with various pieces of plastic debris.

16 Q Do you remember or did you make notation, were they found in
17 the glove, in the pockets of the jumpsuit, or?

18 A Yes. So the green, leafy substance, I found in the left hip
19 pocket. The teal, sneaker-shape tablet, I found in the upper
20 right chest pocket.

21 And none of the other items I wrote where I found them, so
22 they may not have been found within, just packaged together.

23 Q Okay. Moving on to 166. What are we looking at here?

24 A The same items as the previous picture. Just kind of spread
25 out.

1 Q 167?

2 A The previous items with the small pouch of debris that I
3 mentioned. And I put that, the debris, in the pouch. The pouch
4 didn't come like that.

5 Q Let me see if we can zoom here a little bit. These arrows
6 that are on here, do you know anything about know?

7 A Yes. So, I wrote on these items. So those arrows are going
8 to be similar to the ski mask that you saw. It's just indicating
9 where I collected. Probably if the knife was unfolded, you would
10 see a number hidden underneath, and then probably on the reverse
11 side will have my initials, the case number and the item number.

12 Q And what type of knife is it? Can you read that from the
13 photograph?

14 A I think I may have written it down. I wrote brand name is
15 Gerber.

16 Q Okay. All right. Moving on to 168, what are we looking at
17 here?

18 A This would be the navy jumpsuit.

19 Q What analysis, if any, did you perform on these items?

20 A The navy jumpsuit, as I had previously mentioned, was
21 submitted for ownership processing. However, I thought that
22 there might be a possible spot where there may have been blood,
23 so I did screen this item for blood. However, the screening was
24 negative.

25 And then I did the ownership processing. And I took a swab

1 from scraping the entire neckline of the navy jumpsuit. I also
2 collected hair from the navy jumpsuit.

3 And then for the green, leafy substance and the teal
4 sneaker-shaped tablet, I just packaged those items separately and
5 forwarded it to our drug analysis department.

6 The dime was separated out for our valuable storage.

7 The pocketknife, I swabbed for touch DNA.

8 The black-and-orange glove, I did ownership processing on,
9 so I swabbed. I have a swab from scraping the entire interior of
10 the black-and-orange glove. And there was no hair found that was
11 suitable for our SDR, TPR or DNA analysis.

12 And that was everything that was performed on those items
13 that were packaged together.

14 Q All right. And now let's move on -- and then again, same
15 procedures, you packaged them to be forwarded on to DNA analysis?

16 A Yes. So everything that I collected was going to be
17 packaged together separate from the original items, to be
18 forwarded to the DNA section.

19 Q Okay. Next let's move on to State's 110, which is going to
20 be your 36. Can you tell us how you have that item described.

21 A Item 36, I have as a camouflaged glove.

22 Q What analysis, if any, did you perform on that glove?

23 A I performed the ownership processing, so I swabbed. I had a
24 swab from scraping the entire interior of the camouflage glove.
25 I also collected hair off of the glove.

1 Q All right. And same deal, package it, sent it to SLED?

2 A Correct.

3 Q All right. Let's move on to, okay, State's 109, which is
4 your SLED item no. 37. Can you tell us what those two items are.

5 A So item 37 is a black, knit hat and a black-orange glove.

6 Q All right. Let me just stop you one second before I ask you
7 what did with those items. When you received those items, were
8 they in the same package? Were they together? I mean, if they
9 were, they were.

10 A I don't have specifically if they were packaged together or
11 separately packaged and in the same pouch. But based on the fact
12 that I then broke them down into their own separate items
13 numbers, they were found within the same packaging.

14 Q Okay. And if they were recovered together, they may have
15 been packaged together?

16 A It's possible.

17 Q What analysis, if any, did you perform on those two items?

18 A Once again, I did the ownership processing. So I had a swab
19 from scraping the entire interior of the knit hat. I have a swab
20 from scraping the entire interior of the black-orange glove. And
21 I have hair from both.

22 So that indicates to me that they were packaged together and
23 not separate, in the same container, because I collected hair
24 from just those two together. Hair was collected and forwarded
25 to the DNA section.

1 Q Okay. And I don't think we talked about it, let's go ahead
2 and talk about it. The last one, SLED item 44, State's Exhibit
3 24, can you tell me what that was listed as and what analysis you
4 did on it, if any?

5 A Our item 44 was the multiple latex-style gloves located near
6 the scene. I took two cuttings off of that. So I cut a portion
7 from the middle finger of one glove, and from the other glove I
8 cut below the pinky.

9 Both of these cuttings off of the gloves were screened
10 positive for our presumptive blood testing, and they were both
11 forwarded to the DNA section for further analysis.

12 Q And now can you lastly take a look at item, or our State's
13 Exhibit 172, and tell me if you recognize the items that are in
14 that bag, or what that bag is.

15 A Yes. So these are all the smaller Manila envelopes that I
16 packaged all the swabs I had mentioned, all of the hair that I
17 had mentioned that I collected, as well as the presumptively
18 positive blood cuttings from the glove.

19 There's a smaller plastic bag, which is -- I prepped all
20 these samples for DNA analysis. So prepping means I cut portions
21 of the swab, I cut the root of the hair, and put them in smaller
22 tubes for the DNA analysts.

23 Also within here, it appears to be the DNA analyst's tubes
24 from their portion.

25 Q And so on your notes there, can you tell me -- thank you.

1 Can you tell me what you did with that after you packaged it
2 correctly?

3 A So after I did the collection, after I packaged it, after I
4 prepped all the samples, all of those items are going to be sent
5 to the evidence control department for the DNA analyst to
6 retrieve at a later time.

7 Q Okay. I'm sorry, did you mention the time?

8 A I can.

9 Q Yes.

10 A So for the subitem that I created, which are all the swabs
11 and hair, that was our container I that I created. And that was
12 transferred to the evidence control department on June 13th of
13 2019 at 11:06.

14 Q Okay. So is it fair to say the only thing that goes to the
15 DNA analysts is the evidence that you recovered from the items?
16 The actual items don't go? That's where I'm getting.

17 A Yes. So my purpose is to take large items and make them
18 smaller, essentially. So, yes, the cuttings and everything, the
19 swabs, will go to the DNA analysts.

20 And that all the larger items, like you saw the pocketknife,
21 the jumpsuit, that will go back to our evidence control
22 department, which will then later be returned to the agency.

23 ATTORNEY OSBORNE: Again, Your Honor, I realize some of this
24 is duplicative. I apologize. At this time the state would offer
25 10, 11, 109, 110 and 24 into evidence.

1 THE COURT: Any objection?

2 ATTORNEY GAY: I don't think Mr. Green has an objection.

3 THE COURT: All right.

4 ATTORNEY GAY: Laree looks like she might want to say
5 something. And if she does, I'm joining in, just to let you
6 know.

7 ATTORNEY HENSLEY: I don't have an objection. I just don't
8 know what 110, 109, 24, 10 and 11 are, because she had used her
9 numbers and then she identified things off of a picture. So ---

10 THE COURT: You must know.

11 ATTORNEY HENSLEY: So that would be my objection.

12 THE COURT: Well, you need to know. I'm so sorry that you
13 did not. Let the solicitor pass them over to you.

14 ATTORNEY OSBORNE: All right. Ten is SLED item 34, that is
15 the orange ski mask. Eleven is SLED 35, that is the navy
16 jumpsuit. 110 is the camo glove that was recovered from the
17 Honda, that is SLED 36. And 109 is the black, knit cap and the
18 orange glove, SLED 37, and that also was recovered from the
19 Honda. And then also 24, which is SLED 44, are multiple latex
20 gloves that were recovered from outside at the scene.

21 ATTORNEY HENSLEY: And I don't have any objection to any of
22 those exhibits. Thank you, Your Honor.

23 THE COURT: Thank you. Very well.

24 (WHEREUPON, State's Exhibit 24 is entered into the record.)

25 ATTORNEY OSBORNE: No further questions, Your Honor.

1 THE COURT: Cross-examination, Ms. Gay?

2 ATTORNEY GAY: One moment, Your Honor. I have no questions
3 for this witness, Your Honor.

4 THE COURT: All right. Ms. Hensley?

5 ATTORNEY HENSLEY: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY HENSLEY:

8 Q Good afternoon.

9 A Good afternoon.

10 Q I'm Laree Hensley, I represent Devonte Major. I want to
11 talk a little bit about item 11. That's the jumpsuit.

12 A Okay.

13 Q That's State's Exhibit No. 11, right, and it's your 35?

14 A Okay.

15 Q So we know that in that jumpsuit, in the left hip pocket,
16 was some green, leafy substance; correct?

17 A Okay. Yes.

18 Q So that was how, when you laid the jumpsuit out and you
19 looked into the left hip pocket, you found green, leafy
20 substance; right?

21 A Yes. And I oriented it if I were wearing it. So it's going
22 to be the jumpsuit's left pocket, not me looking down on the left
23 side.

24 Q And the same thing about the teal tablet. We know where
25 that was in the jumpsuit, it was in the right chest pocket.

1 Right?

2 A Yes.

3 Q But you can't tell us where the dime was. Right?

4 A Like I said, I didn't notate it, so I'm imagining it was
5 free floating all together, bundled up.

6 Q Could have just been in the bag that item 35 was in; right?

7 A Yes.

8 Q And so could the pocketknife, it could have just been
9 dropped down in that bag; right?

10 A I mean, they were all packaged together. So if I didn't
11 know a specific location on the jumpsuit, it might have just been
12 either folded within the jumpsuit or just all within the same
13 exterior packaging.

14 Q And the same thing with the black-and-orange glove? We
15 didn't find it in some part of the jumpsuit, just in the
16 container the jumpsuit was in; right?

17 A Yes.

18 Q So it's possible somebody just stuck the jumpsuit in there
19 and dropped a bunch of other stuff down there; right?

20 A I mean, this is how I received it, so I don't know what
21 happened prior.

22 Q And with regard to the knit hat and the glove, they were in
23 the same package, is that right, or you don't know? That's
24 item 37.

25 A So the knit hat -- yes. So since they are all, what we

1 call, subitems, such as they're 37.1 and 37.2, off of the main
2 item 37, that means, it indicates to me, they were packaged
3 together.

4 Q So they weren't in separate envelopes; they were in the same
5 envelope?

6 A No -- yes. So as I only know notated that hair was
7 collected from both items and I didn't have it separate, like
8 hair from the knit hat and then separate hair from the gloves,
9 that says to me that they were packaged together, not separately
10 packaged.

11 Q And that's State's 109?

12 A If that's what you have.

13 Q It's your 37; right?

14 A It's my 37.

15 Q Thank you very much. I appreciate your help.

16 ATTORNEY HENSLEY: That's all the questions I have, Your
17 Honor.

18 THE COURT: All right. Any redirect?

19 ATTORNEY OSBORNE: No, Your Honor.

20 THE COURT: All right. Is this witness free to leave, and
21 is there any objection?

22 ATTORNEY OSBORNE: None from the state.

23 THE COURT: Very well. You're free to go.

24 Pizzas are here, ladies and gentlemen. So I'm going to ask
25 you to please step to your jury room. Do not discuss this

1 matter. Do not allow anyone to discuss it with you. We will
2 take an hour. It is a quarter till 2:00. We will start back at
3 a quarter till 3:00. Enjoy your pizza.

4 Oh, and just so you know, Ms. Westbury, all the calories,
5 gone. Enjoy.

6 (WHEREUPON, the jury is escorted out of the courtroom at
7 1:49 p.m.)

8 (WHEREUPON, court recessed at 1:50 p.m. and reconvened at
9 2:48 p.m.)

10 THE COURT: So, like, I've got to mark these. These are
11 just jurors wanting to make phone calls.

12 (WHEREUPON, Court's Exhibits 8 and 9 were marked for
13 identification.)

14 THE COURT: Anything from the state before we bring our jury
15 back again? I'm looking for you.

16 ATTORNEY OSBORNE: No, ma'am.

17 THE COURT: All right.

18 ATTORNEY GAY: No, ma'am.

19 THE COURT: Everybody ready?

20 ATTORNEY HENSLEY: Just a second, Your Honor.

21 (WHEREUPON, the jury is seated in the courtroom at
22 2:54 p.m.)

23 THE COURT: All right. Ladies and gentlemen, at this time
24 we will continue with the state's next witness.

25 ATTORNEY OSBORNE: The state calls Ryan DeWane.

1 THE COURT: All right. Your witness.

2 ATTORNEY OSBORNE: Thank you, Your Honor.

3 CLERK OF COURT: If you would raise your right hand, and
4 state your full name for the record.

5 THE WITNESS: Ryan DeWane.

6 CLERK OF COURT: And spell your last name for the record.

7 THE WITNESS: D-e-W-a-n-e.

8 RYAN DeWANE,

9 having first been duly sworn, was examined and testified as
10 follows:

11 ATTORNEY OSBORNE: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY OSBORNE:

14 Q While you're getting settled, Ms. DeWane, let's have some
15 background questions. Where are you employed?

16 A I work for the South Carolina Law Enforcement Division.

17 Q And if you don't mind, could you pull that mic just a little
18 bit closer to you. Thank you so much.

19 And how long have you been employed with SLED?

20 A Approximately five-and-a-half years.

21 Q And what's your job there?

22 A I am a forensic scientist assigned to the DNA casework
23 department.

24 Q Okay. And what duties or responsibilities do you have
25 working there?

1 A I receive evidence from across the state. I then attempt to
2 develop DNA profiles from that evidence and compare it to the
3 known DNA profiles of people associated with the case. I then
4 write a report of my findings and testify in court, when needed.

5 Q What is your educational background?

6 A I have a Bachelor of Science degree in biology,
7 preprofessional, from Appalachian State University in Boone,
8 North Carolina. I also have two minors in chemistry and English.
9 I am currently pursuing my Master of Science degree in biological
10 sciences from Clemson University in Greenville, South Carolina.

11 During my education, I completed courses in molecular
12 biology, genetics, statistics and biochemistry. These four
13 courses are considered the foundations of forensic biology by the
14 FBI.

15 Q Have you received any additional training specifically as it
16 relates to DNA analysis at SLED?

17 A Yes. Upon being hired at SLED, I underwent an extensive
18 training program. This training program included practice
19 samples, training samples, mock cases, written exams for DNA and
20 serology, a report-writing exam, an oral exam, a competency and a
21 mock court exam.

22 Q Okay. Outside of SLED did you have any previous jobs that
23 related to the field of DNA analysis?

24 A Yes. I was a DNA analyst at a private, forensic laboratory
25 in Greenville, North Carolina, called AroGYN (phonetic sp), that

1 was previously known as the Center for Advanced Forensic DNA
2 Analysis.

3 Q Throughout your career, how many times would you estimate
4 that you've tested DNA samples?

5 A I have tested thousands of samples and approximately 500
6 cases.

7 Q Have you ever been qualified as an expert in the field of
8 DNA analysis before?

9 A I have.

10 Q How many times?

11 A Six times.

12 Q And is that in state General Sessions Court like this, or
13 other courts?

14 A State General Sessions.

15 Q Okay. Have you ever failed to qualify as an expert?

16 A I have not.

17 ATTORNEY OSBORNE: Your Honor, at this time we would offer
18 Ms DeWane as an expert in the field of DNA analysis.

19 THE COURT: Any voir dire or any objection?

20 ATTORNEY GAY: No, ma'am. And I am not -- I'm not objecting
21 to her qualifications.

22 ATTORNEY HENSLEY: No.

23 THE COURT: Very well. She's so qualified.

24 Q Just as way of background, in layman's terms, what is DNA?

25 A DNA stands for deoxyribonucleic acid. It is a chemical that

1 is found in all of our bodies. We get half of it from our mother
2 and half from our father and, aside from identical twins, no two
3 people will have the same DNA.

4 Q And you sort of mentioned this when you said statistics as
5 being part of the building block to DNA. Is it fair to say that
6 when we're talking about DNA analysis it's reported in numbers?

7 A That is correct. Anytime we include an individual in a
8 profile, we report a statistic associated with that.

9 Q So really no way to run from numbers or statistics when
10 we're talking about DNA, fair to say?

11 A That is correct.

12 Q All right. When SLED reports DNA, is it fair to say they
13 report it in statistical probabilities or propositions?

14 A That's correct.

15 Q Can you explain just generally, what does that mean, like a
16 proposition or -- yeah, a proposition.

17 A We report what are called likelihood ratios. And a
18 likelihood ratio is two different scenarios that can best explain
19 a DNA profile. And that set of comparisons is called a
20 proposition set.

21 Q Okay. And I think it will make more sense when we really
22 start getting into it. All right. Now, in reference to this
23 case, your SLED lab no. L19-02-418, were you asked to conduct DNA
24 analysis on some items submitted to SLED?

25 A I was.

1 Q And you mentioned this before. When you're talking about
2 DNA analysis, you're talking about comparing, is it fair to say,
3 known standards to unknown samples?

4 A That is correct.

5 Q And what does that mean, known standards, if not obvious?

6 A A known standard is DNA taken directly from an individual so
7 that we know that it is their DNA. This is usually from inside
8 of the cheek or in the form of a blood sample.

9 Q And did you receive known samples in this case?

10 A I did.

11 Q All right.

12 ATTORNEY OSBORNE: Beg the Court's indulgence.

13 THE COURT: Yes.

14 ATTORNEY OSBORNE: May I approach, Your Honor?

15 THE COURT: You may.

16 Q I'm going to show you State's 206, 186, 209 through 211, and
17 214. And can you tell me if you recognize those items.

18 A I do.

19 Q Okay. And starting off with 206, and that's SLED item 132.
20 Well, let me do it another way. When is it that you came into
21 possession of these items?

22 A For SLED item no. 10, which is State's Exhibit 214, I
23 received that on March 12th, 2019.

24 Q Did it appear to be damaged, altered or tampered in any way
25 when you received it?

1 A It did not.

2 Q Okay. Next?

3 A For SLED container N, which is the State's Exhibit 210, and
4 these were buccal swabs from Devonte Major, I received these on
5 April 9th, 2021.

6 Q Okay.

7 A SLED container O, which is the State's Exhibit 211, and
8 threes are buccal swabs from Elijah Green, I received these on
9 April 9th, 2021.

10 For State's -- SLED container N -- this is State's Exhibit
11 209, and these are buccal swabs from Polo Salazar, I also
12 received those on April 9th of this year, 2021.

13 For SLED item 32, State Exhibit 206, these are buccal swabs
14 from Marcus Porter, I received those on March 12th, 2019.

15 And SLED item 38, which is State's Exhibit 186, and these
16 are, this is a blood spot from Joe Weaver, I received that item
17 on -- I apologize. On June 30th of 2020.

18 Q And the same question. Did any of those items appear
19 damaged, altered or tampered in any way?

20 A They did not.

21 Q And while you're up I'll go ahead and show you this one,
22 state's 172. Can you take a look at that and tell me if you
23 recognize that.

24 A Yes. This is SLED container I.

25 Q And what is it?

1 A This container held SLED items 34.1, 34.2, 34.2.3, 35.4.1,
2 35.5.1, 35.6, 35.7, 35.7.1, 35.7.2, 36.1, 36.2, 37.1.1, 37.2.1,
3 37.2.2, 37.2.2.2, 44.1 and 44.2.

4 Q Okay. And were these items submitted to you from, well,
5 maybe not directly, but from serology?

6 A That is correct.

7 Q And when was it that you came into possession of those?

8 A I received these items on February 26th of 2020.

9 Q Okay. And generally speaking, is it fair to say that what
10 you're asked to do is to compare the samples from serology in 172
11 to the known standards to see what results you come up with?

12 A That is correct.

13 Q Okay. You can have a seat again. Thanks so much. And then
14 we'll just go ahead and get right into your findings.

15 All right. I'll start with SLED item no. 12, which is
16 labeled as a swab from marker 11 collected from the living room.
17 Did you have the opportunity to analyze this object, or this
18 item?

19 A I did.

20 Q Well, you know, I'm going to ask you like this. When you
21 analyze a profile, and that's what we call when you get that
22 mixture together, what is one of the first things you're looking
23 at? Are you trying to find the number of contributors to the
24 profile?

25 A That is correct. We will determine if it is a single

1 source, meaning one person is on the item, or if it's a mixture,
2 meaning that multiple people are on the item at the same time.

3 Q Okay. And in relation to SLED item 12, what was your
4 finding, was it a single source or multiple contributors?

5 A The DNA profile was interpreted as single source.

6 Q And we'll just get right into our findings on that one.
7 What, if any, results did you reach when you looked at that?

8 A Polo Salazar, Devonte Major, Muanah Fortune, Elijah Green
9 and Marcus Porter are excluded as possible contributors. The DNA
10 profile was interpreted as single source.

11 And as I stated earlier, we report in likelihood ratios, so
12 we will have scenario where the person we're comparing to is
13 always included, and the second scenario is that they're excluded
14 or if it's another individual. Then we'll make a calculation,
15 and the number is reflecting which of those two scenarios is more
16 likely to have occurred.

17 So in this case I am comparing Joe Weaver. The first
18 scenario is Joe Weaver contributed the DNA profile, and the
19 alternative scenario is it's an unidentified, unrelated person,
20 meaning it is not him.

21 The result of that comparison is the DNA profile is
22 approximately 2.7 octillion times more likely if Joe Weaver
23 contributed the profile than if an unidentified, unrelated
24 individual contributed the profile.

25 So that statistic is supporting the scenario where Joe

1 Weaver contributed the DNA profile based on the DNA.

2 Q And was that swab tested presumptive for blood?

3 A That's correct, presumptive testing for blood was positive.

4 Q Okay. Moving on to 13. This is labeled as a swab from
5 marker 10, collected from a projectile. Was that tested as
6 presumptive for blood?

7 A Yes. Presumptive testing for blood was positive.

8 Q All right. What results, if any, did you come to when you
9 analyzed that item?

10 A Polo Salazar, Devonte Major, Muanah Fortune, Elijah Green
11 and Marcus Porter are excluded as possible contributors. The DNA
12 profile was interpreted as single source.

13 Scenario one is Joe Weaver contributed the DNA profile
14 versus the possibility that it's an unidentified, unrelated
15 individual that contributed the profile.

16 The result of that comparison is the DNA profile is
17 approximately 2.7 octillion times more likely if Joe Weaver
18 contributed the profile than if an unidentified, unrelated
19 individual contributed the profile.

20 Q Okay. Going on into SLED item no. 14, which is labeled oral
21 swab from the inside of the dog's mouth. Were you able to do
22 anything with that?

23 A The partial DNA profile developed is not suitable for
24 interpretation.

25 Q Just couldn't do anything with it; huh?

1 A There was not enough DNA developed.

2 Q Okay. Item 34.1, which is labeled a swab from scrapings
3 from the entire interior of an orange ski mask. Can you tell us,
4 on that DNA profile, how many contributors were found?

5 A Four individuals.

6 Q All right. And did you compare that to the known standards?

7 A I did.

8 Q And what results, if any, did you come up with?

9 A Polo Salazar, Muanah Fortune, Elijah Green, Marcus Porter
10 and Joe Weaver are excluded as possible contributors.

11 This comparison is for Devonte Major. The first scenario is
12 Devonte Major and three unidentified, unrelated individuals
13 contributed to the mixture versus it being four unidentified,
14 unrelated individuals, meaning he is not included as a
15 contributor.

16 The result of that comparison is the DNA profile is
17 approximately 370 trillion times more likely if Devonte Major and
18 three unidentified, unrelated individuals contributed to the
19 mixture than if four unidentified, unrelated individuals
20 contributed to the mixture.

21 Q 370 trillion times?

22 A That is correct.

23 Q Item 34.2.1, it's labeled as a hair from the orange ski
24 mask. What results, if any, did you come up with that?

25 A No DNA profile was developed.

1 Q All right. 34.2.2, another hair from the orange ski mask.
2 How about that one?

3 A Polo Salazar, Muanah Fortune, Elijah Green, Marcus Porter
4 and Joe Weaver are excluded as possible contributors. The DNA
5 profile was interpreted as single source. The first scenario is
6 Devonte Major contributed the DNA profile versus the possibility
7 that it's an unidentified, unrelated individual that contributed
8 the profile.

9 The result of that comparison is the DNA profile is
10 approximately 310 septillion times more likely if Devonte Major
11 contributed the profile than if an unidentified, unrelated
12 individual contributed to the profile.

13 Q One hair, single source?

14 A That is correct.

15 Q All right. Well, let's get into this one, 35.4.1, which is
16 labeled as swabs from the entire pocketknife. And looking at --
17 was the mixture, or the swabs, obtained in this, for this sample,
18 was it compared to Joe Weaver?

19 A It was.

20 Q And what were the results as it compares -- well, let me ask
21 you this. How many contributors were on that mixture?

22 A The DNA profile was interpreted as a mixture originating
23 from two individuals.

24 Q And you did compare that mixture to Joe Weaver?

25 A That is correct.

1 Q Okay. And what were your findings?

2 A The first scenario is Joe Weaver and an unidentified,
3 unrelated individual contributed to the mixture versus it being
4 two unidentified, unrelated individuals that contributed to the
5 mixture.

6 The result of that comparison is DNA profile is
7 approximately 340 septillion times more likely if Joe Weaver and
8 an unidentified, unrelated individual contributed to the mixture
9 than if two unidentified, unrelated individuals contributed to
10 the mixture.

11 Q All right. I want to move to 35.6., which is labeled as
12 swab from scrapings of the entire neckline of the navy jumpsuit.
13 What, if any, results did you come up with with that?

14 A The DNA profile developed a mixture of at least five
15 individuals. Due to the complexity of the mixture, no further
16 interpretation will be offered.

17 Q Okay. 36.1, swab from the scraping of the entire interior
18 of the camouflage glove.

19 A The DNA profile developed is a mixture. Due to the
20 complexity of the mixture and the inability to determine the
21 number of contributors, no further interpretation will be
22 offered.

23 Q All right. Can more than one person touch an item and leave
24 their DNA?

25 A That is correct.

1 Q 37.1.1, which is labeled as a swab from the scraping of the
2 entire interior of the knit hat. First, how many profiles were
3 developed from this mixture?

4 A The DNA profile was interpreted as a mixture originating
5 from four individuals.

6 Q And did you compare that mixture to one Polo Salazar?

7 A I did.

8 Q And what, if any, findings did you come up with that?

9 A First scenario is Polo Salazar and three unidentified,
10 unrelated individuals contributed to the mixture versus the
11 possibility of it being four unidentified, unrelated individuals
12 that contributed to the mixture.

13 The result of that comparison is the DNA profile is
14 approximately 1.4 septillion times more likely if Polo Salazar
15 and three unidentified, unrelated individuals contributed to the
16 mixture than if four unidentified, unrelated individuals
17 contributed to the mixture.

18 Q Okay. Is it fair to say from this that Devonte Major,
19 Muanah ---

20 ATTORNEY HENSLEY: Objection to leading, Your Honor.

21 ATTORNEY OSBORNE: Okay.

22 THE COURT: Sustained.

23 Q Who did you exclude as being a contributor?

24 A Devonte Major, Muanah Fortune, Elijah Green, Marcus Porter
25 and Joe Weaver.

1 Q 37.2.1, which is labeled as a swab from scraping of the
2 entire interior of a black-orange glove. How many profiles were
3 found on this mixture?

4 A The DNA profile was interpreted as a mixture originating
5 from four individuals.

6 Q Okay. And who were you able to eliminate as contributing?

7 A Devonte Major, Muanah Fortune, Elijah Green, Marcus Porter
8 and Joe Weaver.

9 Q All right. I didn't hear Polo Salazar. What, if any,
10 findings did you come up with in relation to him?

11 A For the comparison of Polo Salazar and three unidentified,
12 unrelated individuals versus it being four unidentified,
13 unrelated individuals that contributed to the mixture, is the DNA
14 profile is approximately 12 octillion times more likely if Polo
15 Salazar and three unidentified, unrelated individuals contributed
16 to the mixture than if four unidentified, unrelated individuals
17 contributed to the mixture.

18 Q And now, 37.2.2.1 is labeled as a hair from the black-orange
19 glove. Was this a single source or a multiple source?

20 A The DNA profile was interpreted as single source.

21 Q Okay. What findings did you come up with with that?

22 A Devonte Major, Muanah Fortune, Elijah Green, Marcus Porter
23 and Joe Weaver are excluded as possible contributors.

24 Q All right. And now we have another, 37.2.2.2, which is also
25 another hair found in the black-orange glove. Who were you able

1 to eliminate from the known standards as contributing to that DNA
2 mixture?

3 A Polo Salazar, Devonte Major, Muanah Fortune, Elijah Green,
4 Marcus Porter and Joe Weaver are excluded as possible
5 contributors.

6 Q All right. Last one, 44.1, cutting from the middle finger
7 of a latex glove. How many DNA profiles were found in this
8 mixture?

9 A The DNA profile was interpreted as a mixture originating
10 from two individuals.

11 Q All right. And what, if any, were your findings when you
12 analyzed that?

13 A Polo Salazar, Devonte Major, Muanah Fortune, Elijah Green
14 and Marcus Porter are excluded as possible contributors.

15 For comparison of Joe Weaver to the mixture, the first
16 scenario is Joe Weaver and an unidentified, unrelated individual
17 contributed to the mixture, to the DNA profile, versus the
18 scenario of it being two unidentified, unrelated individuals that
19 contributed to the DNA profile.

20 The result of that comparison is the DNA profile is
21 approximately 1.2 octillion times more likely that Joe Weaver and
22 an unidentified, unrelated individual contributed to the profile
23 than if two unidentified, unrelated individuals contributed to
24 the profile.

25 ATTORNEY OSBORNE: Your Honor, at this time the state would

1 seek to admit 206, 209, 210, 211, 214, 186 and 172 into evidence.

2 THE COURT: All right. Yes, ma'am?

3 ATTORNEY GAY: I believe that those are the ones I've
4 written down, Your Honor, and I don't have an objection to any of
5 them.

6 THE COURT: All right.

7 ATTORNEY HENSLEY: Without objection.

8 THE COURT: Very well. In evidence.

9 (WHEREUPON, State's Exhibits 172, 186, 206, 209, 210, 211
10 and 214 are entered into the record.)

11 ATTORNEY OSBORNE: No further questions.

12 THE COURT: All right. Ms. Gay, cross-examination?

13 ATTORNEY GAY: I have no questions for this witness on
14 behalf of Mr. Green.

15 THE COURT: All right. Yes, ma'am?

16 ATTORNEY HENSLEY: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY HENSLEY:

19 Q I'm Laree Hensley, I represent Mr. Major. I just have a few
20 questions. So you're creating propositions; right?

21 A That is correct.

22 Q From known standards and things that have been tested;
23 right?

24 A That is correct.

25 Q And all you can tell us -- let's talk about, I think it's,

1 State's 10, which was the orange hat. The orange mask, I'm
2 sorry. And that orange mask contained Devonte Major's DNA;
3 correct?

4 A I just want to clarify, is this SLED item 34.1?

5 Q 34.1, yes.

6 A There was a positive association with Devonte Major to the
7 mixture.

8 Q But that association doesn't say that on January the 28th,
9 2019, Devonte Major had on an orange mask, that orange mask;
10 right?

11 A That is correct.

12 Q It doesn't tell us anything about when Devonte Major came in
13 contact with that orange mask; correct?

14 A That is correct.

15 Q And you can't tell us anything about that?

16 A That is correct.

17 Q So at best all you can tell us is that at some point in time
18 Devonte Major came in contact with that orange mask?

19 A That is correct.

20 ATTORNEY HENSLEY: I think that's all the questions I have.
21 Thank you so much.

22 THE COURT: All right. Redirect?

23 ATTORNEY OSBORNE: None, Your Honor.

24 THE COURT: All right. Is this witness free to leave, and
25 is there any objection?

1 ATTORNEY OSBORNE: None from the state.

2 ATTORNEY GAY: No objection.

3 ATTORNEY HENSLEY: No.

4 THE COURT: You are free to go.

5 Call your next witness, please.

6 ATTORNEY OSBORNE: State calls Agent Nicole Hardin.

7 CLERK OF COURT: If you'll please raise your right hand, and
8 state your full name for the record.

9 THE WITNESS: Nicole Hardin.

10 CLERK OF COURT: If you'll spell your last name for the
11 record.

12 THE WITNESS: H-a-r-d-i-n.

13 NICOLE HARDIN,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: Your witness.

17 ATTORNEY OSBORNE: Thank you, Judge.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY OSBORNE:

20 Q Okay, Ms. Hardin. While you're getting settled there, what
21 is your occupation?

22 A I am a forensic scientist with the South Carolina Law
23 Enforcement Division in the trace evidence department.

24 Q And if you could, please, just move the microphone up just a
25 little bit closer. All right. How long have you been with SLED?

1 A Three-and-a-half years.

2 Q And have you worked with the trace lab the entire time that
3 you've been there?

4 A I have.

5 Q And what do you test or analyze in the trace lab?

6 A In the trace evidence department at SLED, we analyze things
7 such as glass, fibers, paint, fire debris and gunshot residue.

8 Q Okay. And we got you here today for gunshot residue, fair
9 to say?

10 A Yes, sir.

11 Q As a forensic scientist, what is your educational
12 background?

13 A I have a Bachelor of Science degree in chemistry, with a
14 concentration in forensic science, from Methodist University.

15 Q Have you received any specialized training as it relates
16 specifically to gunshot primer residue?

17 A I have. Upon beginning at SLED, I began a
18 year-and-a-half-long training program that consisted of a series
19 of written, practical and oral examinations, all of which I had
20 to pass, so it covered all aspects of my duty. I also had to, I
21 analyzed casework under direct supervision of a competent
22 analyst. I had a competency exam where I had to correctly report
23 my findings, and then I had a mock court based on that case. And
24 then I also have attended some classes at Hooke College of
25 Applied Sciences in Westmont, Illinois, some of those being

1 scanning electronic microscopy and gunshot residues
2 identification.

3 Q Okay. How many cases involving gunshot primer residue would
4 you guess that you've analyzed?

5 A In training, I have analyzed around 400 samples. And then
6 out of training, my own casework, I have analyzed around 1,200
7 samples.

8 Q Have you ever been qualified as an expert in the field of
9 gunshot primer residue analysis and identification?

10 A I have.

11 Q How many times?

12 A Six.

13 Q In what courts?

14 A The South Carolina General Sessions.

15 Q General Sessions Court, okay.

16 ATTORNEY OSBORNE: Your Honor, at this time the state would
17 offer Agent Hardin as an expert in the field of gunshot primer
18 residue analysis.

19 THE COURT: All right. Any voir dire?

20 ATTORNEY GAY: No, ma'am. And I have no objection to her
21 being qualified as an expert.

22 THE COURT: All right.

23 ATTORNEY HENSLEY: No objection, Your Honor.

24 THE COURT: Very well. So qualified.

25

1 Q All right. Let's go ahead and get into it. What is gunshot
2 primer residue?

3 A Gunshot residue is the mixture of chemicals that comes out
4 of a gun when it is discharged. This comes from the primer, the
5 propellant and the projectile.

6 What we're specifically looking for comes from a primer, and
7 are microscopic, molten particles containing the elements lead,
8 barium and antimony.

9 Q All right. Are there any other sources other than from
10 firing a gun that you might get a false positive gunshot primer
11 residue test?

12 A There are a couple things that are similar. However, with
13 specific elements and the amount present in a sample, we can rule
14 those out.

15 Q Now, in regards to this investigation, I believe it is your
16 lab number 19-02-418 (sic), were you asked to provide -- I was
17 just going to say GSR. Were you asked to perform GSR analysis?

18 A I was.

19 Q All right. Okay, let's do it like this. I'm going start by
20 showing you State's 201. And I believe that's going to be from
21 SLED item 29. Well, you know what, might be easier just to do it
22 like this.

23 (WHEREUPON, State's Exhibit 207 is marked for
24 identification.)

25 Q I'm going show you 207. Do you recognize this?

1 A It is SLED lab no. L19-02-418, container L, which has all of
2 the particle lifts that were analyzed in this case. I know
3 that -- I recognize it because it has our, this unique,
4 identifying lab number, the sticker, and then it also has my
5 initials and the date of when I received this evidence, and the
6 analysis that I was performing.

7 Q Okay. And who -- well, when is it that you received that?

8 A I received it on April 24th, 2020.

9 Q Okay. And I believe Jamie Hall is -- does she work -- what
10 lab, where does she work again?

11 A Excuse me?

12 Q Jamie Hall, where does she work, again?

13 A She works at SLED, trace evidence department.

14 Q And is she the individual who put those items in there?

15 A She took ---

16 Q The lifts?

17 A --- the lifts off of the clothing, yes.

18 Q Okay. All right. Let's start talking with talking about --
19 now, I realize that you, you never saw the clothing itself; you
20 only saw the lifts. Is that correct?

21 A That is correct.

22 Q And we've already heard testimony from Ms. Hall. So let's
23 start with, I'm showing you, State's 201. And I believe this is
24 going to be SLED 29. This has previously been identified as
25 Devonte Major, a jacket recovered from Devonte Major.

1 Did you have the occasion to perform any analysis on lifts
2 taken from this item?

3 A From item 29, a black Special Forces Operational Detachment
4 jacket submitted as belonging to Devonte Major, yes.

5 Q Okay. And what were your results?

6 A My results are one particle characteristic of gunshot primer
7 residue was found. In general, particle characteristics of
8 gunshot primer residue are microscopic, molten particles that
9 contain the elements lead, barium and antimony.

10 Gunshot primer residue can come from being in the vicinity
11 of the discharge of a firearm or coming into contact with a
12 surface that has gunshot primer residue on it.

13 However, no information can be provided as to the timeframe
14 in which this particle was deposited.

15 Q And I think you have covered everything right there. You
16 can't timestamp GSR, is that fair to say? And that's really what
17 you just said; right?

18 A That's correct, I cannot tell you when it got there.

19 Q And you also can't say that just because you found GSR on
20 this garment that doesn't mean that the person who was wearing
21 the garment fired a gun?

22 A Correct.

23 Q Is that fair to say? And I think you, even in your
24 disclaimer, you even said that he could have been within the
25 vicinity when the gun was fired, is that fair to say?

1 A Yes, sir, that's fair to say.

2 Q Or he may have come into contact with a surface that had GSR
3 on it, also fair to say?

4 A Correct.

5 Q I really just repeated what you just said; didn't I?

6 A That's fine.

7 Q Now I'm showing you 202. And did you have the occasion, in
8 your SLED 25, to conduct any analysis on particles taken from
9 this item?

10 A Item 25 is one camouflage Mossy Oak hoodie submitted as
11 belonging to Polo Salazar. And I did perform analysis.

12 Q What were the results of your analysis?

13 A For this item, particles characteristic of gunshot primer
14 residue were found. In general, particles characteristic of
15 gunshot primer residue are microscopic, molten particles that
16 contain the elements lead, barium and antimony. Gunshot primer
17 residue can come from being in the vicinity to the discharge of a
18 firearm or coming into contact with a surface that has gunshot
19 primer residue on it.

20 However, no information can be provided as to the timeframe
21 in which these particles were deposited.

22 Q All right. Moving on to State's 203, which is going to
23 correspond to your SLED item no. 27. Did you have the occasion
24 to analyze lifts taken from 27?

25 A I did.

1 Q And what were your results?

2 A For one black American Eagle hooded sweatshirt submitted as
3 belonging to Muanah Fortune, my results are particles
4 characteristic of gunshot primer residue were found.

5 In general, particles characteristic of gunshot primer
6 residue are microscopic, molten particles that contain the
7 elements lead, barium and antimony.

8 Gunshot primer residue can come from being in the vicinity
9 to the discharge of a firearm or coming into contact with a
10 surface that has gunshot primer residue on it.

11 However, no information can be provided as to the timeframe
12 in which these particles were deposited.

13 Q Moving on to 204, which is your 28. Did you analyze lifts
14 taken from SLED 28?

15 A I did.

16 Q And what was your results?

17 A For one black, Chaps jacket submitted as belonging to Elijah
18 Green, my results are particles characteristic of gunshot primer
19 residue were found.

20 In general, particles characteristic of gunshot primer
21 residue are microscopic, molten particles that contain the
22 elements lead, barium and antimony.

23 Gunshot primer residue can come from being in the vicinity
24 to the discharge of a firearm or coming into contact with a
25 surface that has gunshot primer residue on it.

1 However, no information can be provided as to the timeframe
2 in which these particles were deposited.

3 Q Lastly, State's, showing you State's, 205, your 26. Did you
4 analyze lifts taken from 26?

5 A I did.

6 Q And what were your results?

7 A For one black, North Face hooded jacket submitted as
8 belonging to Elijah Green, my results are particles
9 characteristic of gunshot primer residue were found.

10 In general, particles characteristic of gunshot primer
11 residue are microscopic, molten particles that contain the
12 elements lead, barium and antimony.

13 Gunshot primer residue can come from being in the vicinity
14 to the discharge of a firearm or coming into contact with a
15 surface that has gunshot primer residue on it.

16 However, no information can be provided as to the timeframe
17 in which the particles were deposited.

18 Q Okay. So gunshot primer residue was found on every garment
19 that was submitted, or that was tested by you?

20 A Yes, sir.

21 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
22 to admit 207 into evidence.

23 THE COURT: Any objection?

24 ATTORNEY GAY: No objection at this time from Mr. Green.

25 ATTORNEY HENSLEY: None, Your Honor.

1 THE COURT: Very well.

2 (WHEREUPON, State's Exhibit 207 is entered into the record.)

3 ATTORNEY OSBORNE: No further questions.

4 THE COURT: Cross-examination, Ms. Gay?

5 ATTORNEY GAY: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY GAY:

8 Q How are you today?

9 A I'm good. How are you?

10 Q Good. Long day. I'm Melisa Gay. I represent Elijah Green.
11 And I appreciate you coming today. I just have a couple of
12 questions, Ms. Hardin.

13 So you read your report, and when you read the report you
14 have, we'll call it, a blurb, or some standard language, that you
15 put in your reports. Is that correct?

16 A Yes, ma'am.

17 Q And in that standard language -- and I know the solicitor
18 asked you about this -- it says, No information can be provided
19 as to the timeframe in which these particles were deposited.
20 That's standard language for your results?

21 A Yes, ma'am.

22 Q And that's because scientifically you could not, as he said,
23 have a timestamp on things?

24 A Correct. We just test for presence or absence.

25 Q Right. And so, you know, just to break it down in

1 commonsense terms, things/particles that were on these jackets
2 could have been on there a day before or a week before or a long
3 time before?

4 A That's a possibility.

5 Q And these are outer garments, garments that, you know, like
6 the jacket, things like that, you know, things that you're
7 probably not going to throw in your -- and this may be
8 speculation, I don't want to ask but, you know, it's possible
9 they don't get washed that often. What do you think?

10 A About what, washing them often?

11 Q It is a jacket?

12 A These are jackets.

13 Q And they're not T-shirts or any cotton wear?

14 A I don't know what they are made of, but they are jackets and
15 hoodies.

16 Q Right. So like I said, they're not just pullover T-shirts
17 or any type of shirt that you wear that's got buttons up?

18 A There were no buttons.

19 Q And we have them in evidence. I mean, the jury will be able
20 to look at these items.

21 ATTORNEY GAY: I think that's it, Your Honor. I just want
22 to make sure and confer with Ms. Hensley.

23 THE COURT: All right. Sure.

24 ATTORNEY GAY: I do have one other question.

25 THE COURT: All right.

1 Q When you received these items, they were in separate --
2 well, the stuff that you received was not the actual cloth items,
3 they were the tubes and the scrapings; correct?

4 A They are particle lifts that were collected off of the items
5 of clothing that were submitted.

6 Q Okay. So based on your training and the type of classes
7 that you've taken, would you agree with me that if items -- and I
8 think you even mentioned it -- are closely connected to each
9 other, touching each other, that these particles can transfer
10 from one item to the other?

11 A They can transfer within an item of clothing.

12 Q Well, I mean, like, if one item of clothing was on top of or
13 near, touching another item of clothing, a particle, or one or
14 more particles, could be transferred from one to the other?

15 A That is a possibility. However, in this case I believe that
16 all of the items were packaged in separate paper bags. So each
17 item -- item 25 was in its own paper bag; item 26 was in its own
18 paper bag; item 28 was in its own paper bag; 27 was in its own
19 paper bag.

20 Q And the only thing -- the last question I'm going to ask you
21 is, that's when it got to SLED. You have no idea what condition
22 it was in before it got to SLED?

23 A Correct.

24 ATTORNEY GAY: I have no further questions. Thank you, Your
25 Honor.

1 THE COURT: Thank you. Yes, ma'am?

2 ATTORNEY HENSLEY: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, ma'am.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY HENSLEY:

7 Q Agent Hardin, right?

8 A You can call me Ms. Hardin. That's fine.

9 Q Ms. Hardin, I'm Laree Hensley, I represent Devonte Major.

10 So I have a couple of questions. When you conducted your
11 analysis, you prepared SLED trace evidence, gunshot primer
12 residue, SEM and results worksheet; correct?

13 A Yes, ma'am.

14 Q And on that worksheet you actually listed the number of
15 particles you found on each item; correct?

16 A Correct.

17 Q And so on item 29, which was the black jacket -- let me just
18 be sure I say that right. Particle lifts. One black Special
19 Forces Operational Detachment jacket submitted as belonging to
20 Devonte Major; right? On the right chest you found zero
21 particles, correct, on side one?

22 A On side one, thank you. On the right chest, correct.

23 Q And on the right sleeve you found one particle; correct?

24 A Yes, ma'am.

25 Q And on the left chest you found zero particles; correct?

- 1 A Correct.
- 2 Q And on the left sleeve you found zero particles; correct?
- 3 A Correct.
- 4 Q And so the total for that jacket was a single particle;
- 5 correct?
- 6 A Correct.
- 7 Q And on side 2 you didn't find any particles at all, on item
- 8 29?
- 9 A On side 2, no, ma'am.
- 10 Q So on item 25, which is the Mossy Oak hoodie submitted as
- 11 belonging to Polo Salazar, on the right chest you found one
- 12 particle?
- 13 A Correct.
- 14 Q And on the right sleeve you found a particle?
- 15 A Correct.
- 16 Q And on the left chest you found a particle?
- 17 A Correct.
- 18 Q And on the left sleeve you found two particles?
- 19 A Correct.
- 20 Q So a total of five for Mr. Salazar; correct?
- 21 A For item 25, yes.
- 22 Q Item 25.
- 23 A Yes, ma'am.
- 24 Q So on item 27, which is one black, American Eagle hooded
- 25 sweatshirt submitted as belonging to Muanah Fortune -- I think

1 that's your 27, right, black, American Eagle sweatshirt?

2 A Yes, ma'am.

3 Q So on the right chest you found four particles; correct?

4 A Correct.

5 Q And on the right sleeve you found three particles?

6 A Correct.

7 Q And on the left chest you found four particles?

8 A Correct.

9 Q And on the left sleeve you found four particles?

10 A Correct.

11 Q So for Mr. Fortune, on that item of clothing, there were 15
12 particles?

13 A Correct.

14 Q And on item 28, one black Chaps jacket submitted as
15 belonging to Elijah Green, you found zero particles on the right
16 chest?

17 A Correct.

18 Q Two particles on the right sleeve?

19 A Correct.

20 Q Zero particles on the left chest?

21 A Correct.

22 Q Two particles on the left sleeve?

23 A Correct.

24 Q For a total of four particles?

25 A Yes, ma'am.

1 Q And you can't tell us when these particles got there;
2 correct?

3 A That is correct.

4 Q And it's possible, let's just say for item 29, Mr. Major, if
5 he had been merely present in the vicinity of the discharge of a
6 firearm, he could have gotten that single particle on him;
7 correct?

8 A That's a possibility.

9 ATTORNEY HENSLEY: That's all the questions I have. Thank
10 you so much.

11 THE COURT: Redirect?

12 **REDIRECT EXAMINATION**

13 BY ATTORNEY OSBORNE:

14 Q Can you draw any conclusions at all from the presence, or I
15 should say the number, of particles on a jacket as to whether
16 they were shooting a gun or in the presence when a gun was being
17 fired?

18 A I cannot. I check for presence or absence.

19 Q It's just presence or absence?

20 A That's correct.

21 ATTORNEY OSBORNE: Okay. No further question.

22 THE COURT: Ms. Gay?

23 ATTORNEY GAY: No, ma'am. No further questions.

24 THE COURT: All right. Yes, ma'am?

25 ATTORNEY HENSLEY: Nothing, Your Honor.

1 THE COURT: And is this witness free to leave, and is there
2 any objection?

3 ATTORNEY GAY: No, ma'am.

4 ATTORNEY OSBORNE: None from the state.

5 ATTORNEY HENSLEY: No, Your Honor.

6 THE COURT: Very well, you're free to go.

7 Call your next witness, please.

8 ATTORNEY OSBORNE: Your Honor, may we broach?

9 THE COURT: You surely can.

10 (WHEREUPON, an off-the-record discussion was held at
11 sidebar.)

12 THE COURT: All right. Ladies and gentlemen, I just had an
13 opportunity to confer with counsel. And the trial of a case is
14 something that counsel plans for, and normally and typically it
15 proceeds slower than anticipated, and every once in awhile it can
16 proceed a little bit quicker than anticipated.

17 The state has informed me that they have one final witness
18 who is not/was not available this afternoon. It was not believed
19 that that was going to present a problem. That witness will be
20 here in the morning.

21 I would share with you, however, if that witness was to
22 begin, we would take our afternoon break, we would begin and,
23 quite frankly, I think that would push us beyond the time that I
24 like to conclude in the afternoon. So it's one of those
25 situations that it's probably best.

1 And there are certainly things that we can do and will do to
2 prepare for tomorrow, and prepare for you all for tomorrow. So
3 in just a moment I am going to be excusing you.

4 But I did want, a couple of other things, I wanted to
5 mention to you. Of course, be mindful that curiosity's going to
6 be heightened. Don't want anybody upset with you; let them be
7 upset with me, but the instruction is, do not discuss this matter
8 or allow anyone to discuss it with you. Do not read anything,
9 listen to anything, do not do any research about this matter.

10 Be mindful that there could be news accounts. I don't
11 anticipate that, but it could, be, so do not listen to anything,
12 don't read anything, radio, television, internet, newspapers.
13 Please be mindful of that.

14 With regards to your cellphones, we got/we have a spot for
15 your cellphones. Just be sure that you do not have your
16 cellphone with you while you're serving on the jury. Just
17 remember to do just as y'all have done, and put your cellphone in
18 the new cellphone spot.

19 Ladies and gentlemen, I am hopeful -- I'm hopeful, but it's
20 not a sure, of course. In this matter, trials are -- it's
21 difficult to anticipate exactly how long they will last. But I
22 am optimistic that you will receive this case tomorrow for your
23 deliberations. I'm optimistic. And I probably just caused it so
24 that you will not get it tomorrow. But I am optimistic.

25 Please be mindful of the admonitions, and have a very good

1 evening. And I look forward to seeing you in the morning at
2 9:30.

3 (WHEREUPON, the jury is escorted out of the courtroom at
4 3:48 p.m.)

5 THE COURT: All right. Counsel, I would appreciate having
6 an informal charge conference. Y'all take a break. We are
7 printing our charge currently, and we'll go over it. So take a
8 short break, and y'all come back in chambers.

9 ATTORNEY GAY: Your Honor, I think the defendant --

10 THE COURT: Did you have any --

11 ATTORNEY GAY: When are we going to talk about whether they
12 want to testify?

13 THE COURT: After that. I'm not going to keep you long.

14 ATTORNEY GAY: All right.

15 (WHEREUPON, court recessed for the day at 3:49 p.m. on
16 Thursday, July 15, 2021, and reconvened at 9:59 a.m. on Friday,
17 July 16, 2021.)

18 ATTORNEY OSBORNE: Judge, just as a preliminary matter, and
19 I'm sorry I didn't catch her name, but she is a fellow and she is
20 here in training, and she was going to watch Dr. Batalis testify.
21 Is it okay if she sat in the back in one of the empty rows, or
22 would you like her to sit downstairs and view it from the Webex?

23 THE COURT: I think she's -- I think she's perfectly
24 located.

25 ATTORNEY OSBORNE: Okay.

1 THE COURT: Yeah. I think she's perfectly located. She's
2 here to observe. Any concern about that?

3 ATTORNEY GAY: No, ma'am.

4 ATTORNEY HENSLEY: Where is she?

5 THE COURT: She's a tiny little lady. She's right here.

6 ATTORNEY HENSLEY: I can't see. I don't know where she's
7 located, so I don't -- I don't have any objection, Your Honor.

8 (WHEREUPON, an off-the-record discussion was held at
9 sidebar.)

10 MATTER(S) OF LAW

11 THE COURT: Anything from the state before we begin this
12 morning?

13 ATTORNEY OSBORNE: Yes. Your Honor, so, Dr. Batalis, we're
14 calling him at our next witness.

15 THE COURT: Yes.

16 ATTORNEY OSBORNE: And as part of the victim's toxicology
17 report, I guess there's a couple matters. The victim passed. In
18 his toxicology -- and I might be missing some of this, but there
19 is -- there's a presence of methamphetamine found in his tox, as
20 well as THC, marijuana.

21 The state's position obviously is that's irrelevant. We
22 haven't heard any testimony at this point to indicate that this
23 is a self-defense case which I guess might somehow bring meth
24 into the equation. If that were to come out, then I can see
25 where that could potentially be relevant, depending upon what the

1 testimony was. But at this point I can't see any relevance to
2 meth or THC being in the victim's tox to the case at hand.

3 Ethanol, on the other hand, I think is. And I guess
4 Ms. Hensley had brought out testimony from Marcus Porter
5 indicating that the victim wasn't drinking. So a negative
6 ethanol in his toxicology could discredit Marcus Porter. So I
7 think that would be relevant. But the marijuana and the
8 methamphetamine, the state's position, would not be relevant.

9 THE COURT: I understand. Yes, ma'am?

10 ATTORNEY GAY: Well, I believe that it's relevant. And I
11 think Laree's going to emphasize this even more, and this is one
12 of the things I just mentioned to your clerk, and we'll talk
13 about later. I believe that we should get a voluntary
14 manslaughter charge in this case because ---

15 THE COURT: Okay.

16 ATTORNEY GAY: --- because, as the testimony was presented,
17 people were inside the house. There's dispute about credibility
18 on how they get in the house, obviously that's an issue. There
19 is a dog that does its job and basically attacks the people in
20 the house or snarls at them, or however you want to do it. The
21 dog dies. And then Joe Weaver, who ends up getting shot,
22 apparently had some kind of knife which we actually have in
23 evidence because it has his DNA on it.

24 And there's been no testimony from these two witnesses with
25 their credibility at issue at this point about why Joe Weaver

1 would have -- or, how our clients in the car may have ended up
2 with Joe Weaver's knife.

3 But we can make some assertions and some inferences that it
4 is possible that Joe Weaver was armed and that that caused some
5 type of conflict which led to his death. Now, that may not rise
6 to the level of self-defense, but it certainly should rise to the
7 level of the possibility of some type of voluntary manslaughter
8 situation, with heated passion, as opposed to an intent to kill
9 under murder. So I believe we should get a voluntary
10 manslaughter.

11 That's very important, as we move forward, with him having
12 had, somehow these people got a hold of this knife that has his
13 DNA on it. And we can make some logical steps on that.

14 But the bottom line is, is that this man had meth in his
15 system, had marijuana in his system, and not just the fact that
16 he didn't have alcohol in his system, the guy was high. And a
17 high person, as we all know, could have erratic behavior. And he
18 potentially was armed with a knife.

19 So I believe that we should have a voluntary manslaughter
20 charge. I believe that the existence in this case of evidence to
21 establish that this man could have been armed and could have been
22 high, or was high, is very relevant to this case.

23 And I'm sure Laree has other things, as well.

24 THE COURT: All right. Then let me hear that argument, as
25 well.

1 ATTORNEY HENSLEY: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, ma'am.

4 ATTORNEY HENSLEY: I would join in Lisa's motion. And I do
5 believe that there's been a lot of discussion in this case about
6 methamphetamine and marijuana and about Marcus Porter being a
7 drug dealer, and about Marcus Porter's credibility. And I think
8 that it's information, it's something that the doctor relied
9 upon. I think it's relevant to the testimony in this trial, I
10 think it's relevant to this case.

11 THE COURT: How so?

12 ATTORNEY HENSLEY: Well, because Marcus Porter still does
13 amphetamine and marijuana, and because Marcus Porter says they
14 had drinks. And I think that I should be allowed to argue that
15 the evidence suggests otherwise.

16 THE COURT: That's on the alcohol. Right?

17 ATTORNEY HENSLEY: Well, they had something.

18 ATTORNEY GAY: Well, Your Honor, they were obviously, we'll
19 call the word, partying that day, or socializing together. And
20 that man has meth in his system and that man has marijuana in his
21 system. And the state of mind of all of these people that day,
22 all the victims, all the defendants, at the time the intent was
23 going on in all of their minds about what was happening is
24 relevant to this case.

25 And the fact that they put Mr. Weaver's knife into evidence

1 that was supposedly and obviously came out of the car that our
2 clients were driving in, creates all kinds of issues about why
3 they have his knife, how they got the knife from him, was the
4 knife wielded against him. You know, all these things that are,
5 in fact, inferrible from the circumstances of the existence of
6 the knife.

7 If we didn't have the knife we wouldn't have this argument,
8 Your Honor, but because we do have the knife the jury can make
9 assumptions about that and decide this night had something to do
10 with this knife, and that that's why a man, who has meth in his
11 system -- meth makes you crazy, that's my opinion. And, you
12 know, marijuana in his system should be exceptionally relevant.

13 I'm sorry, I jumped in. I'm really passionate about this.

14 ATTORNEY HENSLEY: I think it goes to, to be perfectly
15 frank, my entire theory of the case about the truth and telling
16 the truth.

17 THE COURT: Say what now?

18 ATTORNEY HENSLEY: I just think that this information goes
19 to my entire theory of the case about the truth and about the
20 fact that this is a fact in this case that it has been
21 established, I believe, that Marcus Porter sells methamphetamine
22 and marijuana.

23 I mean, I didn't ask Marcus Porter, Y'all were smoking meth
24 and weed? But I certainly think I can argue that to a jury. And
25 I think it's relevant to the rest of the credibility of his

1 testimony.

2 THE COURT: Yes?

3 ATTORNEY OSBORNE: Could have been, could have been, could
4 have been are not facts in evidence. I mean, I can sit up here
5 and I can come up with a bunch of could have beens, too.

6 But the facts that we have in evidence are that J.B. Weaver
7 was executed. He was on the ground when he was shot seven times.
8 There is no evidence in the record that indicates that J.B.
9 Weaver was crazy or that he was fueled by meth. Absolutely none.

10 I think that, and as far as the knife goes, if evidence
11 comes into play that indicates that J.B. Weaver did pull out a
12 knife and did attack them in some way and they were forced to
13 defend themselves, then perhaps that could become relevant.

14 But with the evidence that we've heard so far, for what we
15 know that happened in that house when J.B. was murdered and
16 Marcus Porter was shot in the chest and their dog was shot and
17 killed, there's absolutely no evidence that indicates that
18 whether J.B. had meth in his system or not is relevant to this
19 case. None. Marijuana, too.

20 ATTORNEY GAY: Last thing I'm going to say, Your Honor,
21 because, as I said, I'm very serious about it. We can pick up
22 that knife and shake it and go, Uhm, what do you think?, and the
23 jury can make their own exist assumptions about what that knife
24 and the existence of that knife is.

25 Every fact in a trial should come out that has any

1 connection whatsoever to the possibility of the truth, as
2 Ms. Hensley said, of what really did happen?

3 We're obviously going to stand up in our closing argument
4 and say, You know, we can't believe anything these people say,
5 you know, what is the truth; you do we know? I mean, that's our
6 defense.

7 And so, in the scheme of things, the jury's ability to
8 appeal that, what was said in opening, and decide what they
9 believe the facts to be, that's their job. They are the fact
10 finders. But they should be entitled to know everything that was
11 going on this night.

12 And I think to exclude it becomes, I'll just say, reversible
13 error, because I think it has to be in there for the jury because
14 it is a fact and it is something that the jury needs to consider
15 in the totality in the circumstances of this event.

16 And if we are, Mr. Osborne or Mr. Young, and we say, Well,
17 you know, this is what Marcus Porters said; this is what David
18 Swibaker said and, ladies and gentlemen, you should believe that,
19 we don't need to be here. You know, this is our job, to the jury
20 realize that there's more to it than what they say. And I have
21 goose bumps, because I'm ready for closing.

22 THE COURT: Good for you.

23 ATTORNEY OSBORNE: To argue outside of the facts of evidence
24 is to argue outside of the facts that are in evidence. The only
25 facts that are in evidence are the two individuals that are still

1 alive that were inside the house whenever it went down. That
2 could easily change. If somebody else, meaning these two
3 defendants, testify and they present a different version of
4 events that happened inside of that house, then meth very well
5 could become relevant, as far as the knife.

6 But until we hear evidence, or evidence that suggests
7 something different from what we've already heard, all of that is
8 completely irrelevant.

9 Really, let's get down to what we're talking about. Really
10 what they're saying is, the fact that he had meth in his system,
11 he deserves to get executed. And that's really what we're
12 talking about. And that's completely irrelevant to what's going
13 on in this case.

14 You can't speculate that because he had meth in his system
15 that he acted irrationally when we have no evidence to suggest
16 that. If they get on the stand and they say that, then it could
17 become relevant. Otherwise, it's fact not in evidence. It's
18 completely objectionable.

19 THE COURT: Okay. So here's where we are. As I understand
20 the argument, the argument to admit the presence of substances in
21 the alleged victim's system is to explain why he might have
22 wielded a knife. Correct?

23 ATTORNEY HENSLEY: That's not my argument.

24 ATTORNEY GAY: Well ---

25 THE COURT: Isn't that your argument?

1 ATTORNEY GAY: To explain his mindset on the night of his
2 death. And, you know, referring to this as he didn't deserve to
3 be executed is not at all what we're talking about. We're
4 talking about the state of mind and/or physical presence. What's
5 the right word, physicalness, of him that night.

6 THE COURT: And where you were headed is you believe that
7 that information, what makes it relevant, is it becomes relevant
8 with regards to voluntary manslaughter, to a charge of voluntary
9 manslaughter, because if he is on substances, wielding a knife,
10 then that somehow makes the potentiality of that conduct such
11 that you're entitled to a charge on voluntary manslaughter.

12 Here's my problem. As I look at that issue -- and help me,
13 just help me with this because let me tell you, this is where my
14 brain is -- voluntary manslaughter, you will recall, is the
15 unlawful killing of a human being, being in sudden heat of
16 passion, upon sufficient legal provocation.

17 You've got a little problem there, because you have to, the
18 evidence up to this point is it doesn't matter whether the
19 gentleman kicked the door in or walked in or came through the
20 window, they are in this person's house. They're in these
21 people's house. And this is a friend. All testimony is he's a
22 friend there visiting.

23 And however they came in the house, for voluntary
24 manslaughter, you have to concede, do you not, that they are
25 there with weapons to get voluntary manslaughter? Under what

1 theory, if that is the evidence, could the wielding of a knife
2 ever be sufficient legal provocation to shoot this man?

3 ATTORNEY GAY: Well, Your Honor, I'm making a record. I
4 believe we should get the charge. I understand that. With
5 regard to what the substances are in his body, I think, is a
6 relevant fact. And I join with Ms. Hensley on this, that we do
7 believe we should be able to go ---

8 THE COURT: I understand.

9 ATTORNEY GAY: I mean, in terms of, if you want to limit
10 what we can say in closing, he had meth in his system. I mean,
11 they can make it up any way they want. That's a pretty
12 significant fact.

13 THE COURT: So let me ask you this question. What issue,
14 which is the consequence to this litigation, does the fact that
15 the evidence, that the alleged victim has methamphetamine and THC
16 in his system, make more probable or less probable?

17 ATTORNEY HENSLEY: I think it all goes to Marcus Porter's
18 credibility, Your Honor. And that's an issue in this case. In
19 this case they collected marijuana and crystal-like substances
20 from their search warrant. That's evidence in this case.

21 Mr. Osborne wants to argue that there's no facts in evidence
22 about Mr. Weaver's use of these drugs.

23 THE COURT: Right.

24 ATTORNEY HENSLEY: But there would be if we are allowed to
25 question the doctor about the toxicology report, because it's a

1 fact. And it's a fact that's relevant to the believability of
2 Mr. Porter and Mr. Swibaker.

3 THE COURT: Let me ask you this question, because I don't
4 recall. And I apologize, but certainly if we need to pull the
5 record, we can. I remember the conversation, We were having
6 tequila shots, I remember that.

7 As I recall the testimony, there is no testimony from either
8 Mr. Swibaker or Mr. Porter with regards to whether or not these
9 gentlemen were using methamphetamine and THC. Was that question
10 asked and answered? No?

11 ATTORNEY HENSLEY: I don't believe that it was.

12 THE COURT: Okay.

13 ATTORNEY HENSLEY: I think it goes to the fact that they're
14 not honest.

15 THE COURT: Well, that's why I just asked.

16 ATTORNEY HENSLEY: This is indicative of the fact that
17 they're not honest.

18 THE COURT: Well, I mean, you have the testimony that they
19 were having tequila shots, yes. And remember, got a little bit
20 left in the bottle, I kept the bottle.

21 ATTORNEY HENSLEY: I remember. You know this as well as you
22 know everything. I hear you.

23 THE COURT: But, you know, with regard to alcohol you
24 absolutely, that is absolutely relevant, that is absolutely
25 relevant, because that question was asked, and the fact that if

1 he did not have alcohol in his system, that is absolutely
2 relevant, absolutely relevant.

3 If the question had been asked, Were you smoking marijuana
4 or any, whatever, ingesting marijuana, or methamphetamine, and
5 the answer had been no, it would be relevant. And the question
6 wasn't asked. There is no predicate, there is no predicate to
7 which makes it relevant.

8 I mean, the fact that -- and let me tell you this, let me
9 say this. When the doctor is through testifying today, if it
10 becomes relevant, he can come right on back, okay. He can come
11 right on back.

12 So sorry. But it will be two, it will be two experiences.
13 And if it becomes relevant, then he may come back.

14 ATTORNEY HENSLEY: Just for the record, they did, I think
15 Detective/Sergeant Davis -- did I get that wrong again -- testify
16 that they found pipes that could be used for smoking marijuana,
17 they found pipes that could be used for smoking methamphetamine.

18 And I think that makes it relevant for the jury to decide
19 whether or not they want to evaluate that.

20 THE COURT: I don't think there's any question. I don't
21 think there's any question in this case that Mr. Porter, you
22 know, irrespective, irrespective of the way that he depicts
23 himself, is a bit of a street pharmacy just given what, at this
24 point, is before this jury. I understand he's innocent until
25 proven guilty. But all of that is before this jury. All of that

1 is before this jury.

2 ATTORNEY HENSLEY: And that's why I think this is relevant.

3 THE COURT: I don't know. The fact that this particular,
4 the fact that the victim has ingested those substances, he's
5 already admitted. It's all, you know, it's all over his life. I
6 mean, it was in his life, all over his life. And if it becomes
7 relevant with regards to this alleged victim, then the doctor can
8 return.

9 But at this point, alcohol, yes, it's very clear. Alcohol,
10 absolutely, because, remember, Mr. Porter testified they were
11 doing shots of tequila. And so whatever the toxicology report
12 shows with that, that is relevant. But not with the meth and not
13 with the marijuana. Because it's clear, it's before this jury.
14 It's in this case already. All right.

15 Very well. Anything further?

16 ATTORNEY OSBORNE: No, Your Honor.

17 THE COURT: All right. So let's have the jury, please.

18 (WHEREUPON, the jury is seated in the courtroom at 10:23
19 a.m.)

20 THE COURT: All right. Ladies and gentlemen, good morning.
21 At this time we'll continue with the state's case.

22 Please call your next witness.

23 ATTORNEY OSBORNE: Thank you, Judge. The state calls
24 Dr. Nicholas Batalis.

25 CLERK OF COURT: Dr. Batalis, if you'll please raise your

1 right hand, and state your name for the record.

2 THE WITNESS: Nicholas Ike Batalis.

3 CLERK OF COURT: Would you spell your last name for the
4 record.

5 THE WITNESS: B-a-t-a-l-i-s.

6 NICHOLAS I. BATALIS,
7 having first been duly sworn, was examined and testified as
8 follows:

9 THE COURT: Your witness.

10 ATTORNEY OSBORNE: Thank you, Judge.

11 THE COURT: Yes.

12 DIRECT EXAMINATION

13 BY ATTORNEY OSBORNE:

14 Q Good morning, Dr. Batalis.

15 A Good morning.

16 Q And if you don't mind, could you pull that even closer to
17 you and just, I guess, speak louder than you normally would.

18 A Sure thing.

19 Q Where are you currently employed?

20 A I'm employed at the Medical University of South Carolina
21 down in Charleston.

22 Q And in what capacity are you employed there?

23 A I'm employed there as a forensic pathologist, with my
24 appointment being a professor in the Department of Pathology and
25 Laboratory Medicine.

1 Q And how long have you been with MUSC?

2 A I've been in my position as a faculty member with them for
3 just over 13 years now.

4 Q What's your educational background?

5 A I obtained my undergraduate degree in science at Butler
6 University in Indianapolis, Indiana.

7 And after graduating from college, I then moved on to medical
8 school at the Indiana University School of Medicine.

9 After graduating medical school, I then came down to
10 Charleston to MUSC for a residency, or general training, program
11 in general pathology.

12 After completing that four-year general training program,
13 our residency, I passed a board exam to become nationally
14 certified in anatomic and clinical, or for general, pathology.

15 Following that, I moved on into a one-year fellowship, so
16 subspecialty training in forensic pathology, at the Dallas County
17 Medical Examiner's Office in Dallas, Texas. Again, at the end of
18 that year, I passed an examination to become nationally
19 certified.

20 At that point I then took my current position, where I've
21 been for, again, just over 13 years.

22 Q And as part of your national certifications do you have any
23 continuing educational requirements?

24 A I do. There are requirements both by the American Board of
25 Pathology, who are the ones that certify us, and also the state

1 of South Carolina. So between those, there's different
2 organizations that do require education.

3 Q And you mentioned a word a couple times what. Does the area
4 of pathology consist of?

5 A Sure. So general pathology is a specialty of medicine that
6 deals with the study and diagnose of disease. So a general
7 pathologist would generally form a couple roles, fill a couple
8 roles. If you had a biopsy or a tumor that was taken out, the
9 surgeon, or clinician, would send that to pathology and we would
10 be the ones to say it's cancer or not or what type of cancer.

11 The pathologist also overseas the clinical laboratory. So
12 if you have any blood work done, a pathologist is overseeing
13 things as far as that goes.

14 Forensic pathology is in a subspecialty that really deals
15 with the, kind of, application of medicine to the legal aspects,
16 which really evolves around performing autopsies to determine the
17 cause and manner of death.

18 Q Cause and manner of death?

19 A Yes.

20 Q What exactly does that mean, cause and manner? What's the
21 difference between the two?

22 A So the cause of death is, more simply put, how the person
23 died. It was a gunshot wound, a heart attack, just kind of very
24 simply put like that.

25 The manner of death are the circumstances that it comes

1 about. So if it was just a heart attack, it would most likely be
2 a natural event. If somebody took their own life, it would be a
3 suicide. If there happened to be a drug overdose or a
4 motor-vehicle collision, maybe an accident, or if the death is
5 due to the hands of another individual, it is determined
6 homicide.

7 Q Approximately how many autopsies have you performed?

8 A I don't have an exact log, but 13 years in, I'm probably
9 somewhere about 3,000 autopsies, I would guess.

10 Q Have you ever been qualified as an expert in courts before
11 in the field of forensic pathology?

12 A Yes. I'm probably getting close to 100 times here in South
13 Carolina. And I believe it's also once or twice in Texas and
14 twice in North Carolina.

15 Q Have you ever failed to qualify as an expert?

16 A I have not.

17 ATTORNEY OSBORNE: Your Honor, at this time the state would
18 offer Dr. Batalis as an expert in the field of forensic
19 pathology.

20 THE COURT: Any objection?

21 ATTORNEY GAY: No voir dire. No objection, Your Honor.

22 THE COURT: Very well.

23 ATTORNEY HENSLEY: No objection.

24 THE COURT: Very well. So qualified. You may proceed.

25 ATTORNEY OSBORNE: Thank you.

1 Q All right, Dr. Batalis. Did you have the occasion to
2 perform an autopsy on the victim in this case, Mr. Joe Weaver?

3 A I did, on January 30th of 2019.

4 Q Let's start off with just some overall questions about
5 Mr. Weaver himself. Do you have a listed height and weight for
6 him.

7 A I do. At autopsy, we measured him to be 73 inches in
8 length, so six-foot-one. And he weighed 273 pounds.

9 Q Now I want to switch gears a little bit and talk about
10 ethanol. What is ethanol?

11 A Ethanol is simply drinking alcohol.

12 Q Okay. And did you or someone at MUSC test Mr. Weaver for
13 ethanol?

14 A So we sent samples of his -- give me one second here. We
15 did send samples of his blood to the state toxicology lab, and
16 they did test for ethanol.

17 Q Okay. And what were the results of that?

18 A The results were negative. There was no ethanol in his
19 system.

20 Q Through your training, education and experience, do you have
21 any knowledge about the dissipation rates of alcohol, or ethanol,
22 in a human being?

23 A Roughly. It varies quite a bit based on some things, but I
24 have a general understanding.

25 Q So generally speaking, how long does ---

1 ATTORNEY HENSLEY: Objection, Your Honor.

2 THE COURT: All right. Yes?

3 ATTORNEY HENSLEY: He's been qualified as a forensic
4 pathologist. I don't know that the dissipation of alcohol in a
5 person's system is in that area of expertise.

6 THE COURT: I understand. I understand. Your concern is
7 lack of foundation?

8 ATTORNEY HENSLEY: Yes.

9 THE COURT: Just, if you'd go into some foundational
10 questions on that.

11 Q If you could, doctor, and if you have received any sort of
12 training in regards to alcohol and interpreting alcohol when it
13 comes to determining the manner and cause of death in an
14 individual, what type of training have you received?

15 A Certainly. So as a forensic pathologist, we do have to
16 incorporate little bits of various fields to be able to determine
17 that cause and manner of death. So with regards to toxicology, I
18 certainly don't have a Ph.D., I'm not the one there running the
19 machine, although pretty much all of my close-to-3,000 deaths,
20 that we've ordered full toxicology on all of those, so it is up
21 to us to interpret those values in the context of the case that
22 we are examining.

23 We do get training as part of our fellowship in a toxicology
24 lab to learn directly from the toxicologist, but there's a lot we
25 learn about interpreting, again, from other pathologists, because

1 it is part of -- a big part of forensics is interpreting the
2 toxicology report in context with the autopsy.

3 Q Because is it fair to say that ---

4 ATTORNEY HENSLEY: Objection to leading.

5 ATTORNEY OSBORNE: I'll ask it another way.

6 THE COURT: All right --

7 Q Have you ever performed an autopsy on an alcoholic?

8 A Certainly.

9 Q And have you ever been asked to determine whether a cause of
10 death or a manner of death where alcohol was a contributing
11 factor?

12 A I have.

13 Q So in doing so, do you have to then look at toxicology
14 reports and base those findings, or at least your findings, on
15 those toxicology reports?

16 A Certainly. When we perform an autopsy, we're going to take
17 into account what we see with our own eyes during the process of
18 the autopsy, but then also the other studies including
19 toxicology, to bring all that together before we make our final
20 ruling.

21 Q Okay. Now I will ask you, in regards to ethanol in a human
22 being and dissipation rates, how long does it take for one shot
23 of alcohol, or one shot of liquor, let's say tequila, to
24 dissipate in a human being?

25 A So the general rule is a human being will metabolize, or

1 break down, one drink in one hour. So it could be one 12-ounce
2 beer, one, I think it's one-and-a-half, ounces of alcohol or five
3 ounces of wine, we will metabolize that back to zero within
4 roughly an hour.

5 Q So if I were to take a shot of tequila here at 10:30 in the
6 morning, by 11:30 you would expect that to be zero?

7 A Again, plus or minus a few minutes. It might be 11:45.
8 But, yes, within roughly an hour it would be out of your system.

9 Q And by that same token, I guess, two shots, two hours?

10 A Correct. With two shots, it would depend when you did them,
11 of course. If you took them at the same time, yes, it would take
12 two hours. If you take one shot now, that would be gone in an
13 hour. If you take another shot an hour after -- it would be an
14 hour per shot, essentially, ---

15 Q Oh, I see.

16 A --- if they're done at the same time or not.

17 Q Okay, I see. As a general rule, does the individual's
18 height or weight play a factor in dissipation rates?

19 A The weight and sex, male or female factors, actually, that's
20 more as far as how it affects you and how it would build up in
21 your system. So generally not. There are some very minor
22 variables. But, for the most part, the one drink per hour is the
23 general rule for most individuals.

24 Q All right. Before we get into the gunshots wounds in this
25 case, did you make a note of any other wounds for Mr. Weaver?

1 A Yes. These are the -- other than the gunshot wounds that, I
2 guess, we'll discuss, he had a couple different injuries. On
3 his -- excuse me one second. On the back of his left hand and
4 his right leg he had some healing lesions, so either some scrapes
5 or some older injuries.

6 And then a couple injuries, some scrapes or abrasions, on
7 the back of his right hand, and they looked more acute, that it
8 happened recently.

9 And then two abrasions on his chin, up to a half inch, on, I
10 believe, the right side of the chin.

11 Q Did the abrasions that were on his chin appear acute or had
12 to have occurred recently?

13 A They appeared to have occurred recently. Yes.

14 Q And I know it's kind of difficult to say with abrasions, but
15 would that be consistent with him being football-kicked in the
16 face?

17 A That's one possible way it could have occurred. Again, I
18 can say that there's a scrape, there were a number of things that
19 could have caused it, but that would be one such scenario.

20 Q All right. Now, in reference to the gunshot wounds, did you
21 prepare a diagram in anticipation for trial?

22 A I did.

23 Q And would that diagram assist you in describing to the jury
24 or explaining to the jury the extent, location, and the nature of
25 the gunshot wounds to Mr. Weaver?

1 A I believe it would.

2 (WHEREUPON, State's Exhibit 189 is marked for
3 identification.)

4 ATTORNEY OSBORNE: Your Honor, may I approach?

5 THE COURT: You may.

6 Q I'm showing you State's Exhibit No. 189. Can you take a
7 look at that and tell me if you recognize that exhibit.

8 A Yes, I recognize it.

9 Q And what is that?

10 A This is a diagram I put together a couple months ago. We
11 make a general body diagram as we're doing the autopsy that has
12 lots of notes and scribbles on it. This is a cleaned-up diagram
13 that just shows the gunshot wound injuries to make it more, to be
14 a better exhibit to explain to the jury.

15 ATTORNEY OSBORNE: Okay. Your Honor, at this time the state
16 seeks to admit 189 into evidence.

17 ATTORNEY GAY: No objection from Mr. Green.

18 ATTORNEY HENSLEY: No objection, Your Honor.

19 THE COURT: Very well.

20 (WHEREUPON, State's Exhibit 189 is entered into the record.)

21 Q Can you see that okay?

22 A Yes, I can.

23 Q Okay. And this is your handwriting on here?

24 A It is.

25 Q And up here, Joe Weaver, we have the victim's name?

1 A Yep, I have the victim's name. And then the FA1995 is our
2 unique case number for this case.

3 Q All right. And I'm going to take a chance here and see if I
4 can zoom in just a little bit. All right. So what is the legend
5 that you have up here? And I know it's kind of obvious, but, I
6 guess, just walk us through it.

7 A Yes. The legend's for the diagrams on the body. It shows,
8 in this case, we have both entrance wounds and exit wounds,
9 recovered bullets, and a couple wounds that I couldn't say if
10 they were entrants or exits.

11 So that the legend shows, if it's a circle, I determined it
12 to be an entrance wound. An X is an exit wound. The circle with
13 the X through it is indeterminate so I, you know, couldn't choose
14 between the two. And then if there's a B, it's a bullet that we
15 recovered during the course of the autopsy.

16 Q And as we're going through, I notice that we have numbers
17 here. Do these numbers necessarily indicate the sequence in
18 which the gunshot wounds occurred?

19 A No. The numbers are there purely for descriptive purposes
20 so that I can put things together in the report. So they do not
21 indicate the severity of the injuries, nor do they indicate their
22 chronology.

23 Q If you would, doctor, I guess, just begin with gunshot wound
24 labeled no. 1, and explain to the jury, what were your findings?

25 A Sure. So as you can see, gunshot wound no. 1 is on the

1 upper, outer right-side of the chest. The bullet entered the
2 chest there, and then on the, kind of, lower, left flank, kind of
3 beneath the left armpit, you can see there's a 1 with an X on it.

4 And so that bullet, on myself, essentially traveled from the
5 right side of the chest, traveled through the right lung,
6 continued to travel then through the diaphragm, which separates
7 your chest from your abdomen, it went through the liver, and then
8 exited on the left side of the abdomen there.

9 So, again, it traveled across the body and exited. As it
10 went through, the major organs it hit were the right lung and
11 liver. And because of that, there was significant bleeding in
12 that right chest cavity. So he had almost two liters of blood
13 surrounding that right lung, which is, you know, roughly a third
14 to 40 percent of your blood volume.

15 Q Is it fair to say that that would have been ---

16 ATTORNEY HENSLEY: Objection to leading.

17 THE COURT: I can have you finish the question to be sure
18 that it's leading, but it's probably going to end up being
19 leading given how it started. So, please, don't lead.

20 ATTORNEY OSBORNE: Is it fair to say that that ---

21 ATTORNEY HENSLEY: Objection to leading, Your Honor.

22 ATTORNEY OSBORNE: I didn't get to finish the question.

23 THE COURT: All right. And keep your voice up, because I'm
24 worried about my jurors being able to hear you because you don't
25 have a microphone, and because you're closer to the witness your

1 voice is not loud as it is otherwise.

2 Let me hear the question. Don't answer, please, until I
3 hear the question.

4 Q I'll say it like this. Was that a fatal shot?

5 THE COURT: You may answer.

6 A In this case, the individual was shot eight times. Four of
7 the shots struck vital organs and caused significant bleeding.
8 So this would be one of the four shots that could be considered
9 fatal.

10 Q One of the four?

11 A Yes.

12 Q All right. Let's go on to no., gunshot wound labeled
13 no., 2?

14 A Yes. So gunshot wound no. 2 follows a very similar pathway
15 to gunshot wound no. 1. Again, instead of starting out up in his
16 armpit, it's more down in the flank area, so it's sort of the mid
17 abdomen. And then if you look to the right side of the diagram
18 where his back is, there's a no. 2 on the left side of the back.

19 So this one, again, basically traverses the entire body,
20 from right to left. And, again, as it went through there, it
21 went through, it hit the liver again, which that first gunshot
22 hit. It also hit the aorta, so that's the major blood vessel
23 that delivers blood from your heart to the rest of your body.
24 Hit the stomach, and also the left kidney before it exited.

25 So this gunshot wound led to bleeding that accumulated

1 within the abdominal cavity.

2 Q And is this one of the four shots that you mentioned that
3 would have been fatal?

4 A It is. Having damaged the liver, aorta and kidney, this
5 could be considered potentially fatal injuries.

6 Q All right. And it looks like gunshot wound no. 3.

7 A So gunshot wound no. 3 goes in a little, kind of the,
8 opposite direction that we saw of the last two. The last two
9 were moving from right to left across the body. This one
10 actually moves from left to right and really just goes through
11 the, kind of, superficial skin.

12 So you can see the entrance is kind of just above the
13 bellybutton on the right side, and then the exit wound is just a
14 little bit above it and a few inches over to the right. So this
15 one was more kind a superficial flash, not quite a graze wound,
16 because it did actually enter the skin, but did not enter the
17 abdominal cavity to cause any significant injuries.

18 Q Would you have expected him to live from this gunshot?

19 A Yes.

20 Q All right. And gunshot wound no. 4?

21 A So gunshot wound no. 4 is on the front of the right arm, so
22 kind of the top of the bicep here. This is the one that's the
23 indeterminate. So what we know are, there's an entrance wound
24 and an exit wound, essentially right next to each other. And the
25 wound goes very, again, a very short distance underneath the

1 skin.

2 Since the bullet didn't really -- as it goes through the
3 body, usually it starts tumbling, and that's why we can tell
4 differences between entrance and exit. In this case, the two
5 wounds looked essentially identical. So that's why I have a
6 circle with an X through it. I know it exited one of the areas
7 and exited the other. I just can't say confidently which way.

8 So this could have been going from right to left or left to
9 right. But again, in either of the situations, similar to the
10 previous gunshot wound, it was just kind of a flesh wound, if you
11 will.

12 Q So you would have expected him to live from that gunshot
13 wound, as well?

14 A Correct.

15 Q All right. And now we're on to no. 5?

16 A So gunshot wound no. 5 enters on the kind of inner upper
17 part of the right forearm, so just below the elbow. That bullet
18 then traveled from front to back and then exited a little bit
19 upward and exited the back of the arm just above the elbow.

20 So again, comes in the front of the arm -- and when I say
21 front, it's like I'm standing with you with my palms facing --
22 comes in the front, goes a little bit upward, and then exits the
23 side of the arm.

24 Again, this did not -- it went through skin and muscle, did
25 not fracture any bones or cause any significant injuries.

1 Q And you did something that kind of reminded me, this diagram
2 right here, does this necessarily depict how the victim was
3 standing or positioned whenever he was shot?

4 A No. The diagram is essentially for descriptive purposes.
5 And so when I'm describing pathways, that it travels from right
6 to left, I'm basically speaking of the gun in relationship to the
7 body when the gun was fired.

8 So similarly, you know, we could say something was traveling
9 from back to front, but easily I could take my arm, I could be
10 facing you, and turn it around like that. So even though the
11 front of the arm, just the way we define it, is on the palm side,
12 if I turn it like that and you shot me, that would be going
13 through the back of my arm even though I'm facing it. So the
14 body certainly can move different directions.

15 Q I think we left off on, looks like they're in a cluster
16 here, 6, 7 and 8?

17 A So, as you can see, there are three wounds that are in
18 proximity to each other on the upper right side of the back, or
19 right shoulder, area. These wounds, essentially, they all look
20 very similar in appearance to one another, so it likely happened,
21 essentially, at the same time.

22 Once they entered the skin, the wound paths crossed, so I
23 was not able to say -- as with the other ones, I know no. 1 went
24 to no. 1, and no 2. went to no. 2. With this group, I
25 essentially know, here's these three entrance wounds. Once they

1 got in the body, they crossed, so I know where they ended up.
2 It's just, I know, as a group, I kind of grouped the injuries
3 that the three bullets caused.

4 One of the bullets essentially went straight sideways, so
5 there's a V in the upper left side of his back. So again, it
6 kind of came in near the right shoulder and just kind of went
7 straight sideways, again, just going through the skin. So that
8 one would not have caused too much trouble.

9 But then two of the other wounds, again, traveled from the
10 upper right side of the back, entered the chest, went through the
11 right lung, went through the aorta, again, the blood vessel that
12 takes blood from the heart, it went through the heart itself, and
13 then one of the bullets penetrated into the stomach where we
14 recovered it. The other one, we recovered in the chest wall.

15 So again, two bullets taking very, very similar pathways to
16 one another. One just went a little bit further, ended up in the
17 ribs; the other one stopped in the stomach.

18 So again, of these three wounds, again, two of them could be
19 considered fatal, as they went through the right lung, the aorta
20 and the heart, and, again, caused significant bleeding around
21 both lungs.

22 Q All right. So during the autopsy, did you have the occasion
23 to recover some of these projectiles, or bullets, from the
24 victim, Mr. Weaver?

25 A We did. I believe we recovered three bullets from the last

1 gunshot wounds we spoke of, 6 through 8.

2 ATTORNEY OSBORNE: Your Honor, may I approach?

3 THE COURT: You may.

4 Q I'm showing you what's already been marked and admitted as
5 State's 187. Can you just tell me if you recognize those items.

6 A Yes. These are the three bullets that I recovered during
7 the course of the autopsy, and corresponding to what we saw as
8 gunshot wounds 6, 7 and 8.

9 Q And lastly, Dr. Batalis, did you determine, within a
10 reasonable degree of medical certainty, a manner and cause of
11 death for Mr. Weaver?

12 A I did.

13 Q And what was that?

14 A The cause of death in this situation was gunshot wounds of
15 the trunk, and the manner of death was homicide.

16 ATTORNEY OSBORNE: No further questions.

17 THE COURT: All right. Ms. Gay, cross-examination?

18 ATTORNEY GAY: One moment, Your Honor.

19 THE COURT: All right.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY GAY:

22 Q Hey, good afternoon. Or, good morning, doctor.

23 A Good morning.

24 Q My name is Melisa Gay, and I represent Elijah Green. And
25 when you first ---

1 THE COURT: I know I'm going to have to ask you to increase
2 your volume for the jury.

3 ATTORNEY GAY: Okay.

4 THE COURT: I'm so sorry to bother you.

5 Q I'm Melisa Gay, and I represent Elijah Green. How are you
6 this morning?

7 A Good, thank you.

8 Q Great. So when you were testifying for Mr. Osborne and
9 discussing the concept of having alcohol in the body, that was
10 general information that you were providing about alcohol
11 dissipating, not specific to Mr. Weaver?

12 A It's general information that's applicable across the
13 population. So each individual may have slight differences, but
14 it's generally acceptable for most individuals.

15 Q So on the day that you did his autopsy and you took the
16 blood and sent it off to toxicology, there was, it was negative
17 for ethanol?

18 A Correct. They did not detect any ethanol in his system.

19 Q And you have no information to give to this jury today about
20 Mr. Weaver ever consuming alcohol and it metabolizing through his
21 body? You have no information specifically about Mr. Weaver?

22 A I've overheard conversations y'all had this morning. But as
23 part of my autopsy exam, no. Again, we ran toxicology. Alcohol
24 was not detected, which doesn't mean he didn't have any. He
25 could have had some and broke it all down.

1 Q Right. Means he could have not had any at all; correct?

2 A That's one possibility.

3 ATTORNEY GAY: Thank you. I have no further questions, Your
4 Honor.

5 THE COURT: All right, thank you. Yes, ma'am, Ms. Hensley,
6 on behalf of Mr. Major?

7 CROSS-EXAMINATION

8 BY ATTORNEY HENSLEY:

9 Q Good morning, Dr. Batalis.

10 A Good morning.

11 Q I'm Laree Hensley. I represent Devonte Major. I just want
12 to talk a little bit about the numbers on your diagram. And is
13 it fair to say that you numbered these numbers -- you have to
14 start somewhere, something has to be no. 1. Right?

15 A Right. As we're examining the body, we get it cleaned up,
16 and this is part of the process. It's going to be whichever one
17 is there and present, I would start with that one.

18 Q But you say that's no. 1. But you're not saying to this
19 jury that's the first shot; right?

20 A That's correct.

21 Q Not at all; right?

22 A Correct.

23 Q We have to start somewhere; we started over here with
24 no. 1; right?

25 A Essentially, yes.

1 Q So any suggestion that this is the order would just be a
2 guess; right?

3 A It would depend on the context of things. I mean, as I
4 mentioned, certainly four of these eight wounds could be
5 considered fatal, and there's certain situations where you could
6 piece together which wound may have occurred before others.
7 Again, this situation, I did not do that when I was performing or
8 putting together the report.

9 Q And you're the pathologist; you're the expert; you're the
10 person we're relying on for the information about the cause and
11 manner of death; right?

12 A I'm providing information. You guys are the ones relying on
13 it.

14 Q Okay, I appreciate that. But you're not providing and
15 you're not suggesting that these wounds occurred in the order
16 that they're numbered; correct?

17 A That was not my intention. Again, at the same time, there
18 could be happenstance where the first, no. 1, was the first one.
19 So it doesn't rule it out, but it certainly was not the
20 consideration when I was putting the diagram together.

21 Q Thank you so much.

22 ATTORNEY HENSLEY: That's all the questions I have. Thank
23 you.

24 THE COURT: Thank you. Any redirect?

25 ATTORNEY OSBORNE: Just briefly.

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY ATTORNEY OSBORNE:

4 Q And just to circle back on that last question, did myself or
5 law enforcement or anyone else tell you, Hey, look, you know, we
6 really would like 6, 7, 8 to be the last ones, the back shots?

7 A No, I don't recall anything like that. It's been a couple
8 years. At some point we might have talked about possible
9 sequence, but I don't remember making that determination, or
10 certainly no pressure from you.

11 Q In regards to the ethanol, is another possibility that
12 Mr. Weaver had a shot or two and it just simply metabolized?

13 A Yes. I left off one thing earlier. So three reasons that
14 you could have zero alcohol. So one could be that you never had
15 alcohol; two could be that you had alcohol but you died so
16 quickly, so if I took two shots now and then died, my blood test
17 would be negative because it wouldn't have had time to enter the
18 system; and then the third situation would be, you know, you
19 could have 2 shots, you could have had 20 shots, we don't know,
20 but then if your body goes down and breaks it all down, you're
21 still left with a zero.

22 So it could be in your system, but just hadn't had long
23 enough; it could be you never had it; or it could have broken it
24 all down.

1 Q I see.

2 ATTORNEY OSBORNE: No further questions.

3 THE COURT: Ms. Gay, recross?

4 ATTORNEY GAY: No, thank you, Your Honor.

5 THE COURT: All right. Ms. Hensley?

6 ATTORNEY HENSLEY: Nothing, Your Honor. Thank you.

7 THE COURT: Very well. I'm not going to release from your
8 subpoena at this time, but you certainly are free to go back in
9 the jury room.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: All right. Call your next witness.

12 ATTORNEY OSBORNE: The state rests.

13 THE COURT: Ladies and gentlemen, you have now heard the
14 witnesses and received the evidence from the state in the state's
15 case in chief. That signifies to me that there are matters which
16 I must take up outside your presence, and so in a moment I'm
17 going ask you to please step to your jury room.

18 Do not, do not, discuss this matter. Do not allow anyone to
19 discuss it with you. And we will be with you in just a little
20 bit. And also consider this your break.

21 (WHEREUPON, the jury is escorted out of the courtroom at
22 10:53 a.m.)

23 MATTER(S) OF LAW

24 THE COURT: All right. Yes, ma'am, Ms. Gay?

25 ATTORNEY GAY: Thank you, Your Honor.

1 THE COURT: Yes.

2 ATTORNEY GAY: At this time I make a motion for a directed
3 verdict on behalf of my client, Elijah Green. We presented
4 evidence today that, even in the light most favorable to the
5 state, I do not believe that there's been sufficient evidence to
6 establish the elements of the offense necessary for these charges
7 of murder. As I've argued, I believe that we should have a
8 voluntary manslaughter charge, Your Honor. I do not believe that
9 there's sufficient evidence for a murder charge.

10 Attempted murder, same thing in terms of his, we're not
11 clear on the intent that was involved in that case.

12 Burglary, specifically, Your Honor, I believe that we have
13 evidence to establish that it's not a burglary and, even in the
14 light most favorable, they don't. They put a footprint on a door
15 that doesn't match these defendants. There's evidence in this
16 case that the door was not damaged and that the physical
17 evidence, as part of the investigation, does not support the
18 statement of Mr. Porter and Mr. Swibaker, they are not credible,
19 and I don't believe there's enough evidence to establish the
20 charge to show the charge of burglary, first degree.

21 And the charge of possession of a weapon during commission
22 of a violent crime, Your Honor, I'd say the same thing about
23 that.

24 So I'm passing on it to Ms. Hensley.

25 THE COURT: All right. Very well, thank you.

1 Yes, ma'am?

2 ATTORNEY HENSLEY: And thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, ma'am.

5 ATTORNEY HENSLEY: On behalf of Devonte Major, I, too, make
6 a directed verdict motion. I don't want to belabor all these
7 points that Ms. Gay has made. I believe, I, too, believe, that
8 even in the light most favorable to the state there is
9 insufficient evidence for murder, attempted murder, burglary,
10 possession of a firearm during commission of a violent crime, and
11 the cruelty to animals charge.

12 And with regard Devonte Major, I have a directed verdict
13 motion as to the burglary, the fact, the allegations in the
14 indictment, Your Honor, because this indictment says that, in
15 Dorchester County, South Carolina, on or about January 28th ---

16 THE COURT: You'll have to slow down for the court reporter.

17 ATTORNEY HENSLEY: I'm sorry.

18 THE COURT: That's okay.

19 ATTORNEY HENSLEY: Twenty-eight, 2019, the Defendant,
20 Devonte Trevon Major, did willfully and unlawfully enter the
21 dwelling of Marcus Porter without the consent and with the intent
22 to commit a crime therein, and when, in effecting entry or while
23 in the dwelling or in immediate flight, the defendant or another
24 participant in the crime, is armed with a deadly weapon or
25 explosive, causes physical injury to a person who is not a

1 participant in the crime, uses or threatens the use of a
2 dangerous instrument, displays what is or appears to be a knife,
3 pistol, revolver, rifle, shotgun, machinegun or other firearm --
4 and this is the important part -- the burglary is committed by a
5 person with a prior record of two or more convictions for
6 burglary or housebreaking, or a combination of both, or the
7 entering or remaining occurs at night.

8 The state did not attempt -- the state put up zero evidence
9 of any prior convictions. They never provided any. They didn't
10 ask any questions about it. It's not in evidence. They haven't
11 provided -- I think they never intended to. I think they put
12 this information in the indictment in an attempt to get that
13 information in front of the jury.

14 This indictment is different from Elijah Green's indictment.
15 And I think that's certainly prejudicial. And I would just move
16 to dismiss the first-degree burglary based on the state's failure
17 to prove that element and the inability to correct it at this
18 point.

19 THE COURT: Let me ask you this question. So your position
20 is that because the state alleged all of the grounds that make a
21 burglary a burglary in the first degree, they must prove all of
22 those grounds in order for a defendant to be convicted of
23 burglary in the first degree?

24 ATTORNEY HENSLEY: My position is, only for Devonte Major do
25 they allege all of the grounds, and they did not allege all of

1 the grounds for Elijah Green.

2 So my position is the state has to prove the burglary is
3 committed by a person with a prior record of two or more
4 convictions for burglary. They put it in there, they put it in
5 front of the jury. I think that we're entitled to a directed
6 verdict motion on that.

7 THE COURT: On that part? On the entire indictment, or that
8 part of the indictment?

9 ATTORNEY HENSLEY: But it is that part of the indictment,
10 Your Honor. I believe I'm entitled to a directed verdict motion
11 on the part of the indictment, and I think that ---

12 THE COURT: I concur.

13 ATTORNEY HENSLEY: Thank you.

14 THE COURT: And I'm so sorry, because I thought you were
15 saying the entire indictment. But as to that part of the
16 indictment, you concur Mr. Major's entitled to that, correct,
17 Mr. Osborne?

18 ATTORNEY OSBORNE: I would.

19 THE COURT: I agree.

20 ATTORNEY HENSLEY: And then I think the problem becomes the
21 difference in the language in the indictment when you send the
22 indictment back with the jury.

23 THE COURT: What are you talking about?

24 ATTORNEY HENSLEY: The foreman didn't sign the front of the
25 indictment?

1 THE COURT: That's in the verdict form.

2 ATTORNEY HENSLEY: And that's all they've got. And that's
3 fair, because I looked at your jury charge, and I don't think
4 it's contained in your jury charge.

5 THE COURT: There was another little stack of the verdict
6 form that you're all missing, and that is absolutely 100 percent
7 my fault, and I am so sorry. You'll have a chance to look at
8 them. That is my fault because they were sitting there. I just
9 didn't call y'all's attention. And I apologize.

10 ATTORNEY HENSLEY: I have the verdict form. I just wanted
11 to make sure. I think he's entitled to a directed verdict on
12 that issue on the indictment. And the state obviously concurs.
13 And I don't believe that that issue is contained in your charge,
14 so I think ---

15 THE COURT: It isn't.

16 ATTORNEY HENSLEY: And if the indictments aren't going back,
17 then it alleviates my concern of prejudice with regard to the
18 difference in the two indictments.

19 THE COURT: Ms. Hensley, thank you so much for your
20 remarkable focus and assistance with regard to detail. It is
21 impressive, and I am grateful.

22 As I sit here thinking, because when I was reading some of
23 the allegations to the jury during the jury qualification, I'm
24 sitting here -- because I read one, do you know what I mean?
25 Although both names went in, I'm sitting here wondering which one

1 I read.

2 ATTORNEY HENSLEY: With different polls, you read it
3 different ways. So I think sometimes the indictment form that
4 was in front you was Devonte Major, and I think sometimes you
5 said Devonte Major and Elijah Green in all of those elements.
6 And sometimes I think the one was Elijah Green. And so I don't
7 know, for these 12 jurors, if they heard it. And I think that,
8 just like any other directed verdict motion ...

9 THE COURT: The jury could have heard something as they were
10 qualified, but then become applicable later on in the trial.

11 ATTORNEY HENSLEY: Correct. Thank you, Your Honor, for
12 helping me articulate my thought. That's exactly what I mean.

13 THE COURT: Yeah, without a doubt. And I think you're
14 correct because, you know, as I'm going through that process, I
15 think the first jury panel, that one, I did read that one. And
16 the remaining ones, I didn't, because at one point I thought, and
17 I'm having this moment, I thought ---

18 ATTORNEY HENSLEY: One is the same as the other.

19 THE COURT: I think you're right. I think I did on one, but
20 not on the others. But you're absolutely entitled to a directed
21 verdict on that.

22 ATTORNEY GAY: Your Honor, I just would like to add the
23 ill-treatment of the animal charge to my motion ---

24 THE COURT: Of course.

25 ATTORNEY GAY: --- for directed verdict, because I left that

1 out. And obviously I'm joining in with what Ms. Hensley's
2 saying.

3 THE COURT: Of course. Absolutely. There is evidence on
4 each and every element of the offenses, as they are now, without
5 that portion contained in Mr. Major's indictment regarding
6 burglary in the first degree. It's up to the jury to weigh the
7 evidence, but there is evidence on each element of each offense
8 for each of these defendants. I would respectfully, with the
9 exception of that allegation in the burglary in the first degree
10 regarding Mr. Major, I would respectfully deny the motion of
11 Mr. Green and of Mr. Major.

12 ATTORNEY GAY: I just want to reiterate all of our past
13 objections. Also, specifically with regard to the relevancy
14 issue for the autopsy testimony and my motion to, or my request
15 to, have a charge for voluntary manslaughter. Your Honor, I
16 think it's just one of these little procedural things you do
17 along the way.

18 THE COURT: Absolutely. And I take that as being from both
19 of you; correct?

20 ATTORNEY HENSLEY: In an abundance of caution, yes. I would
21 renew all my motions and join in all of Ms. Gay's motions.

22 ATTORNEY GAY: Make sure we've got it all done, dot our I's
23 and cross our T's.

24 THE COURT: And it will certainly be considered that way,
25 absolutely. And we will respectfully deny. Those matters for

1 which your objections were sustained, those obviously wouldn't
2 change. But for the holdings earlier as we proceeded through the
3 trial, those would also remain.

4 All right. We've been through the charge. We've been
5 through the verdict forms. I wanted to speak with your clients.

6 ATTORNEY HENSLEY: And I just have one issue with regard to
7 the charge, Your Honor. And I'm not trying to interrupt you, and
8 I apologize.

9 THE COURT: No, go ahead.

10 ATTORNEY HENSLEY: But the indictment for possession of a
11 firearm or a knife during the commission of a violent crime
12 alleges, the violent crime, to wit, burglary, first degree, and
13 murder, and it does not allege attempted murder as a violent
14 crime.

15 So I would just ask that we take attempted murder out of the
16 charge, because it's a notice issue.

17 THE COURT: I thought it was just burglary. I understand.

18 ATTORNEY HENSLEY: I mean, if your charge just says a
19 violent crime, murder, attempted murder and burglary in the first
20 degree ---

21 THE COURT: Yes, that's correct.

22 ATTORNEY HENSLEY: --- are violent crimes. So I think
23 because the indictment just says murder and burglary, we should
24 take attempted murder out of the charge.

25 THE COURT: And dismiss that indictment in its entirety?

1 ATTORNEY HENSLEY: No, no, no. I'm just saying in your
2 charge, I think the charge should match the indictment.

3 THE COURT: I agree.

4 ATTORNEY HENSLEY: And just say burglary and murder.

5 THE COURT: I agree. I agree.

6 ATTORNEY HENSLEY: Thank you, Your Honor.

7 THE COURT: Right. Anything you want to add to that?

8 ATTORNEY OSBORNE: No. And I will try my best to remember
9 that in closing.

10 THE COURT: Well, if not, you've got help right here.

11 ATTORNEY OSBORNE: I have no doubt.

12 THE COURT: They will assist you in objecting. Very well.
13 So this is where we would be. And I just want to put this on the
14 record, because you never know what, you never know what the jury
15 will read from here to the end of the trial, but it is the
16 intention of the Court, that because attempted murder was not
17 included in the indictment for possession of a weapon during the
18 commission of a violent crime, that attempted murder will not
19 become the foundation for possession of a weapon during the
20 commission of a violent crime.

21 Is that clear with everyone?

22 ATTORNEY OSBORNE: Yes, Your Honor. Thank you.

23 ATTORNEY GAY: Yes, ma'am.

24 ATTORNEY HENSLEY: Yes, got it.

25 THE COURT: Now, I want to talk to your client. And I'll

1 start with Ms. Gay for Mr. Green. Will you be offering a
2 defense?

3 ATTORNEY GAY: No, ma'am. And I've spoken to him about
4 that.

5 THE COURT: And do I not correctly recall that you actually
6 admitted a document into evidence?

7 ATTORNEY GAY: No. ID purposes only, 1 and 2.

8 THE COURT: ID purposes, okay, all right, 1 and 2. Okay.
9 Okay. And does your client -- I'm going to examine your client
10 with regard to testimony. Have y'all had an ample opportunity to
11 discuss? I hope. If not, do share that with me.

12 DEFENDANT'S 5TH AMENDMENT RIGHTS

13 THE COURT: All right. Please place Mr. Green under oath.

14 CLERK OF COURT: Mr. Green, if you'll please raise your
15 right hand, and state your full name for the record.

16 THE WITNESS: Elijah Quinlin Diante Green.

17 ELIJAH QUINLIN DIANTE GREEN,
18 having first been duly sworn, was examined and testified,
19 outside of the jury's presence, as follows:

20 EXAMINATION BY THE COURT

21 BY THE COURT:

22 Q Now, Mr. Green, I have certain matters that I want to talk
23 to you about, and I want to explain to you certain rights. If
24 you do not understand anything that I say, please let me know.
25 There are many ways to explain any one thing. So if I explain it

1 in a certain way and you're like, Uhm, for goodness sake, let me
2 know that because, again, there are many ways to explain any one
3 thing.

4 And if you want me to explain anything in more detail, you
5 let me know, okay?

6 A Yes, ma'am.

7 Q Very well. Now, Mr. Green, we have now reached the stage of
8 the trial where you may present your defense. We've heard from
9 the state and the state's case in chief. We then turn to the
10 defenses, to the defendants. And now is your opportunity to
11 present a defense.

12 You have the right to claim the protections given to you by
13 the Fifth Amendment of the Constitution of the United States, and
14 also the state of South Carolina, but of the United States. This
15 amendment states, in part, that no person, no person, shall be
16 compelled in any criminal case to be a witness against himself.

17 This means that you cannot be required to testify in this
18 case. You have the right to testify on your own behalf.
19 However, no one can make you testify. The decision to testify or
20 not testify is a personal right. It is your right to testify; it
21 is your right to decide not to testify. And no one, no one, can
22 waive the right to testify for you.

23 If you decide to testify, you will be subject to the same
24 rules that govern other witnesses, and you may be examined and
25 cross-examined on any relevant issue in this case.

1 In addition, if you had any convictions involving the
2 dishonesty or false statements, or if you have convictions of
3 crimes which are punishable by imprisonment for more than one
4 year, and this Court, me, determines that the probative value of
5 admitting the evidence outweighs its prejudicial effect to you,
6 the solicitor will be able to introduce your record for the
7 purpose of attacking your credibility, in other words, your
8 believability.

9 Prior records don't come in for the purpose of saying, See,
10 because somebody committed this offense that means they must have
11 committed this other offense; they come in to challenge
12 somebody's credibility, which simply means believability.

13 If you decide to testify, your decision to testify must be
14 freely, voluntarily and intelligently made with the knowledge of
15 the protections given to you by the Fifth Amendment and the
16 consequences of your decision to testify.

17 Let me just say this at this point. In other words, in
18 order to be fair, that's why we have these conversations, is
19 really to explain to you your right to testify, your right not to
20 testify, and to tell you that you can be examined and
21 cross-examined, and go over what we've just been over.

22 But it's so important that you understand that this right to
23 testify or not testify, it is your decision. And the mere fact
24 that I'm going over these options, I want you to understand, I
25 just want you to understand, the law with regards to your right

1 to testify or not testify.

2 I don't have an opinion at all. I just want you to know
3 your rights. Do you understand that?

4 A Yes, ma'am, I understand.

5 Q And I certainly don't want you to take any kind of hidden
6 meaning from me one way or the other. What's important to me is
7 that you understand your rights. Now, that really matters to me.
8 Your decision is yours. It's so important that you understand
9 that.

10 If you decide not to testify, I will instruct the jurors
11 that they cannot, they cannot, give the fact that you did not
12 testify any consideration whatsoever, and that there is to be
13 absolutely no prejudice to you because you did not testify. And
14 your attorney has already seen that charge. And, in fact, what I
15 tell the jury is that they can take no meaning whatsoever. And
16 then I go on to tell them, You cannot even discuss it in the jury
17 room; it's not a matter to even be discussed.

18 And the reason for that is because the burden is, and
19 remains, on the state to prove guilt beyond a reasonable doubt.

20 Now, again -- and I know I said it several times, I'm going
21 to say it again -- it is left entirely up to you to make the
22 decision, because it's your life, this is your case. It's up to
23 you to decide whether you want to testify or not.

24 You may talk with your attorney. And I know that you've
25 been having conversations with your attorney. I don't know what

1 y'all have talked about, but I know that y'all obviously have had
2 conversations, I know, and it's important that you discuss with
3 your attorney all of your concerns, but certainly discuss this
4 issue with her, and perhaps family or friends, or anyone else
5 that you have faith in their judgment. And that's certainly
6 appropriate.

7 However, however, it is so important that you understand,
8 even with all the advice that you receive, it's so important that
9 you understand that the final decision, the final decision, is
10 left entirely up to you.

11 Do you understand what I am saying?

12 A Yes, ma'am.

13 Q And take a moment and think if you have any questions about
14 what I just explained.

15 A No, I don't.

16 Q Now, have you had a chance to discuss with your attorney
17 whether you wish to testify or not?

18 A I have.

19 Q And do you need to speak with her anymore about that?

20 A No, Your Honor.

21 Q All right. And do you wish to testify?

22 A No, Your Honor.

23 Q Very well. Thank you so much. And you may be seated.

24 DEFENDANT'S 5TH AMENDMENT RIGHTS

25 THE COURT: All right. Mr. Major. If you'd stand and raise

(Devonte Trevon Major - Examination by The Court)

1 your right hand.

2 CLERK OF COURT: If you'd state your full name for the
3 record.

4 THE WITNESS: Devonte Trevon Major.

5 DEVONTE TREVON MAJOR,
6 having first been duly sworn, was examined and testified,
7 outside of the jury's presence, as follows:

8 **EXAMINATION BY THE COURT**

9 BY THE COURT:

10 Q Good morning, ---

11 A Good morning.

12 Q --- Mr. Major. I'm going to use a lot of the same words. I
13 know that you were right here in the courtroom when I had the
14 conversation with Mr. Green. And because Mr. Green didn't have
15 any questions doesn't mean that you might not have any questions.
16 Okay?

17 A Yes, ma'am.

18 Q Okay. Because again, there are many ways to explain any one
19 thing, Mr. Major. And it's so important that you understand
20 everything we're going to talk about. Okay?

21 A Yes, ma'am.

22 Q Now, at this time I am going to explain to you certain of
23 your rights. If you do not understand anything I say, please,
24 please let me know. If you want me to explain anything in more
25 detail, please let me know. Do you understand this much?

(Devonte Trevon Major - Examination by The Court)

1 A Yes, ma'am.

2 Q Now, Mr. Major, we've heard from the state in the state's
3 case in chief. The state has the burden of proof, and we now
4 have concluded with what's called their case in chief. And now
5 is the stage of the trial where you may present your defense.

6 You have the right to claim the protection as given to us by
7 the Fifth Amendment of the Constitution of the United States.
8 And this amendment states, in part, no person shall be compelled,
9 in other words, you know, another way to express that, no person
10 shall be made, compelled, in any criminal case to be a witness
11 against himself. This means that you cannot be required to
12 testify in this case. You have the right to testify on your own
13 behalf. That is your right, also. However, no one can make you
14 testify. This is a personal right, meaning it belongs to you,
15 and no one can waive your right to testify or your right to
16 remain silent but you. This decision, this is a personal right.
17 If you choose to waive that, your Fifth Amendment protections,
18 you have to do that, and you have to waive it. No one will do
19 that for you. It's a personal right.

20 Do you understand that?

21 A Yes, ma'am.

22 Q And if you decide to testify, you will be subject to the
23 same rules that govern other witnesses, and you may be examined
24 and cross-examined on any relevant issue in this case.

25 In addition, if you have any convictions involving

(Devonte Trevon Major - Examination by The Court)

1 dishonesty or false statement or for crimes punishable by
2 imprisonment for more than a year, and this Court -- that would
3 be me -- determines that the probative value of admitting this
4 evidence outweighs its prejudicial effect to you, what that means
5 is that I would make the determination that the conviction -- we
6 know it would be prejudicial, right, for a jury to hear about a
7 prior conviction, so I would have to make a determination that
8 it's more probative, that it gives more information, and it
9 outweighs the prejudicial effect to you.

10 And if I was to make that determination, the solicitor would
11 be able to introduce your record, or part of your record, however
12 that decision might be made, for the purpose of attacking your
13 credibility, meaning your believability. In other words, a
14 person's record of prior convictions are not admitted for the
15 purpose of saying to the jury, Well, if a person committed a
16 crime once, then clearly they committed this crime. That's not
17 the reason that it comes in. But it does come in for the purpose
18 of attacking your credibility, or believability.

19 Do you understand that?

20 A Yes, ma'am.

21 Q Okay. Now, if you decide to testify, this decision, on your
22 part, must be freely, voluntarily and intelligently made with the
23 knowledge of the protections given to you by the Fifth Amendment
24 and the consequences of your decision to testify. In other
25 words, I am explaining these things to you so that you understand

(Devonte Trevon Major - Examination by The Court)

1 your rights.

2 Of course, I don't want you to take anything that I am
3 saying to you now to be that I have a feeling one way or the
4 other, because obviously I do not. This is a personal right.
5 What I care about is that you understand your right. But your
6 decision must be your decision. Understand that?

7 A Yes, ma'am.

8 Q Now, if you decide not to testify, I will instruct the
9 jurors that they cannot give the fact that you did not testify
10 any consideration whatsoever, and that there is to be absolutely
11 no prejudice to you because you did not testify. It is left
12 entirely up to you whether or not to testify.

13 And when I give -- and your attorney has seen this part of
14 my charge, or instruction, to the jury. And I tell them, they
15 are to draw absolutely no inference whatsoever. And I do make a
16 face, actually, to really make a point, and I tell them, You're
17 not allowed to talk about it; you can't mention it in the jury
18 room; it's not to be talked about; you can't even talk about it,
19 mention it. And then I tell them, And that's because the burden
20 is, and remains, on the state to prove guilt beyond a reasonable
21 doubt. In other words, I do everything that I can, that I know
22 how to do, if you choose not to testify, to tell this jury that's
23 your right.

24 Now, obviously in order to make this decision, which is an
25 important decision, you can talk to your attorney. It's

(Devonte Trevon Major - Examination by The Court)

1 important to talk to your attorney about this particular matter.
2 Sometimes folks want to talk to their family and friends, and
3 certainly you should talk to people that you have faith in.

4 But it's so important, it's so important that you
5 understand. You know, at the end of the day it's so important
6 that you understand that the final decision whether to testify or
7 not to testify, that that decision is left entirely up to you.
8 It's so important that you understand that. And, do you
9 understand that?

10 A Yes, ma'am.

11 Q Okay. Now, do you understand what I have explained to you?

12 A Yes, ma'am.

13 Q Do you have any questions?

14 A No, ma'am.

15 Q And have you discussed with your attorney whether you should
16 testify or not testify?

17 A Yes, ma'am.

18 Q And do you need to speak with her anymore?

19 A No, ma'am.

20 Q All right. And are you prepared to tell me at this point
21 whether you wish to testify or not testify?

22 A No, ma'am, I do not want to testify.

23 Q You do not wish to testify?

24 A No, ma'am.

25 Q So you are telling me now that you do not wish to testify?

(Devonte Trevon Major - Examination by The Court)

1 A Yes, ma'am.

2 Q Okay. Thank you, sir.

3 MATTER(S) OF LAW

4 THE COURT: All right. Now, with regard to the arguments
5 and my charge -- we've been over the charge and been over the
6 verdict forms -- have you all had an opportunity to mark the
7 exhibits as you shared with me you guys were going to mark the
8 exhibits? Yes?

9 ATTORNEY OSBORNE: We have marked the exhibits. There's
10 only a couple that we, in talking to the court reporter, that
11 need clarification on, 19 and 20. And I thought we moved them
12 in, but apparently we didn't. Nineteen is -- shoot. Nineteen
13 and 20 is a swab from the dog's mouth. The other one is the
14 victim's blood swab from inside house. We've already testified
15 to them. If there's no objection, if we haven't moved them in,
16 we'd seek to move them in now, just for the record.

17 THE COURT: I understand.

18 ATTORNEY GAY: Well, I don't think the dog swab really had
19 any relevance to the trial at all, so I would ask that they not
20 be admitted.

21 ATTORNEY OSBORNE: The dog's mouth.

22 ATTORNEY GAY: I know. But still, there was nothing
23 testified -- except for the existence of the swab, there was
24 nothing testified to any information about what's inside the
25 dog's mouth. And also ---

1 ATTORNEY OSBORNE: Just to clarify, we did. There was
2 nothing, no DNA came back from inside the mouth. So the whole
3 point, from the state's position, was that they tried. And it
4 just shows a complete investigation. No DNA, no human DNA, was
5 found inside the swabs.

6 ATTORNEY GAY: I understand that. But I'm going to object
7 to the entrance of that at this time without a witness.

8 And then the second thing is what?

9 ATTORNEY OSBORNE: The second thing was the victim's blood
10 standard that was taken from inside the home.

11 ATTORNEY GAY: I think the witness testified about it.

12 ATTORNEY OSBORNE: Yeah, I thought we moved them in.

13 ATTORNEY GAY: I don't have an objection to that. But I do
14 have an objection about the dog.

15 ATTORNEY HENSLEY: And my objection just simply would be the
16 timing, Your Honor. The state's rested its case. So I would
17 just object to the entry of evidence after that point.

18 THE COURT: Okay. All right.

19 ATTORNEY OSBORNE: And honestly, if I wasn't clear, I
20 thought we had already moved it in, but ...

21 ATTORNEY GAY: And again, she's right. You know, the
22 trial's closed and you had rested, and we should not be putting
23 evidence in that's after the state's closing.

24 And then I have specific things about the particular dog
25 swab. But I don't think we should put evidence in after the case

1 closes.

2 THE COURT: You mean after they have rested their case?

3 ATTORNEY GAY: Yes, after the state's rested.

4 THE COURT: I understand.

5 ATTORNEY OSBORNE: No problem with it not going back, Judge.

6 THE COURT: Okay. Very well then. We'll let it go into
7 evidence.

8 ATTORNEY OSBORNE: And then secondly, we have
9 inadvertently -- we just need clarification here -- marked two
10 180s. They had the same information, and one is just a better
11 copy than the other. And then we've marked two 201s. And 180
12 is, for the record, the contact of Marcus Porter's home of Little
13 Brh. And then 201 is a photograph of Devonte Major's jacket, and
14 we inadvertently put two in.

15 THE COURT: I understand. Well, while you are standing
16 there -- and, counsel, I know y'all can see -- pick one and put
17 the other one down. And if you have a concern, let me know.

18 ATTORNEY HENSLEY: My concern would be I think they should
19 just put the one in -- they went in on two different days, so I
20 would just say put the one that went in on the 14th.

21 ATTORNEY OSBORNE: Okay.

22 ATTORNEY HENSLEY: That would be my resolution to this.

23 ATTORNEY OSBORNE: And that's the same for both, the one
24 that went in first? All right. We'll pull the other ones,
25 Judge.

1 THE COURT: Okay. I don't want two of them going back,
2 because that makes it look like somehow it should have some sort
3 of emphasis. Is that all?

4 ATTORNEY OSBORNE: Yes, ma'am. Everything else seems to be
5 okay.

6 THE COURT: All right. With regards to the argument, I
7 gather you, the defense believes, that you are entitled to the
8 last argument. Any objection?

9 ATTORNEY OSBORNE: None from the state.

10 THE COURT: All right. Y'all going to flip a coin? How
11 y'all going to do that?

12 ATTORNEY GAY: We'll just go by the same path that we've
13 done before. But I'm looking at the clerk, wondering, are we
14 going to do all three before lunch? We would need some time to
15 go through some of these things we discussed, and look at some of
16 the physical evidence to get ready.

17 THE COURT: Well, I'm going to give you -- I'm not going to
18 give you a lot of time. Tacos are going to be delivered at 1:00.
19 Probably what we will do is, we'll have closing; probably break
20 for lunch; and then I'll probably, at that point, deliver the
21 charge to them.

22 I thought we would be 11:30 with the doctor, and then we
23 would be 12:00, and then tacos. I mean, my whole schedule just
24 went haywire. So their lunch is going to be delivered at 1:00.

25 So how long are you talking? How long do you want to look

1 at what you want to look at?

2 ATTORNEY HENSLEY: There's several pieces of evidence that I
3 plan to use in my close.

4 THE COURT: Sure.

5 ATTORNEY HENSLEY: And there's a gazillion pieces of
6 evidence. So it's going to take me a little while to figure out
7 where what I need is. Because other than Exhibit 22, I don't
8 think I've picked up any of the other exhibits. So I'm just
9 going to need a few minutes to figure it out.

10 THE COURT: All right. We're going to take a 15-minute
11 break.

12 (WHEREUPON, court recessed at 11:32 a.m. and reconvened at
13 12:05 p.m.)

14 THE COURT: All right. When the jury returns, I will turn
15 to you, Ms. Gay. You will rest. And then I will turn to you,
16 Ms. Hensley. You will rest. And then we're going to go into
17 closing arguments.

18 Are you all prepared?

19 ATTORNEY OSBORNE: Yes, ma'am.

20 ATTORNEY GAY: Yes, ma'am.

21 ATTORNEY HENSLEY: Yes, ma'am.

22 THE COURT: Very well. All right, thank you so much. Let's
23 have the jury.

24 (WHEREUPON, the jury was seated in the courtroom at
25 12:07 p.m.)

1 THE COURT: All right. Ladies and gentlemen, when you all
2 stepped to your jury room, we had heard the case from the state.
3 And we will now turn to Ms. Gay on behalf of Mr. Green.

4 ATTORNEY GAY: On behalf of Mr. Elijah Green, Your Honor, we
5 rest.

6 THE COURT: Thank you. And, Ms. Hensley, on behalf of
7 Mr. Major?

8 ATTORNEY HENSLEY: Thank you, Your Honor. May it please the
9 Court. On behalf of Devonte Major, we rest.

10 THE COURT: Thank you very much.

11 Ladies and gentlemen, you have now heard the witnesses and
12 received the evidence which you will in this case. What remains
13 for us are the arguments of counsel and then my charge, or
14 instruction, on the law. And let me tell you how we will be
15 proceeding. You will first hear the closing arguments from the
16 state, to be delivered by Mr. Osborne. You will then hear from
17 Ms. Gay on behalf of Mr. Green, her closing argument on his
18 behalf. And then you will hear from Ms. Hensley on behalf of
19 Mr. Major, and her closing argument on his behalf.

20 Ladies and gentlemen, and then we may break for lunch at
21 that point and then come back, and I will deliver the instruction
22 on the law to you.

23 Ladies and gentlemen, at this time I ask that you please
24 draw close as we listen to the closing arguments. Solicitor
25 Osborne.

1 CLOSING STATEMENT ON BEHALF OF THE STATE

2 ATTORNEY OSBORNE: Thank you, Your Honor. While J.B. was
3 hanging out with his friends, having a good time, bragging about
4 his moped, he had no idea that there were four men on their way
5 from Beaufort, headed to Summerville. And they weren't coming to
6 hang out and have a good time; they were coming with plans to
7 commit an armed, home invasion.

8 And when those four men got to the back door of Marcus's
9 home and forced entry, these two defendants were the first to go
10 through.

11 David and Marcus's dog tried to defend their owners, and it
12 cost him his life, he was shot and killed.

13 J.B. was treatment no better than that dog. He was shot and
14 left on the ground. That first shot may not have killed J.B.,
15 you heard testimony to that. And let's face it, if J.B. had
16 lived we probably wouldn't be here today.

17 When these four defendants couldn't find that marijuana that
18 they had traveled so far to come and steal, they got mad, they
19 got angry, and they began shooting. And when the gun smoke
20 cleared, Marcus Porter was shot in the chest and J.B. was shot
21 eight times, left on the ground in a pool of his own blood,
22 fighting for his life.

23 This wasn't just an armed, home invasion. This was nothing
24 short of a ruthless, cruel execution.

25 Before I get into the evidence in this case, I want to talk

1 to you about something that Judge Goodstein spoke about earlier,
2 way back in the beginning of this trial. And it's credibility.
3 And this is for you, this is for -- you as jurors, get to decide.
4 It's all yours. You can believe some, or none, or all of what a
5 witness tells you. Look at what fits. Look at what doesn't.

6 And you are going to hear me talk about this a lot,
7 corroboration. You corroborate the evidence by what witnesses
8 tell you, and you corroborate the evidence by the physical
9 evidence itself. And if there's a difference, you ask yourself
10 why.

11 And lastly, and most importantly, you are not required to
12 check your commonsense at the deliberation room door when you're
13 deliberating. Bring it with you when you're in there.

14 All right. I'm going to start by talking about timing.
15 Timing is very important in this case. There's Robynwyn
16 subdivision. ■■■ Myrtle Place is the location of the murder. As
17 you heard testimony and you know from the 911 call, as well as
18 from Marcus Porter, that after he was shot he ran out the front
19 door and he ran across the street to Shaneka Wright's house.

20 Now, as he was running, he heard individuals jumping the
21 fence. Now, there was some questions and some innuendo made by
22 the defense that maybe there was a delay there. Well, I want you
23 to, again, tap upon your commonsense and ask yourself, Marcus
24 Porter was literally shot in the chest. It's amazing that he is
25 still alive. Marcus Porter didn't delay getting help. He ran

1 across the street and got help and asked her to call 911.

2 And Shaneka said she didn't delay. And you can hear Marcus
3 in the background. Now, maybe there might be a suggestion that,
4 Well, why didn't he go back in the house and use one of the seven
5 phones that were there; why did he go across the street? That
6 would be asking Marcus to take a chance and go back into the
7 house and hope that those individuals would come back and finish
8 him off. Marcus was running away from danger and seeking help,
9 and he didn't wait to do it.

10 Shaneka lives right across the street. Based on that,
11 Detective/Sergeant Jonathan Davis told you, and all the other
12 evidence and the testimony, the 911 call came in at 12:03 and a
13 little bit of change. He backed that up. He's estimating that
14 the four individuals would have left Marcus's house around 12:03.

15 About four minutes later officer Scarborough sees the Honda
16 CR-V occupied by four individuals, turning off of Pawley onto
17 Fripp. Now, I know Officer Scarborough, two years later and
18 whatnot, some months, he didn't remember the exact map or the
19 exact streets. But when he looked at his report, he remembered
20 it was from Pawley to Fripp.

21 You'll have this map back there with you, along with all the
22 other evidence that was entered. Those streets are marked. This
23 is where he ended up seeing that CR-V.

24 (WHEREUPON, a video was published.)

25 ATTORNEY OSBORNE: That's what you call a pucker moment.

1 Those four individuals that were inside that car were just
2 involved in a home invasion and a murder and shooting another
3 individual. And when they passed by the police officer, remember
4 what Scarborough told you, all of them, bright-eyed, looking
5 straight ahead. And one of the individuals in the back seat was
6 so shocked upon seeing the police, he had his mouth wide open.
7 One of those two guys. They were in the back seat. Officer
8 Scarborough ended up passing that car at 12:07.

9 Now, you may ask yourself, Why is there a four-minute delay
10 here, why does it take four minutes to get from [REDACTED] Myrtle Place
11 to Fripp and Pawley? Detective Sergeant and Jonathan Davis asked
12 the same question, so he clocked it, and he said it took him
13 about three minutes, all right.

14 But there's another explanation here. These four guys are
15 from Beaufort/Seabrook, they're not from Summerville. This is
16 one of the most twisty-turny neighborhoods you'll ever see.
17 Officers who respond to this neighborhood on -- well, respond to
18 this neighborhood frequently, even two of them, Scarborough and
19 the officer following him got lost while responding to this
20 neighborhood. It is not surprising that these four individuals
21 who are not from there might get a little turned around,
22 especially whenever you consider the adrenaline that will be
23 pumping from being involved in what they were just involved in.

24 All right. Marcus told you that after the incident, when he
25 ran to Shaneka's house, he hears people jumping the fence.

1 Corporal Cramer, when he brought his K-9, Chase, over to do an
2 article search, he saw what he thought was footprints behind
3 Marcus's home.

4 Well, if Marcus and Corporal Cramer are correct that these
5 individuals fled out of the back door and through mud, you would
6 expect to see mud, on all four of the individuals who broke into
7 that home, on their shoes. And that's exactly what you see.

8 And while we're talking about shoes, I want to point out
9 something here that we kind of glossed over a little quickly, but
10 it's important. And I think this came out during
11 cross-examination of David Swibaker. David was asked, On the
12 night of the incident when you were interviewed by police, you
13 described one of the individuals that broke into the house as
14 wearing white, red and blue shoes. And David said yes. That's
15 Muanah Fortunes shoes, top right.

16 And what about those purple shoes? You heard the 911 call.
17 You'll have it with you back there. This is way before they
18 caught Devonte Major and all these buddies, way before that. You
19 heard Marcus on that 911 call say, operator asked, Well, what did
20 they look like? And Marcus said, One of them's wearing purple
21 shoes. You can hear him in the background.

22 And when Marcus was interviewed, he described that
23 individual. He said he's a large guy, he's a big guy, he's
24 wearing purple shoes. That's corroboration.

25 And if you ask yourself, Well, how is Marcus, how is he able

1 to see those shoes in particular? Well, one, those are pretty
2 distinctive shoes. Two, he said he was on the ground for a good
3 bit of this. But also remember, when Marcus testified that
4 Elijah Green and Devonte Major drug him to the back, he was at
5 gunpoint. Ask yourself, If you're being held at gunpoint,
6 where's your head? I know I'm looking down. But there's more
7 corroboration for that. I'll get to that in a second.

8 All right. Just a few seconds after Scarborough passes that
9 Honda Officers Reynolds and Cramer pass the Honda coming up
10 Palmetto. And that's just a few seconds later. When they see
11 the CR-V, they then turned around.

12 The CR-V then turns left on to Palmetto. Four individuals
13 are responsible for this burglary. Four individuals were in the
14 Honda at 12:07. Four individuals are in the Honda seconds later.

15 When Officer Cramer and Reynolds gets behind the vehicle,
16 they notice that vehicle does not have a license plate. They
17 activate their lights and sirens, trying to pull the car over.
18 The occupants in that vehicle are having none of it.

19 You heard testimony that this vehicle took police on a chase
20 that lasted nearly 30 minutes, that went on through multiple
21 jurisdictions. The only reason why that vehicle ever stopped was
22 because Colleton County deployed stop sticks, forcing it to stop,
23 flattening all of its tires.

24 What were these defendants doing during this chase? Well,
25 you know, and I'm going to talk about it, that they were

1 desperately trying to cover their tracks. They were getting rid
2 of evidence that was inside of that car that would tie them back
3 to [REDACTED] Myrtle Place.

4 And you know who the fear of getting caught was weighing on
5 the most? That guy, Elijah Green. He's the first guy through
6 door. He's the guy that first shot J.B. He's the guy, and
7 another, that shot J.B. over and over and over again. And he's
8 the guy that shot Marcus Porter. The fear of getting caught was
9 so great on him, that it caused him to vomit all over himself.

10 After the vehicle was stopped, there's Polo Salazar, the
11 driver. Remember Marcus Porter said, I seem to recall something
12 about camouflage. That's Polo. But that's an interesting
13 sweatshirt that he has on because it's not just a regular hoodie,
14 it's a balaclava where you can pull up the mask and cover up your
15 face.

16 Muanah Fortune, front passenger, again with the hoodie.

17 There's the big guy wearing the purple shoes. Rear, driver.

18 And there's Elijah Green, behind the passenger.

19 Four defendants, all from the Beaufort/Seabrook area,
20 fleeing right after a murder was committed by four individuals,
21 and every single one of these individuals had gunshot residue on
22 their jacket. Exactly what you would expect to see if they had
23 fired a gun or they were in the vicinity when a gun was fired.

24 Now, after the defendants were taken into custody,
25 detectives searched the Honda. And I want to talk to you briefly

1 about some of the evidence that was found in the Honda. On the
2 driver's side floorboard, we have a black-and-orange glove, as
3 well as a knit cap. No point -- and it was mentioned. No point
4 to package these separately. They were found together, and cross
5 contamination's already occurred. I'm going to talk about this
6 black-and-orange glove here in a second.

7 I also want to talk to you about what Ryan DeWane said when
8 they analyzed these two items and some of the other items. When
9 we're talking about DNA, I have to be careful. I'm going to kind
10 of give you the results on this. But in regards to these two
11 items, Ms. DeWane reported that there were four different
12 individuals that contributed a mixture of DNA, four individuals
13 contributed their DNA to this mixture.

14 You'll have these items back there. Feel free to put on
15 some gloves and take a look at them. These are not new items
16 that were just purchased; these are items that have been around
17 for a little bit. Ms. DeWane told you DNA can hang around so,
18 yes, more than one person can put their DNA on an item.

19 But anyhow, when she compared those results, it was
20 1.4 septillion times more likely that it was Polo and three
21 unknown people compared to four unknown people. And with the
22 black gloves, similar results, 12 octillion times more likely it
23 was Polo and three unknowns compared to four unknowns.

24 And so what does all that really mean? Very high likelihood
25 that the presence of Polo's DNA is on these items.

1 All right. Then we move to the passenger floorboard, front,
2 passenger floorboard. We have a Gucci bag. This Gucci bag's
3 pretty important. There was ammunition found in that bag, and it
4 was Hornady and Tulammo, .380 rounds, mixed. Those are the same
5 combinations of ammunition that was found in the .380. Also
6 found in that bag, not insignificant, Polo Salazar's ID.

7 And stuffed on the side of the front, passenger's seat where
8 Fortune was seated, we have a camo, sort of face guard, we also
9 have the watch, and then we have two more watches found inside
10 that Honda. These are not just any watches. This is David
11 Swibaker's watch, and two of them belong to Marcus Porter. David
12 Swibaker and Marcus Porter did not put their watches in that
13 Honda CR-V. The individuals that broke into that home and
14 committed this murder and home invasion, they put them in that
15 CR-V.

16 Now, Marcus Porter told you that the big guy that was
17 wearing the purple shoes also had big, bulky gloves, and those
18 big, bulky gloves caused him to have a hard time to reach into
19 the mason jar, or the jar, and pull out the loose marijuana.
20 Inside the CR-V, detectives found this.

21 Now, Ryan DeWane, the scientist, said, You know, we looked
22 at samples that was here, and we just couldn't get enough to tie
23 any DNA to anyone. However, the glove is certainly consistent
24 with a big, bulky glove. You have a big guy wearing purple shoes
25 in the CR-V.

1 And, yes, you have heard testimony that -- or, I would
2 assume that the defense is going to argue, they should, that
3 Marcus Porter never said anything about a glove when he was
4 talking to the police. Well, that's true. But you know what
5 else never happened? The police never showed that glove to
6 Marcus Porter. The police never showed a photograph of that
7 glove to Marcus Porter. That would have been improper. Yet he
8 described the glove that was found inside the car.

9 And there's more corroboration. And that was provided by
10 Devonte Major himself. If Marcus Porter is correct and the big
11 guy came in with that glove and took some loose marijuana, well,
12 there should be some loose marijuana on that guy's person.

13 Remember when Devonte Major was telling Officer Moy and
14 giving his story about what he was doing that night, he said that
15 I came from Beaufort down to Summerville to buy some marijuana, I
16 wanted by 3.5 grams of marijuana for 25 bucks. Well, Moy started
17 questioning, It's a long way, hour and a half there, hour and a
18 half back, for 25 bucks. Said he was going to try to sell it.
19 Well, listen. Beaufort, that's \$30 for that. So I came all the
20 way down to Summerville to save some money. And to further prove
21 that point to Moy -- beg the Court's indulgence.

22 THE COURT: Yes.

23 ATTORNEY OSBORNE: He pulled out the loose marijuana while
24 he was in the interview room, and showed it to Moy.

25 Now, ladies and gentlemen, I am not at all suggesting that

1 any of you have ever purchased marijuana from anyone, nor am I
2 suggesting that any of you know anyone who has ever bought
3 marijuana. But ask yourself, how plausible is it, when you
4 purchase marijuana from someone, that they would hand it to you
5 in their hand and ask you to open up your hand and give it to
6 you?

7 This loose marijuana didn't come from any dope deal. It was
8 stolen, and it was stolen from Marcus Porter's home in Marcus
9 Porter's jar.

10 All right. Now, after the defendants were in custody
11 Corporal Cramer backtracked and began collecting evidence that
12 they saw thrown from the vehicle. And did they find everything
13 that was thrown from that vehicle? Almost certainly not. But
14 what they did find was significant. About a mile or so before
15 the car was stopped, officers founds that.

16 And this mask was sent to SLED and analyzed. And there was
17 one hair that was found in that mask that came back as being a
18 single-source DNA contributor. And the DNA was 310 septillion
19 times more likely that it was Devonte Major compared to that of
20 an unknown subject.

21 Why do you think Devonte Major was so determined to get this
22 mask out of that car? Because when Marcus Porter and David
23 Swibaker tell you that these guys were masked up and gloved, they
24 were right, at least about one of them.

25 But officers kept looking. And around the same area they

1 found this, a navy jumpsuit. Now, I'm not suggesting, or do we
2 know that the defendants wore this navy jumpsuit during the
3 incident? No, we're not suggesting that. But what we do know
4 for sure is that these defendants wanted that jumpsuit out of
5 that car, bad.

6 When that jumpsuit was sent to SLED, Ms. DeWane looked at
7 the jumpsuit, and she found that knife that and that orange
8 glove. That knife was swabbed for DNA, and something interesting
9 came back. When they compared the samples to J.B. Weaver, they
10 found it 340 septillion times more likely that J.B.'s DNA, along
11 with an unknown person, contributed to that sample, compared to
12 two unknown people.

13 And what about the glove? Other than a very strong
14 likelihood that J.B.'s DNA is on that knife, how do we know that
15 that was involved in this incident or it came from that Honda?
16 It's a matching glove. You will have those, both of those,
17 gloves back with you. One's a right; one's a left. The glove
18 that was found on the driver's side of the Honda matches the one
19 that was found inside the jumpsuit.

20 All right. Now, officers knew that if Marcus Porter and
21 David Swibaker were correct in that these four individuals were
22 armed, then those guns, they should be somewhere. So they went
23 back and they started looking. And there was an area in which,
24 if you remember, that they lost these cars, right when they went
25 from Palmetto and then took a left onto 78.

1 So that's where they focused their attention, and that's
2 where they found the four guns. These four guns were all tossed
3 from that Honda CR-V. And if you look, in all likelihood they
4 were probably tossed from the passenger's side. Two guns were
5 the murder weapon; two guns were not. And I'll talk about that
6 in a second. All right.

7 The defendants might have been smart enough to throw out the
8 guns and other evidence in this case, but the real smoking gun in
9 this case, the real smoking gun, and the one that Officer
10 Reynolds didn't miss, that he saw, was that, J.B. Weaver's wallet
11 thrown from that Honda occupied by these four defendants. It
12 didn't magically get transported by some other car and thrown
13 from; it was thrown from that car. These defendants committed
14 this murder. Make no mistake about it.

15 And I want to take a second and talk about J.B. There's
16 absolutely no evidence in this case presented that J.B. had
17 anything to do with the personal consumption or the sale of this.
18 But this is why J.B. died, this is why he was murdered, all over
19 this. This is what they drove an hour and a half to get, a
20 three-hour trip, hour and a half there, hour and a half back.
21 That's what they wanted.

22 And they were going to be ready just in case they ran into
23 an unaccounted dog or person. They were all going to be locked
24 and loaded, fully loaded, with pistols. No one or dog was going
25 to stop them from getting what they came for.

1 All right. So how did these defendants, and certainly a
2 question that Marcus was asking, how did these defendants from
3 the Beaufort/Seabrook area even know about Marcus? He didn't
4 know them, or where he lives. Yes, Marcus sold marijuana.

5 There's his debt list, or ledger. And you can look and
6 judge for yourself whether he's cartel worthy or a heavy dealer.
7 The last entry here is Little Brh. Little Brh owed him \$100, he
8 said, from two different transactions.

9 Who is Little Brh? Well, that's this guy, Jaquavious
10 Washington. David Swibaker introduced Jaquavious Washington to
11 Marcus Porter, and Marcus Porter sold marijuana to him a couple
12 times. That turned out to be a huge mistake, especially for J.B.
13 And if you notice, Jaquavious is from the Beaufort/Seabrook area.

14 But what's the connection between -- other than they live in
15 the same area, what's the connection between Jaquavious
16 Washington and the people in the car? Well, that was found on
17 the phones. There's Little Brh, the contact, [REDACTED], and there is
18 an outgoing phone call placed on Elijah Green's phone on the
19 night of the murder to that [REDACTED] number, and it is a
20 14-and-a-half-minute phone call. That phone call occurred an
21 hour and a half before this murder. We have no idea what was
22 being said in that call. But we sure know what happened an hour
23 and a half later.

24 All right. Now, this is the last time that I'm going to get
25 an opportunity to talk to you, and so I'd just like to take this

1 time to just address any questions that I think might come up
2 with you while you're deliberating, and also address any issues
3 that I think the defense might bring up based on some of their
4 questions.

5 The first thing I want to say is, in her opening, Ms. Gay
6 said that the defendants had waited a long time. And that is
7 true, for this week, they have waited a long time. But you know
8 who else has waited a long time? J.B.'s family. They've waited
9 a long time for this week, too.

10 If you look at this courtroom, this is not how this
11 courtroom is normally set up. No one can help COVID; no one can
12 help COVID restrictions; no one can help that year when we were
13 all in our house. But it happened. We would love for all four
14 to be here, but it can't happen, we just don't have the room.
15 Muanah Fortune and Polo Salazar, make no mistake about it, they
16 will have them here for their week in court. You're not here for
17 them; you're here for these two.

18 All right. This defense -- and what I imagine will come up,
19 and what I sort of glean from the questioning, in the business we
20 sort of call this a spaghetti defense, right, you know, just
21 throw out a whole bunch of innuendos and accusations and hope
22 something sticks to the wail. The back door was kicked in. Yep,
23 the back door was forced in. We know that. But he also know the
24 back door was forced in another time, during another burglary.

25 Cannot timestamp footprints, can't do it. But we do know

1 that whatever force was used to enter that back door, it wasn't
2 enough to cause any damage to the frame. It's not like the
3 deadbolt was turned or anything. You would have seen that. Just
4 a flimsy little door lock, that's all that was needed to get
5 through.

6 No forensic evidence. Well, I assume there's going to be an
7 argument that we can't tie, forensically, any of these defendants
8 to Marcus's home. Well, that's true, we can't. But unless you
9 believe that Marcus shot himself and that J.B. somehow shot
10 himself, or even the dog, I guess, shot himself, then a crime was
11 committed by someone. And we don't have evidence tying anyone to
12 that incident.

13 And Detective Brooks, Crime Scene Detective Brooks, told you
14 if someone was wearing a mask or gloves, you wouldn't expect to
15 find fingerprints or DNA. But you know where you would expect to
16 find them? In the mask, and in the gloves. And that's what we
17 have in this case.

18 But what you do know is, whoever went inside of that house
19 and in the vicinity of those gunshots should have GSR on them.
20 And all four of them did.

21 I think I've already talked about this. You might hear
22 something about there's four people's DNA, so maybe there's an
23 unknown person. Old clothing, you would expect to find multiple
24 DNA contributor, or mixtures, on it. I'm sure the defense will
25 say something about, Well, you know, you just can't convict based

1 on David and Marcus's identifying these defendants, you can't
2 convict on that.

3 Ladies and gentlemen, when you go back there in that
4 deliberation room and you convict these defendants, which I'm
5 confident you're going to do, you're not going to convict them
6 based solely off the IDs. You're going to convict them based on
7 all the evidence in this case.

8 Wade Rollings is a chief, and I think you heard a little bit
9 about that, crime scene technician who was fired. He stole
10 money.

11 David and Marcus, there's probably going to be some
12 attacking of them. David only saw two or three people. Yes, he
13 did. Look at what David told you. David said, I was inside the
14 house. I saw two or three people come in. I jetted to the back.
15 That's what he saw, two or three. As he saw Marcus being drug by
16 two individuals, Green and Major, he then went across into his
17 bedroom. And, while he was in his bedroom, he got hit upside the
18 back of his head. So, one. And then he's thinking that he saw
19 another one in there, or heard another one in this. While
20 Devonte and Major were with Marcus, Muanah Fortune and Polo
21 Salazar were taking care of David. He's not lying. He's telling
22 you what he saw.

23 Marcus has pending drug charges. I suppose, you know, he's
24 a dope dealer, therefore, you can't believe him.

25 And then there was some talk about like what's been analyzed

1 and what isn't. All of the dope that's taken in this case is all
2 going to be analyzed -- well, if it hadn't already. And I think
3 you've heard testimony, you can you glean that it's already been
4 analyzed. That's going to be relevant for his trial, for his
5 charges. It's not relevant in this. But you can take a look at
6 that and tell that's marijuana.

7 And I guess there might be another thing, like maybe the
8 argument could be Marcus is telling us what we want to hear, the
9 state, in hopes that I might help him in some way with his
10 charges. If Marcus is lying to convict these defendants and
11 trying to help us, he's doing a pretty crappy job of it, all
12 right. He didn't describe all the clothes that they were
13 wearing. He didn't describe the guns. Marcus came in here and
14 told you, as best he could, what he could describe and what he
15 could remember.

16 But when you're dealing with somebody like Marcus, okay,
17 somebody that does have pending charges, you corroborate what he
18 says with the evidence. Just don't just take it at face value;
19 corroborate it. And there's more than enough evidence
20 corroborating this case.

21 I suppose there might be like the marijuana, personal
22 consumption. I mean, it looks a lot to me for personal
23 consumption. But remember, you can believe all, none or some of
24 what a witness tells you. But whether that bag is for personal
25 consumption or selling, or whether Marcus Porter, himself, is

1 trafficking meth, is completely irrelevant to the question of
2 whether these defendants murdered J.B. Those are just
3 distractions.

4 But you know who those questions are relevant for? They're
5 relevant for Marcus. He's going to have to answer to those
6 charges at a later date. So I don't think it would be that
7 surprising that he might hesitate to answer those questions here
8 today, especially knowing what he's got pending.

9 Now, you might hear something about David lied on the night
10 of the murder and said that he was unfamiliar with any marijuana
11 sales going on inside his house. Just think for a second what
12 Dave had just gone through. Having a good time; fixing a table;
13 hanging out with his friends; and it was shattered. Dog shot and
14 killed in front of him; he runs for safety; he gets hit in the
15 back of his head; J.B. is shot over, over, over and again; Marcus
16 is shot in the chest; he then tries to save J.B.'s life while
17 blood's coming out of his mouth, giving him CPR.

18 And now he's being asked, Are you involved in marijuana at
19 all? Is it not surprising that he would not want to be in
20 handcuffs for the rest of that night? But right now David has no
21 charges; David has no motivation to lie to you. Corroborate what
22 he said.

23 All right. Another point that could come up is the
24 difference between direct and circumstantial evidence, so I want
25 to just address that. But you're going to hear the Judge

1 instruct you on the law. I want to just say this right now as a
2 preface. If I say anything that's different from what the Judge
3 instructs you on the law, ignore everything I've told you. And
4 that goes for Ms. Gay and Ms. Hensley, as well. The Judge is
5 going to instruct you on the law. But I would suspect that you
6 might hear something about circumstantial and direct evidence.

7 Circumstantial is a chain of facts or circumstances
8 indicating the existence of a fact. And the classic example that
9 you hear, a lot of times we hear in law school, is that let's say
10 we're all sitting in here and we hear thunder outside, we hear
11 what we think to be raining outside; we see an individual coming
12 in here soaking wet with an umbrella that's wet. Nobody in this
13 courtroom would have any direct evidence that it's raining. But
14 we have a ton of circumstantial evidence that it's raining.

15 And this is the important point. The law makes absolutely
16 no distinction between the weight or value that you are to give
17 to either direct or circumstantial evidence. So if you hear a
18 defense attorney tells you or insinuate that circumstantial
19 evidence is no good, or not good evidence, that's simply not the
20 law.

21 You can absolutely convict someone on circumstantial
22 evidence.

23 Okay. Now I'm going to get into the charges, talk about
24 them briefly. The Judge is certainly going to give you much more
25 lengthy instructions on the law, okay, but I want to highlight

1 some points.

2 But I want to start by saying, there's one key point to this
3 trial. When you're trying joint defendants, is not proper -- and
4 I want to reiterate, it is not proper -- if you think Devonte,
5 there's enough evidence to convict Devonte, you cannot convict
6 Elijah for that reason alone. You need to judge the evidence
7 against both of them separately. And that goes vice versa.

8 I'll go through them all kind of quickly, okay, and I'll
9 save murder for last.

10 Burglary in the first degree. The defendant, or defendants,
11 entered a dwelling with the intent to commit a crime. This is
12 important here. It's the intent to commit a crime, not a
13 specific crime. You do not have to find that these defendants
14 entered that back door with the intent to kill J.B. That is not
15 the law. All you need to do is find that they entered that home
16 with the intent to commit a crime. You don't enter someone's
17 home whom you don't know and they don't know you armed with guns
18 and masks and gloves with not intending to commit a crime. I
19 mean, clearly they came there to commit a crime.

20 When entering or fleeing, the defendants were armed with a
21 deadly weapon. We have that here, all four.

22 Or, the incident occurred at nighttime. And we've heard
23 plenty of testimony that this was at night. We've seen the
24 video, the chase and whatnot, to know that this occurred at
25 night.

1 Attempted murder. It's exactly what it sounds like. With
2 specific intent, the defendant, or defendants, attempted to kill
3 someone. Okay. You don't shoot someone in the chest in hopes to
4 hurt them. You're trying to kill them.

5 Oh, with malice aforethought. I'll talk about malice
6 aforethought in a little bit, because that's really the key to
7 murder.

8 Possession of a weapon during the commission of a violent
9 crime. The defendants were in possession of a firearm during
10 commission of a violent crime. This is like a tagalong. If you
11 convict either defendant with murder or burglary in the first
12 degree, you may also elect to convict him of this crime, okay.
13 If, for whatever reason, you only go with ill-treatment of an
14 animal or attempted murder, you may not convict him of this
15 crime. So this crime goes along with murder and burglary in the
16 first degree. You don't have to, but you may elect to also
17 convict him of this crime.

18 Lastly, before I get into murder, I'll talk about the
19 killing of a dog. In South Carolina, this is what we call
20 ill-treatment of an animal. This dog, yes, mf'er, immediately
21 knew that those defendants were coming into that home to do his
22 masters harm. And he didn't hesitate. He fought for their
23 lives, and it cost him his.

24 And now that brings to us J.B.'s killing. Both the
25 defendants have been charged with murder. Defendants killed

1 another person. That's why Dr. Batalis's testimony was
2 important. J.B. didn't die from any natural causes. He was
3 murdered, with malice aforethought.

4 Now, malice aforethought, it's an old English term, and
5 nobody uses it anymore, all right. But it's sort of broken down
6 into two main ideas.

7 Malice. Malice is the hatred and ill will, or hostility,
8 toward another person. And I want to point out something here.
9 Marcus told that you after J.B. was shot the first time he was on
10 the ground. When Green, Major and the other two weren't happy
11 with just walking away with that loose little bit of marijuana in
12 Devonte's pocket, they couldn't find what they came there for,
13 they got angry. And Green came and up football-kicked J.B. in
14 the face.

15 That kick, in all likelihood-- we've seen injuries, we heard
16 Dr. Batalis testify to injuries that corroborated with that, in
17 all likelihood, flipped J.B. over. And why do I say that?
18 Because it is correct, we cannot chronologically sequence these
19 gunshots, right. There's no way for Dr. Batalis to know that.
20 But 6, 7 and 8, in all likelihood, were fired when J.B. was on
21 the ground. Back shots, cowardly.

22 All right. Malice is an intentional doing with the intent
23 to inflict harm. Intentional. You're not going to hear -- well,
24 you don't shoot somebody eight times and say it's an accident,
25 right?

1 Without just cause or excuse. If there was just cause or
2 excuse here, you would hear Judge Goodstein instruct you on
3 self-defense. You're not going to hear anything about
4 self-defense in this case. There's no excuse for this murder.
5 It's, quite simply, another senseless murder, and it's all too
6 commonplace.

7 Aforethought. There is no time requirement to form the
8 intent. Malice aforethought does not require that malice exists
9 for any particular time before the act is committed. And this is
10 really important. So, again, when they made entry into that back
11 door, you don't need to find that they made entry into that back
12 door with the intent in their mind that they were going to commit
13 a murder. Aforethought, the law says, you can form that intent
14 in an instant.

15 And you may probably ask yourself, Well, why was J.B. shot
16 the first time? Remember what Marcus told you. J.B., after they
17 shot the dog, J.B. started inching towards them. Like, what do
18 you want; I can get it for you in North Charleston, whatever;
19 what do you want?

20 And as he got closer, he, in particular, felt threatened.
21 And for good reason. And Dr. Batalis told you, J.B. was a big
22 man. He was six foot tall, 270 pounds. And I bet if you were to
23 ask his family, if J.B. were going to go down, he wasn't going to
24 go down without a fight. But this was not a fight that J.B. was
25 going to win. It was not a fair fight. He was destined to lose.

1 He was outnumbered and he was unarmed.

2 All right. Now I'm just going to just sort of, you're all
3 in the room, and I'm sure you've all been asking this question
4 throughout the entire trial. What guns were used to murder J.B.,
5 and who fired those guns? But, most importantly, does it matter?

6 Let's talk about the guns first. All right. Taurus
7 9-millimeter pistol, seventeen-round magazine capacity, 16 in the
8 mag, one in the round, locked and loaded, fully loaded. No
9 evidence this gun was fired.

10 Smith & Wesson, .38 revolver, three live rounds in the
11 cylinder, three spent shell casings in the cylinder. A lot of
12 evidence that this gun was fired. In fact, this, ladies and
13 gentlemen, is one of your murder weapons.

14 The Jimenez Arms .380 pistol, fourteen live rounds, one in
15 the chamber. Don't know about the capacity. Certainly looks
16 like it was locked and loaded, fully ready to go. Remember, the
17 rounds they were in this magazine are also consistent with the
18 mixed rounds that were found in the bag with Polo Salazar's I.D.
19 No evidence that this gun was fired.

20 The Springfield Armory 9-millimeter pistol. It's a 16-round
21 magazine capacity, one in the chamber, eight rounds, eight live
22 rounds, still in the mag. So that leaves seven rounds that
23 potentially were fired. Yep, fired seven times. That gun was
24 fully load, locked and loaded, ready to go. Each one of those
25 shell casings were recovered from the scene and came back

1 matching to that 9-millimeter.

2 Now, here are the three projectiles. One found near the
3 body; two recovered from the autopsy. And look, gunshot wounds 7
4 and 8., these are back shots.

5 From the residence, we've got a couple other projectiles.
6 One found near the body, marker no. 9; and then there's another
7 one, gunshot wound no. 6, back shot.

8 And now, what did Jamie Green tell you, the firearms
9 examiner? He can't match that projectile, no. 6, definitively to
10 no. 4, okay, to the Springfield. But what he can tell you is
11 it's a 9-millimeter. So what does that tell you? Two guns were
12 used to murder J.B.

13 The evidence shows that there were four weapons involved.
14 Two were murder weapons. The evidence shows you that all four of
15 those guns were discarded on the trial when that Honda was
16 fleeing and it was occupied by all four of the defendants. But
17 are these two defendants right here guilty of murder even if we
18 don't know for sure who pulled the trigger? Well, you bet they
19 are.

20 These four defendants here are all guilty of murder. The
21 law is very clear on this matter. And you'll hear the Judge tell
22 you, in our state, The hand of one is the hand of all. If a
23 crime is committed by two or more people who are acting together
24 in committing the crime, the act of one is the act of all. A
25 person who joins with another to commit an unlawful act is

1 criminally responsible for everything done by that other person
2 that is a natural and probable consequence of the acts done in
3 carrying out that common plan and purpose.

4 Don't break into somebody's house armed, locked and loaded,
5 not intending on using it, or not intending that your buddy might
6 have to use it.

7 I'm sure Salazar and Fortune would say, Well, the state
8 can't prove I pulled the trigger; therefore, I'm not guilty, too.
9 That's not the law. All four were acting together. They're all
10 four guilty.

11 And now I want to take a second and talk to you about
12 reasonable doubt. You know, sometimes you're going to hear
13 defense attorneys say things like, Well, reasonable doubt to me
14 is, or I explain reasonable doubt this way. Well, that's great,
15 and that's cute, but that not the law. Judge Goodstein is going
16 to instruct you on the law. And the law on reasonable doubt is,
17 it's proof that leaves you firmly convinced of the defendant's
18 guilt. The law does not require proof that overcomes every
19 possible doubt. There are few things in life that we know to an
20 absolute certainty.

21 The Judge will also instruct you on, and again these are
22 just summaries, listen to what she tells you, the Judge is also
23 instruct you and use the word, hesitation, it's the type of doubt
24 that would cause a person to hesitate. I have sometimes heard
25 defense attorneys argue that, Well, if you go back in the

1 deliberation room and you hesitate, well, then that means not
2 guilty. No, don't confuse hesitation with deliberation. They're
3 two entirely different things.

4 When you go back in that deliberation room, we all want you
5 to deliberate. Go through the evidence. You're going to have it
6 back there with you. You're also going to -- if you want to
7 watch any of the videos or anything, we'll see if we can send a
8 computer back there with you. I know that some of Major's
9 interview is kind of hard to hear. Send a note, and we'll send
10 it back. But take your time, go through it. If you want to look
11 at any of the masks or whatnot, put on some gloves.

12 All right. And I'll end it with this. When Green shot J.B.
13 the first time, J.B. was no danger to him. You heard Marcus
14 Porter testify J.B. never got up, never even tried to get up. If
15 they had simply just left J.B. alone at that point and leave him
16 to fight for his life, J.B. may very well be here today.

17 But they didn't. These defendants came on a mission. They
18 drove a long way for that marijuana. And when they couldn't find
19 it and Marcus and David wouldn't tell them where it was, they got
20 angry, they got mad.

21 And Green came up to J.B., who was laying on the ground,
22 kicked him in the face and said, I know that hurt. Those words
23 would be the last words that J.B. would hear before he was
24 executed. Shot over and over and over again while he lay on the
25 ground.

1 J.B. did not deserve to die that way. Give Green and his
2 buddy, Major, a fair and just verdict, one that, yeah, I bet's
3 going to hurt, but one that they've earned and one they deserve.
4 Find them guilty on all charges.

5 Thank you.

6 THE COURT: Thank you, Solicitor Osborne. Ms. Gay.

7 CLOSING STATEMENT ON BEHALF OF DEFENDANT GREEN

8 ATTORNEY GAY: Thank you, Your Honor. Good afternoon. How
9 are you all? Certainly you've heard me say my name enough times
10 in this process, and I've been told by the Judge to say it loud
11 enough. So I represent Elijah Green, as you know.

12 And in the beginning of this process when we all came
13 together on Tuesday, I believe, you know, as the solicitor said,
14 I did say we've been waiting for a long time. But what I really
15 meant is, we've been waiting for this most significant day in
16 life, this day or this week while we have the trial. And so if
17 you'll recall, I told you that it's the most important situation,
18 the most important day, of his life.

19 And the other thing that you should recall is that I told
20 you, the jury, that y'all are the most important people in this
21 whole entire process. Everything that we've done this week to
22 present all of these things was for you to be able to go back in
23 the jury room and sit down and look at all this, and make a
24 decision as the finders of fact. And, you know, the Judge gave
25 some opening remarks, and she'll give you what they call the

1 charge on the law.

2 On the charge of the law, she's going to tell you some
3 things about, you know, once again reiterate, it is up to y'all
4 to find out, to make the decision about the facts. Because
5 Mr. Osborne and I don't agree. Ms. Hensley and I are on the same
6 side of the fence, and we certainly don't agree with Mr. Young or
7 Mr. Osborne about how these facts should be interpreted. That's
8 really what this is about, is how these facts should be
9 interpreted.

10 So there are some very specific things about how the facts
11 of each individual piece of evidence may be viewed or should be
12 viewed. I have, my client, Mr. Green, has some, you know,
13 reasons why he believes that the circumstances, or even the
14 direct evidence, should point to a different interpretation than
15 what Mr. Osborne said up here. Because, as the Judge instructs
16 you all, what we say isn't evidence. So many things that were
17 either said, this is evidence, this is the evidence, this is the
18 evidence, this is the evidence by either Mr. Osborne, or by me,
19 is not the evidence. What is the evidence is what y'all decide.
20 I mean, what is the facts is what y'all decide, and how you
21 interpret that evidence.

22 And so this case is about a man with hazel eyes. If you
23 recall, Swibaker and Marcus Porter both said Elijah Green's the
24 man with the hazel eyes. But the officer said, on his sheet,
25 that my client, Mr. Green, had brown eyes, he does not have hazel

1 eyes.

2 Who is this person, masked person, that they don't see any
3 identifying personal features except the eyes? Who is this
4 green-eyed person, or hazel-eyed person? It is not Mr. Green, my
5 client, because he doesn't even have hazel eyes. And so when the
6 officer said on the stand, and, as you know, this is what we do,
7 they say things, and then we come up afterwards and say, Well,
8 what about this interpretation, or what about that
9 interpretation, what have you left out, what is different than
10 what the solicitor, I mean, Mr. Osborne presented?

11 I said to the officer, I said to the chief
12 inspector/detective, I said, Okay, does a piece of paper come
13 from your office; is it part of your group, the police or the
14 authorities? And he said yes. And I said, On this piece of
15 paper it says that my client has brown eyes. And what was his
16 comment? Well, that could be a scrivener's error. The piece of
17 paper said brown eyes. There's no testimony in this case that
18 that was a scrivener's error. The only testimony presented to
19 you, the jury in this case, is that my client is a brown-eyed
20 individual, not a hazel-eyed individual.

21 So going back and de-constructing the case that Mr. Osborne
22 just presented to you, there are many things -- and you've notice
23 that had Ms. Hensley and I sort of, we work differently, we kind
24 of bring up different things, because we didn't want to have to
25 repeat everything, the same thing, twice. So there will be very,

1 very specific facts. And I know Ms. Hensley will cover some of
2 that.

3 But in the big picture of this, what's happening is is that
4 the testimony -- well, not even the testimony -- the statements
5 of the individuals involved, Swibaker and Porter, are not
6 consistent with reality. And they start all around the time of
7 the 911 tape. And Mr. Porter is talking in the background of the
8 911 tape.

9 First of all, Mr. Swibaker talked to the first officer
10 involved, the young lady that helped respond. And he had things
11 to say, that he was talking about hiding in the shower; he was
12 talking about he never mentioned lots of things that he
13 eventually started saying afterwards. And this is the first
14 responding officer, this is the person who's trying to help you
15 figure out who did this; this is the person who's out there,
16 going to provide the information to the authorities, start the
17 chase, figure out how to find these people.

18 And he is leaving out essential details to what it is that
19 may be going on. And he's saying things like, Well, you know,
20 they came in the back door; they kicked the back door down;
21 things like that, things that, later on it was determined, did
22 not occur. Best way to say it, did not occur. And so he's not
23 providing information that's credible, or the true facts, if you
24 want to call it, at the time to the first responding officer.

25 Then, as that officer is talking to Marcus Porter, he's

1 saying things in the background about having the door kicked in
2 and things like that. But, as we said, physical evidence in this
3 case does not support that that door was kicked in.

4 And just a side note, to jump ahead to some of these other,
5 I think the detective, the officer that came, the crime scene
6 guy, who took endless pictures -- you will see, they're in
7 evidence in this case. You'll have many, many, many pictures of
8 the scene and the back yard, and things like that. There is this
9 discussion that these four individuals were supposed to have come
10 in the back door. And there's supposed to be mud, which
11 Mr. Osborne claimed is, from them jumping out the back door,
12 which is kind of interesting. I want you to think about this,
13 because that's exiting the house.

14 You know what? When they entered the house, there's no mud
15 on any back door, there's no broken -- and he said it's a, small,
16 regular, not a deadbolt. But the bottom line is, if somebody
17 comes in and forcibly kicks your back door in, there's going to
18 be some significant mud on the door if you're tracking mud, and
19 there's going to be a broken doorframe or something like that to
20 indicate that there was actually forced entry.

21 And this is very important, very important, because, in this
22 case, my client has been charged with burglary first. And one of
23 the number-one main elements of a burglary first it that they
24 have to come into the house in a forcible manner, not be invited.
25 We'll call that being an invitee, having the ability to come in

1 the front door and have a conversation with the people that were
2 in the house.

3 There is evidence in this case to establish that that house,
4 these boys, entered into this allows; is that they had, they came
5 in through the front door. And there's pictures. You'll see in
6 the hallway, in the kitchen, there is mud tracked in that house
7 at all. The witness testified that there was no mud, you know,
8 the crime scene investigator said there was no mud in the house.

9 So initially as we're moving through what happened here,
10 they're both telling you, the responding officer, that the door
11 was kicked in. But that's not consistent with the physical
12 evidence in the case. And as the case moves along, they're
13 giving out the information that they are leaving out, is
14 basically the best way to say it, they're leaving out, huge
15 chunks of information that's very important.

16 At this point they aren't aware that there is any suspect in
17 custody. They're talking to a responding officer as if, you
18 know, this is very, very important information, that you need to
19 be able to go find these people who may have committed this
20 offense. And so they're leaving out huge chunks of information
21 about things things that, you know, about the things that are
22 happening on that night.

23 And they're basically -- and I think when Mr. Osborne
24 discussed credibility, should we believe Marcus Porter and David
25 Swibaker, the problem is, is what they said at the time is not

1 what they said on the stand. What they said on the stand now,
2 two years later, even more, is a version of reality that they've
3 talked about with Mr. Osborne a number of times; that they've
4 talked to officers about a number of times. It's not what
5 happened that night, or it's not what happened even coming out of
6 their mouths to talk to the officers who were responding that
7 night who are going to help them try to figure out who came in
8 their home.

9 So initially nothing that was said that night, the physical
10 evidence, does not support that there was a burglary at all.

11 So once we start there, we've got two things that are not
12 consistent with the facts, the real facts in life. My guy has
13 brown eyes, and my guy didn't come in without consent. My guy
14 walked in the front door and had a conversation with these
15 people. Because all the physical evidence which he talks about,
16 making sure you corroborate the evidence, and everything
17 corroborates, in his opinion, that Mr. Porter and Mr. Swibaker
18 are telling the truth, there are plenty of facts that we can
19 establish that physical evidence and corroboration do not support
20 their version of testimony that they had.

21 So, therefore, once we start looking at that, we have to
22 start opening our eyes real wide. What's really going on, and
23 what is happening that now these people are trying to posture to
24 make it look like this was a home invasion, to make it look like,
25 you know, they weren't invited into the home.

1 And, you know, that's where it just is, really, we'll just
2 call it, squirrely. Because the problem is, is that when you're
3 looking at facts -- and we talked about this in the beginning of
4 the case -- when you're looking at facts and you figure out that
5 the person who is on the witness stand, swearing under oath to
6 tell the truth, and then already, we haven't even gotten to
7 arrest process or the statements that they gave they were
8 written, already we can establish that the testimony that they
9 had under oath is not accurate.

10 So can we believe these people at all? And, what really did
11 happen? I mean, that's what's happening here, that's what this
12 whole case is about.

13 Let's talk about what we can also say is real. There was a
14 dog that died, and it did get shot. And that's so unfortunate.
15 And I think that this dog, Mr. porter said something really
16 interesting, he said, the dog did what it was supposed to do, the
17 dog protected its owner.

18 Well, at some point after these people came into the house
19 as invitees, not tracking any mud, having conversations with the
20 people inside the house, the dog created some type of problem.
21 The dog barked, attacked, however you want to say it, and the dog
22 died.

23 Now, was the dog protecting its owners from a home invasion,
24 or was the dog protecting its owners from something it perceived
25 inside the house as a threat, or commotion is maybe the best way

1 to say it? We don't know. Another thing. We don't know what
2 really happened with the dog to freak out. But the dog did get
3 shot.

4 And then, I believe, and then the evidence would establish
5 that mayhem occurred and that, you know, things started happening
6 that were not intended at all, but were part of a chain of events
7 that the dog being shot seems to begin.

8 Mr. Swibaker is saying that he was not part of any of the
9 action that was going on in the house. He goes and hides in the
10 shower in the bathroom. And he also eventually said that some
11 mattress was turned up on top of him, which will leave you to
12 decide whether or not there's any credibility in that statement,
13 that it's claimed he's hiding in the bathroom while all this is
14 going on.

15 And then what's interesting is, Mr. Porter starts giving up
16 some of his reality of what happened. He testified that J.B.
17 starts talking to the people, or was talking to the people, about
18 having some type of drug transaction. His comment in his
19 testimony was, Well, I can get, you know, we can get you
20 something.

21 Okay, so there it is, confirmation that these guys were
22 there about a drug deal, or a drug transaction, not as a home
23 invasion. But they're coming in the house; they're having a
24 conversation; and then everything goes south. But there's no
25 burglary, there's no forced entry, there's no kicking the door

1 down, there's no, all this, major, you know, coming in with all
2 these guns as if it was intended to be a home invasion.

3 The evidence in this case is not about a home invasion. The
4 evidence in this case is about a drug deal. And then ultimately
5 what happens is that somebody, both Mr. Porter and Mr. Swibaker,
6 is saying the hazel-eyed man. Well, the hazel-eyed man is not my
7 client.

8 So whatever the hazel-eyed man did or is alleged to do is
9 not Elijah Green.

10 You know, and there's some specifics about things they gave
11 in their statement, Mr. Swibaker or Mr. Porter, they said -- or,
12 I guess they failed to say -- that something, in the beginning,
13 that something like this happened in the past. But we find out
14 during the course of the trial that there has been this other
15 incident where other people have come into their house and stole
16 marijuana.

17 And the footprint that they are able to get off the door is
18 not anybody of these four guys that night. And so they start
19 giving it up, little by little. But they're not telling that
20 information in the very beginning. And they're not
21 necessarily -- and how do we know based on what they said and
22 then what they come back and say in their fourth or fifth
23 statement.

24 How do we know what they testified to under oath is the
25 truth? And that's what we're all here about. Are we going to

1 convict these people on statements made under oath in a courtroom
2 that we already know were not credible, that we already know have
3 blaring, glaring, big, red signs that say, not consistent with
4 reality, not truthful? Can we do that? Can we do that as
5 American citizens?

6 And I think that ultimately -- that's kind of where I want
7 to lead us to, is the very end here, is that the Judge is going
8 to instruct you on the law. And I, like Mr. Osborne, you know, I
9 don't have one of those computers here, so I can't bring up all
10 the little things like that. But I will tell you that his
11 picture of reasonable doubt was the law. And the Judge will give
12 that to you in writing. I mean, she'll tell it to you.

13 And if you get back in your jury room and you need it
14 repeated and you're not real sure what reasonable doubt was, and
15 you want to know for sure, what are we supposed to talk about
16 here, we can come out, she will repeat it again, she'll repeat it
17 as many times as you need to know.

18 But what is really happening here is that the state has the
19 burden of proof in this case. The defendants, as I said in
20 beginning of the trial, are cloaked in innocence, they're
21 innocent people, and nothing happens in terms of a determination
22 about guilt unless and until you decide that the state has proved
23 their burden of -- you know, proved their burden.

24 So what is interesting is is that the definition of
25 reasonable doubt, which is doubt that would leave a person firmly

1 convinced of the defendant's guilt, and doubt -- not every doubt
2 has to be taken away. Of course, that's kind of qualifying
3 language, is the best way to say it. And so, you know, you want
4 to make sure that it's not that they have to give all possibility
5 to be extinguished, and so that that's reasonable doubt.

6 But, you see, what the law actually says -- this is really
7 interesting -- is that it's beyond a reasonable doubt. So the
8 law says that you have to, all that being taken into
9 consideration, you have to get there and then be beyond that
10 reasonable doubt to find the defendant guilty. To find
11 Mr. Elijah Green guilty, you have to genuinely decide that you've
12 gotten to that place where you think you've handled your
13 reasonable doubt, and then are you beyond a reasonable doubt?
14 Because that's what's it's going to require to convict.

15 And when you're doing this, what you're going to have to
16 decide, and, as Mr. Osborne said, you're going to have to
17 determine the credibility of the witnesses. And it's the same
18 thing he said. Do you believe all of it; do you believe a piece
19 of it; do you believe a portion it? The problem is, is that are
20 you literally going to say, I believe a guy lied this time, but
21 maybe he didn't lie this time; or, it is okay with me that he
22 lied this time because now I can believe this.

23 And so I would suggest that you can't believe any of it,
24 because we don't know what happened that night. And that's the
25 truth. We don't know what happened that night. And we don't

1 know who did what. And we don't know -- there's this discussion
2 about how many minutes it took for him to call 911. I'm sorry,
3 but if I'm in my house and those people ran out the back door and
4 I had my phone, or seven other ones or six other ones, I'm
5 dialing 911 right that minute.

6 So this person, Mr. Porter, he runs out the door.
7 Mr. Swibaker is hiding in the bathroom still, or in his room.
8 And these people, what we know the most, has never told the
9 police anything about why all their furniture is turned upside
10 down, and why all their, you know, things in certain parts of the
11 house are all scrambled up, but yet things in other parts of the
12 house aren't. Closet, shelf. You have pictures of all of this.
13 Cabinetry. The drawer that had all the marijuana in it, just as
14 neat as can be. But yet the couch is turned upside down; and so
15 the mattress is turned upside down.

16 It's like whatever was going on that day, whatever these
17 people were trying to fudge up, was happening between the time
18 these people ran out the back door and the 911 call came.
19 Because we know that when the 911 call came, everything sort of
20 happened real quick, but we really don't know what happened in
21 the house. And that's the truth, we do not know what happened in
22 this house.

23 And so what you're going to be asked to do as part of your
24 jury duty is, you're going to be asked to decide, Is there enough
25 information in this case to decide what happened in the house?

1 And I assert that there isn't and, at the end, you will find my
2 client not guilty.

3 And I want to tell you something right now. Each one of
4 you, each one of you, has a duty to my client to make sure that
5 there is no conviction passed unless you believe that the state
6 proved their case. And each one of you has a right to their own
7 opinion.

8 And the thing about a jury is, it's supposed to be
9 unanimous, it's supposed to, you know, if that is where it gets,
10 is that the verdict is to be unanimous, which means that
11 everybody has to decide the same thing. And what we have right
12 now is a need for each individual person to individually decide
13 what they think and not let this mass group figure out a way to
14 put aside your trepidation for, you know, for a guilty verdict
15 and go, Oh, I just, it's Friday afternoon, I just want to go
16 home. And, you know, that's the bottom line here. As we said,
17 the most important day of Elijah Green's life, it's an important
18 thing. I'm sorry it's whatever time it is on a Friday and I
19 know, you know, we can come back next week if we need to.

20 You just need to realize that you have a voice, that you get
21 to decide, that you're the person, individually, who gets to make
22 up your own mind, and you have a right to say, I'm not going to
23 convict even if 11 other people want to, because that's our
24 process, that's our judicial process. You have a voice in that
25 jury room.

1 And I know that you will find, in the end, that there's not
2 enough information in this case presented by Mr. Osborne to
3 convict my client.

4 THE COURT: Thank you, Ms. Gay. Ms. Hensley ---

5 ATTORNEY HENSLEY: Thank you, Your Honor.

6 THE COURT: --- on behalf of Mr. Major.

7 CLOSING STATEMENT ON BEHALF OF THE DEFENDANT MAJOR

8 ATTORNEY HENSLEY: May it please the Court. Ladies and
9 gentlemen of the jury. So we're to the end. And throughout this
10 process I have tried not to repeat every single point that
11 Ms. Gay has made, okay. But right here, right now, I'm going to
12 do my job. And my job is to tell you the story of the way I
13 believe it. My job is to present this closing argument to you.
14 So if I repeat some things that you have heard, I'm doing my job.

15 I started this case in my opening statements to you, and I
16 said that my dad told me that if you tell the truth, you never
17 have to remember anything. And I would submit that in this case
18 we heard from witnesses who have never been given that advice.
19 And I said to you in the beginning, those lies and those
20 contradictions, keep track.

21 And now I'm going to summarize what I kept track of during
22 this case. Ms. Gay said in the beginning, you know, if it was as
23 easy as Ms. Young had told you, if we were building this puzzle
24 and all the pieces were going to fit together, we wouldn't be
25 here. And I would submit to you now that we're missing a lot of

1 pieces, and a lot of these pieces don't even go in this puzzle.

2 So these are the things I want to talk to you about. I want
3 to talk to you about lies, outright lies that have been told and
4 outright lies that have been admitted to. I think you'll
5 remember when I cross-examined Mr. Swibaker I said, You told the
6 police nothing like this had ever happened, and that was a lie.
7 He said, Yep, that was a lie. You told the police no one has a
8 beef with anybody here. That was a lie. He said, Yep, that was
9 a lie. I said, You told this the police all that's been going on
10 here is you were arguing with your girlfriend. That was a lie.
11 He said, Yeah, that was a lie. Does anybody have any issues
12 here? That was a lie. He said, No, and that was a lie. Did
13 anybody owe anybody money? Mr. Swibaker told the police no, and
14 that was a lie. And he said it, That's a lie.

15 Who lies to the police moments after a home invasion?
16 Wouldn't your goal be to help the police? These people are
17 protecting themselves. From what? From whom? Ask yourself
18 those questions. Mr. Swibaker told the police that these people
19 came in and he didn't know what they were looking for. And that
20 that was a lie. And he said that's a lie.

21 I think it's interesting that both Mr. Porter and
22 Mr. Swibaker, without having spoken to each other at all, knew
23 not to tell the police about that prior burglary. I think that's
24 interesting. They got their stories straight miraculously.

25 Let's talk about Marcus Porter. What did he say? What did

1 he say that was the truth? What did he say that is a lie? I'm a
2 small-time drug dealer. That's what we heard all along, I'm a
3 small-time drug dealer. But Detective/Sergeant Davis told us
4 that he had pictures of marijuana in his phone; he had
5 conversations about drug deals in his phone.

6 They downloaded his phone. Well, the state didn't bring in
7 that evidence; did they? That's because they wanted you to
8 forget about it, I promise you. He has a ledger where he keeps
9 his drug debts. Doesn't sound like -- I'm not insinuating that
10 he's the Columbia cartel, but he's a drug dealer. He keeps track
11 of who owes him money for drugs.

12 He has pending arrests, so many pending arrests that he had
13 to get a cooperation agreement with the state. That's Exhibit
14 173. I apologize, I don't have the ability to use this
15 technology, and I'm not going to try. But I'll tell you the
16 numbers. You'll have all the exhibits back there. He gets a
17 cooperation agreement so that, the big surprise when Dorchester
18 County Solicitor's Office doesn't want to dirty up their star
19 witness, he enters the cooperation agreement, the solicitor's
20 office lets him out of jail.

21 But I'm going to tell you something that I found
22 interesting. The solicitor's office doesn't even trust Marcus
23 Porter. They put him on a GPS monitor. I would submit that
24 Marcus Porter has 7 to 30 years worth of reason to make his
25 testimony match what the solicitor's office needs you to believe.

1 Marcus Porter has been arrested and not convicted. Been arrested
2 with over 32 grams of methamphetamine on him, half a pound of
3 marijuana. And we know this wasn't the first time he had half a
4 pound of marijuana.

5 And there's some things in his house that I think sound like
6 things that a drug dealer might have, like cameras inside your
7 house. I mean, people are ringing doorbells to see if somebody's
8 trying to break in their car, but Marcus Porter has a camera in
9 his house. And I wonder what was on that camera? Well, we don't
10 know because the police believed Marcus Porter when he said the
11 cameras weren't activated, and they never even looked.

12 Marcus Porter had some other things, I think, drug dealers
13 have, like seven cellphones. You've got seven cellphones, you go
14 across the street to call the police. I don't think that makes
15 any sense. And in this case that's one of these things that
16 makes me go, Uhm. Marcus Porter has five scales. Marcus Porter
17 has baggies consistent with drug packaging.

18 Marcus Porter has a dispensary, that's what Marcus Porter
19 has. He has some Huckleberry, some Platinum Mints, some Dirty
20 Girl, some Gorilla Glue, some White Fire OG, he has some Sage, he
21 has some White Bulls, some Xanax, some OG Kush, some Dangerous
22 Delight. He has it all labeled and packaged up.

23 Marcus Porter is a drug dealer. And Marcus Porter wasn't
24 giving up his stash; was he? But he wants you to believe he's a
25 small-time drug dealer, and the state wants you to believe he's a

1 small-time drug dealer. I would submit that drug trafficking
2 that carries 7 to 30 years gives you lots of reasons to try to
3 confirm what the state wants you to say.

4 I think there's a lot that is inconsistent in this case.
5 Mr. Osborne stood up here and told you what he thought I was
6 going to say, but he didn't say any of these things, I don't
7 think.

8 Here's an inconsistency I find very interesting.
9 Mr. Swibaker, on the night of this incident, and on any follow-up
10 interviews from this incident, never told anybody he had been hit
11 in the head with a gun and that anybody had said they were going
12 to throw his mf'ing brains out. He never told anybody that.

13 And I would submit that that's a new fact for this trial.
14 If you had gotten hit in the head with a gun and somebody had
15 threatened your life, that would have been in the forefront of
16 your mind, probably way ahead of, I'm going to lie about this
17 prior incident that happened in my house. Right?

18 I think David Swibaker's goal -- and I think it's just kind
19 of a normal thing -- is to be a hero. I'm going to tell this
20 tale. My fishtail gets bigger and bigger to enhance his role in
21 all this. But it's a lie. Because if it was the truth, he would
22 have told it in the beginning because, when you tell the truth,
23 you never have to remember anything, right?

24 There's no mention of any ransacking of the home. These
25 people come in and they're supposedly looking for weed, right?

1 That's what Mr. Osborne says. Mr. Osborne said, When they
2 couldn't find it, they got mad. It's funny, because Detective
3 Brooks just opens a nightstand, and there it was. And you'll
4 have a picture of that, actually, Exhibit 79. Opened the drawer,
5 right there, there's the weed.

6 Not underneath the couch, which nobody ever said that's how
7 it got -- that anybody did anything with their furniture. But,
8 low and behold, their house is ransacked, like the couch and
9 mattresses are tipped over. I think that's inconsistent with, A,
10 looking for weed and; B, anything that Mr. Porter or Mr. Swibaker
11 ever told the police, because -- but it is consistent with
12 something you might do to make it look like your home had been
13 invaded.

14 Notice they didn't mess up their clothes, they didn't knock
15 the neatly folded jeans in the top of their closet down; they
16 didn't overturn their laundry basket. They just made a little
17 mess.

18 Another thing that makes me go, Uhm, is Marcus's story about
19 the dog. The dog got shot; the dog ran to the room; the dog got
20 on the bed; and then Marcus and two people came into the room,
21 and the dog was on the bed. But when you look at the pictures,
22 when you look at picture of the dog on the bed, the mattress is
23 off the bed and the dog is laying on the box springs. And that
24 would have had to have happened after the two people came in the
25 room. It just doesn't fit; it doesn't make sense; it makes me

1 go, Uhm.

2 The timeline from Detective/Sergeant Davis all depends on --
3 I think I asked this question -- this whole timeline depends on
4 you believing Marcus and David; right? Right. It also depends
5 on where did he start from? Where did Detective/Sergeant Brooks
6 begin his journey? This is, admittedly, a confusing
7 neighborhood. We saw Officer Scarborough having a really hard
8 time finding his way around in the neighborhood.

9 But they want to explain away this delay about, We clocked
10 it. But we don't really know what time it started, and we
11 certainly don't know what route they took.

12 There's some other things that make me go, Uhm. Like this
13 back door. The door -- the report was there was a boom and the
14 door got kicked in. Well, you know that, Officer Boehler, she
15 was the first witness, she said the door didn't appear to being
16 to be kicked in. The CSI guy, Brooks, the door didn't appear to
17 be kicked in. There's no mud on that door. So if these people,
18 with their big, humongous, heavy shoes had come in the way they
19 went out, there would have certainly been mud on that door. That
20 makes me go, Uhm.

21 You know another thing that makes me go, Uhm, about that?
22 Mr. Swibaker says to the initial investigating officers, You
23 might want to look at that door for a footprint. Uhm. He
24 remembered, he thinks about that, right? But the footprint
25 doesn't match. And I asked him, Did you check the footprint

1 against anybody who lived in the house? No, we didn't. But it
2 certainly is not Devonte Major's footprint.

3 But I think this is the way lies work. You know, you take
4 little facts from this incident, little facts from that incident,
5 and then you create your lie. And I would suggest that it is a
6 lie, because it doesn't make sense, it makes you go, Uhm.

7 I mean, the mud alone. They came in the way they went out,
8 which they must have you believe to believe that this has been a
9 burglary, their feet would have been muddy when they came in.
10 And you're going to have lots of pictures, I mean, so many
11 pictures, of the inside of this house and through the hall. And
12 there's a lot.

13 And I didn't pull every single exhibit, but there's Exhibit
14 33 that shows the hall; there's exhibit showing the floor going
15 down the hall; there's an exhibit showing the kitchen floor.
16 Look for the mud. Because if it happens the way the state wants
17 you to believe, there would be mud. I don't think these people
18 were wiping their feet before they came in, according to state's
19 story; right? I think that's significant.

20 I'll tell you another thing I think's significant about the
21 mud. It's so muddy, there's a muddy ditch, they didn't take a
22 picture of it. They were able to walk across that yard in the
23 mud without leaving any footprints. That makes me go, Uhm.
24 Doesn't make any sense to me.

25 Another thing that makes me go, Uhm, is this, and this is

1 the key. Marcus said, in both of his stories, both times he told
2 the story initially, the night of the incident and February the
3 4th, the beginning line is J.B. came over to have drinks. Right?
4 J.B. came over to have a drink. And then when we got here, he
5 said they had two tequilas. And I said to Marcus, I said, You're
6 as sure about that fact as you are everything else in this case;
7 right? He said, I am. Positive? Positive.

8 Where's the tequila bottle? We've got a whiskey, an empty
9 whiskey, bottle they took a picture of, they collected. Look at
10 the pictures. See if they collected any tequila bottles. I
11 submit that you won't. And I'll tell you why. Because they
12 didn't have tequila.

13 I don't know what J.B. came over to do, but I suggest to you
14 it wasn't to have a drink, because the doctor told us there was
15 no alcohol in his system. And one way to have no alcohol in your
16 system is to have no drink. That makes me go, Uhm.

17 Another thing. Marcus said Devonte Major had on gloves. He
18 didn't say it on January the 28th, and he didn't say it on
19 February the 4th. Actually, on February the 4th he said, You
20 guys keep asking me about gloves, and I just can't visualize
21 them. He probably remembers that. It took me about five minutes
22 to find the clip on my computer so that Marcus could listen to it
23 to remind himself what he said.

24 But now, all of a sudden, miraculously he's remembered these
25 bulky gloves that make it comical to put your hands in a mason

1 jar. So when that testimony was going on, I was thinking about a
2 mason jar, right. Because a man might have a hard time getting
3 his hands through the lid, through the hole in the mason jar.
4 But this isn't a mason jar. Exhibit 12, it says mason jar. And
5 if you ever opened it up you might think it was a mason jar, but
6 it's not a mason jar, it's not a canning jar.

7 And Mr. Osborne wants you to believe that there's this glove
8 in there, and that y'all can get it out and you can look at it,
9 and the DNA analyst said they scraped the entire interior of this
10 camouflage glove that Mr. Osborne wants you to believe that
11 Devonte Major was wearing and they were unable to determine any
12 DNA.

13 So Mr. Major apparently has the ability to wear a glove
14 during this very high-adrenaline event, and leave no sweat or
15 hair or DNA at all. That would really make me go, Uhm.

16 And I want to talk a little bit about gunshot residue,
17 right, that's an issue in this case. Devonte Major had eight
18 single particles of gunshot residue on his coat. And so we asked
19 a lot of questions about, How did the coat get to the police
20 station? Right? Where did they get it from? In the back of the
21 police officer's car, all stacked up on each other, would that be
22 a way to transfer gunshot residue? Sure. How long does gunshot
23 residue last on clothes? Well, until you wash them. So I would
24 submit that in South Carolina we don't wear jackets a lot. It's
25 not cold a whole lot. You probably wear a coat in South Carolina

1 during the winter six or seven sometimes. How often does
2 somebody clean a jacket?

3 I just think that -- and I asked the DNA analyst, if you had
4 been merely present where a gun was fired, if you had, if it
5 could stay on there for a long time? I just don't think that's
6 significant. I don't think that it's enough. I certainly don't
7 think that it goes beyond a reasonable doubt to believe that
8 Devonte Major had anything do with the firing of a gun.

9 I have questions about the pocketknife. How did it get in
10 the bag? You know, I think Mr. Osborne, in his closing, said it
11 was in the jumpsuit. But remember when the analyst was
12 testifying that she found the weed in the pocket and the dime and
13 everything, and then the rest it was just thrown in there? Who
14 knows how it got in the bag. I'll tell you who doesn't know, and
15 that's y'all, because nobody's testified to it and nobody knows.

16 I think this Jaquavious Washington thing is really
17 interesting. There's absolutely no testimony that Devonte Major
18 was anywhere near Mr. Green when Mr. Green had a phone
19 conversation with Jaquavious Washington. Nobody knows what the
20 phone conversation was about. Well, I mean, somebody does.
21 Jaquavious Washington does. But he didn't come and testify to
22 y'all.

23 And Mr. Osborne would have you believe that, since Seabrook
24 and Beaufort are close together, that all these people must know
25 each other. And I submit that Summerville and Ridgeville are

1 close together, too, but everybody who lives in Summerville
2 doesn't know everybody that lives in Ridgeville.

3 Now, we have conferred, Ms. Gay and I have conferred with
4 each other, and we talked to each other throughout this true.
5 But I think it's very important to remember that these are two
6 separate trials. This isn't the State of South Carolina versus
7 Elijah Green and Devonte Major. This is the State of South
8 Carolina versus Elijah Green, that's one trial. And this is the
9 State of South Carolina versus Devonte Major, and that's a
10 separate trial.

11 I'm Devonte Major's lawyer. The state must prove Devonte
12 Major's guilt separately and independently of anything that you
13 make a determination of with Mr. Green.

14 I would submit to you that when the Judge reads you the
15 definition and talks to you about credibility of the witnesses,
16 the believability, this is you know, we're going to use all these
17 big words about it, but it's just commonsense. Can you believe
18 what they tell you? And I would submit that you can't.

19 Finally, I want to talk about the most damaging piece of
20 evidence for Mr. Major. This is Exhibit 10, this knife. This
21 knife. They were all masked. Did anybody show this mask to
22 Marcus Porter and say, Do you remember this orange mask? This is
23 not a mask that you would forget. This isn't a black collar that
24 comes up out of a coat. This isn't a bandanna or a hoodie. This
25 is a bright, orange mask. I would submit to you that if someone

1 broke into your house wearing this bright, orange mask, the first
2 thing you'd say is he had on a bright, orange mask. Yet he never
3 told anybody that. Nobody's ever testified to it.

4 But Mr. Osborne asked you to buy it because he knows that
5 Mr. Major's hair was in it. I would submit to you that, yes,
6 Devonte Major, at some point in his life, be it when he was born
7 on January the 15th of 1974, until January the 28th, Devonte
8 Major wore this mask. But I would say it was not that night,
9 because nobody talked about it.

10 Now, I'm not suggesting that Devonte Major was at [REDACTED] Myrtle
11 Place on January the 27th of 2019. But I would say that people
12 who go to plan together to commit a home invasion probably
13 wouldn't wear purple shoes. In this case, no one wore an orange
14 mask.

15 So I talked about all these things that make me go, Uhm.
16 What I think all of those things are are things that would make
17 you hesitate to act, things that would not leave you firmly
18 convinced. I would ask you to use your commonsense. I ask, Can
19 you believe this story that you've been told?

20 And I would suggest that after you do all of that, and you
21 weigh and examine all this evidence, you will come to the
22 conclusion that I have come to, and that is that the state has
23 failed to meet its burden, and you must find Devonte Major not
24 guilty. Thank you.

25 THE COURT: Thank you, Ms. Hensley. Ladies and gentlemen,

1 your lunch has been delivered. So I am going to -- we're going
2 to have lunch, and then I'm going to deliver the charge, or the
3 instruction on the law, to you.

4 Now, you have not heard my instruction on the law. You are
5 not, you are not, prepared to deliberate. So do not discuss this
6 matter or allow anyone to discuss it with you. And leave,
7 please, your notebooks in your seat.

8 The way that we are going to be proceeding now is that I
9 want you to enjoy your lunch. I do not want anyone, at this
10 point, to make phone calls unless it is of an emergent nature.
11 And if it is, just send me a note. But I do want you to have
12 your lunch. When everyone has finished your lunch and maybe had
13 a little comfort break, then I want you to knock on your jury
14 door.

15 And at that time you will return to the courtroom and I will
16 deliver the charge, or the instruction, to you. And then we'll
17 have a very short break, and I'll explain at that point. And
18 then, ladies and gentlemen, you're going to receive this case for
19 your deliberations.

20 So at this point, leave your notebooks in your seat.
21 Remember, do not discuss this matter or allow anyone to discuss
22 it with you. I'm going to ask that you not use your cellphones
23 or other communication devices during this lunch break. If
24 there's an emergent situation, just let one of our bailiffs know
25 or send me a note, and I'll deal with that.

1 When you have finished your lunch, then knock on your door,
2 and then we'll gather everyone and I'll deliver the charge, or
3 instruction, to you. Thank you.

4 If you'll please step to your jury room.

5 (WHEREUPON, the jury is escorted out of the courtroom at
6 1:44 p.m.)

7 THE COURT: All right. Y'all be at ease. Please don't go
8 far, please stay around. We have cookies and whatnot, and we
9 have stuff in the kitchen or whatever. Just because once they're
10 back, I don't want to wait 30 minutes for folks to get back from
11 lunch. So if you can get lunch and go quickly and come back,
12 that's fine. But I would say they will be about 30 minutes. So
13 be at ease.

14 I'm making some notes. Y'all go ahead and go to lunch.

15 (WHEREUPON, court recessed at 1:45 p.m. and reconvened at
16 2:29 p.m.)

17 (WHEREUPON, Court's Exhibits 10, 11, 12 and 13 are marked
18 for identification.)

19 THE COURT: I'm prepared to bring them out and proceed with
20 the charge. I have more notes from them. Question, Will you
21 explain the roles and responsibilities of our alternates? Will
22 all be included in the deliberations and review of the evidence?
23 Thank you. Also says, thanks for the meals, lunches, snacks, and
24 when can we have our cellphones back? Question number two, Can
25 we have a bailiff bring each of our work excuses to our room?

1 And the other one was, May I be excused from my trial so I
2 can reschedule my biological wastewater exam, please? I'm going
3 to reschedule at 3:00 today. Okay.

4 (WHEREUPON, the jury is seated in the courtroom at
5 2:38 p.m.)

6 THE COURT: Ladies and gentlemen, I have your questions. I
7 think we have resolved the issue with regard to the phone calls
8 to be made. And, secondly, with regard to the alternates, I will
9 discuss that towards the end of the charge. I think that's going
10 to be made very clear at that time. So bear with me, those of
11 you who are alternates or have curiosity about the role, going
12 forward, of our alternates.

13 JURY CHARGE

14 THE COURT: Ladies and gentlemen, I will begin again, and
15 tell you that the caption, or the name of this case, is the State
16 of South Carolina versus Elijah Quinlin Diante Green and Devonte
17 Travon Major.

18 Ladies and gentlemen, the indictments in this case charge
19 the defendants, each of them, with murder, attempted murder,
20 burglary in the first degree, possession of a weapon during the
21 commission of a violent crime and ill-treatment of animals.

22 I remind you that the fact that these defendants were
23 arrested, charged and indicted in this case is not evidence in
24 this case and cannot be considered by you as evidence of guilt in
25 this case. These documents are simply the formal, written

1 instruments which contain the charges made against the
2 defendants. They are formal documents by which this case is
3 brought into this Court.

4 Each indictment charges a separate and distinct offense
5 against one of these defendants. You must decide each indictment
6 separately on the evidence and law applicable to it, uninfluenced
7 by your decision as to any other indictment.

8 Each of these defendants may be convicted or acquitted,
9 meaning be found guilty or not guilty, on any or all of the
10 offenses charged. You will be asked to write a separate verdict
11 of guilty or not guilty for each indictment for each defendant.

12 Ladies and gentlemen, I charge you that, as you are aware,
13 there are multiple defendants in this case, each of whom is
14 charged with murder, attempted murder, burglary in the first
15 degree, possession of a weapon during a violent crime, and
16 ill-treatment of animals.

17 Each defendant, and the evidence and law concerning that
18 defendant, should be considered separately and individually.
19 Your verdict does not have to be the same for both defendants.
20 The fact that you may find one defendant guilty or not guilty
21 regarding an indictment should not control your verdict as to the
22 other defendant.

23 Where more than one person is charged with a crime, if the
24 evidence warrants it, you may convict one and find the other not
25 guilty, meaning find one guilty and the other not guilty; or, you

1 may find both not guilty; or you may find both guilty. It will
2 depend upon your view of the testimony and evidence.

3 You must take each defendant and each indictment concerning
4 him, consider the evidence as to that defendant and my
5 instructions to you on the law. You will then write a separate
6 verdict of guilty or not guilty for each individual defendant for
7 the indictments, each of them, with which he is charged.

8 Ladies and gentlemen, each of these defendants have pled not
9 guilty to each indictment, and that plea puts the burden on the
10 state to prove each of the defendants guilty.

11 A person charged with committing a criminal offense in South
12 Carolina is never required to prove himself not guilty.

13 I charge you that it is an important rule of law that the
14 defendants in a criminal trial, no matter the seriousness of the
15 charge or charges, will always be presumed to be innocent of the
16 crime or crimes for which the indictment, or indictments, were
17 issued 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 begin
20 your deliberations, but it accompanies each of these defendants
21 throughout the trial until you should reach a verdict of guilt
22 with regards to the defendant you are considering based on
23 evidence satisfying you of that guilt beyond a reasonable doubt.

24 The presumption of innocence is not merely a legal theory or
25 a legal phrase. It is a substantial right to which every

1 defendant is entitled unless you, the jury, are satisfied, from
2 the evidence, of that defendant's guilt beyond a reasonable
3 doubt.

4 The state has the burden of proving each of these defendants
5 guilty beyond a reasonable doubt. Some of you may have served as
6 jurors in civil cases where you were told that it is only
7 necessary to prove that a fact is more likely true than not true,
8 such as by the greater weight or preponderance of the evidence.
9 In criminal cases, the state's proof must be more powerful than
10 that, it must be beyond a reasonable doubt.

11 What then is reasonable doubt in the law? A reasonable
12 doubt is the kind of doubt that would cause a reasonable person
13 to hesitate to act. Proof beyond a reasonable doubt is proof
14 that leaves you firmly convinced of a defendant's guilt. There
15 are very few things in this world that we know with absolute
16 certainty and, in criminal cases, the law does not require proof
17 that overcomes every possible doubt.

18 If, based on your consideration of the evidence, you are
19 firmly convinced that the defendant that you are considering is
20 guilty of the crime which you are considering, you must find that
21 defendant guilty.

22 If, on the other hand, you think there is a real possibility
23 that the defendant that you are considering on the charge you are
24 considering is not guilty, you must give that defendant the
25 benefit of the doubt and find him not guilty.

1 You will perform this task for each defendant separately and
2 independently and for each indictment with which he is charged.

3 I remind you that during this trial you and I had certain
4 duties to perform. As the trial judge, it is my responsibility
5 to preside over the trial of this case, and I have also the duty
6 to rule on the admissibility of the evidence which has been
7 offered during the trial.

8 You are to consider only the sworn testimony and any
9 exhibits which have been made a part of the record in this case.

10 I have the additional duty to charge you the law applicable
11 to this case. As the presiding judge, I am the sole judge of the
12 law of this case.

13 And it is your duty, as jurors, to accept and to apply the
14 law as I now state it to you. If you already have any idea as to
15 what the law is or what the law ought to be and it does not agree
16 with what I now tell you the law is, you must abandon that idea
17 because you are sworn to accept the law and to apply the law
18 exactly as I state it to you.

19 In every case tried in this court before a jury, the jury
20 becomes the sole and exclusive judge of the facts in the case. A
21 trial judge cannot emanate, state, comment on or make any
22 statement to a trial jury about the facts in a case. Since you,
23 the jury, are the sole judge of the facts in this case, you are
24 not to infer from what I have said during the process of this
25 trial in ruling on the admissibility of evidence, or otherwise,

1 or anything that I say now during the course of this instruction
2 to you, that I have any opinion about the facts in this case.
3 The law does not allow me to have an opinion about the facts in
4 this case. This is a matter solely for you, the jury, to
5 determine.

6 As jurors, it is your duty to determine the effect, the
7 value, the weight and the believability of the evidence
8 presenting during this trial.

9 Ladies and gentlemen, there are two types of evidence which
10 are generally presented during a trial. One type of evidence is
11 called direct evidence. The other is called circumstantial
12 evidence.

13 Direct evidence proves the existence of a fact and does not
14 require deduction. Circumstantial evidence is proof of a chain
15 of facts and circumstances indicating the existence of a fact.
16 Crimes may be proven by circumstantial evidence. The law makes
17 no distinction between the weight or value to be given to either
18 direct or circumstantial evidence.

19 However, to the extent the state relies on circumstantial
20 evidence, all of the circumstances must be consistent with each
21 other and, when taken together, point conclusively to the guilt
22 of the defendant you are considering beyond a reasonable doubt.
23 If these circumstances merely portray the defendant's behavior as
24 suspicious, the proof ...

25 (WHEREUPON, an interruption occurred.)

1 THE COURT: If these circumstances merely portrayed the
2 defendant's behavior as suspicious, the proof has failed.

3 I want to give you an example of what we mean by direct
4 evidence and circumstantial evidence. I now it's July, and it's
5 hot, but my favorite example is to go to February and think of
6 cold weather. So go with me to February. It is very cold. Snow
7 is forecast. You go outside and, low and behold, you look up in
8 the sky, it's snowing. You go back inside and you tell your
9 family, It's snowing outside. That is direct evidence. There's
10 no deduction needed. It probably got in your eye, so you truly
11 are an eyewitness to the fact that it is snowing.

12 Circumstantial evidence. It's still February. It's still
13 cold. Snow is forecast, but -- and I'll add this -- you're kind
14 of looking forward to a snow day. You go to bed, but just before
15 you go to bed you look out and all you see is your cold, brown
16 crunchy grass. And you're thinking, Uh, maybe not a snow day
17 tomorrow. But, alas, when you wake up in the morning the sun is
18 shining, but snow's covering everything, and everything's getting
19 canceled. Snow day. So here's what you know. You know that
20 it's February. You know that snow is forecast. You know that
21 when you went to bed there was no snow on the ground, just your
22 cold, brown, crunchy grass. But you know in the morning when you
23 awoke the sun was shining and snow covered everything. By
24 deduction, you know that it snowed overnight. That is
25 circumstantial evidence. And all the collateral facts that you

1 know point conclusively to the fact that it snowed overnight.
2 That is circumstantial evidence.

3 The state has the burden of proving each of these defendants
4 guilty beyond a reasonable doubt with regards to each of these
5 indictments. This burden rests with the state regardless of
6 whether the state relies on direct evidence, circumstantial
7 evidence or some combination of the two.

8 You should weigh all of the evidence in this case. And,
9 after weighing all of the evidence in this case, if you are not
10 convinced of the guilt of the defendant that you are considering
11 for the indictment that you are considering, and if you are not
12 convinced of that defendant's guilt beyond a reasonable doubt,
13 you must find that defendant, on that indictment, not guilty.

14 Necessarily, you must determine the credibility of the
15 witnesses who have testified in this case. Credibility, ladies
16 and gentlemen, simply means believability. It becomes your duty,
17 as jurors, to analyze and evaluate the evidence and determine
18 which evidence convinces you of its believability.

19 In determining the believability of witnesses who have
20 testified in this case, and these are examples, ladies and
21 gentlemen, and these are not exhaustive, you may believe one
22 witness over several witnesses; or several witnesses over one
23 witness; you may believe a part of the testimony of a witness,
24 and reject the remaining part of the testimony of that same
25 witness; you may believe the testimony of a witness in its

1 entirety, or you may reject the testimony of a witness in its
2 entirety; you may consider whether any witness has exhibited to
3 you any interest, bias, prejudice or other motive in this case;
4 you may also consider the appearance and the manner of the
5 witness while on the witness stand.

6 Now, ladies and gentlemen, in this case we have had expert
7 witnesses. And I want to talk to you about that type of
8 testimony. Our rules of evidence ordinarily do not permit
9 witnesses to testify regarding their opinions or conclusions or
10 the reasons for those conclusions and opinions.

11 There is an exemption, however, and that exemption exists
12 for witnesses who are deemed to be expert witnesses. A witness
13 who, by education and experience, has become an expert in some
14 art, science, profession or calling, and these witnesses may
15 state an opinion or opinions as to relevant and material matters
16 in which the witness claims to be an expert, and they may also
17 state the reasons for the opinion or opinions.

18 You should consider any expert opinion received in evidence
19 in this case and, like any other evidence, give it the weight you
20 think it deserves. If you decide that the opinion of an expert
21 witness is not based on sufficient education and experience, or
22 if you conclude that the reasons given in support of the opinion
23 or opinions are not found, or that the opinion or opinions are
24 outweighed by other evidence, you may disregard the opinion
25 entirely.

1 An expert witness's testimony is to be given no greater
2 weight than that of other witnesses simply because the witness is
3 an expert. And, further, you are not required to accept an
4 expert's opinion even though it is not contradicted.

5 Now, I instruct you and I emphasize that the fact that the
6 defendants in this case did not testify is not a factor to be
7 considered by you in any way in your deliberations or in your
8 consideration on the question of whether each of these defendants
9 is guilty or not guilty. The fact that these defendants did not
10 testify must not be considered by you in any manner whatsoever.

11 A defendant has the constitutional right to remain silent,
12 and the assertion of this right must not be considered by you in
13 your deliberations.

14 I repeat, under your oath, you are to draw no conclusion
15 whatsoever from the fact that these defendants did not testify.
16 The fact that they did not testify must not be discussed in your
17 jury room.

18 The burden of proof, as I have stated to you, is and remains
19 on the state. Each of these defendants, neither of these
20 defendants, is required to prove themselves not guilty. They do
21 not have the burden of proof. The burden of proof is, and
22 remains, on the state to prove guilt beyond a reasonable doubt.
23 And I repeat, these defendants' decision not to testify must not
24 be discussed or mentioned in your jury room.

25 Now, ladies and gentlemen, I'm going to talk to you about a

1 part of the law which is called The hand of one is the hand of
2 all. Before I do that, I'm halfway through, and I know it's
3 after lunch, everybody just stop for a moment and just stand up,
4 seriously, and move a minute. You know, if we had been able to
5 do this in law school, I might have had to study only about half
6 as hard as I had to study, because I would have had more oxygen
7 going, you know. Our professors, although they were brilliant,
8 they weren't always that interesting. So we're going to move a
9 minute and breathe and get oxygen. And when you are ready to be
10 seated, then I'm going to ask you to be seated. Didn't that feel
11 good?

12 Ladies and gentlemen, if a crime is committed by two or more
13 people who are acting together in committing a crime, the act of
14 one is the act of all. A person who joins with another to commit
15 an unlawful act is criminally responsible for everything done by
16 the other person which happened as a probable, or natural,
17 consequence of the acts done in carrying out the common plan and
18 purpose.

19 If two or more people are together, acting together,
20 assisting each other in committing the offense, the act of one is
21 the act of all. Or, as it is sometimes said, The hand of one is
22 the hand of all.

23 Prior knowledge that a crime is going to be committed,
24 without more, is not sufficient to make a person guilty of that
25 crime, and the mere knowledge that another person is going to

1 commit a crime, even if the defendant is present when the crime
2 is committed, is not sufficient to convict the defendant as a
3 principal.

4 Guilt as a principal is shown by actual, or constructive,
5 presence at the scene as a result of prior arrangement.
6 Therefore, a finding of a prior, arranged plan or common scheme
7 is necessary for a finding of guilt as a principal.

8 The state must prove beyond a reasonable doubt, by competent
9 evidence, the theory of The hand of one is the hand of all.

10 A principal in a crime is one who either actually commits
11 the crime or who was present, aiding, abetting or assisting in
12 committing the crime. When a person does an act in the presence
13 of and with the assistance of another, the act is done by both.

14 Where two or more, acting with a common plan or intent, are
15 present at the commission of a crime, it does not matter who
16 actually commits the crime. All are guilty. The hand of one is
17 the hand of all.

18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the commission of
20 the crime. Mere presence at the scene is not sufficient to prove
21 someone guilty of a crime. A defendant's presence where a crime
22 is being committed or mere association with a person who commits
23 a crime does not make a defendant an accomplice or an aider or
24 abettor of the person committing the crime. The burden is on the
25 state to prove every element of the crimes charged.

1 If you find, after reviewing all the evidence, that the
2 state has proved that the defendant that you are considering was
3 only present at the scene of the crime and that they have not
4 proved beyond a reasonable doubt any other participation in the
5 crime, then you must find the defendant not guilty of the crime
6 that you are considering.

7 The law is that proof of the defendant at the scene of the
8 crime is not sufficient to find someone guilty.

9 Now, ladies and gentlemen, we're going to talk about intent.
10 Intent. In order to establish criminal liability, criminal
11 intent is required. For example, the mental state required to be
12 proven by the state for a particular crime might be purpose,
13 intent, knowledge, recklessness, and there's some where the
14 required intent is called criminal negligence.

15 Criminal intent must be proven by the state beyond a
16 reasonable doubt. Criminal intent is always a matter that must
17 be determined by the jury from the circumstances surrounding the
18 situation. There is no way to prove intent to a mathematical
19 certainty. There is no way that medical science can dissect a
20 person's brain and determine what that person had in mind. So
21 the law says that criminal intent may be inferred from the
22 circumstances shown to have existed.

23 This is how you make a determination of whether or not the
24 element requiring intent was present. It is not necessary to
25 establish intent by direct and positive evidence, but intent may

1 be established by inference in the same way as any other fact by
2 taking into consideration the acts of the parties and all the
3 facts and circumstances of the case.

4 Criminal intent is a mental state, a conscious wrongdoing.
5 It is up to you to determine what each of these defendants
6 intended to do, based on the circumstances shown to have existed.

7 Criminal intent can rise from action or failure to act. It
8 may arise based upon the particular crime charged for
9 recklessness, negligence, indifference to duty or consequences,
10 considered by the law to be the equivalent of criminal intent.

11 Now, ladies and gentlemen, in this case a statement alleged
12 to have been made by the Defendant Mr. Major has been admitted
13 into evidence in this case. While the Court has determined that
14 the statement is admissible, I instruct you that you make the
15 ultimate decision of whether or not the defendant made the
16 statement.

17 If the defendant did make the statement, you must determine
18 whether the statement was made by the defendant voluntarily and
19 of his own will. This means that the statement was not caused by
20 pressure, force, fear, threat, coercion or intimidation, or by
21 hope or a promise of leniency or a reward of any kind.

22 In determining whether the statement was voluntary, you
23 should consider both the characteristics of the defendant and the
24 details of the questioning. Some of the factors that you must
25 consider are the age of the defendant, the defendant's education

1 or lack of education, the defendant's mental ability or capacity,
2 the defendant's IQ or intelligence, the defendant's background
3 and environment, the place and length of detention, the nature of
4 the questioning, and the advice or lack thereof to the defendant
5 of his constitutional rights including, but not limited to, the
6 right to remain silent; that any statement could be used against
7 him in a court of law; the right to have a lawyer present; that
8 if he cannot afford a lawyer, a lawyer would be appointed to
9 represent him without any cost; and that he could stop making a
10 statement at any time. You must carefully consider all of the
11 surrounding circumstances before you give any weight to an
12 alleged statement.

13 The state has the burden of proving beyond a reasonable
14 doubt that the alleged statement was voluntary. If you determine
15 it was, you may give the statement any further consideration that
16 you deem proper. You must decide what weight, if any, should be
17 given to the alleged statement.

18 If you determine the alleged statement was not the free and
19 voluntary statement of the Defendant Mr. Major, you should not
20 consider the statement at all.

21 Now, ladies and gentlemen, I'm going to just stop it, and
22 tell you that now I'm going to go over the elements of each of
23 the offenses. Before I do that, I'm going to go over the
24 indictments.

25 Ladies and gentlemen, Indictment 2019-GS-18-0423 and

1 Indictment 2019-GS-18-0430, these are each indictments for
2 murder. 0423 refers to Defendant Elijah Quinlin Diante Green,
3 and 0430 refers to the Defendant Devonte Trevon Major.

4 The indictments allege that, in Dorchester County, South
5 Carolina, on or about January the 28th, 2019, with malice
6 aforethought, the Defendant Elijah Quinlin Diante Green did kill
7 one Joe Weaver, by means of shooting the victim. The victim did
8 die as a proximate result thereof. This offense being in
9 violation of the common law and Section 16-3-10 of the South
10 Carolina Code of Laws, as amended.

11 Indictment 2019-GS-18-0430 alleges that, in Dorchester
12 County, South Carolina, on or about January the 28th, 2019, with
13 malice aforethought, the Defendant Devonte Trevon Major did kill
14 one Joe Weaver, by means of shooting the victim. The victim did
15 die as a proximate result thereof. This offense being in
16 violation of the common law and Section 16-3-10 of the South
17 Carolina Code of Laws, as amended. Those are the indictments
18 regarding murder.

19 I'm now going to define for you the law as it regards the
20 offense of murder.

21 Ladies and gentlemen, the state must prove, beyond a
22 reasonable doubt that the defendants -- and you will consider
23 each of these gentlemen separately and independently -- must
24 prove beyond a reasonable doubt, that the defendants killed
25 another person, with malice aforethought.

1 Malice is hatred, ill will or hostility towards another
2 person. It is the intentional doing of a wrongful act without
3 just cause or excuse, and with an intent to inflict an injury or,
4 under circumstances from which the law will infer, an evil
5 intent.

6 Malice aforethought does not require that malice exist for
7 any particular amount of time before the act is committed, but
8 malice must exist in the mind of the defendant just before and at
9 the time the act is committed. Therefore, there must be a
10 combination of the previous evil intent and the act.

11 Malice aforethought may be expressed or inferred. These
12 terms, express and inferred, do not mean different kinds of
13 malice, but merely the manner in which malice may be shown to
14 have existed, that is, either by direct evidence or by inference
15 from the facts and circumstances which are proved.

16 Express malice is shown when a person speaks words which
17 express hatred or ill will for another, or when the person
18 prepared beforehand to do the act which was later accomplished.
19 For example, lying in wait for a person, or any other act of
20 preparation going to show that the deed was within the
21 defendant's mind would be express malice. Malice may be inferred
22 from conduct showing a total disregard for human life.

23 And again, you'll do this analysis for each defendant.

24 Next, attempted murder. Indictment 2019-GS-18-0426 and
25 0432, allege that, in Dorchester County, South Carolina, on or

1 about January the 28th, 2019, the Defendant Elijah Quinlin Diante
2 Green did, with the intent to kill, attempt to kill one Marcus
3 Porter, with malice aforethought, by shooting the victim. This
4 offense being in violation of Section 16-3-29 of the South
5 Carolina Code of Laws, as amended.

6 0432 alleges that, in Dorchester County, South Carolina, on
7 or about January the 28th, 2019, the Defendant Devonte Travon
8 Major did, with the intent to kill, attempt to kill one Marcus
9 Porter, with malice aforethought, by shooting the victim. This
10 offense be not guilty violation of Section 16-3-29 of the South
11 Carolina Code of Laws, as amended.

12 Now, ladies and gentlemen, I am going to define for you the
13 offense of attempted murder. In order to prove attempted murder,
14 the state must prove the defendant that you're considering
15 attempted to kill another person, with malice aforethought.

16 Malice is hatred, ill will or hostility towards another
17 person, it is the intentional doing of a wrongful act without
18 just cause or excuse, and with the intent to inflict an injury
19 or, under circumstances that the law will infer, an evil intent.

20 Malice aforethought does not require that malice exist for
21 any particular time before the act is committed, but malice must
22 exist in the mind of the defendant that you are considering just
23 to before and at the time that the act is committed. Therefore,
24 there must be a combination of the previous evil intent and the
25 act.

1 A specific intent to kill is an element of attempted murder,
2 which must be proven beyond a reasonable doubt.

3 Ladies and gentlemen, you will make this analysis and apply
4 this law with regards to attempted murder separately
5 independently with regards to each of these defendants. And you
6 will do that separately and independently.

7 Next I am going to discuss with you burglary in the first
8 degree. Indictments 2019-GS-18-0424 and 0433 charge each of
9 these defendants with burglary in the first degree. Bear with me
10 just one second. Ladies and gentlemen, 0424 alleges that, in
11 Dorchester County, South Carolina, on or about January the 28th,
12 2019, the Defendant Elijah Quinlin Diante Green did willfully and
13 unlawfully enter the dwelling of Marcus Porter without consent
14 and with the intent to commit a crime therein and, when, in
15 effecting entry or while in the dwelling or in immediate flight,
16 the defendant or another participant in the crime, is armed with
17 a deadly weapon or explosive, causes physical injury to a person
18 who is not a participant in the crime, uses or threatens the use
19 a dangerous instrument, displays what is or appears to be a
20 knife, shotgun, machinegun, rifle, pistol, revolver, or other
21 firearm or the entering or remaining occurs in the nighttime.

22 0433 alleges that, in South Carolina, Dorchester County, on
23 or about January the 28th, 2019, the Defendant Devonte Trevon
24 Major did willfully and unlawfully enter the dwelling of Marcus
25 Porter without consent and with intent could commit a crime

1 therein and, when, in effecting entry or while in the dwelling or
2 in immediate flight, the defendant or another participant in the
3 crime, is armed with a deadly weapon or explosive, causes
4 physical injury to a person who is not a participant in the
5 crime, uses or threatens the use a dangerous instrument, displays
6 what is or appears to be a knife, shotgun, machinegun, rifle,
7 pistol, revolver, or other firearm or the entering or remaining
8 occurs in the nighttime. This offense being in violation of
9 Section 16-11-311 of the South Carolina Code of Laws, as amended.

10 Now I will define for you the law applicable to first-degree
11 murder -- excuse me, burglary, first-degree burglary. The state
12 must prove beyond a reasonable doubt that the defendant entered a
13 dwelling without consent. Of course I'm referring to one
14 defendant, but it's applicable to each defendant, and you will
15 analyze the law with regards to each defendant.

16 A dwelling is any building or portion of a building in which
17 a person ordinarily sleeps. A building constructed as a dwelling
18 that has never been occupied cannot be considered a dwelling for
19 purposes of burglary, but a building is a dwelling, even if the
20 residents are temporarily absent from the building.

21 In order to prove that the defendant entered the dwelling,
22 the state does not have to show that the defendant's entire body
23 entered the dwelling. The smallest entry is sufficient. It may
24 be any part of the body, such as a hand or foot, or even an
25 instrument such as a hook or other instrument. In addition, the

1 .state does not have to prove that force was used to gain entry.

2 If a person enters a building by using deception or
3 artifice, trick or misrepresentation to get consent to enter,
4 this is an entry without consent.

5 Next, the state must prove beyond a reasonable doubt that
6 the defendant intended to commit a crime, either a felony or a
7 misdemeanor, at the time of the entry.

8 The mere entry into a dwelling without consent is not
9 burglary. If the intent to commit a crime is formed after the
10 entry, it is not burglary. On the other hand, if the defendant
11 intended to commit a crime at the time of the entry, it is a
12 burglary, even if the intent was abandoned after the entry. It
13 does not matter that the intended crime was not completed.

14 Intent may be shown by acts and conduct of the defendant and
15 other circumstances from which you may naturally and reasonably
16 infer intent.

17 Finally, the state must prove beyond a reasonable doubt
18 that, one, when entering, while in the dwelling or in fleeing,
19 the defendant, or an accomplice, was armed with a deadly weapon
20 or explosive.

21 A deadly weapon is any article, instrument or substance
22 which is likely to cause death or great bodily harm. Whether an
23 instrument has been used as a deadly weapon depends on the facts
24 and circumstances of each case. The following are examples of,
25 just examples of, instruments which may be deadly weapons: A

1 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal
2 knuckles, a razer, gasoline, a firebomb or Molotov cocktail and
3 lighter fluid. A shotgun, for example, can be a deadly weapon,
4 even if it is not operating.

5 Now, when entering, while in the dwelling, or in fleeing,
6 the defendant, or an accomplice, displayed what was or appeared
7 to be a knife, a pistol, revolver, rifle, shotgun, machinegun or
8 other firearm, or the defendant entered or remained in the
9 dwelling in the nighttime.

10 Nighttime is the period between sunset and sunrise during
11 which there is not enough daylight to recognize a person's face,
12 except by artificial light or moonlight.

13 Ladies and gentlemen, the state must prove beyond a
14 reasonable doubt one of those that I just went over with regards
15 to each defendant. And that, when entering or fleeing, the
16 defendant, or an accomplice, was armed with a deadly weapon.
17 When entering, while in the dwelling, or fleeing, the defendant,
18 or an accomplice, displayed what appeared to be a knife, rifle,
19 shotgun, machinegun or other firearm, or the defendant entered or
20 remained in the dwelling in the nighttime.

21 Now, ladies and gentlemen, possession of a firearm or knife
22 during the commission of a violent crime, 2019-GS-18-0434,
23 2019-GS-18-0427, these indictments allege that, in Dorchester
24 County, South Carolina, on or about January the 28th, 2019, the
25 Defendant Elijah Quinlin Diante Green did visibly display or have

1 in his possession a handgun during the commission of a violent
2 crime as defined by Section 16-1-60 of the Code of Laws of South
3 Carolina, 1976, as amended, to wit, burglary in the first degree
4 and murder, thereby violating Section 16-23-490 of the Code of
5 Law of South Carolina, as amended.

6 And 0434 allegation that, in Dorchester County, South
7 Carolina, on or about January the 28th, 2019, the Defendant
8 Devonte Travon Major did visibly display or have in his
9 possession a firearm during the commission of a violent crime, as
10 defined by Section 16-1-60 of the Code of Laws of South Carolina,
11 1976, as amend, to wit, burglary in the first degree and murder,
12 thereby violating Section 16-23-490 of the Code of Laws of South
13 Carolina.

14 Now, ladies and gentlemen, I'm going to define for you
15 possession of a weapon during the commission of a violent crime.
16 The state must prove beyond a reasonable doubt that the
17 defendant -- and again, you'll do this analysis for each of the
18 defendants -- was in possession of a firearm or visibly displayed
19 what appeared to be a firearm during the commission of a violent
20 crime.

21 A firearm means any machinegun, automatic rifle or any
22 weapon which will or is designed to, or may be readily converted
23 to, expel a projectile.

24 In order to find a defendant guilty of possession of a
25 weapon during the commission of a violent crime, you must first

1 find the defendant guilty of either committing a violent crime or
2 attempting or -- committing a violent crime.

3 Ladies and gentlemen, I charge you that murder and burglary
4 in the first degree are violent crimes.

5 The state must prove beyond a reasonable doubt that the
6 weapon further advanced, or helped, in the commission of the
7 crime or crimes.

8 Now, ladies and gentlemen, I am going to discuss with you
9 Indictments 2019-GS-18-0436 and 0429. Ladies and gentlemen,
10 these are the indictments alleging ill-treatment of animals, in
11 general, torture. 0429 alleges that, in Dorchester County, South
12 Carolina, on or about January 28th, 2019, the Defendant Elijah
13 Quinlin Diante Green did torture, torment, needlessly mutilate,
14 cruelly kill or inflict excessive or repeated unnecessary pain or
15 suffering upon an animal or by omission or commission did cause
16 the acts to be done, in that the defendant did cruelly kill a dog
17 by shooting it. This offense being in violation of Section
18 47-1-40(B) of the South Carolina Code of Laws, as amended.

19 0436 alleges that, in Dorchester County, South Carolina, on
20 or about January the 28th, 2019, the Defendant Devonte Travon
21 Major did torture, torment, needlessly mutilate, cruelly kill or
22 inflict excessive or repeated unnecessary pain or suffering upon
23 an animal or by omission or commission did cause the acts to be
24 done in that the defendant did cruelly kill a dog by shooting it.
25 This offense being in violation of section 47-1-40(B) of the

1 South Carolina Code of Laws, as amended.

2 Ladies and gentlemen, the state, in order to prove this
3 offense, must prove beyond a reasonable doubt that the defendant
4 you are considering -- and you will do this analysis with regard
5 to each defendant -- did torture, torment, needlessly mutilate,
6 cruelly kill or inflict unnecessary pain and suffering to an
7 animal. A defendant may be convicted of this crime by
8 commission, which is acting, or omission, which is not acting.

9 Now, ladies and gentlemen, I am going to go over with you
10 the verdict form. But before I do so, there are two things that
11 I want to tell you. First, your decision as to each of these
12 indictments and as to each of these defendants, your decision has
13 to be unanimous. Majority doesn't rule, and no individual rules.
14 Your decisions, your verdict, must be unanimous. This must be
15 the verdict of each and every one of you with regards to each of
16 these indictments and each of these defendants. Your verdict
17 must be unanimous; it must be the verdict of all 12 of you.

18 Which should be a hint to our alternates. I want you to
19 stay in the courtroom when my jury leaves on this next occasion.

20 Now, the second thing that I want to tell you is this.
21 There are two possible verdicts for each of these indictments,
22 for each of these defendants, and I have put them on this piece
23 of paper. One's first, and one's second. Irrespective of what
24 your unanimous decision is, your unanimous verdict is, I want to
25 you circle it so there's no question about which is your verdict.

1 I have put them on this piece of paper in order. I want you
2 to understand there's no hidden meaning in which the order of
3 these two possible verdicts has been put on this piece of paper.
4 I could have just as easily reversed them. There's no hidden
5 meaning in the order in which these things have been placed on
6 paper. It's just reality. If you're going to put two things on
7 a piece of paper, one's got to be first and the other one's got
8 to be second. So, please, do not take any hidden meaning.

9 Now, the way that I have done this, ladies and gentlemen, I
10 have a verdict form for Mr. Green and I have a verdict form for
11 Mr. Major, and it says, State of South Carolina versus Devonte
12 Travon Major, and this one says the State of South Carolina
13 versus Elijah Quinlin Diante Green. So there should be no
14 question in your mind which verdict form applies to which
15 defendant. Now, they continue and they mirror one another.

16 I'm going to use Mr. Green's verdict form. The first
17 instruction says this. Please circle the appropriate verdict
18 below and follow the accompanying instructions carefully. Number
19 one says, as to the charge of murder, we, the jury, unanimously
20 find the defendant, the two possible verdicts, not guilty,
21 guilty, whichever the unanimous verdict, you'll circle it.

22 Number two, as to the charge of attempted murder, we, the
23 jury, unanimously find the defendant, and there are two possible
24 verdicts, not guilty and guilty. You'll circle whichever's the
25 unanimous verdict of the jury.

1 Number three, as to the charge of burglary in the first
2 degree, we, the jury, unanimously find the defendant, two
3 possible verdicts, not guilty and guilty, and you will circle the
4 unanimous verdict of the jury.

5 Number four, as to the charge of possession of a weapon
6 during the commission of a violent crime, we, the jury,
7 unanimously find the defendant, two possible verdicts, not guilty
8 and guilty, and you'll circle the unanimous verdict of the jury.

9 And number five, as to the charge of ill-treatment of
10 animals, torture, we, the jury, unanimous find the defendant, two
11 possible verdicts, not guilty, guilty, and you will circle the
12 unanimous verdict of the jury.

13 Now, when you have completed your deliberations with regards
14 to Mr. Green, you will, it says, stop in your deliberations, and
15 that's as to Mr. Green, and then you're going to date and sign
16 the verdict form.

17 Madam presiding juror, you know who you are. And you will
18 place your name on the line which says presiding juror, and you
19 will date your verdict form. Just for your reference, just for
20 your reference, today, of course, is the 16th of July, 2021. And
21 you will date the verdict form when you have completed your
22 deliberations.

23 Now, the other verdict form is the verdict form relating to
24 Mr. Devonte Trevon Major. And it mirrors the one that I just
25 went offer with in regards to Mr. Green. Again, there are two

1 possible verdicts. Your verdict must be unanimous. Whichever is
2 the unanimous verdict of this jury, you will circle that verdict
3 for each of the charged offenses. When you have finished your
4 deliberations with regards to Mr. Major, you will sign where it
5 says presiding juror, and date the verdict form.

6 When you have completed your deliberations, you will knock
7 on the door. You'll return to the courtroom with the verdict
8 forms. And then you will hand the verdict forms, you'll give
9 them, to one of our bailiffs, who will give them to me. Do not
10 publish the verdict. So keep that in mind, as well.

11 Now, ladies and gentlemen, let me also share with you that
12 if, during the course of your deliberations, you need to take a
13 comfort break, you need to take a break, stop your deliberations,
14 take a comfort break, and then just start back up. All 12 of you
15 must be present in order for to you deliberate. So be sure that
16 all 12 of you are present. If anybody needs to stop and take a
17 comfort break, stop and take a comfort break, and then reconvene
18 your deliberations when all 12 of you are together again.

19 Now, are ladies and gentlemen, in just a moment I'm going to
20 ask you to step to your jury room, the 12 of you, with this
21 instruction. Do not discuss this matter or allow anyone to
22 discuss it with you. But I have been telling you now for several
23 days that this is when you begin your deliberation. So I'm going
24 to tell you exactly what's going to happen.

25 When you step back to your jury room on this next occasion,

1 I am going turn to these lawyers and I'm going to ask them two
2 questions. Have I given this jury all of the law that they may
3 need for their deliberations, and that have I stated it for them
4 correctly?

5 Now, sometimes I need to bring juries back out because I
6 have failed to give you an instruction that I should have given
7 you. And these attorneys help me know that. In the event that I
8 need to bring you back out for that reason, I'm going to ask you,
9 please do not consider that instruction with any emphasis, just
10 know I've got to get to right, and that if I've forgotten to give
11 that you instruction, I do need to give you that additional
12 instruction. So please don't consider that with any emphasis, I
13 will ask you in advance.

14 Now, sometimes, and goodness knows it's unintended but,
15 sometimes something would just pop out wrong. And I don't
16 intend, goodness knows I don't intend, for that to happen. But
17 these lawyers help me know that. And so in the event that I need
18 to bring you back out because I need to correct an error that I
19 have made, I ask you, in advance, please allow me to correct my
20 error in your minds. Because this is my one chance to get this
21 right, to give you all of the law that you may need for your
22 deliberations, and to state it correctly.

23 Now, in the event I do not need to bring you back out, you
24 will be brought the verdict forms and the exhibits, and an
25 instruction to begin your deliberations.

1 Now, ladies and gentlemen, at this time I would ask the 12
2 jurors, the 12 of you, to please step to your jury room. Do not
3 discuss this matter or allow -- Yes, ma'am?

4 THE FOREPERSON: At this time can we bring our notebooks?

5 THE COURT: No. I thank you for mentioning that. Leave
6 your notebooks. And we'll bring those to you, as well. But
7 anyway, please step to your jury room. Do not discuss this
8 matter or allow anyone to discuss it with you.

9 Thank you for bringing that to my attention. Leave your
10 notepads here in the courtroom.

11 (WHEREUPON, the jury is escorted out of the courtroom at
12 3:58 p.m.)

13 THE COURT: And not alternates. I have the alternates.
14 Where are the alternates? I see three alternates. There, you
15 are. I'm speaking now to my alternates. You've given us so much
16 of your time, and I'm so grateful. We've come such a long way.
17 I'm going to ask you to please give us, once the jury starts
18 deliberations, another 15 minutes because, I believe, should
19 something happen -- and again, I've had that happen -- I can stop
20 the deliberations of the jury, seat you, one of you or however
21 many might be need, and start the deliberations and you would
22 stay for the trial. You have given me so much of your time. I'm
23 going to ask for another 15 minutes once the jury has begun its
24 deliberations.

25 And in just a moment our bailiffs are going to take you to a

1 whole different area, because at this point it is appropriate for
2 you to be separated from our jury. So if you want to come this
3 way. If you will please come towards Ms. Catherine, she's going
4 to escort you guys back to our old, the old, jury room before we
5 started using the courtroom. Yes. Thank you so much.

6 (WHEREUPON, the alternate jurors are escorted out of the
7 courtroom at 4:01 p.m.)

8 MATTER(S) OF LAW

9 THE COURT: All right. Any additional exceptions from the
10 state?

11 ATTORNEY OSBORNE: None from the state, Your Honor.

12 THE COURT: All right. On behalf of Mr. Green?

13 ATTORNEY GAY: No, ma'am, none.

14 THE COURT: On behalf of Mr. Major?

15 ATTORNEY HENSLEY: The only exception that I would note,
16 Your Honor, is in the presumption of innocence charge, instead of
17 charging a person's charged with committing a criminal offense in
18 South Carolina is never required to prove himself innocent, I
19 think you charged is never required to prove himself not guilty.

20 And that was the same with the charge on failure of the
21 defendants to testify, instead of proving their innocence, prove
22 themselves not guilty. So that would be my exemption.

23 THE COURT: Now, tell me why you think -- tell me your
24 thoughts?

25 ATTORNEY HENSLEY: Well, I think my thought is that this is

1 something that people think, that people need to prove their
2 innocence, and it's a phrase that you hear. So I think that just
3 seems different than proving himself not guilty.

4 THE COURT: Let me tell you what my concern is and why I
5 have made that change. Because I think that it is a higher
6 burden to prove innocence, to prove yourself innocent, than to
7 prove yourself not guilty.

8 ATTORNEY HENSLEY: I agree.

9 THE COURT: And not guilty means that you're not guilty; it
10 doesn't mean that you have proven yourself innocent. And so my
11 fear is is that I don't want to, in other words, I don't want to
12 use words that I don't think are applicable. And I don't think
13 that -- and we don't deal in that; we deal in not guilty, we're
14 all presumed innocent. And so that's the reason that I made that
15 change.

16 ATTORNEY HENSLEY: And based on that explanation, Your
17 Honor, I think recharging it the way that it was written would
18 have the opposite effect, the opposite sins of my desires. So
19 I'm fine with the way it was charged.

20 THE COURT: I mean, but that is the reason why. And I don't
21 know how other judges are doing that. You know what I mean? I
22 don't think -- I think it is -- I don't think they understand.

23 ATTORNEY HENSLEY: I agree.

24 THE COURT: Thank you. Thank you. Thank you. All right.
25 Now, let me tell you, here's what I'm going to ask you to do. I

1 love for lawyers to take one more look at everything, I really
2 do, and particularly the exhibits. So here's the verdict form.
3 Please look, check everything one more time. Please check what's
4 going to this jury, because I am the judge that tried the case
5 where the confession was in the back pocket on a defendant's blue
6 jeans. So please look at them.

7 ATTORNEY OSBORNE: And, Judge, just for your edification,
8 all of the attorneys and the clerk meticulously went through all
9 the evidence during our break.

10 THE COURT: You're all fine. If not, come and get me. We
11 need to take the notepads. We need to get the alternates'
12 notepads.

13 THE BAILIFF: Oh, you want the alternates pads? Okay, I'll
14 get them.

15 ATTORNEY GAY: I believe I'm making a motion at the end the
16 trial, a motion, renew my motion, for a directed verdict and
17 everything else. That is something we need to do. I'm just
18 trying to do everything I'm supposed to.

19 THE COURT: And you will. But not yet.

20 ATTORNEY GAY: Not yet, okay.

21 THE COURT: Not until there's a verdict.

22 ATTORNEY GAY: No. I mean, I believe it's appropriate ---

23 THE COURT: Well, go ahead, if it makes you happy.

24 ATTORNEY GAY: It's going to make me happy.

25 THE COURT: You can go again.

1 ATTORNEY GAY: I want to renew all my motions for directed
2 verdict, and renew all of our objections, and my request for a
3 voluntary manslaughter charge. And I probably need to go to the
4 bathroom.

5 THE COURT: Go right ahead. And respectfully denied.

6 ATTORNEY HENSLEY: And I will join in that motion, Your
7 Honor.

8 THE COURT: Thank you. Y'all going to take all of the
9 exhibits and the pads. Y'all might need to --

10 THE BAILIFF: Got my hand truck. I'm gonna load it down.

11 THE COURT: And then we'll be at ease until we hear from the
12 jury.

13 ATTORNEY HENSLEY: I don't have any objection, on behalf
14 Mr. Major, to the verdict form.

15 ATTORNEY OSBORNE: None from the state.

16 THE COURT: Okay, great.

17 (WHEREUPON, the jury receives the evidence and is instructed
18 to commence their deliberations at 4:07 p.m.)

19 (WHEREUPON, court recessed at 4:07 p.m. and reconvened at
20 5:07 p.m.)

21 JURY DELIBERATION QUESTION

22 THE COURT: I'm ready for the jury. You know, I should tell
23 you all what we're doing. I'm sorry. We have a question of the
24 jury, and the question of the jury is this. Here's the question.
25 Somebody had to call immediately to let the pets out, so that's

1 this one. So, they were escorted to do that.

2 And the other one is, Question: Can we have, in writing,
3 the indictment and/or the law regarding burglary in the first
4 degree? Thank you. I'm going to recharge them. I'm going to
5 read them the indictment on burglary in the first degree, and
6 will go over the law for burglary in the first degree.

7 (WHEREUPON, Court's Exhibits 14 and 15 are marked for
8 identification.)

9 (WHEREUPON, the jury is seated in the courtroom at
10 5:10 p.m.)

11 THE COURT: All right. Ladies and gentlemen, I have your
12 note. And I'm going recharge you. No, I cannot -- the way that
13 we give the law is, that it's my responsibility to explain it to
14 you. So I will do that. And I will do that as many times as you
15 need, and if you want to do them all, with regards to all of
16 these offenses, I'm happy to do that. You just keep me informed
17 about the information that you need. Happy to do it.

18 Now, ladies and gentlemen, what I'm going to do is, I think
19 instead of beginning by reading the indictments to you, I'm going
20 to go into the definition of what is burglary in the first
21 degree, I'm going to define that for you. And I'm going to give
22 you, I'm going to state what it is, and then I'm going define
23 some terms for you.

24 Ladies and gentlemen, the defendants are charged with
25 first-degree burglary. The state must first prove beyond a

1 reasonable doubt that the defendant -- here you will do this
2 again, as for each of these defendants, the defendant -- entered
3 a dwelling without consent. That's the first element.

4 Now I'm going to define what is a dwelling. A dwelling is
5 any building or portion of a building --

6 THE BAILIFF: I've got one can't hear you, Your Honor.

7 THE COURT: One can't hear?

8 THE BAILIFF: Yes, ma'am.

9 THE COURT: All right. Well, then I'm going start all over.
10 Okay. All right.

11 The defendants are charged with first-degree burglary. The
12 state must first prove beyond a reasonable doubt that the
13 defendant entered a dwelling without consent. That's the first
14 element.

15 I'm going to define dwelling. A dwelling is any building or
16 portion of a building in which a person ordinarily sleeps. A
17 building constructed as a dwelling that has never been occupied
18 cannot be considered a dwelling for purposes of burglary. But a
19 building is a dwelling even if the residents are temporarily
20 absent from the building.

21 In order to prove that the defendant entered the dwelling,
22 the state does not have to show that the defendant's entire body
23 entered the dwelling. The smallest entry is sufficient. It may
24 be any part of the body such as hand or a foot, or even an
25 instrument such as a hook or other instrument.

1 In addition, the state does not have to prove that force was
2 used to gain entry. If a person enters a building by using
3 deception or artifice, trick or misrepresentation to get consent
4 to enter, this is an entry without consent. That's element
5 number one. The state must prove beyond a reasonable doubt that
6 the defendant entered a dwelling without consent.

7 Second element. The state must prove beyond a reasonable
8 doubt that the defendant intended to commit a crime therein, is
9 what the statute says, intended to commit a crime therein.
10 Now -- and it can be a felony or a misdemeanor, the intended
11 crime. And the intent to commit the crime, whether it is a
12 misdemeanor or a felony, must exist in the mind of the defendant
13 at the time of the entry.

14 The mere entry into a dwelling without consent is not
15 burglary. If the intent to commit a crime is formed after the
16 entry, it is not burglary. On the other hand, if the defendant
17 intended to commit a crime at the time of the entry, it is
18 burglary even if the intent was abandoned after the entry. It
19 does not matter that the intended crime was not completed.

20 Now, intent may be shown by acts and conduct of the
21 defendant and other circumstances from which you may naturally
22 and reasonably infer intent.

23 Now, ladies and gentlemen, in order to meet the state's
24 burden of proof with regards to burglary in the first degree, the
25 state must prove beyond a reasonable doubt one of the following.

1 And I'm going to give you a list, and I'm going to give you
2 definition.

3 The first element is, when entering, while in the dwelling
4 or in fleeing, the defendant, or an accomplice, was armed with a
5 deadly weapon or explosive.

6 What is a deadly weapon? A deadly weapon is any article,
7 instrument or substance which is likely to cause death or great
8 bodily harm. Whether an instrument has been used as a deadly
9 weapon depends on the facts and circumstances of each case. The
10 followings are examples, and just examples, of instruments which
11 may be deadly weapons: A shotgun, a rifle, a dirk, a dagger, a
12 knife, slingshot, metal knuckles, a razor, gasoline, a firebomb,
13 Molotov cocktail, lighter fluid, and a shotgun could be a deadly
14 weapon, even if it's not operating. Now I have -- that's element
15 number one, the state must prove beyond a reasonable doubt,
16 number one; or, that when entering, while in the dwelling or when
17 fleeing, the defendant, or an accomplice, displayed what was or
18 appeared to be a knife, a rifle, shotgun, machinegun or other
19 firearm, or the defendant causes physical injury to a person who
20 is not a participant in the crime, or the defendant entered or
21 remained in the dwelling in the nighttime.

22 Nighttime is the period between sunset and sunrise during
23 which there is not enough sunlight to recognize a person's face,
24 except by artificial light or moonlight.

25 Ladies and gentlemen, again, the state must prove one of

1 those additional elements, the state does not have to prove them
2 all, but in order to make/to prove the state's case against a
3 defendant. Now, be mindful, though, each element must be proved
4 beyond a reasonable doubt.

5 All right. Ladies and gentlemen, I'm going to, with that
6 definition, I'm going to ask you to retire to your jury room.
7 Continue your deliberations.

8 If you need me to go back over the indictments, I'm happy to
9 do that, as well. Just let me know. Bring you back out, and
10 we'll go over those.

11 If you'll please retire and continue your deliberations.

12 (WHEREUPON, the jury is escorted out of the courtroom to
13 continue at 5:20 p.m.)

14 MATTER(S) OF LAW

15 THE COURT: All right. Any exceptions or additions from the
16 state?

17 ATTORNEY OSBORNE: None, Your Honor.

18 THE COURT: All right. And, Ms. Gay?

19 ATTORNEY GAY: Your Honor, I'm discussing something with
20 Ms. Hensley.

21 THE COURT: Sure.

22 ATTORNEY GAY: What we believe has just occurred is that --
23 or, I'm going to make this motion, or instruction, on behalf of
24 Mr. Green. And then she can say what she wants.

25 THE COURT: Sure.

1 ATTORNEY GAY: But when you charged it, page 15, number
2 four, after you did number four you actually did, basically, a
3 number five.

4 THE COURT: Yes.

5 ATTORNEY GAY: It was in the indictment, but I don't believe
6 it was charged initially in the first set of charges.

7 THE COURT: That's right. It wasn't.

8 ATTORNEY GAY: Right.

9 THE COURT: I'm delighted that I got the opportunity to do
10 it correctly the second time.

11 ATTORNEY GAY: Okay.

12 THE COURT: It's in the indictment, and the state was
13 entitled to the charge. I didn't do it the first time. I caught
14 it, and did the second time.

15 ATTORNEY GAY: So I understand.

16 ATTORNEY HENSLEY: And, Your Honor, for the record, I would
17 join in Ms. Gay's motion. Since the state didn't catch it the
18 first time, I don't believe it should have been corrected.

19 THE COURT: Okay. Well, I think it was my bad, and I'm glad
20 I had an opportunity to correct my mistake. All right. And we
21 will continue. And let me just see you guys a second.

22 (WHEREUPON, an off-the-record discussion was held at
23 sidebar.)

24 (WHEREUPON, court recessed at 5:24 p.m. and reconvened at
25 6:17 p.m.)

JURY DELIBERATION QUESTION

(WHEREUPON, Court's Exhibit 16 is marked for identification.)

THE COURT: We have another question. They wish to be charged on The hand of one is the hand of all. Yes, I'm going to charge in their presence, also. And ---

THE BAILIFF: They said if you give them about five minutes, they can come to an end.

THE COURT: Okay. Tell them I am prepared to recharge them in accordance with their note. But if they no longer need it, that's perfectly fine. Okay for her to tell them that? Any objection?

ATTORNEY OSBORNE: No, Your Honor.

ATTORNEY GAY: No, Your Honor.

ATTORNEY HENSLEY: No, Your Honor.

THE COURT: Okay. Got it. Let me know what they say.

THE BAILIFF: They have changed their mind and would like for them to come in and you read it to them.

THE COURT: Okay. Great.

(WHEREUPON, the jury is seated in the courtroom at 6:22 p.m.)

THE COURT: All right. Ladies and gentlemen, I have your note. And I am going to recharge you with regards to The hand of one is the hand of all. And I'll supplement that with another charge, mere presence.

1 And given the second part of your question, the way that I
2 set up my instructions, or my charge is, is that the first part
3 of my instruction to you are various theories of law that may or
4 may not apply based upon your view of the evidence. And then I
5 go into the elements of the offenses.

6 The charge of The hand in one is the hand of all, and the
7 second one I'm going to give you which is mere presence, is in
8 that part of the instruction like credibility of witnesses, what
9 do we mean by the presumption of innocence, how is beyond a
10 reasonable doubt defined. Those are the theories of law that you
11 may need for your deliberations based upon your view of the
12 evidence.

13 So The hand of one is the hand of all is not a separate
14 offense, but it is a tenet of the law that you may need, that you
15 ought be instructed that this is what our law says. And it may
16 or may not be needed by you as you make your finding of fact.

17 I hope that's helpful. It looked like your comment, after
18 you asked to be instructed, it looked as though you were asking
19 for some sort of separate consideration or some sort of separate
20 element. And what it is, is part of the instruction that I give
21 when I give a jury instruction, we talk about many different
22 things, as you now have heard, that I think are important for the
23 jury to know that are part of the law, they are tenets, if you
24 will, of the law that may or may not be needed by you based upon
25 your view of the evidence. And then, of course, as you now know,

1 then I go into the elements of the offenses.

2 Now, ladies and gentlemen, what I'm going to talk to you
3 about, is I'm going to define for you a part of the law which is
4 called The hand of one is the hand of all.

5 Ladies and gentlemen, if a crime is committed by two or more
6 people who are acting together in committing a crime, the act of
7 one is the act of all. A person who joins with another to commit
8 an unlawful act is criminally responsible for everything done by
9 the other person which happens as a probable, or natural,
10 consequence of the acts done in carrying out the common plan and
11 purpose. If two or more people are together, and they're acting
12 together and they're assisting each other in committing the
13 offense, the act of one is the act of all. As it is sometimes
14 said, The hand of one is the hand of all.

15 Prior knowledge that a crime is going to be committed
16 without more is not sufficient to make a person guilty of that
17 crime. Mere knowledge, mere knowledge that another is going to
18 commit a crime, even if the defendant is present when the crime
19 is committed, is not sufficient to convict the defendant as a
20 principal.

21 Guilt, as a principal, is shown by actual or constructive
22 presence at the scene as a result of prior arrangement.
23 Therefore, a finding of a prior, arranged plan or common scheme
24 is necessary for a finding of guilt as a principal.

25 The state must prove beyond a reasonable doubt, by competent

1 evidence, the theory of The hand of one is the hand of all.

2 A principal in a crime is one who either actually commits
3 the crime or who is present, aiding, abetting or assisting in
4 committing the crime. When a person does an act in the presence
5 of and with the assistance of another, the act is done by both.
6 Where two or more, acting with a common plan or intent, are
7 present at the commission of a crime, it does not matter who
8 actually commits the crime, all are guilty. The hand of one is
9 the hand of all.

10 Present at the commission of a crime means to be
11 sufficiently near to aid and abet and assist in the commission of
12 a crime.

13 Now I'm going to talk about something called mere presence.
14 I did a little bit earlier in the charge of The hand of one, but
15 I'm going to talk about it a little bit more. Mere presence at
16 the scene is not sufficient to prove someone guilty a crime.
17 Mere presence. A defendant's presence, when a crime is being
18 committed, or mere association with a person who commits a crime,
19 does not make a defendant an accomplice or an aider or abettor of
20 the person committing the crime.

21 The burden is on the state to prove every element of the
22 crime charged.

23 If you find, after reviewing all the evidence, that the
24 state has proved that the defendant was only present at the scene
25 of a crime and that they have not proved beyond a reasonable

1 doubt any other participation in the crime, then you must find
2 the defendant not guilty. The law is that proof of the defendant
3 at the scene of the crime is not sufficient to find someone
4 guilty.

5 Ladies and gentlemen, I'm going to ask you, ask you this
6 question. And you're welcome to just send me a note. Because I
7 want -- we want to proceed as you would want to proceed.

8 So the question for you is, Do you wish to continue to
9 deliberate this evening, or do you wish to stop your
10 deliberations and return and continue those deliberations on
11 Monday? If you'd just take your first vote of your jury and let
12 us know. And you should please yourselves. You know, I turn
13 that over to you to make that determination. You can stay and
14 continue to deliberate, or you can return on Monday. If you send
15 me a note, let me know whatever is your pleasure.

16 If you'll please retire to your jury room.

17 (WHEREUPON, the jury is escorted out of the courtroom at
18 6:31 p.m.)

19 MATTER(S) OF LAW

20 THE COURT: All right. Any exceptions or additions from the
21 state?

22 ATTORNEY OSBORNE: None, Your Honor.

23 THE COURT: All right. On behalf of Mr. Green?

24 ATTORNEY GAY: I didn't see anything different, Your Honor.
25 I believe you just read directly from the paperwork, so I don't

1 have any.

2 THE COURT: Yes, ma'am?

3 ATTORNEY HENSLEY: None, Your Honor.

4 THE COURT: Okay, thank you.

5 (WHEREUPON, court recessed at 6:32 p.m. and reconvened at
6 7:05 p.m.)

7 (WHEREUPON, Court's Exhibit 17 is marked for
8 identification.)

9 THE COURT: Anything for the state before we bring the jury
10 back?

11 ATTORNEY OSBORNE: No, Your Honor.

12 THE COURT: Anything on behalf of Mr. Green?

13 ATTORNEY GAY: No, ma'am.

14 THE COURT: And on behalf of ---

15 ATTORNEY HENSLEY: No, Your Honor.

16 THE COURT: Very well.

17 (WHEREUPON, the jury is seated in the courtroom at
18 7:10 p.m.)

19 (WHEREUPON, Court's Exhibit 18 is marked for
20 identification.)

21 THE COURT: Madam presiding juror, it is my understanding
22 you have reached, the jury has, reached its verdict. Is that
23 correct?

24 THE FOREPERSON: Yes, ma'am.

25 THE COURT: If you'll pass it to our bailiff.

1 (WHEREUPON, the Court receives the verdict slip for
2 inspection.)

3 VERDICT

4 THE COURT: All right. I find that the verdict is in
5 appropriate and due form. Ms. Westbury.

6 CLERK OF COURT: Yes, ma'am. In the matter of the State of
7 South Carolina versus Elijah Diante Green, Indictment Nos.
8 2019-GS-18-0423, 2019-GS-18-0426, 2019-GS-18-0424,
9 2019-GS-18-0427, 2019-GS-18-0429.

10 As to the charge of murder, we, the jury, unanimously find
11 the defendant guilty.

12 As to the charge of attempted murder, we, the jury,
13 unanimously find the defendant guilty.

14 As to the charge of burglary in the first degree, we the
15 jury, unanimously find the defendant guilty.

16 As to the charge of possession of a weapon during the
17 commission of a violent crime, we, the jury, unanimously find the
18 defendant guilty.

19 As to the charge of ill-treatment of animals, torture, we,
20 the jury, unanimously find the defendant guilty.

21 Signed and dated by Presiding Juror Stephanie Kerstetter,
22 dated July 16th, 2021.

23 In the matter of State of South Carolina versus Devonte
24 Trevon Major, Indictment Nos. 2019-GS-18-0430, 2019-GS-18-0432,
25 2019-GS-18-0433, 2019-GS-18-0434, 2019-GS-18-0436.

1 As to the charge of murder, we, the jury, unanimously find
2 the defendant guilty.

3 As to the charge of attempted murder, we, the jury,
4 unanimously find the defendant guilty.

5 As to the charge of burglary in the first degree, we, the
6 jury, unanimously find the defendant guilty.

7 As to the charge of possession of a weapon during the
8 commission of a violent crime, we, the jury, unanimously find the
9 defendant guilty.

10 As to the charge of ill-treatments of animals, torture, we,
11 the jury, unanimously find the defendant guilty.

12 Signed by Jury Foreperson Stephanie Kerstetter, dated
13 July 16th, 2021.

14 THE COURT: Ladies and gentlemen, if these two verdict forms
15 were your verdict in your jury room and continue to be your
16 verdict in the courtroom, please indicate by raising your right
17 hand.

18 (Jury responds.)

19 THE COURT: All right. I can observe all of the right hands
20 are raised. All right. Anything further on behalf of Mr. Green
21 before we dismiss the jury, Ms. Gay?

22 ATTORNEY GAY: Your Honor, I know that you had them all, as
23 a group, put their right hand up, but I would just ask you to
24 poll them individually.

25 THE COURT: Sure.

1 ATTORNEY HENSLEY: And I would join in that, Your Honor.

2 THE COURT: Certainly.

3 CLERK OF COURT: As I call your juror number and name, if
4 you'll please stand.

5 Juror no. 120, Tobias Goodwine. Was this your verdict in
6 the jury room?

7 JUROR NO. 120: Yes, ma'am.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR NO. 120: Yes, ma'am.

10 CLERK OF COURT: Thank you, sir.

11 Juror no. 292, Dillon Poe. Was this your verdict in the
12 jury room?

13 JUROR NO. 292: Yes, ma'am.

14 CLERK OF COURT: Is it still your verdict?

15 JUROR NO. 292: Yes, ma'am.

16 CLERK OF COURT: Thank you.

17 Juror no. 201, Stephanie Kerstetter. Was this your verdict
18 in the jury room?

19 JUROR NO. 201: Yes, ma'am.

20 CLERK OF COURT: Is it still your verdict?

21 JUROR NO. 201: Yes, ma'am.

22 CLERK OF COURT: Thank you.

23 Juror no. 194, Ryan Jones. Was this your verdict in the
24 jury room?

25 JUROR NO. 194: Yes, it, was.

1 CLERK OF COURT: Is it still your verdict?

2 JUROR NO. 194: Yes, ma'am.

3 CLERK OF COURT: Thank you.

4 Juror no. 319, Janeka Ryans. Was this your verdict in the
5 jury room?

6 JUROR NO. 319: Yes, ma'am.

7 CLERK OF COURT: Is it still your verdict?

8 JUROR NO. 319: Yes, ma'am.

9 CLERK OF COURT: Thank you.

10 Juror 375, Cynthia Wade. Was this your verdict in the jury
11 room?

12 JUROR NO. 375: Yes, ma'am.

13 CLERK OF COURT: Is it still your verdict?

14 JUROR NO. 375: Yes.

15 CLERK OF COURT: Thank you.

16 Juror no. 54, Amanda Collins. Was this your verdict in the
17 jury room?

18 JUROR NO. 54: Yes, ma'am.

19 CLERK OF COURT: Is it still your verdict?

20 JUROR NO. 54: Yes, ma'am.

21 CLERK OF COURT: Thank you.

22 Juror no. 158, Elizabeth Hazen. Was this your verdict in
23 the jury room?

24 JUROR NO. 158: Yes, ma'am.

25 CLERK OF COURT: It still your verdict? I'm sorry?

1 JUROR NO. 158: Yes, ma'am.

2 CLERK OF COURT: Thank you.

3 Juror no. 18, Lori Bisceglia. Was this your verdict in the
4 jury room?

5 JUROR NO. 18: Yes, ma'am.

6 CLERK OF COURT: Is it still your verdict?

7 JUROR NO. 18: Yes.

8 CLERK OF COURT: Thank you.

9 Juror no. 102, Christine Felesky. Was this your verdict in
10 the jury room?

11 JUROR NO. 102: Yes.

12 CLERK OF COURT: Is it still your verdict?

13 JUROR NO. 102: Yes.

14 CLERK OF COURT: Thank you.

15 Juror no. 121, James Gordon. Was this your verdict in the
16 jury room?

17 JUROR NO. 121: Yes, ma'am.

18 CLERK OF COURT: Is it still your verdict?

19 JUROR NO. 121: Yes, ma'am.

20 CLERK OF COURT: Thank you.

21 And juror no. 347, Kimeta Stewart. Was this your verdict in
22 the jury room?

23 JUROR NO. 347: Yes, ma'am.

24 CLERK OF COURT: I'm sorry?

25 JUROR NO. 347: Yes, ma'am.

1 CLERK OF COURT: It still your verdict?

2 JUROR NO. 347: Yes.

3 CLERK OF COURT: Thank you. Thank you, Judge.

4 THE COURT: All right. Anything further on behalf of
5 Mr. Green before we dismiss the jury, Ms. Gay?

6 ATTORNEY GAY: No, Your Honor.

7 THE COURT: All right. Anything on behalf of Mr. Major
8 before we dismiss the jury?

9 ATTORNEY HENSLEY: No, Your Honor. Thank you.

10 THE COURT: Very well. Ladies and gentlemen -- and I
11 presume not from the state? Mr. Osborne, I didn't mean to ignore
12 you.

13 ATTORNEY OSBORNE: No, Your Honor.

14 THE COURT: Ladies and gentlemen, I want to thank you for
15 your service on this jury. I know that we have taken so much of
16 your dear, precious time, and I want you to know that, on behalf
17 of all of us, we are truly grateful for each and every tick of
18 the clock. We truly appreciate your service.

19 If you were not here there would be no reason for any of us
20 to be here because, you see, our system of justice depends upon
21 jurors. And I would submit to you that having a jury system is
22 where the rubber meets the road in a democracy. And for your
23 participation and for your being here, always, I am truly so
24 grateful.

25 I have your note where you were asking that your excuses, I

1 think excuses, but the verification that you've been in court all
2 week. We have those for you. And Ms. Westbury is going to put
3 them somewhere.

4 CLERK OF COURT: We have them in the hallway.

5 THE COURT: In the hallway. They're hanging out with your
6 cellphones. They are in the hallway, so that you will certainly
7 have them.

8 Be mindful, should you get another juror summons for 2021,
9 you are not eligible to serve in a court of record for the
10 balance of 2021. And, remember, if you choose to exercise an
11 exemption, you have an exemption for your jury service for 2022
12 and 2023. So you might want to just keep, just keep a little
13 document, or put that in your calendar, because time flies.
14 You'd be very surprised how many people think they have just
15 served and it's been six years ago. You might want to have that
16 information.

17 Ladies and gentlemen, I know the hour is late, but our
18 appreciation to you is -- we are so grateful to you for your
19 time. We, hopefully, with the COVID situation, we don't know how
20 much longer we'll be trying cases in this format. However, we
21 want to be able to accommodate our jurors. And obviously we need
22 to be able to continue to try cases. If you have any
23 suggestions, any comments, we would be delighted to have them,
24 positive or negative, because we certainly want our jurors to be
25 as comfortable as we can have them be, because we need to

1 continue to try cases, and it appears that this is the format,
2 unless y'all have some suggestions. We'd be delighted to have
3 them. You can leave them with the clerk's office, you can leave
4 them a note.

5 Now, with regards to your notes, if you wish to take them
6 with you, that is perfectly fine. And otherwise, they will come
7 to my chambers and, as I told you, on Tuesday I will destroy them
8 myself.

9 Now, you are now at liberty to talk about this case, if you
10 wish. Well, I will tell you that the practice of law is an art,
11 it is not a science, and sometimes lawyers want to have contact
12 with jurors if they want to get better. If you are comfortable
13 speaking with them, that is perfectly fine.

14 If you do not want to talk about it, you just tell these
15 attorneys, I don't want to talk about it. I can assure you
16 they're not going to press you to talk about it if you do not
17 wish to.

18 Sometimes folks can be doing studies with regards to jury
19 panels. I have maybe had this happen once in 23 years. Should
20 anyone try to contact you about this case and want to talk about
21 it and you don't want to talk about it and they persist, if you
22 will contact our clerk's office, they will reach out to me and I
23 will intercede on your behalf.

24 Ladies and gentlemen, again, thank you. That will conclude
25 my remarks. And the hour is getting late. So if you will return

1 to your juror room, your notes are in there for whoever's curious
2 and wants to know where you've been and what you've been up to,
3 those are in there for -- actually, they're by your cellphone.

4 But at this time, if you wish to remain, you certainly can.
5 But if you wish to depart, you absolutely can do that, as well.
6 And thank you so much.

7 (WHEREUPON, the jury is dismissed at 7:23 p.m.)

8 THE COURT: All right. I have the sentencing sheets, and I
9 am prepared to proceed into sentencing. Anyone wish to speak on
10 behalf of the victim?

11 ATTORNEY GAY: Your Honor, I think we have to make these
12 last motions.

13 THE COURT: Oh, yes, of course. You can do it now, or you
14 can do it after sentencing. I don't care. Go ahead.

15 ATTORNEY GAY: Your Honor, at this time, Ms. Hensley and I
16 have discussed it, on behalf of Mr. Green I'd like to make a
17 motion for a new trial or judgment notwithstanding the verdict.

18 I don't believe that there was enough evidence pursuant to
19 my motion for directed verdict. And all the other motions that
20 we've made, we would like to reiterate and bring them back up,
21 and say to you that we don't believe that the evidence in this
22 case supports the verdict.

23 THE COURT: Thank you so much. And what would you add to
24 that?

25 ATTORNEY HENSLEY: I would join in that motion. I don't

1 have anything to add on behalf of Mr. Major, Your Honor.

2 THE COURT: Thank you very much. I will respectfully deny
3 your motion, noting your exception thereto. All right.

4 ATTORNEY GAY: And I have kind of a housekeeping question.
5 Normally when somebody's being sentenced, their family may be
6 able to say something on their behalf.

7 THE COURT: Thank you for that, Ms. Gay. Thank you so much.
8 Yes, they certainly are more than welcome to come up. We have
9 plenty of seats. I'm happy to have them come up. Certainly.

10 ATTORNEY GAY: So if they're in the downstairs room, can
11 they ---

12 THE BAILIFF: We'll get them. If the Judge say get them,
13 we'll get them.

14 THE COURT: Come on up.

15 THE BAILIFF: Yes, ma'am.

16 THE COURT: If they wish to come upstairs, I'm delighted to
17 have them come upstairs.

18 (WHEREUPON, people enter the courtroom.)

19 THE COURT: All right. Anyone else coming from --
20 everyone's up here?

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: Very well. Does anyone, any of the victims,
23 wish to speak on behalf of the decedent?

24 ATTORNEY OSBORNE: Yes, Your Honor.

25 THE COURT: All right.

1 ATTORNEY OSBORNE: Dennis Weaver, who is J.B.'s uncle, would
2 like to speak on behalf of the entire family.

3 THE COURT: Happy to hear from him. You're fine right
4 there, sir. All I need you to do is state your name for the
5 record.

6 MR. DENNIS WEAVER: My name's Dennis Weaver.

7 THE COURT: Yes, sir.

8 MR. DENNIS WEAVER: I'm J.B. Weaver's uncle. My family has
9 asked me to speak on behalf of the family. Marcus Porter also
10 asked me to speak on his behalf, as well.

11 B.J.'s son, Steven, is here in the courtroom; his dad, Joe.

12 THE COURT: Would you point him out? Would you point him
13 out for me?

14 MR. DENNIS WEAVER: Steven.

15 THE COURT: Thank you.

16 MR. DENNIS WEAVER: His dad, Joe.

17 THE COURT: Thank you.

18 MR. DENNIS WEAVER: His mother, Brenda.

19 THE COURT: Thank you. Yes.

20 MR. DENNIS WEAVER: Aunt, uncles and some cousins. They all
21 asked me to thank you. Just might put my glasses on here. Thank
22 you, court officers, thank the solicitor's office, respectfully
23 thank the defense counsel, the jury, all of law enforcement
24 that's been involved in this case for the last two-plus years.

25 Please know that our beloved J.B. will never walk the earth

1 again. So at this point, due to the heinous and tortuous nature
2 of the way our family member was murdered, we feel the defendant
3 should not be allowed to walk our streets again either.

4 Throughout the past two-plus years of this trial and bond
5 hearings the defendants have shown no remorse. We were told the
6 death penalty was not an option, even though J.B. was absolutely
7 executed while laying on that floor.

8 While we're sympathetic for the defendants' family, we still
9 ask you at this time to give the maximum sentence, with no chance
10 of parole. Thank you.

11 THE COURT: Thank you so much, Mr. Weaver. All right. Yes?

12 ATTORNEY OSBORNE: Your Honor, the only thing I would ---

13 THE COURT: And their records, please.

14 ATTORNEY OSBORNE: Yes, Your Honor. So, Devonte Major's
15 record's a little bit peculiar, because my rap sheet literally
16 starts with a parole recollection, so I'm not sure exactly sure
17 what that charge was for.

18 As far as convictions, he has none. But I will say that the
19 charges that appear to have been nol-prossed are significant. In
20 2018 he had two attempted murders and two possession of a weapon
21 during commission of a violent crime charges that appear to have
22 both been dismissed. They were out of Beaufort. Possession of
23 cocaine base, first. Again, stolen vehicle. These all appear to
24 have been out of Beaufort, and also appear to have been
25 dismissed. And some resisting arrest charges. Again, no

1 disposition on conviction.

2 Elijah Green has no record. What I will say, Your Honor,
3 there were a piece of evidence in this case that we were not able
4 to admit that I think is important, and it is germane. Four
5 weapons, one was the .380, we found ammunition in the .380 that
6 had, like, two or three different types of ammunition, that same
7 ammunition was found in a bag with Polo Salazar's ID, certainly
8 indicating or evidence that that's Polo Salazar's gun. No
9 evidence that that gun was fired.

10 The other gun, the Taurus, that gun came back registered to
11 a Tanisha Gamble. Tanisha Gamble is Muanah Fortune's girlfriend.
12 Tanisha told us that Muanah stole that gun from her. That would
13 indicate that Muanah was in possession of the Taurus. We
14 couldn't bring Tanisha in here because she's in Texas. We would
15 have loved to have done that. If we had done that, then what I
16 would have argued, those two guns, the ones that weren't fired,
17 were in possession of Muanah Fortune and Polo Salazar.

18 That means the two murder weapons were fired by these two
19 defendants.

20 THE COURT: All right. And that concludes the presentation
21 on behalf of the state?

22 ATTORNEY OSBORNE: Yes, ma'am.

23 THE COURT: Yes, ma'am, Ms. Gay?

24 ATTORNEY GAY: Thank you, Your Honor. We have some family
25 members that came in on behalf of Mr. Green. One of them is his

1 mother, who's -- if you want to raise your hand, please -- she's
2 the woman who's in the front, in the middle.

3 THE COURT: Yes, ma'am. Thank you.

4 ATTORNEY GAY: His grandmother, who's the woman in the --
5 orange.

6 THE COURT: Yes.

7 ATTORNEY GAY: His aunt, who's next to them. And I believe
8 a family friend. I don't think he's the father. I asked. A
9 family friend.

10 THE COURT: Okay.

11 ATTORNEY GAY: And they have been here, most of them have
12 been here, for the entire trial.

13 Mr. Green is a young man, Your Honor. He's only 23. He was
14 21 at the time that this incident occurred. He had joined the
15 Army and got general discharge from the Army. And I think that
16 his family was hopeful that, based on that work experience, if
17 nothing else, that he would be able to have a good life, Your
18 Honor.

19 He tells me that he had two jobs at the time of the
20 situation, Your Honor. He had worked on Edisto Island as a chef,
21 and he was also doing tree work. He doesn't have any children,
22 Your Honor.

23 We would ask you to be as lenient as possible. If you
24 recall, when Mr. Osborne said that he ended up throwing up in the
25 car, it was so overwhelming -- I think that we talked about it in

1 your office -- I really genuinely think that when the dog
2 attacked, that it just all, whatever they were attempting to try
3 to do or not do, it just went into a very, very bad direction.

4 And I think that, you know, we've all seen those kinds of
5 things where once one incident, once one thing happens to set a
6 chain of action in a direction, there's just, everybody starts
7 freaking out. And I think that there was -- there was just bad
8 choices, Your Honor, of young people.

9 And we would ask you to please be as lenient as possible.

10 THE COURT: Thank you. Thank you so much, Ms. Gay.

11 ATTORNEY GAY: Are you going to hear from Ms. Hensley?

12 THE COURT: Yes, ma'am, I would. Yes, ma'am?

13 ATTORNEY HENSLEY: Thank you, Your Honor. On behalf of
14 Devonte Major, when all of this happened, Devonte was 25. And I
15 will say that throughout the time that I've been representing
16 Devonte, I've had consistent contact with his mother, with the
17 mother of his son, his two-year-old son. And just, unfortunately
18 for them, because the mother of his son had a new job, his mother
19 was having transportation issues, and so they are not here. But
20 they're not not here because they don't care about Devonte, and I
21 can certainly tell you that they do.

22 Devonte, like I said, was 25, he's 27 now. He is a dad. I
23 think he went through the 10th grade, and he did work at the
24 chicken factory in Hardeeville.

25 And, you know, as to Mr. Osborne's comments to try to put

1 this gun in Mr. Major's hand, at this point I would just point to
2 the gunshot residue testimony that we had in this trial that they
3 didn't have in the last trial about the number of particles all
4 over Muanah Fortune. And I think that kind of flies in the face
5 of now Muanah's the good guy. So I would just add that, because
6 I think that that's indicative of something and not what
7 Mr. Osborne -- the conclusion Mr. Osborne asked you to draw.

8 And certainly I would ask that you be as lenient as possible
9 with Devonte. They're young, young men. And, I mean, a 30-year
10 sentence here today makes it basically a life sentence for them.
11 It's not an easy life; it's a hard life. And, you know, there's
12 nothing that they can do to change anything that's happened.

13 And, you know, I think it's sad that they're not able to
14 show remorse at bond hearings because they must maintain their
15 presumption of innocence. They can't come in and say, We're
16 sorry and this and that, but I don't think it's because they're
17 not. So we would just ask your consideration for that.

18 THE COURT: Thank you. All right. And anything further
19 from anyone?

20 ATTORNEY GAY: I think his grandmother would like to speak
21 to the Court, Your Honor, if possible.

22 THE COURT: Indeed. Happy to hear from her.

23 MS. KAREN GREEN: I would just say to the family that we ---

24 ATTORNEY GAY: Can you take off the mask?

25 MS. KAREN GREEN: Sorry. I would just say to the family

1 that we are sorry for all that has transpired. It's been
2 difficult on everyone. I just want my son to know that we love
3 him from the bottom of our heart.

4 And I would ask that you have mercy on him.

5 THE COURT: And your full name is?

6 MS. KAREN GREEN: Karen Green. Karen Green.

7 THE COURT: Karen Green. Thank you so much, Ms. Green.

8 (WHEREUPON, Defendant Elijah Quinlin Diante Green
9 approaches, with counsel).

10 THE COURT: All right. I am prepared to pass sentence at
11 this time. Anything from anyone before I do that? No. Very
12 well.

13 SENTENCE OF THE COURT

14 All right. With regards to Indictment
15 No. 2019-GS-18-0429 -- well, I don't want to start that way. I
16 want to start -- excuse me.

17 With regards to Indictment No. 2019-GS-18-0423, which is the
18 indictment for murder, Mr. Green, I am going to commit you to the
19 State Department of Corrections for the rest of your life.

20 With regards to 2019-GS-18-0429, which is ill-treatment of
21 animals, in general, torture, I am going to commit you to the
22 State Department of Corrections for a period of five years.

23 With regards to 2019-GS-18-0427, possession of a firearm
24 during the commission of a violent crime, I'm going to commit you
25 to the State Department of Corrections for a period of five

1 years.

2 With regards to Indictment No. 2019-GS-18-0426, which is the
3 indictment for attempted murder, I'm going to commit you to the
4 State Department of Corrections for a period of 30 years.

5 And with regards to 2019-GS-18-0424, which is the indictment
6 for burglary in the first degree, I'm going to commit you to the
7 State Department of Corrections for the balance of your life.

8 These sentencings will run concurrent.

9 ATTORNEY GAY: Thank you, Your Honor.

10 THE COURT: That will conclude Mr. Green's case. You may
11 take him out.

12 You want to bring Mr. Major up.

13 (WHEREUPON, Defendant Devonte Trevon Major approaches, with
14 counsel).

15 THE COURT: All right. Anything from anyone before I
16 sentence Mr. Major?

17 ATTORNEY HENSLEY: No, Your Honor.

18 SENTENCE OF THE COURT

19 THE COURT: With regards to 2019-GS-18-0430, which is the
20 indictment for murder, Mr. Major, I am going to commit you to the
21 State Department of Corrections for the balance of your life.

22 With regards to 2019-GS-18-0433, which is the indictment for
23 burglary in the first degree, I am going to commit you to the
24 State Department of Corrections for the balance of your life.

25 With regard to 2019-GS-18-0432, which is the indictment for

1 attempted murder, I am going to commit you to the State
2 Department of Corrections for a period of 30 years.

3 With regard to 2019-GS-18-0434, which is the indictment for
4 possession of a firearm during the commission of a violent crime,
5 I'm going to commit you to the State Department of Corrections
6 for a period of five years.

7 And with regard to 2019-GS-18-0436, which is the indictment
8 for ill-treatment of animals, I am going to commit you to the
9 State Department of Corrections for a period of five years.

10 These sentences will run concurrent.

11 And that will conclude sentencing for Mr. Major. Thank you.

12 All right. Anything further? Anymore business for the
13 Court?

14 ATTORNEY OSBORNE: No, Your Honor.

15 THE COURT: Very well. Then we will be adjourned.

16 (WHEREUPON, court adjourned at 7:52 p.m.)

17 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/proceedings of the captioned case, relative to appeal, in the Court of General Sessions for Dorchester County, South Carolina, for the following days: Friday, July 9, 2021; Monday, July 12, 2021; Tuesday, July 13, 2021; Wednesday, July 14, 2021; Thursday, July 15, 2021; and Friday, July 16, 2021.

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

Date: November 1, 2021

/s/ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter

CERTIFIED COPY

1973 SEP -5 PM 5:06

pg 1-of-3

Clay L. Maham
 IN the Court of Common Pleas
 Application For post-Conviction Relief

IN RESPONSE to question #10 pg-3
 AND question #11 pg-3 A, B, C

A) Co-defendant prejudiced the jury.

1966 Amendment in Schaffer V. United States - 221 F.2d 17 (5th Cir. 1955); Barton V. United States, 263 F.2d 894 (5th Cir. 1959)

- A defendant may prejudice by the admission of evidence against a co-defendant of a statement or confession made by that co-defendant, this prejudice can not be dispelled by cross examination if the co-defendant does not take the stand

B) Ineffective Assistance of Counsel;

D) For failure to prepare and investigate applicants case during time of arrest and trial, which resulted in client not being able to properly review all evidence against him before trial.

Pg 2 of 3

2) Ineffective Assistance of Counsel; For Failing to dismiss For Evidence Tampering by lead investigator, who was charged with misconduct in office

3) Ineffective Assistance of Counsel; For Council never informed defendant of right to seek a separate trial, which resulted in conviction.

4) Ineffective Assistance of Counsel; For Failing to Advise Client of All Rights Regarding trial procedure, options etc. For Failing to object during trial allowing damaging testimony, there is a reasonable probability that he was prejudiced by Counsel's unprofessional errors

* United States Court of Appeals 4th Circuit
- VALENTINO V. CLARKE 972 F.3d 560

* United States Court of Appeals 4th Circuit
- FRAZER V. SOUTH CAROLINA 430 F.3d 696

* JOHNSON V. STEPHAN

United States District Court S.C. WL 586522
(NOT REPORTED IN Fed Supplement 2019)

pg 3 of 3

C.) trial judge Not allowing defense evidence that witness was found to have math in system.

A. collector Not being truthful About Dismissed charges

B. Malicious prosecution

C. Improper Identification techniques

1.) Chain of Custody / mishandling Evidence

Devante Major

SWORN or affirmed to and subscribed before me this

31 day of August, 2023.

Richard Berger

Notary Public

My Commission Expires 8/30/2026

FORM 5

STATE OF SOUTH CAROLINA

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS

County of Dorchester

7/23 SEP -5 PM 5:06

2023 - CP - 18 - 1477Devonte Treven Major #353098

Full name and prison number (if any) of Applicant

Clerk of Court
Dorchester County

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
4466 Broad River Rd. Columbia SC 29210
2. Name and location of Court which imposed sentence 5200 East Jim Bilton Blvd St George S.C 29477
3. Name(s) of co-defendant(s) (if any) Polo Salazar, Elijah Green
Muanah Fortune
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-GS-18-00423; -00424 - 00426 - 00427; -00429
 - (b) 2019-GS-18-00430; -00432 - 00433 - 00434; -00436

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 9-16-2021-2019-GS-180430 (LWOP) (cur
- (b) July 9-16-2021-2019-GS-18-0433 Burg 1st degree
- (c) July 9-16-2021-2019-GS-18-0432 30 yrs
6. Check whether a finding of guilty was made: - 2019-GS-18-0434 10 yrs
- 2019-GS-18-0436 5 yrs
- (a) after a plea of guilty _____
- (b) after a plea of not guilty PLEA OF NOT GUILTY
- (c) after a plea of nolo contendere Condono
7. Did you appeal from the judgment of conviction or the imposition of sentence?
CONVICTION
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Dorchester County (Court of Appeals)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED (Dismissed)
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE, 7 2023
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) WAS NEVER INFORMED OF RIGHT TO TOTAL SEPARATION
 (b) INEFFECTIVE ASSIST OF COUNCIL
 (c) JUDGE NOT ADMITTING EVIDENCE

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- SEE NOTE (a) CO-DEFENDANT PROVIDING THE SURETY (SCHOFFERT)
 SEE NOTE (b) INEFFECTIVE ASSIST OF COUNCIL
 SEE NOTE (c) JUDGE NOT ADMITTING RELEVANT EVIDENCE
 APPROX 12.1

Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. State of South Carolina, Court of Appeals
 ii. DIRECT APPEAL
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of Appeals, Dorchester County
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. JUNE - 7 - 2023
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES, JUDGE NOT Letting Relevant Evidence
IN TO trial

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. JUDGE NOT Letting Relevant Evidence
- ii. IN to trial
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Appellate Court
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) New Joseph and in depth information
 (b) ignorance to the law
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Laree A. Hensley
2129 Dorchester Road, North Charleston SC 29405

ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Laree A. Hensley

ii. Laree A. Hensley

iii. Laree A. Hensley

19. State clearly the relief you seek in filing this application:

Time Served, Time Amended

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Devonte Trevon Major, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 31
day of August, 2023.

Frankelberg (L.S.)
Notary Public

My Commission Expires: 8/30/2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2023 - CP - 18 - 1477

I, Devonte Trevon Major, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Devonte Trevon Major
Applicant

SWORN or affirmed to and subscribed before me this
31 day of August, 2023.

Kuehnbauer
Notary Public

My Commission Expires: 8/30/2026

CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

2023 SEP - 5 PM 5:06

CERTIFIED COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Devonte T. Major, #353008,	)	Case No.: 2023-CP-18-01477
	)	
Applicant,	)	
	)	
v.	)	RETURN AND
	)	PARTIAL MOTION TO DISMISS
State of South Carolina,	)	
	)	(Counsel Appointed)
Respondent.	)	
	)	

The State of South Carolina (Respondent or the State) hereby makes its Return to the post-conviction relief (PCR) action filed by Devonte T. Major (Applicant) on September 5, 2023. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections, serving a life sentence. On September 26, 2019, the Dorchester Grand Jury indicted Applicant for murder (2019-GS-18-0430), attempted murder (2019-GS-18-0432), burglary in the first degree (2019-GS-18-0433), possession of a weapon during the commission of a violent crime (2019-GS-18-0434), and ill treatment of animals (2019-GS-18-0436). On July 9-16, 2021, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Assistant Solicitors David L. Osborne and Nicholas A. Young prosecuted the case on behalf of the First Circuit Solicitor's Office. Applicant was represented by Laree A. Hensley, Esq. (Counsel). Applicant was tried with his co-defendant, Elijah Quinlin Diante Green (Green or co-defendant).¹

Applicant was convicted as indicted. Judge Goodstein sentenced Applicant to life imprisonment for murder, thirty (30) years for attempted murder, life imprisonment for burglary

¹ Green was represented by Assistant Public Defenders Melisa W. Gay and Michael Coleman.

first degree, five (5) years for possession of a weapon during a violent crime, and five (5) years for ill treatment of animals. Judge Goodstein ordered the sentences to be served concurrently.

On August 11, 2021, a notice of appeal was filed on Applicant's behalf by Laree A. Hensley, Esq. On May 9, 2022, an appeal was perfected by Appellant Defender Lara M. Caudy, who filed a brief pursuant to *Anders*² and a motion to be relieved. Applicant raised the following issue on appeal:

Whether trial judge abused her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and Rule 402, SCRE, and would have impeached the credibility of Marcus Porter, the subject of the attempted murder charge, and one of only two eyewitnesses who testified.

Following briefing and without oral argument, the South Carolina Court of Appeals dismissed Applicant's appeal and granted appellate counsel's motion to be relieved. *State v. Major*, Op. No. 2023-UP-230 (S.C. Ct. App. filed June 7, 2023). The Remittitur was sent on June 23, 2023.

II. FACTUAL HISTORY

At trial, David Swibaker testified he was sharing a home with Marcus Porter. (R. 244). Swibaker testified that before midnight on January 27, 2019, four armed men wearing masks kicked in the back door and came into the home. (R. 251; 253). Swibaker testified the men dragged Porter down the hall and hit Swibaker in the head with a gun, threatening him. (R. 251). According to Swibaker, Porter's dog charged the men to attack them, and the men shot the dog. (R. 252-253). The men ransacked the house, looking for "stuff." (R. 255). The men demanded Swibaker tell them where "the stuff" was or they were going to start "lighting mothereffers [sic] up." (R. 255).

² *Anders v California*, 378 U.S. 738, 87 S. Ct. 1396 (1967).

The men dragged Porter from his bedroom into the living room, demanding him to tell them where “the stuff” was. (R. 256). Swibaker testified he heard a gunshot, then a “bunch more shots[,]” then the men left. (R. 256).

Marcus Porter, Swibaker’s roommate, testified that on the night of January 27, 2019, he was at his home with his dog, Swibaker, and Joe Weaver. (R. 294). Porter testified he sold marijuana around the time of the break in. (R. 290). Porter testified he heard a big crack at the door and four men with handguns came in demanding weed. (R. 296-97) Porter testified Elijah Green, Applicant’s co-defendant, was the first person in, followed by Applicant. (R. 296). According to Porter, Weaver tried to diffuse the situation by offering a chance for the men to get weed. (R. 297). Porter’s dog was trying to protect his owner, and the men shot the dog. (R. 297). Porter testified Weaver was inching closer towards the men, attempting to diffuse the situation, and was being told by the men to stand back. (R. 297-00). Porter testified Green shot Weaver. (R. 300). Porter testified Applicant stated, “you know what time it is, man, just give us some weed, we out of here.” (R. 300). Porter testified Applicant stuck his hand in a mason jar of weed and grabbed some loosely. (R. 301). Green stated, “if you don’t come up with some weed[,] I’m going to start killing motherfuckers around here.” (R. 302). Porter testified Green then shot Weaver a second time. (R. 302). Porter testified he began inching towards the first door and heard Weaver get shot a third time then five more times. (R. 304). Porter testified that Green shot Porter once. (R. 304). Porter testified the men left out of the back door, and Porter went to his neighbor’s house to call 911. (R. 304).

Officer Joshua Scarborough, Berkley County Sheriff’s Office, testified he was working on the night of January 27, 2019, and radio dispatch mentioned a shooting that had occurred in the same area. (R. 347). Scarborough observed a black Honda CR-V, with no license plate, leaving

the area with four (4) Black men inside. (R. 347). According to Scarborough, one of the passenger's mouths dropped, and his eyes followed Scarborough wide open as if he had seen a ghost. (R. 251).

Corporal Jacob Cramer, Summerville PD, testified while working on the night of January 27, 2019, Scarborough stated over the radio that he passed a dark SUV with four individuals who could have been involved in the shooting. (R. 373). Cramer testified he also saw a dark Honda CR-V with four individuals pass, which matched Scarborough's description. (R. 374). Cramer attempted a traffic stop, and a pursuit began when the vehicle refused to stop. (R. 376-77). After approximately thirty (30) minutes, the vehicle was stopped, and the occupants were arrested. (R. 382-83). The men were identified as Applicant, Green, Polo Salazar, and Muanah Fortune. (R. 382-83). Cramer testified no firearms were found on the suspects, so officers searched along the route of the pursuit and found four firearms and ski masks along the shoulder of the road. (R. 391-94). Bullets recovered from Weaver's body were determined to have been fired from one of the firearms found. (R. 608).

Detective Jonathan Davis, Summerville PD, testified he seized a cellphone from Green. (R. 513). Cellphone records indicated that approximately an hour and a half before the burglary, there was an outgoing call from Green's phone to a number belonging to Jaquavious Washington, who had previously purchased marijuana from Porter. (R. 516- 17; 529). This was the only [social] connection between the victims and the four men. (R. 529). Officer Phillip Moy testified that during an interview, Applicant reached into his coat pocket, grabbed a small amount of loose marijuana, and threw it on the floor. (R. 493-94).

III. CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the

following:³

- I. Ineffective Assistance of Counsel
 - a. Failure to object to statement made by co-defendant that “prejudiced the jury.”
 - b. Failure to prepare and investigate the case.
 - c. Failure to move to dismiss evidence for tampering by lead investigator.
 - d. Failure to advise on trial procedure, rights, options, etc.
 - e. Failure to seek separate trial from co-defendant.
- II. Trial Judge not Allowing Defense Evidence that Witness was Found to Have Meth in System.
- III. Prosecutorial Misconduct
 - a. Solicitor being untruthful about dismissed charges.
 - b. Malicious prosecution.
 - c. Improper identification techniques. Chain of custody concerns/mishandling evidence.

Applicant requests relief as follows: time served, time amended.⁴

Attached to this Return and incorporated herein are the records of the Dorchester County Clerk of Court records regarding the subject convictions, the appellate records, Applicant’s records from the South Carolina Department of Corrections, and the PCR application. The State reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATION

Ineffective Assistance of Counsel, Generally.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to “assistance by an attorney, whether retained or appointed, who play a necessary role to ensure the trial is fair. *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann.

³ Unless quoted, Applicant’s allegations have been summarized for brevity and clarity.

⁴ If this Court finds a defect in the original proceedings, the appropriate remedy would be to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial”).

§ 17-27-20(A) (2014) (enumerating cognizable claims in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, measured under “prevailing professional norms,” and (2) the applicant sustained prejudice as a result of counsel’s performance. *Strickland*, 466 U.S. at 687-88; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-18.

Strickland Decisions of Counsel

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, at 688-89 (stating “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant”). Judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690.

Failure to Object to Statement by Co-Defendant

Applicant alleges Counsel was ineffective for failing to object to a statement made by his co-defendant that “prejudiced the jury.” Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380. (“[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court’s finding... if so, an appellate would necessarily have affirmed the trial court’s [ruling]....”). An ineffective assistance claim based on failure to object is tied to the admissibility of the underlying evidence. *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of *Strickland*: failing to object to admissible evidence cannot be professionally unreasonable, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*

A statement by a coconspirator of a party is not hearsay and may be admissible if the statement was made during the course and in furtherance of the conspiracy. Rule 801(2)(E), SCRE.

The sixth amendment guarantees a criminal defendant the right to confront witnesses against him. U.S. Const. amend VI. A defendant's right to confront witnesses is not violated by the admission of a non-testifying co-defendant's statement, where the defendant's name is redacted and not implicated by the statement's maker. *State v. McDonald*, 400 S.C. 272, 734 S.E.2d 167 (2012). Applicant's co-defendant did not testify at trial. (R. 718; 729). Applicant has failed to specify a statement, if any, was made by his co-defendant that was published to the jury. The record refutes the allegation that Counsel failed to make all material and necessary objections in accordance with her professional expertise and the widely practiced norms. Applicant does not show that some objection should have been made but was not made that would have changed the outcome of his trial. Thus, Applicant cannot meet his burden on this allegation because he has neither shown a specific statement by his co-defendant that Counsel should have objected to nor resulting prejudice.

Failure to Adequately Prepare for Trial and Investigate

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). Counsel has a duty to make *reasonable* investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691 (emphasis added). Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's

duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). In applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46.

Failure to Move for Severance of Trial from Co-Defendant

Applicant alleges counsel was ineffective for failing to move for severance of trial from his co-defendant. There is no clearly defined rule for determining when a defendant is entitled to a separate trial. *State v. Halcomb*, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (2009). The decision to sever is within the trial court’s discretion, based on a just and proper consideration of the particular circumstances presented to the court in each case. *Id.* Severance should only be granted when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant’s guilt. *Id.* A defendant must show prejudice by demonstrating he was prejudiced by the joint trial and would have obtained a more

favorable result in a separate trial. *See id.*, 382 S.C. at 441, 676 S.E.2d at 154.

Applicant cannot meet his burden of proof on this allegation because Applicant cannot prove that having a joint trial violated a specific right or prevented the jury from making a reliable judgment about his guilt. Additionally, Applicant cannot prove that he was prejudiced by having a joint trial. Applicant and his co-defendant were prosecuted under the theory of “hands of one, hands of all.” Under this theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his [co-defendant] incidental to the execution of the common design and purpose.” *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). Applicant joined his co-defendant(s) to accomplish the burglary, seeking marijuana. During the course of and in furtherance of the burglary, Applicant’s co-defendant shot Weaver and Porter, resulting in Weaver’s death. Applicant and his co-defendants were caught fleeing the scene and were arrested shortly after the burglary. Officers found the weapons used in the burglary and murder along the pursuit route. Even if Applicant were granted a separate trial, Applicant cannot prove he would have obtained a more favorable result in the separate trial because the evidence against him was overwhelmingly in favor of a finding of guilty under the theory of hands of one, hands of all. Thus, Applicant cannot meet his burden on this allegation.

V. RESPONSE TO PROSECUTORIAL MISCONDUCT CLAIM

Applicant alleges the solicitor engaged in prosecutorial misconduct for not being truthful about dismissed charges, malicious prosecution, improper identification techniques, and mishandling evidence. The State submits these allegations are without merit. The Due Process Clauses of the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty “without due process of law.” U.S. Const. amends V, XIV. When examining allegations of prosecutorial misconduct, the inquiry is whether the solicitor’s conduct denied the defendant’s due

process right to a fair trial. *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006); *Fortune v. State*, 428 S.C. 545, 549-50, 837 S.E.2d 37, 39-40 (2019). It is Applicant's burden to prove actual prosecutorial misconduct. *Butler*, 286 S.C. at 442 (stating "the burden of proof is on the applicant to prove the allegations in his application."); see *Alabama v. Smith*, 490 U.S. 794, 800 (1989) (stating "burden remains upon the defendant to prove actual vindictiveness[.]").

Applicant alleged the solicitor engaged in misconduct but has failed to present any credible evidence to support his allegation. Applicant has failed to prove actual vindictiveness by the solicitor. Applicant has not presented any credible evidence that the solicitor offered evidence in bad faith or elicited perjured testimony. Applicant has failed to identify what evidence, if any, is alleged to have been mishandled. Additionally, Applicant alleges the solicitor was being untruthful about dismissed charges, but Applicant has failed to specify what statement about charges, if any, was untruthful. Thus, Applicant cannot meet his burden on this allegation.

VI. MOTION TO DISMISS ALLEGATION REGARDING TRIAL COURT JUDGE'S EXCLUSION OF EVIDENCE AS A TRIAL COURT ERROR

The State moves to dismiss Applicant's allegation regarding the trial judge not allowing defense's evidence that a witness was found with methamphetamine in their system. As phrased, this allegation states an alleged trial court error and not a cognizable PCR claim. Summary dismissal of an application [or claim] is permitted under S.C. Code Ann. § 17-27-70(b) (2014). Summary dismissal without a hearing is appropriate if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). When considering the State's motion for summary dismissal, the court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Id.*

Cognizable PCR claims are enumerated in S.C. Code Ann § 17-27-20(A). PCR is not a substitute for an appeal or a place for asserting errors for the first time which could have been raised at trial or reviewed on direct appeal. S.C. Code Ann. § 17-27-20(B); *Simmons*, 264 S.C. at 423 (stating “[e]rrors in trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel and is not a cognizable claim for post-conviction relief. *See Wolfe v. State*, 326 S.C. 158, 162 n.2, 485 S.E.2d 367, 369 n.2 (1997).

Applicant’s allegation that the trial judge did not allow evidence that methamphetamine was found in a witness’ system is a direct appeal issue. Applicant has already raised this issue in his direct appeal and may not do so in a PCR action. As stated, this allegation does not state a cognizable PCR claim and should be dismissed because it alleges a trial court error. Therefore, the State moves for summary dismissal of Applicant’s trial court error claim regarding the trial judge’s exclusion of the evidence, pursuant to S.C. Code § 17-27-70(b) (2014) and Rule 12(b)(6), SCRCR, because there is no genuine issue of material fact which would necessitate an evidentiary hearing on this issue, and this allegation should be dismissed as a matter of law.

VII. REQUEST FOR AN EVIDENTIARY HEARING

Because the record likely does not refute or disprove Applicant’s claims, additional testimony is likely needed to resolve Applicant’s allegations. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VIII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Applicant's attorney is required to file amendments to this application, as necessary. Rule 71.1(a), SCRCPP; *see* Rule 11, SCRCPP. *Pro se* filings should not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State, or alternatively, the State will request a continuance in the matter.⁵ If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss any claim(s) or allegation(s). S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)-(b), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150 (2014), Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing.

IX. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion follows on next page.]

⁵ *See Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., dissenting) ("If, however, the proposed amendment... would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments").

X. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its partial motion for summary dismissal as set forth in section VI, and thereafter, convene an evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

BRYAN T. HALL
Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29212

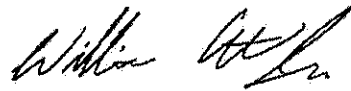
December 12, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	2023-CP-18-1477
Devonte T. Major, #353008	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Denise G. Swope, Esquire
The Swope Law Firm, PA
1525 Sam Rittenberg Blvd., Ste. 208
Charleston, SC 29407

DATED this the 12th day of December, 2023.



William Corbett Jr,
Legal Assistant For Respondent

State of South Carolina	)	
	)	In the Circuit Court
County Of Dorchester	)	
	)	
Devonte Trevon Major,	)	
	)	
vs.	)	2023-CP-18-01477
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Dorchester County Courthouse
March 25, 2025

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Thomas William McGee

A P P E A R A N C E S:

Denise G. Swope Esquire
Attorney for Plaintiff

Bryan T Hall, Esquire
Attorney for Defendant

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

I N D E X

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E X H I B I T S

(There were no exhibits marked during this hearing)

Devonte Trevon Major vs. State of South Carolina 3

1 THE COURT: All right, Mr. Hall.

2 MR. HALL: May it please the Court.

3 THE COURT: Yes sir.

4 MR. HALL: Assistant Attorney General, Bryan Hall
5 for the State. Your Honor, this is the case of Devonte
6 Major versus the State of South Carolina. Docket number
7 2023-CP-18-01477. In September of 2019, the Dorchester
8 County Grand Jury indicted Mr. Major for murder. That's
9 indictment number 2019-GS-18-0430, attempted murder
10 indictment number 2019-GS-18-0432, burglary, first degree,
11 2019-GS-18-0433, possession of a weapon during the
12 commission of a violent crime 2019-GS-18-0434, ill
13 treatment of animals 2019-GS-18-0436. Between July 9th and
14 16th of 2021, Mr. Major proceeded to a jury trial before
15 the Honorable Diane Goodstein. Assistant solicitors David
16 Osborne and Nicholas Young prosecuted the case, and Mr.
17 Major was represented by Laree Hensley. Mr. Major was tried
18 with his co-defendant, Elijah Green. There were two other
19 co-defendants in this case, Your Honor, who were tried
20 jointly in a separate trial. Mr. Major was convicted and
21 sentenced to a concurrent sentence of life for murder,
22 thirty (30) years for attempted murder, life for the
23 burglary, first degree, five years for the weapon charge
24 and five years for the ill treatment of animals charge. On
25 August 11 of 2021, a notice of appeal was filed. And on

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1 appeal, Mr. Major was represented by Laura Cotty who filed
2 a brief pursuant to *Andrews v. California* raising the
3 following issue, whether the trial judge abused her
4 discretion by refusing to admit evidence that the decedent
5 had methamphetamine and marijuana in his system when he
6 died, since the evidence was relevant and would have
7 impeached the credibility of Marcus Porter, the subject of
8 the attempted murder charge, and one of only two
9 eyewitnesses. The Court of Appeals dismissed the appeal,
10 pursuant to review under *Anders* and the remittitur was sent
11 on June 23rd of 2023. This PCR was timely filed on
12 September 5th of 2023 and, in his application, Mr. Major is
13 alleging ineffective assistance counsel for failure to
14 object to a statement made by his co-defendant that
15 prejudiced the jury, failure to prepare and investigate the
16 case, failure to move to dismiss evidence for tampering by
17 a lead investigator, failure to advise on trial procedure
18 rights and options, and failure to seek a separate trial
19 from his co-defendant. Mr. Major is also raising
20 allegations of prosecutorial misconduct alleging that the
21 solicitor was being untruthful about dismissed charges,
22 malicious prosecution, improper identification techniques
23 and chain of custody concerns and mishandling evidence. Mr.
24 Major also raised an allegation that the trial judge erred
25 in not allowing the defense's evidence that the witness was

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5

1 found with methamphetamine in his system. Your Honor, the
2 state filed our return on December 14th of 2023. We are
3 moving to dismiss the allegation of trial court error for
4 failure to state a cognizable PCR claim. That issue is a
5 direct appeal issue, not a PCR claim, and that issue has
6 already been raised on appeal and the Court of Appeals
7 dismissed the appeal pursuant to Anders. Mr. Mayor is
8 present and represented by Denise Swope. Your Honor, the
9 state has provided this court with records from the subject
10 conviction, including the trial transcript and clerk
11 records as well as Mr. Majors SCDC records and appellate
12 records, and the state is ready to proceed.

13 THE COURT: All right, anything further on your
14 motion to dismiss?

15 MR. HALL: Your Honor, we ask that allegation be
16 dismissed and stricken because it fails to state a
17 cognizable claim. We ask for an evidentiary hearing on the
18 other allegations.

19 THE COURT: All right. Ms. Swope, let's first
20 address the issue of the exclusion of evidence. That
21 appears to be and I don't have it readily handy, his notice
22 of intent to appeal, but I do believe that that is an issue
23 to be handled on appeal instead of PCR. Am I wrong?

24 MS. SWOPE: No sir, you're not wrong. It is an
25 appellate issue and, in fact, it was addressed by the

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1 appellant court.

2 THE COURT: All right.

3 MS. SWOPE: So I believe that's already been
4 addressed by the court.

5 THE COURT: Okay. I'll grant the partial motion to
6 dismiss as to the trial judge's disallowance of evidence
7 that the witness had methamphetamine in his system. All
8 right, ready to anything from the defendant before, or
9 anything from the state, I'm sorry, before we proceed?

10 MR. HALL: Nothing, Your Honor, we'll turn it over
11 to Ms. Swope.

12 MS. SWOPE: Yes Your Honor. I would call Devonte
13 Major to the stand please.

14 THE COURT: Come on up Mr. Major.

15 DEPUTY CLERK: Please raise your right hand. State
16 your full name for the record.

17 MR. MAJOR: Devonte Major.

18 DEPUTY CLERK: Do you swear or affirm to tell the
19 truth, the whole truth and nothing but the truth so help
20 you God?

21 MR. MAJOR: Yes ma'am.

22 THE COURT: Yes ma'am, Ms. Swope.

23 MS. SWOPE: Yes, Your Honor.

24 **Mr. Devonte Major - Examination by Ms. Denise Swope**

25 Q. Mr. Major, you made a number of allegations in your

1 PCR application, and I want to go over those with you
2 carefully to make sure that we cover everything. Let's kind
3 of start at the beginning of the case, if you will. You
4 stated that you didn't feel Ms. Hensley prepared or
5 investigated the case sufficiently. Is that correct?

6 A. Yes ma'am.

7 Q. Can you explain to the court what you feel that she
8 failed to do or could have done that she didn't?

9 A. Cause my lead officer tell me about my evidence. I
10 didn't find out about that until the ending of my trial
11 date, the end date. I didn't know, oblivious of everything.

12 Q. And can you explain your recollection of what you
13 were told and when you were told?

14 A. I was just told I was going to get me a sentence. I
15 was never told to much.

16 Q. Okay. You said --- to my understanding what you're
17 saying is Ms. Hensley failed to disclose information to
18 you?

19 A. Yes ma'am.

20 Q. And that was, regarding your recollection, is a lead
21 investigator?

22 A. Yes ma'am.

23 Q. What information did you find out at the last --- at
24 the end of the trial, what information did you find out
25 that you did not know previously?

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1 A. That he was under investigation. I guess he was on a
2 probation on something until he got sentenced like three
3 months after.

4 Q. Okay. Your recollection is that was the lead
5 investigator in your case?

6 A. Yes ma'am.

7 Q. And so you feel like she didn't tell you about that
8 information in a timely fashion?

9 A. Yes ma'am.

10 Q. And you said in your PCR application that you feel
11 like she should have moved to dismiss evidence due to those
12 allegations. Is that correct?

13 A. Yes ma'am.

14 Q. Okay. And you also said that Ms. Hensley failed to
15 advise you on trial procedure and options and what your
16 options were. Do you feel like you didn't understand the
17 trial process? I just want to make sure I understand what
18 the allegation is.

19 MR. HALL: Objection, leading.

20 THE COURT: Overruled.

21 A. Yes. Ms. Hensley only came to see me like three times
22 during my stay in county jail.

23 Q. So you didn't feel like she come to see you enough?

24 A. Yes ma'am.

25 Q. Do you feel like she explained the trial process to

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1 you enough?

2 A. No ma'am. She would just come and tell me I really
3 don't have a win. What do I want to do? Do I want to take a
4 plea or do I want to take a trial? She really wouldn't get
5 into the case like that.

6 Q. Did you go over the evidence, your Brady motions with
7 her, the evidence against you, did you go over that
8 evidence?

9 A. No ma'am.

10 Q. You don't recall going over that evidence with Ms.
11 Hensley?

12 A. No ma'am.

13 Q. Did you feel prepared to go to trial? Do you feel
14 like you were prepared properly?

15 A. No, ma'am.

16 Q. And you feel like that if you had been prepared
17 properly, that the outcome in this matter could have
18 changed things?

19 A. Yes ma'am.

20 MR. HALL: Objection, leading.

21 THE COURT: Overruled.

22 Q. You feel like perhaps you would have been more
23 informed, is your argument. Is that correct?

24 A. I wish I would have been more informed, ma'am.

25 Q. Okay. Do you feel like that, that would have enabled

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1 you to assist in your own defense better?

2 A. Yes ma'am.

3 Q. Okay. All right. Now the other issue that you
4 mentioned was, there's two, actually. You mentioned that,
5 actually you said, in the PCR application, you said that
6 you wished that the trials had been severed so you were
7 tried separately from the co-defendant. And you've also
8 mentioned to me that you felt like it might have been less
9 confusing if you were tried together. Can you explain how
10 you feel like, should they have been tried together, should
11 you have been tried separately? What is your allegation?

12 A. I really didn't have no choice with the hands of one
13 hands of all. They had to severance it. I just didn't
14 understand why it couldn't be severance. If it had been
15 separate it would have been different.

16 Q. So you don't feel like that that legal issue was
17 properly explained to you?

18 A. Yes ma'am.

19 Q. All right. I follow that. And you also allege that
20 there were objections that Ms. Hensley could have made at
21 trial that she did not make?

22 A. Yes ma'am.

23 Q. Regarding things that you allege made your case
24 worse?

25 A. Yes ma'am.

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1 Q. Is there anything that you feel like we need to
2 address that I haven't asked you about because this is your
3 one day in court to explain to the judge why you feel like
4 your case should be overturned. So if I have missed
5 something, or you feel like there's something else that you
6 need to mention, please do that.

7 A. No ma'am. You said everything. You said everything
8 correctly.

9 Q. Okay. Just making sure.

10 MS. SWOPE: I don't have anything further, Your
11 Honor.

12 THE COURT: All right. Mr. Hall.

13 MS. SWOPE: Your Honor, I apologize. Should we
14 cover the prosecutorial misconduct now or do you want to
15 cover Ms. Hensley first then do that? Which is easier?

16 MR. HALL: Well he's on the stand now.

17 MS. SWOPE: Okay. I'm sorry. Let me ask about that
18 real quickly.

19 THE COURT: Okay.

20 Q. You also allege prosecutorial misconduct because you
21 feel like the solicitor was untruthful when he was
22 explaining your prior record to the judge. Is that correct?

23 A. Yes ma'am.

24 Q. And you said you feel like the prosecution was
25 malicious in nature?

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1 A. Ma'am? Can you say that again?

2 Q. You said that --- your application says that you felt
3 like he was targeting you, that the prosecution was
4 malicious?

5 A. Yes ma'am.

6 Q. Okay, can you explain to us why you feel that way?

7 A. Because he made a statement that I had a charge of
8 shooting a dog before and I never had a charge of that.

9 Q. Okay. And you stated that you thought there was
10 prosecutorial misconduct in that there were improper
11 identification techniques and change of custody concerns.
12 What did that have to do with?

13 A. Because I believe I felt like I didn't really have a
14 chance to say anything because I was told not to say
15 anything. So I really felt like I was ...

16 Q. Okay.

17 A. ... getting tricked into going further with this
18 court thing.

19 Q. And you said you felt like that the prosecution used
20 improper identification techniques. You feel like there
21 were problems with the evidence in the way it was handled?

22 A. Yes ma'am.

23 MS. SWOPE: Your Honor, I believe that's all.

24 THE COURT: All right.

25 MS. SWOPE: I apologize for the interruption.

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1 THE COURT: No no. Mr. Hall.

2 **Mr. Devonte Major - Cross Examination by Mr. Bryan Hall**

3 Q. Mr. Major, I want to ask you some questions about the
4 facts in your case. Isn't it true that Marcus Porter, who
5 was one of the victims in this case, testified that on the
6 night of the murder, four men with guns broke into his home
7 and shot Joe Brown Weaver, is that right?

8 A. Yes sir.

9 Q. Okay. And isn't it true that on the night of the
10 shooting, shortly after that happened, you and your co-
11 defendants were seen by the police matching the description
12 of the robbers in that area. Isn't that right?

13 A. Yes sir.

14 Q. Okay. And isn't it true that after you were spotted
15 by police, you and your co-defendants fled and led police
16 on a high speed chase? Isn't that right?

17 A. Yes sir.

18 Q. Okay. And isn't it true that while that high speed
19 chase is going on, you and your co-defendants threw various
20 items out of the window, right?

21 A. Yes sir.

22 Q. Okay. And isn't it true that when the police searched
23 the route of that chase, they found four guns and ski masks
24 along the side of the road? Isn't that right?

25 A. Yes sir.

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1 Q. Okay. And isn't it true that the bullets that were
2 recovered from the deceased victim, Joe Weaver, match ...

3 MS. SWOPE: Your Honor, I would object that calls
4 for legal conclusion.

5 MR. HALL: Your Honor, it's testimony that's
6 already in the trial record. I'm just asking him about
7 those facts.

8 THE COURT: All right if he knows the answer he
9 can say so. If he doesn't he can say so. Go ahead.

10 Q. Isn't it true that, at your trial, there was
11 testimony that the bullets recovered from Joe Weaver, the
12 deceased victim, matched one of the guns that was found?
13 Isn't that true?

14 A. Yes sir.

15 Q. And isn't it true, that Marcus Porter, who was
16 present when that home evasion occurred, testified that one
17 of the men broke into the home and grabbed loose marijuana
18 from a jar. Isn't that right?

19 A. Sir?

20 Q. Isn't it true that at your --- at your trial, Marcus
21 Porter testified that one of the men that broke into the
22 home during that home invasion grabbed loose marijuana from
23 a jar. Marcus Porter testified that he observed that.

24 A. I don't remember him testifying about that.

25 Q. And isn't it true that when you were interrogated by

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1 the police --- Isn't it true that the police testified at
2 your trial that you reached into your coat pocket and threw
3 on the floor a hand full of loose marijuana?

4 A. Yes sir.

5 MR. HALL: No further questions, Your Honor.

6 THE COURT: All right. Any redirect, Ms. Swope?

7 MS. SWOPE: None, Your Honor.

8 THE COURT: Thank you very much, Mr. Mayor, you
9 may step down. All right, Ms. Swope.

10 MS. SWOPE: My question is Your Honor was the
11 state going to call the solicitor and trial counselor or
12 not?

13 THE COURT: Right.

14 MS. SWOPE: I certainly can but those are the two
15 remaining witnesses that I'm aware of.

16 MR. HALL: The state had intended to call them,
17 but it's --- you haven't rested yet.

18 MS. SWOPE: Okay, that's what I --- the defense
19 has no further witnesses. We would question the State's,
20 witnesses.

21 THE COURT: All right. Mr. Hall.

22 MR. HALL: The state calls Laree Hensley.

23 DEPUTY CLERK: Please state your name for the
24 record.

25 MS. HENSLEY: Laree Hensley.

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1 DEPUTY CLERK: Do you swear or affirm the
2 testimony you give the court shall be the truth, the whole
3 truth and nothing but the truth so help you God?

4 MS. HENSLEY: I do.

5 DEPUTY CLERK: Thank you. You may be seated.

6 **Ms. Laree Hensley - Examination by Mr. Bryan Hall**

7 Q. Ms. Hensley, how are you?

8 A. I'm doing well. How are you sir?

9 Q. I'm doing well. Ms. Hensley. How long have you been
10 practicing law?

11 A. 25 years.

12 Q. And how much of that time has been spent in criminal
13 practice?

14 A. Well, I'd say criminal practice is about 60% of my
15 total practice, but the entire time I've been practicing
16 law I've been representing criminal defendants.

17 Q. Can you tell the court how you got involved in Mr.
18 Major's case?

19 A. I got appointed on a 608 conflict appointment.

20 Q. And during your representation, can you tell the
21 court how often you met with him?

22 A. Well, I met with him as often as I had information to
23 give him. You got to understand that during the time of,
24 especially around the time of this trial, was COVID. So the
25 jails were locked down, and we were having to communicate

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1 mostly by letter and some video visits, and then we had
2 some several in person meetings at hearings. He had filed
3 a motion to relieve me. I filed motions for bond, but a
4 lot of that was during that time. Devonte was originally in
5 jail here in Berkeley County, and then he picked up ABHAN
6 charge and got transferred to Charleston County Jail, but
7 still, in person, communication was a little difficult then
8 so I couldn't tell you a number.

9 Q. Do you believe that you met with him sufficiently to
10 be prepared for trial?

11 A. Oh, yes, in this case, because of COVID, instead of
12 trying all four co-defendants at the same time they tried
13 two co-defendants prior to Devonte's trial. So I think that
14 was in May of 2021. So I sat up here for the whole week of
15 that trial. I got an ex parte order to get a copy of that
16 transcript, I shared that transcript with him which was,
17 you know, a pretty good preview as to how this trial was
18 going to go, and then we communicated by mail, and I
19 shared, you know, all the other evidence and discovery that
20 I received.

21 Q. Okay. And so, in preparation for Mr. Majors trial,
22 you reviewed the trial transcript from his co-defendant
23 trial?

24 A. I didn't just review it. I sat through the entire
25 trial. I took notes of the entire trial --- I took notes of

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1 the entire trial, I got the transcript, and then what I did
2 was, for every witness, broke down you know their
3 transcript from the first trial, so that I had a record of
4 what they had said previously, so I knew, basically it was
5 a good preview of what they were going to
6 testify to. So yes I did.

7 Q. And I believe you testified that you reviewed
8 discovery. Did you review the discovery with Mr. Major?

9 A. Well, mostly because of COVID, I provided the
10 discovery Mr. Major and then had opportunities for us to
11 talk about it. But certainly it was, and it always is, I
12 think, with cases like this where your clients can't get a
13 bond, is an issue of whether they have their evidence is
14 always a huge issue in those cases, so I made sure that he
15 had all the information that I had.

16 Q. And during those meetings and discussions, did you
17 discuss with him the charges that he was facing and the
18 elements?

19 A. I did.

20 Q. And Ms. Hensley, did you discuss with him possible
21 defenses?

22 A. Well, we discussed the way the trial was going to go.
23 You know this was a case where we didn't have any offers,
24 and I think that the our defense centered around the fact
25 that Mr. Major's defense was he wasn't present. So we

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1 certainly discussed that and problems with that defense.

2 Q. Can you tell the Court what problems were with that
3 defense?

4 A. Well, in this case, immediately after this crime
5 occurred, there was a 911 call. And the 911 call basically
6 said that four men had broken into this house. Somebody had
7 been shot. One of the men was a heavyset African American
8 man wearing bright purple shoes. That was the 911 call. So
9 before these fellas, before they could get out of the
10 Robynwyn neighborhood where this crime occurred, there was
11 a police officer who had a car pulled over on the side of
12 the road. So the call goes out about the 911 calls the
13 police officer, I guess writing the ticket, he sees this
14 car leaving this neighborhood with four African American
15 males in it. He thinks it looks suspicious, right? They
16 look they look at him, they look scared, or something like
17 that. I don't remember the exact words. But that car didn't
18 have a tag. So the police obviously had a reason to pursue
19 that vehicle. And they did pursue that vehicle on a high
20 speed chase, I think from where this happened all the way
21 to Cottageville. So down 17A, all the way to Cottageville.
22 And then when they threw the sticks out, when they got them
23 out, all individually, I thought the biggest problem that
24 we had was that Devonte matched that description from the
25 initial 911 call. He was a heavy set African American male

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1 with bright purple shoes on.

2 Q. And isn't it also true that the shell casings
3 recovered from the scene matched the description of one of
4 the guns that was thrown out of the window?

5 A. That was a problem, but I thought the biggest had to
6 do with the ID. I mean, all of those things combined,
7 certainly caused problems with the defense.

8 Q. And Ms. Hensley, I want to ask you about Mr. Majors
9 intentions for proceeding to trial or deciding to plea,
10 were there any plea negotiations or offers in this
11 case?

12 A. There weren't --- This was the case with no offers.
13 And so in a case like that, I want to be really careful
14 that my client knows what the possible punishment is, what
15 to expect and so I detailed that information from him,
16 because early on, I think they started to call his case for
17 trial in January of 2021, which they weren't able to do
18 that, obviously, because of the whole COVID thing. But as
19 early as October of 2020, I had written to him, told him
20 how I thought they were going to settle the case is they
21 weren't going to be able to try all four co defendants
22 together. That I wasn't sure what order they were going to
23 go in. Actually, I believe that they would try Mr. Major's
24 case first. But that's not the way that it shook out. But
25 and then, basically I just outlined for him the possible

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1 punishments for all the charges and kind of what I, my
2 ideas about what might happen if he got convicted, just
3 based on my experience.

4 Q. And do you believe that severing this trial from his
5 co-defendants would have made a difference in this case?

6 A. I don't believe we could have been successful with
7 the severance motion. And I don't think that it made a lot
8 of the difference, just because, I mean, they wanted to try
9 them all together, so I thought we actually had an
10 advantage to get to go second.

11 Q. Ms. Hensley, I want to ask you about your
12 investigations in this case. Did you conduct any
13 investigations in this case?

14 A. Well I did drive the route, you know, from the where
15 the police officer --- the Robynwyn neighborhood where the
16 murder took place, and the route out of there up to 17A. My
17 oldest son went to Charleston Southern, so I've driven 17A
18 lots and lots and lots of times. But I wanted to know, you
19 know, what route that they took for the chase, and then
20 there was a lot of evidence. And so, of course, we went
21 through all of that. The interviews, the transcripts, the
22 physical evidence, and the things that you know that I
23 thought didn't match, you know, anything in the story,
24 there were issues. There were issues in the case, where the
25 story I didn't think added up, which was basically our

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1 defense.

2 Q. And Ms. Hensley, there was testimony about a lead
3 investigator in this case. Do you recall that?

4 A. Well, do I recall Mr. Major testifying about it or?

5 Q. I'll rephrase. There was testimony that Mr. Major, at
6 some point, became aware of misconduct by an investigator
7 who was involved in this case. Were you aware of that
8 during this time of trial?

9 A. Certainly, but it wasn't the lead investigator. I
10 think an investigator, officers that was involved in this
11 case. I think Detective Rollins, I don't know his title.
12 I'm sorry and I'm just not good with police titles, so I
13 don't know if he's a sergeant or a detective or what he was
14 but had been arrested for misconduct in office. So it was
15 an issue. Unfortunately, there wasn't any evidence in Mr.
16 Major's case that anything that he had been involved with
17 or in really affected the actual evidence in Mr. Major's
18 case. But yes, and it was an issue in the May trial also,
19 so he was aware of that too.

20 Q. And the Officer, Officer Rollins, that misconduct was
21 unrelated to this case. Is that right?

22 A. That's my belief, yes. I think he was accused of
23 stealing money from the evidence room, there wasn't any
24 evidence missing in our case. There wasn't any money in our
25 case.

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1 Q. And I want to ask you, just going back to the
2 severance issue, were you aware of any statements that were
3 made by Mr. Major's co-defendant?

4 A. That got used in the trial?

5 Q. Yes, that would have been used or could have been
6 used?

7 A. There weren't any issues with statements in this
8 trial. None of the co-defendant's testified.

9 MR. HALL: Beg the Court's indulgence.

10 Q. Ms. Hensley, I want to ask you about the testimony of
11 Marcus Porter. Mr. Major is raising the allegation
12 regarding an agreement or something of that nature, with
13 the solicitor. Did you cross examine Mr. Porter on that at
14 trial?

15 A. Oh, I did. I think he had a pending trafficking
16 charge. I mean, I think part of our theme of the case was,
17 Marcus Porter is a great big drug dealer, and you can't
18 trust him. And I cross examined him extensively.

19 Q. And did you also make the argument to the jury?

20 A. Yes. Yes.

21 Q. And ultimately the jury found Mr. Major guilty of all
22 charges?

23 A. Unfortunately.

24 MR. HALL: No further questions, Your Honor.
25 Please answer any questions opposing counsel may have.

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Ms. Laree Hensley - Cross Examination Ms. Denise Swope

1 Q. Ms. Hensley, as you described, there was actually a
2 trial number one and a trial number two?

3 A. Yes.

4 Q. And there was in our conversations, you stated that
5 on two different occasions on pages 267 and 324, actually
6 that the other trial was mentioned, the other trial, the
7 other hearing. You did not object to those statements, did
8 you?

9 A. I did not. I think it was in response to a question
10 elicited by counsel for the co-defendant and honestly, I
11 felt like if had objected may have bought more attention to
12 it then it could help us. So it wasn't like, from my
13 recollection, that the response that came said, you know,
14 in the trial of the co-defendants, or in the trial where
15 these fellas got other fellas got convicted, he just, I
16 think the witness said something about the other trial, and
17 I felt like there wasn't any specificity to it, because we
18 worked really hard to keep, you know, all of the
19 information about the facts the first two fellows had
20 gotten convicted out of Devonte's trial, so much as, you
21 know, making sure that the labels on the exhibits didn't
22 mention the other trial and those things. I think it was
23 about a half a day long pre-trial hearing about that. So
24 that was my decision, that to have objected to the answer
25

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1 might cause more attention to it.

2 Q. And I understand. But you could have objected, you
3 could have made a motion for mistrial. Correct?

4 A. I could have objected. I'm not sure that the answer
5 elicited was something that raised an issue of a mistrial
6 but.

7 Q. Isn't it true that the jury could have made any type
8 of inference in terms of what the other trial means?

9 A. Right. And that was basically my thought process, Ms.
10 Swope, that it was as vague --- as good a vague answer that
11 we could get as she was going to elicit, elicit a question
12 that mentioned a trial, but not which trial, the trial, the
13 co-defendant's trial and I felt like if I had objected to
14 it, it was just going to call attention to it.

15 Q. And in your --- in speaking with Devonte earlier, and
16 I was just speaking with him, he raises the issue that the
17 evidence did not add up, that there were things about the
18 trial that did not add up. And you covered that in the
19 trial as well?

20 A. I did. I think that was basically what my closing was
21 about. There was a piece of evidence in this trial, an
22 orange mask. And I mean an orange mask, the color of Mr.
23 Major's jumpsuit today, and there was no mention of that. I
24 mean, it was in our trial, they put that mask into evidence
25 but no witness said they saw an orange mask, nobody --- it

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1 was not something I think you would forget so that was
2 basically the theme of my closing, that there were a lot of
3 things in the case that did not add up. There, you know, it
4 was a home invasion. The victim said that somebody kicked
5 in their back door came in, robbed them, shot them, all of
6 these things. There wasn't any mud tracked in the house.
7 All those things were part of our defense. That was our
8 defense, that these victims stories and this evidence don't
9 match.

10 Q. Did you feel at any point that the things that did
11 not add up could have been related to the officer that was
12 engaged in misconduct in another case?

13 MR. HALL: Objection, speculation.

14 THE COURT: Overruled.

15 A. I did not.

16 Q. Okay. And because you did not feel that those things
17 were related to that, you did not seek an investigator or
18 dig deeper into what had occurred with that officer in
19 terms of his disciplinary procedures?

20 A. Correct.

21 MS. SWOPE: Your Honor, I don't believe I have
22 anything further with this witness but let me double check
23 with my client.

24 THE COURT: Yes ma'am.

25 MS. SWOPE: Your Honor, I have nothing further

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1 from this witness?

2 THE COURT: All right. Any redirect Mr. Hall?

3 MR. HALL: Briefly, Your Honor.

4 **Ms. Laree Hensley - Redirect by Mr. Bryan Hall**

5 Q. Ms. Hensley, based on the evidence that was presented
6 in Mr. Major's trial, do you believe that if you had
7 objected to the mention of another trial that it would have
8 made a difference in this case?

9 A. I don't. I mean, I wish she hadn't asked the question
10 that got that answer but no.

11 Q. And regarding alleged discrepancies and evidence or
12 things that didn't add up, you testified that that was a
13 part of your defense, right?

14 A. Yes.

15 Q. And in fact, didn't you make that argument to the
16 jury in Mr. Major's trial?

17 A. I did. I mean, as a criminal defense attorney, things
18 not adding up is generally to my advantage.

19 MR. HALL: No further questions, Your Honor.

20 THE COURT: All right. Thank you very much ma'am.
21 You may step down.

22 MR. HALL: May she be excused, Your Honor?

23 THE COURT: Absolutely. Yes sir, Mr. Hall.

24 MR. HALL: State calls David Osborne.

25 DEPUTY CLERK: Please state your full name for the

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1 record.

2 MR. OSBORNE: David Osborne.

3 DEPUTY CLERK: Do you swear or affirm the
4 testimony you give will be the truth, the whole truth, and
5 nothing but the truth so help you God?

6 MR. OSBORNE: I do.

7 DEPUTY CLERK: Thank you.

8 **Mr. David Osborne - Examination by Mr. Bryan Hall**

9 Q. How are you doing Mr. Osborne?

10 A. Good. How about yourself?

11 Q. I'm doing well. Mr. Osborne, can you tell the Court
12 how long you've been practicing law?

13 A. About 11 years.

14 Q. And how much of that time has been spent in criminal
15 practice?

16 A. All of it.

17 Q. Are you currently a solicitor?

18 A. No, I'm on the dark side, a defense attorney.

19 Q. But you were once a solicitor. Is that right?

20 A. That's right.

21 Q. And you prosecuted Mr. Major?

22 A. I did.

23 Q. Mr. Osborne, can you tell the court what evidence the
24 solicitor's office had against Mr. Major?

25 A. So on January 28 of 2019 at about 12 o'clock, Marcus

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1 Porter ran to his neighbor's house where he called 911. He
2 reported that there was a home invasion at his house. He
3 was there with Joe Brown Weaver, who would end up being
4 murdered that night, along with David Baker. He also said
5 that multiple people broke into the back door. I don't
6 remember specifically a description at that time, but when
7 the call came out, and I think the call came out about
8 12:03 actually, four minutes after that, a Summerville
9 police officer was in the subdivision, and they were
10 passing the vehicle. We played the dash cam for the jury.
11 You can see the occupants in the vehicle were staring at
12 the car pretty hard. The officer then elected to just go to
13 crime scene check on victims, but he put out a description.
14 Almost immediately after that, like seconds after that,
15 another officer got behind that same vehicle, tried to
16 light it up. The vehicle then took off speeding. I think it
17 was like a 30 minute chase that went all the way into like
18 Ms. Hensley said, into Cottageville. Along the way, you can
19 hear the officer who's engaged in the case saying that
20 things are being thrown out of the car during the chase.
21 They eventually stopped the car. The driver was Polo
22 Salazar he was wearing like a camo jacket that became
23 important because Marcus Porter said that one of the
24 individuals, he believed, was wearing a camo jacket. It's
25 my recollection he also said that he thought that person

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1 had covered his face in some way. The camo jacket that Polo
2 was wearing had a hood in the back where you could pull it
3 up and then cover your face. The front passenger was Muanah
4 Fortune the rear driver side, passenger was Devonte Major,
5 and the rear passenger was Elijah Green. Devonte was
6 wearing purple shoes. He's a larger heavy set guy, I think
7 it was Marcus Porter, who said that one of the individuals
8 was a large heavy set guy wearing purple shoes. Also of
9 note, part of our theory to the case was that the
10 individuals that entered the back door, they enter the back
11 door of the house. If you follow the back door and you go
12 to the back of the house, Marcus Porter said after the
13 incident, he thought that someone jumped the fence.
14 Officers followed that path, and it was a muddy one, there
15 was a lot of mud back there. All four of the individuals
16 that got out of the car, all four defendants all had mud on
17 their shoes. Inside the car, there was a mid cap, there was
18 some gloves. All of those had strong propositions. And I
19 don't have the numbers in front of me, but they were strong
20 propositions that Polo Salazar contributed DNA to those
21 items along with I think, three other individuals. Well,
22 also, of note, the car ended up being stolen. I think the
23 car was stolen out of Beaufort, which became relevant. I'll
24 explain to you how in a second. There was also, like a
25 really large, puffy glove inside of the car. Marcus Porter

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1 said that the large individual, whenever he was trying to
2 get marijuana out of a jar he had puffy gloves on and he
3 was having a hard time manipulating the jar to get the
4 marijuana in it. Officers ended up backtracking. They found
5 an orange ski mask. The orange ski mask came back with one
6 hair follicle in the ski mask. Single source, contributor,
7 310, septillion times more likely to be the defendant
8 compared to an unknown individual. There were also overalls
9 that were thrown out of the car. The victim Joe Brown
10 Weaver's DNA was found on the overalls that were thrown out
11 of the car. Polo and Muanah Fortune could not be excluded
12 as contributors to that. There were also four firearms
13 recovered along the same path that the car took. Two of the
14 firearms have been used in the incident and they came back
15 matching the ballistics from the crime scene to two of
16 those firearms. And as far as a motive goes, and this kind
17 of brings us back to Beaufort. So there was evidence in the
18 trial that Marcus sold marijuana one --- he had a ledger,
19 got a ledger from the search warrant, and on that ledger,
20 there was an individual by the nickname of little bro.
21 Through the investigation we determined that little bro was
22 this guy named Jaquavious Washington from Beaufort. When we
23 looked at the phone records to Elijah Green, we saw that
24 just prior to the incident, Elijah Green was contacting
25 Jaquavious Washington. So we tied that into the connections

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1 of how the individuals in the car would know where, or at
2 least know this house, would be involved in drug activity.
3 There was some testimony that they had ransacked the house
4 during the home invasion. And that was basically the case.
5 I can get into the Wade Rollins if you want me to.

6 Q. Yes. Can you tell the court about officer Wade
7 Rollins and his involvement in this case?

8 A. So Wade was a crime scene investigator, and we
9 certainly recognized that that was going to be difficult,
10 because Wade had been charged for stealing. He was actually
11 stealing firearms from out of Summerville's Police
12 Department's evidence and then pawning them off. So, in
13 this case, though, there was no situations in which Wade
14 didn't --- Wade processed evidence where Matthew Brooks was
15 there. So that's sort of how we got around it. We called
16 Matthew Brooks to testify. I think the biggest piece of
17 evidence was recovering of the weapons which Brooks did
18 himself, and any of the items that were recovered along the
19 way, Brooks was there as well.

20 Q. And you mentioned Matthew Brooks, can you tell the
21 court who that is?

22 A. He's a crime scene investigator with Summerville
23 Police Department.

24 Q. And Mr. Brooks handled the evidence in Mr. Major's
25 case? Is that right?

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1 A. And if he didn't, he was there when Wade did. So they
2 were working it in unison is my recollection.

3 Q. And in your handling of the case, are you aware of
4 any evidence that was mishandled?

5 A. No.

6 Q. Are you aware of any evidence that had chain of
7 custody concerns?

8 A. No.

9 Q. I want to ask you about the victims identification,
10 Marcus Porter's identification in this case. I believe he
11 testified that Mr. Porter identified I believe it was Mr.
12 Major?

13 A. I think it was Elijah Green. And the way that came
14 about was after the incident occurred. I don't know if I
15 mentioned this. Marcus was shot in the chest, and they
16 also killed Mr. Weaver's dog during the process. After the
17 incident occurred, all four of the defendants who have been
18 arrested, their mug shots were put on the news. Marcus then
19 contacted, I believe, law enforcement at the time, and said
20 that he recognized one of the individuals, Elijah Green, as
21 being involved in the incident. I don't believe he
22 identified anyone else but I could be wrong.

23 Q. And that identification occurred out of court and out
24 of police custody?

25 A. Yeah, so I believe my argument on that was it wasn't,

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1 it didn't implicate --- because it wasn't a police lineup,
2 it wasn't a law enforcement identification process. So even
3 if it was unduly suggestive, it shouldn't be kept out of
4 evidence because it wasn't law enforcement that did the
5 process it was literally the news.

6 Q. And there was a pre trial hearing on the victim's
7 identification. Is that right?

8 A. Yes.

9 Q. And isn't it true that the trial court excluded the
10 shot --- news shot of the mug shots from being entered, but
11 allowed the victims to testify to his identification of Mr.
12 Green, is that right?

13 A. That's correct.

14 Q. And ultimately at trial Mr. Porter did testify to
15 that?

16 A. Mr. Porter, that's right, yes.

17 Q. I want to ask you about Mr. Porter's testimony.
18 There's an allegation that there were charges that were
19 dismissed as a result of his testimony. Are you aware of
20 any of that?

21 Q. No, I don't know what happened to his charges after
22 his testimony. His charged were prosecuted by Mike Spears,
23 another assistant solicitor. The only thing that came up in
24 reference to his pending charges was Don's deputy first
25 assistant solicitor, Don Sorensen had the case prior to me,

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1 and he had entered into an agreement that's sort of like
2 worded like a proffer as long as you tell the truth and be
3 honest, nothing can be used against you, and I'm pretty
4 sure that I elicited testimony concerning that agreement
5 and I think I actually moved that into evidence.

6 Q. And just for clarification, you're unaware of any
7 charges that were dismissed in exchange for his testimony?

8 A. No I don't know anything about his charges.

9 MR. HALL: No further questions, Your Honor.
10 Please answer any questions opposing counsel may have.

11 THE COURT: Thank you Mr. Hall. Ms. Swope?

12 MS. SWOPE: One moment, Your Honor.

13 **Mr. David Osborne - Cross Examination by Ms. Denise Swope**

14 Q. Good afternoon, Mr. Osborne.

15 A. Good afternoon.

16 Q. Do you have the trial transcript in front of you?

17 A. Yes.

18 Q. Okay. If I might, if I can get to the right numbers
19 here.

20 MR. HALL: May I approach, Your Honor?

21 THE COURT: Yes.

22 MS. SWOPE: I'm sorry thank you. I didn't realize
23 my mic was off.

24 Q. I would direct you to page 844 of the transcript.
25 This is after the jury has come back and you're setting

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1 forth the trial --- setting forth the statements for prior
2 record regarding Mr. Major for the judge and for purposes
3 of sentencing. And hold on just one second let me get to
4 the right place. I would direct you to line 19. And
5 regarding nolle prose charges. Can you read from 18 down to
6 line 25?

7 A. Yeah, I do remember this. I would like to read the
8 first few lines before that though. Where it says, starting
9 at line 14, it says they're asking for the record, the
10 Judge does. I said Yes, Your Honor. Devonte's record is a
11 little peculiar because my rap sheet literally starts with
12 a parole revocation. It says recollection but its
13 revocation. So I'm not sure exactly what that charge was
14 for. As far as convictions, he has none. But I will say
15 that the charges that appear to have been nolle prose are
16 significant. In 2018, he has two attempted murders and two
17 possessions of weapons during the commission of violent
18 crime charges that appear to have been dismissed, they are
19 out of Beaufort. Possession of cocaine in the first, again
20 a stolen vehicle, they all appear to be out of Beaufort,
21 and also appear to have been dismissed. And some resisting
22 charges and again no disposition on conviction.

23 Q. Thank you. Mr. Osborne, those were dismissed,
24 charges, correct?

25 A. Yes.

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1 Q. They were showing no conviction whatsoever?

2 A. That's correct.

3 Q. And yet you felt the court needed to hear regarding
4 charges that were dismissed?

5 A. Yeah, the case law on that I thought was pretty
6 clear. The sentencing judge has wide latitude in
7 consideration of charges. As long as I didn't misrepresent.
8 I thought I was fine. I certainly didn't misrepresent. I
9 was very clear that there's a parole revocation. I can't
10 quite track it down, but these are charges and not
11 convictions.

12 Q. Did you have any certified records to determine the
13 charges and what the evidence --- What the resolution of
14 the charges were?

15 A. No, just --- well, I guess you could get a certified
16 nolle prose but no I didn't have it.

17 Q. So there was actually no basis in terms of
18 reliability as to what these charges were or whether or not
19 he had been convicted of these charges?

20 A. Well, two different questions. The first part yes,
21 there was a basis for reliability and that was his NCIC rap
22 sheet. We always rely on those when we are asserting a
23 criminal history to a judge. So that's what I relied on.

24 Q. But he was not convicted of those charges?

25 A. That's exactly what I said, yes ma'am.

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1 MS. SWOPE: Your Honor, I don't have anything
2 further.

3 THE COURT: Any redirect, Mr. Hall?

4 MR. HALL: No, Your Honor.

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

6 MR. OSBORNE: Thank you, Your Honor.

7 MR. HALL: May he be excused, Your Honor?

8 THE COURT: Yes. All right, Mr. Hall.

9 MR. HALL: Your Honor, at this time the State rest
10 and we would just ask for an opportunity to make brief
11 closings.

12 THE COURT: Absolutely. Anything further from you?

13 MS. SWOPE: Nothing, Your Honor.

14 THE COURT: All right, happy to hear from you Ms.
15 Swope.

16 MS. SWOPE: Yes, Your Honor, I would submit to the
17 court that Mr. Major testified that he did not understand
18 the evidence against him. That he did not understand and
19 had not been advised regarding the process in terms of how
20 he could assist in his own defense. He seemed to have
21 legitimate confusion as to those issues. I do believe that
22 the statements from the witness stand about other trials
23 were severely prejudicial. The jury can make any number of

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1 assumptions to that. They can make assumptions as to prior
2 records of the defendant. They can make assumptions as to
3 guilt of a co-defendants, and there was no objection to
4 that testimony. There was no request for a mistrial, and
5 therefore those issues were not preserved for an appellate
6 process.

7 In terms of the prosecutorial misconduct issues,
8 Your Honor, with all due respect to Mr. Osborne saying that
9 you have a history of shoplifting, but that it was
10 dismissed is very different from saying, well, you have
11 these very, very serious charges, but it looks like they
12 were dismissed. There was no certified record, there was no
13 explanation as to where they came from. And you know, Mr.
14 Major has testified that these charges do not pertain to
15 him, and even if they did, they were dismissed, and this
16 was just prior to sentencing, and he got the most severe
17 sentence he could have gotten. He's serving life without
18 possibility of parole, and I can't help but think that
19 those statements colored the viewpoint of the judge in
20 regards to this defendant. And I think that he has raised
21 enough issues that I think he's entitled to have a new
22 trial. I think that's the trial in terms of confusion with
23 the various defendants, with the statements regarding other
24 trials, I'm very concerned that the jury might have made
25 any number of inferences to the detriment of my client, and

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1 I feel like the misrepresentation of his record could have
2 had an adverse effect regarding the judge. I think that
3 judges, just like lawyers, are human, we do the best we
4 can, but when you hear someone has prior serious charges, I
5 can see very easily how that could have affected the
6 outcome in terms of his sentence.

7 THE COURT: Yes ma'am. Do we know if those --- do
8 we know now looking back whether those charges were his or
9 not? Is there any evidence in the record to show whether
10 what Mr. Osborne said was accurate or Mr. Major's position
11 is accurate?

12 MS. SWOPE: There is no evidence in the record to
13 ascertain one way or the other, but it's very clear that
14 these were dismissed charges, and I think that they were
15 mentioned for the sole purpose of coloring him with a tar
16 brush before the judge. And he knew that these charges were
17 dismissed. It's improper to bring them up in the first
18 place.

19 THE COURT: Right. I guess I just want to make
20 sure that I was clear, because I'm thinking about it, my
21 question could have implied now or then. Do we know now
22 whether or not Mr. Major had those prior issues and they
23 were nolle prose or do we now know that he never was
24 charged with those and the statements by Mr. Osborne were
25 factually inaccurate?

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1 MS. SWOPE: We do not know. We know that it was on
2 the NCIC report at the time.

3 THE COURT: Okay. Anything further Ms. Swope?

4 MS. SWOPE: None, Your Honor.

5 THE COURT: All right, Mr. Hall happy to hear from
6 you sir.

7 MR. HALL: May it please the Court. Your Honor as
8 I'm sure you know the standard for Court in a PCR
9 proceeding comes from Strickland v. Washington, for any of
10 the allegations that Mr. Major is alleging he has to prove
11 that counsel's performance was deficient, and that's
12 measured under reasonable professional standards,
13 reasonable professional, excuse me, existing at the time of
14 trial, and the court is to evaluate those actions at the
15 time of trial. If Mr. Major can somehow prove that any of
16 counsels actions were deficient, he must prove that those
17 actions prejudice him, and prejudice as defined by the
18 court in Strickland meaning there's a reasonable
19 probability that, but for counsels actions, whether
20 something counsel should have --- should have done and did
21 not do or did, would have changed the outcome at trial.
22 Your Honor, the evidence in this case was overwhelming.
23 There's overwhelming evidence of guilt in this case. We
24 have a victim that identified Mr. Major's co-defendant. We
25 have Mr. Major and his co-defendants being spotted by

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1 officers just moments after the home invasion and murder
2 occurred. You have the officers recovering the items that
3 were used in the home invasion. You have the victim
4 testifying that he observed one of the men grab marijuana,
5 and you have Mr. Major in his law enforcement interrogation
6 throwing a handful of marijuana on the floor. Your Honor, I
7 think that the record speaks for itself. I think that given
8 the evidence and what Ms. Hensley was dealing with, I think
9 she did a fantastic job. The evidence in this case was
10 stacked against Mr. Major, and it was --- anything that
11 he's alleging she did or should have done would not have
12 changed the outcome in this case. Regarding the
13 prosecutorial misconduct allegation. You heard testimony
14 from former solicitor David Osborne, who testified to his
15 prosecution of his case. He testified to the officer in
16 question here Rollins when he was in --- when he had,
17 excuse me, beg the Court's indulgence. Officer Rollins,
18 who's involved in this case, was assisted by another
19 officer who was there and present at all times, and that
20 the misconduct had nothing to do with this case. Regarding
21 the record of Mr. Major, you have a testimony from Mr.
22 Osborne that the sentencing judge has wide latitude, and
23 Mr. Osborne testified, and the record speaks --- speaks for
24 itself, that these were not convictions, and so the
25 sentencing judge was aware of that prior to sentencing, I

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1 don't think there's anything here that Mr. Major can really
2 hang his hat on, due to the overwhelming evidence of guilt
3 in this case, and we ask that you deny his PCR application.

4 THE COURT: How about that the issue with the
5 charges that are nolle prose. Certainly, Mr. Osborne was
6 very up front about it on the record that there were no
7 convictions and that these were nolle prose. There's no
8 question, in my mind at least, that he wasn't upfront about
9 that but is that something that can be considered at all or
10 does that fall within acceptable information to provide a
11 judge at sentencing?

12 MR. HALL: Your Honor, we submit that given the
13 sentencing judge's wide latitude of begin able to consider
14 those things that the sentencing judge could have. Now,
15 that to the best of my knowledge, certainly if Ms. Swope
16 has case law that says otherwise, you know, we will defer
17 to precedent. But, Your Honor, even --- even if that's the
18 case, there's a few hurdles that Mr. Mayor has to jump over
19 to even attain relief. He has to show that somehow the
20 records were inaccurate. That the solicitor knew that the
21 records were inaccurate and intentionally put inaccurate
22 records before the sentencing judge. And the solicitor
23 testified, and the record speaks for itself, that the
24 solicitor clarified to the judge that these were just
25 arrests. They were nolle prose or dismissed, these are not

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1 convictions. So the sentencing judge knew that --- knew
2 that at the time and again, the burden is on Mr. Major to
3 prove that it would have resulted in a different outcome.
4 He can't prove that the sentencing judge would have
5 sentenced him to a different sentence, but for the
6 solicitor doing any of those things. And so we'd ask this
7 court to consider that, to consider the sentencing judge
8 hearing all the evidence decided that the best sentence
9 here for Mr. Major, given the crimes was life for murder.

10 THE COURT: Again, I'm asking about this just
11 because I find that issue interesting. In any sentencing
12 information whether something is properly provided or not,
13 inside or outside the scope of what the judge is to be
14 presented in sentencing, unless the judge says, because you
15 have these nolle prose charges, is there any way for the
16 petitioner here to carry the burden of showing that but for
17 that information the sentence would have been different?

18 MR. HALL: Your Honor, we make the argument that
19 it's a case by case basis and it depends on the
20 circumstance. Perhaps if this case were a close call where
21 the evidence is sort of on the fence and a defendant fell
22 on one side of the fence and the judge decides to give a
23 harsher sentence, an argument could be made. In this case
24 given the overwhelming evidence of guilt and the fact that
25 you had a victim who was shot and killed and another victim

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1 that was shot in the chest, and we have a dead dog, I don't
2 think that Mr. Major can meet his burden on showing that
3 but for that information, that he would have received a
4 more lenient sentence. And so that would be our position
5 and our argument.

6 THE COURT: Thank you, Mr. Hall. And ma'am, I'll
7 give you last word.

8 MS. SWOPE: Yes, Your Honor, if I could respond
9 briefly. I think to, Your Honor's point, that we're being
10 asked an impossible standard unless the judge says, which I
11 can't imagine any judge doing, I'm making this sentence
12 because of what the solicitor said. I think that that is an
13 unfair and unrealistic standard. For the record I'm not
14 suggesting that solicitor Osborne was deliberately
15 misinforming the court, because he did say that they were
16 non-convictions. However, they're not non convictions for a
17 minor charge, Judge, according to what he stated, they are
18 non convictions for two attempted murders and possession of
19 a weapon. I think it's completely unrealistic to expect
20 that for a judge to hear that there's two previous
21 attempted murder cases, there are weapons cases, to say
22 that there is no way that this could have affected the
23 sentence. I just don't think that that's
24 realistic. And I would leave it there.

25 MR. HALL: And Your Honor, just to briefly respond

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1 to that point. In the state's return, you mentioned the
2 standard for this court as it relates to allegations of
3 prosecutorial misconduct. Again the burden is on Mr. Major
4 and he has to prove that burden by showing actual
5 prosecutorial misconduct. He has to show that the solicitor
6 knew the information was false and put it before the court
7 for purposes of misrepresenting or misleading the court and
8 he hasn't demonstrated that point today.

9 THE COURT: All right. Thank you both for very good
10 arguments on both sides of this issue. I do want to go back
11 and look at some of the trial transcript some of it that
12 was referenced, as well as a couple of the cases as well.
13 And so what I'll do is take this matter under advisement.
14 As soon as I have a ruling, it should be hopefully soon. I
15 will advise y'all of the ruling at the same time. Thank
16 you.

17 MS. SWOPE: Thank you, Your Honor.

18 MR. HALL: Thank you.

19 THE COURT: Thank you.
20
21
22
23
24
25

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF DORCHESTER)

4
5 Be it known that I, the undersigned Melissa R.
6 Singletary, Certified Verbatim Reporter, for the State of
7 South Carolina, do hereby certify that the foregoing
8 transcript represents a true, accurate and complete
9 transcript of record of the testimony and evidence
10 introduced in during this testimony of the captioned case,
11 before the Circuit Court for Dorchester County, South
12 Carolina, so given on March 25, 2025 to the best of my
13 skill and ability;

14 That I am not related to nor an employee of any of
15 the parties hereto, nor a relative or employee of any
16 attorney or counsel employed by the parties hereto, nor
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF I have here unto set my hand this
19 29th day of June, 2025.

20 *Melissa R. Singletary*

21 _____
22 Melissa R. Singletary, CVR
23 Certified Verbatim Reporter
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

DEVONTE T. MAJOR #353008)

Plaintiff)

V.)

STATE OF SOUTH CAROLINA,)

Defendant.)

THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2023-CP-18-1477

**APPLICANT'S MEMORANDUM
ON PCR ALLEGATION OF
PROSECUTORIAL MISCONDUCT**

This matter came before the Court pursuant to an evidentiary hearing before the Honorable Thomas McGee III on March 25, 2025. With permission of the Court, the Applicant hereby submits a memorandum in support of the post-conviction relief ("PCR") action filed by Devonte T. Major ("Applicant") on September 5, 2023. The Applicant would respectfully show this Court that Applicant is entitled to relief on the issue of the Solicitor's improper mention of Applicant's prior record of arrests and non-convictions prior to sentencing.

HISTORY OF THE CASE

Applicant proceeded to a joint jury trial with his co-defendant, Elijah Green, before the Honorable Diane Goodstein. Former Assistant Solicitor David Osborne ("Solicitor") prosecuted the case, and Applicant was represented by Laree Hensley, Esquire. The jury convicted Applicant of murder, attempted murder, burglary 1st degree, possession of a weapon during the commission of a violent crime, and ill treatment of animals. During sentencing the solicitor recited Applicant's prior record to the trial judge as follows:

Solicitor: So, Devonte Major's record's a little bit peculiar, because my rap sheet literally starts with a parole recollection, so I'm not sure exactly sure what that charge was for.

As far as convictions, he has none. But I will say that the charges that appear to have been nol-prossed [sic] are significant. In 2018 he had two attempted murders and two

possession of a weapon during commission of a violent crime charges that appear to have both been dismissed. They were out of Beaufort. Possession of cocaine base, first. Again, stolen vehicle. These all appear to have been out of Beaufort, and also appear to have been dismissed. And some resisting arrest charges. Again, no disposition on conviction.

(R. 844:14-845:1). The trial judge sentenced Applicant and his co-defendant to life. (R. 849-51).

ARGUMENT

Pursuant to the South Carolina Rules of Professional Conduct Rule 8.4(e) "It is professional misconduct for a lawyer to...engage in conduct that is prejudicial to the administration of justice...". Further, South Carolina Rules of Professional Conduct Rule 3.8 states that a prosecutor has special responsibilities, noting in the comments that "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice...".

Applicant argues that Prosecutor's statements regarding dismissed charges of two attempted murder charges and two possession of a weapon during the commission of a violent crime were designed to be prejudicial to Applicant, especially given that the dismissed charges were nearly identical to the charges before the Court. The sentencing judge is a human being, not a computer. To assert that such alleged prior bad acts (State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)) would have no effect on how Applicant is perceived by the Court is disingenuous. Applicant was sentenced to life without the possibility of parole, the worst possible sentence available to the sentencing judge.

WHEREFORE Applicant believes that he is entitled to a new trial and/or a resentencing in this matter.

SWOPE LAW FIRM, P.A.

s/Denise Grainger Swope

Denise Grainger Swope
1525 Sam Rittenberg Blvd., Suite 208
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Charleston, South Carolina

Date: April 8, 2025

FILED-RECORDED

4-10-25

Daryl Graham

Clerk of Court

Dorchester County

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Devonte T. Major, #353008,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

) Case No.: 2023-CP-18-01477
)

) **RESPONDENT'S MEMORANDUM**
) **ON APPLICANT'S PCR ALLEGATION**
) **REGARDING THE SOLICITOR'S**
) **COMMENTS DURING SENTENCING**

) (Counsel Appointed)
)

Pursuant to the PCR court's permission at an evidentiary hearing before the Honorable Thomas McGee III on March 25, 2025, the State of South Carolina ("Respondent" or "the State") makes a memorandum in opposition to the post-conviction relief ("PCR") action filed by Devonte T. Major ("Applicant") on September 5, 2023. The State would respectfully show this Court that Applicant is not entitled to relief on the issue of the solicitor's mention of Applicant's prior record of arrests and non-convictions prior to sentencing because:

(1) Applicant failed to prove he was prejudiced by failing to prove the solicitor reciting his prior record of non-convictions so infected sentencing with unfairness as to make the resulting life sentence a denial of due process because the information is not prohibited from being considered by the trial judge, and the solicitor did not mislead the court about Applicant's prior record.

(2) Applicant failed to prove prejudice by failing to prove there's a reasonable probability that the result of sentencing would have been different (i.e. that a more lenient sentence would have been given) but for the solicitor's comments since Applicant received the same sentence as his co-defendant who also had no criminal record, and the life sentence imposed was within the statutory range for murder after the trial judge considered the aggravating circumstances of the offense.

I. STATEMENT OF FACTS

Applicant proceeded to a joint jury trial with his co-defendant, Elijah Green, before the Honorable Diane Goodstein. Former Assistant Solicitor David Osborne ("Osborne" or "the solicitor") prosecuted the case, and Applicant was represented by Laree Hensley. Applicant's

charges arose from an incident in which Applicant and his co-defendants committed a home invasion of the victims, resulting in one victim being shot and killed and another being shot and wounded. One of the victims called 911 shortly thereafter, and law enforcement observed Applicant and his co-defendants pass-by around the time of the call. When officers attempted to stop the vehicle, Applicant and his co-defendant fled and discarded various pieces of evidence along the route including the gun(s) used in the murder.

The jury convicted Applicant of murder, attempted murder, burglary 1st degree, possession of a weapon during the commission of a violent crime, and ill treatment of animals.¹ During sentencing the solicitor recited Applicant's prior record to the trial judge as follows:

Solicitor: So, Devonte Major's record's a little bit peculiar, because my rap sheet literally starts with a parole recollection, so I'm not sure exactly sure what that charge was for.

As far as convictions, he has none. But I will say that the charges that appear to have been nol-prossed [sic] are significant. In 2018 he had two attempted murders and two possession of a weapon during commission of a violent crime charges that appear to have both been dismissed. They were out of Beaufort. Possession of cocaine base, first. Again, stolen vehicle. These all appear to have been out of Beaufort, and also appear to have been dismissed. And some resisting arrest charges. Again, no disposition on conviction.

Elijah Green has no record.

(R. 844:14-845:2). The trial judge sentenced Applicant and his co-defendant to life. (R. 849-51).

II. ARGUMENT

- A. Applicant failed to prove the solicitor reciting his prior record of non-convictions so infected sentencing as to result in a denial of due process because the information is not prohibited from being considered by the trial judge, and the solicitor did not mislead the court about Applicant's prior record.**

¹ During the home invasion, Applicant and his co-defendants shot and killed the victims' dog.

It is Applicant's burden to prove actual prosecutorial misconduct.; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 824 (1985) (stating "the burden of proof is on the applicant to prove the allegations in his application" by a preponderance of the evidence). When examining allegations of prosecutorial misconduct, the inquiry is whether the solicitor's conduct denied the defendant's due process right to a fair trial. *Fortune v. State*, 428 S.C. 545, 549-50, 837 S.E.2d 37, 39-40 (2019); *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Fortune*, 428 S.C. at 549-50, 837 S.E.2d at 39-40. When evaluating the solicitor's comments in sentencing, the inquiry for prejudice is whether the comments so infected sentencing with unfairness as to make the resulting sentence a denial of due process. *See State v. McClure*, 342 S.C. 403, 409, 537 S.E.2d 273, 276 (2000).²

Applicant failed to prove the solicitor's comments so infected sentencing with unfairness as to make the resulting sentence a denial of due process because the information is not prohibited from being considered by the trial judge, and the solicitor did not mislead the court about Applicant's record. At the PCR hearing, David Osborne testified that he did not misrepresent the information to the court and informed the court that the offenses in Applicant's prior record were *not* convictions. Osborne also testified that he believed case law supports his proposition that the trial court could consider the information since the trial court is given wide latitude for what it may consider when sentencing. *See Alabama v. Smith*, 490 U.S. 794, 798 (1989) (stating "sentencing discretion permits consideration of a wide range of information relevant to the assessment of punishment" (citation omitted)); *State v. Gullledge*, 326 S.C. 220, 229, 487 S.E.2d 590, 594 (1997)

² *McClure* is distinguished from Applicant's case because *McClure* was a death penalty case in which a trial is bifurcated into two (2) phases: the guilt phase and the penalty phase (sentencing). The sentencing phase in a capital case is different than in a non-capital case, and the State merely cites to *McClure* for the limited purpose of illustrating a standard of review for solicitor comments in sentencing.

("when sentencing a convicted defendant, a trial court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed" (citing *State v. Cantrell*, 250 S.C. 376, 158 S.E.2d 189 (1967))).

The State asks this Court to find Osborne's testimony *credible*. Further, the record reflects that Osborne was transparent and candid with the trial court regarding Applicant's prior record since Osborne clarified more than once that the offenses mentioned were *not* convictions. (R. 844:18; 8:44:25-846:2) (emphasis added). Thus, Applicant failed to meet his burden.

B. Applicant failed to prove there's a reasonable probability the result of sentencing would have been different (i.e. a more lenient sentence would've been given) but for the solicitor's comments because Applicant received the same sentence as his co-defendant who also had no criminal record, and the life sentence imposed was within the statutory range for murder after the trial judge considered the aggravating circumstances.

A judge has discretion in sentencing within statutory limits. *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974). A sentence is not excessive if it is imposed within the statutory limitations and there is no evidence of prejudice against a defendant. *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (holding a PCR applicant failed to prove prejudice by failing to prove remarks by the trial judge prior to sentencing resulted in the imposition of an excessive sentence where the sentence imposed was within the statutory limitations, and there were no facts supporting the applicant's allegation of prejudice). When imposing a punishment for murder, the judge must consider aggravating and mitigating circumstances which may be supported by the evidence. *See* S.C. Code Ann. § 16-3-20(C) (enumerating aggravating circumstances and crimes or acts that the judge "shall" consider prior to sentencing for murder, and listing burglary and robbery as aggravating circumstances).

Here, Applicant cannot prove he was prejudiced by the solicitor's reciting his prior record of non-convictions because despite the solicitor's comments, Applicant received the same life

sentence as his co-defendant, Elijah Green, who did not have a criminal record at all.³ (R. 845:2). The trial court's imposition of the same sentence of life imprisonment on both Applicant and his co-defendant evidences a finding that the solicitor's mention of Applicant's prior arrests and non-convictions did not affect the sentence he received. (R. 849-51). Thus, Applicant cannot prove the solicitor's comments resulted in him receiving a harsher sentence where his co-defendant, who did not have a criminal record, received the same sentence.

Additionally, Applicant cannot prove he was prejudiced by the solicitor's comments because the life sentence imposed by the trial court was within the statutory limitations for murder, and trial judge was statutorily permitted to consider the facts and circumstances of the case in aggravation of the punishment. The murder was committed during a first-degree burglary, and there was overwhelming evidence of Applicant's guilt: Applicant's arrest shortly after the murder after a high speed chase with law enforcement; physical evidence that was discarded along the route of the chase; firearm analysis showing the guns discarded by Applicant and his co-defendant matched the bullets found in the deceased victim; and an out-of-court identification of Applicant's co-defendant by one of the victims. Thus, this Court should deny Applicant's PCR.

III. APPROPRIATE REMEDY

The State submits that Applicant is not entitled to relief. However, should this Court find that Applicant is entitled to relief on *this issue*, the appropriate remedy is to remand the case to the trial court for resentencing and not a new trial. Although the relief typically available on PCR is the grant of a new trial, Applicant's allegation of prosecutorial misconduct for comments made during sentencing does not challenge the conviction itself but his sentence. *See Smith v. State*, 413

³ Under a prejudice analysis, this Court may consider the co-defendant's sentence in relation to Applicant's sentence. *See State v. Brewington*, 267 S.C. 97, 103, 226 S.E.2d 249, 251 (1976) (stating "[t]he sentence imposed upon a co-defendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper punishment").

S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (clarifying that the proper remedy under the circumstances of the particular case was to remand for a new trial but remanded the case to the lower court for resentencing where the parties did not challenge the mandate of the decision); *see Robinson v. State*, 380 S.C. 201, 669 S.E.2d 588 (2008) (holding the appropriate remedy for the improper use of a prior conviction as a sentence enhancer was resentencing).

IV. CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Applicant's PCR application.

Respectfully submitted,

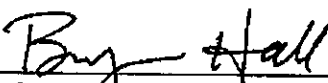
ALAN WILSON
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By:


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April 8, 2025

STATE OF SOUTH CAROLINA CERTIFIED COPY IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER FOR THE FIRST JUDICIAL CIRCUIT

2025 JUN 17 AM 11:41

Devonte T. Major, SCDC #353008,

Case No. 2023-CP-18-01477

Applicant,

CLERK OF COURT
DORCHESTER COUNTY

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Devonte T. Major ("Applicant") on September 5, 2023. On March 25, 2025, an evidentiary hearing convened before the Honorable Thomas McGee III. Applicant was present and represented by Denise G. Swope, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Laree Hensley, Esquire, and David Osborne, Esquire. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a life sentence. In September 2019, the Dorchester County Grand Jury indicted Applicant for murder (2019-GS-18-0430); attempted murder (-0432); burglary - first degree (-0433); possession of a weapon during the commission of a violent crime (-0434); and ill treatment of animals (-0436).

On July 9-16, 2021, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Applicant was tried jointly with his co-defendant, Elijah Green. Laree Hensley,

Esquire, ("Counsel") represented Applicant. Former Assistant Solicitor David Osborne prosecuted the case. Applicant was convicted, and Judge Goodstein sentenced him to a concurrent sentence of life imprisonment for murder; life for burglary – first degree; thirty (30) years for attempted murder; five (5) years for the weapon charge; and five (5) years for ill treatment of animals.

On August 11, 2021, Applicant timely filed a notice of appeal. On appeal, Applicant was represented by Appellate Defender Laura Caudy who filed an *Anders*¹ brief, raising the following issue:

Did the trial judge abuse her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and rule 402, SCRE, and would have impeached the credibility of Marcus Porter, the subject of the attempted murder charge, and one of only two eyewitnesses who testified?

The Court of Appeals Dismissed the appeal after *Anders* review. *State v. Major*, Op. No. 2023-UP-230 (S.C. Ct. App. filed June 7, 2023). The Remittitur was sent on June 23, 2023.

FACTUAL SUMMARY

On January 27, 2019, Applicant and his co-defendants (Elijah Green, Polo Salazar, Muanah Fortune) committed a home invasion, searching for drugs. Green shot and killed Joe Weaver (Victim). Green also shot Marcus Porter (resident) and attacked David Swibaker (Porter's roommate). The men also shot Porter's dog. Porter testified that he observed one of the men (Applicant) grab loose marijuana out of a mason jar. When the men left, Porter called 911. Law enforcement responded and observed a vehicle with four individuals in the area. Law enforcement attempted a traffic stop, and the vehicle refused to stop; a high-speed chase ensued. During the chase, the men threw various items out of the car, and the police recovered the items which included firearms and ski masks. Bullets recovered from Victim's body were determined to have

¹ *Anders v. California*, 386 U.S. 738 (1967).

been fired from one of the firearms recovered. While being interviewed by law enforcement, Applicant reached into his coat pocket, grabbed loose marijuana, and threw it on the floor.

CURRENT APPLICATION

Applicant timely commenced this PCR action on September 5, 2023, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Failure to object to a statement made by a co-defendant that "prejudiced the jury."
- b. Failure to prepare and investigate the case.
- c. Failure to move to dismiss evidence for tampering by the lead investigator.
- d. Failure to advise on trial procedure, rights, and options.
- e. Failure to seek a separate trial from co-defendant.

Prosecutorial Misconduct

- a. Solicitor was untruthful about dismissed charges.
- b. Malicious prosecution.
- c. Improper identification techniques.
- d. Chain of custody concerns and mishandling evidence.

Trial judge not allowing defense evidence that the witness was found with meth in his system.

On December 14, 2023, Respondent filed its Return.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Dorchester County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action. This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below,

this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687-88; *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

***Failure to Investigate;
Failure to Prepare;
Failure to Meet Sufficiently; and
Failure to Advise***

This Court finds Applicant failed to prove Counsel was ineffective for failing to

investigate, failing to prepare, failing to meet with him sufficiently, and failing to advise him on trial procedures, rights, and his options. To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how additional preparation and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Additionally, brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation; the applicant must show how additional consultation, or communication would have resulted in a different outcome. *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012); *Jackson, supra*.

Applicant averred Counsel did not meet with Applicant enough, did not explain trial procedure, and did not review discovery with Applicant. Applicant testified that he did not feel that Counsel was prepared and believes that better preparation would have helped with his defense.

This Court finds *credible* Counsel's testimony that since Applicant's case was during the Covid-19 pandemic, it was difficult for her to meet with him in person, but she met sufficiently with Applicant to be prepared for trial. This Court finds *credible* Counsel's testimony that she sat through the first trial of Applicant's co-defendants and used the transcript to prepare for Applicant's trial. This Court finds *credible* Counsel's testimony that she discussed with Applicant the charges against him and the elements of the offenses. This Court finds *credible* Counsel's

testimony that she reviewed discovery and investigated the scene by driving the route of the chase. This Court finds *credible* Counsel's testimony that her defense strategy was that Applicant was not present but the biggest issue for that defense strategy was the victims' identification.

This Court finds Counsel's preparation for trial and investigations were reasonable under prevailing professional norms and thus, were not deficient. This Court also finds Counsel's consultations, communications, and advice were reasonable under prevailing professional norms and thus, were not deficient. This Court finds Applicant failed to prove prejudice by failing to present evidence of discoverable information or defenses that Counsel could have discovered or developed that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Failure to Move to Dismiss Evidence for Tampering by an Investigator

This Court finds Applicant failed to prove Counsel was ineffective for failing to move to suppress evidence due to alleged tampering by an investigator. Applicant averred that the lead investigator in his case was under investigation for misconduct three (3) months after [trial]. This Court finds *credible* David Osborne's testimony that Wade Rollins was a crime scene investigator, but not the lead investigator, and another investigator (Matthew Brooks) handled the evidence in Applicant's case. This Court finds *credible* Osborne's testimony that Brooks was there (present) when Wade handled evidence, and Osborne had no concerns about how evidence was handled.

This Court finds *credible* Counsel's testimony that there were pieces of evidence that did not match, such as an orange ski mask that was found. This Court finds *credible* Counsel's testimony that although Officer Wade Rollins was arrested for misconduct, she did not believe the evidence not adding up was related to Rollins. This Court finds *credible* Counsel's testimony that part of the defense and her argument to the jury was that the evidence did not match.

This Court finds Counsel's performance in challenging the evidence in Applicant's case and making arguments to the jury regarding the evidence was reasonable under prevailing professional norms and thus, was not deficient. This Court finds Counsel exercised reasonable judgment, and this Court defers to Counsel's reasonable belief about the evidence not being related to Officer Rollins. Accordingly, this Court defers to Counsel's reasonable decisions in challenging the evidence in Applicant's case. *Strickland*, 466 U.S. at 688-89 (stating judicial scrutiny of counsel's performance must be highly deferential). Thus, Applicant failed to meet his burden.

Failure to Seek a Separate Trial from Applicant's Co-Defendant

This Court finds Applicant failed to prove Counsel was ineffective for failing to move for severance of his trial from his co-defendant. There is no clearly defined rule for determining when a defendant is entitled to a separate trial; the decision to sever is within the trial court's discretion, based on a just and proper consideration of the particular circumstances presented to the court in each case. *State v. Halcomb*, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (2009). An applicant must prove he was prejudiced by a joint trial by proving there's a reasonable probability that the result of trial would have been different in a separate trial. *See id.*, 382 S.C. at 441, 676 S.E.2d at 154 (holding the defendant did not demonstrate that he was prejudiced by the joint trial and that he would have obtained a more favorable outcome in the separate trial); *Strickland, supra*; *Cherry, supra*.

This Court finds *credible* Counsel's testimony that she did not believe Applicant's trial would have been severed if the motion were made. This Court finds Applicant failed to prove he was prejudiced by failing to prove there's a reasonable probability that the result of trial would have been different if he were tried separately since there was overwhelming evidence of Applicant's guilt. Thus, Applicant failed to meet his burden.

Failure to Object to a Statement by a Co-Defendant

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to a statement by a co-defendant that he believed prejudiced the jury. This Court finds *credible* Counsel's testimony that no co-defendants testified in Applicant's trial. This Court finds Applicant failed to meet his burden.

Witnesses Mention of the Other Trial

Although not raised in the pleadings, at the evidentiary hearing, Applicant averred that Counsel should have objected to a witness mentioning the previous trial. At trial, when asked if he had been interviewed for this case a few times, David Swibaker testified, "No. Just one other time, but just before the last trial." (R. 267:21-25). When asked if he ever mentioned to Swibaker that he thought he set him up, Marcus Porter testified, "No. because once this incident happened, I didn't talk to him. I didn't talk to him until the last trial." (R. 324:11-14).

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the witnesses mentioning the previous trial. This Court finds *credible* Counsel's testimony that she did not object because she believed objecting would have called more attention to the statements. This Court also finds *credible* Counsel's testimony that she did not believe objecting to the statements would have made a difference in the case. This Court finds Counsel articulated a reasonable strategy for not objecting to the statement, and this Court gives deference to Counsel's exercise of reasonable judgment. This Court also finds that Applicant failed to prove prejudice by failing to prove there's a reasonable probability that the result of trial would have been different if Counsel had objected. Thus, Applicant failed to meet his burden.

Prosecutorial Misconduct

The Due Process Clauses of the Fifth and Fourteenth Amendments provide that no person

may be deprived of liberty “without due process of law.” U.S. Const. amends V, XIV. When examining allegations of prosecutorial misconduct, the inquiry is whether the solicitor’s conduct denied the defendant’s due process right to a fair trial. *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006); *Fortune v. State*, 428 S.C. 545, 549-50, 837 S.E.2d 37, 39-40 (2019). It is Applicant’s burden to prove actual prosecutorial misconduct. *Butler*, 286 S.C. at 442 (stating “the burden of proof is on the applicant to prove the allegations in his application”).

Untruthful Comments About Dismissed Charges

Applicant averred the solicitor (“Osborne” or “the solicitor”) was untruthful in his comments to the trial court in sentencing. This Court finds Applicant failed to prove prosecutorial misconduct and failed to prove the solicitor’s comments violated his due process rights. Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Fortune*, 428 S.C. at 549-50, 837 S.E.2d at 39-40. When evaluating the solicitor’s comments in sentencing, the inquiry for prejudice is whether the comments so infected sentencing with unfairness as to make the resulting sentence a denial of due process. *See State v. McClure*, 342 S.C. 403, 409, 537 S.E.2d 273, 276 (2000).

After the jury’s verdict, during sentencing, Osborne recited Applicant’s prior record to the trial judge as follows:

Solicitor: So, Devonte Major’s record’s a little bit peculiar, because my rap sheet literally starts with a parole recollection, so I’m not sure exactly sure what that charge was for.

As far as convictions, he has none. But I will say that the charges that appear to have been nol-prossed [sic] are significant. In 2018 he had two attempted murders and two possession of a weapon during commission of a violent crime charges that appear to have both been dismissed. They were out of Beaufort. Possession of cocaine base, first. Again, stolen vehicle. These all appear to have been out of Beaufort, and also appear to have been dismissed. And some resisting arrest charges. Again, no disposition on conviction.

Elijah Green has no record.

(R. 844:14-845:2). The trial judge sentenced Applicant and his co-defendant to life. (R. 849-51).

This Court finds *credible* Osborne's testimony at the PCR hearing that he did not misrepresent the information to the court and informed the court that the offenses in Applicant's prior record were not convictions. This Court also finds *credible* Osborne's testimony that he believed case law supports his proposition that the trial court could consider the information since the trial court is given wide latitude for what it may consider when sentencing. This Court finds the record reflects Osborne was transparent with the trial court that Applicant's prior record did not include convictions.

This Court finds Applicant failed to prove Osborne's comments violated his due process right in sentencing since the trial court is permitted to consider a wide latitude of information in sentencing. *See Alabama v. Smith*, 490 U.S. 794, 798 (1989) (stating "sentencing discretion permits consideration of a wide range of information relevant to the assessment of punishment" (citation omitted)); *State v. Gullede*, 326 S.C. 220, 229, 487 S.E.2d 590, 594 (1997) ("when sentencing a convicted defendant, a trial court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed" (citing *State v. Cantrell*, 250 S.C. 376, 158 S.E.2d 189 (1967))). Additionally, this Court finds Applicant failed to prove he was prejudiced by the comments since he received the same sentence as his co-defendant (Green), who did not have a criminal record. Thus, Applicant failed to meet his burden.

Malicious Prosecution

This Court finds Applicant failed to meet his burden of proving prosecutorial misconduct for malicious prosecution. This Court finds Applicant's allegation is unsupported by the record,

evidence, or testimony presented. Thus, Applicant failed to meet his burden.

Improper Identification Techniques

This Court finds Applicant failed to meet his burden of proving prosecutorial misconduct for improper identification techniques in his trial. This Court finds *credible* Osborne's testimony that Marcus Porter identified Applicant's co-defendant (Green) from a news report, not a law enforcement identification process. This Court finds the record reflects Applicant challenged Porter's identification as unduly suggestive in a pre-trial hearing. (R. 37-46). The trial court excluded the identification exhibit but allowed the solicitor to question witnesses about watching the news and seeing a person they recognized as Green. (R. 46-47). This Court finds Applicant failed to prove the witness' identification was improper or violated his due process rights. Thus, Applicant failed to meet his burden.

Chain of Custody Concerns and Mishandling Evidence

This Court finds Applicant failed to meet his burden of proving prosecutorial misconduct for chain of custody concerns or mishandled evidence. This Court finds Applicant failed to specify which evidence, if any, was mishandled in his case. This Court finds Applicant's allegation is based on mere speculation. This Court finds *credible* Osborne's testimony that he had no concerns about the chain of custody or handling of evidence in Applicant's case. Thus, Applicant failed to meet his burden.

Dismissal of Trial Court Error Allegation

Respondent moved to dismissed Applicant's allegation that the trial court erred by not allowing defense evidence that the victim had methamphetamine in his system. Since this issue raises an allegation of trial court error, which is a direct appeal issue that has already been raised in Applicant's direct appeal, this Court grants Respondent's motion to dismiss this allegation. S.C.

Code Ann. § 17-27-20(B); *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (stating “[e]rrors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings”). Thus, this allegation is dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel’s assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant’s behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE, IT IS ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 10 day of June, 2025.

Richland, South Carolina


 THOMAS MCGEE III
 Presiding Judge
 First Judicial Circuit

WITNESSES

Philip M Moy

Summerville Police Department
19-006360**ARREST WARRANT NUMBER**
2019A1820500083

Arrested: January 28, 2019

ACTION OF GRAND JURY
TRUE BILLFor person of Grand Jury
Date: September 26, 2019**VERDICT**

of Petit Jury

DOCKET NO. 2019GS18-0430**The State of South Carolina**
County of DORCHESTER**COURT OF GENERAL SESSIONS****September 30, 2019 TERM****THE STATE**
vs.**Devonte Trevon Major****Indictment for****Murder**

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1. [Signature]
 2. [Signature]
 3. [Signature]
 4. [Signature]
 5. [Signature]
 6. [Signature]
 7. [Signature]
 8. [Signature]
 9. [Signature]
 10. [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

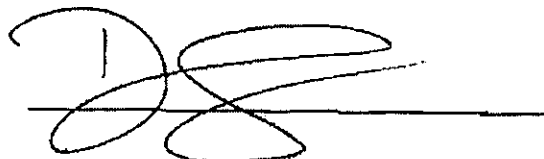
INDICTMENT
2019GS18-0430

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

MURDER

That in Dorchester County, South Carolina, on or about January 28, 2019, with malice aforethought, the defendant, Devonte Trevon Major, did kill one, Joe Weaver, by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a horizontal line extending to the right.

Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE

VS.

Devonte Trevon Major

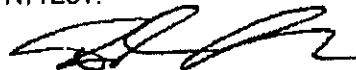
AKA:

Race: BLACK Sex: M Age: 27DOB: -1994 SS# [REDACTED]Address: Delaney CircleCity, State, Zip: Seabrook, SC 29940DL#: SID#:

IN THE COURT OF GENERAL SESSION

INDICTMENT/CASE#: 2019GS18-0430A/W#: 2019A1820500083Date of Offense: 1/28/2019 - 1/28/2019S.C. Code § : 16-3-10CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murderin violation of § 16-3-10 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:

101325
 Osborne, David L. SC Bar#

Defendant

Hensley, Laree Anne
Attorney for Defendant

SCB16867

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention C-for a determinate term of LIFE DSG ~~days/months/years/Time Served~~ ☐ Youthful Offender Act not to exceed 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: 7-16-2021☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.
 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 § 16-24 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Devonte Trevon Major INDICTMENT/CASE#: 2019GS18-0430**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 0 _____ 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
§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
§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.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$500	\$
TBD	\$
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk:

Cheryl Graham
Cathy Probst

Presiding Judge:

Judge Code:

Sentence Date:

Paul S. Smith
 2112
 7-16-2021

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

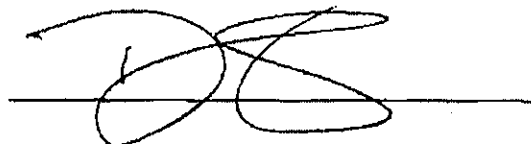
INDICTMENT
2019GS18-0432

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

ATTEMPTED MURDER

That in Dorchester County, South Carolina, on or about January 28, 2019, the defendant, Devonte Trevon Major, did with the intent to kill, attempt to kill one Marcus Porter with malice aforethought by shooting the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a horizontal line extending to the right.

Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE

VS.

Devonte Trevon Major

AKA:

Race: BLACK Sex: M Age: 27DOB: 1994 SS# [REDACTED]Address: Delaney CircleCity, State, Zip: Seabrook, SC 29940DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS18-0432A/W#: 2019A1820500088Date of Offense: 1/28/2019 - 1/28/2019S.C. Code § : 16-3-29CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Attempted Murderin violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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:
Osborne, David L.

101325

SC Bar#

Defendant

Hensley, Laree Anne
Attorney for Defendant

SCB16867

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 Years ~~days/months/years/Time Served~~, ☐ Youthful Offender Act not to exceed yearand/or to pay a fine of \$ provided that upon the service of days/months/years/Time Servedof \$; 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: 7-16-2021☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by 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. Devonte Trevon Major INDICTMENT/CASE#: 2019GS18-0432

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol test
- ☐ 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 0 _____ 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</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
☐ 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: Cheryl GrahamCourt Reporter: Cathy BrownPresiding Judge: Deane FortJudge Code: 2112Sentence Date: 7-16-2021

WITNESSES

Philip M Moy

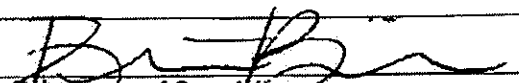
Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500090

Arrested: January 28, 2019

ACTION OF GRAND JURY**TRUE BILL**

 Foreperson of Grand Jury
 Date: September 26, 2019
VERDICT
 Foreperson of Petit Jury
 Date:
DOCKET NO. 2019GS18-0433
The State of South Carolina
County of DORCHESTER
COURT OF GENERAL SESSIONS**September 30, 2019 TERM**
THE STATE
vs.

Devonte Trevon Major

Indictment for

Burglary - First Degree

SC Code: 16-11-311

 After being fully advised as to my legal
 rights, I hereby waive presentment to the
 Grand Jury.

Defendant

 I
 hereby appear in my own proper person
 and plead guilty to the within indictment or
 to

Defendant

Witness:

C.C.C. PLS. AND G.S.

 RECEIVED
 CLERK OF COURT
 SEP 26 2019
 SUMMERVILLE, SC

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

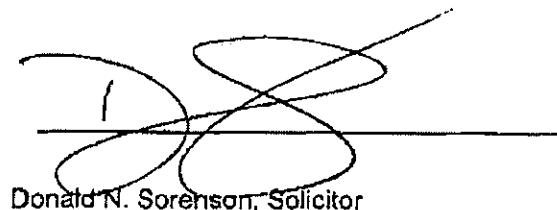
INDICTMENT
2019GS18-0433

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 28, 2019, the Defendant, Devonte Trevon Major, did willfully and unlawfully enter the dwelling of Marcus Porter, without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, the defendant or another participant in the crime: is armed with a deadly weapon or explosive; causes physical injury to a person who is not a participant in the crime; uses or threatens the use of a dangerous instrument; displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or the entering or remaining occurs in the nighttime. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE

VS.

Devonte Trevon Major

AKA:

Race: BLACK Sex: M Age: 27DOB: -1994 SS# [REDACTED]Address: Delaney CircleCity, State, Zip: Seabrook, SC 29940DL#: SID#:

IN THE COURT OF GENERAL SESSION

INDICTMENT/CASE#: 2019GS18-0433A/W#: 2019A1820500090Date of Offense: 1/28/2019 - 1/28/2019S.C. Code § : 16-11-311CDR Code #: 0079

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary - First DegreeIn violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ 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:
ATTEST:

Osborne, David L. 101325 SC Bar#

Defendant.

Hensley, Laree Anne
Attorney for Defendant

SCB16867

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE ~~and/or to pay a fine of \$~~ DSG ☐ Youthful Offender Act not to exceed y.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: 7-16-2021☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by
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 § 16-25-20
(Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Devonte Trevon Major INDICTMENT/CASE# 2019GS18-0433

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

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days¹⁴☐ 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
§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
§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:

Presiding Judge:

Judge Code:

Sentence Date:

Philip M Moy

Summerville Police Department
19-006360

ARREST WARRANT NUMBER
2019A1820500092

Arrested: January 28, 2019

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: September 26, 2019

VERDICT

Foreperson: _____ Jury: _____
Date: _____

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS
September 30, 2019 TERM

THE STATE
vs.

Devonte Trevon Major

Indictment for

Possession of a Firearm or Knife During the Commission of a Violent Crime

SC Code: 16-23-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

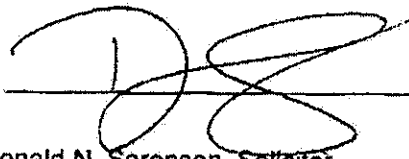
INDICTMENT
2019GS18-0434

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Dorchester, South Carolina, on or about January 28, 2019, the defendant, Devonte Trevon Major, did visibly display or have in his possession a handgun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Burglary 1st Degree and Murder, thereby violating 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.



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE

VS.

Devonte Trevon Major

AKA:

Race: BLACK Sex: M Age: 27DOB: 1994 SS# [REDACTED]Address: Delaney CircleCity, State, Zip: Seabrook, SC 29940DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS18-0434A/W#: 2019A1820500092Date of Offense: 1/28/2019 - 1/28/2019S.C. Code § : 16-23-490CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession of a Firearm or Knife During the Commission of a Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-17
(CSC w/minor 1st or CSC w/minor 2nd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:[Signature] 101325
Osborne, David L SC Bar#

Defendant

Hansley, Laree Anne
Attorney for Defendant

SCB16867

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 ~~days/months/years/Time Served~~ ☐ Youthful Offender Act not to exceed yearsand/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 probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7-16-2021☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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

STATE VS. Devonte Trevon Major INDICTMENT/CASE#: 2019GS18-0434

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

TOTAL \$ 128

Clerk of Court/ Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

WITNESSES

Philip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500095

Arrested: January 28, 2019

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date: September 26, 2019

VERDICT

For person of Grand Jury
Date:

DOCKET NO. 2019GS18-0436

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 30, 2019 TERM

THE STATE
vs.

Devonte Trevon Major

Indictment for

**Ill Treatment of Animals in General,
torture**

SC Code: 47-1-40(B)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

816119400
11/18

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

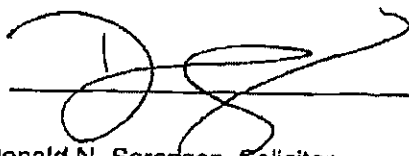
INDICTMENT
2019GS18-0436

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

ILL TREATMENT OF ANIMALS IN GENERAL, TORTURE

That in Dorchester County, South Carolina, on or about January 28, 2019 the Defendant, Devonte Trevon Major, did torture, torment, needlessly mutilate, cruelly kill, or inflict excessive or repeated unnecessary pain or suffering upon an animal or by omission or commission did cause the acts to be done in that the Defendant did cruelly kill a dog by shooting it. This offense being in violation of Section 47-1-40(B) of the South Carolina Code of Laws as amended.

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


Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE

VS.

Devonte Trevon Major

AKA:

Race: BLACK Sex: M Age: 27DOB: -1994 SS# Address: Delaney CircleCity, State, Zip: Seabrook, SC 29940DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS18-0436A/W#: 2019A1820500095Date of Offense: 1/28/2019 - 1/28/2019S.C. Code § : 47-1-40(B)CDR Code #: 2804

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Animals / Ill treatment of animals in general, torturein violation of § 47-1-40(B) of the S.C. Code of Laws, bearing CDR Code # 2804☒ 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 Court
ATTEST:

101325

SCB16867

Osborne, David L

SC Bar#

Defendant

Hensley, Laree Anne
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center.for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceedand/or to pay a fine of \$ provided that upon the service of days/months/years/Time Served andof \$; 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.

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days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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STATE VS. Devonte Trevon Major INDICTMENT/CASE#: 2019GS18-0436**SPECIAL CONDITIONS:**☐ PTUP after _____ months/years**And Other Terms Listed Below:**

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

\$500	\$
TBD	\$
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk: Cheryl GrahamPresiding Judge: Diane S. GossCourt Reporter: Wing ProbstJudge Code: 7112Sentence Date: 7-16-2021